November 2023
State Clearinghouse Number: 2021080499

ANCHOR QEA

# TC NO. CAL. Development Warehousing and Distribution Facility Project Final Environmental Impact Report

# DRAFT

Prepared for the Port of Stockton

November 2023
State Clearinghouse Number: 2021080499

# TC NO. CAL. Development Warehousing and Distribution Facility Project Final Environmental Impact Report

# DRAFT

**Prepared for**
Port of Stockton
2201 West Washington Street
Stockton, California 95203

**Prepared by**
Anchor QEA, LLC
33 New Montgomery Street, Suite 1210
San Francisco, California 94111

Project Number: 160377-01.11

# TABLE OF CONTENTS

## TABLES



## FIGURES

# ABBREVIATIONS

| | |
|---|---|
| µg | microgram |
| ABJC | Adams Broadwell Joseph & Cardozo |
| ACF | Advanced Clean Fleets |
| BAAQMD | Bay Area Air Quality Management District |
| BMP | best management practice |
| CAAQS | California Ambient Air Quality Standards |
| CAP | Clean Air Plan |
| CAPCOA | California Air Pollution Control Officers Association |
| CARB | California Air Resources Board |
| CC | Catholic Charities |
| CCR | California Code of Regulations |
| CDFW | California Department of Fish and Wildlife |
| CEQA | California Environmental Quality Act |
| CERP | community reduction emissions plan |
| CERS | California Environmental Reporting System |
| CFR | *Code of Federal Regulations* |
| CO | carbon monoxide |
| CVRWQCB | Central Valley Regional Water Quality Control Board |
| DBH | diameter at breast height |
| DEIR | Draft Environmental Impact Report |
| DPM | diesel particulate matter |
| DSG | Delta-Sierra Group of the Sierra Club |
| DTSC | California Department of Toxic Substances Control |
| EIR | Environmental Impact Report |
| FEIR | Final Environmental Impact Report |
| FFS | Focused Feasibility Study |
| GHG | greenhouse gas |
| HRA | Health Risk Assessment |
| HSC | California Health and Safety Code |
| IC | institutional control |
| ITMM | incidental take minimization measure |
| kgal | kilogallon |
| kWh | kilowatt hour |
| LD | Lozeau Drury, LLP |
| LSAA | Lake or Streambed Alteration Agreement |
| LTS | less-than-significant impact |

| | |
|---|---|
| LUC | Land Use Covenant |
| $m^3$ | square meter |
| mg | milligram |
| MMRP | Mitigation Monitoring and Reporting Program |
| MT | million tons |
| NAAQS | National Ambient Air Quality Standards |
| NAHC | California Native American Heritage Commission |
| NI | no impact |
| $NO_2$ | nitrogen dioxide |
| NOP | Notice of Preparation |
| NOx | nitric oxide and nitrogen dioxide |
| NPDES | National Pollutant Discharge Elimination System |
| $O_3$ | ozone |
| OCP | organochlorine pesticide |
| OHWM | ordinary high water mark |
| OSHA | Occupational Safety and Health Administration/Act |
| PAH | polycyclic aromatic hydrocarbon |
| $PM_{2.5}$ | particulate matter with a diameter of 2.5 microns or less |
| $PM_{10}$ | particulate matter with a diameter of 10 microns or less |
| Port | Port of Stockton |
| ppb | part per billion |
| ppm | part per million |
| PRC | California Public Resources Code |
| PSIP | Periodic Smoke Inspection Program |
| RAP | Remedial Action Plan |
| RCRA | Resource Conservation and Recovery Act |
| RDIP | Remedial Design Implementation Plan |
| RI | Remedial Investigation |
| ROG | reactive organic gas |
| RWQCB | Central Valley Regional Water Quality Control Board |
| SCH | State Clearinghouse |
| sf | square foot |
| SJCOG | San Joaquin Council of Governments |
| SJMSCP | San Joaquin County Multi-Species Habitat Conservation and Open Space Plan |
| SJVAB | San Joaquin Valley Air Basin |
| SJVAPCD | San Joaquin Valley Air Pollution Control District |
| SMAQMD | Sacramento Metropolitan Air Quality Management District |

| | |
|---|---|
| SMP | Site Management Program |
| SOx | sulfur oxide |
| SU | significant and unavoidable impact |
| SWPPP | Stormwater Pollution Prevention Plan |
| TAC | toxic air contaminant |
| TDM | Transportation Demand Management |
| TRU | Transport Refrigeration Unit |
| USACE | U.S. Army Corps of Engineers |
| VERA | Voluntary Emission Reduction Agreements |
| VMT | vehicle miles of travel |
| WCDP | West Complex Development Plan |
| yr | year |

# Executive Summary

This *Final Environmental Impact Report* (FEIR) was prepared in compliance with the California Environmental Quality Act (CEQA; California Public Resources Code [PRC] Division 13, Section 21000 et seq.) and CEQA Guidelines (14 California Code of Regulations [CCR] 15000 et seq.) to assist the Port of Stockton (Port) in considering the approval of the proposed TC NO. CAL. Development Warehousing and Distribution Facility Project (proposed project) in accordance with 22 CCR 66265 et seq. The proposed project would occur on the Port's West Complex at a 102-acre parcel referred to as Site 47. Under the proposed project, a new warehouse building and associated infrastructure would be developed over approximately 60 acres of the site to receive, store, and distribute bulk building products and consumer goods. The proposed project would also include remediation of contaminated soils from past U.S. Navy activities associated with the entire 102-acre remedial site. Under the proposed project, the Port would issue a lease to TC NO. CAL. Development to construct and conduct operations within the 60-acre portion of the site identified for the warehouse. TC NO. CAL. Development would sublease the warehousing facility to a commercial operator for distribution services. The Port would be responsible for remedial activities in the remaining areas of the site.

The Port has principal responsibility for making a determination on the proposed project through issuance of the lease and is the lead agency under CEQA (PRC 21151 et seq.) and the CEQA Guidelines for Implementation (14 CCR 15081 et seq.). Under Sections 15088 and 15132 of the CEQA Guidelines, a FEIR consists of the Draft Environmental Impact Report (DEIR); a list of commenters, as well as the verbal and written comments received on the DEIR; responses to comments on environmental issues received on the DEIR; and any information added to the document or any changes made to the text of the DEIR in response to comments. The FEIR contains an updated description of the proposed project in Chapter 1; a copy of responses to all comments on environmental issues received on the DEIR in Chapter 2; and a description of all changes made to the DEIR in Chapter 3.

This FEIR will support the permitting process of all agencies whose discretionary approvals must be obtained for elements of the proposed project. The FEIR is intended to provide decision-makers and the public with the most up-to-date information available regarding the proposed project, required mitigation measures, and alternatives.

## Proposed Project

The 102-acre project site (Site 47) is located south of McCloy Avenue on the Port's West Complex in Stockton, California (Figure ES-1). The proposed project includes construction and operation of a distribution warehouse on a 60-acre portion of the project site and remediation of contaminated soils from past Navy activities throughout the project site. Remediation would occur in areas throughout the 102-acre project site, which includes the proposed 60-acre area on which the warehouse would be developed, as well as approximately 42 acres to the east and west. Under the proposed project, the Port would issue a lease to TC NO. CAL. Development to construct and operate the warehouse, which would be built following remediation of the 60-acre Warehouse Development Area. TC NO. CAL. Development would sublease the warehousing facility to a commercial operator.

The approximately 102-acre project site comprises four distinct areas proposed for remediation and development:

- A 60-acre area proposed for remediation and TC NO. CAL. Development warehouse development ("Warehouse Development Area")
- A 7-acre area to the west of the Warehouse Development Area that would be remediated and remain undeveloped ("Western Remediation Area")
- A 9-acre area to the east of the Warehouse Development Area that would be remediated and remain undeveloped ("Eastern Remediation Area")
- A 26-acre area to the west of the Western Remediation Area that would be remediated using institutional controls and undergo necessary pavement repairs ("Western Warehouse Area")

Remediation and construction would be phased as follows:

- **Phase 1: Site Preparation and Remediation in Warehouse Development Area.** Anticipated to start in 2023 (8-month duration).
- **Phase 2: Construction of Warehouse and Improvements in Warehouse Development Area.** Anticipated to occur between 2024 and 2025 (20-month duration with 1 month of potential overlap with Phase 1).
- **Phase 3: Remediation of Western and Eastern Remediation Areas and Western Warehouse Area.** Anticipated to occur in 2025 (2-month duration).

The Port prepared this FEIR using available technical information and incorporating potential alternatives to the proposed project. As required by CEQA, the Port must evaluate the information in this FEIR, including the DEIR, all comments received during public review, proposed mitigation measures, and potentially feasible alternatives, before deciding whether to approve the proposed project or an alternative.

## Project Objectives

Pursuant to the CEQA Guidelines and 14 CCR 15124, a "statement of the objectives sought by the proposed project" must be provided as part of the project description in an EIR. The goals of the proposed project are to construct and operate a distribution warehouse facility to accommodate

Port-bound cargo and to remediate Site 47. To accomplish this goal, the following key project objectives must be accomplished:

- Remediate Site 47 per applicable regulations and standards.
- Initiate a lease between the Port and TC NO. CAL. Development consistent with the proposed project.
- Provide modern warehouse space to meet the existing need for an on-demand logistical model as the current growth in logistics has outpaced the availability of modern warehouse space.
- Receive, store, and ship bulk building products and consumer goods in a manner that promotes safe and efficient handling while ensuring environmental protection and controls.
- Increase the availability of building materials and supplies to the local area, region, and state.


Publish Date: 2021/08/23, 2:36 PM | User: jsfox
Filepath: \\orcas\GIS\Jobs\Port_of_Stockton_0377\Maps\TrammelCrow\AQ_fig1_SiteAndVicinityMap.mxd

ANCHOR QEA

0 2,000
Feet

**Figure ES-1**
**Project Site and Vicinity**
Final Environmental Impact Report
TC NO. CAL. Development Warehousing and Distribution Facility Project

## Summary of Project Alternatives

The CEQA Guidelines (14 CCR 15126) require that an EIR consider a range of reasonable alternatives to the project or to the location of the project that would feasibly attain most of its basic objectives but would avoid or substantially lessen any of the significant effects of the project. The alternatives considered in the DEIR were the following:

- Alternative 1: No Project Alternative
- Alternative 2: Reduced Project Alternative
- Alternative 3: Alternative Site Locations

A complete evaluation of these alternatives—including their ability to meet the objectives of the proposed project and their ability to avoid or substantially reduce significant environmental impacts—is provided in Section 6 of the DEIR.

### *Alternative 1: No Project Alternative*

The No Project Alternative, which is required for inclusion in an EIR by CEQA, represents what would reasonably be expected to occur in the foreseeable future if the proposed project were not approved. Under this alternative, no new warehouse building, or associated improvements would be constructed, and there would be no change to operations on the site. Additionally, no remediation of Site 47 would occur as part of the distribution facility construction, and a different remedial design that meets cleanup goals would be selected through the RAP approval process.

### *Alternative 2: Reduced Project Alternative*

The Reduced Project Alternative would consist of warehouse building construction and operation at two-thirds the capacity of the proposed project. This alternative includes development of a warehouse building and associated infrastructure (e.g., parking areas) over a 40-acre area at the same location as the proposed project. With the smaller warehouse building, there would be a commensurate reduction in throughput capacity. Because this alternative would still overlap with Site 47, it is anticipated that the extent of remediation associated with this alternative would be the same as that of the proposed project.

### *Alternative 3: Alternative Site Locations*

This alternative considers locating the proposed TC NO. CAL. Development warehouse at another site within the Port. It considers whether an available existing facility could be retrofitted to provide warehousing or whether a separate parcel of land could be developed to meet project objectives. As part of this alternative, no remediation of Site 47 would occur as part of the proposed project. However, if any of the alternative sites also require remediation, the regulatory process governing remediation would need to be completed specific to the selected site.

## Comments Received

The DEIR was released and distributed on January 11, 2022, for a 45-day review period, which ended on February 24, 2022. The DEIR includes a full analysis and an Executive Summary that summarizes the proposed project, alternatives, and findings.

The DEIR is available on the Port's website at https://www.portofstockton.com/ceqa-documents/. It is also posted on the State Clearinghouse (SCH) website at https://ceqanet.opr.ca.gov/ and can be found by entering the SCH Number 2021080499 in the "search" window. Hard copies of the DEIR and technical appendices are available upon request by contacting Jason Cashman by email (ceqa@stocktonport.com) or phone at 209-946-0246.

The Port received comment letters on the DEIR from the following organizations:

- California Air Resources Board (CARB)
- California Department of Fish and Wildlife (CDFW)
- Central Valley Regional Water Quality Control Board (RWQCB)
- San Joaquin Valley Air Pollution Control District (SJVAPCD)
- Delta-Sierra Group of the Sierra Club (DSG)
- Adams Broadwell Joseph & Cardozo (ABJC)
- Catholic Charities (CC)
- Lozeau Drury, LLP (LD)

All comments and responses to comments are presented in Chapter 2 of the FEIR.

## Summary of Impacts and Mitigation Measures

Table ES-1 presents a summary of the environmental impacts, proposed mitigation measures, and residual impacts of the proposed project. With incorporation of mitigation measures, the proposed project would result in significant and unavoidable project-level impacts in the following resource areas: greenhouse gases (GHGs) and transportation. Less-than-significant project-level impacts would occur in the following resource areas: aesthetics; biological resources; cultural resources; energy; geology and soils; hazards and hazardous materials; hydrology and water quality; noise; Tribal cultural resources; and utilities and service systems. Mitigation measures have been incorporated where available and feasible. The proposed project would result in no impacts on the following resources areas: agriculture and forestry resources; land use and planning; mineral resources; population and housing; public services; recreation; and wildfire. Accordingly, these resource areas are not addressed in DEIR or the FEIR. With implementation of mitigation, the proposed project would result in in significant and unavoidable cumulative GHG and transportation impacts. Less-than-significant cumulative impacts would occur in the following resource areas: aesthetics; biological resources; cultural resources; energy; geology and soils; hazards and hazardous

materials; hydrology and water quality; noise; Tribal cultural resources; and utilities and service systems.

Full descriptions of the mitigation measures noted in Table ES-1 are provided in Table ES-2. The mitigation measures identified in Table ES-2 are included in the Mitigation Monitoring and Reporting Program (MMRP) that will be considered by the Port as part of the FEIR approval process.

**Table ES-1**
**Summary of Proposed Project Impacts and Proposed Mitigation Measures**

| | Impact Determination | Mitigation Measures | Impact Determination After Mitigation |
|---|---|---|---|
| **Aesthetics** | | | |
| AES-1: Would the project have a substantial adverse effect on a scenic vista? | No Impact | -- | No Impact |
| AES-2: Would the project substantially damage scenic resources? | No Impact | -- | No Impact |
| AES-3: Would the project substantially degrade the existing visual character or quality of public views of the site and its surroundings? | No Impact | -- | No Impact |
| AES-4: Would the project create a new source of substantial light or glare that would adversely affect day or nighttime views in the area? | Less-than-significant Impact | MM-AES-1 | Less-than-significant Impact |
| **Air Quality** | | | |
| AQ-1: Would the project conflict with or obstruct implementation of the applicable air quality plan? | Significant Impact | MM-AQ-1<br>MM-AQ-2<br>MM-AQ-3<br>MM-AQ-4<br>MM-AQ-5 | Less-than-significant Impact |
| AQ-2: Would the project result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard? | Significant Impact | MM-AQ-1<br>MM-AQ-2<br>MM-AQ-3<br>MM-AQ-4<br>MM-AQ-5 | Less-than-significant Impact |
| AQ-3: Would the project expose sensitive receptors to substantial pollutant concentrations? | Less-than-significant Impact | MM-AQ-1<br>MM-AQ-2<br>MM-AQ-3<br>MM-AQ-4<br>MM-AQ-5 | Less-than-significant Impact |
| AQ-4: Would the project result in other emissions (such as those leading to odors) adversely affecting a substantial number of people? | Less-than-significant Impact | -- | Less-than-significant Impact |

| | Impact Determination | Mitigation Measures | Impact Determination After Mitigation |
|---|---|---|---|
| **Biological Resources** | | | |
| BIO-1: Would the project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service? | Significant Impact | MM-BIO-1<br>MM-BIO-2<br>MM-BIO-3 | Less-than-significant Impact |
| BIO-2: Would the project have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service? | No Impact | -- | No Impact |
| BIO-3: Would the project have a substantial adverse effect on state or federally protected wetlands (including, but not limited to, marshes, vernal pools, coastal wetlands) through direct removal, filling, hydrological interruption, or other means? | Significant Impact | MM-BIO-4 | Less-than-significant Impact |
| BIO-4: Would the project interfere substantially with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites? | Significant Impact | MM-BIO-1<br>MM-BIO-3 | Less-than-significant Impact |
| BIO-5: Would the project conflict with any local policies or ordinances protecting biological resources, such as a tree preservation policy or ordinance? | No Impact | -- | No Impact |
| BIO-6: Would the project conflict with the provisions of an adopted habitat conservation plan, natural community conservation plan, or other approved local, regional, or state habitat conservation plan? | Significant Impact | MM-BIO-1 | Less-than-significant Impact |
| **Cultural Resources** | | | |
| CHR-1: Would the project cause a substantial adverse change in the significance of a historical resource pursuant to Section 15064.5? | No Impact | -- | No Impact |
| CHR-2: Would the project cause a substantial adverse change in the significance of an archaeological resource pursuant to Section 15064.5? | Significant Impact | MM-CHR-1 | Less-than-significant Impact |
| CHR-3: Would the project disturb any human remains, including those interred outside of formal cemeteries? | Significant Impact | MM-CHR-1 | Less-than-significant Impact |

| | Impact Determination | Mitigation Measures | Impact Determination After Mitigation |
|---|---|---|---|
| **Energy** | | | |
| ENE-1: Would the project result in potentially significant environmental impact due to wasteful, inefficient, or unnecessary consumption of energy resources, during project construction or operation? | Less-than-significant Impact | -- | Less-than-significant Impact |
| ENE-2: Would the project conflict with or obstruct a state or local plan for renewable energy or energy efficiency? | Less-than-significant Impact | MM-GHG-1 | Less-than-significant Impact |
| **Geology/Soils** | | | |
| GEO-1: Would the project directly or indirectly cause potential substantial adverse effects, including the risk of loss, injury, or death involving:<br>• Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map issued by the State Geologist for the area or based on other substantial evidence of a known fault?<br>• Strong seismic ground shaking?<br>• Seismic-related ground failure, including liquefaction?<br>• Landslides? | Less-than-significant Impact | MM-GEO-1<br>MM-GEO-2 | Less-than-significant Impact |
| GEO-2: Would the project result in substantial soil erosion or the loss of topsoil? | Significant Impact | MM-GEO-3 | Less-than-significant Impact |
| GEO-3: Would the project be located on a geologic unit or soil that is unstable or that would become unstable as a result of the project and potentially result in on-site or off-site landslide, lateral spreading, subsidence, liquefaction, or collapse? | Less-than-significant Impact | MM-GEO-1<br>MM-GEO-2 | Less-than-significant Impact |
| GEO-4: Would the project be located on expansive soil, as defined in Table 18-1-B of the Uniform Building Code (1994), creating substantial direct or indirect risks to life or property? | Less-than-significant Impact | MM-GEO-1<br>MM-GEO-2 | Less-than-significant Impact |
| GEO-5: Would the project have soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems in areas where sewers are not available for the disposal of wastewater? | No Impact | -- | No Impact |
| GEO-6: Would the project directly or indirectly destroy a unique paleontological resource or site or unique geologic feature? | No Impact | -- | No Impact |

| | Impact Determination | Mitigation Measures | Impact Determination After Mitigation |
|---|---|---|---|
| **Greenhouse Gas Emissions** | | | |
| GHG-1: Would the project generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment? | Significant Impact | MM-GHG-1<br>MM-GHG-2<br>MM-AQ-1<br>MM-AQ-3<br>MM-AQ-4<br>MM-AQ-5 | Significant and Unavoidable Impact |
| GHG-2: Would the project conflict with an applicable plan, policy, or regulation adopted for the purpose of reducing the emissions of GHGs? | Significant Impact | MM-GHG-1<br>MM-GHG-2<br>MM-GHG-3<br>MM-AQ-1<br>MM-AQ-3<br>MM-BIO-3 | Less-than-significant Impact |
| **Hazards and Hazardous Materials** | | | |
| HAZ-1: Would the project create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials? | Significant Impact | MM-HAZ-1<br>MM-GEO-1 | Less-than-significant Impact |
| HAZ-2: Would the project create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment? | Significant Impact | MM-HAZ-1<br>MM-HAZ-2<br>MM-GEO-1 | Less-than-significant Impact |
| HAZ-3: Would the project emit hazardous emissions or involve handling hazardous or acutely hazardous materials, substances, or waste within 0.25 mile of an existing or proposed school? | No Impact | -- | No Impact |
| HAZ-4: Would the project be located on a site that is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 and, as a result, would it create a significant hazard to the public or the environment? | Significant Impact | MM-HAZ-1<br>MM-HAZ-2<br>MM-GEO-1 | Less-than-significant Impact |
| HAZ-5: Would the project be located within an airport land use plan area or, where such a plan has not been adopted, be within 2 miles of a public airport or public use airport, and result in a safety hazard or excessive noise for people residing or working in the project area? | No Impact | -- | No Impact |
| HAZ-6: Would the project impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan? | Less-than-significant Impact | MM-GEO-1 | Less-than-significant Impact |
| HAZ-7: Would the project expose people or structures, either directly or indirectly, to a significant risk of loss, injury or death involving wildland fires? | No Impact | -- | No Impact |

| | Impact Determination | Mitigation Measures | Impact Determination After Mitigation |
|---|---|---|---|
| **Hydrology/Water Quality** | | | |
| HYD-1: Would the project violate any water quality standards or waste discharge requirements or otherwise substantially degrade surface or groundwater quality? | Significant Impact | MM-HAZ-1<br>MM-HAZ-2<br>MM-GEO-1<br>MM-GEO-2 | Less-than-significant Impact |
| HYD-2: Would the project substantially decrease groundwater supplies or interfere substantially with groundwater recharge such that the project may impede sustainable groundwater management of the basin? | Less-than-significant Impact | -- | Less-than-significant Impact |
| HYD-3: Would the project substantially alter the existing drainage pattern of the site or area, including through the alteration of the course of a stream or river or through the addition of impervious surfaces, in a manner which would:<br>• Result in substantial erosion or siltation on or off site?<br>• Substantially increase the rate or amount of surface runoff in a manner which would result in flooding on or off site?<br>• Create or contribute runoff water which would exceed the capacity of existing or planned stormwater drainage systems or provide substantial additional sources of polluted runoff?<br>• Impede or redirect flood flows? | Less-than-significant Impact | -- | Less-than-significant Impact |
| HYD-4: Would the project, in flood hazard, tsunami, or seiche zones, risk release of pollutants due to project inundation? | Less-than-significant Impact | MM-HAZ-1 | Less-than-significant Impact |
| HYD-5: Would the project conflict with or obstruct implementation of a water quality control plan or sustainable groundwater management plan? | Less-than-significant Impact | -- | Less-than-significant Impact |

| | Impact Determination | Mitigation Measures | Impact Determination After Mitigation |
|---|---|---|---|
| **Noise** | | | |
| NV-1: Would the project result in generation of a substantial temporary or permanent increase in ambient noise levels in the vicinity of the project in excess of standards established in the local general plan or noise ordinance, or applicable standards of other agencies? | Less-than-significant Impact | -- | Less-than-significant Impact |
| NV-2: Would the project result in generation of excessive groundborne vibration or groundborne noise levels? | Less-than-significant Impact | -- | Less-than-significant Impact |
| NV-3: For a project located within the vicinity of a private airstrip or an airport land use plan or, where such a plan has not been adopted, within 2 miles of a public airport or public use airport, would the project expose people residing or working in the project area to excessive noise levels? | No Impact | -- | No Impact |
| **Transportation** | | | |
| TRA-1: Would the project conflict with a program, plan, ordinance, or policy addressing the circulation system, including transit, roadway, bicycle, and pedestrian facilities? | Significant Impact | MM-TRA-1<br>MM-TRA-2 | Less-than-significant Impact |
| TRA-2: Would the project conflict or be inconsistent with CEQA Guidelines Section 15064.3, subdivision (b)? | Significant Impact | MM-TRA-3 | Significant and Unavoidable Impact |
| TRA-3: Would the project substantially increase hazards because of a geometric design feature (e.g., sharp curves or dangerous intersections) or incompatible uses (e.g., farm equipment)? | Significant Impact | MM-TRA-1 | Less-than-significant Impact |
| TRA-4: Would the project result in inadequate emergency access? | No Impact | -- | No Impact |
| **Tribal Cultural Resources** | | | |
| TCR-1: Would the project cause a substantial adverse change in the significance of a Tribal cultural resource, defined in Public Resources Code Section 21074? | Significant Impact | MM-CHR-1 | Less-than-significant Impact |

| | Impact Determination | Mitigation Measures | Impact Determination After Mitigation |
|---|---|---|---|
| **Utilities** | | | |
| UTI-1: Would the project require or result in the relocation or construction of new or expanded water, wastewater treatment or stormwater drainage, electric power, natural gas, or telecommunications facilities, the construction or relocation of which could cause significant environmental effects? | Less-than-significant Impact | -- | Less-than-significant Impact |
| UTI-2: Would the project have sufficient water supplies available to serve the project and reasonably foreseeable future development during normal, dry, and multiple dry years? | No Impact | -- | No Impact |
| UTI-3: Would the project result in a determination by the wastewater treatment provider which serves or may serve the project that it has adequate capacity to serve the project's project demand in addition to the provider's existing commitments? | Less-than-significant Impact | -- | Less-than-significant Impact |
| UTI-4: Would the project generate solid waste in excess of State or local standards, or in excess of the capacity of local infrastructure, or otherwise impair the attainment of solid waste reduction goals? | No Impact | -- | No Impact |
| UTI-5: Would the project comply with federal, state, and local management and reduction statutes and regulations related to solid waste? | No Impact | -- | No Impact |

**Table ES-2**
**Mitigation Measures and Project Conditions**

| Mitigation Measures | | |
|---|---|---|
| **Measure** | **Responsible Party and Implementation** | **Timing and Monitoring** |
| **MM-AES-1: Lighting Plan.** TC NO. CAL. Development will submit for approval a lighting plan for the proposed warehouse and related facilities prior to the start of construction. The lighting plan shall demonstrate that project lighting is shielded from surrounding areas, and that only the minimum amount of lighting required for safety purposes is provided to avoid adverse effects on surrounding areas. The lighting plan shall also include shielding that would be installed to meet City and Port requirements. In general, lighting fixtures shall be shielded downward and away from the adjacent streets and properties. Construction of the warehouse and related facilities shall be in conformance with the approved plan. | **Port Implementation Responsibility:** This measure shall be incorporated into TC NO. CAL. Development's lease. The Port shall review and approve TC NO. CAL. Development's lighting plan ahead of construction.<br><br>**TC NO. CAL. Development Implementation Responsibility:** TC NO. CAL. Development shall develop a lighting plan that avoids excess lighting and glare. | Prior to TC NO. CAL. Development construction. |
| **MM-AQ-1: Construction Idling Reductions.** TC NO. CAL. Development and the Port will require construction contractors to minimize heavy-duty construction idling time to 2 minutes where feasible. Exceptions include vehicles that need to idle to perform work (such as a crane providing hydraulic power to the boom), vehicles being serviced, or vehicles in a queue waiting for work. This requirement will be included as a specification in construction contracts. | **Port Implementation Responsibility:** This measure shall be incorporated into TC NO. CAL. Development's lease and into any applicable construction contracts initiated by TC NO. CAL. Development.<br><br>This measure shall be incorporated into any applicable construction contracts initiated by the Port to support Port-led remedial and construction activities.<br><br>**TC NO. CAL. Development Implementation Responsibility:** TC NO. CAL. Development shall include the mitigation measure requirements in all construction contracts related to TC NO. CAL. Development that include the use of land-based construction equipment. Measures shall be enforceable, and TC NO. CAL. Development shall verbally inform contractors of requirements. | Prior to commencement of and during all construction events. |

| Mitigation Measures | | |
|---|---|---|
| **Measure** | **Responsible Party and Implementation** | **Timing and Monitoring** |
| **MM-AQ-2: Use of Clean Equipment and Clean Trucks During Construction.** All off-road engines less than 50 horsepower used to construct the proposed project will be equipped with Tier 2 engines, except for specialized equipment or when Tier 2 engines are not available. All off-road diesel-powered heavy equipment exceeding 50 horsepower used to construct the proposed project will be equipped with Tier 4 engines, except for specialized equipment or when Tier 4 engines are not available. In place of Tier 4 engines for equipment exceeding 50 horsepower, off-road diesel-powered heavy equipment will incorporate retrofits such that emission reductions achieved equal or exceed that of a Tier 4 engine. In addition, all heavy-duty on-road trucks used during construction shall be model year 2014 or newer, with a preference for zero-emission trucks where available. These requirements will be included as specifications in construction contracts. The contractor shall also prioritize the use of zero-emission construction equipment. | **Port Implementation Responsibility:** This measure shall be incorporated into TC NO. CAL. Development's lease and into any applicable construction contracts initiated by TC NO. CAL. Development.<br><br>This measure shall be incorporated into any applicable construction contracts initiated by the Port to support Port-led remedial and construction activities.<br><br>**TC NO. CAL. Development Implementation Responsibility:** TC NO. CAL. Development shall include the mitigation measure requirements in all construction contracts related to TC NO. CAL. Development that include the use of land-based construction equipment. Measures shall be enforceable, and TC NO. CAL. Development shall verbally inform contractors of requirements. | Prior to commencement of and during all construction events. |
| **MM-AQ-3: Operational Truck Idling Reductions.** TC NO. CAL. Development will require trucks to minimize idling time to 2 minutes while on terminal. These requirements will be posted on site and included as a contract provision. TC NO. CAL. Development shall design the gate check-in so that the check-in point for trucks is well inside the project site to ensure that there are no trucks queuing outside of the facility. | **Port Implementation Responsibility:** This measure shall be incorporated into TC NO. CAL. Development's lease.<br><br>**TC NO. CAL. Development Implementation Responsibility:** TC NO. CAL. Development shall include gate design requirements in design specifications.<br><br>TC NO. CAL. Development shall include the idling requirements in all operational contracts related to the warehouse and related facilities, and TC NO. CAL. Development shall verbally inform sublessors of requirements. | During warehouse designs (prior to operations) and during operations. |
| **MM-AQ-4: Use of Clean Trucks During Operations.** TC NO. CAL. Development will require all cargo trucks entering the warehouse | **Port Implementation Responsibility:** This measure shall be incorporated into TC NO. CAL. Development's lease. | Prior to and during operations.<br><br>The Level 3 electric charger shall be installed within 9 months of |

| Mitigation Measures | | |
|---|---|---|
| **Measure** | **Responsible Party and Implementation** | **Timing and Monitoring** |
| site to be model year 2017 or newer and encourage its customers to use zero-emission trucks to transport cargo.<br><br>TC NO. CAL. Development will require all trucks be in compliance with CARB air quality regulations for on-road trucks, including CARB's Heavy-Duty (Tractor-Trailer) Greenhouse Gas Regulation, Periodic Smoke Inspection Program (PSIP), and the Statewide Truck and Bus Regulation. TC NO. CAL. Development will also educate customers about the SJVAPCD Truck Replacement Program and CARB's Advanced Clean Truck Program, including funding opportunities, via direct or electronic mailings. TC NO. CAL. Development will post a copy of the SJVAPCD Truck Replacement Program information currently available at http://valleyair.org/grants/truck-replacement.htm and applicable CARB regulations at the terminal. These requirements will be posted on site and included as a contract provision.<br><br>In addition, TC NO. CAL. Development shall install at minimum one Level 3 electric charger on the terminal in a place convenient for heavy-duty truck access within 12 months of facility operations. | **TC NO. CAL. Development Implementation Responsibility:** TC NO. CAL. Development shall require all cargo trucks entering the site to be model year 2017 or newer, encourage its customers to use zero-emission trucks to transport cargo, and educate customers about the Truck Replacement Program via direct or electronic mailings, and post a copy of the Truck Replacement Program information at the project site. Compliance with CARB air quality regulations shall be enforceable, and TC NO. CAL. Development shall include requirements in any and all subleases and verbally inform sublessors of requirements.<br><br>TC NO. CAL. Development shall install at least one Level 3 electric charger on the terminal in a place convenient for heavy-duty truck access within 12 months of facility operations. | the effective date of the new lease. |
| **MM-AQ-5: Use of Clean Yard Equipment.** TC NO. CAL. Development will require terminal and yard equipment, including yard hostlers, yard equipment, forklifts, and pallet jacks, to be the cleanest available equipment (for future purchases). Considerations for clean equipment will include a first preference for zero-emission equipment, a second preference for near-zero equipment, and then for the cleanest available equipment if neither zero nor near-zero equipment are available or feasible. TC NO. CAL. Development will ensure the proper infrastructure to support such equipment is available. At a minimum, TC NO. CAL. Shall require at least 25 of the forklifts be zero emissions. All remaining forklifts shall be low emissions using alternative fuels. | **Port Implementation Responsibility:** This measure shall be incorporated into TC NO. CAL. Development's lease.<br><br>**TC NO. CAL. Development Implementation Responsibility:** TC NO. CAL. Development shall ensure at least 25 forklifts are zero-emission electric or hydrogen. TC NO. CAL. Development shall replace cargo-handling equipment with the cleanest available equipment anytime new or replacement equipment is purchased. TC NO. CAL. Development shall include requirements in any and all subleases and verbally inform sublessors of requirements. | Within 1 year of the effective day of the lease. |

| Mitigation Measures | | |
|---|---|---|
| **Measure** | **Responsible Party and Implementation** | **Timing and Monitoring** |
| **MM-BIO-1: Obtain Coverage under the SJMSCP or Implement Protective Measures for Nesting Birds, Swainson's Hawk. Western Pond Turtle, Giant Garter Snake, and Valley Elderberry Longhorn Beetle.** To avoid impacts on potentially present special status species, the proposed project proponent will obtain coverage under the SJMSCP. For the 60-acre area, TC NO. CAL. Development will submit an application for coverage to SJCOG within 60 days of project construction. For the remedial activities in the remaining areas of the site, the Port will submit an application for coverage to SJCOG within 60 days of remediation activities. SJCOG will review the proposed project, prepare a staff report, and submit the report to the SJMSCP Habitat Technical Advisory Committee, which determines whether the proposed project will be covered under the SJMSCP. Assuming the proposed project is approved for coverage, a SJCOG biologist will conduct a site visit to determine which incidental take minimization measures (ITMMs) included in the SJMSCP are applicable to the project. SJCOG will then execute a final summary of applicable ITMMs for the project. ITMMs would include surveys, monitoring, and applying temporary construction buffers, if determined appropriate by SJCOG. TC NO. CAL. Development and the Port will implement all required ITMMs identified by the SJCOG. Ground disturbance will not occur until the ITMMs have been satisfied.<br><br>If the proposed project is not able to obtain coverage under the SJMSCP, TC NO. CAL. Development and the Port will implement avoidance and minimization measures specific to nesting birds, Swainson's hawk, western pond turtle, giant garter snake, and valley elderberry longhorn beetle as detailed below.<br><br>For nesting birds, alternatives to SJMSCP coverage will include surveys and avoidance measures consistent with CDFW's standard requirements. If equipment staging, site preparation, or other project-related construction work is scheduled to occur between February 1 and September 15, the nesting season of protected raptors and other avian species, a CDFW-approved biologist will conduct a pre-construction survey of the project area for active | **Port Implementation Responsibility:** This measure shall be incorporated into TC NO. CAL. Development's lease. If the proposed project is not able to obtain coverage under the SJMSCP, the Port would be responsible for reviewing and approving TC NO. CAL. Development's plan.<br><br>**TC NO. CAL. Development Implementation Responsibility:** Approximately 60 days prior to construction, TC NO. CAL. Development shall prepare an application for obtaining coverage for the proposed project under the SJMSCP and submit it to SJCOG.<br><br>If the proposed project is not able to obtain coverage under the SJMSCP, TC NO. CAL. Development will prepare a plan to implement avoidance and minimization measures specific to nesting birds, swallows, bats, and western pond turtle, as outlined in the mitigation measure. The plan would need to be approved by the Port prior to commencement of construction.<br><br>All measures required by the SJMSCP shall be included in all construction contracts. Measures shall be enforceable, and TC NO. CAL. Development shall verbally inform contractors of requirements. | Prior to commencement of and during construction.<br><br>TC NO. CAL. Development and the Port shall comply with any monitoring and reporting requirements as required under the SJMSCP or Port-approved plan. |

| Mitigation Measures | | |
|---|---|---|
| **Measure** | **Responsible Party and Implementation** | **Timing and Monitoring** |
| nests within 7 days prior to commencing project construction. The minimum survey area will be 250 feet for passerines, 500 feet for small raptors, and 1,000 feet for larger raptors. Surveys will be conducted during periods of peak activity (early morning or dusk) and be of sufficient duration to observe movement patterns. If a lapse in project-related work of 15 days or longer occurs, another survey will be performed before construction is reinitiated. If any active bird nests are found, a buffer around the nest will be established by the biologist in coordination with CDFW. The buffer area will be fenced off from work activities and avoided until the young have fledged, as determined by the biologist. The biologist will monitor the active nest until the young have fledged for at least 2 hours per day when project activities are occurring to observe the behavior of the nesting birds. If the birds show signs of disruption to nesting activities (e.g., defensive flights/vocalizations directed toward project personnel, standing up from a brooding position, or flying away from the nest), the buffers will be expanded by the biologist until no further interruptions to nesting behavior are detectable.<br><br>For Swainson's hawks, proposed project construction activities will occur outside of the Swainson's hawk breeding season (March 20 to September 15). If proposed project construction activities are to be conducted during breeding season, surveys for Swainson's hawks and their nests shall be conducted by a qualified biologist prior to the beginning of proposed project-related activities at each phase of the project site. Surveys shall be conducted in a manner consistent with the *Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley* (https://www.wildlife.ca.gov/Conservation/Survey-Protocols#377281284-birds). Surveys shall cover a minimum of two survey periods with the minimum number of surveys prior to proposed project initiation as follows:<br>• January to March 20: survey for raptor nests over 1 day, with a minimum of one survey. | | |

| Mitigation Measures | | |
|---|---|---|
| **Measure** | **Responsible Party and Implementation** | **Timing and Monitoring** |
| • March 20 to April 5: survey from either sunrise to 10:00 a.m. or 4:00 p.m. to sunset, with a minimum of three surveys.<br>• April 5 to April 20: survey from either sunrise to 12:00 p.m. or 2:30 p.m. to sunset, with a minimum of three surveys.<br>For western pond turtle, alternatives to SJMSCP coverage will include establishing a buffer area of 300 feet between any nesting turtle sites and the waters located near the nesting site. These buffers shall be indicated by temporary fencing if construction has or will begin before nesting periods are ended (the period from egg laying to emergence of hatchlings is normally April to November).<br>For giant garter snake, alternatives to SJMSCP coverage will include limiting construction activities that may disturb potential giant garter snake habitat to between May 1 and September 30 to the extent practicable. If construction activities are necessary in giant garter snake habitat between October 1 and April 30, a qualified biologist would conduct a survey within 24 hours prior to construction and monitor construction activities to ensure that individuals of giant garter snake encountered during construction are avoided. If a giant garter snake is encountered during construction activities, the biologist will have the authority to stop construction activities until appropriate corrective measures are completed or it is determined that the snake will not be harmed. Giant garter snakes encountered during construction activities will be allowed to move away from the construction area on their own. If giant garter snakes are observed in burrows or other wintering habitat, burrows will be flagged, and a 200-foot buffer will be established and maintained until the biologist confirms that snakes are no longer present. The project area will be reinspected by the biologist whenever a lapse in construction activity of 2 weeks or more has occurred.<br>For valley elderberry longhorn beetle, alternatives to SJMSCP coverage will include conducting a survey of the project site to confirm the presence of any elderberry shrubs. If elderberry shrubs are identified on the project site and cannot be avoided, TC NO. | | |

| Mitigation Measures | | |
|---|---|---|
| **Measure** | **Responsible Party and Implementation** | **Timing and Monitoring** |
| CAL. Development and the Port will coordinate a removal and replanting effort with the U.S. Fish and Wildlife Service. | | |
| **MM-BIO-2: Obtain and Implement NPDES Construction Stormwater General Permit.** A NPDES Construction Stormwater General Permit will be obtained for the proposed project, which will require the development of a construction Stormwater Pollution Prevention Plan (SWPPP). The construction SWPPP would include BMPs including or similar to use of barriers (e.g., netting or sandbags) to prevent pollutants from entering drainage channels, equipment inspection for spills, and maintenance and implementation of material spill prevention and cleanup plans. The construction SWPPP would ensure that contaminants are not accidentally introduced into the drainage channels. | **Port Implementation Responsibility:** This measure shall be incorporated into TC NO. CAL. Development's lease and permit requirements shall be incorporated into applicable construction contracts.<br>The Port shall obtain and implement the General Permit for any Port-directed remediation and permit requirements shall be incorporated into applicable construction contracts.<br>**TC NO. CAL. Development Implementation Responsibility:** TC NO. CAL. Development shall develop a construction SWPPP and apply for a Stormwater General Permit. | Prior to commencement of and during construction. |
| **MM-BIO-3: Tree Replanting.** TC NO. CAL. Development will plant a minimum of 30 trees on the project Warehouse Development Area in locations where future removal is not likely to be required.<br>If any trees are removed as part of the Port's remedial activities, the Port will plant trees based on the ratios identified below at locations where future removal is not likely to be required.<br>Only native species of trees adapted to the lighting, soil, and hydrological conditions shall be replanted at the replanting site. Each tree slated for removal that is 4 inches diameter at breast height (DBH) or larger will be mitigated.<br>• For oaks 4 to 12 inches DBH to be removed, trees will be replanted at a 3:1 ratio.<br>• For oaks 13 to 24 inches DBH, trees will be replanted at a 5:1 ratio.<br>• For other native trees, trees will be replanted at a 3:1 ratio.<br>• For non-native trees, trees will be replanted at a 1:1 ratio. | **Port Implementation Responsibility:** This measure shall be incorporated into TC NO. CAL. Development's lease.<br>If any trees are removed as part of the Port's remedial activities, the Port will plant trees based on the ratios identified in the mitigation measure.<br>**TC NO. CAL. Development Implementation Responsibility:** TC NO. CAL. Development shall develop a planting plan that must be reviewed and approved by the Port prior to planting. Following approval, TC NO. CAL. Development shall plant a minimum of 30 trees. | Prior to operations and after construction at the 60-acre warehouse development site.<br>After Port remediation at all other areas. |

| Mitigation Measures | | |
|---|---|---|
| **Measure** | **Responsible Party and Implementation** | **Timing and Monitoring** |
| Replanted trees will consist of California native tree species, including valley oak (*Quercus lobata*), interior live oak (*Quercus wizlizeni*), coast live oak (*Quercus agrifolia*), box elder (*Acer negundo*), western redbud (*Cercis occidentalis*), Oregon ash (*Fraxinus latifolia*), red willow (*Salix laevigata*), or giant sequoia (*Sequoiadenron giganticum*), or native pine trees. Other suitable native tree species may be considered if necessary. TC NO. CAL. Development is required to prepare a planting plan that must be reviewed and approved by the Port prior to planting. | | |
| **MM-BIO-4: Compensatory Wetland and Waters Mitigation.** If determined to be subject to CVRWQCB jurisdiction as waters of the state, TC NO. CAL. Development will purchase appropriate wetland mitigation credits at a minimum ratio of 1:1 to compensate for the loss of state waters. Mitigation credits shall be purchased from an agency-approved bank, potentially including Liberty Island Conservation Bank, Elsie Gridley Mitigation Bank, or possibly the National Fish and Wildlife Foundation in lieu fee program (Aquatic Resource Service Area – San Joaquin River) at a minimum ratio of 1:1. | **Port Implementation Responsibility:** This measure shall be incorporated into TC NO. CAL. Development's lease.<br><br>**TC NO. CAL. Development Implementation Responsibility:** TC NO. CAL. Development shall purchase credits if area is determined to be within CVRWQCB jurisdiction as waters of the state or subject to mitigation required by CDFW. | Following CVRWQCB's and CDFW's determinations. |
| **MM-CHR-1: Stop Work in the Area If Prehistoric or Historical Archaeological Resources Are Encountered.** A qualified archaeologist will provide training materials to TC NO. CAL. Development's contractor in identification of cultural resources, and in the event that any artifact, or an unusual amount of bone, shell, or non-native stone, is encountered during construction, work would be immediately stopped and relocated to another area. The contractor would stop construction within 10 meters (30 feet) of the exposure of these finds until a qualified archaeologist can be retained by the Port to evaluate the find (see 36 CFR 800.11.1 and 14 CCR 15064.5[f]). Examples of such cultural materials might include concentrations of ground stone tools such as mortars, bowls, pestles, and manos; chipped stone tools such as projectile points or choppers; flakes of stone not consistent with the immediate | **Port Implementation Responsibility:** This measure shall be incorporated into TC NO. CAL. Development's lease and into any applicable construction contracts initiated by TC NO. CAL. Development.<br><br>This measure shall be incorporated into any applicable construction contracts initiated by the Port to support Port-led remedial and construction activities.<br><br>If an artifact is found, the Port shall retain a qualified archaeologist to evaluate the find, and if the find is determined to be of cultural significance, the Port shall notify Native American Tribes and the Office of Historic Preservation. | Prior to commencement of and during construction. |

| Mitigation Measures | | |
|---|---|---|
| **Measure** | **Responsible Party and Implementation** | **Timing and Monitoring** |
| geology, such as obsidian or fused shale; a historic trash pit containing bottles and/or ceramics; or structural remains.<br><br>Native American Tribes and the Office of Historic Preservation would be notified of the find. If the resources are found to be significant, they would be avoided or if avoidance is not possible, mitigated. Mitigation would be developed in coordination with Native American Tribes and could include development of a treatment plan to guide data recovery and interpretation of results for the public. This interpretation could include adding information on the resources to the Port's website, which will include a history portal site, developing informational brochures or signage on site or in the Port administrative building, and/or providing material to the Tribes.<br><br>Tribal representatives will be invited to review and comment on the training materials that are to be made available to construction contractors prior to commencement of work. The construction contractor must then inform and train construction workers that are involved with land disturbance activities.<br><br>If any Tribal artifact or remains are identified, a paid Tribal representative should be present during the unearthing. In addition to the Office of Historic Preservation, the California Native American Heritage Commission should be contacted as the primary government agency responsible for identifying and cataloging Native American cultural resources. | **TC NO. CAL. Development Implementation Responsibility:** TC NO. CAL. Development shall include the mitigation measure requirements in all construction contracts that include excavation or other earth work. Measures shall be enforceable, and TC NO. CAL. Development shall verbally inform contractors of requirements. | |

| Mitigation Measures | | |
|---|---|---|
| **Measure** | **Responsible Party and Implementation** | **Timing and Monitoring** |
| **MM-GEO-1: Maintain, Update, and Implement Emergency Response Plans.** TC NO. CAL. Development will implement and update as frequently as needed an emergency response plan, Contingency Plan, and Emergency Action Plan. The Plan will identify response procedures for chemical spills, fires, and earthquakes involving hazardous materials and hazardous wastes and will establish requirements and procedures needed to protect employees from serious injury, property loss, or loss of life in the event of fires, other emergencies, or major disasters. | **Port Implementation Responsibility:** This measure shall be incorporated into TC NO. CAL. Development's lease.<br><br>**TC NO. CAL. Development Implementation Responsibility:** TC NO. CAL. Development shall maintain, update, and implement emergency response plans, including its existing California Environmental Reporting System (CERS) Consolidated Emergency Response/Contingency Plan and Emergency Action Policy, OSHA Operations. | Prior to commencement of and during construction, as well as during operations. |
| **MM-GEO-2: As-Needed Implementation of Geotechnical Recommendations.** Recommendations from the *Preliminary Geotechnical Investigation* (H&A 2020a) will be implemented as needed, including use of materials and construction techniques specifically addressing potential seismic and geologic hazards. | **Port Implementation Responsibility:** This measure shall be incorporated into TC NO. CAL. Development's lease.<br><br>**TC NO. CAL. Development Implementation Responsibility:** TC NO. CAL. Development shall implement geotechnical recommendations as needed. Measures shall be enforceable, and TC NO. CAL. Development shall verbally inform contractors of requirements. | Prior to commencement of and during construction. |
| **MM-GEO-3: Implement Construction Best Management Practices.** Standard construction BMPs—including but not limited to use of storm drain inlet filters, erosion control (e.g., straw wattles), and maintenance of spill control kits—will be implemented during construction to control or respond to spills or other potential sources of construction-related pollution. | **Port Implementation Responsibility:** This measure shall be incorporated into TC NO. CAL. Development's lease into any applicable construction contracts initiated by TC NO. CAL. Development.<br><br>This measure shall be incorporated into any applicable construction contracts initiated by the Port to support Port-led remedial and construction activities.<br><br>**TC NO. CAL. Development Implementation Responsibility:** TC NO. CAL. Development shall implement geotechnical recommendations as | Prior to commencement of and during construction. |

| Mitigation Measures | | |
|---|---|---|
| **Measure** | **Responsible Party and Implementation** | **Timing and Monitoring** |
| | needed. Measures shall be enforceable, and TC NO. CAL. Development shall verbally inform contractors of requirements. | |
| **MM-GHG-1: Solar Requirements and Energy Audit.** TC NO. CAL. Development will install a 600 kW solar system as part of warehouse construction. The warehouse operator will be required to use the solar system at its maximum capacity.<br><br>In addition, within 6 months of the effective date of the new lease, TC NO. CAL. Development will conduct an energy audit of warehouse design plans to determine if there are additional energy saving features that can be implemented as part of construction and warehouse design and operations. The plan must be submitted to the Port for review and approval. The plan will incorporate the following measures at a minimum:<br>• Replace less-efficient lighting with energy-efficient lighting, where applicable and in compliance with safety requirements, on the premises and outdoors including the parking lot, loading dock, security, and exit signs. High mast parking lot lighting will use LED lighting or a technology with similar energy-saving capabilities, and motion sensors will be installed where lighting is not used for security.<br>• Install ENERGY STAR qualified HVAC equipment and variable frequency drives. When installing new equipment, ensure that the system is not oversized for the building's heating and cooling needs. | **Port Implementation Responsibility:** This measure shall be incorporated into TC NO. CAL. Development's lease. The Port shall review and approve the plan.<br><br>**TC NO. CAL. Development Implementation Responsibility:** TC NO. CAL. Development shall install a 600 kw solar system and conduct an energy audit and develop a plan for reducing overall terminal energy. TC NO. CAL. shall include a lease provision for any sublessor that requires the solar system be used. | Within 6 months of the effective date of the new lease. |
| **MM-GHG-2: Waste Reduction.** Within 9 months of the effective date of the new lease, TC NO. CAL. Development will perform an audit of its waste stream to identify areas for total waste reduction, including reductions of single use products and details for transitioning to a procurement process that prioritizes recycled goods and products. For resultant waste, TC NO. CAL. Development will develop a plan to ensure waste is recycled where available. | **Port Implementation Responsibility:** This measure shall be incorporated into TC NO. CAL. Development's lease. The Port shall review and approve the plan.<br><br>**TC NO. CAL. Development Implementation Responsibility:** TC NO. CAL. Development shall conduct a waste reduction audit and develop a plan for ensuring waste is recycled where | Within 9 months of the effective date of the new lease. |

| Mitigation Measures | | |
|---|---|---|
| **Measure** | **Responsible Party and Implementation** | **Timing and Monitoring** |
| | available. TC NO. CAL. Development shall include a lease provision for any sublessor that requires that the resultant plan shall be implemented. | |
| **MM-GHG-3: Construction Recycling.** TC NO. CAL. Development will require construction contractors to recycle construction and demolition debris where feasible. | **Port Implementation Responsibility:** This measure shall be incorporated into TC NO. CAL. Development's lease and into any applicable construction contracts initiated by TC NO. CAL. Development.<br><br>This measure shall be incorporated into any applicable construction contracts initiated by the Port to support Port-led remedial and construction activities.<br><br>**TC NO. CAL. Development Implementation Responsibility:** TC NO. CAL. Development shall require construction contractors to include a recycling provision for all construction materials as feasible. Measures shall be enforceable, and TC NO. CAL. Development shall verbally inform contractors of requirements. | Prior to commencement of and during construction. |
| **MM-HAZ-1: Maintain and Implement Facility-Wide Site Management Program.** To address potential impacts to persons and the environment from management of common industrial materials, TC NO. CAL. Development will develop, implement, and update as needed a Facility-Wide Site Management Program. | **Port Implementation Responsibility:** This measure shall be incorporated into TC NO. CAL. Development's lease.<br><br>**TC NO. CAL. Development Implementation Responsibility:** TC NO. CAL. Development shall implement, and update as needed the Facility-Wide Site Management Program (SMP). TC NO. CAL. Development shall also document implementation of the BMPs listed in the SMP. | During operations. |
| **MM-HAZ-2: Minimize Human and Environmental Exposure to Potentially Hazardous Materials During Construction.** Prior to remedial activities, the Port and TC NO. CAL. Development will develop a plan that ensures worker training and develop | **Port Implementation Responsibility:** This measure shall be incorporated into TC NO. CAL. Development's lease and into any applicable | Prior to commencement of and during construction, as well as during operations. |

| Mitigation Measures | | |
|---|---|---|
| **Measure** | **Responsible Party and Implementation** | **Timing and Monitoring** |
| contingencies for responding to hazardous material conditions that may be encountered on site consistent with the DTSC-approved site-wide RAP and RDIP for the Warehouse Development Area. | construction contracts initiated by TC NO. CAL. Development.<br><br>This measure shall be incorporated into any applicable construction contracts initiated by the Port to support Port-led remedial and construction activities.<br><br>**TC NO. CAL. Development Implementation Responsibility:** TC NO. CAL. Development shall complete a survey for potentially hazardous materials and manage and dispose of any hazardous materials in compliance with OSHA regulations. TC NO. CAL. Development shall also offer training of workers for responding to hazardous material conditions that may be encountered on site. | |
| **MM-TRA-1: Signal Timing.** The Port and TC NO. CAL. Development will work with the City and Caltrans to revise the signal timing at the I-5 NB Ramps and Charter Way intersection to accommodate proposed project traffic. | **Port Implementation Responsibility:** This measure shall be incorporated into TC NO. CAL. Development's lease. The Port shall coordinate with the City and Caltrans.<br><br>**TC NO. CAL. Development Implementation Responsibility:** TC NO. CAL. Development shall work with the Port, the City, and Caltrans. | Prior to operations. |
| **MM-TRA-2: Accessible Parking.** In order to comply with ADA requirements, the TC NO. CAL. Development will install at least eight accessible parking spaces, two of which must be van accessible. | **Port Implementation Responsibility:** This measure shall be incorporated into TC NO. CAL. Development's lease.<br><br>**TC NO. CAL. Development Implementation Responsibility:** TC NO. CAL. Development shall install at least eight accessible parking spaces, two of which must be van accessible. | Prior to operations. |

| Mitigation Measures | | |
|---|---|---|
| **Measure** | **Responsible Party and Implementation** | **Timing and Monitoring** |
| **MM-TRA-3: Implement a Transportation Demand Management (TDM) Plan.** TC NO. CAL. Development would implement a TDM Plan that includes the following components:<br>• Identification of locations along the project frontage on the Port of Stockton Expressway/McCloy Avenue where bus stops could be constructed with a pedestrian connection from the bus stop to primary building entrances.<br>• Coordination with the San Joaquin Regional Transit District to determine if transit services could be provided to the project site and if service could be coordinated to accommodate future shift changes.<br>• Implementation of a commute trip reduction program that could include a carpooling/ride-matching program and/or preferential carpool parking. | **Port Implementation Responsibility:** This measure shall be incorporated into TC NO. CAL. Development's lease. The Port shall review and approve the TDM Plan.<br><br>**TC NO. CAL. Development Implementation Responsibility:** TC NO. CAL. Development shall develop and implement a TDM Plan. | Prior to and during operations. |
| **Project Condition 1:** TC NO. CAL. Development and sublessor cannot support Transport Refrigeration Units (TRUs) at the site without prior Port approval. | **Port Implementation Responsibility:** This measure shall be incorporated into TC NO. CAL. Development's lease. The Port shall review the application and determine if additional CEQA analysis or control measures are required.<br><br>**TC NO. CAL. Development Implementation Responsibility:** TC NO. CAL. Development shall submit an application to the Port if TRUs are proposed to be used at the facility in the future. | Prior to and during operations. |

# 1 Introduction

## 1.1 FEIR Purpose and Organization

This *Final Environmental Impact Report* (FEIR) was prepared in compliance with the California Environmental Quality Act (CEQA; Public Resources Code [PRC] Division 13, Section 21000 et seq.) and the CEQA Guidelines (14 California Code of Regulations [CCR] 15000 et seq.) to assist the Port of Stockton (the Port) in considering the approval of the proposed TC NO. CAL. Development Warehousing and Distribution Facility Project (proposed project), in accordance with 22 CCR 66265 et seq.

### *1.1.1 FEIR Purpose*

The purpose of an Environmental Impact Report (EIR) is to inform decision-makers and the general public of the potential environmental impacts resulting from a project, as well as the mitigation measures or alternatives that would avoid or minimize identified significant impacts. The Port has the principal responsibility for approving the proposed project and, as the CEQA lead agency, is responsible for the preparation and distribution of this FEIR pursuant to PRC 21067. The FEIR will be used by the Port and other responsible agencies in conjunction with all approvals necessary for the implementation of the proposed project.

This document, in conjunction with the Draft Environmental Impact Report (DEIR), collectively constitutes the FEIR. As described in CEQA Guidelines Sections 15089, 15090, and 15132, the lead agency must prepare and consider the information contained in a FEIR before approving a project. Pursuant to CEQA Guidelines Section 15132, a FEIR comprises the following materials:

- The DEIR or a revision of the DEIR
- Comments and recommendations received on the DEIR.
- A list of persons, organizations, and public agencies commenting on the DEIR

### *1.1.2 FEIR Organization*

Chapter 1 presents background and introductory information for the proposed approval and implementation of the proposed project. Chapter 2 presents information regarding the distribution of and comments received on the DEIR as well as the responses to all comments received during the public comment period. Chapter 3 presents a description of modifications to the DEIR.

## 1.2 Project Description

The 102-acre project site is located south of McCloy Avenue on the Port's West Complex in Stockton, California (Figure 1). The proposed project includes remediation of contaminated soils from past Navy activities throughout the project site and construction and operation of a distribution

warehouse on a portion of the project site. The site is largely vacant except for five warehouses on a 26-acre parcel on the western side of the site.

Remediation would occur in areas throughout the 102-acre project site, which includes the proposed 60-acre site on which the warehouse would be developed, as well as approximately 42 acres to the east and west. The remedial site is referred to as Site 47.

The approximately 102-acre project site comprises four distinct areas proposed for remediation and development:

- A 60-acre area proposed for remediation and TC NO. CAL. Development warehouse development ("Warehouse Development Area")
- A 7-acre area to the west of the Warehouse Development Area that would be remediated and remain undeveloped ("Western Remediation Area")
- A 9-acre area to the east of the Warehouse Development Area that would be remediated and remain undeveloped ("Eastern Remediation Area")
- A 26-acre area to the west of the Western Remediation Area that would be remediated using institutional controls and undergo necessary pavement repairs ("Western Warehouse Area")

Under the proposed project, the Port would issue a lease to TC NO. CAL. Development to construct and operate the warehouse. Construction would begin following remedial activities in the Warehouse Development Area. TC NO. CAL. Development would sublease the warehousing facility to a commercial operator based on lease terms established by the Port and analyzed in this EIR. Construction elements include a 655,200-square-foot (sf) warehouse, 293,951-sf outdoor storage area, employee parking, trailer parking, trailer storage, truck docks, rail service and spurs, detention ponds, water tank and pumphouse, guard house, and minor ancillary structures on the existing vacant area. The warehouse would be used for receiving, storing, and distributing bulk building products and consumer goods (warehousing or wholesaling/distribution). Operations are expected to begin following warehouse construction and would involve truck and rail deliveries of commercial building materials and consumer home improvement goods.

Contaminants detected within various portions of Site 47 include arsenic, polycyclic aromatic hydrocarbons (PAHs), and organochlorine pesticides (OCPs) including DDT. The contaminants in soil and sediment were determined to pose a risk to human health and wildlife and therefore require remediation. Based on an assessment of human health and ecological risk, the primary drivers of risk at Site 47 are the presence of arsenic in soil and OCPs in sediment.

The port is addressing hazardous substances at Site 47 as required under a July 30, 2003, consent agreement between the Port, the California Department of Toxic Substances Control (DTSC), and the Central Valley Regional Water Quality Control Board (CVRWQCB). DTSC is the lead regulatory agency, and CVRWQCB is a supporting agency overseeing the Port's remediation within Site 47.

Remediation requires the development and approval of the following Cleanup Decision Documents as follows:

- Remedial Investigation/Focused Feasibility Study (RI/FFS): The purpose of the Site 47 RI/FFS is to assess site conditions and evaluate alternatives to the extent necessary to select a remedy that will be documented in the Remedial Action Plan (RAP). The Site 47 RI/FFS presents the current understanding of potential human health and ecological risks posed by soil and sediment contamination within Site 47 and develops and evaluates remedial alternatives (Geosyntec 2020). It is being developed by the Port and TC NO. CAL. Development, subject to approval by DTSC and CVRWQCB.
- RAP: The RAP, developed by DTSC and CVRWQCB, selects the remedial alternative based on the RI/FFS. The RAP identifies and selects the remedy to address the contaminated soil pursuant to Sections 3006 and 6001 of the Resource Conservation and Recovery Act (RCRA; 42 *United States Code* 6926 and 6961) and Division 20 of the California Health and Safety Code (HSC; Chapters 6.5 and 6.8). Following a public comment period, DTSC will consider approval of the Draft RAP. The CVRWQCB will also consider approval of the Draft RAP and select the remedy pursuant to the Division 7 of the California Water Code, Division 20 of the HSC (Chapters 6.67, 6.7, and 6.75), and the CCR. The remedy selected as part of the RAP may not conform to the remedy proposed in the RI/FFS or evaluated in the DEIR. Provided the FEIR adequately addresses the environmental impacts of the remedy selected in the Final RAP, DTSC and CVRWQCB—as CEQA responsible agencies—will consider and rely on the environmental analysis of the selected remedy in the FEIR to comply with CEQA.
- Remedial Design Implementation Plan (RDIP): The RDIP is developed by the Port and TC NO. CAL. Development to present construction details associated with implementing the selected Site 47 remedy approved under the RAP. The RDIP is subject to DTSC and CVRWQCB approval.


Publish Date: 2021/08/23, 2:36 PM | User: jsfox
Filepath: \\orcas\GIS\Jobs\Port_of_Stockton_0377\Maps\TrammelCrow\AQ_fig1_SiteAndVicinityMap.mxd

ANCHOR QEA

0 2,000
Feet

**Figure 1**
**Vicinity Map**
Final Environmental Impact Report
TC NO. CAL. Development Warehousing and Distribution Facility Project

## 1.3 Environmental Setting

### *1.3.1 Regional Setting*

The project site is located within the City's urban core, which is characterized as a mix of heavy industrial uses with limited landscape features, older residential neighborhoods, neighborhood commercial shopping centers, and a variety of other commercial and industrial parcels. The Port is located south of the San Joaquin River and is an industrial port served by rail, trucks, and vessels. It supports a mix of liquid and dry bulk storage and shipment, as well as warehousing. Several communities are in close proximity to the Port, including the Southwest Stockton community, which CARB selected in 2019 for community-specific air monitoring and the development of an air emissions reduction plan pursuant to AB 617.

The project site is located on Rough and Ready Island, also known as the Port's West Complex, which is bordered to the north, south, and east by the San Joaquin River and to the west and south by the Burns Cutoff. The West Complex is characterized by the presence of large warehouse buildings, maritime terminals, railroad facilities, large storage buildings, and stockpiles of various commodities. There are no residential communities on Rough and Ready Island; the closest residential receptors are located north of the island across the San Joaquin River.

The City's 2040 General Plan (City 2018a) designates the project site as "Institutional," and the zoning district of the project site and surrounding parcels is "Port" (City 2021b). Port areas are designated for the operation of Port facilities, including wharves, dockage, warehousing, and related facilities, and the Port zoning district principally permits warehouse uses. While the City does not have discretionary authority to approve, disapprove, or conditionally approve land uses at the Port, the City's General Plan does cover the Port, and the City issues building permits and is responsible for other infrastructure planning such as roadway intersections on City streets within and adjacent to the Port.

The project site is also part of the area covered by the West Complex Development Plan (WCDP), which identified the following types of Port-related land uses for development on Rough and Ready Island: rail to dock; break-bulk; petroleum plant; commercial industrial park; automobile facility and wharf upgrade; container shipping facility; expanded break-bulk, roll-on/roll-off, and project cargo; container expansion and intermodal transfer; water-related future expansion area; diversified land use; and a future Immigration and Naturalization Service facility (this property has subsequently been transferred to the Port). As part of long-term planning for the West Complex, the Port identified and considered the types of development and operations that could occur based on existing infrastructure, approved land uses, and future regional consumer demand. The WCDP assumed that commercial and industrial parks and other diversified land uses and infrastructure that

support Port activities would be located on the undeveloped portion of Rough and Ready Island, while marine terminals would be developed on the remaining 500-acre area. (Port 2004)

## *1.3.2 Project Setting*

The approximately 102-acre project site contains a former model airplane landing strip and skeet/trap shooting range, abandoned buildings and sports courts, stormwater drainage ditches, paved areas, paved and dirt roads, and a section of railroad tracks. Most of the project site is unpaved. There are four distinct areas proposed for remediation and/or development (Figure 2):

Ruderal vegetation are the plant species that colonize disturbed lands and are commonly fast-growing weeds.

- A 60-acre area proposed for remediation and TC NO. CAL. Development warehouse development ("Warehouse Development Area")
- A 7-acre area to the west of the Warehouse Development Area that would be remediated and remain undeveloped ("Western Remediation Area")
- A 9-acre area to the east of the Warehouse Development Area that would be remediated and remain undeveloped ("Eastern Remediation Area")
- A 26-acre area to the west of the Western Remediation Area that would be remediated using institutional controls (ICs) and undergo necessary pavement repairs ("Western Warehouse Area")

In addition to the four areas listed previously, the Port of Stockton Expressway is also subject to remediation under the 2003 Consent Agreement. The remedial activites include maintaining the roadway, which serves as the cover.

### 1.3.2.1 Warehouse Development Area

The 60-acre Warehouse Development Area is bordered to the north by McCloy Avenue and Port railways; to the west by the Port of Stockton Expressway; to the south by the Ferguson Building warehouse parking lot at 530 Port of Stockton Expressway, stormwater drainage ditches, and undeveloped Port land; and to the east by the DR commercial facility and abandoned structures. As noted, soils with elevated contaminants of concern are present in the Warehouse Development Area due to historical activities prior to the Port's ownership of the Site 47 parcel.

The Warehouse Development Area is surfaced in ruderal vegetation and non-native grasses; trees, including Italian stone pine (*Pinus pinea*), white mulberry (*Morus alba*), northern hackberry (*Celtis occidentalis*), and California palm (*Washingtonia filifera*); and a small area of remnant asphalt or concrete paving. A narrow access road bisects the project site from north to south. Three stormwater

drainage ditches are located within this portion of the project site (identified in Figure 2) and are described as follows:

- **Drainage Ditch 1 ("central ditch"):** An open, channelized, earthen stormwater drainage ditch bisects the center of the project site from east to west (WRA 2021). This approximately 0.80-acre and 2,139-foot-long ditch has been present on the project site since 1954, as indicated by a line on a topographic map (NETR 2021). Water flows from east to west in this central semipermanently inundated ditch, with sections of the ditch drying during the most arid time of the year. Plant species found within the ditch include hardstem bulrush, alkali bulrush, and cattail.
- **Drainage Ditch 2:** A second open, channelized, earthen stormwater drainage ditch is located on the western edge of the Warehouse Development Area and connects to Drainage Ditch 1. This approximately 0.17-acre and 529-foot-long drainage ditch is a linear feature confined to a distinct channel with an ordinary high water mark (OHWM), which flows for a portion of the year and generally dries out in sections during the most arid time of the year. It has also been present since 1954, as indicated by a line on a topographic map (NETR 2021). Water within this western ditch flows from north to south. At the southern end of this western ditch is a large culvert and concrete catch basin where water flows into the project site from the Port's larger storm drain system. Dominant plant species within the ditch are hardstem bulrush, alkali bulrush, cattail, and other hydrophytic and ruderal species.
- **Drainage Ditch 3:** A third approximately 0.61-acre and 1,732-foot-long drainage ditch also extends east to west on the southern edge of the project site immediately north of the existing Ferguson Building warehouse at 530 Port of Stockton Expressway. This southern ditch was excavated in 2006 to route water around the Ferguson Building warehouse (WRA 2021), and it connects to the western ditch with no obstructions or culverts. This semipermanently inundated ditch is a linear feature confined to a distinct channel with an OHWM and contains water for a portion of the year, generally drying out in sections during the most arid time of the year. The ditch is almost entirely vegetated, with only a few sections of unvegetated channel. Unvegetated portions are presumed to be caused by long-term inundation. Water within the southern ditch flows from east to west. Hardstem bulrush, common reed (*Phragmites australis*), arroyo willow (*Salix lasiolepis*), alkali bulrush, cattail, and other hydrophytic and ruderal species are the dominant plant species within this southern ditch.

These ditches are part of the Port's West Complex drainage system, which conveys stormwater and surfacing groundwater to a single pump-controlled discharge point on the west side of the West Complex. Stormwater that reaches this discharge point is held in a stormwater retention basin on the western end of the West Complex. During years when the retention basin reaches a high level, stormwater is pumped to the San Joaquin River.

#### 1.3.2.2 Western Remediation Area

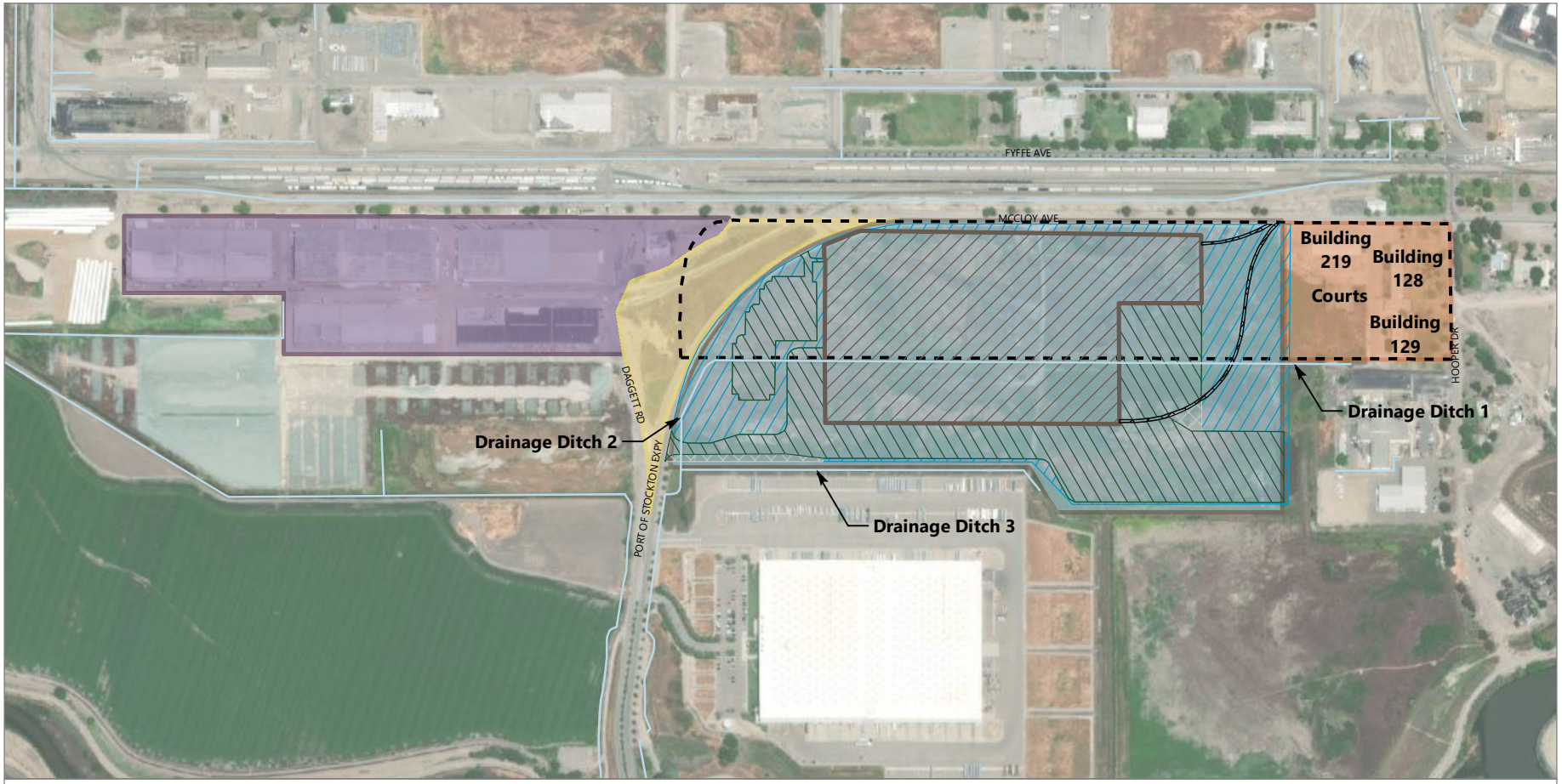
The Western Remediation Area is an irregularly shaped, approximately 7-acre area west of and across from the Port of Stockton Expressway and the Warehouse Development Area. The Western Remediation Area is surfaced in ruderal vegetation with small areas of remnant barren concrete, asphalt, or compacted dirt. A rail spur extends northeast to southwest across the area's northern portion. Ten London planetrees (*Platanus* × *acerifolia*) are located along the west side of the Port of Stockton Expressway. The Western Remediation Area is bordered by Daggett Road, Port of Stockton Expressway, and McCloy Avenue.

#### 1.3.2.3 Eastern Remediation Area

The Eastern Remediation Area is a rectangular 9-acre area immediately east of and adjacent to the Warehouse Development Area. The Eastern Remediation Area has three derelict abandoned structures and degraded tennis and basketball courts associated with the West Complex's former Navy use. This area also includes asphalt or concrete surfacing, ruderal vegetation, ornamental grass lawn, and mature native and non-native ornamental trees. It is bordered to the east by North Hooper Street, to the north by McCloy Avenue, and to the south by a narrow strip of vegetation and an asphalt-paved parking area.

#### 1.3.2.4 Western Warehouse Area

The Western Warehouse Area is an approximately 26-acre area west of the Port of Stockton Expressway and the Western Remediation Area. The Western Warehouse Area is composed of five existing warehouses that are currently used for storage and logistics services. The Western Warehouse Area is surfaced with asphalt or concrete with one mature ornamental tree located near the western portion of the area. The Western Warehouse Area is bordered to the east by Port of Stockton Expressway, to the south by Gillis Avenue, to the north by McCloy Avenue, and to the west by Humphreys Street and a strip of compacted dirt and ornamental grass lawn.




**LEGEND:**

- Stormwater Ditch
- Site 47 Consent Agreement Boundary
- Warehouse Development Area
- Eastern Remediation Area
- Western Remediation Area
- Western Warehouse Area

Development Features

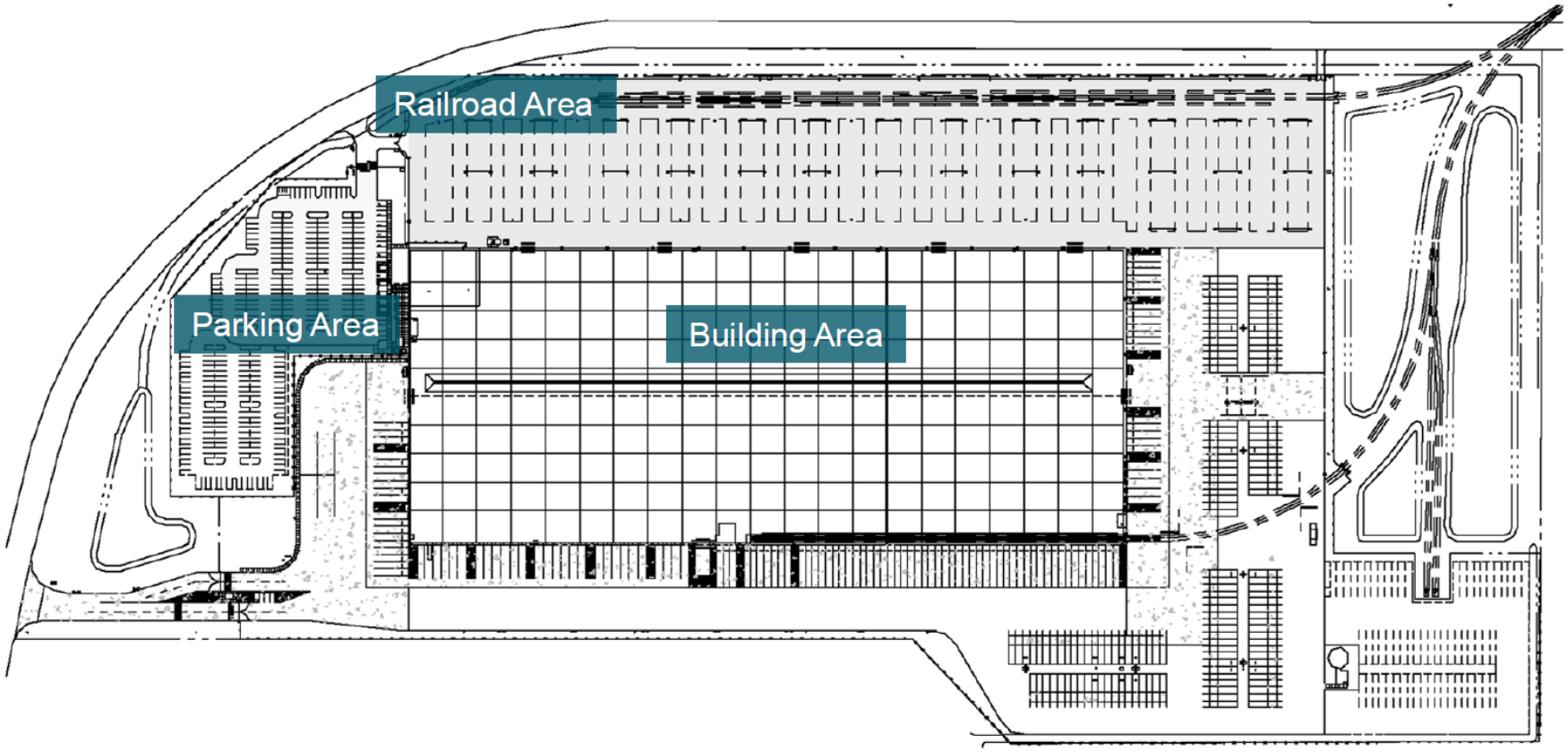
- Warehouse and outdoor storage areas
- Stormwater detention ponds and limited landscape areas
- Parking and driveway areas
- New railroad spurs
- Exterior concrete areas and sidewalks

0 700
Feet

Publish Date: 2021/12/06, 10:17 AM | User: jsfox
Filepath: \\orcas\GIS\Jobs\Port_of_Stockton_0377\Maps\TrammelCrow\AQ_Fig2_DevelopmentRemediationAreas.mxd

ANCHOR QEA

**Figure 2**
**Development and Remediation Areas**
Draft Environmental Impact Report
TC NO. CAL. Development Warehousing and Distribution Facility Project




Filepath: S:\PROJECTS\Port_of_Stockton\Tenant Projects\Trammel Crow - Home Depot\Deliverables\DEIR\Figures

ANCHOR QEA

**Figure 3**
**Overall Warehousing and Distribution Facility Site Plan**
Final Environmental Impact Report
TC NO. CAL. Development Warehousing and Distribution Facility Project

## 1.4 Proposed Project Overview

### *1.4.1 Project Objectives*

Pursuant to the CEQA Guidelines and 14 CCR 15124, a "statement of the objectives sought by the proposed project" must be provided as part of the project description in an EIR. The proposed project's goal is to construct and operate a distribution facility to accommodate Port-bound cargo and to remediate Site 47 as identified in the 2003 Consent Agreement. To accomplish these goals, the following key project objectives must be accomplished:

- Remediate Site 47 per applicable regulations and standards.
- Initiate a lease with the Port consistent with the proposed project.
- Provide modern warehouse space to meet the existing need for an on-demand logistical model as the current growth in logistics has outpaced the availability of modern warehouse space.
- Receive, store, and ship bulk building products and consumer home goods in a manner that promotes safe and efficient handling while ensuring environmental protection and controls.
- Increase the availability of building materials and supplies to the local area, region, and state.

### *1.4.2 California Environmental Quality Act Baseline*

CEQA Guidelines Section 15125 requires that an EIR include a description of the physical environmental conditions in the vicinity of the proposed project as they exist at the time the Notice of Preparation (NOP) is published, or if no NOP is published, at the time the environmental analysis is commenced, from both a local and regional perspective. These environmental conditions are referred to as the environmental setting. Further, CEQA Guidelines Section 15125(a) states that "the environmental setting normally constitutes the baseline physical conditions by which a lead agency determines whether an impact is significant." The CEQA baseline is the set of conditions that prevailed at the time this NOP is circulated. Per CEQA Guidelines Section 15125, the following paragraph describes current conditions at the project site.

The 102-acre project site is surfaced in weeds, remnant barren concrete, asphalt, compacted dirt, ornamental grass lawn, and mature native and non-native ornamental trees. Structures on the project site include three stormwater drainage ditches, abandoned structures, rail spurs, and degraded basketball and tennis courts. Soils in certain areas of the project site contain arsenic, PAHs, and OCPs, including DDT. There are five existing warehouses that are currently used for storage and logistics services on the Western Warehouse Area. Other than the five warehouses and associated activities at those warehouses, no other industrial, commercial, or other uses occur under existing conditions at the project site.

### *1.4.3 Proposed Project Construction and Remedial Activities*

Remediation and construction are anticipated to occur between 2023 and 2025. The proposed project construction would occur in three phases that would generally occur sequentially, as follows:

- **Phase 1: Site Preparation and Remediation in Warehouse Development Area.** Anticipated to occur in 2023 (expected 8-month duration)
- **Phase 2: Construction of Warehouse and Improvements in Warehouse Development Area.** Anticipated to occur between 2024 and 2025 (expected 20-month duration with 1 month of potential overlap with Phase 1)
- **Phase 3: Remediation of Western and Eastern Remediation Areas and Western Warehouse Area.** Anticipated to occur in 2025 (expected 2-month duration)

No removal of facilities and no major construction is planned at the Western Warehouse Area. Activities within the Western Warehouse Area would be permanently managed by the Port using ICs and the new Land Use Covenant (LUC) developed as part of the RAP. However, some areas of existing damaged pavement would be fixed.

### *1.4.4 Phase 1: Site Preparation and Remediation in Warehouse Development Area*

Site preparation and remediation of the Warehouse Development Area would largely occur first, prior to construction of the warehouse and associated improvements under Phase 2. Site preparation activities include clearing and grubbing of vegetation, implementing best management practices (BMPs) consistent with the SWPPP, and removing existing utilities. Following site preparation, approximately 57,000 cubic yards of contaminated soil would be excavated throughout the Warehouse Development Area. Building support columns will then be installed within the area of the proposed building, outdoor storage area, and rail spurs.

Drainage Ditch 1 would be filled in with clean material sourced on site during the grading process. Drainage Ditch 2 would be modified to accommodate the distribution facility and related infrastructure, and a new drainage channel would be constructed along the northern boundary of Site 47 (south of McCloy Avenue) and integrated into the Port's drainage system. In the eastern and western area of the project site, grading activities would also move contaminated soil away from existing paved areas and building foundations to facilitate placement of a 2-foot clean soil cover in unpaved areas next to these features.

All excavated contaminated soil would be consolidated on site, then placed in the footprint of the new warehouse and outdoor storage area. Prior to placement, the top and lateral extent of the contaminated soil and bottom of the cap would be surveyed, and a demarcation layer would be installed above the contaminated soil. Following placement, contaminated soil would be covered

with approximately 168,000 loose cubic yards of clean soil sourced from adjacent sites within the Port. The clean fill would be compacted, treated with lime and cement, overlain by an aggregate base, and covered with a concrete slab, which would serve as the foundation for the warehouse.

Other areas within the Warehouse Development Area but outside the foundation footprint would be covered with a combination of clean soil and hardscape surfaces, including concrete sidewalks and asphalt-concrete pavement. The new covers would be tied into the existing pavement and structures where necessary. The final surface of the covers would be designed to slope at a slight grade to promote surface water drainage. The durable covers would prevent future site users and wildlife from contacting the underlying contaminated soil.

### *1.4.5 Phase 2: Construction of Warehouse and Improvements in Warehouse Development Area*

The proposed warehouse and associated improvements would be constructed immediately following Phase 1 remediation and site preparation, with the potential for 1 month of construction overlap between these phases. As described in Table 1, proposed improvements during this phase include construction of a 655,200-sf, 36-foot clear height, concrete tilt-wall build-to-suit warehouse structure; 293,951-sf outdoor storage area (exterior slab-on-grade); 418 car and trailer parking spaces; trailer storage; truck docks; rail service via two rail spurs extended onto the project site and a railcar storage track; water tank and pumphouse; guard house; and minor ancillary structures. The warehouse and structures would meet all requirements of the 2019 California Green Building Standards Code. Rail service would be extended into the Warehouse Development Area via the existing Port rail network, entering the site from the northeast corner through a new gated crossing off McCloy Avenue. TC NO. CAL. Development would also plant at least 30 trees. TC NO. CAL. Development will plant only native species of trees, adapted to the lighting, soil and hydrological conditions at the replanting site. For each tree slated for removal that is four inches diameter at breast height or larger, the following minimum mitigation ratio would be used:

- For oaks 4 to 12 inches DBH to be removed, trees will be replanted at a 3:1 ratio.
- For oaks 13 to 24 inches DBH, trees will be replanted at a 5:1 ratio.
- For other native trees, trees will be replanted at a 3:1 ratio.
- For non-native trees, trees will be replanted at a 1:1 ratio.

California native tree species to be used in replanting shall include valley oak (*Quercus lobata*), interior live oak (*Quercus wizlizeni*), coast live oak (*Quercus agrifolia*), box elder (*Acer negundo*), western redbud (*Cercis occidentalis*), Oregon ash (*Fraxinus latifolia*), red willow (*Salix laevigata*) or possibly giant sequoia (*Sequoiadenron giganticum*) or native pine trees. Other suitable native tree species may be considered if necessary. Utility extensions would be required for gas, electricity, water, wastewater, and telecommunications.

### *1.4.6 Phase 3: Remediation of Western and Eastern Remediation Areas and Western Warehouse Area*

Remediation of the Western and Eastern Remediation Areas shown in Figure 2 would occur following completion of Phase 2 warehouse and improvements construction. The Phase 3 remediation construction sequence would be similar to Phase 1 remediation and is anticipated to include site preparation activities, including surveying the top and lateral extent of the contaminated soil and bottom of the cap, clearing and grubbing vegetation, removing the former tennis courts in the Eastern Remediation Area, and preparing the site to receive fill by compacting the subgrade and grading away from existing paved areas. It would also include installing a demarcation layer above the contaminated soils, importing borrow fill material from adjacent sites in the West Complex for the soil cover and fill areas, placing clean soil above the demarcation layer to achieve the bottom of cap elevation, and compacting and grading soil cover and fill material.

Some existing infrastructure within the Western and Eastern Remediation Areas, including intact paved surfaces and building foundations, would be integrated into the remediation design. In limited areas of the Eastern Remediation Area, low-permeability asphalt would be installed between the intact paved surfaces and building foundations to form a continuous engineered cover. All engineered covers would be designed to slope away from buildings and paved surfaces and towards existing stormwater infrastructure. Engineered covers would be inspected annually and repaired as needed. All existing structures located in the Eastern Remediation Area, besides the tennis courts, would remain in place. The intact rail line in the Western Remediation Area would be undisturbed and left uncapped.

The Western Warehouse Area would be permanently managed by the Port using ICs and land use restrictions. There would be no removal of facilities and no major construction in this area; however, some areas of existing damaged pavement would be fixed.

## 1.5 Construction Schedule

The proposed construction schedule with proposed equipment list is presented in Table 1. There would be no export of contaminated soils; all soils would be managed and consolidated on site. All clean fill will be sourced from within the Port. Material used to cap soils would be scraped from adjacent areas on the project site and obtained from existing dredge material stored on the West Complex. During construction, traffic would be restricted to the Port of Stockton Expressway and Navy Drive. Construction staging would be entirely within the footprint of the project site shown in Figure 3, likely within the southern portion of the site.

**Table 1**
**Construction Schedule and Equipment List**

| | | | |
|---|---|---|---|
| **Phase 1: Site Preparation and Remediation in Warehouse Development Area** | | | |
| • Site preparation activities<br>• Backfilling Drainage Ditch 1 and constructing a replacement drainage ditch and two detention basins<br>• Over-excavating surficial contaminated soils, installing a demarcation layer above the contaminated soils, and placing clean soil above the demarcation layer<br>• Installing drilled displacement columns<br>• Applying lime and cement treatment and compacting layers of clean soil, aggregate base, and concrete slabs<br>• Excavating clean soil and placing, compacting, and grading the soil cover and fill material<br>• Placing and compacting aggregate base and constructing exterior concrete and asphalt slabs, driveways, parking, and railroad spurs | 8 Months<br>Start: 2023 | Sweeper<br>Tractor<br>Excavator<br>Crane<br>Grader<br>Loader<br>Dozer<br>Haul/Dump Truck | Compactor<br>Backhoe<br>Welder<br>Generator<br>Scrapper<br>Roller/Paver<br>Flat Bed Truck |
| **Phase 2: Construction of Warehouse and Improvements in Warehouse Development Area** | | | |
| • Constructing a 655,200 sf, 36-foot clear height, concrete tilt-wall build-to-suit warehouse structure<br>• Constructing a 293,951-sf outdoor storage area (exterior slab-on-grade), 418 car and trailer parking spaces, trailer storage, and truck docks, water tank and pumphouse; guard house; and minor ancillary structures<br>• Extending rail service via adding two rail spurs, a railcar storage track<br>• Utility extensions (gas, electricity, water, wastewater, and telecommunications) | 20 Months<br>Start: 2024 | Dozer<br>Flat Bed Truck<br>Welder<br>Crane<br>Excavator<br>Crane | Haul/ Dump Truck<br>Generator<br>Water Truck<br>DDC<br>Tiller |
| **Phase 3: Remediation of Western and Eastern Remediation Areas and Western Warehouse Area** | | | |
| • Site preparation activities, including surveying the top and lateral extent of the contaminated soil and bottom of the cap<br>• Clearing and grubbing vegetation<br>• Removing former tennis courts in the Eastern Remediation Area<br>• Preparing the site to receive fill by compacting the subgrade and grading away from existing paved areas<br>• Installing a demarcation layer above the contaminated soils<br>• Importing borrow fill material for the soil cover and fill areas<br>• Placing clean soil above the demarcation layer to achieve the bottom of cap elevation<br>• Compacting and grading soil cover and fill material | 2 Months<br>Start: 2025 | Sweeper<br>Tractor<br>Excavator<br>Crane<br>Grader<br>Loader<br>Dozer<br>Haul/ Dump Truck | Compactor<br>Backhoe<br>Welder<br>Generator<br>Scrapper<br>Roller/Paver<br>Flat Bed Truck |

### *1.5.1 Proposed Project Operations*

Operation of the proposed project could include wholesaling and distribution and warehousing of building materials and commercial home goods. The distribution facility's design and operational throughput assumptions could accommodate any of these uses. For the purposes of this document, it is assumed that the distribution facility would operate 365 days a year from 6:30 a.m. to 10:30 p.m., with truck operations occurring primarily Monday through Saturday.

It is anticipated that the distribution facility may initially be used for storage and bulk distribution of building products and consumer home improvement goods to be identified based on customer demand. Bulk materials would be nationally sourced and delivered to the project site by truck or rail; sorted, batched, and stored on site; and exported from the project site by truck to the final off-site delivery location within the local Stockton region. Occasional outbound shipments via rail may also occur but would be sporadic and intermittent.

Facility throughput would be dependent on customer demand; a conservative estimate of maximum annual truck and railcar trips associated with proposed project operations is presented in Table 2.

**Table 2**
**Proposed Project Cargo Throughput (Maximum)**

| Mode[1] | Maximum Annual Calls[2] |
|---|---|
| Inbound Truck Calls | 32,287 |
| Outbound Truck Calls | 63,211 |
| Total Truck Calls | 95,498 |
| Total Rail Calls[3] | 2,053 |

Notes:

1. Cargo would be delivered to the facility by truck and rail. All cargo would be distributed from the facility by truck.
2. Calls are expressed in round trips. Each truck and train call makes two trips: one trip in and one trip out.
3. Rail cargo would be shipped via manifest rail.

Operations at the proposed facility are anticipated to require 100 employees working over two daily shifts with a 30-minute overlap between shifts (6:30 a.m. to 2:30 p.m. and 2:00 p.m. to 10:30 p.m.). Parking would be accommodated on site through the proposed employee parking. The site design includes ingress and egress points and other design measures to accommodate the anticipated volume of vehicular traffic, minimize queuing, and facilitate traffic flow within the boundary of the project site and adjoining roadways. Industry-standard emergency procedures for operations would be developed by the on-site management team, and all associates would be trained in those procedures. A single emergency generator would be installed and operated as needed. Up to 56 forklifts and two power saws would operate at the site daily (7 days a week).

Table 3 identifies operational utility demands, which would be comparable to similar warehouse structures and accommodated by connections to existing utilities. Wastewater demand would be limited to plumbing waste from employee use; no process or industrial wastewater would be generated. Non-potable water demand would be limited to as-needed emergency fire controls. The proposed improvements would be solar ready. Facility lighting, including appropriate shielding, would be installed as part of the proposed project.

**Table 3**
**Operational Utility Demand**

| Utility | Operations | |
|---|---|---|
| | Annual | Peak Daily |
| Gas | 13,868 therms | 42 therms |
| Electricity | 3,316,962 kWh | 9,500 kWh |
| Water (potable) | 3,975 kgal | 12 kgal |

As described, the proposed project includes filling an existing drainage ditch, creating a replacement drainage ditch alignment, and constructing two detention basins. The replacement drainage ditch would provide stormwater filtration and conveyance to the existing Port drainage system. The detention basins would limit discharge of post-construction stormwater runoff. Together, the replacement drainage ditch and detention basins would restrict post-construction runoff to pre-construction runoff rates, as required by the Port's Storm Water Development Standards (Port 2009).

The Western and Eastern Remediation Areas are anticipated to remain vacant and unused for the foreseeable future. The remedial engineered cover placed in Phase 3 would be protected from future disturbance in accordance with existing LUC restrictions. Inspections of the engineered cover would be conducted annually, with repairs as needed. These inspections would be documented on a 5-year frequency at a minimum.

The Western Warehouse Area would be permanently managed by the Port using ICs and land use restrictions, and there would be no operational changes associated with the proposed project. The existing warehouse operations in this area would continue to operate at existing levels; therefore, no operational changes are assessed for this area in the DEIR.

## 1.6 Project Alternatives

CEQA's requirements for an EIR to evaluate alternatives specifically requires that an EIR present a range of reasonable alternatives to a proposed project, or to the location of a project, that could feasibly attain most of the basic project objectives but would avoid or substantially lessen any

significant effects of a project. Therefore, alternatives generally have fewer environmental impacts than the proposed project by design. Pursuant to Section 15126.6(e)(2) of the CEQA Guidelines, an EIR must also include an analysis of a No Project Alternative. This section presents brief descriptions of the alternatives to the proposed project that were carried forward for analysis in the DEIR.

### *1.6.1 Alternative 1: No Project Alternative*

The No Project Alternative, which is required by CEQA, represents what would reasonably be expected to occur in the foreseeable future if the proposed project were not approved. Under this alternative, no new warehouse building, or associated improvements would be constructed, and there would be no change to operations on the site. Additionally, no remediation of Site 47 would occur as part of the distribution facility construction, and a different remedial design that meets cleanup goals would be selected through the RAP approval process.

### *1.6.2 Alternative 2: Reduced Project Alternative*

The Reduced Project Alternative would consist of warehouse building construction and operation at two-thirds the capacity of the proposed project. This alternative includes development of a warehouse building and associated infrastructure (e.g., parking areas) over a 40-acre area at the same location as the proposed project. With the smaller warehouse building, there would be a commensurate reduction in throughput capacity. Because this alternative would still overlap with Site 47, it is anticipated that the extent of remediation associated with this alternative would be the same as that of the proposed project. While a warehouse of this size would not meet the project objective of providing a modern warehouse for existing logistical needs, this alterative is being analyzed based on comments received during public scoping.

### *1.6.3 Alternative 3: Alternative Site Locations*

The Alternative Site Locations Alternative considers locating the proposed TC NO. CAL. Development warehouse at another site within the Port. It considers whether an available existing facility could be retrofitted to provide warehousing or whether a separate parcel of land could be developed to meet project objectives. As part of this alternative, no remediation of Site 47 would occur as part of the proposed project. No existing facility at the Port could be retrofitted to provide enough warehousing space to accommodate as much bulk material as proposed as part of this project. There are two vacant Alternative Site Locations on the West Complex that could be considered for this proposed project (Site A and Site B)—one of which is slightly smaller than the project site (Site B); therefore, it would result in a smaller warehouse footprint than the proposed project. If it is determined that either of the alternative sites requires remediation, the regulatory process governing remediation would be completed specific to the selected site.

### *1.6.4 Comparison of Alternatives*

Table 4 provides a summary comparison of the potential environmental impacts after implementation of mitigation measures resulting from the proposed project and alternatives relative to the topics analyzed in the DEIR. Table 5 presents a summary of the alternatives regarding their ability to meet the project objectives.

**Table 4**
**Comparison of Potential Impacts from Proposed Project and Alternatives (with Incorporation of Mitigation)**

| Resource | Proposed Project | Alternative 1: No Project Alternative | Alternative 2: Reduced Project Alternative | Alternative 3: Alternative Site Locations (Site A) | Alternative 3: Alternative Site Locations (Site B) |
|---|---|---|---|---|---|
| **Aesthetics** | LTS | NI | LTS | SU | LTS |
| **Air Quality** | LTS | LTS | LTS | SU | SU |
| **Biological Resources** | LTS | NI | LTS | LTS | LTS |
| **Cultural Resources** | LTS | NI | LTS | LTS | LTS |
| **Energy** | LTS | LTS | LTS | LTS | LTS |
| **Geology and Soils** | LTS | NI | LTS | LTS | LTS |
| **GHG Emissions** | SU | LTS | SU | SU | SU |
| **Hazards and Hazardous Materials** | LTS | LTS | LTS | LTS | SU |
| **Hydrology and Water Quality** | LTS | NI | LTS | LTS | LTS |
| **Noise** | LTS | LTS | LTS | SU | LTS |
| **Transportation** | SU | LTS | LTS | SU | SU |
| **Tribal Cultural Resources** | LTS | NI | LTS | LTS | LTS |
| **Utilities** | LTS | NI | LTS | LTS | LTS |

Notes:
LTS: less-than-significant impact
SU: significant and unavoidable impact
NI: no impact

**Table 5**
**Ability of Alternatives to Meet Project Objectives**

| Objective | Proposed Project | Alternative 1: No Project | Alternative 2: Reduced Project | Alternative 3: Alternative Site Locations |
|---|---|---|---|---|
| Remediate Site 47 per applicable regulations and standards. | Meets Objective | Does Not Meet Objective | Meets Objective | Does Not Meet Objective |
| Initiate a lease with the Port consistent with the proposed project. | Meets Objective | Does Not Meet Objective | Does Not Meet Objective | Does Not Meet Objective |
| Provide modern warehouse space to meet the existing need for an on-demand logistical model as the current growth in logistics has outpaced the availability of modern warehouse space. | Meets Objective | Does Not Meet Objective | Does Not Meet Objective | Does Not Meet Objective |
| Receive, store, and ship bulk building products and consumer goods in a manner that promotes safe and efficient handling while ensuring environmental protection and controls. | Meets Objective | Does Not Meet Objective | Meets Objective to a Lesser Extent than the Proposed Project | Meets Objective to a Lesser Extent than the Proposed Project |
| Increase the availability of building materials and supplies to the local area, region, and state. | Meets Objective | Does Not Meet Objective | Meets Objective to a Lesser Extent than the Proposed Project | Meets Objective to a Lesser Extent than the Proposed Project |

# 2 DEIR Comments and Responses

## 2.1 DEIR Report Distribution

The DEIR was released and distributed on January 11, 2022, for a 45-day review period, which ended on February 24, 2022. The DEIR includes a full analysis and an Executive Summary that summarizes the proposed project, alternatives, and findings.

The DEIR is available on the Port's website at https://www.portofstockton.com/ceqa-documents/. It is also posted on the State Clearinghouse (SCH) website at https://ceqanet.opr.ca.gov/ and can be found by entering the SCH Number 2021080499 in the "search" window.

Hard copies of the DEIR and technical appendices are available upon request by contacting Jason Cashman by email at ceqa@stocktonport.com or phone at 209-946-0246.

## 2.2 Comments on the DEIR

The Port received comment letters on the DEIR from the following organizations:

- California Air Resources Board (CARB)
- California Department of Fish and Wildlife (CDFW)
- Central Valley Regional Water Quality Control Board (RWQCB)
- San Joaquin Valley Air Pollution Control District (SJVAPCD)
- Delta-Sierra Group of the Sierra Club (DSG)
- Adams Broadwell Joseph & Cardozo (ABJC)
- Catholic Charities (CC)
- Lozeau Drury, LLP (LD)

## 2.3 Response to Comments on the DEIR

In accordance with Section 15088 of the CEQA Guidelines, the Port has evaluated the comments on environmental issues received from interested parties and has prepared written responses to each comment pertinent to the adequacy of the environmental analyses contained in the DEIR. In addition, where appropriate, the basis for incorporating or not incorporating specific suggestions into the proposed project is provided. In each case, the Port has expended a good-faith effort, supported by reasoned analysis, to respond to comments.

The comment letters are provided in Section 2.5. Each comment letter is followed by tabulated responses prepared by the Port for each comment received. In addition, there were several similar comments that were provided by multiple commentors—specifically on zero-emissions equipment and Port-wide emissions. Therefore, two master responses to these comments (Section 2.4) were prepared in addition to specific responses to comments presented in Section 2.5.

## 2.4 Master Responses

### *2.4.1 Master Response-1: Zero-Emissions Equipment*

Several comments recommended requiring zero-emission terminal equipment, trucks, and rail. While zero-emissions equipment have become more available, there remains commercial availability questions for several classes of equipment, especially heavy-duty equipment. The largest source of criteria pollutant and greenhouse gas (GHG) emissions are from delivery trucks followed by locomotives.

There are two main classes of zero-emission trucks: trucks powered by batteries that need to be charged (electric trucks) and trucks powered by fuel cells (fueled by hydrogen). While commercially available, zero-emission trucks are not available at the level needed to fully support operations and the area lacks the necessary infrastructure, including charging stations and hydrogen fueling stations, to support operations. The California Air Resources Board's (CARB's) recent Advanced Clean Fleets (ACF) rule will require a full transition to zero-emissions drayage truck operations by 2035 and establish zero-emission truck purchase requirements for large commercial, federal, state, and municipal fleets, beginning as early as 2024 and ramping up to a 100% zero-emission fleet requirement in 2045, based on vehicle category. The ACF regulation applies to fleets performing drayage operations (from ports); those owned by state, local, and federal government agencies; and high priority fleets.[1] Specifically, between now and 2035, regulated entities will need to achieve zero-emissions targets for 50% of long-haul trucks, 75% of work trucks and daily-route heavy trucks, and 100% of box trucks, delivery vans, and yard trucks. After 2036, all new commercial trucks sold in the state must be zero-emissions, and by 2045, all fleets must be emissions-free.

In advance of that rule, many large companies in California are considering how best to meet requirements, including whether to invest in electric or hydrogen fuel cell trucks based on battery range, fuel availability, charging infrastructure, and cost. As there are still large questions regarding availability and fueling/charging, companies will need time to transition. The Port supports this statewide approach to transitioning to zero-emission trucks and equipment is working with tenants to facilitate the process and, as discussed below, is requiring clean trucks (defined as model year 2017 or newer which are subject to USEPA Phase 1 GHG emissions and fuel economy standards).

In addition, the following mitigation measures (MM-AQ-1 through MM-AQ-5) have been modified to encourage a quick transition to zero-emissions vehicles as well as begin planning for the

[1] High priority fleets are entities that own, operate, or direct at least one vehicle in California, and that have either $50 million or more in gross annual revenues, or that own, operate, or have common ownership or control of a total of 50 or more vehicles (excluding light-duty package delivery vehicles). The regulation affects medium- and heavy-duty on-road vehicles with a gross vehicle weight rating greater than 8,500 pounds, off-road yard tractors, and light-duty mail and package delivery vehicles.

necessary infrastructure to support such equipment. Underlined text denotes new text and ~~crossed out~~ text denotes deleted text.

- **MM-AQ-1: Construction Idling Reductions.** TC NO. CAL. Development and the Port will require construction contractors to minimize heavy-duty construction idling time to 2 minutes where feasible. Exceptions include vehicles that need to idle to perform work (such as a crane providing hydraulic power to ~~the~~ a boom), vehicles being serviced, or vehicles in a queue waiting for work. This requirement will be included as a specification in construction contracts.
- **MM-AQ-2: Use of ~~Tier 4 Engines~~ Clean Equipment and Clean Trucks During Construction.** All off-road engines less than 50 horsepower used to construct the proposed project will be equipped with Tier 2 engines, except for specialized equipment or when Tier 2 engines are not available. All off-road diesel-powered heavy equipment exceeding 50 horsepower used to construct the proposed project will be equipped with Tier 4 engines, except for specialized equipment or when Tier 4 engines are not available. In place of Tier 4 engines for equipment exceeding 50 horsepower, off-road diesel-powered heavy equipment will incorporate retrofits such that emission reductions achieved equal or exceed that of a Tier 4 engine. In addition, all heavy-duty on-road trucks used during construction shall be model year 2014 or newer, with a preference for zero-emission trucks where available. These requirements will be included as specifications in construction contracts. The contractor shall also prioritize the use of zero-emission construction equipment.
- **MM-AQ-3: Operational Truck Idling Reductions.** TC NO. CAL. Development will require trucks to minimize idling time to 2 minutes while on terminal. These requirements will be posted on site and included as a contract provision. TC NO. CAL. Development will design the gate check-in so that the check-in point for trucks is well inside the project site to ensure that there are no trucks queuing outside of the facility.
- **MM-AQ-4: Use of Clean Trucks During Operations.** TC NO. CAL. Development will require all cargo trucks entering the warehouse site to be model year 2017 or newer and encourage its customers to use ~~clean trucks (defined as model year 2017 or newer)~~ zero-emission trucks to transport cargo. ~~TC NO. CAL. Development will also educate customers about the SJVAPCD Truck Replacement Program via direct or electronic mailings. In addition,~~ TC NO. CAL. Development will require all trucks be in compliance with CARB air quality regulations for on-road trucks, including CARB's Heavy-Duty (Tractor-Trailer) Greenhouse Gas Regulation, Periodic Smoke Inspection Program (PSIP), and the Statewide Truck and Bus Regulation. TC NO. CAL. Development will also educate customers about the SJVAPCD Truck Replacement Program and CARB's Advanced Clean Truck Program, including funding opportunities, via direct or electronic mailings. TC NO. CAL. Development will post a copy of the SJVAPCD Truck Replacement Program information currently available at http://valleyair.org/grants/truck-replacement.htm and applicable CARB regulations at the terminal. These requirements will be posted on site and included as a contract provision. In addition, TC NO. CAL. Development

shall install at minimum one Level 3 electric charger on the terminal in a place convenient for heavy-duty truck access within 12 months of facility operations.

- **MM-AQ-5: Use of Clean Yard Equipment.** TC NO. CAL. Development will require terminal and yard equipment, including yard hostlers, yard equipment, forklifts, and pallet jacks, to be the cleanest available equipment (for future purchases). Considerations for clean equipment will include a first preference for zero-emission equipment, a second preference for near-zero equipment, and then for the cleanest available equipment if neither zero nor near-zero equipment are available or feasible. TC NO. CAL. Development will ensure the proper infrastructure to support such equipment is available. At a minimum, TC NO. CAL. Development will require at least 25 of the forklifts be zero emissions. All remaining forklifts shall be low emissions using alternative fuels.

Zero-emissions rail options are more limited. As discussed in the DEIR, because there are only two mainline rail companies (UP and BNSF) that service the entire rail network as well as interstate commerce, mainline locomotives are regulated by the federal and state governments. CARB is addressing rail emissions through a statewide rail plan, which includes agreements directly with the two mainline locomotive companies. The 2005 Statewide Railyard Agreement, which was completed in 2015, included a statewide idle reduction program, maximized the use of state and federal ultra-low-sulfur (15 ppm maximum) diesel fuel, and established a statewide visible emissions reduction and repair program. The agreement also required the preparation of 17 railyard inventories and Health Risk Assessments (HRAs). Requirements aimed at the two companies to upgrade equipment is beyond the scope of a single Port project.

Switcher engines are also a source of emissions, and the Port has actively engaged the Port's switching company, CCT, to upgrade equipment. CCT has recently upgraded several of its locomotives, including upgrading gensets and adding a new ultra-low-emissions locomotive purchased through USEPA's Diesel Emissions Reduction Program. To achieve further emissions reductions would require purchases of new equipment or a move to electrification, which is beyond the scope of one terminal project. The Port has applied for grant funding for addition electric switchers which would be used Port-wide, including at this terminal.

In terms of yard (terminal) equipment, yard equipment emissions represent less than 1% of the proposed project's total emissions. Nevertheless, TC NO. CAL. Development will be required to use low- and zero-emissions forklifts, which generate most yard equipment-generated emissions.

In addition to equipment specifications, the following mitigation measure (MM-GHG-1) has been modified to require the facility to install enough roof top solar to meet daily electricity needs. This

requirement will ensure that the electricity used to power electric equipment will be renewable. Underlined text denotes new text and ~~crossed-out~~ text denotes deleted text.

- **MM-GHG-1: Solar Requirements and Energy Audit** (See also GHG-1 in Section 3.7.3.4, "Impact Analysis"): TC NO. CAL. Development will install a 600 kW solar system as part of warehouse construction. The warehouse operator will be required to use the solar system at its maximum capacity.
  In addition, within 6 ~~Within 9~~ months of the effective date of the new lease, TC NO. CAL. Development will conduct an energy audit of warehouse design plans to determine if there are additional energy-saving features that can be implemented as part of construction and warehouse design and operations. ~~and develop a plan for reducing overall terminal energy from 2021 levels by within 5 years of the effective date of the lease.~~ The plan must be submitted to the Port for review and approval. The plan will incorporate the following measures at a minimum:
  - ~~Evaluate the level of solar panels that are required to meet the facility's electrical needs, both on buildings and for high mast lighting. Based on the evaluation, TC NO. CAL. Development will install solar unless a technical feasibility issue is identified.~~
  - Replace less-efficient lighting ~~bulbs~~ with energy-efficient lighting ~~bulbs~~, where applicable and in compliance with safety requirements, ~~. Lighting within the interior of buildings~~ on the premises and outdoors including the parking lot, loading dock, security, and exit signs. High mast parking lot ~~terminal~~ lighting will use ~~be replaced with~~ LED lighting or a technology with similar energy-saving capabilities and motion sensors will be installed where lighting is not used for security ~~within 2 years after the effective date of a new lease~~.
  - Install ENERGY STAR qualified HVAC equipment and variable frequency drives. When installing new equipment, ensure that the system is not oversized for the building's heating and cooling needs.

## *2.4.2 Master Response-2: Port-Wide Emissions*

Several comments requested additional mitigation to reduce cumulative Port-wide emissions. While the proposed project is a new project at the Port and therefore has not contributed to past or present emissions, the proposed project has the potential to contribute to future emissions. As discussed in the DEIR, criteria pollutant emissions would be less than significant after mitigation, and therefore would not make a significant contribution to future emissions. However, as discussed in the DEIR, the proposed project is within the planning area identified under Stockton's community reduction emissions plan (CERP). The CERP describes the sources of pollution impacting the Southwest Stockton community. Strategies for reducing air pollution impacts and health risk reduction from these sources were evaluated and selected as part of the public engagement process

between the AB 617 Community Steering Committee, SJVAPCD, and CARB. The Port is an active member of the AB 617 planning group for the Stockton area.

The Port has several port-wide programs aimed at reducing emissions throughout the Port. The Port operates a Clean Truck Program, which helps to ensure that trucks used throughout the Port are cleaner options. This program reduces Port-wide emissions and makes certain that tenant fleets are up to date. The Port also requires tenants to route inbound and outbound truck traffic through an internal Port route to minimize impacts on nearby communities. The Port has also committed to modernizing its own truck fleet, including its purchase of electric vehicles to replace older, gasoline-powered trucks, and retrofit of diesel-powered equipment with new emission control technologies.

The Port is seeking grants to buy zero-emissions equipment and help terminal operators secure grants. The Port is seeking both grants for Port-owned equipment and can support its tenants by helping them apply for grants as well. For the tenants, the Port will hold grant application workshops for operators, issue regular updates on grant opportunities, provide guidance on grant management, and could apply for funds directly, helping to defray the costs of assembling competitive applications. One potential area of focus is to seek grant funds for the development and demonstration of larger bulk-cargo equipment, such as bulldozers or loaders, for which there is very little zero-emission advancement today.

The Port has made significant steps towards its goal to "green" its entire fleet of cargo-handling equipment. In early 2018, the Port partnered with SJVAPCD and CARB to acquire two zero-emission, multiuse DANNAR mobile power sources fitted with forklift, scissor lift, and dump capabilities. In addition to these units, a zero-emissions railcar mover has also been acquired and is now operational in the Port.

Working in tandem with the Ports of Long Beach and Oakland, the Port successfully competed for grant funding as part of CARB's Zero and Near-Zero Emission Freight Facilities Program to receive an additional 34 forklifts from XL Lifts, a company specializing in zero and low-emissions forklifts.

Recently, the Port was awarded a $50 million grant from CARB for a transformative demonstration of a near-zero and zero-emissions supply chain. The larger START project also includes the Ports of Oakland as well as more than 100 pieces of zero-emission terminal equipment.

The Port is also working with tenants and the SJVAPCD to repower and retrofit its existing cargo-handling equipment with lower emission engines for improved air quality. Projects that have resulted in direct emissions reductions, demonstrating the beginning of the Port's longer-term emissions plans and strategies, include the following:

- Replacing four older gasoline-powered trucks with new zero-emission electric vehicles for use on docks and implementing more than 30 electrical vehicle charging stations.

- Acquiring two zero-emission, multiuse DANNAR mobile power sources fitted with forklift, scissor lift, and dump capabilities.
- Working in tandem with the Ports of Long Beach and Oakland, the Port was awarded grant funding as part of CARB's Zero- and Near-Zero Emission Freight Facilities Program to receive 34 forklifts from XL Lifts, a company specializing in zero- and near-zero-emissions forklifts.
- Obtaining a zero-emissions railcar mover in late 2020.

Other measures include the following:

- The Port has installed shore-side electrical power for tugs, which significantly reduces tug idling time and emissions.
- During dredging activities, port contractors operate an electric rather than diesel-powered dredge. This reduces air emissions by using a clean, renewable energy source instead of burning fossil fuels.
- The Port's Truck Traffic Control Plan has been finalized. The Port has installed signage on Rough & Ready Island directing truck traffic to the Stockton Port Expressway. This will ease congestion and reduce emissions in the nearby Boggs Tract neighborhood.
- The Port is also developing a comprehensive Clean Air Plan (CAP). The CAP strategies are intended to guide the Port's policy, land use, and procurement decisions to reduce air- and climate-related community impacts. The strategies may be implemented in any number of ways, including the following:
  - New voluntary programs, such as incentive or recognition programs;
  - Requirements in the tariff—the Port's "rulebook";
  - Conditions in new leases or in existing leases that are under active renewal and negotiations;
  - Mitigation measures in environmental documents under CEQA, or through partnerships with other agencies.
  - For each strategy, the Port will assess the implementation options to figure out the most effective approach, working with its many stakeholders every step of the way.

## 2.5 Responses to Individual Comments

This section presents the individual comment letters received on the DEIR with comments coded. It also presents responses to the coded comments included in the letters.

March 1, 2022

Jason Cashman
Environmental Manager
Port of Stockton
2201 West Washington Street
Stockton, California 95203
*ceqa@stocktonport.com*

Dear Jason Cashman:

Thank you for providing the California Air Resources Board (CARB) with the opportunity to comment on the T.C. NO CAL. Development Warehousing and Distribution Facility Project (Project) Draft Environmental Impact Report (DEIR), State Clearinghouse No. 2021080499. The Project site is located within the Port of Stockton (Port), California, which is the lead agency for California Environmental Quality Act (CEQA) purposes.

The Project consists of the issuance of a lease to TC NO. CAL. Development that would allow for the construction of a new 655,200 square foot warehouse building, 293,951 square foot outdoor storage area, and contaminated soil remediation on approximately 60 acres of the Port's West Complex. The Port is expecting the warehouse building to be used by commercial operators for distribution services. Uses may include wholesaling and distribution, warehousing, or light manufacturing. Building products and consumer goods would be received via rail or truck, unloaded, and then stored at the facility before being shipped to local, regional, and state markets by truck and rail. The Project would result in a cargo throughput of 32,287 annual inbound truck calls, 63,211 outbound truck calls and 2,053 inbound rail calls per year.

CARB-1

Industrial facilities, like the facility described in the Project, can result in high volumes of heavy-duty diesel trucks, locomotive operations and operation of on-site equipment (e.g., forklifts and yard tractors) that emit toxic diesel emissions, and contribute to regional air pollution and global climate change.[1] Governor Gavin Newsom signed Executive Order N-79-20 on September 23, 2020. The executive order states: "It shall be a goal of the State that 100 percent of in-state sales of new passenger cars and trucks will be zero-emission by 2035. It shall be a further goal of the State that 100 percent of medium and heavy-duty vehicles in the State be zero-emission by 2045 for all operations where feasible and by 2035 for drayage trucks. It shall be further a goal of the State to transition to 100 percent zero-emission off-road vehicles and equipment by 2035 where feasible." The executive order further directs the development of regulations to help meet these goals. To ensure that lead

1. With regard to greenhouse gas emissions from this project, CARB has been clear that local governments and project proponents have a responsibility to properly mitigate these impacts. CARB's guidance, set out in detail in the Scoping Plan issued in 2017, makes clear that in CARB's expert view, local mitigation is critical to achieving climate goals and reducing greenhouse gases below levels of significance.

CARB-1 (cont.)

agencies, like the Port, stay in step with evolving scientific knowledge to protect public health from adverse air quality and greenhouse gas impacts from the transportation sector, which serves as the basis of the Governor's Executive Order N-79-20, CARB staff urges the Port and applicant to construct and operate the Project using the zero-emission technologies recommended in this letter.

CARB submitted a comment letter, which is attached to this letter, on the Notice of Preparation (NOP) for the DEIR released in August 2021. CARB's comments, dated October 1, 2021, highlighted the need for preparing a health risk assessment (HRA) for the Project. The letter also encouraged the Port and applicant to implement all existing and emerging zero-emission technologies to minimize exposure to diesel particulate matter (diesel PM) and nitrogen oxides (NOx) emissions for all neighboring communities, and to minimize the greenhouse gases that contribute to climate change. Since the Project is located near the Stockton community, which has been designated as a disadvantaged community under Assembly Bill (AB) 617 (C. Garcia, Chapter 136, Statutes of 2017)[2], CARB's comments on the NOP expressed concerns with the potential cumulative health risks associated with the construction and operation of the Project. CARB reviewed the DEIR and has the following concerns:

## The Port Must Implement All Feasible Mitigation Measures to Reduce the Project's Potentially Cumulatively Considerable Impact on Air Quality and Public Health

Chapter 3.2 (Air Quality) of the DEIR concludes that NOx emitted during Project operation would exceed the San Joaquin Valley Air Pollution Control District's (SJVAPCD) significance thresholds. To reduce the Project's impact on air quality, the DEIR included five mitigation measures summarized below.

MM-AQ-1: Require construction contractors to minimize heavy-duty construction equipment idling time to 2 minutes when feasible.

MM-AQ-2: Use construction equipment equipped with Tier 4 engines.

MM-AQ-3: Require all trucks serving the Project to minimize idling duration to 2 minutes.

MM-AQ-4: Encourage customers to utilize 2017 or newer trucks to transport cargo.

MM-AQ-5: Require terminal and yard equipment to be the cleanest available equipment.

After implementing these measures, the Port concluded in the DEIR that the Project's impact on air quality would be reduced to a less than significant level. However, the DEIR

2. Assembly Bill 617, Garcia, C., Chapter 136, Statutes of 2017, modified the California Health and Safety Code, amending § 40920.6, § 42400, and § 42402, and adding § 39607.1, § 40920.8, § 42411, § 42705.5, and § 44391.2.

acknowledges that Project is located near other past, present, and reasonably foreseeable future industrial projects located around the Port. Because of this, the Port concluded in Chapter 4.2.1 (Cumulative Impacts for Affected Environmental Resource Areas) that the operation of the Project in conjunction with these projects would result in a cumulatively significant impact on air quality and public health after mitigation.

CARB-2 Some of the mitigation measures presented in the DEIR, aimed to reduce the Project's air quality impacts, lack enforceability. The operational mitigated air pollutant emissions shown in the DEIR assumes all trucks serving the Project would be model year 2017 or later. However, MM-AQ-4 would not require tenants to use model year 2017 trucks, but rather would encourage tenants to use them. Based on CARB's review of the Project's air quality analysis, unless all trucks were model year 2017 or later, the Project's air quality impacts would likely remain significant even after all mitigation measures are applied. For MM-AQ-4 to be useful, the measure must require, rather than encourage, all customers to utilize 2017 or newer trucks to transport cargo. In addition, this measure must have some method of enforcement. If there is no plan to enforce MM-AQ-4, the Port must re-model the Project's operational mitigated air quality emissions conservatively assuming that MM-AQ-4 will not be fully implemented.

CARB-3 Furthermore, MM-AQ-5 would require terminal and yard equipment to be the cleanest available equipment with a first preference for zero-emission equipment, a second preference for near-zero equipment, and then for the cleanest available equipment if neither zero nor near-zero equipment are available or feasible. The Port does not provide criteria used to determine how zero-emission equipment is available or feasible, leaving this criteria to be determined by the tenants. Zero-emission yard equipment is widely available and can be purchased using incentive funding from CARB's Clean Off-Road Equipment Voucher Incentive Project (CORE).[3]

CARB-4 Since the Project, in conjunction with existing and planned facilities at the Port, would result in cumulatively considerable impacts on air quality and public heath, CARB staff urges the Port and applicant to implement all feasible mitigation measures to reduce the Project's impact on public health. Even where impacts will remain significant and unavoidable after mitigation, CEQA nevertheless requires that all feasible mitigation measures be incorporated (see California Public Resources Code§ 21081; 14 CCR§ 15126.2(b)). To meet this requirement, the Port must add the feasible emission reduction measures listed below in the Final Environmental Impact Report (FEIR) to reduce the Project's significant adverse air quality impacts:

- In construction contracts, include language that requires all heavy-duty trucks entering the construction site, during all construction phases, be model year 2014 or later.

---

3 Clean Off-Road Equipment Voucher Incentive Project. Accessible at: *https://californiacore.org/how-toparticipate/*

CARB-4 (cont.)

- Require all heavy-duty trucks entering or on the Project site to be model year 2014 or later, expedite a transition to zero-emission vehicles, and be fully zero-emission beginning in 2023. A list of commercially available zero-emission trucks can be obtained from the Hybrid and Zero-emission Truck and Bus Voucher Incentive Project (HVIP).[4] Additional incentive funds can be obtained from the Carl Moyer Program and Voucher Incentive Program.[5]
- Include contractual language in tenant lease agreements that requires all service equipment (e.g., yard hostlers, yard equipment, forklifts, and pallet jacks) used within the Project site to be zero-emission.
- Include rooftop solar panels for each proposed warehouse to the extent feasible, with a capacity that matches the maximum allowed for distributed solar connections to the grid.

## The FEIR Should Include a Feasible Mitigation Measure that Ensures the Project Uses the Cleanest Switcher and Line-Haul Locomotives Available

CARB-5

To meet the emission reduction targets established by Executive Order N-79-20, CARB is presently developing regulatory concepts for the In-Use Locomotive Regulation to reduce air pollutant emissions, toxic air contaminants and greenhouse gas emissions from locomotives operating through California. These concepts would require locomotive operators to mitigate diesel PM emissions by paying into an account used by the operators to develop or purchase zero-emission locomotives. The proposed concepts would also prohibit the operation of locomotives with an original engine build date that is 23 years or older starting in 2030, limit locomotive idling durations to 30 minutes, and require operators to register their locomotives with CARB. More information about the proposed In-Use Locomotive Regulation and associated workshops can be obtained from CARB's website: *https://ww2.arb.ca.gov/our-work/programs/reducing-rail-emissions-california*.

Based on emerging technologies in batteries and hydrogen fuel cells, zero-emission locomotives are becoming a reality and could be used in the near future to meet the needs of the Project. CARB has sponsored, and continues to sponsor, demonstration projects to accelerate the adoption of clean freight technologies and reduce air pollution caused by the movement of goods throughout the State. CARB's Zero and Near Zero-Emission Freight Facilities Program successfully demonstrated batteries in locomotives that could be

4. Zero-Emission Truck and Bus Voucher Incentive Project. Accessible at: *https://californiahvip.org/*
5. Carl Moyer Program and Voucher Incentive Program. *https://ww2.arb.ca.gov/carl-moyer-program-apply*

CARB-5 (cont.)

developed further and applied to the Project.[6] Although there are no demonstration projects currently funded by CARB, there are demonstration projects presently underway that focus on battery-electric and hydrogen zero-emission locomotive technologies. An example of these demonstration projects is provided below.

- **Lithium-ion Battery Technology**. "Progress Rail, a Caterpillar company, has reached an agreement with Pacific Harbor Line to supply its new EMD® Joule battery electric locomotive for a demonstration project operating in the POLA and POLB, California. The new, six-axle locomotive will feature the latest lithium-ion battery technology and battery management system, alongside alternating current (AC) traction and state-of-the-art electronics. The locomotive includes battery capacity of 2.4 megawatt hours, for a run time of up to 24 hours, depending upon charging and utilization. It is anticipated for delivery in the second half of 2021."[7]
- **Hydrogen-Powered Locomotive Pilot Project.** In December 2020, Canadian Pacific (CP) has announced plans to develop line-haul hydrogen-powered locomotive technology. The "[h]ydrogen Locomotive Program will retrofit a line-haul locomotive with hydrogen fuel cells and battery technology to drive the locomotive's electric traction motors. Once operational, CP will conduct rail service trials and qualification testing to evaluate the technology's readiness for the freight-rail sector."[8]
- **Ultium Battery and HYDROTEC Hydrogen Fuel Cell Technology.** In June 2021, Wabtec Corporation and General Motors (GM) announced develop and commercialize GM's Ultium battery technology and HYDROTEC hydrogen fuel cell systems.[9]

With the development of locomotive technology presently underway, and the goals set by Executive Order N-79-20, it is reasonable to expect that zero-emission switcher and line-haul locomotives could be available by 2030. To this end, CARB staff urges the Port and applicant to present a mitigation measure in the FEIR that requires all switcher and line-haul locomotives serving the Project to be zero-emission.

---

6. California Air Resources Board (CARB), 2020. CARB's Zero and Near Zero-emission Freight Facility Program. Accessible at *https://ww2.arb.ca.gov/news/carb-announces-more-200-million-new-funding-clean-freight-transportation#:~:text=The%20goal%20of%20CARB's%20Zero,commercialization%20of%20these%20technologies%20statewide*

7. Progress Rail, 2020. Progress Rail and Pacific Harbor Line Sign Agreement. Accessible at *https://www.progressrail.com/en/Company/News/PressReleases/ProgressRailAndPacificHarborLineSignAgreementForBatteryLocomotive.html*

8. Canadian Pacific, 2020. CP announces hydrogen-powered locomotive pilot project. Accessible at *https://www.cpr.ca/en/media/cp-announces-hydrogen-powered-locomotive-pilot-project*

9. General Motors, 2021. Wabtec and GM to Develop Advanced Ultium Battery and HYDROTEC Hydrogen Fuel Cell Solutions for Rail Industry. Accessible at *https://plants.gm.com/media/us/en/gm/home.detail.html/content/Pages/news/us/en/2021/jun/0615-wabtec.html*

## The DEIR Does Not Specify if the Project Would be Used for Cold Storage

CARB-6

In Chapter 2 (Project Description) of the DEIR, the Port does not specify if the Project would include the operation of on-site cold storage uses. Consequently, air pollutant emissions associated with cold storage operation were not included in the DEIR. Should the Project later include cold storage uses, residences in the Stockton community near the Project-site could be exposed to significantly higher levels of toxic diesel PM and nitrogen oxides (NOx), and greenhouse gases when compared trucks, trailers, and rail cars without Transport Refrigeration Units (TRUs). To ensure TRUs will not operate within the Project site without first quantifying and mitigating their potential impacts, the Port must include one of the following design features in the FEIR:

- A Project design measure requiring contractual language in tenant lease agreements that prohibits tenants from operating TRUs within the Project-site; or
- A condition requiring a restrictive covenant over the parcel that prohibits the applicant's use of TRUs on the property, unless the applicant seeks and receives an amendment to its conditional use permit allowing such use.

If the Port and applicant later chooses to allow TRUs to operate within the Project site, the Port must re-model the Project's air quality impact analysis and HRA to account for potential health risk impacts. The updated air quality impact analysis and HRA should include the following air pollutant emission reduction measures:

- Include contractual language in tenant lease agreements that requires all loading/unloading docks and trailer or container spaces to be equipped with electrical hookups for trucks with TRU or auxiliary power units. This requirement will substantially decrease the amount of time that a TRU powered by a fossil-fueled internal combustion engine can operate at the Project-site. Use of zero-emission all-electric plug-in TRUs, hydrogen fuel cell transport refrigeration, and cryogenic transport refrigeration are encouraged and can also be included in lease agreements.[10]
- Include contractual language in tenant lease agreements that requires all TRUs entering the project site to be plug-in capable.

10. CARB's Technology Assessment for Transport Refrigerators provides information on the current and projected development of TRUs, including current and anticipated costs. The assessment is available at: *https://www.arb.ca.gov/msprog/tech/techreport/tru_07292015.pdf*.

## The Port Uses Modeling Assumptions Unsupported by Substantial Evidence

CARB-7

The Project's operational mobile source air pollutant emissions may have been underestimated in the DEIR by using trip lengths and operational durations unsupported by substantial evidence. Chapter 3.2 (Air Quality) of the DEIR shows that the Project operational emissions of NOx would exceed the SJVAPCD significance thresholds and would be reduced to a less than significant level after the implementation of MM-AQ-1 through MM-AQ-5. The Project's operational air pollutant emissions were estimated under the assumption that the Project would not operate more than 313 days out of the year (see Table 21 in Appendix D of the DEIR). However, this conflicts with the operating assumptions presented in Chapter 2.7 (Proposed Project Operations) of the DEIR, which assumes the Project would operate 365 days out of the year. The Port should revise the assumptions used to estimate the Project's operational emissions to be consistent with those used in the Project's description and present the updated unmitigated and mitigated air pollutant emissions in the FEIR.

The Port estimated the Project's operational air pollutant emissions using the assumption that the heavy-duty trucks and trains serving the Project would travel a distance of 22 and 25 miles, respectively. There is a concern that these trip distances could be underestimated as Project-related heavy-duty trucks and trains transporting goods could travel greater distances, such as to the Port of Oakland or Port of Point San Pablo. Unless the Port restricts the Project's truck and train trip distances to those specified in the Project's air quality analysis, the Port must remodel the Project's air quality impacts assuming a trip distance supported by substantial evidence.

## Conclusion

CARB-8

CARB is concerned about the potential air quality impacts should the Port approve the Project and the assumptions used to evaluate those impacts in the DEIR. The Project is located within proximity to residences within the Stockton community, which has been designated as a disadvantaged community under AB 617. The DEIR evaluates Project air quality impacts assuming that unenforceable mitigation measures will be implemented once the Project is operational. The DEIR does not include any mitigation measures to reduce the air pollutant emissions generated by the switcher and line-haul locomotives serving the Project. The DEIR may not have accounted for diesel PM emissions from trucks with TRUs or accounted for TRUs on rail cars when evaluating the Project's cancer risk impacts. Lastly, the Port evaluated air quality using unsubstantiated truck and trail trip distances and inconsistent annual operating days.

Given the breadth and scope of projects subject to CEQA review throughout California that have air quality and greenhouse gas impacts, coupled with CARB's limited staff resources to substantively respond to all issues associated with a project, CARB must prioritize its substantive comments here based on staff time, resources, and its assessment of impacts. CARB's deliberate decision to substantively comment on some issues does not constitute an

CARB-8 (cont.)

admission or concession that it substantively agrees with the lead agency's findings and conclusions on any issues on which CARB does not substantively submit comments.

CARB appreciates the opportunity to comment on the DEIR for the Project and can provide assistance on zero-emission technologies and emission reduction strategies, as needed. Please include CARB on your list of selected State agencies that will receive the FEIR. If you have questions, please contact Stanley Armstrong, Air Pollution Specialist via email at *stanley.armstrong@arb.ca.gov*.

Sincerely,

Robert Krieger, Branch Chief, Risk Reduction Branch

Attachment

cc: State Clearinghouse
*state.clearinghouse@opr.ca.gov*

Dillon Delvo, Executive Director, Little Manila Rising
*dillon@littlemanila.org*

Matt Holmes, Environmental Justice Director, Little Manila Rising
*matt@littlemanila.org*

Patia Siong, Supervising Air Quality Specialist, San Joaquin Valley Air Pollution Control District
*patia.siong@valleyair.org*

Eric McLaughlin, Air Quality Specialist, San Joaquin Valley Air Pollution Control District
*eric.mclaughlin@valleyair.org*

Jonathan Pruitt, Environmental Justice Program Coordinator, Catholic Charities of the Diocese of Stockton
*jpruitt@ccstockton.org*

Mary Elizabeth, Conservation Chair, Delta-Sierra Group,
*mebeth@outlook.com*

Mariah Looney, Campaign Coordinator, Restore the Delta
*mariah@restorethedelta.org*

Morgan Capilla, NEPA Reviewer, U.S. Environmental Protection Agency, Air Division, Region 9
*capilla.morgan@epa.gov*

Stanley Armstrong, Air Pollution Specialist, Risk Reduction Branch

October 1, 2021

Jason Cashman
Environmental and Regulatory Affairs Manager
Port of Stockton
2201 West Washington Street
Stockton, California 95203
*ceqa@stocktonport.com*

Dear Jason Cashman:

Thank you for providing the California Air Resources Board (CARB) with the opportunity to comment on the Notice of Preparation (NOP) for the TC NO. CAL. Development Warehousing and Distribution Facility Project (Project) Draft Environmental Impact Report (DEIR), State Clearinghouse No. 2021080499. The Project site is located within the Port of Stockton (Port), California, which is the lead agency for California Environmental Quality Act (CEQA) purposes.

The Project consists of the issuance of a lease to TC NO. CAL. Development that would allow for the construction of a new 655,200 square foot warehouse building, 293,951 square foot outdoor storage area, and contaminated soil remediation on approximately 60 acres of the Port's West Complex. The warehouse building is expected to be used by a commercial operator for distribution services, which may include wholesaling and distribution, warehousing, or light manufacturing. Building products and consumer goods would be received via rail or truck, unloaded, and then stored at the facility before being shipped to local, regional, and state markets by truck and rail. According to the NOP, the Project would result in a cargo throughput of 32,287 annual inbound truck calls, 63,211 outbound truck calls and 2,053 inbound rail calls per year.

Industrial development, such as the Project, can result in high daily volumes of heavy-duty diesel truck and rail traffic and operation of on-site equipment (e.g., forklifts and yard tractors) that emit toxic diesel emissions, and contribute to regional air pollution and global climate change.[1] The proposed warehouse building will be located approximately a half a mile from the Stockton community. This community has been designated as a disadvantaged community under Assembly Bill (AB) 617 (C. Garcia, Chapter 136, Statutes of 2017)[2] and

1. With regard to greenhouse gas emissions from this project, CARB has been clear that local governments and project proponents have a responsibility to properly mitigate these impacts. CARB's guidance, set out in detail in the Scoping Plan issued in 2017, makes clear that in CARB's expert view, local mitigation is critical to achieving climate goals and reducing greenhouse gases below levels of significance.
2 Assembly Bill 617, Garcia, C., Chapter 136, Statutes of 2017, modified the California Health and Safety Code, amending § 40920.6, § 42400, and § 42402, and adding § 39607.1, § 40920.8, § 42411, § 42705.5, and § 44391.2.

therefore, CARB is concerned about localized air pollutant exposure at the neighborhood level, as well as the Project's regional air quality impacts.

## The Project Would Increase Exposure to Air Pollution in Disadvantaged Communities

The Project, in conjunction with the operation of the other industrial development within the Port of Stockton, will expose the nearby Stockton community to increased levels of air pollution. Addressing the disproportionate impacts that air pollution has on disadvantaged communities is a pressing concern across the State, as evidenced by statutory requirements compelling California's public agencies to target these communities for clean air investment, pollution mitigation, and environmental regulation. The following three pieces of legislation need to be considered and included in the DEIR when developing a project like this near a disadvantaged community:

## Senate Bill 535 (De León, 2012)

Senate Bill 535 (De León, Chapter 830, 2012)[3] recognizes the potential vulnerability of low-income and disadvantaged communities to poor air quality and requires funds to be spent to benefit disadvantaged communities. The California Environmental Protection Agency (CalEPA) is charged with the duty to identify disadvantaged communities. CalEPA bases its identification of these communities on geographic, socioeconomic, public health, and environmental hazard criteria (Health and Safety Code, section 39711, subsection (a)). In this capacity, CalEPA currently defines a disadvantaged community, from an environmental hazard and socioeconomic standpoint, as a community that scores within the top 25 percent of the census tracts, as analyzed by the California Communities Environmental Health Screening Tool Version 3.0 (CalEnviroScreen).[4] This Project is located with the boundary of the Stockton community. The maximum CalEnviroScreen score for the Stockton community is in the top 1 percent, indicating that the area is home to some of the most vulnerable neighborhoods in the State. The air pollution levels in the Stockton community routinely exceed state and federal air quality standards. CARB urges the Port to ensure that the Project does not adversely impact neighboring disadvantaged communities.

## Senate Bill 1000 (Leyva, 2016)

Senate Bill 1000 (SB 1000) (Leyva, Chapter 587, Statutes of 2016)[5] amended California's Planning and Zoning Law. SB 1000 requires local governments that have identified

---

3 Senate Bill 535, De León, K., Chapter 800, Statutes of 2012, modified the California Health and Safety Code, adding § 39711, § 39713, § 39715, § 39721and § 39723.

4 "CalEnviroScreen 3.0." Oehha.ca.gov, California Office of Environmental Health Hazard Assessment, June 2018, *https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-30*

5 Senate Bill 1000, Leyva, S., Chapter 587, Statutes of 2016, amended the California Health and Safety Code, § 65302.

disadvantaged communities to incorporate the addition of an environmental justice element into their general plans upon the adoption or next revision of two or more elements concurrently on or after January 1, 2018. SB 1000 requires environmental justice elements to identify objectives and policies to reduce unique or compounded health risks in disadvantaged communities. Generally, environmental justice elements will include policies to reduce the community's exposure to pollution through air quality improvement. SB 1000 affirms the need to integrate environmental justice principles into the planning process to prioritize improvements and programs that address the needs of disadvantaged communities.

## Assembly Bill 617 (Garcia, 2017)

The State of California has emphasized protecting local communities from the harmful effects of air pollution through the passage of AB 617. AB 617 requires CARB to develop the process that creates new community-focused and community-driven action to reduce air pollution and improve public health in communities that experience disproportionate burdens from exposure to air pollutants. In response to AB 617, CARB established the Community Air Protection Program with the goal of reducing exposure in communities heavily impacted by air pollution. As part of its role in implementing AB 617, CARB must annually consider the selection of communities for development and implementation of community air monitoring plans and/or community emission reduction programs for those communities affected by a high cumulative exposure burden. The Stockton community is one of 15 communities statewide chosen thus far for inclusion in the Community Air Protection Program.

The Stockton community was selected for the development of both a Community Air Monitoring Plan and a Community Emissions Reduction Program (CERP) due to its high cumulative exposure burden, the presence of a significant number of sensitive populations (children, elderly, and individuals with pre-existing conditions), and the socioeconomic challenges experienced by its residents. CARB approved the Stockton CERP in July 2021, which describes strategies to achieve emissions and exposure reductions throughout this community, including significantly reducing or eliminating emissions from heavy-duty mobile sources and industrial stationary sources.

Health-harming emissions, including particulate matter (PM), toxic air contaminants, and diesel PM generated from the proposed increase in warehouse development in the Project area will negatively impact the community, which is already disproportionately impacted by air pollution from existing freight operations as well as stationary sources of air pollution. Part of the AB 617 process required CARB and the San Joaquin Valley Air Pollution Control District (SJVAPCD) to create a highly resolved inventory of air pollution sources within this community.

## The DEIR Should Quantify and Discuss the Potential Cancer Risks from Project Operation

Since the Project is near a community that is already burdened by multiple air pollution sources, CARB urges the Port and applicant to prepare a health risk assessment (HRA) for the Project. The HRA should account for all potential operational health risks from Project-related diesel particulate matter (diesel PM) emission sources, including, but not limited to, back-up generators, on-site diesel-powered equipment, locomotives, and heavy-duty trucks. The HRA should also determine if the operation of the Project in conjunction with past, present, and reasonably foreseeable future projects or activities would result in a cumulative cancer risk impact on nearby residences. To reduce diesel PM exposure and associated cancer risks, CARB urges the Port and applicant to include all the air pollution reduction measures listed in Attachment A.

Since the Project description provided in the NOP does not explicitly state that the proposed industrial land uses would not be used for cold storage, there is a possibility that trucks and trailers visiting the Project-site would be equipped with TRUs.[6] TRUs on trucks and trailers can emit large quantities of diesel exhaust while operating within the Project-site. Residences and other sensitive receptors (e.g., daycare facilities, senior care facilities, and schools) located near where these TRUs could be operating, would be exposed to diesel exhaust emissions that would result in a significant cancer risk impact to the nearby community. If the Project would be used for cold storage, CARB urges the Port to model air pollutant emissions from on-site TRUs in the DEIR, as well as include potential cancer risks from on-site TRUs in the Project's HRA. If the Project will not be used for cold storage, CARB urges the Port to include one of the following design measures in the DEIR:

- A Project design measure requiring contractual language in tenant lease agreements that prohibits tenants from operating TRUs within the Project-site; or
- A condition requiring a restrictive covenant over the parcel that prohibits the applicant's use of TRUs on the property unless the applicant seeks and receives an amendment to its conditional use permit allowing such use.

The HRA prepared in support of the Project should be based on the latest Office of Environmental Health Hazard Assessment's (OEHHA) guidance (2015 Air Toxics Hot Spots Program Guidance Manual for Preparation of Health Risk Assessments),[7] and CARB's Hot Spots Analysis and Reporting Program (HARP2 model). The Project's mobile PM emissions used to estimate the Project's cancer risk impacts should be based on CARB's latest 2021

6. TRUs are refrigeration systems powered by integral diesel engines that protect perishable goods during transport in an insulated truck and trailer vans, rail cars, and domestic shipping containers.
7. Office of Environmental Health Hazard Assessment (OEHHA). Air Toxics Hot Spots Program Guidance Manual for Preparation of Health Risk Assessments. February 2015. Accessed at: *https://oehha.ca.gov/media/downloads/crnr/2015guidancemanual.pdf*.

Emission Factors model (EMFAC2021). Mobile emission factors can be easily obtained by running the EMFAC2021 Web Database: *https://arb.ca.gov/emfac/.*

The HRA should evaluate and present the existing baseline (current conditions), future baseline (full build-out year, without the Project), and future year with the Project. The health risks modeled under both the existing and the future baselines should reflect all applicable federal, state, and local rules and regulations. By evaluating health risks using both baselines, the public and planners will have a complete understanding of the potential health impacts that would result from the Project.

## The DEIR Should Quantify and Discuss the Potential Cancer Risks from Project Construction

In addition to the health risks associated with operational diesel PM emissions, health risks associated with construction diesel PM emissions should also be included in the air quality section of the DEIR and the Project's HRA. Construction of the Project would result in short-term diesel PM emissions from the use of both on-road and off-road diesel equipment. The OEHHA guidance recommends assessing cancer risks for construction projects lasting longer than two months. Since construction would very likely occur over a period lasting longer than two months, the HRA prepared for the Project should include health risks for existing residences near the Project-site during construction.

The HRA should account for all diesel PM emission sources related to Project construction, including, but not limited to, off-road mobile equipment, diesel generators, and on-road heavy-duty trucks. As previously stated in first section of this letter, the cancer risks evaluated in the construction HRA should be based on the latest OEHHA guidance and CARB's HARP2 model. The cancer risks reported in the HRA should be calculated using the latest emission factors obtained from CARB's latest EMFAC (currently EMFAC 2021) and off-road models.

## Conclusion

To reduce the exposure of toxic diesel PM emissions in disadvantaged communities already impacted by air pollution, the final design of the Project should include all existing and emerging zero-emission technologies to minimize diesel PM and $NO_x$ emissions, as well as the greenhouse gases that contribute to climate change. CARB encourages the Port and applicant to implement the measures listed in Attachment A.

Given the breadth and scope of projects subject to CEQA review throughout California that have air quality and greenhouse gas impacts, coupled with CARB's limited staff resources to substantively respond to all issues associated with a project, CARB must prioritize its substantive comments here based on staff time, resources, and its assessment of impacts. CARB's deliberate decision to substantively comment on some issues does not constitute an admission or concession that it substantively agrees with the lead agency's findings and conclusions on any issues on which CARB does not substantively submit comments.

CARB appreciates the opportunity to comment on the NOP for the Project and can provide assistance on zero-emission technologies and emission reduction strategies, as needed. Please include CARB on your State Clearinghouse list of selected State agencies that will receive the DEIR as part of the comment period. If you have questions, please contact Stanley Armstrong, Air Pollution Specialist via email at *stanley.armstrong@arb.ca.gov*.

Sincerely,

Robert Krieger, Branch Chief, Risk Reduction Branch

Attachment

cc: State Clearinghouse
*state.clearinghouse@opr.ca.gov*

Dillon Delvo, Executive Director, Little Manila Rising
*dillon@littlemanila.org*

Patia Siong, Supervising Air Quality Specialist, San Joaquin Valley Air Pollution Control District
*patia.siong@valleyair.org*

Jonathan Pruitt, Environmental Justice Program Coordinator, Catholic Charities of the Diocese of Stockton
*jpruitt@ccstockton.org*

Mariah Looney, Campaign Coordinator, Restore the Delta
*mariah@restorethedelta.org*

Morgan Capilla, NEPA Reviewer, U.S. Environmental Protection Agency, Air Division, Region 9
*capilla.morgan@epa.gov*

Stanley Armstrong, Air Pollution Specialist, Risk Reduction Branch

# Attachment A
# Recommended Air Pollution Emission Reduction Measures for Warehouses and Distribution Centers

The California Air Resources Board (CARB) recommends developers and government planners use all existing and emerging zero to near-zero emission technologies during project construction and operation to minimize public exposure to air pollution. Below are some measures, currently recommended by CARB, specific to warehouse and distribution center projects. These recommendations are subject to change as new zero-emission technologies become available.

## Recommended Construction Measures

1. Ensure the cleanest possible construction practices and equipment are used. This includes eliminating the idling of diesel-powered equipment and providing the necessary infrastructure (e.g., electrical hookups) to support zero and near-zero equipment and tools.
2. Implement, and plan accordingly for, the necessary infrastructure to support the zero and near-zero emission technology vehicles and equipment that will be operating on site. Necessary infrastructure may include the physical (e.g., needed footprint), energy, and fueling infrastructure for construction equipment, on-site vehicles and equipment, and medium-heavy and heavy-heavy duty trucks.
3. In construction contracts, include language that requires all off-road diesel-powered equipment used during construction to be equipped with Tier 4 or cleaner engines, except for specialized construction equipment in which Tier 4 engines are not available. In place of Tier 4 engines, off-road equipment can incorporate retrofits, such that, emission reductions achieved are equal to or exceed that of a Tier 4 engine.
4. In construction contracts, include language that requires all off-road equipment with a power rating below 19 kilowatts (e.g., plate compactors, pressure washers) used during project construction be battery powered.
5. In construction contracts, include language that requires all heavy-duty trucks entering the construction site, during the grading and building construction phases be model year 2014 or later. All heavy-duty haul trucks should also meet CARB's lowest optional low-oxides of nitrogen ($NO_x$) standard starting in the year 2022.[1]

---

1. In 2013, CARB adopted optional low-NOx emission standards for on-road heavy-duty engines. CARB encourages engine manufacturers to introduce new technologies to reduce NOx emissions below the current mandatory on-road heavy-duty diesel engine emission standards for model-year 2010 and later. CARB's

6. In construction contracts, include language that requires all construction equipment and fleets to be in compliance with all current air quality regulations. CARB is available to assist in implementing this recommendation.

## Recommended Operation Measures

1. Include contractual language in tenant lease agreements that requires tenants to use the cleanest technologies available, and to provide the necessary infrastructure to support zero-emission vehicles and equipment that will be operating on site.
2. Include contractual language in tenant lease agreements that requires all loading/unloading docks and trailer spaces be equipped with electrical hookups for trucks with transport refrigeration units (TRU) or auxiliary power units. This requirement will substantially decrease the amount of time that a TRU powered by a fossil-fueled internal combustion engine can operate at the project site. Use of zero-emission all-electric plug-in TRUs, hydrogen fuel cell transport refrigeration, and cryogenic transport refrigeration are encouraged and can also be included in lease agreements.[2]
3. Include contractual language in tenant lease agreements that requires all TRUs entering the project-site be plug-in capable.
4. Include contractual language in tenant lease agreements that requires future tenants to exclusively use zero-emission light and medium-duty delivery trucks and vans.
5. Include contractual language in tenant lease agreements that requires all service equipment (e.g., yard hostlers, yard equipment, forklifts, and pallet jacks) used within the project site to be zero-emission. This equipment is widely available and can be purchased using incentive funding from CARB's Clean Off-Road Equipment Voucher Incentive Project (CORE).[3]
6. Include contractual language in tenant lease agreements that requires all heavy-duty trucks entering or on the project site to be model year 2014 or later, expedite a transition to zero-emission vehicles, and be fully zero-emission beginning in 2023. A list of commercially available zero-emission trucks can be obtained from the the Hybrid and Zero-emission Truck and Bus Voucher Incentive Project (HVIP).[4] Additional insentive funds can be obtained from the Carl Moyer Program and Voucher Incentive Program.[5]
7. Include contractual language in tenant lease agreements that requires the tenant to be in, and monitor compliance with, all current air quality regulations for on-road trucks

---

optional low-NOx emission standard is available at: *https://ww2.arb.ca.gov/our-work/programs/optional-reduced-nox-standards* .

2. CARB's technology assessment for transport refrigerators provides information on the current and projected development of TRUs, including current and anticipated costs. The assessment is available at: *https://www.arb.ca.gov/msprog/tech/techreport/tru_07292015.pdf*

3 Clean Off-Road Equipment Voucher Incentive Project. Accessible at: *https://californiacore.org/how-to-participate/*

4 Zero-Emission Truck and Bus Voucher Incentive Project. Accessible at: *https://californiahvip.org/*

5 Carl Moyer Program and Voucher Incentive Program. *https://ww2.arb.ca.gov/carl-moyer-program-apply*

including CARB's Heavy-Duty (Tractor-Trailer) Greenhouse Gas Regulation,[6] Advanced Clean Trucks Regulation,[7] Periodic Smoke Inspection Program (PSIP),[8] and the Statewide Truck and Bus Regulation.[9]

8. Include contractual language in tenant lease agreements restricting trucks and support equipment from idling longer than two minutes while on site.
9. Include rooftop solar panels for each proposed warehouse to the extent feasible, with a capacity that matches the maximum allowed for distributed solar connections to the grid.
10. Include contractual language in tenant lease agreements, requiring the installing of vegetative walls[10] or other effective barriers that separate loading docks and people living or working nearby.
11. Include contractual language in tenant lease agreements, requiring all emergency generators to be powered by a non-diesel fuel.
12. The project should be constructed to meet CalGreen Tier 2 green building standards, including all provisions related to designated parking for clean air vehicles, electric vehicle charging, and bicycle parking, and achieve a certification of compliance with LEED green building standards.

---

6. In December 2008, CARB adopted a regulation to reduce greenhouse gas emissions by improving the fuel efficiency of heavy-duty tractors that pull 53-foot or longer box-type trailers. The regulation applies primarily to owners of 53-foot or longer box-type trailers, including both dry-van and refrigerated-van trailers, and owners of the heavy-duty tractors that pull them on California highways. CARB's Heavy-Duty (Tractor-Trailer) Greenhouse Gas Regulation is available at: *https://ww2.arb.ca.gov/our-work/programs/ttghg*

7 On June 25, 2020, CARB approved the Advanced Clean Trucks Regulation. The regulation requires manufacturers to start the transition from diesel trucks and vans to zero-emission trucks beginning in 2024. The rule is expected to result in about 100,000 electric trucks in California by the end of 2030 and about 300,000 by 2035. CARB is expected to consider a fleet regulation in 2021 that would be compatible with the Advanced Clean Trucks regulation, requiring fleets to purchase a certain percentage of zero-emission trucks and vans for their fleet operations. *https://ww2.arb.ca.gov/our-work/programs/advanced-clean-trucks*

8. The PSIP program requires that diesel and bus fleet owners conduct annual smoke opacity inspections of their vehicles and repair those with excessive smoke emissions to ensure compliance. CARB's PSIP program is available at: *https://www.arb.ca.gov/enf/hdvip/hdvip.htm*

9. The regulation requires that newer heavier trucks and buses must meet particulate matter filter requirements beginning January 1, 2012. Lighter and older heavier trucks must be replaced starting January 1, 2015. By January 1, 2023, nearly all trucks and buses will need to have 2010 model-year engines or equivalent. CARB's Statewide Truck and Bus Regulation is available at: *https://www.arb.ca.gov/msprog/onrdiesel/onrdiesel.htm*

10. Effectiveness of Sound Wall-Vegetation Combination Barriers as Near-Roadway Pollutant Mitigation Strategies (2017) is available at: *https://ww2.arb.ca.gov/sites/default/files/classic//research/apr/past/13-306.pdf*

## 2.5.1 *Response to the California Air Resources Board (CARB)*

| Comment Code | Response |
|---|---|
| **CARB-1** | The Port thanks CARB for its comments on the DEIR. Please see Master Responses 1 and 2, and Responses to Comments CARB-2 through CARB-5, which address the agency's specific comments. As described in the Draft and FEIR, the Port is working with tenants to repower and retrofit its existing cargo-handling equipment with lower emission engines for improved air quality Port-wide. The Port appreciates the need for the transition to zero-emission equipment and vehicles and has incorporated such strategies where equipment is available. |
| **CARB-2** | Please see Master Responses 1 and 2. As discussed in the DEIR, all feasible mitigation has been applied to the proposed project. As detailed in Master Response 1, several mitigation measures have been modified in response to public comment.<br><br>Regarding CARB's comments on MM-AQ-4, the analysis assumes that all cargo delivery trucks meet 2017 emission standards. The Final Environmental Impact Report (FEIR) includes revisions to Section 3.2.3.4.2 to include more information on the assumptions used in the analysis and MM-AQ-4 has been modified as follows to clarify the requirement for cargo trucks to be model 2017 or newer at a minimum:<br><br>**MM-AQ-4: Use of Clean Trucks During Operations.** TC NO. CAL. Development will require all cargo trucks entering the warehouse site to be model year 2017 or newer and encourage its customers to use ~~clean trucks (defined as model year 2017 or newer)~~ zero-emission trucks to transport cargo.<br><br>~~TC NO. CAL. Development will also educate customers about the SJVAPCD Truck Replacement Program via direct or electronic mailings. In addition,~~ TC NO. CAL. Development will require all trucks be in compliance with CARB air quality regulations for on-road trucks, including CARB's Heavy-Duty (Tractor-Trailer) Greenhouse Gas Regulation, Periodic Smoke Inspection Program (PSIP), and the Statewide Truck and Bus Regulation. TC NO. CAL. Development will also educate customers about the SJVAPCD Truck Replacement Program and CARB's Advanced Clean Truck Program, including funding opportunities, via direct or electronic mailings. TC NO. CAL. Development will post a copy of the SJVAPCD Truck Replacement Program information currently available at http://valleyair.org/grants/truck-replacement.htm and applicable CARB regulations at the terminal. These requirements will be posted on site and included as a contract provision.<br><br>In addition, TC NO. CAL. Development shall install at minimum one Level 3 electric charger on the terminal in a place convenient for heavy-duty truck access within 12 months of facility operations. |
| **CARB-3** | Regarding CARB's comments on AQ-5, MM-AQ-5 has been revised in the FEIR to specify the amount of required zero-emission yard equipment. Specifically, the facility will be required to use at least 25 electric powered forklifts and at least 20 propane powered forklifts. |

| Comment Code | Response |
|---|---|
| **CARB-4** | Please see Master Response 1. As discussed in the DEIR and expanded upon in the FEIR, the proposed project would result in less-than-significant impacts related to project-specific air emissions. The DEIR included out-of-date text in the cumulative section. The proposed project's emissions would not exceed applicable air thresholds and therefore, and impacts would not be considered cumulatively significant under CEQA. However, the Port recognizes that the air quality in the region has been impacted by a history of industrial operations and transportation sources, including from Port sources. As discussed in Master Response-1, the Port has several port-wide programs aimed at actively reducing emissions throughout the Port.<br><br>Several mitigation measures have been modified to address CARB's comments on cumulative impacts. For instances where a CARB proposed mitigation measure may not yet be fully feasible specific to the proposed project, a discussion has been added regarding feasibility.<br><br>The Port has modified MM-AQ-2 to require all heavy-duty on-road trucks used during construction to be model year 2014 or newer.<br><br>The Port has modified MM-AQ-4 to require all cargo trucks entering the site to be model year 2017 or newer. The Port cannot add the requirement for all cargo trucks to be zero emission by 2023. While zero-emissions trucks are available, the number of trucks cannot yet meet the expected number of trucks expected to call at the terminal. The Port understands that CARB is advancing its ACF regulation, which will require all drayage trucks to be zero emissions by 2035. In anticipation of this rule, the Port is working with several companies to test hydrogen fuel cell powered trucks and to ensure hydrogen is available at the Port. The Port is also evaluating its electricity network to identify the need for additional capacity to support electric trucks.<br><br>The Port has modified MM-AQ-5 to require a certain percentage of zero-emissions equipment. Specifically, at least 25 of the forklifts must be zero emissions. All remaining forklifts shall be low emissions using alternative fuels. The Port will continue to work with the applicant to identify other equipment that can be zero emissions.<br><br>The Port has modified MM-GHG-1 to include the requirement to install a 600 kw solar system. |

| Comment Code | Response |
|---|---|
| **CARB-5** | As discussed in the DEIR, because there are only two mainline rail companies (UP and BNSF) that service the entire rail network as well as interstate commerce, mainline locomotives are regulated by the federal and state governments. CARB is addressing rail emissions through a statewide rail plan, which includes agreements directly with the two mainline locomotive companies. The 2005 Statewide Railyard Agreement, which was completed in 2015, included a statewide idle reduction program, maximized the use of state and federal ultra-low-sulfur (15 ppm maximum) diesel fuel, and established a statewide visible emissions reduction and repair program. The agreement also required the preparation of 17 railyard inventories and HRAs. Switcher engines are also a source of emissions. CCT has also recently upgraded several of its locomotives, including upgrading gensets and adding a new ultra-low-emissions locomotive purchased through USEPA's Diesel Emissions Reduction Program. To achieve further emissions reductions would require purchases of new equipment or a move to electrification, which is beyond the scope of one terminal project.<br><br>In terms of switching locomotives, the Port acquired and began using a battery electric locomotive railcar mover in 2021. This is now being used throughout the Port. The Port is actively engaged in obtaining funding to further invest in zero-emission railcar switching equipment. |
| **CARB-6** | As described in the DEIR, the proposed project is the construction and operation of a warehouse and distribution facility for bulk building products and consumer goods. The are no designs or plans to construct or support refrigerated units per the applicant's proposal. To address this concern, the following project condition has been added to the FEIR:<br><br><u>Project Condition 1: TC NO. CAL. Development or sublessor cannot support Transport Refrigeration Units (TRUs) at the site without prior Port approval.</u><br><br>This project condition will be added as a lease measure. |
| **CARB-7** | The operational emissions inventory was revised to assume mobile sources operate 365 days per year rather than 313 days per year (see Appendix D, Tables 21 [Revised], 24-26 [Revised], 34-35 [Revised], and 40 [Revised]).<br><br>This revision results in a small increase in the annual emissions generated by employee (passenger) vehicles (see Tables 34 [Revised] and 35 [Revised] in Appendix D). However, emissions remain below significant.<br><br>The revision does not affect the annual emissions generated by delivery trucks or yard hostlers. As shown in Tables 21 (Revised) and 24-26 (Revised), annual emissions from these sources are calculated based on annual activity rates provided by TC NO. CAL. Development and are unchanged compared to the original versions included in Appendix D of the DEIR. The number of days per year is used to calculate average daily activity rates that are presented in these tables for informational purposes only as SJVAPCD has not established daily emissions thresholds of significance under CEQA. Further, the air dispersion model does not need to be revised as AERMOD was run with unit emission rates and source-specific emission factors (EMISFACT) to account for the hours of the day in which a source may operate. The HRA also does not require updating as the annualized gram-per-second |

| Comment Code | Response |
|---|---|
| | emission rates used in the HRA correctly average the annual emission rates over 365 days per year and the source-specific number of hours per day (see Table 44 of Appendix D). For consistency with Table 21 (Revised), an updated version of the trip rates table used for the HRA is included in this response (see Table 40 [Revised]). Thus, no revisions to the air dispersion model or HRA are required. |
| **CARB-8** | The Port thanks CARB for its comments on the DEIR. Please see the Responses to Comments CARB-2 through CARB-7, which address the agency's specific comments. The Port will send CARB the FEIR ahead of its consideration by the Board of Commissioners.<br><br>Please note, as stated in the DEIR, the comments in the attached October 1, 2021, letter from ARB on the NOP was considered in development of the DEIR. |

State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Bay Delta Region
2825 Cordelia Road, Suite 100
Fairfield, CA 94534
(707) 428-2002
www.wildlife.ca.gov

***GAVIN NEWSOM, Governor***
***CHARLTON H. BONHAM, Director***

February 24, 2022

Jason Cashman, Environmental Manager
Port of Stockton
2201 West Washington Street
Stockton, CA 95203
jcashman@stocktonport.com

Subject: T.C. NO. CAL. Warehousing and Distribution Facility Project, Draft Environmental Impact Report, SCH No. 2021080499, City of Stockton, San Joaquin County

Dear Mr. Cashman:

The California Department of Fish and Wildlife (CDFW) reviewed the draft Environmental Impact Report (EIR) from the Port of Stockton for the T.C. NO. CAL. Warehousing and Distribution Facility Project (Project) pursuant to the California Environmental Quality Act (CEQA) and CEQA Guidelines.[1]

**CDFW ROLE**

CDFW is California's **Trustee Agency** for fish and wildlife resources, and holds those resources in trust by statute for all the people of the State. (Fish & G. Code, §§ 711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines § 15386, subd. (a)). CDFW, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*Id.*, § 1802). Similarly for purposes of CEQA, CDFW is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources.

CDFW is also submitting comments as a **Responsible Agency** under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). CDFW expects that it may need to exercise regulatory authority as provided by the Fish and Game Code. As proposed, for example, the Project may be subject to CDFW's lake and streambed alteration regulatory authority. (Fish & G. Code, § 1600 et seq.). Likewise, to the extent implementation of the Project as proposed may result in "take" as defined by State law of any species protected under the California Endangered Species Act (CESA) (Fish &

[1] CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

G. Code, § 2050 et seq.), the Project proponent may seek related take authorization as provided by the Fish and Game Code.

**PROJECT DESCRIPTION SUMMARY**

**Proponent:** Port of Stockton

**Objective:** The objective of the Project is to construct and operate a distribution warehouse on a portion of the Project site and remediate existing contaminated soils throughout the Project site. Primary Project activities include soil remediation of areas throughout the 102-acre Project site called Site 47. The construction and operation of a distribution warehouse will occur on 60 acres within the 102-acre Project site. Construction elements include a 655,200-square-foot warehouse, 293,951-square-foot outdoor storage area, employee parking, trailer parking, trailer storage, truck docks, rail service and spurs, detention ponds, water tank and pumphouse, guard house, and minor ancillary structures on the existing vacant area.

Three stormwater drainage ditches are located on the Project site. Drainage Ditch 1, “central ditch,” is an open, channelized, earthen stormwater drainage ditch approximately 0.80-acre and 2,139 feet long. Drainage Ditch 2, “western ditch,” is an open, channelized, earthen stormwater drainage ditch approximately 0.17-acre and 529 feet long. The southern end of the western ditch has a culvert and concrete catch basin where water flows into the Project site from the Port’s larger storm drain system. Drainage Ditch 3, “southern ditch,” connects to the western ditch with no obstructions or culverts. It is vegetated and approximately 0.61-acre and 1,732 feet long. The ditches convey stormwater and surface groundwater to a single pump-controlled discharge point on the west side of the West Complex. Stormwater is held in a retention basin until it is pumped into the San Joaquin River. The central ditch will be filled, the western ditch will be modified to accommodate the distribution facility and infrastructure, and a new drainage channel will be constructed along the northern boundary of Site 47 (south of McCloy Avenue) to be integrated into the Port’s drainage system.

Site preparation will generally include clearing and grubbing of vegetation, removing existing utilities, removing contaminated soil, installation of building support columns, moving contaminated soil away from existing paved areas, building foundations to facilitate placement of a two-foot clean soil cover in unpaved areas, covering contaminated soil with clean soil sourced from the Port, compacting the clean fill, treating it with lime and cement, overlaying it with an aggregate base, and covering it with a concrete slab.

Trees to be removed by Project activities will be replaced by 30 trees in undisturbed areas of the Project site.

**Location:** The Project is located in the City of Stockton, San Joaquin County. It is located on the Port of Stockton's West Complex. Rough and Ready Island is bordered to the north, south, and east by the San Joaquin River and to the west and south by the Burns Cutoff (a tributary to the San Joaquin River). The Project site is south of McCloy Avenue and the nearest cross-street is the Port of Stockton Expressway, located at latitude 37°56'47.192" N and longitude -121°21'8.773" W (see Exhibit 1, Project Site and Vicinity).

The Project has four distinct areas proposed for remediation and/or development (see Exhibit 2, Development and Remediation Areas).

- Warehouse Development Area – a 60-acre area proposed for remediation and warehouse development. It is bordered to the north by McCloy Avenue and Port railways; to the west by the Port of Stockton Expressway; to the south by the Ferguson Building warehouse parking lot at 530 Port of Stockton Expressway, stormwater drainage ditches, and undeveloped Port land; and to the east by the DR commercial facility and abandoned structures.

- Western Remediation Area – a 7-acre area to the west of the Warehouse Development Area that will be remediated and remain undeveloped.

- Eastern Remediation Area – a 9-acre area to the east of the Warehouse Development Area that will be remediated and remain undeveloped.

- Western Warehouse Area – a 26-acre area to the west of the Western Remediation Area that will be remediated and undergo pavement controls.

**Timeframe:** The Project construction and remediation is anticipated to occur between 2022 and 2024. Phase 1 includes site preparation and remediation within the Warehouse Development Area (8 months). Phase 2 includes construction of warehouse and improvements in the Warehouse Development Area (20 months duration with a potential one-month overlap with Phase 1). The third phase includes remediation of the Western and Eastern Remediation Areas and Western Warehouse Area (two months in 2024).

## COMMENTS AND RECOMMENDATIONS

CDFW offers the comments and recommendations below to assist Port of Stockton in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document.

**Comment 1: Notification of Streambed Alteration Agreement Recommended**

CDFW-1

On page 84, in Section 3.3.1.2 Wetlands and Jurisdictional Waters, the draft EIR states the following: "The stormwater ditches…do not meet the definition of a wetland under the State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State that was adopted by the State Resources Water Quality Control Board as the ditches are artificial (not a wetland created by modification of surface waters of the state) and are subject to ongoing operation and maintenance… Per the Procedures, the stormwater ditches are not waters of the state because they are artificial wetlands that were constructed and are…maintained for settling if sediment; detention, retention, infiltration, or treatment of stormwater runoff…; and treatment of surface waters." Please be advised that elements of the proposed Project may be subject to Lake and Streambed Alteration (LSA) Notification. This includes impacts to drainage systems that connect to tributaries of main stem creeks and tributaries that occur within the Project site. CDFW requires an LSA Notification, pursuant to Fish and Game Code section 1600 et. seq., for any activity that may substantially divert or obstruct the natural flow; change or use material from the bed, bank or channel or deposit or dispose of material where it may pass into a river, lake, or stream. CDFW recommends that the Project submit an LSA notification so that CDFW may determine whether project elements are subject CDFW's LSA regulatory authority.

**Comment 2: Wetland Mitigation**

CDFW-2

On page 95, Mitigation Measure BIO-4: Compensatory Wetland and Waters Mitigation, the draft EIR says that if areas on the Project site are determined to be subject to the Central Valley Regional Water Quality Control Board jurisdiction as waters of the state, then TC NO. CAL. Development will purchase appropriate wetland mitigation credits at a ratio of 1:1 to compensate the loss of state waters from the National Fish and Wildlife Foundation in-lieu fee program. If the impacted ditches are determined to have wildlife habitat per the LSA Agreement process discussed in Comment 1, and if mitigation is deemed necessary during the permitting process, CDFW cannot accept in-lieu fees as compensatory mitigation.

CDFW recommends that the draft EIR be revised to include an alternate compensatory mitigation strategy, such as 1) creating mitigation on-site to protect it in perpetuity, and funding the protection in perpetuity; or 2) putting a conservation easement on land with wetland habitat of equal or greater conservation value, with written acceptance from CFDW, including a management plan, and providing an endowment to manage the easement in perpetuity. CDFW has recommended previously that the Port of Stockton develop on-site or local compensatory mitigation options for development projects that require habitat/species mitigation which is not covered through the San Joaquin County Multi-Species Habitat Conservation Plan (SJMSCP) process. There are currently no CDFW-approved mitigation banks for wetlands that include the Project site within the

CDFW-2 (cont.)

banks' service area. Accordingly, CDFW recommends that the draft EIR be revised to include development of a robust mitigation plan that will reduce the impacts of the Project to a level less-than-significant and provide benefits to local or on-site resources and species.

**Comment 3: Swainson's Hawk Surveys**

CDFW-3

On page 97 of the draft EIR, Mitigation Measure BIO-1: Obtain Coverage under the SJMSCP or Implement Protective Measures for Nesting Birds, Western Pond Turtle, Giant Garter Snake, and Valley Elderberry Longhorn Beetle, it states that the Project will obtain coverage under the SJMSCP. If the Project cannot obtain coverage under the SJMSCP, specific avoidance and minimization measures will be implemented to avoid impacts to special-status species.

CDFW recommends adding the following avoidance and minimization measure to the draft EIR for avoidance of impacts to Swainson's hawk:

> "CDFW recommends conducting Project activities outside of the Swainson's hawk breeding season (March 20 to September 15). If Project activities are to be conducted during breeding season, surveys for Swainson's hawks and their nests shall be conducted by a Qualified Biologist prior to the beginning of Project-related activities at each phase of the Project site. Surveys shall be conducted in a manner consistent with the *Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley* (https://www.wildlife.ca.gov/Conservation/Survey-Protocols#377281284-birds). Surveys shall cover a minimum of two survey periods with the minimum number of surveys prior to Project initiation as follows:
>
> - January to March 20 – survey all day for raptor nests a minimum of one survey.
> - March 20 to April 5 – survey from either sunrise to 1000 or 1600 to sunset with a minimum of three surveys.
> - April 5 to April 20 – survey from either sunrise to 1200 or 1630 to sunset with a minimum of three surveys."

**Comment 4: Giant Garter Snake Avoidance and Incidental Take Recommendation**

CDFW-4

On page 93, the draft EIR states that alternatives to SJMSCP coverage will limit construction activities between May 1 to September 30 (giant garter snake's active period, when snakes are able to move to avoid disturbance), that a survey will be conducted 24 hours prior to construction activities necessary in giant garter snake habitat between October 1 and April 30, that biologists will have stop work authority, giant garter snakes will be allowed to move away from the construction area on their own, and if giant garter snakes are observed in burrows, then burrows will be flagged, a 200-foot buffer will

be established until snakes are no longer present, and the project area will be inspected by the biologist when a lapse in construction activity of 2 weeks or more has occurred.

CDFW-4 (cont.)

If the Project does not participate in the SJMCSP, CDFW recommends avoiding work in potential giant garter snake habitat between October 1 and April 30 because it is likely that, if giant garter snakes are in the Project area, they will be estivating in upland burrows and unable to move away from Project construction. This could result in a greater impact to giant garter snake. Please be advised that a CESA Incidental Take Permit (ITP) must be obtained if the Project has the potential to result in take of species of plants or animals listed or a candidate under CESA, either during construction or over the life of the Project. Under CESA, take is defined as "to hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture or kill." Issuance of an ITP is subject to CEQA documentation. If the Project will impact CESA-listed species, early consultation with CDFW is encouraged, as significant modification to the Project and mitigation measures may be required in order to obtain a CESA Permit. If project work must occur during the inactive period of giant garter snake without SJMSCP coverage, then CDFW recommends obtaining an ITP to avoid possible significant delays in construction.

**Comment 5: Valley Elderberry Longhorn Beetle Consultation**

CDFW-5

On page 93, the draft EIR says an alternative to SJMSCP participation coverage will include surveying for elderberry shrubs and if elderberry shrubs identified on the Project site cannot be avoided, then TC NO. CAL. Development will coordinate a removal and replanting effort with CDFW. The Valley elderberry longhorn beetle is listed as threatened under the Endangered Species Act, but is not listed as a threatened or endangered species under CESA. CDFW recommends that coordination for a removal and replanting effort is pursued with the United States Fish and Wildlife Service.

**Comment 6: Tree Replanting Guidance**

CDFW-6

On page 93-94, the draft EIR states that TC NO. CAL. Development will plant a minimum of 30 trees, including Patmore ash (*Fraxinus p. 'Patmore'*), Chinese pistache (*Pistachia chinensis*), redwood (*Sequoia sempervirens*), and multi-trunk chaste tree (*Vitex agnus-castus*). CDFW recommends the draft EIR be amended to specify that only native species of trees, adapted to the lighting, soil and hydrological conditions at the replanting site, will be used. For each tree slated for removal that is four inches diameter at breast height or larger, the following minimum mitigation ratio should be used:

- Oaks 4" to 12" DBH – 3:1 (replacement trees to each tree removed)
- Oaks 13" to 24" DBH – 5:1
- Other native trees – 3:1

CDFW-6 (cont.)

- Non-native trees – 1:1

**ENVIRONMENTAL DATA**

CDFW-7

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a database which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e)). Accordingly, please report any special-status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDB). The CNNDB field survey form can be found at the following link: http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDB_FieldSurveyForm.pdf. The completed form can be mailed electronically to CNDDB at the following email address: CNDDB@wildlife.ca.gov. The types of information reported to CNDDB can be found at the following link: http://www.dfg.ca.gov/biogeodata/cnddb/plants_and_animals.asp.

**FILING FEES**

CDFW-8

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089).

**CONCLUSION**

CDFW appreciates the opportunity to comment on the draft EIR to assist Port of Stockton in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Andrea Boertien, Environmental Scientist, at (707) 317-0388 or Andrea.Boertien@wildlife.ca.gov; or Michelle Battaglia, Senior Environmental Scientist (Supervisory), at Michelle.Battaglia@wildlife.ca.gov.

Sincerely,

DocuSigned by:
Erin Chappell
B77E9A6211EF486...

Erin Chappell
Regional Manager
Bay Delta Region

cc: Office of Planning and Research, State Clearinghouse, Sacramento
Katie Chamberlin, Anchor QEA; kchamberlin@anchorqea.com

## Exhibits

Exhibit 1: Project Site and Vicinity Map

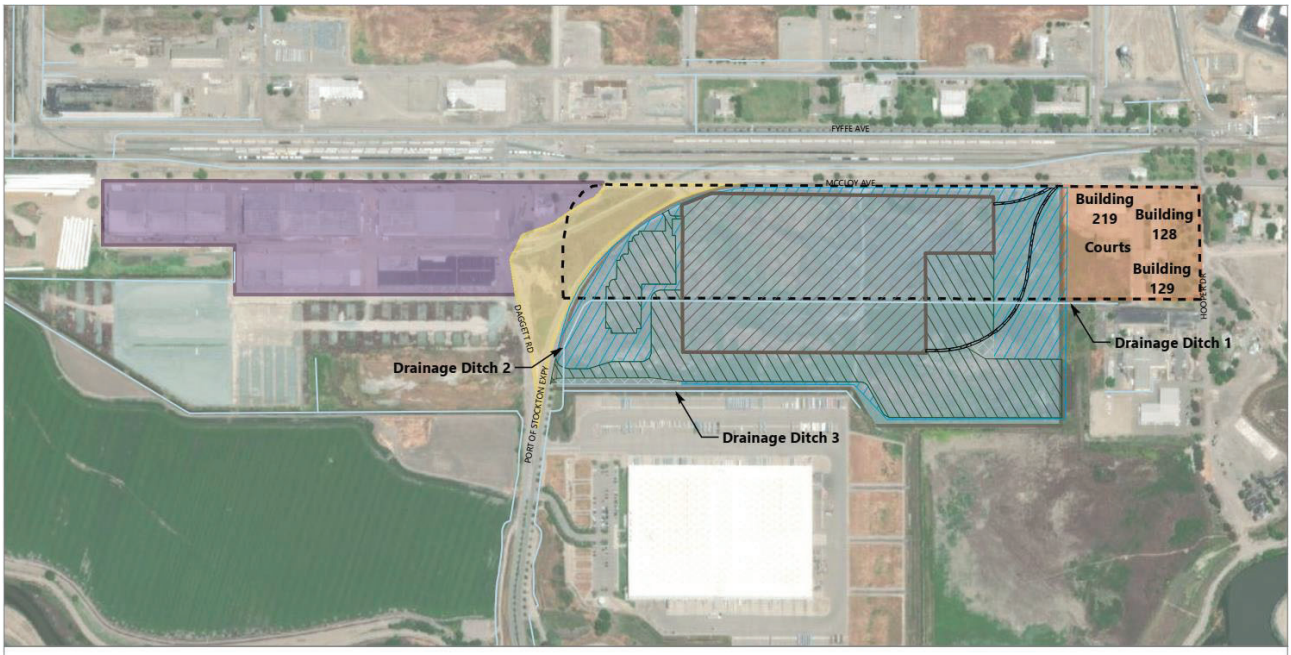

Publish Date: 2021/08/23, 2:36 PM | User: jsfox
Filepath: \\orcas\GIS\Jobs\Port_of_Stockton_0377\Maps\TrammelCrow\AQ_fig1_SiteAndVicinityMap.mxd

ANCHOR QEA

0 2,000
Feet

**Figure ES-1**
**Project Site and Vicinity**
Draft Environmental Impact Report
TC NO. CAL. Development Warehousing and Distribution Facility Project

## Exhibit 2: Development and Remediation Area




Publish Date: 2021/12/06, 10:17 AM | User: jsfox
Filepath: \\orcas\GIS\Jobs\Port_of_Stockton_0377\Maps\TrammelCrow\AQ_Fig2_DevelopmentRemediationAreas.mxd

ANCHOR QEA

**Figure 2**
**Development and Remediation Areas**
Draft Environmental Impact Report
TC NO. CAL. Development Warehousing and Distribution Facility Project

## 2.5.2 *Response to California Department of Fish and Wildlife (CDFW)*

| Comment Code | Response |
|---|---|
| **CDFW-1** | The Port thanks CDFW for its comments. TC NO. CAL. Development will submit a Lake or Streambed Alteration Agreement (LSAA) notification so that CDFW may determine whether project elements are subject CDFW's LSAA regulatory authority. Section 3.3.1.2 has been amended to clarify this point. |
| **CDFW-2** | Consistent with Comment CDFW-2, the Port has modified MM-BIO-4 to include mitigation and conservation banks that have credits available and will be acceptable to CDFW. Should the proposed project require a LSAA and need to provide CDFW-approved mitigation, the revised mitigation measure will meet this need.<br><br>Separate from the proposed project, the Port is currently in the planning stages of developing a mitigation bank site at Spud Island, a property owned by the Port on the San Joaquin River, to mitigate impacts to wetlands and waters of the United States resulting from development at the Port. Spud Island, located on the San Joaquin River has approximately 5 to 6 acres of uplands which could be opened to river influence to create wetlands and wildlife habitat. |
| **CDFW-3** | Consistent with Comment CDFW-3, the Port has modified MM-BIO-1 to include the following text:<br><br>If the proposed project is not able to obtain coverage under the SJMSCP… For Swainson's hawks, proposed project construction activities will occur outside of the Swainson's hawk breeding season (March 20 to September 15). If proposed project construction activities are to be conducted during breeding season, surveys for Swainson's hawks and their nests shall be conducted by a qualified biologist prior to the beginning of proposed project-related activities at each phase of the project site. Surveys shall be conducted in a manner consistent with the *Recommended Timing and Methodology for* Swainson's Hawk Nesting Surveys in California's Central Valley (https://www.wildlife.ca.gov/Conservation/Survey-Protocols#377281284-birds). Surveys shall cover a minimum of two survey periods with the minimum number of surveys prior to proposed project initiation as follows:<br>• January to March 20: survey for raptor nests over 1 day, with a minimum of one survey.<br>• March 20 to April 5: survey from either sunrise to 10:00 a.m. or 4:00 p.m. to sunset, with a minimum of three surveys.<br>• April 5 to April 20: survey from either sunrise to 12:00 p.m. or 4:30 p.m. to sunset, with a minimum of three surveys. |
| **CDFW-4** | As discussed in the DEIR, it is unlikely that the proposed project would impact garter snakes. MM-BIO-1 already limits construction to occur between May 1 and September 30, consistent with Comment CDFW-4. Any work proposed outside of these times would require qualified biologist conduct a survey within 24 hours prior to construction and monitor construction activities to ensure that individuals of giant garter snake encountered during construction are avoided. If a giant garter snake is encountered during construction activities, the biologist will have the authority to stop construction activities until appropriate corrective measures are completed or it is determined that the snake will not be harmed. Giant garter snakes encountered during construction activities will be allowed to move away from the construction area on their own. If giant garter snakes are observed in burrows or other wintering |

| Comment Code | Response |
|---|---|
| | habitat, burrows will be flagged, and a 200-foot buffer will be established and maintained until the biologist confirms that snakes are no longer present. The project area will be reinspected by the biologist whenever a lapse in construction activity of 2 weeks or more has occurred. Implementation of these measures, should coverage under the SJMSCP not be obtained, will ensure that take of giant garter snake is avoided during construction. |
| **CDFW-5** | Consistent with Comment CDFW-5, the Port has modified MM-BIO-1 to clarify that the Port will consult with USFWS not CDFW should the proposed project not obtain coverage under the SJMSCP. |
| **CDFW-6** | Consistent with Comment CDFW-6, the Port has modified MM-BIO-3 to read:<br><br>TC NO. CAL. Development will plant a minimum of 30 trees~~, including Patmore ash (*Fraxinus p. 'Patmore'*), Chinese pistache (*Pistachia chinensis*), coast redwood (*Sequoia sempervirens*), and multi-trunk chaste tree (*Vitex agnus-castus*),~~ on the project Warehouse Development Area in locations where future removal is not likely to be required.<br><br>If any trees are removed as part of the Port's remedial activities, the Port will plant trees based on the ratios identified below at locations where future removal is not likely to be required.<br><br>Only native species of trees adapted to the lighting, soil, and hydrological conditions shall be replanted at the replanting site. Each tree slated for removal that is 4 inches diameter at breast height (DBH) or larger will be mitigated.<br>• For oaks 4 to 12 inches DBH to be removed, trees will be replanted at a 3:1 ratio.<br>• For oaks 13 to 24 inches DBH, trees will be replanted at a 5:1 ratio.<br>• For other native trees, trees will be replanted at a 3:1 ratio.<br>• For non-native trees, trees will be replanted at a 1:1 ratio.<br><br>Replanted trees will consist of California native tree species, including valley oak (*Quercus lobata*), interior live oak (*Quercus wizlizeni*), coast live oak (*Quercus agrifolia*), box elder (*Acer negundo*), western redbud (*Cercis occidentalis*), Oregon ash (*Fraxinus latifolia*), red willow (*Salix laevigata*), giant sequoia (*Sequoiadenron giganticum*), or native pine trees. Other suitable native tree species may be considered if necessary. TC NO. CAL. Development is required to prepare a planting plan that must be reviewed and approved by the Port prior to planting.<br><br>Please note that Redwood trees (California native) are not recommended for inland planting due to climate change. |
| **CDFW-7** | Thank you for your comment and the Port will report any special status species and natural communities detected during surveys conducted for the proposed project to the California Natural Diversity Database (CNDDB) as requested. |
| **CDFW-8** | Comment noted. The Port will pay all fees required by CDFW. |

22 February 2022

Jason Cashman
Port of Stockton
2201 West Washington Street
Stockton, CA 95203
*jcashman@stocktonport.com*

**COMMENTS TO REQUEST FOR REVIEW FOR THE DRAFT ENVIRONMENTAL IMPACT REPORT, T.C. NO. CAL. WAREHOUSING AND DISTRIBUTION FACILITY PROJECT, SCH#2021080499, SAN JOAQUIN COUNTY**

Pursuant to the State Clearinghouse's 12 January 2022 request, the Central Valley Regional Water Quality Control Board (Central Valley Water Board) has reviewed the *Request for Review for the Draft Environmental Impact Report* for the T.C. NO. CAL. Warehousing and Distribution Facility Project, located in San Joaquin County.

Our agency is delegated with the responsibility of protecting the quality of surface and groundwaters of the state; therefore our comments will address concerns surrounding those issues.

## I. Regulatory Setting

### Basin Plan

The Central Valley Water Board is required to formulate and adopt Basin Plans for all areas within the Central Valley region under Section 13240 of the Porter-Cologne Water Quality Control Act. Each Basin Plan must contain water quality objectives to ensure the reasonable protection of beneficial uses, as well as a program of implementation for achieving water quality objectives with the Basin Plans. Federal regulations require each state to adopt water quality standards to protect the public health or welfare, enhance the quality of water and serve the purposes of the Clean Water Act. In California, the beneficial uses, water quality objectives, and the Antidegradation Policy are the State's water quality standards. Water quality standards are also contained in the National Toxics Rule, 40 CFR Section 131.36, and the California Toxics Rule, 40 CFR Section 131.38.

The Basin Plan is subject to modification as necessary, considering applicable laws, policies, technologies, water quality conditions and priorities. The original Basin Plans were adopted in 1975, and have been updated and revised periodically as required, using Basin Plan amendments. Once the Central Valley Water Board has adopted a Basin Plan amendment in noticed public hearings, it must be approved by the State Water Resources Control Board (State Water Board), Office of Administrative Law (OAL) and in some cases, the United States Environmental

Protection Agency (USEPA). Basin Plan amendments only become effective after they have been approved by the OAL and in some cases, the USEPA. Every three (3) years, a review of the Basin Plan is completed that assesses the appropriateness of existing standards and evaluates and prioritizes Basin Planning issues. For more information on the *Water Quality Control Plan for the Sacramento and San Joaquin River Basins*, please visit our website: http://www.waterboards.ca.gov/centralvalley/water_issues/basin_plans/

**Antidegradation Considerations**

RWQCB-1

All wastewater discharges must comply with the Antidegradation Policy (State Water Board Resolution 68-16) and the Antidegradation Implementation Policy contained in the Basin Plan. The Antidegradation Implementation Policy is available on page 74 at: https://www.waterboards.ca.gov/centralvalley/water_issues/basin_plans/sacsjr_201805.pdf

In part it states:

*Any discharge of waste to high quality waters must apply best practicable treatment or control not only to prevent a condition of pollution or nuisance from occurring, but also to maintain the highest water quality possible consistent with the maximum benefit to the people of the State.*

*This information must be presented as an analysis of the impacts and potential impacts of the discharge on water quality, as measured by background concentrations and applicable water quality objectives.*

The antidegradation analysis is a mandatory element in the National Pollutant Discharge Elimination System and land discharge Waste Discharge Requirements (WDRs) permitting processes. The environmental review document should evaluate potential impacts to both surface and groundwater quality.

## II. Permitting Requirements

**Construction Storm Water General Permit**

RWQCB-2

Dischargers whose project disturb one or more acres of soil or where projects disturb less than one acre but are part of a larger common plan of development that in total disturbs one or more acres, are required to obtain coverage under the General Permit for Storm Water Discharges Associated with Construction and Land Disturbance Activities (Construction General Permit), Construction General Permit Order No. 2009-0009-DWQ. Construction activity subject to this permit includes clearing, grading, grubbing, disturbances to the ground, such as stockpiling, or excavation, but does not include regular maintenance activities performed to restore the original line, grade, or capacity of the facility. The Construction General Permit requires the development and implementation of a Storm Water Pollution Prevention Plan (SWPPP). For more information on the Construction General Permit, visit the State Water Resources Control Board website at: http://www.waterboards.ca.gov/water_issues/programs/stormwater/constpermits.shtml

RWQCB-3

**Industrial Storm Water General Permit**

Storm water discharges associated with industrial sites must comply with the regulations contained in the Industrial Storm Water General Permit Order No. 2014-0057-DWQ. For more information on the Industrial Storm Water General Permit, visit the Central Valley Water Board website at: http://www.waterboards.ca.gov/centralvalley/water_issues/storm_water/industrial_general_permits/index.shtml

RWQCB-4

**Clean Water Act Section 404 Permit**

If the project will involve the discharge of dredged or fill material in navigable waters or wetlands, a permit pursuant to Section 404 of the Clean Water Act may be needed from the United States Army Corps of Engineers (USACE). If a Section 404 permit is required by the USACE, the Central Valley Water Board will review the permit application to ensure that discharge will not violate water quality standards. If the project requires surface water drainage realignment, the applicant is advised to contact the Department of Fish and Game for information on Streambed Alteration Permit requirements. If you have any questions regarding the Clean Water Act Section 404 permits, please contact the Regulatory Division of the Sacramento District of USACE at (916) 557-5250.

RWQCB-5

**Clean Water Act Section 401 Permit – Water Quality Certification**

If an USACE permit (e.g., Non-Reporting Nationwide Permit, Nationwide Permit, Letter of Permission, Individual Permit, Regional General Permit, Programmatic General Permit), or any other federal permit (e.g., Section 10 of the Rivers and Harbors Act or Section 9 from the United States Coast Guard), is required for this project due to the disturbance of waters of the United States (such as streams and wetlands), then a Water Quality Certification must be obtained from the Central Valley Water Board prior to initiation of project activities. There are no waivers for 401 Water Quality Certifications. For more information on the Water Quality Certification, visit the Central Valley Water Board website at: https://www.waterboards.ca.gov/centralvalley/water_issues/water_quality_certification/

RWQCB-6

**Waste Discharge Requirements – Discharges to Waters of the State**

If USACE determines that only non-jurisdictional waters of the State (i.e., "non-federal" waters of the State) are present in the proposed project area, the proposed project may require a Waste Discharge Requirement (WDR) permit to be issued by Central Valley Water Board. Under the California Porter-Cologne Water Quality Control Act, discharges to all waters of the State, including all wetlands and other waters of the State including, but not limited to, isolated wetlands, are subject to State regulation. For more information on the Waste Discharges to Surface Water NPDES Program and WDR processes, visit the Central Valley Water Board website at:https://www.waterboards.ca.gov/centralvalley/water_issues/waste_to_surface_water/

Projects involving excavation or fill activities impacting less than 0.2 acre or 400 linear feet of non-jurisdictional waters of the state and projects involving dredging

RWQCB-6 (cont.)

activities impacting less than 50 cubic yards of non-jurisdictional waters of the state may be eligible for coverage under the State Water Resources Control Board Water Quality Order No. 2004-0004-DWQ (General Order 2004-0004). For more information on the General Order 2004-0004, visit the State Water Resources Control Board website at: https://www.waterboards.ca.gov/board_decisions/adopted_orders/water_quality/2004/wqo/wqo2004-0004.pdf

RWQCB-7

**Limited Threat General NPDES Permit**

If the proposed project includes construction dewatering and it is necessary to discharge the groundwater to waters of the United States, the proposed project will require coverage under a National Pollutant Discharge Elimination System (NPDES) permit. Dewatering discharges are typically considered a low or limited threat to water quality and may be covered under the General Order for *Limited Threat Discharges to Surface Water* (Limited Threat General Order). A complete Notice of Intent must be submitted to the Central Valley Water Board to obtain coverage under the Limited Threat General Order. For more information regarding the Limited Threat General Order and the application process, visit the Central Valley Water Board website at: https://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/general_orders/r5-2016-0076-01.pdf

RWQCB-8

**NPDES Permit**

If the proposed project discharges waste that could affect the quality of surface waters of the State, other than into a community sewer system, the proposed project will require coverage under a National Pollutant Discharge Elimination System (NPDES) permit. A complete Report of Waste Discharge must be submitted with the Central Valley Water Board to obtain a NPDES Permit. For more information regarding the NPDES Permit and the application process, visit the Central Valley Water Board website at: https://www.waterboards.ca.gov/centralvalley/help/permit/

If you have questions regarding these comments, please contact me at (916) 464-4856 or Nicholas.White@waterboards.ca.gov.

Nicholas White
Water Resource Control Engineer

cc: State Clearinghouse unit, Governor's Office of Planning and Research, Sacramento

## *2.5.3 Response to Central Valley Regional Water Quality Control Board (RWQCB)*

| Comment Code | Response |
|---|---|
| **RWQCB-1** | The Port thanks the Central Valley Regional Water Quality Control Board (RWQCB) for their comments. As presented in Table 1 of the DEIR, the Port will apply for all required permits and approvals, including a NPDES permit and WDR, and will comply with the RWQCB permit conditions.<br><br>The DEIR evaluate potential impacts to both surface and groundwater quality in Section 3.9 Hydrology and Water Quality. |
| **RWQCB-2** | As presented in MM-BIO-1, TC NO. CAL. Development will obtain an NPDES Construction Stormwater General Permit for the proposed project, which will require the development of a construction Stormwater Pollution Prevention Plan (SWPPP). |
| **RWQCB-3** | An Industrial Storm Water General Permit Order is not applicable to the nature or operations associated with the proposed project. |
| **RWQCB-4** | As discussed in the DEIR, the proposed project is not subject to Section 404 of the Clean Water Act based on an approved jurisdictional determination issued by USACE for the proposed project and project site. |
| **RWQCB-5** | As discussed in the DEIR and Response to Comment RWQCB-4, the proposed project is not subject to Section 404 of the Clean Water Act and does not require a USACE permit. Therefore a Section 401 Water Quality Certification is not required. |
| **RWQCB-6** | Please see the Response to Comment RWQCB-1. |
| **RWQCB-7** | Please see the Response to Comment RWQCB-2. |
| **RWQCB-8** | Please see the Response to Comment RWQCB-2. |

San Joaquin Valley
AIR POLLUTION CONTROL DISTRICT

HEALTHY AIR LIVING™

February 24, 2022

Jason Cashman
Port of Stockton
Environmental & Regulatory Affairs
2201 West Washington Street
Stockton, CA, 95203

**Project: Draft Environmental Impact Report (DEIR) for TC NO. CAL Development Warehousing and Distribution Facility**

**District CEQA Reference No: 20220028**

Dear Mr. Cashman:

The San Joaquin Valley Unified Air Pollution Control District (District) has reviewed the DEIR for the project referenced above from the Port of Stockton (Port). The project consists of the construction and operation of a 655,200 square foot warehouse for distribution, 293,951 square foot outdoor storage area, employee parking, trailer parking, truck docks, rail service and spurs, detention ponds, water tank and pump house, guard house, minor ancillary structures, and soil remediation on a 102-acre site (Project). The Project is located south of McCloy Avenue, in the Port's West Complex in Stockton, CA. The District offers the following comments:

**1) <u>Assembly Bill (AB) 617</u>**

SJVAPCD-1

Assembly Bill 617 requires CARB and air districts to develop and implement Community Emission Reduction Programs (CERPs) in an effort to reduce air pollution exposure in impacted disadvantaged communities. The Stockton community is one of the statewide communities selected by CARB for the development and implementation of a CERP. Although this Project is not directly located in the AB 617 Stockton community boundary, it is located directly adjacent to the AB 617 Stockton community boundary. Given the nature of the Project that consists of warehouse/distribution, it has the potential to result in air quality impacts to the nearby AB 617 Stockton community.

Samir Sheikh
Executive Director/Air Pollution Control Officer

Northern Region
4800 Enterprise Way
Modesto, CA 95356-8718
Tel: (209) 557-6400 FAX: (209) 557-6475

Central Region (Main Office)
1990 E. Gettysburg Avenue
Fresno, CA 93726-0244
Tel: (559) 230-6000 FAX: (559) 230-6061

Southern Region
34946 Flyover Court
Bakersfield, CA 93308-9725
Tel: (661) 392-5500 FAX: (661) 392-5585

www.valleyair.org www.healthyairliving.com

SJVAPCD-1

The CERP developed for the Stockton community has been adopted by the District's Governing Board in March 2021 and by CARB in July 2021. The CERP identifies a wide range of measures designed to reduce air pollution and exposure, including a number of strategies to be implemented in partnership between agencies and local organizations.

**1a) Cleanest Available Heavy Duty Trucks**

The San Joaquin Valley will not be able to attain stringent health-based federal air quality standards without significant reductions in emissions from Heavy Duty trucks, the single largest source of NOx emissions in the San Joaquin Valley. The District's ARB-approved 2018 PM2.5 Plan includes significant new reductions from Heavy Duty Trucks, including emissions reductions by 2023 through the implementation of CARB's Statewide Truck and Bus Regulation, which requires truck fleets operating in California to meet the 2010 standard of 0.2 g-NOx/bhp-hr by 2023. Additionally, to meet federal air quality attainment standards, the District's Plan relies on a significant and immediate transition of Heavy Duty fleets to zero or near-zero emissions technologies, including the near-zero truck standard of 0.02 g/bhp-hr NOx established by CARB.

The Project consists of warehouse/distribution and is expected to result in increased Heavy Duty truck traffic, traveling to-and-from the Project location. The DEIR specifically "*Table 15-Proposed Project Construction and Operational Emissions-Mitigated"* shows Project operational emissions will not exceed the District's significance thresholds, and thus resulting in a less than significant air quality impact. Additionally, the DEIR includes the following measure to lessen operational air quality emission impacts from Project Heavy Duty trucks:

> *"Mitigation Measure AQ-4: Use of Clean Trucks: TC NO. CAL. Development will encourage its customers to use clean trucks (defined as model year 2017 or newer to transport cargo. TC NO. CAL. Development will also educate customers about the SJVAPCD Truck Replacement Program via direct or electronic mailings. In addition, TC NO. CAL Development will require all trucks to be in compliance with ARB air quality regulations for on-road trucks, including ARB's Heavy Duty (Tractor-Trailer) Greenhouse Gas Regulation, Periodic Smoke Inspection Program (PSIP), and Statewide Truck and Bus Regulation. TC NO. CAL. Development will post a copy of the SJVAPCD Truck Replacement Program information currently available at http://valleyair.org/grants/truck-replacement.htm and applicable ARB regulations at the terminal."*

Based on the above measure and the DEIR specifically encourages the use of clean trucks for the Project. However, it appears the Project emission quantification in "*Table 15-Proposed Project Construction and Operational Emissions-Mitigated"* accounts for emission reductions to be achieved under Mitigation Measure AQ-4. If Mitigation Measure AQ-4 is accounted for in

SJVAPCD-1 (cont.)

mitigated air quality emissions for the Project, the District recommends the Port strengthen the above mitigation measure to require the use of clean trucks through zero or near-zero emissions technologies. This can be achieved by considering the feasibility of the following measure: require fleets associated with Project operational activities to utilize the cleanest available Heavy Duty truck technologies, including zero and near-zero technologies as feasible.

**1b) Truck Routing**

SJVAPCD-2

The Project consists of warehouse/distribution and is expected to result in an increase in Heavy Duty truck traffic. Truck routing involves the assessment of which roads Heavy Duty trucks take to and from their destination, and the emissions impact that the trucks may have on residential communities and sensitive receptors.

The District appreciates the Port evaluating Heavy Duty truck routing patterns from the Project, with the goal of limiting emission exposure to nearby residential communities (e.g.: Boggs Tract Residential Neighborhood) and sensitive receptors (e.g.: West Washington Elementary School). However, the District recommends the Port strengthen the commitment to working with City and County agencies to identify Project-specific strategies that will limit exposure of Heavy Duty truck traffic to nearby residential communities and sensitive receptors.

**1c) Locomotives, and Railcar Movers/Switchers**

SJVAPCD-3

The Project is expected to result in an increase use of freight trains. Therefore, to reduce air quality emission impacts from the Project, the District recommends the Port advise freight and passenger train operators to utilize newer, and cleaner technology. Replacing older locomotives is important to reduce the public's exposure to diesel emissions, including PM2.5 in the form of diesel particulate and NOx. These pollutants negatively impact human health, especially for sensitive populations such as children and the elderly. New, clean-technology locomotives generate significantly lower emissions than older, uncontrolled diesel locomotives.

The District offers the following incentive program for locomotive fleets interested in transitioning to newer, clean technology:

- Heavy-Duty Program – http://valleyair.org/grants/locomotive.htm
  Locomotive replacements, including switcher locomotives and railcar movers can be funded as an eligible project. These projects are administered according to the Carl Moyer Program guidelines.

### 1d) Vegetative Barriers and Urban Greening

SJVAPCD-4

There are residential units located northwest of the Project. The District suggests the Port consider incorporating vegetative barriers and urban greening as a measure to further reduce air pollution exposure on sensitive receptors (e.g. residences, schools, healthcare facilities).

While various emission control techniques and programs exist to reduce air quality emissions from mobile sources, vegetative barriers have been shown to be an additional measure to potentially reduce a population's exposure to air pollution through the interception of airborne particles and the update of gaseous pollutants. Examples of vegetative barriers include, but are not limited to the following: trees, bushes, shrubs, or a mix of these. Generally, a higher and thicker vegetative barrier with full coverage will result in greater reductions in downwind pollutant concentrations. In the same manner, urban greening is also a way to help improve air quality and public health in addition to enhancing the overall beautification of a community with drought tolerant, low-maintenance greenery.

## 2) Health Risk Assessment

The District has reviewed the Project's Health Risk Assessment (HRA) and has the following comments:

SJVAPCD-5

- To ensure consistency with the substances identified in Appendix A of the DEIR, the District recommends the HRA include all substances referenced in Appendix A.

- In addition to the toxics listed in Appendix A of the DEIR, the District recommends soil remediation sampling be conducted to determine if additional toxic substances are expected to be emitted from the soil remediation process. In relation, it is recommended that the soil remediation risk is additive to the risk associated with the construction phase of the HRA in order to adequately assess the potential health impacts from the Project.

## 3) On-site Solar Deployment

SJVAPCD-6

It is the policy of the State of California that renewable energy resources and zero-carbon resources supply 100% of retail sales of electricity to California end-use customers by December 31, 2045. While various emission control techniques and programs exist to reduce air quality emissions from mobile and stationary sources, the production of solar energy is contributing to improving air quality and public health. The District suggests that the Project proponent consider the feasibility of incorporating solar power systems, as an emission reduction strategy for this Project.

**4) Charge Up! Electric Vehicle Charger**

SJVAPCD-7

To support further installation of electric vehicle charging equipment and development of such infrastructure, the District offers incentives to public agencies, businesses, and property owners of multi-unit dwellings to install electric charging infrastructure (Level 2 and 3 chargers). The purpose of this incentive program is to promote clean air alternative-fuel technologies and the use of low or zero-emission vehicles. The District suggests that the Port and Project proponent consider the feasibility of installing electric vehicle chargers for this Project.

Please visit www.valleyair.org/grants/chargeup.htm for more information.

**5) District Rules and Regulation**

SJVAPCD-8

The District issues permits for many types of air pollution sources and regulates some activities not requiring permits. A project subject to District rules and regulation would reduce its impacts on air quality through compliance with regulatory requirements. In general, a regulation is a collection of rules, each of which deals with a specific topic. Here are a couple of example, Regulation II (Permits) deals with permitting emission sources and includes rules such as District permit requirements (Rule 2010), and New and Modified Stationary Source Review (Rule 2201).

The list of rules below is neither exhaustive nor exclusive. Current District rules can be found online at: www.valleyair.org/rules/1ruleslist.htm. To identify other District rules or regulations that apply to this Project or to obtain information about District permit requirements, the applicant is strongly encouraged to contact the District's Small Business Assistance (SBA) Office at (209) 557-6446.

**5a) District Rules 2010 and 2201 - Air Quality Permitting for Stationary Sources**

Stationary Source emissions include any building, structure, facility, or installation which emits or may emit any affected pollutant directly or as a fugitive emission. District Rule 2010 requires operators of emission sources to obtain an Authority to Construct (ATC) and Permit to Operate (PTO) from the District. District Rule 2201 requires that new and modified stationary sources of emissions mitigate their emissions using best available control technology (BACT).

This Project may be subject to District Rule 2010 (Permits Required) and Rule 2201 (New and Modified Stationary Source Review) and may require District permits.

Prior to commencing construction on any permit-required equipment or process, a finalized Authority to Construct (ATC) must be issued to the Project proponent by the District. For further information or assistance, the project proponent may contact the District's Small Business Assistance (SBA) Office at (209) 557-6446.

### 5b) District Rule 9510 (Indirect Source Review)

SJVAPCD-9

The purpose of District Rule 9510 (Indirect Source Review) is to reduce the growth in both NOx and PM10 emissions associated with development and transportation projects from mobile and area sources associated with construction and operation of development projects. The rule encourages clean air design elements to be incorporated into the development project. In case the proposed project clean air design elements are insufficient to meet the targeted emission reductions, the rule requires developers to pay a fee used to fund projects to achieve off-site emissions reductions.

The proposed Project is subject to District Rule 9510 because it will receive a project-level discretionary approval from a public agency and will equal or exceed 25,000 square feet of light industrial space. When subject to the rule, an Air Impact Assessment (AIA) application is required prior to applying for project-level approval from a public agency. In this case, if not already done, please inform the project proponent to immediately submit an AIA application to the District to comply with District Rule 9510.

An AIA application is required and the District recommends that demonstration of compliance with District Rule 9510, before issuance of the first building permit, be made a condition of Project approval.

Information about how to comply with District Rule 9510 can be found online at: http://www.valleyair.org/ISR/ISRHome.htm.

The AIA application form can be found online at: http://www.valleyair.org/ISR/ISRFormsAndApplications.htm.

### 5c) District Rule 9410 (Employer Based Trip Reduction)

SJVAPCD-10

The Project may be subject to District Rule 9410 (Employer Based Trip Reduction) if the Project would result in employment of 100 or more “eligible” employees. District Rule 9410 requires employers with 100 or more “eligible” employees at a worksite to establish an Employer Trip Reduction Implementation Plan (eTRIP) that encourages employees to reduce single-occupancy vehicle trips, thus reducing pollutant emissions associated with work commutes. Under an eTRIP plan, employers have the flexibility to select the options that work best for their worksites and their employees.

Information about how District Rule 9410 can be found online at: www.valleyair.org/tripreduction.htm.

For additional information, you can contact the District by phone at 559-230-6000 or by e-mail at etrip@valleyair.org.

### 5d) District Regulation VIII (Fugitive PM10 Prohibitions)

SJVAPCD-11

The project proponent may be required to submit a Construction Notification Form or submit and receive approval of a Dust Control Plan prior to commencing any earthmoving activities as described in Regulation VIII, specifically Rule 8021 – *Construction, Demolition, Excavation, Extraction, and Other Earthmoving Activities.*

Should the project result in at least 1-acre in size, the project proponent shall provide written notification to the District at least 48 hours prior to the project proponents intent to commence any earthmoving activities pursuant to District Rule 8021 (Construction, Demolition, Excavation, Extraction, and Other Earthmoving Activities). Also, should the project result in the disturbance of 5-acres or more, or will include moving, depositing, or relocating more than 2,500 cubic yards per day of bulk materials, the project proponent shall submit to the District a Dust Control Plan pursuant to District Rule 8021 (Construction, Demolition, Excavation, Extraction, and Other Earthmoving Activities). Should you have any questions regarding the written notification or Dust Control Plan requirements, please contact District Compliance staff at (559) 230-5950.

The application for both the Construction Notification and Dust Control Plan can be found online at:
https://www.valleyair.org/busind/comply/PM10/forms/DCP-Form.docx

Information about District Regulation VIII can be found online at:
http://www.valleyair.org/busind/comply/pm10/compliance_pm10.htm

### 5e) Other District Rules and Regulations

SJVAPCD-12

The Project may also be subject to the following District rules: Rule 4102 (Nuisance), Rule 4601 (Architectural Coatings), and Rule 4641 (Cutback, Slow Cure, and Emulsified Asphalt, Paving and Maintenance Operations).

**6) District Comment Letter**

SJVAPCD-13 The District recommends that a copy of the District's comments be provided to the Project proponent.

If you have any questions or require further information, please contact Eric McLaughlin by e-mail at Eric.McLaughlin@valleyair.org or by phone at (559) 230-5808.

Sincerely,

Brian Clements
Director of Permit Services

For Mark Montelongo
Program Manager

## *2.5.4 Response to San Joaquin Valley Air Pollution Control Board (SJVAPCD)*

| Comment Code | Response |
|---|---|
| **SJVAPCD-1** | The Port thanks the SJVAPCD for its comments and appreciates the efforts of CARB and the SJVAPCD to reduce regional emissions. As discussed in the DEIR, the Port is a member of the AB 617 Community Steering Committee and intends to be active in developing strategies to protect public health and the environment.<br><br>Please see Master Response 1 and the Response to Comment CARB-2, which clarifies the assumptions made under MM-AQ-4 and adds additional provisions to the mitigation measure. |
| **SJVAPCD-2** | As discussed in Section 1.5.4 of the DEIR, separate of this project, the Port is working with the City and San Joaquin County on truck routes for port bound trucks to access terminals in the northern section of the East Complex. Currently, a portion of the trucks travel northbound on South Fresno Avenue to access terminals located along West Washington Street. South Fresno Avenue is a designated City-controlled truck route; however, the street runs adjacent to the Boggs Tract Residential Neighborhood and West Washington Elementary School, which are heavily impacted by surrounding industrial operations and major traffic corridors.<br><br>The Port understands that there is community support for reducing the level of truck traffic on South Fresno Avenue or closing the road to trucks, as well as placing restrictions on truck travel through the Boggs Tract neighborhood. Because South Fresno Avenue is controlled by the City, the Port does not have the authority to change the truck designation. However, the Port is evaluating improvements to several in-Port roads that could be used as alternative truck routes. The Port is also working with the City and County to identify other strategies, such as restricting access to West Washington Street from South Fresno Avenue and building vegetative or other noise barriers along the avenue between the residential neighborhood and the roadway.<br><br>The proposed project, however, is located on the West Complex, and trucks bound for the project site will not add to congestion within the East Complex. As described in the DEIR, vehicular access to the project site is provided by two driveways along the Port of Stockton Expressway/McCloy Avenue, avoiding the area of concern. |

| Comment Code | Response |
|---|---|
| **SJVAPCD-3** | Please see the Response to Comment CARB-5, which addresses clean rail equipment. Regarding ARB's request to add mitigation specific to locomotives, as discussed in the DEIR, there are only two mainline rail companies (UP and BNSF) that service the entire rail network as well as interstate commerce. Mainline locomotives are regulated by the federal and state governments and CARB is addressing rail emissions through a statewide rail plan, which includes agreements directly with the two mainline locomotive companies. The 2005 Statewide Railyard Agreement, which was completed in 2015, included a statewide idle reduction program, maximized the use of state and federal ultra-low-sulfur (15 ppm maximum) diesel fuel, and established a statewide visible emissions reduction and repair program. The agreement also required the preparation of 17 railyard inventories and HRAs. Requirements aimed at the two companies to upgrade equipment is beyond the scope of a single Port project.<br><br>Switcher engines are also a source of emissions, and the Port has actively engaged the Port's switching company, CCT, to upgrade equipment. CCT has recently upgraded several of its locomotives, including upgrading gensets and adding a new ultra-low-emissions locomotive purchased through USEPA's Diesel Emissions Reduction Program. |
| **SJVAPCD-4** | Please see Section 3.2.4 of the FEIR. Construction of the proposed project would result in the removal of several mature trees. As part of the proposed project (MM-BIO-3), TC NO. CAL. Development would plant at least 30 trees on the project site to compensate for the loss of vegetation. This mitigation measure was modified slightly in the FEIR to include specific tree species and replanting ratios in Response to Comment CDFW-6.<br><br>The Community Steering Committee has identified installation of vegetative barriers as a priority for air pollutant mitigation. The committee has expressed the need for the installation of vegetative barriers around and near sources of concern such as schools, along truck routes, and near the Port, Charter Way, Boggs Tract, and El Dorado with an additional priority along Interstate 5. While the project site is not within the priority areas for vegetative barriers as identified in the CERP, TC NO. CAL. Development's planting plan conforms with the CERP's goals to increase vegetation to reduce air pollution. |
| **SJVAPCD-5** | The HRA was revised to include, in addition to diesel particulate matter (DPM) from proposed project construction and operation as well as other toxic air contaminants (TACs) contained in fugitive dust emitted from the soil remediation process. The additional air toxics evaluated include 10 constituents of concern identified in the Final Site 47 Remedial Investigation/Focused Feasibility Study (RI/FFS) report.[2] These air toxics were identified through a comprehensive sampling campaign that included hundreds of soil samples collected between 1995 and 2020 at various locations and depths ranging from 6 inches to 22 feet below ground. The 10 constituents of concern were identified in the RI/FFS report by comparing the maximum concentrations to the lower of either the cancer of non-cancer screening levels determined by the Department of Toxic Substances Control |

[2] Geosyntec Consultants, 2022. *Final Site 47 Remedial Investigation/Focused Feasibility Study for Soil.* Page 24.

| Comment Code | Response |
|---|---|
| | (DTSC) Human and Ecological Risk Office. Chemicals with a maximum concentration exceeding the screening levels were selected as constituents of concern.<br><br>For the cancer risk and chronic hazard index (HI) analyses, the mean concentrations for each constituent from the former skeet trap area, where concentrations are typically highest, were applied to speciate the total suspended particulates (TSP) emitted from grading, dozing and demolition activities to determine annual emissions (see Tables 48-50 of Appendix D). For the acute HI analysis, the maximum concentrations of each constituent were used to speciate the TSP to determine maximum hourly emissions. If the maximum concentration resulted in an estimated acute risk that exceeded a HI of 1, the acute HI risk calculation was re-run using the 99-percentile upper confidence limit (UCL) from Attachment 1 of Appendix F of the RI/FFS report. This was the case for arsenic where the UCL was estimated for samples from the top 6 feet of soil. Ground-based area sources coinciding with the Western Remediation Area, Warehouse Development Area, and Eastern Remediation Area each with initial vertical dimensions of 1 meter, consistent with guidance from the South Coast Air Quality Management District (SCAQMD)[3], were added to the AERMOD model to simulate emissions from the fugitive dust sources.<br><br>The revised HRA was conducted using CARB's Hot Spots Analysis & Reporting Program (HARP) Air Dispersion Modeling and Risk Tool (version 22118) to account for both inhalation and non-inhalation pathways from the TACs emitted from soil remediation activities. HARP was also used to estimate health risks from the DPM emissions previously included in the HRA. For residential and worker receptors, mandatory minimum (inhalation, soil, dermal, and mother's milk) and worker (inhalation, soil, and dermal) pathways were selected, respectively. Both receptor types used 95*th* percentile intake rates consistent with SJVACPD HRA guidance.[4] As shown in Table 51, the estimated construction cancer risk was 0.32 in a million, which is below SJVACPD's CEQA threshold of 20 in a million. The estimated construction non-cancer chronic HI was 0.28 which is below SJVAPCD's CEQA threshold of 1. The estimated construction non-cancer acute HI was 0.23 which is below SJVAPCD's threshold of 1. The updated overall proposed project risks (construction plus operations) are summarized in Table 47 (Revised), and all results are below SJVAPCD's CEQA risk thresholds.<br><br>Fugitive dust emissions from site remediation activities have been added to the unmitigated and mitigated construction mass emissions tables (see Table 10 [Revised] and Table 11 [Revised]), respectively, and emissions remain below SJVAPCD mass emission thresholds for CEQA. |
| **SJVAPCD-6** | Please see Master Response 1 and the Response to Comment CARB-4. TC NO. CAL. Development has committed to installing solar, and MM-GHG-1 has been modified accordingly. |

[3] SCAQMD, 2008. *Final Localized Significance Threshold Methodology*. Available at: http://www.aqmd.gov/docs/default-source/ceqa/handbook/localized-significance-thresholds/final-lst-methodology-document.pdf.

[4] SJVAPCD, 2018. *APR – 1906 Framework for Performing Health Risk Assessments*. July 1, 2018. Available at: http://www.valleyair.org/policies_per/Policies/APR-1906-7-1-18.pdf.

| Comment Code | Response |
|---|---|
| **SJVAPCD-7** | The Port has modified MM-AQ-4 to include installation of electric charging infrastructure within 12 months of the start of facility operations. |
| **SJVAPCD-8** | The Port and/or applicant will apply for all applicable permits prior to construction. |
| **SJVAPCD-9** | The Port and/or applicant will apply for all applicable permits prior to construction. An AIA will be submitted. |
| **SJVAPCD-10** | The Port and/or applicant will apply for all applicable permits prior to construction. |
| **SJVAPCD-11** | The Port and/or applicant will apply for all applicable permits prior to construction. |
| **SJVAPCD-12** | The Port and/or applicant will apply for all applicable permits prior to construction. |
| **SJVAPCD-13** | Thank you for your comment. A copy of the letter has been provided to TC NO. CAL. Development. |

ADAMS BROADWELL JOSEPH & CARDOZO
A PROFESSIONAL CORPORATION
ATTORNEYS AT LAW
520 CAPITOL MALL, SUITE 350
SACRAMENTO, CA 95814-4721
TEL: (916) 444-6201
FAX: (916) 444-6209
kcarmichael@adamsbroadwell.com

SO. SAN FRANCISCO OFFICE
601 GATEWAY BLVD., SUITE 1000
SO. SAN FRANCISCO, CA 94080
TEL: (650) 589-1660
FAX: (650) 589-5062

KEVIN T. CARMICHAEL
CHRISTINA M. CARO
THOMAS A. ENSLOW
KELILAH D. FEDERMAN
ANDREW J. GRAF
TANYA A. GULESSERIAN
KENDRA D. HARTMANN*
DARIEN K. KEY
RACHAEL E. KOSS
AIDAN P. MARSHALL
TARA C. RENGIFO
MICHAEL R. SEVILLE

*Of Counsel*
MARC D. JOSEPH
DANIEL L. CARDOZO

*Not admitted in California. Licensed in Colorado.*

February 24, 2022

**Via Email & Overnight Mail**:

Jason Cashman, Environmental Manager
Port of Stockton
2201 West Washington Street
Stockton, California 95203
**Email:** jcashman@stocktonport.com

Steve Escobar, Senior Deputy Port Director, Real Estate & Port Development
Port of Stockton
2201 West Washington Street
Stockton, California 95203
**Email:** sescobar@stocktonport.com

Re: **Comments on the DEIR for TC NO. CAL. Development Warehousing and Distribution Facility Project (SCH Number 2021080499)**

Dear Mr. Cashman and Mr. Escobar

We write on behalf of San Joaquin Residents for Responsible Development ("San Joaquin Residents") to provide comments on the Draft environmental Impact Report ("DEIR") prepared by the Port of Stockton ("Port") for the Warehousing and Distribution Facility Project (SCH Number 2021080499) ("Project") proposed by Trammel Crow Company d.b.a. TC NO. CAL. Development ("Applicant").[1]

## I. INTRODUCTION

Under the proposed Project, the Port would issue a lease to the Applicant to construct a 655,200-square foot, 36-foot clear height, concrete tilt-up build-to-suit warehouse structure on 60 acres on Rough and Ready Island, the West Complex of the Port of Stockton, San Joaquin County (Accessor's Parcel Number 162-030-070-000). The Project would include construction of a 293,951-square foot outdoor storage area, 418 car and truck trailer parking spaces, trailer storage, truck docks,

[1] TC NO. CAL. Development Warehousing and Distribution Facility Project State Clearinghouse Number: 2021080499, Draft Environmental Impact Report (January 2022) available at https://ceqanet.opr.ca.gov/2021080499/2.

rail service and spurs, detention ponds, and minor ancillary structures on the existing vacant area (collectively, "Distribution Facility").[2] Once constructed, the Applicant would sublease the Distribution Facility to a commercial operator to use the Project to receive, store, and distribute bulk building products and consumer goods.[3] The proposed Project also includes remediation of contaminated soils from past U.S. Department of the Navy ("Navy") activities associated with the Project site.[4] The constituents of concern ("COC"s) at the Project site are arsenic, five polycyclic aromatic hydrocarbons ("PAH"s), and, in limited areas, organochlorine pesticides ("OCP"s), including DDT. Remediation would occur in areas throughout the 102-acre project site, including the 60 acres on which the Distribution Facility would be developed as well as on approximately 42 acres to the east and west.[5] Approximately 16 acres of the Project site would remain undeveloped after remediation, and 26 acres of the site would undergo remediation and pavement repairs.[6] The DEIR does not describe the disposition of the 26 acre portion of the Project site beyond the planned remediation and pavement repairs.

ABJC-1

The DEIR fails to comply with the California Environmental Quality Act'[7]s ("CEQA") basic requirement to act as an "informational document." It is devoid of meaningful details in critical areas, such as air quality, health risk, noise, and biological impacts, without which the public and decisionmakers cannot adequately assess the Project's significant impacts. Because of the DEIR's shortcomings, it is deficient as a matter of law because it fails to properly disclose and mitigate the Project's potentially significant impacts. The DEIR also lacks substantial evidence to support the Port's conclusions regarding the Project's impacts and proposed mitigation. These deficiencies render the document inadequate for purposes of compliance with CEQA.

ABJC-2

We reviewed the DEIR, technical appendices, and reference documents, with the assistance of our expert consultants, including air quality and hazardous materials expert James J.J. Clark, Ph.D., biological resourced expert Renee Owens, and transportation expert Daniel T, Smith Jr., whose comments and qualifications

[2] DEIR, p, 28.
[3] DEIR, p. 15.
[4] DEIR, p, 15.
[5] DEIR, p. 15.
[6] DEIR, p. 20.
[7] Pub. Res. Code §§ 21000 et seq.; 14 Cal. Code Regs. ("CCR") §§ 15000 et seq.

are included as Exhibit A, Exhibit B and Exhibit C respectively.[8] Dr. Clark, Ms. Owens and Mr. Smith provide substantial evidence of potentially significant impacts that have not been adequately disclosed, analyzed, or mitigated. The Port must address and respond to their comments separately and fully.[9]

## II. STATEMENT OF INTEREST

ABJC-3

San Joaquin Residents is an unincorporated association of individuals and labor organizations with members who may be adversely affected by the potential public and worker health and safety hazards and environmental and public service impacts of the Project. The association includes individual members and Stockton residents Steven Dickinson, David Gracian, and Tim Knoeb, as well as the International Brotherhood of Electrical Workers Local 595, Plumbers & Steamfitters Local 442, Sheet Metal Workers Local 104, Sprinkler Fitters Local 669, District Council of Ironworkers and their members and their families, and other individuals that live, recreate and/or work in and around San Joaquin County.

San Joaquin Residents supports the development of sustainable commercial and industrial centers where properly analyzed and carefully planned to minimize impacts on public health and the environment. Large warehouse projects like this Project should avoid adverse impacts to air quality, noise levels, transportation, biological resources and public health, and should take all feasible steps to ensure unavoidable impacts are mitigated to the maximum extent feasible. Only by maintaining the highest standards can commercial and industrial development truly be sustainable.

The individual members of San Joaquin Residents and the members of the affiliated labor organizations live, work, recreate and raise their families in and around the County. They would be directly affected by the Project's environmental and health and safety impacts. Individual members may also work constructing the

---

[8] **Exhibit A**, Letter from James J.J. Clark, Ph.D., Clark & Associates, Comments on Draft Environmental Impact Report TC NO. CAL. Development Warehousing and Distribution Facility Project State Clearinghouse Number: 2021080499 (February 24, 2022) (hereinafter "Clark Comments"); **Exhibit B**, Letter from Renee Owens, Comments on the Draft Environmental Impact Report for the TC NO. CAL. Development Warehousing and Distribution Facility Project State Clearinghouse Number: 2021080499 (February 24, 2022) (hereinafter "Owens Comments"); **Exhibit C**, Letter from Daniel T. Smith Jr., TC NO. CAL. Development Warehousing and Distribution Facility DEIR (SCH Number: 2021080499) (February 23, 2022) (hereinafter "Smith Comments").

[9] 14 CCR §§ 15088(a), (c).

ABJC-3 (cont.)

Project itself. They would be the first in line to be exposed to any health and safety hazards which may be present on the Project site. They each have a personal interest in protecting the Project area from unnecessary, adverse environmental and public health impacts.

San Joaquin Residents and its members also have an interest in enforcing environmental laws that encourage sustainable development and ensure a safe working environment for the members they represent. Environmentally detrimental projects can jeopardize future jobs by making it more difficult and more expensive for industry to expand in the County, and by making it less desirable for businesses to locate and people to live and recreate in the County, including the Project vicinity. Continued environmental degradation can, and has, caused construction moratoriums and other restrictions on growth that, in turn, reduces future employment opportunities.

Finally, San Joaquin Residents is concerned with projects that can result in serious environmental harm without providing countervailing economic benefits. CEQA provides a balancing process whereby economic benefits are weighed against significant impacts to the environment.[10] It is in this spirit we offer these comments.

## III. LEGAL BACKGROUND

CEQA requires public agencies to analyze the potential environmental impacts of their proposed actions in an EIR.[11] "The foremost principle under CEQA is that the Legislature intended the act to be interpreted in such manner as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language."[12]

CEQA has two primary purposes. First, CEQA is designed to inform decisionmakers and the public about the potential significant environmental effects of a project.[13] "Its purpose is to inform the public and its responsible officials of the

[10] Pub. Resources Code § 21081(a)(3); *Citizens for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 171.
[11] PRC § 21100.
[12] *Laurel Heights Improvement Assn. v. Regents of Univ. of Cal ("Laurel Heights I")* (1988) 47 Cal.3d 376, 390 (internal quotations omitted).
[13] Pub. Resources Code § 21061; CEQA Guidelines §§ 15002(a)(1); 15003(b)-(e); *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 517 ("[T]he basic purpose of an EIR is to provide public agencies and

environmental consequences of their decisions before they are made. Thus, the EIR 'protects not only the environment but also informed self-government.'"[14] The EIR has been described as "an environmental 'alarm bell' whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return."[15] As the CEQA Guidelines explain, "[t]he EIR serves not only to protect the environment but also to demonstrate to the public that it is being protected."[16]

Second, CEQA requires public agencies to avoid or reduce environmental damage when "feasible" by requiring consideration of environmentally superior alternatives and adoption of all feasible mitigation measures.[17] The EIR serves to provide agencies and the public with information about the environmental impacts of a proposed project and to "identify ways that environmental damage can be avoided or significantly reduced."[18] If the project will have a significant effect on the environment, the agency may approve the project only if it finds that it has "eliminated or substantially lessened all significant effects on the environment" to the greatest extent feasible and that any unavoidable significant effects on the environment are "acceptable due to overriding concerns."[19]

While courts review an EIR using an "abuse of discretion" standard, "the reviewing court is not to 'uncritically rely on every study or analysis presented by a project proponent in support of its position. A clearly inadequate or unsupported study is entitled to no judicial deference."[20] As the courts have explained, a prejudicial abuse of discretion occurs "if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby

---

the public in general with detailed information about the effect [that] a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project.").

[14] *Citizens of Goleta Valley,* 52 Cal.3d at p. 564 (quoting *Laurel Heights I*, 47 Cal.3d at 392).

[15] *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810; *see also Berkeley Keep Jets Over the Bay v. Bd. of Port Comm'rs*. (2001) 91 Cal.App.4th 1344, 1354 ("*Berkeley Jets*") (purpose of EIR is to inform the public and officials of environmental consequences of their decisions *before* they are made).

[16] CEQA Guidelines § 15003(b).

[17] *Id*. § 15002(a)(2), (3); *see also Berkeley Jets*, 91 Cal.App.4th at 1354; *Citizens of Goleta Valley*, 52 Cal.3d at p. 564.

[18] CEQA Guidelines § 15002(a)(2).

[19] PRC § 21081(a)(3), (b); CCR §§ 15090(a), 15091(a), 15092(b)(2)(A), (B); *Covington v. Great Basin Unified Air Pollution Control Dist*. (2019) 43 Cal.App.5th 867, 883.

[20] *Berkeley Jets*, 91 Cal.App.4th at p. 1355 (emphasis added) (quoting *Laurel Heights I*, 47 Cal.3d at 391, 409, fn. 12).

thwarting the statutory goals of the EIR process."[21] "The ultimate inquiry, as case law and the CEQA guidelines make clear, is whether the EIR includes enough detail 'to enable who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.'"[22]

## IV. THE DEIR'S BASELINE FOR THE PROJECT'S BIOLOGICAL IMPACTS FAILS TO COMPLY WITH CEQA

An unsupported baseline renders an EIR deficient under CEQA.[23] In *Communities for a Better Environment v. South Coast Air Quality Management District*, the California Supreme Court held that the baseline used in a CEQA analysis should reflect "established levels of particular use."[24] The environmental analysis conducted by the air district in that case improperly used a theoretical level of $NO_x$ emissions that did not match actual operations.[25] The Court explained that failure to represent actual operational conditions, undermines the purpose of CEQA to fully inform decision makers and the public.[26]

ABJC-4

In *Association of Irritated Residents v. Kern County Board of Supervisors* ("*AIR v. Kern County*"), the Court of Appeal held that substantial evidence supports an agency's choice of a baseline when there is evidence showing that the baseline emissions numbers selected by the lead agency are representative of typical operations.[27] In *AIR v. Kern County,* the Court of Appeal reasoned that the

---

[21] *Berkeley Jets*, 91 Cal.App.4th at p. 1355; *see also San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 722 (error is prejudicial if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process); *Galante Vineyards*, 60 Cal.App.4th at p. 1117 (decision to approve a project is a nullity if based upon an EIR that does not provide decision-makers and the public with information about the project as required by CEQA); *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 946 (prejudicial abuse of discretion results where agency fails to comply with information disclosure provisions of CEQA).
[22] *Sierra Club,* 6 Cal.5th at p. 516 (quoting *Laurel Heights I*, 47 Cal.3d at 405).
[23] *Communities for a Better Environment v. South Coast Air Quality Management Dist.* ("*CBE v. SCAQMD*") (2010) 48 Cal.4th 310, 328.
[24] *CBE v. SCAQMD*, 48 Cal.4th at 322.
[25] *Id.* at 320–322, 328.
[26] *Id.* at 328.
[27] *Association of Irritated Residents v. Kern County Board of Supervisors* ("*AIR v. Kern County*") (2017) 17 Cal.App.5th 708, 728–729.

ABJC-4 (cont.)

County's 2007 figure of crude oil barrel throughput at a refinery was a suitable baseline because there was substantial evidence in the EIR showing that the baseline number was close to average of throughout from 2001 to 2008.[28]

As with the CEQA documents in both of the above cases, the DEIR here mischaracterizes information relevant to the baseline conditions present at the site and how the Project will impact the environment. Specifically, the DEIR fails to use appropriate scientific language to establish the existing baseline conditions for biological resources on site.

ABJC-5

First, the DEIR and the Port's website conflicting and inconsistent statements about existing biological conditions at the Project site. The DEIR states that, due to the Project site's "degraded condition" and proximity to industrialized development, it has little likelihood for any wildlife present onsite, including all special status species mentioned.[29] However, the Port's website describes a different reality than the one presented in the DEIR, stating that the Port is "plays host to a wide array of plant and animal life, and, while commerce and trade are the primary objectives of the Port, the need to be good stewards of the environment is taken very seriously."[30] To underscore this, the Port describes how it has erected dozens of bird and bat boxes in the vicinity of the Project site.[31] Ms. Owens states that the Project site has the potential to be utilized by a variety of wildlife, regardless if the Project site lacks high value breeding habitat for a given species.[32] Ms. Owens also explains that the Project site lies adjacent to several high value wetlands to the north, south, and east, and is therefore reasonably likely to be used as a corridor, stopover, and foraging resource by a host of species which the DEIR fails to mention in its description of the Project site.[33]

ABJC-6

ABJC-7

The DEIR also contains conflicting and incomplete analyses of wetlands onsite. First, the DEIR describes the presence of wetlands, stating that "emergent wetlands" exist along drainage ditches onsite, and "these features may be considered waters of the state under the RWQCB's jurisdiction and are potentially under CDFW's jurisdiction," [34] that a "small seasonal wetland and alkaline scald

---

[28] *Id.*
[29] DEIR, p. 83.
[30] https://www.portofstockton.com/wildlife/
[31] *Ibid.*
[32] Owens Comments, p. 3.
[33] Owens Comments, p. 3.
[34] DEIR Appendix B p. 21

ABJC-7 (cont.)

mapped in the study area would likely be subject to RWQCB regulation pursuant to the Porter-Cologne Water Quality Control Act," and "the ultimate determination of jurisdiction is the responsibility of the regulatory agencies." The DEIR then claims, without support, that it is "unlikely that …emergent vegetation would be subject to CDFW jurisdiction pursuant to Section 1602 of the California Fish and Game Code."[35] As Ms. Owens points out, this assumption is based on an inaccurate description of the origin and function of the wetlands onsite.[36] The DEIR's argument for exclusion of this wetland is not part of CDFW Code 1602. CDFW does not conduct independent analysis for 1602 permit applications, and instead relies on CEQA documentation for its information and analysis. Therefore, the DEIR fails as a necessary informational resource to provide the requisite detail for Section 1602 requirements and cannot conclude that the wetlands onsite are excluded from coverage under Section 1602.

ABJC-8

ABJC-9

Second, the DEIR presents a subjective, incomplete description of the Project site's biological baseline status by using layman's terms in lieu of quantitative or ecologically standardized terminology commonly used by EIR preparers and biologists. CEQA requires a detailed analysis of environmental and public health impacts, regardless of the guidance relied upon by the lead agency,[37] and prohibits an agency from concluding that an impact is insignificant unless it produces rigorous analysis and concrete substantial evidence, including accurate scientific and factual data, to justify the finding.[38]

Ms. Owens explains that the DEIR uses unscientific phrases such as "highly industrialized,"[39] "largely vacant,"[40] "ruderal", partly covered with "lawn" and "some native and non-native trees".[41] Additionally, the DEIR refers to bordering habitat and riparian areas as "more natural"[42], which, according to Ms. Owens is an undefined and meaningless term from which scientific detail is lacking. The DEIR

---

[35] DEIR p. 82.
[36] Owens Comments, p. 22.
[37] *Neighbors for Smart Rail v. Exposition Metro Line Const. Authority* (2013) 57 Cal.4th 439, 453 (lead agency has discretion to select the model or methodology it considers most appropriate provided it supports its decision with substantial evidence)
[38] *Kings Cty. Farm Bur. v. Hanford* (1990) 221 Cal.App.3d 692, 732; 14 C.C.R. § 15064(b)(1); 14 CCR § 15151 (EIR must contain a sufficient degree of analysis to enable the decisionmakers to make an intelligent and informed decision).
[39] DEIR p. ES-9
[40] DEIR p. 49
[41] Owens Comments, p. 4.
[42] DEIR, p. 82.

ABJC-9 (cont.)

states that "emergent wetlands" are present along existing drainage ditches; but downplays their significance, calling them "sparse," with no further explanation.[43] The vague terminology used to describe the Project's baseline biological conditions does not meet the CEQA standard that agencies should base significance determinations on scientific and factual data. The DEIR fails to use appropriate language which is required to study biological impacts under CEQA. As a result, the DEIR's baseline analysis lacks evidentiary support, and lacks the rigorous analysis required by CEQA.

ABJC-10

Third, Ms. Owens observed that the DEIR presents conflicting information regarding the potential for wildlife.[44] The DEIR explains that the Port land adjacent of the Project site provides abundant barn owl nesting habitat, stating that the Port installed barn owl nest boxes throughout the East and West Complexes to provide nesting habitat for barn owls.[45] According to the Port's website, the Port currently has 15 barn owl nest boxes, which have housed more than 200 new owls. The nest boxes are described as "valuable and safe habitat and natural rodent control".[46] Additionally, two boxes are outfitted with streaming cameras that allow the public to learn more about Port wildlife.[47] The DEIR also explains that the Port land adjacent of the Project site provides bat habitat, stating: "In addition to the Port's very successful Owl Nest Box Program, the Port established its Bat Roosting Box Program in 2012. All bats in California are protected. The goal of the program is to provide suitable roosting sites and encourage the bats to raise young and establish themselves in the area."[48]

According to Ms. Owens, in order for owls, bats, and their prey to exist in and around the Project site, there must be adequate habitat for foraging, safe movement (through corridors), and other biotic and abiotic factors contributing to their reproductive success.[49] As such, the Port's own website conflicts with the DEIR's attempt to describe the site as not supportive of wildlife, a proposition which lacks evidentiary support in the DEIR. Ms. Owens states that there is an abundance of data which demonstrates use of urban and so-called industrialized areas like the

[43] DEIR, p. 81.
[44] Owens Comments, p. 4.
[45] See https://www.portofstockton.com/wildlife/
[46] See https://www.portofstockton.com/wildlife/
[47] See https://www.portofstockton.com/wildlife/
[48] See https://www.portofstockton.com/wildlife/
[49] Owens Comments, p. 5.

ABJC-10 (cont.)

Project site by a host of species, including special status species noted near the Project site in the California natural Diversity Database ("CNDDB"), and on EBird for breeding, foraging, as a stopover, and a migratory corridor.[50]

ABJC-11

Fourth, the DEIR provides no illustrative maps of habitats or wetlands on the Project site or its borders, including the standard maps that illustrate scientifically recognized vegetation communities (utilizing geospatial and ecological data standards, i.e., scope, acreage, type, and location) necessary for mitigation and habitat remediation. In particular, there are no maps or descriptions of the vegetation communities present as described by the U.S. National Vegetation Classification System[51] and the California Vegetation Classification and Mapping Standards,[52] created in part by the California Department of Fish and Wildlife ("CDFW") and California Native Plant Society ("CNPS").

Ms. Owens explains that scientifically defined ecological vegetation communities are standardized to be indicative of various biological factors, including vegetation where ecological processes primarily determine floral and faunal species and reflect other biotic and abiotic site characteristics, plus related abiotic characteristics including aspects of water cycles, fire patterns, and susceptibility to climate change and drought.[53] Ms. Owens states that using universally adopted, scientifically defined descriptions of vegetation communities not only allows for a thorough analysis of site impacts, but also provides a standard that is used by wildlife regulatory agencies when assisting with creation, review, and assessment of success of mitigation.[54] Ms. Owens states that the standard is of particular importance given that the DEIR's biological impact mitigation measures rely heavily on deferral of mitigation by way of the assumption that most mitigation responsibilities will be met by applying for coverage San Joaquin County Multi-Species Habitat Conservation and Open Space Plan ("SJMSCP").[55]

---

[50] Owens Comments, p. 5.
[51] See: https://www.nps.gov/articles/sw-vegetation-mapping-national-classification-system.htm
[52] See: https://wildlife.ca.gov/data/vegcamp/publications-and-protocols
[53] Owens Comments, p. 6.
[54] Owens Comments, p. 6.
[55] See https://www.sjcog.org/151/Habitat-Technical-Advisory-Committee

Finally, the DEIR's description of methods used to assess the biological baseline and resultant impacts is almost entirely limited to the following:

> Biological conditions in the project area were observed during surveys of the project area and a jurisdictional waters and wetlands delineation conducted in 2021 (Anchor QEA 2021b; WRA 2021). A search of the CNDDB was conducted to identify recorded special status species occurrences within the U.S. Geological Survey Stockton West 7.5-minute quadrangle.[56]

ABJC-12

The DEIR claims that potential impacts to biological resources were "qualitatively evaluated" based on "recent" agency "lists" for special status species with the potential to inhabit the project site, the wetland delineation report, and "local observations"[57]. These terms are not defined or described and therefore do not contribute to scientific or statistical evidence to the degree necessary for CEQA review.

ABJC-13

For the above reasons, the DEIR fails to establish a proper baseline to determine the biological resources impacts of the Project, rending the DEIR deficient as an informational document under CEQA. The DEIR must be revised to provide an accurate and clear baseline description that reflects actual conditions.

## V. THE DEIR FAILS TO ADEQUATELY MITIGATE SIGNIFICANT TRANSPORTATION IMPACTS

ABJC-14

CEQA requires agencies to commit to all feasible mitigation measures to reduce significant environmental impacts.[58] In particular, the lead agency may not make required CEQA findings, including finding that a project impact is significant and unavoidable, unless the administrative record demonstrates that it has adopted all feasible mitigation to reduce significant environmental impacts to the greatest extent feasible.[59] Yet, as explained below, the DEIR falls far short of this mandate by adopting mitigation measures that are vague, ineffective, and unenforceable and by failing to commit to other feasible and effective mitigation strategies to address the significant transportation impacts of the Project.

---

[56] DEIR, pp. 81-82
[57] DEIR, p. 90.
[58] 14 C.C.R. § 15002(a)(2).
[59] Pub. Res. Code § 21081(a)(3), (b); 14 C.C.R. §§ 15090, 15091; *Covington v. Great Basin Unified Air Pollution Control Dist*. (2019) 43 Cal.App.5th 867, 883.

### A. The DEIR Fails to Require All Feasible Mitigation Measures to Reduce VMT from Project Operation to the Greatest Extent Feasible

The DEIR states that the Project will generate an average VMT per employee of 21.96 miles per day, which is 38.98 percent higher than the City's threshold of 15.8 miles per day.[60] While the Port may not be able to reduce the VMT impact below the threshold of significance, CEQA requires that the Port consider additional feasible mitigation to reduce the Project's impacts to the greatest extent possible before declaring the impact significant and unavoidable.

ABJC-15

Mr. Smith explains in his comments that the Transportation Demand Management ("TDM") program proposed as MM-TRA-3 is ineffective as written and can feasibly be bolstered to provide additional reductions to VMT. As proposed, MM-TRA-3 requires the following:

- Identification of locations along the project frontage on the Port of Stockton Expressway/McCloy Avenue where bus stops could be constructed with a pedestrian connection from the bus stop to primary building entrances.
- Coordination with the San Joaquin RTD to determine if transit services could be provided to the project site and if service could be coordinated to accommodate future shift changes.
- Implementation of a commute trip reduction program that could include a carpooling/ride-matching program and/or preferential carpool parking.[61]

Mr. Smith concludes that the TDM program can and should be significantly strengthened. First, he states that the locations where bus stops could be placed should not be merely identified. Rather, Bus stops should be required to be built into the Project so that they are in place when and if regular bus or special shift-change shuttle services are implemented.[62] Second, the Applicant should be required to pay San Joaquin RTD to operate a shuttle service to the Port and Project site, at least for the shift change times of the 'day' shift, or, alternatively, provide access to a private shuttle service.[63] Mr. Smith notes that the second provision has limited effectiveness, as employees who begin or end their shifts late

[60] DEIR, p. 202.
[61] DEIR, pp. 202-203.
[62] Smith Comments, p. 2.
[63] Smith Comments, p. 2.

ABJC-15 (cont.)

at night are not able to use connected transit services as they are largely inoperative late at night, and that additional mitigation would be needed to address night shift VMT.[64]

By bolstering the TDM plan required under MM-TRA-3 with the above feasible measures, Mr. Smith concludes that the Project could achieve additional reductions in VMT over the mitigation measures included in the DEIR. The Port must consider the addition of the proposed measures to further reduce Project VMT.

### B. The DEIR Fails to Require All Feasible Mitigation Measures to Reduce Traffic Impacts on Charter Way

ABJC-16

The DEIR states that the Project would result in an increase in the length of queues on the left turn lane from Charter Way eastbound to I-5 northbound on-ramp from 375 feet to 425 feet in the AM peak and from 675 feet to 725 feet in the PM peak.[65] Mr. Smith notes in his comments that, in both instances, the traffic queues "exceed the queue storage capacity" of the left turn pocket, where the AM peak queue would cause it to extend into the intersection of Charter Way with the I-5 southbound ramps, while the PM peak queue would extend through and well west of the intersection of Charter Way with the I-5 southbound ramps.[66] The Port proposes to work with the Applicant and the City to retime the traffic signal at the Charter Way/I-5 northbound ramps intersection.[67] However, as Mr. Smith points out, this mitigation measure does not eliminate the problem, since the queue overflows are already blocking flows in the leftmost of the two eastbound through lanes at the subject intersection.[68] Mr. Smith states that the Port should seek to combine revised signal timing with conversion of the left through eastbound lane into a second left turn lane in order to increase queueing capacity at the intersection.[69] The conversion of the left through lane is a feasible mitigation measure that could further reduce the significant impact and the potential hazardous conditions at the Charter Way intersection. The Port must consider this feasible mitigation and provide the decisionmakers and the public the opportunity to evaluate the mitigation measures in a revised EIR.

---

[64] Smith Comments, p. 2.
[65] DEIR, p. 203.
[66] Smith Comments, p. 2.
[67] DEIR, p. 199.
[68] Smith Comments, p. 3.
[69] Smith Comments, p. 3.

## VI. THE DEIR FAILS TO ADEQUATELY DISCLOSE, ANALYZE, AND MITIGATE SIGNIFICANT HAZARDOUS MATERIALS AND AIR QUALITY IMPACTS

An EIR must fully disclose all potentially significant impacts of a Project and implement all feasible mitigation to reduce those impacts to less than significant levels. The lead agency's significance determination for each impact must be supported by accurate scientific and factual data.[70]

ABJC-17

An agency cannot conclude that an impact is less than significant unless it produces rigorous analysis and concrete substantial evidence justifying the finding.[71] The failure to provide information required by CEQA is a failure to proceed in the manner required by law.[72] Even when the substantial evidence standard is applicable to agency decisions to certify an EIR and approve a project, reviewing courts will not 'uncritically rely on every study or analysis presented by a project proponent in support of its position. A clearly inadequate or unsupported study is entitled to no judicial deference.'"[73]

As explained below, the DEIR fails to adequately support its analysis of construction and operational impacts and underestimates significant construction and operational emissions. The DEIR also understates the degree to which annual operational emissions of $NO_x$ exceed applicable thresholds of significance, misrepresents the daily operational emissions from the Project, and fails to require all feasible mitigation measures to reduce significant air quality impacts, as required by CEQA.

### A. The DEIR Fails to Analyze Potentially Significant Hazardous Materials Impacts from Consolidation of Contaminated Soils on Site

ABJC-18

The DEIR states that 57,000 cubic yards of hazardous soils that are currently present at the Project site will be consolidated on site and covered with a durable cover.[74] Dr. Clark states in his comments that this measure does not remediate the

[70] 14 C.C.R. § 15064(b).
[71] *Kings Cty. Farm Bur. v. Hanford* (1990) 221 Cal.App.3d 692, 732.
[72] *Sierra Club v. State Bd. Of Forestry* (1994) 7 Cal.4th 1215, 1236.
[73] *Berkeley Jets*, 91 Cal.App.4th at 1355.
[74] DEIR, p. 157.

hazardous waste issues present at the Project site, and instead results in a more concentrated source of pollutants that the DEIR fails to analyze.[75] Dr. Clark states that the remedial step will only delay the inevitable need to remove the contaminants of concern, or isolate them to prevent them from migrating into the environment.[76]

Dr. Clark explains that the DEIR fails to include any plan to construct an engineered containment cell to prevent the infiltration of the hazardous waste into the subsurface or groundwater.[77] The DEIR must analyze the impacts from consolidating the contaminated soils, the potential for contaminated soils to migrate off-site via fugitive dust transfer mechanisms, and determine the potential health impacts on workers at adjacent properties or residents down wind of the remediation efforts.[78]

ABJC-18
(cont.)

The Site location is subject to a Pre-Decisional Land Use Covenant ("LUC") that specifies that the Property may not be used in a manner that causes the covering or disturbing of groundwater monitoring wells, or any use of the Property in a manner that restricts access to groundwater monitoring wells; that there will be no alteration of groundwater conditions within the Property, through activities such as construction of any well, extraction, use or consumption of groundwater from wells within the boundary of the Property, use of any groundwater within the boundary of the property, construction or creation of any groundwater recharge area, unlined surface impoundments or disposal trenches, unless specifically approved by the State; or any use that would restrict investigation activities, remedial actions, or long-term maintenance and operations.[79] Dr. Clark states that without a clear description of the interior lining to prevent the migration of the contaminants into the subsurface and groundwater, the DEIR clearly contradicts the Pre-Decisional LUC regarding the use of unlined surface impoundments or disposal trenches.[80]

---

[75] Clark Comments, p. 3.
[76] Clark Comments, p. 3.
[77] Clark Comments, p. 3.
[78] The disturbance of toxic soil contamination at a project site is a potentially significant impact requiring CEQA review and mitigation. *Cal. Build. Indust. Ass'n v. BAAQMD* (2015) 62 Cal.4th 369, 388-90; *Association For A Cleaner Environment v. Yosemite Comm. College Dist*. (2004) 116 Cal.App.4th 629
[79] Geosyntec, Revised Draft Site 47 Remedial Investigation/Focused Feasibility Study For Soil Rough And Ready Island Port Of Stockton (June 21, 2021). p. 3.
[80] Clark Comments, p. 4.

ABJC-18 (cont.)

The Port must fully analyze the potentially significant hazardous materials and health risks resulting from consolidating hazardous soils on the Project site in a revised DEIR, and include additional mitigation measures to reduce the potentially significant impacts to less than significant levels.

### B. The DEIR Fails to Require All Feasible Air Quality Mitigation Measures to Reduce Air Pollution and Toxic Air Contaminants from Project Construction and Operation to the Greatest Extent Feasible

ABJC-19

CEQA requires agencies to commit to all feasible mitigation measures to reduce significant environmental impacts.[81] In particular, the lead agency may not make required CEQA findings, including finding that a project impact is significant and unavoidable, unless the administrative record demonstrates that it has adopted all feasible mitigation to reduce significant environmental impacts to the greatest extent feasible.[82] Yet, as explained below, the DEIR falls far short of this mandate by adopting mitigation measures that are vague, ineffective, and unenforceable and by failing to commit to other feasible and effective mitigation strategies to address significant air quality impacts of the Project.

Dr. Clark explains that, although a substantial portion of $NO_x$ emissions come from mobile sources, the DEIR neglects to incorporate effective mitigation measures to address those sources of pollution. Dr. Clark explains that the Port must implement additional mitigation measures to reduce substantial NOx emissions from mobile sources.[83]

The DEIR fails to demonstrate that the proposed mitigation measures will be effective in reducing the Project's significant air quality impacts. The DEIR states that the Project would exceed the SJVAPCD threshold for $NO_x$ during operation and concludes that the Project would potentially conflict with or delay implementation of the SJVAPCD attainment plans and would result in a potentially significant impact.[84] The DEIR states "operational emissions would exceed annual SJVAPCD NOx threshold in the SJVAB. NOx emission would be generated by truck operation on terminal and travel and rail operation on terminal and travel.

---

[81] 14 C.C.R. § 15002(a)(2).
[82] Pub. Res. Code § 21081(a)(3), (b); 14 C.C.R. §§ 15090, 15091; *Covington v. Great Basin Unified Air Pollution Control Dist*. (2019) 43 Cal.App.5th 867, 883.
[83] Clark Comments, p .10.
[84] DEIR, p. 73.

ABJC-19 (cont.)

Accordingly, impacts would be considered significant."[85] CEQA requires that an EIR discuss mitigation measures that can minimize a project's significant environmental effects.[86] A reviewing court will not defer to an agency's determination that mitigation measures will work when their efficacy is not apparent and there is no evidence in the record showing that they will be effective in remedying the identified environmental problem.[87] Here, the DEIR offers no evidence in support of the claim that the mitigation measures proposed would reduce the Project's impacts.

The Port lists 5 mitigation measures to reduce construction and operational emissions. Mitigation measure "MM-AQ-4: Use of Clean Trucks" states that Applicant will encourage its customers to use clean trucks (defined as model year 2017 or newer) to transport cargo.[88] The DEIR admits that the measure is voluntary and has no regulatory teeth, stating "it is unknown at this time how many such trucks would visit the terminal."[89] Despite the lack of supporting data, the Port assumes that there will be a 3.6 ton decrease in annual NOx emissions from the use of clean trucks. As Dr. Clark notes in his comments, the 41% decrease in NOx emissions from the voluntary use of newer vehicles ignores the reality of the existing fleet of trucks in use.[90] The Port does not provide evidence that the fleet of trucks servicing the facility will actually be 2017 or newer. The Port must provide evidence to support the significant NOx reductions assumed in the DEIR.

Dr. Clark explains that NOx emissions can be further mitigated using the Voluntary Emissions Reduction Agreement ("VERA") program offered by SJVAPCD.[91] VERAs and other similar mitigation agreement programs have been used many times to reduce air pollution emissions impacts—a testament to its feasibility and effectiveness.[92]

VERAs have been consistently and effectively used since 2005 to reduce $NO_x$, VOC, and ROG emissions from development projects within the San Joaquin Air Basin. "Since 2005, the [SJVAPCD] has entered into 42 VERAs with project

[85] DEIR, p. 73.
[86] PRC §§ 21002, 21002.1(a), 21100(b)(3), 21151, *see also,* CCR § 15126.4
[87] *Sierra Club v. County of San Diego* (2014) 2321 Cal.4th 1152, 1168.
[88] DEIR, p. 139.
[89] DEIR, p. 75.
[90] Clark Comments, p. 9.
[91] Clark Comments, p. 10.
[92] Clark Comments, p. 10.

proponents to mitigate air quality impacts of their projects. These VERAs have generated over $105 million that the District has invested in local emission reduction projects."[93] VERAs have also been implemented for other Port projects to offset operational NOx emissions from both on-site and off-site sources.[94]

ABJC-19 (cont.)

Dr. Clark proposes that the Port could enter into a VERA to fund grants to businesses to purchase new cleaner emitting trucks.[95] As a condition of the VERA grant, the Port should include contractual language that the trucks purchased would be primarily used at the Port site which would ensure that emissions from the Project Site are offset by the VERA grant, actually mitigating the emissions from the Project.

The Port must consider incorporating the above feasible mitigation measures to address the significant air quality and GHG emissions impacts of the Project and present the revised impact analysis in a recirculated DEIR.

### C. The DEIR Fails to Consider All Feasible Mitigation Measures to Reduce Project Emissions

ABJC-20

In addition to adopting VERAs, the Port should require additional feasible and effective mitigation strategies to address significant air quality impacts of the Project. In his comments, Dr. Clark lists several feasible mitigation measures that have been previously recommended by the California Air Resources Board ("CARB") and the Air Quality Management Districts in California to reduce operational $NO_x$ and GHG emissions. The Port should include each of the following mitigation measures to reduce the Project's significant air quality and GHG impacts:

1. Include contractual language in tenant lease agreements that requires tenants to use the cleanest technologies available, and to provide the necessary infrastructure to support zero-emission vehicles and equipment that will be operating on site.
2. Include contractual language in tenant lease agreements that requires all TRUs entering the project site be plug-in capable.

[93] Exhibit D: SJVAPCD Staff Report: Approve VERA with Contanda Terminals LLC (September 19, 2019).
[94] SJVAPCD Staff Report: Approve VERA with Contanda Terminals LLC (September 19, 2019).
[95] Clark Comments, p, 10.

ABJC-20
(cont.)

3. Include contractual language in tenant lease agreements that requires future tenants to exclusively use zero-emission light and medium-duty delivery trucks and vans.
4. Include contractual language in tenant lease agreements requiring all TRUs, trucks, and cars entering the Project site be zero-emission.
5. Include contractual language in tenant lease agreements that requires all heavy-duty trucks entering or on the project site to be model year 2019 or later, expedite a transition to zero-emission vehicles, and be fully zero-emission beginning in 2030.
6. Include contractual language in tenant lease agreements that requires the tenant be in, and monitor compliance with, all current air quality regulations for on-road trucks including CARB's Heavy-Duty (Tractor-Trailer) Greenhouse Gas Regulation,[96] Periodic Smoke Inspection Program (PSIP),[97] and the Statewide Truck and Bus Regulation.[98]
7. Include contractual language in tenant lease agreements restricting trucks and support equipment from idling longer than five minutes while on site.
8. Include rooftop solar panels for each proposed warehouse to the extent feasible, with a capacity that matches the maximum allowed for distributed solar connections to the grid.
9. Have truck routes clearly marked with trailblazer signs, so that trucks will not enter residential areas.
10. Limit the daily number of trucks allowed at the Proposed Project to levels analyzed in the CEQA document. If higher daily truck volumes are anticipated to visit the site, the Port as the Lead Agency should commit to re-evaluating the Proposed Project through CEQA prior to allowing this land use or higher activity level.

---

[96] In December 2008, CARB adopted a regulation to reduce greenhouse gas emissions by improving the fuel efficiency of heavy-duty tractors that pull 53-foot or longer box-type trailers. The regulation applies primarily to owners of 53-foot or longer box-type trailers, including both dry-van and refrigerated-van trailers, and owners of the heavy-duty tractors that pull them on California highways. CARB's Heavy-Duty (Tractor-Trailer) Greenhouse Gas Regulation is available at: https://www.arb.ca.gov/cc/hdghg/hdghg.htm.

[97] The PSIP program requires that diesel and bus fleet owners conduct annual smoke opacity inspections of their vehicles and repair those with excessive smoke emissions to ensure compliance. CARB's PSIP program is available at: https://www.arb.ca.gov/enf/hdvip/hdvip.htm.

[98] The regulation requires that newer heavier trucks and buses must meet particulate matter filter requirements beginning January 1, 2012. Lighter and older heavier trucks must be replaced starting January 1, 2015. By January 1, 2023, nearly all trucks and buses will need to have 201 0 model year engines or equivalent. CARB's Statewide Truck and Bus Regulation is available at: https://www.arb.ca.gov/msprog/onrdiesel/onrdiesel.htm

ABJC-20 (cont.)

11. Ensure that any check-in point for trucks is well inside the Proposed Project site to ensure that there are no trucks queuing outside of the facility.
12. Establish overnight parking within the industrial building where trucks can rest overnight.
13. Establish area(s) within the Proposed Project site for repair needs.

### D. The DEIR Fails to Adopt Mitigation Measures to Reduce the Project's Significant Cumulative Air Quality Impacts

ABJC-21

The DEIR concludes that the majority of Project emissions and those of other nearby projects would originate from non-road construction equipment and mobile sources.[99] However, as noted above, the Port fails to include mitigation measures that will create a measurable reduction of those emissions.

The DEIR's Cumulative Impact Analysis states that the Project is located in an area that in an "extreme" nonattainment for 8-hour ozone ("$O_3$") under the National Ambient Air Quality Standards ("NAAQS").[100] Additionally, the DEIR states that under the California Ambient Air Quality Standards ("CAAQS"), the Port Of Stockton is in a nonattainment area for $O_3$, particulate matter less than 10 microns ("$PM_{10}$") and PM less than 2.5 microns ("$PM_{2.5}$"). The San Joaquin Valley has some of the highest PM concentrations in the State.[101] Projects emitting $O_3$, $PM_{10}$ and $PM_{2.5}$ would contribute to the nonattainment levels and adverse health effects in the region.[102] The DEIR notes that Projects 1 through 3, 10, 23, and 24 in Table 27 would all occur in the same general area as the proposed project and would generate new rail, truck, and on-terminal equipment emissions that may affect the same sensitive receptors.

[99] DEIR, p. 226.
[100] DEIR, p. 69.
[101] DEIR, p. 225.
[102] DEIR, p. 224.

**Table 27**
**Related Present and Future Projects Considered in the Cumulative Impact Analysis**

| Reference No. | Project Name | Location | Project Description | Project Status |
|---|---|---|---|---|
| 1 | Port of Stockton West Complex Development Plan: Marine Terminal Development | Port of Stockton | Marine terminal-related development associated with the Port's West Complex | In progress |
| 2 | Port of Stockton West Complex Development Plan: Commercial and Industrial Park Development | Port of Stockton | Upland commercial development associated with the Port's West Complex | In progress |
| 3 | Port of Stockton West Complex Development Plan: Infrastructure Improvements | Port of Stockton | Industrial development associated with the Port's West Complex | In progress |
| 10 | Nautilus Data Technology Data Storage Facility | Port of Stockton | Construction and operation of a waterborne data center facility at the West Complex | In progress |
| 23 | Denmar Natural Soda Ash Terminal | Port of Stockton | A new terminal to receive natural soda ash by rail and transport it out by ship | EIR Addendum certified; permitting in progress |
| 24 | Port of Stockton Rail Bridge Replacement and Rail Improvements | Port of Stockton | Replacing functionally obsolete rail bridge with a double-track rail bridge, adding a second Port lead track, constructing new yard track on the East Complex, and constructing a new rail classification yard on the West Complex to increase the overall efficiency of train operations within the Port | IS/MND certified; permitting not yet commenced |

ABJC-21 (cont.)

Despite this significant cumulative impact, the DEIR fails to meaningfully address the significant emissions resulting from the Project.[103] As Dr. Clark explains, the air quality impacts from the Project will be realized far beyond the confines of the Project site and immediate surroundings. As such, the Port must revise its mitigation measures to reduce the emissions below the SJVAPCD's significance thresholds in a revised EIR.

[103] Clark Comments, p. 5.

### E. The DEIR Fails to Analyze the Acute Health Risks of Diesel Particulate Matter in the Construction and Operational Health Risk Analyses

In *Sierra Club v. County of Fresno*, the California Supreme Court affirmed the importance CEQA's informational disclosure requirements by holding that an EIR fails as an informational document when it fails to disclose the public health impacts from air pollutants that would be generated by a development project.[104] The DEIR fails to comply with this requirement by failing to provide adequate information about the scope of the Project's acute health risk from exposure to TACs.

ABJC-22

The DEIR includes a health risk assessment ("HRA") of the Project's construction and operational diesel particulate matter ("DPM") emissions. However, no acute risk was analyzed for in the DEIR. As Dr. Clark states in his comments, DPM will be emitted from on-road and off-road equipment during Project construction and operation.[105] These acute health impacts occur over a 1-hour exposure time.[106] OEHHA has not established an acute reference exposure level ("REL") for DPM, but other agencies have.[107] The absence of an OEHHA acute risk exposure level does not excuse the Applicant from evaluating acute health risks when it is feasible to do so, as here. In the absence of an OEHHA significance threshold, it is standard practice to conduct a literature search to determine if other authorities have established a threshold. Since OEHHA last evaluated health impacts of DPM in 1998,[108] substantial additional research has been conducted on acute health impacts of DPM.[109] Dr. Clark states this more current research has

---

[104] *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 518–522.
[105] Clark Comments, p. 6.
[106] Clark Comments, p. 6.
[107] Clark Comments, p. 6.
[108] Findings of the Scientific Review Panel on the Report on Diesel Exhaust, 1998; https://www.arb.ca.gov/toxics/dieseltac/de-fnds.pdf.
[109] See, e.g., A. A. Mehus and others, Comparison of Acute Health Effects from Exposures to Diesel and Biodiesel Fuel Emissions and references cited therein, *Journal of Occupational and Environmental Medicine*, v. 57, no. 7, pp. 705-712, July 2015; https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4479787/.

ABJC-22 (cont.)

led Canada to recently establish an acute REL for DPM of 10 μg/m$^3$ to protect against adverse effects on the respiratory system.[110] There is no regulation or guidance requiring that only OEHHA RELs be used be used in California health risk assessments.[111]

The DEIR must be revised and recirculated to include an acute health risk assessment for both Project construction and operation.

### F. The DEIR Fails to Analyze All Potentially Significant Air Quality Impacts

ABJC-23

The DEIR fails to analyze the potentially significant air quality impacts from the gaseous form of diesel exhaust from construction and operational use of diesel-powered vehicles and equipment. As Dr. Clark explains, diesel exhaust is composed of particulate matter ***as well as vapor***.[112] The DEIR does not account for the vapor components of diesel emissions in its HRA, and thus fails as an informational document as it does not provide an analysis of the full range of the Project's potential health impacts.

A lead agency's significance determination must be supported by accurate scientific and factual data.[113] An agency cannot conclude that an impact is less than significant unless it produces rigorous analysis and concrete substantial evidence justifying the finding.[114] These standards apply to an EIR's analysis of the air quality impacts of a Project.

In *Sierra Club v. County of Fresno*, the California Supreme Court affirmed CEQA's mandate to protect public health and safety by holding that an EIR fails as an informational document when it fails to disclose the public health impacts from air pollutants that would be generated by a development project.[115] In *Sierra Club*, the Supreme Court held that the EIR for the Friant Ranch Project—a 942-acre master-planned, mixed-use development with 2,500 senior residential units, 250,000 square feet of commercial space, and open space on former agricultural

---

[110] Government of Canada, Human Health Risk Assessment for Diesel Exhaust, March 4, 2016; http://publications.gc.ca/collections/collection_2016/sc-hc/H129-60-2016-eng.pdf.
[111] Clark Comments, p. 6.
[112] Clark Comments, p. 18. (emphasis added)
[113] 14 C.C.R. § 15064(b).
[114] *Kings County Farm Bureau*, 221 Cal.App.3d at 732.
[115] *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 518–522.

ABJC-23
(cont.)

land in north central Fresno County—was deficient as a matter of law in its informational discussion of air quality impacts as they connect to adverse human health effects.[116] As the Court explained, "a sufficient discussion of significant impacts requires not merely a determination of whether an impact is significant, but some effort to explain the nature and magnitude of the impact."[117] The Court concluded that the County's EIR was inadequate for failing to disclose the nature and extent of public health impacts caused by the project's air pollution. The EIR failed to comply with CEQA because the public, after reading the EIR, "would have no idea of the health consequences that result when more pollutants are added to a nonattainment basin."[118] CEQA mandates discussion, supported by substantial evidence, of the nature and magnitude of impacts of air pollution on public health.[119]

In *Berkeley Jets*, the Court of Appeal held that an EIR must analyze the impacts from human exposure to toxic substances.[120] In that case, the Port of Oakland approved a development plan for the Oakland International Airport.[121] The EIR admitted that the Project would result in an increase in the release of TACs and adopted mitigation measures to reduce TAC emissions, but failed to quantify the severity of the Project's impacts on human health.[122] The Court held that mitigation alone was insufficient, and that the Port had a duty to analyze the health risks associated with exposure to TACs.[123] As the CEQA Guidelines explain, "[t]he EIR serves not only to protect the environment but also to demonstrate to the public that it is being protected."[124]

---

[116] *Id.* at 507–508, 518–522.
[117] *Id.* at 519, citing *Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497, 514–515.
[118] *Id.* at 518. CEQA's statutory scheme and legislative intent also include an express mandate that agencies analyze human health impacts and determine whether the "***environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly***." (Public Resources Code § 21083(b)(3) (emphasis added).) Moreover, CEQA directs agencies to "take immediate steps to identify any critical thresholds for the ***health and safety of the people*** of the state and take all coordinated actions necessary to prevent such thresholds being reached." (Public Resources Code § 21000(d) (emphasis added).)
[119] *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 518–522.
[120] *Berkeley Jets*, 91 Cal.App.4th at 1369–1371.
[121] *Id.* at 1349–1350.
[122] *Id.* at 1364–1371.
[123] *Id.*
[124] 14 C.C.R. § 15003(b).

ABJC-23 (cont.)

The failure to provide information required by CEQA makes meaningful assessment of potentially significant impacts impossible and is presumed to be prejudicial.[125] Challenges to an agency's failure to proceed in the manner required by CEQA, such as the failure to address a subject required to be covered in an EIR or to disclose information about a project's environmental effects or alternatives, are subject to a less deferential standard than challenges to an agency's factual conclusions.[126] Courts reviewing challenges to an agency's approval of an EIR based on a lack of substantial evidence will "determine de novo whether the agency has employed the correct procedures, scrupulously enforcing all legislatively mandated CEQA requirements."[127]

CARB defines diesel exhaust as a complex mixture of inorganic and organic compounds that exists in gaseous, liquid, and solid phases.[128] CARB and the United States Environmental Protection Agency ("U.S. EPA") identify 40 components of diesel exhaust as suspected human carcinogens, including formaldehyde, 1,3-butadiene, and benzo[a]pyrene.[129] The gas and particle components both contribute to health risks.[130] The inhalation unit risk factor identified by OEHHA for use in risk assessments is for the DPM fraction of diesel exhaust and not the vapor phase components identified by CARB and U.S. EPA.[131] Here, the County only used the DPM fraction of diesel exhaust in its analysis of the construction and operational emissions and failed to analyze the full range of TAC impacts from the Project.[132]

By failing to include an analysis of the additional TAC components of diesel exhaust, the DEIR does not provide a full picture of the Projects potential impacts and fails as an informational document as required by CEQA. The County must update the HRA with the additional TAC impacts included and include the results in a revised and recirculated EIR.

---

[125] *Sierra Club v. State Bd. Of Forestry* (1994) 7 Cal.4th 1215, 1236–1237.
[126] *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435.
[127] *Id.* (internal quotations omitted).
[128] Clark Comments, p. 6.
[129] *Id.* p. 18.
[130] *Ibid.*
[131] *Ibid.*
[132] *Ibid.*

### G. The DEIR Fails to Analyze Air Quality Emissions Using the Current Version of CalEEMod

ABJC-24

The DEIR states that the California Air Resources Board's ("CARB") CalEEMod, Version 2016.3.2 was used to quantify construction-related and operational emissions. [133] On June 1, 2021, CalEEMod and several air districts posted the release of the latest version of CalEEMOD, Version 2020.4.0. The updates to the model include additional analysis and emissions factors which were added to ensure compliance with recent changes in law:

1. Incorporation of the latest EMFAC2017 data from CARB (https://www.arb.ca.gov/emfac/2017/).
2. Addition of CARB's EMFAC2017 N2O emissions.
3. Inclusion of the 2019 update to Title 24 (building efficiency % reduction, see http://www.energy.ca.gov/title24/2019standards/index.html).
4. Incorporation of the ITE 10th edition trip rate data for land uses previously programmed into the model.
5. Utility Intensity Factors for greenhouse gases were updated.

According to Dr. Clark, the updates in version 2020.4.0 provide a higher level of accuracy regarding emission estimates for the project impacts compared to older versions of the CalEEMOD model, as required by existing law. Instead, the Port used outdated modeling that does not correspond to current regulations that are applicable to the Project. As a result, the DEIR's conclusions regarding the Project's air quality impacts are not adequately supported

Given that the DEIR was released for public review in January 2022, there was sufficient time for the Port to run the CalEEMOD analyses of the Project using the current version of the model. The Port must re-run the CalEEMOD analyses and present them in a revised DEIR in order to ensure that all elements of the air quality analyses are accurately presented in the DEIR.

[133] Port of Stockton. 2022. Draft Environmental Impact Report (DEIR) TC NO. CAL Development Warehousing and Distribution Facility Project State Clearinghouse Number 2021080499. Pg 67

### H. The DEIR Fails to Analyze Air Quality Impacts from Transportation Refrigeration Units

ABJC-25

The DEIR's describes the Project as a "distribution warehouse" used for receiving, storing, and distributing bulk building products and consumer goods.[134] The DEIR does not include any measures prohibiting installation of refrigeration and cold-storage by building tenants, and does not otherwise preclude the use of the Distribution Facility as a refrigerated warehouse or preclude the use of transportation refrigeration units ("TRU"s) onsite. Absent such restrictions, it is reasonably foreseeable that the Project could subsequently be used to support refrigeration-dependent uses. These impacts must therefore be analyzed in the DEIR.

Dr. Clark states that the DEIR fails to include a clear and accurate analysis of the potentially significant impacts resulting from deploying refrigeration units on site.[135] Additionally, the DEIR fails to analyze DPM emissions from TRUs installed on insulated cargo vans, rail cars and shipping containers used in transporting fresh produce, meat, dairy products, beverages, film, prescription drugs, and other temperature sensitive consumer goods.[136] In addition to the health impacts from exposure to DPM that must be assessed in the analysis, the impacts on GHG emissions must be included in the DEIR's analysis.

## VII. THE DEIR FAILS TO ADEQUATELY DISCLOSE, ANALYZE, AND MITIGATE SIGNIFICANT BIOLOGICAL RESOURCES IMPACTS

ABJC-26

The DEIR fails to survey and analyze how various special status species which include migratory and roosting bird species, bats, reptiles, and invertebrates, are impacted by habitat removal or disturbance, construction noise, dust, lighting, vehicles and other anthropogenic sources of hazards and habitat fragmentation, or other direct, indirect, and cumulative impacts.[137] Ms. Owens states that Such impacts are widely accepted and researched as significant detriment to individual and population measures of success, including resistance to limiting factors (drought, invasive competitors and predators, climate change) health, including

[134] DEIR, p. ES-2.
[135] Clark Comments, p. 8.
[136] Clark Comments, p. 8.
[137] Owens Comments, p. 9.

fecundity and survival.[138] Additionally, the DEIR's mitigation measures MM-BIO-1, 2, and 3 do not adequately address the Project's potentially significant impacts to the special status species that could be present on site.

ABJC-26 (cont.)

Ms. Owens explains that the DEIR failed to present standardized or focused protocol surveys for any species or for any taxa (i.e. birds, rare plants, invertebrates, mammals, reptiles).[139] Such surveys are necessary to establish a thorough description of the biological baseline regardless of the project footprint, size, or nature of the habitat onsite. Conducting protocol surveys for protected species, and focused surveys for taxa (e.g. rare plants, birds, bats), is standard practice for impact analysis for construction development projects that will remove habitat and have been determined to require an EIR.[140] The practice of "ground-truthing", scientifically accurate field data is necessary for an accurate CEQA analysis of biological impacts to special status species.[141]

### A. The DEIR Fails to Analyze Potentially Significant Impacts to Rare Plant Species

ABJC-27

Ms. Owens states that the Port fails to present standardized vegetation community data in the DEIR and did not conduct any rare plant surveys. [142] The DEIR asserts that CNDDB records for the region indicate there are 20 rare species in the Project vicinity, and yet concludes in a brief summation that none will be present "due to lack of suitable habitat".[143] However, as Ms. Owens states in her comments, there is insufficient evidence to support this conclusion.

The California Native Plant Society ("CNPS") coordinated with CDFW to create "Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities"[144] stating that "[t]he purpose of these protocols is to facilitate a consistent and systematic approach to botanical field surveys and assessments of special status plants and sensitive

---

[138] Citations impacts special status species
[139] Owens Comments, p. 9.
[140] Owens Comments, p. 9.
[141] Owens Comments, p. 9.
[142] Owens Comments, p. 11.
[143] DEIR Appendix E p. E-5
[144] CDFW, Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (March 20, 2018) *available at* https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline

ABJC-27 (cont.)

natural communities so that reliable information is produced and the potential for locating special status plants and sensitive natural communities is maximized."[145] According to CDFW guidance, such field surveys should be floristic in nature, meaning that every plant taxon that occurs in the project area is identified to the taxonomic level necessary to determine rarity and listing status.[146] The guidance goes on to state that "**[s]urveys that are limited to habitats known to support special status plants or that are restricted to lists of likely potential special status plants are not considered floristic in nature and are not adequate to identify all plants in a project area to the level necessary to determine if they are special status plants**."[147]

Furthermore, in their Guidelines for Assessing The Effects of Proposed Developments On Rare, Threatened, And Endangered Plants and Plant Communities, the CDFW states that a complete species list of all plants should be included in every botanical survey report used to inform mitigation of impacts under CEQA.[148] The DEIR presents no such surveys, nor does it follow any such guidelines to support their argument as to why special status plants do not, and have no potential, to occur.[149]

Ms. Owens identifies the following rare, threatened and endangered species which have a potential to occur at the Project site:[150]

- Delta tule pea *Lathyrus jepsonii* var. *jepsonii*
    - Protected Status: California CNPS 1B.2 (rare, threatened, or endangered in CA and elsewhere).
- Alkali milkvetch *Astragalus tener* var. *tener*
    - Protected Status: CNPS 1B.2 (rare, threatened, or endangered in CA and elsewhere; fairly threatened in California)
- Heartscale *Atriplex cordulata* var. *cordulata*
    - Protected Status: California CNPS 1B.2 (rare, threatened, or endangered in CA and elsewhere; fairly threatened in California)
- Big tarplant *Blepharizonia plumosa*

---

[145] *Id.* p.1.
[146] *Id.* p. 1.
[147] *Id.* p. 2. (emphasis added).
[148] CDFW 1998 p. 9 *available at,* https://www.cnps.org/wp-content/uploads/2018/01/policy-mitigation-guidelines.pdf
[149] Owens Comments, p. 12.
[150] Owens Comments, pp. 14-17.

ABJC-27 (cont.)

- Protected Status: California CNPS 1B.1 (rare, threatened, or endangered in CA and elsewhere; seriously threatened in California)

- Palmate-bracted (a.k.a. Palmate salty) bird's-beak *Chloropyron palmatum*
  - Protected Status: Federally and State listed as Endangered, California CNPS 1B.1 (rare, threatened, or endangered in CA and elsewhere; seriously threatened in California)
- San Joaquin spearscale *Extriplex joaquinana*
  - Protected Status: California CNPS 1B.2 (rare, threatened, or endangered in CA and elsewhere; fairly threatened in California)

Despite the clear failure to analyze the potential for the above species to occur on site, the DEIR concludes that the above species states there have no potential to occur, and that their habitat is not present which in turn results in a failure to provide any mitigation measures if they do occur on site. The Port must conduct ground-truthed surveys for the above plant species and present its findings in a revised DEIR.

### B. The DEIR Fails to Analyze and Mitigate Potentially Significant Impacts to Trees and Related Wildlife

ABJC-28

Similar to the failure to analyze the potential impacts to rare plant species, the Port fails to include analysis of impacts to the trees on site and the subsequent impacts to wildlife. Ms. Owens states that several status bird species are recorded as occurring within the Project quad in the CNDDB and on EBird including the Swainson's hawk.[151] These special status species are subject to specific protocol surveys provided by the state and federal agencies to ensure accurate data collection including not only presence but also in regards to nesting, foraging, and as a stopover, movement, or migratory corridor status.[152] These required protocols are not followed by the DEIR's proposed mitigation measure MM-BIO-1, where minimally described pre-construction surveys are presented by the DEIR. Ms. Owens states that the measures that the DEIR erroneously claims the measure will completely mitigate impacts to nesting birds, with no supporting evidence.[153]

[151] Owens Comments, p. 17.
[152] Owens Comments, p. 17.
[153] Owens Comments, p. 17.

ABJC-28 (cont.)

MM-BIO-1 states that one method of impact reduction will include a biologist monitoring any onsite active nests to see "if the birds show signs of disruption to nesting activities (e.g., defensive flights/vocalizations directed toward project personnel, standing up from a brooding position, or flying away from the nest)" to determine if buffers utilized to reduce impacts are not effective.[154] MM-BIO-1 does not describe how the biologist's credentials, including appropriate experience as an ornithologist, or independence from the Applicant's employment, will be determined. Additionally, according to Ms. Owens, the behaviors iterated above represent overt signs of harassment that are not allowed under the statutes protecting these species, whether it be the federal Endangered Species Act ("ESA"), California Endangered Species Act ("CESA"), MBTA, or CDFW Code.[155]

Ms. Owens states that any avian stress responses to an observer, and during baseline conditions prior to construction when no observer is present, will be different than stress responses to intense construction activities compounded by the presence of an observer. Additionally, avian behavior during breeding may vary on different days given limiting factors due to weather. Therefore, by relying on overt, immediate, visual indicators of nesting harassment, i.e., negative impacts to breeding success and fecundity, MM-BIO-1 is unscientific and limited in utility.[156] As such MM-BIO-1 fails to successfully mitigate impacts to birds and other special status species, whether they are nesting, hibernating, foraging, roosting, or migratory.

ABJC-29

Ms. Owens states that other special status species not surveyed and not analyzed accurately - including migratory, foraging, and roosting birds, as well as bats, reptiles, and invertebrates, none of which were surveyed by the DEIR - may potentially be impacted directly or indirectly by tree and other habitat removal.

The DEIR is misleading by stating that "In the **unlikely** event that nesting birds, western pond turtle, giant garter snake, and valley elderberry longhorn beetle are found on the project site, implementation of MM-BIO-1 and MM-BIO-2 would ensure that significant impacts to special status species are avoided

[154] DEIR, p. 93.
[155] Owens Comments, p. 18.
[156] Owens Comments, p. 18.

ABJC-29 (cont.)

(emphasis added)."[157] The DEIR describes a minimum of 50 to 60 trees on site. As Ms. Owens points out, it is more **unlikely** that no birds will use any of the tree (or other) habitats to nest onsite.[158]

This is especially true considering the Port's claim that, on or near the Project site, it currently has 15 barn owl nest boxes which have "housed more than 200 new owls."[159] Nest boxes, no matter the size or construct, are used by more species than owls (or whatever the target species is). As Ms. Owens explains, most, if not all, avian species return to nest in the vicinity, and sometimes in very close proximity (within a few feet) to where they were born.[160] Additionally, special status and other raptor species have been observed on 2020 and 2021 within 0.25 to 0.5 mile of the Project, including the red-tailed hawk, red-shoulder hawk, American kestrel, CESA threatened Swainson's hawk, Northern harrier, Cooper's hawk, state Fully Protected White-tailed kite, and sharp-shinned hawk.[161] Ms. Owens' comments provide further evidence that there is a high likelihood various raptors (as well as other bird species noted in eBird and the CNDDB) may use the site for roosting, foraging, as a corridor, or nesting.

In response to potential impacts to special status species, the DEIR states that "MM-BIO-3 would ensure that roosting habitat opportunities are maintained on the project site for the long term."[162] This mitigation measure is misleading. as it reduces the biological role of trees to that of a random roosting spots, while ignoring the other roles trees play in their biotic and abiotic niche in its impact analysis.[163] Ms. Owens states that DEIR does not explain how tree planting will "maintain" roosting sites when it appears several dozen trees are slated for removal and will not be immediately replaced in appropriate size, species, or scope.[164] The DEIR therefore fails to demonstrate that MM-BIO-3 will effectively reduce impacts.

---

[157] DEIR p. 94
[158] Owens Comments, p. 18.
[159] See https://www.portofstockton.com/wildlife/
[160] Owens Comments, p. 18.
[161] Owens Comments, p. 19, *See Also:* https://ebird.org/hotspot/L1318624; https://ebird.org/hotspot/L595195
[162] DEIR, p. 96.
[163] Owens Comments, p 20.
[164] Owens Comments, p. 20.

ABJC-29 (cont.)

The DEIR fails to analyze and mitigate the potentially significant impacts to special status wildlife species at the Project site. The Port must conduct the proper protocol surveys for species that are likely to occur on the Project site and present their findings in a revised and recirculated DEIR.

ABJC-30

Finally, the DEIR's mitigation measure MM-BIO-1 states that the Applicant will seek to obtain Coverage under the SJMSCP or Implement Protective Measures for Nesting Birds, Western Pond Turtle, Giant Garter Snake, and Valley Elderberry Longhorn Beetle.[165] In order to obtain coverage under the SJMSCP:

> [Applicant] will submit an application for coverage to SJCOG within 60 days of project construction. SJCOG will review the proposed project, prepare a staff report, and submit the report to the SJMSCP Habitat Technical Advisory Committee, which determines whether the proposed project will be covered under the SJMSCP.[166]

This leaves mitigation under the assumption of control of outside agency personnel (the SJMSCP's Habitat Technical Advisory Committee ("HTAC")) that make recommendations to script, oversee, and enforce mitigation actions sometime in the future, after public review by way of CEQA has ended, rendering unenforceable.

Mitigation that is outside agency jurisdiction is unenforceable. The courts have held that an agency cannot enforce mitigations over which it has no jurisdiction.[167] In *Tracy First*, the city of Tracy approved an EIR and use permit to construct a 95,900-square-foot grocery store, but failed to incorporate mitigation to reduce traffic impacts outside of city limits. The court held that the city could not have included such mitigations in the grocery store EIR because the city had no plan in place or jurisdiction to enforce them. Similar to *Tracy First,* the Port's reliance on mitigation measures that are outside of the control of the Port violates CEQA's requirements that mitigation measures be "fully enforceable."[168]

---

[165] DEIR, p. 92.
[166] DEIR, p. 92.
[167] See *Tracy First v. City of Tracy* (2009) 177 Cal. App. 4th 912, 937.
[168] PRC § 21004; 14 CCR § 15126.4(a)(2); *Tracy First* at 938.

ABJC-30 (cont.)

The Port must conduct the appropriate protocol surveys on the Project site and develop effective, enforceable mitigation measures to reduce the Project's potentially significant impacts to biological resources.

## VIII. THE DEIR FAILS TO ANALYZE AND ADDRESS INCONSISTENCIES WITH THE POLICIES OF THE CITY OF STOCKTON'S GENERAL PLAN

ABJC-31

Under CEQA, a significant environmental impact results if there is a conflict with any land use plan, policy, or regulation adopted for the purpose of avoiding or mitigating an environmental effect.[169] The DEIR acknowledges inconsistencies with the City of Stockton General Plan associated with the Project's GHG and climate impacts, but fails to take adequate feasible action to address these impacts and remedy the inconsistencies.

In particular, General Plan Policy TR-3.2 requires new development and transportation projects to reduce travel demand and GHG emissions and support electric vehicle charging.[170] While the DEIR has some measures to reduce GHG emissions, as the DEIR admits, they do not reduce GHG emission below significant levels and, as explained above, there are several feasible mitigation measures that the DEIR currently fails to adopt. Also, the DEIR says nothing about electrical vehicle charging aside from vague handwaving that the Project plans "should" identify which parking spaces could be upgraded to accommodate electric vehicle charging.[171] The DEIR must commit to more effective and feasible GHG emissions measures, including electric vehicle charging infrastructure, if it is to claim compliance with this General Plan Policy.

Furthermore, the DEIR fails to even consider other inconsistencies with the General Plan. General Plan Policy SAF-4.1 requires reduction of air impacts from mobile and stationary sources of air pollution, including through entering into VERAs with SJVAPCD.[172] The DEIR fails to address this entirely. Yet, as our comments show, there is substantial evidence to show that the Port's assertions about these air quality improvement measures are baseless. The inclusion of these in the Stockton General Plan's clean air policies is additional evidence of the Port's

---

[169] *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 783–784 (Project's inconsistencies with local plans and policies constitute significant impacts under CEQA).
[170] DEIR, p. 131.
[171] DEIR, p. 198.
[172] Envision Stockton: 2040 General Plan (December 4, 2018), p. 5-24 (Policy SAF-4.1).

ABJC-31 (cont.)

failure to adopt all feasible and effective mitigation measures to reduce significant environmental impacts. The DEIR's conflict with the General Plan is additional evidence of significant impacts that the Port has failed analyze, in direct contravention of the requirements of CEQA.[173] A revised EIR is necessary to commit to all feasible mitigation and remedy inconsistencies with the City of Stockton's clean air goals.

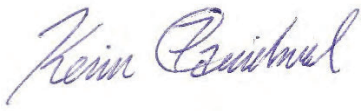
## IX. CONCLUSION

ABJC-32

For the reasons discussed above, the DEIR for the Project remains wholly inadequate under CEQA. It must be thoroughly revised to provide legally adequate analysis of, and mitigation for, all of the Project's potentially significant impacts. These revisions will necessarily require that the DEIR be recirculated for public review. Until the DEIR has been revised and recirculated, as described herein, the Port may not lawfully approve the Project.

Thank you for your attention to these comments. Please include them in the record of proceedings for the Project.

Sincerely,

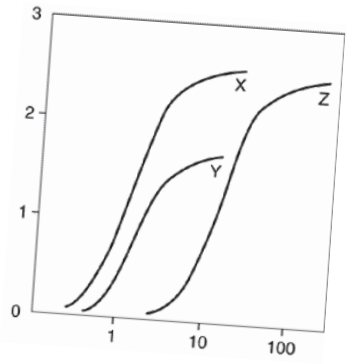


Kevin T. Carmichael

KTC:ljl

[173] See *Sierra Club,* 6 Cal.5th at 516–519 (holding that omission of a required discussion or a patently inadequate analysis renders an EIR deficient as an informational document).

# EXHIBIT A




Clark & Associates
Environmental Consulting, Inc.

**OFFICE**
12405 Venice Blvd
Suite 331
Los Angeles, CA 90066

**PHONE**
310-907-6165

**FAX**
310-398-7626

**EMAIL**
jclark.assoc@gmail.com

February 24, 2022

Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080

**Attn: Mr. Kevin Carmichael**

**Subject: Comments on Draft Environmental Impact Report TC NO. CAL. Development Warehousing and Distribution Facility Project State Clearinghouse Number: 2021080499**

Dear Mr. Carmichael:

At the request of Adams Broadwell Joseph & Cardozo (ABJC), Clark and Associates (Clark) has reviewed materials related to the above referenced project.

Clark's review of the materials in no way constitutes a validation of the conclusions or materials contained within the plan. If we do not comment on a specific item, this does not constitute acceptance of the item.

**General Comments:**

According to the DEIR[1], the proposed project is located on a 102-acre site on the Port's West Complex and involves the development of a new distribution warehouse and remediation of existing impacted soils. Under the proposed project, the Port would issue a lease to TC NO. CAL. Development to construct and operate a new warehouse facility and associated infrastructure over approximately 60 acres of the project site to receive, store, and distribute bulk building products and consumer goods. Construction would also include remediation of contaminated soils from past U.S. Department of the Navy (Navy) activities.

[1] DEIR. 2022. Pg ES-2

Following construction, TC NO. CAL. Development would sublease the warehousing facility to a commercial operator for distribution services.

Construction elements include a 655,200-square-foot (sf) warehouse, 293,951-sf outdoor storage area, employee parking, trailer parking, trailer storage, truck docks, rail service and spurs, detention ponds, water tank and pumphouse, guard house, and minor ancillary structures on the existing vacant area. The warehouse would be used for receiving, storing, and distributing bulk building products and consumer goods (warehousing or wholesaling/distribution).

Operations are expected to begin following warehouse construction and would involve truck and rail deliveries of commercial products. As part of the proposed project, remediation would occur in areas throughout the 102-acre project site, which includes the proposed 60-acre site on which the warehouse would be developed, as well as approximately 42 acres to the east and west. The remedial site is referred to as Site 47.


**Figure ES-1**
**Project Site and Vicinity**
Draft Environmental Impact Report
TC NO. CAL. Development Warehousing and Distribution Facility Project

Contaminants detected within various portions of Site 47 include arsenic, polycyclic aromatic hydrocarbons (PAHs), and organochlorine pesticides (OCPs) including DDT. The contaminants in soil and sediment were determined to pose a risk to human health and wildlife and therefore require remediation. Based on an assessment of human health and ecological risk, the primary drivers of risk at Site 47 are the presence of arsenic in soil and OCPs in sediment.

**Specific Comments:**

1. **The Port's Remedial Strategy To Consolidate The 57,000 Cubic Yards Of Contaminated Sediment And Soil Will Create A Potential Legacy Waste Issue That Will Need To Be Addressed By Future Agencies/Parties and Must Be Analyzed in the DEIR.**

The decision to consolidate hazardous waste at the Port into a 57,000 cubic yard waste containment area with a "durable cover" does not remediate the hazardous waste issues, but instead creates a larger, more concentrated source of pollutants on site that may later impact groundwater beneath the site. Without an engineered containment cell to prevent the leaching or infiltration of contaminants into groundwater through the subsurface, the remedial step described in the DEIR will only delay the inevitable need to alter the properties of the contaminants of concern or isolate the materials to prevent their migration in the environment.

A review of the Revised Draft Site 47 Remedial Investigation/Focused Feasibility Study For Soil Rough And Ready Island Port Of Stockton prepared by Geosyntec in June, 2021, demonstrates that contaminants "detected within various portions of Site 47 include metals (primarily arsenic), polycyclic aromatic hydrocarbons (PAHs), and organochlorine pesticides (OCPs). The contaminants in soil and sediment were determined to pose a risk to human health and wildlife, and therefore require remediation. Based upon an assessment of human health and ecological risk, the primary drivers of risk at Site 47 are the presence of arsenic in soil and OCPs in sediment."[2] Remedial alternatives evaluated in the RI/FS included:

- Alternative 1 – No Action.
- Alternative 2 – Existing Durable Cover, Fence, and Institutional Controls (ICs).

[2] Geosyntec. 2021. Revised Draft Site 47 Remedial Investigation/Focused Feasibility Study For Soil Rough And Ready Island Port Of Stockton. Dated June 21, 2021. Pg ES-1

- Alternative 3 – Excavation with On-Site Consolidation, Durable Cover, and ICs.
- Alternative 4 – Excavation (to 2 feet) with Off-Site Disposal (Backfilled with Clean Fill) and ICs.
- Alternative 5 – Expanded Excavation with On-Site Consolidation, Expanded Durable Cover, and ICs.

Only one of the alternatives identified in the report would remove the contaminants from Site 47 permanently, thus reducing the long term potential for exposure to workers on site and preventing the migration of materials from Site 47 into the groundwater beneath the site (Alternative 4). When comparing the effectiveness of the alternatives, Geosyntec noted that for Alternatives 3 through 5, the three are ranked highly in terms of overall protectiveness, compliance with ARARs, and long-term effectiveness and permanence. Alternatives 3 and 5 outrank Alternative 4 based on cost.[3]

The Site location is subject to a Pre-Decisional Land Use Covenant (LUC) that specifies that the Property may not be used in a manner that causes the covering or disturbing of groundwater monitoring wells, or any use of the Property in a manner that restricts access to groundwater monitoring wells; that there will be no alteration of groundwater conditions within the Property, through activities such as construction of any well, extraction, use or consumption of groundwater from wells within the boundary of the Property, use of any groundwater within the boundary of the property, construction or creation of any groundwater recharge area, unlined surface impoundments or disposal trenches, unless specifically approved by the State; or any use that would restrict investigation activities, remedial actions, or long-term maintenance and operations.[4] The description provided in the DEIR that the Port will allow the movement of the 57,000 cubic yard waste containment area with a "durable cover" without a clear description of the interior lining to prevent the migration of the contaminants into the subsurface and groundwater clearly contradicts the Pre-Decisional LUC regarding the use of unlined surface impoundments or disposal trenches.

The Port must clearly address the concerns about moving contaminated soils, the potential for contaminated soils to migrate off-site via fugitive dust transfer mechanisms, and determine the potential health impacts on workers at adjacent properties or residents down wind of the remediation

[3] Geosyntec. 2021. Revised Draft Site 47 Remedial Investigation/Focused Feasibility Study For Soil Rough And Ready Island Port Of Stockton. Dated June 21, 2021. Pg 51

[4] Geosyntec. 2021. Revised Draft Site 47 Remedial Investigation/Focused Feasibility Study For Soil Rough And Ready Island Port Of Stockton. Dated June 21, 2021. Pg 3

efforts. The Port must address these concerns in a revised EIR.

**2. The Port's DEIR Concludes That The Cumulative Impacts From The Development of The Project With Other Projects In The Vicinity Will Result In Cumulatively Significant Impacts, Yet The Mitigation Measures Outlined In The DEIR Will Have No Effect On The Regional Degradation Of Air Quality.**

In the conclusions to the Cumulative Impacts Analysis (Section 4.2.1 of the DEIR), the Port concludes that Project resides in an area that in an "extreme" nonattainment for 8-hour ozone ($O_3$) under the NAAQS. The DEIR further states that, under the California Ambient Air Quality Standards (CAAQS), the Port Of Stockton is in a nonattainment area for $O_3$, particulate matter less than 10 microns ($PM_{10}$) and PM less than 2.5 microns ($PM_{2.5}$). The San Joaquin Valley has some of the highest PM concentrations in the State. [5] Projects emitting $O_3$, $PM_{10}$ and $PM_{2.5}$ would contribute to the nonattainment levels and adverse health effects in the region.[6] The DEIR notes that Projects 1 through 3, 10, 23, and 24 in Table 27 would all occur in the same general area as the proposed project and would generate new rail, truck, and on-terminal equipment emissions that may affect the same sensitive receptors.

[5] Port of Stockton. 2022. Draft Environmental Impact Report (DEIR) TC NO. CAL Development Warehousing and Distribution Facility Project State Clearinghouse Number 2021080499. page 225.

[6] Port of Stockton. 2022. Draft Environmental Impact Report (DEIR) TC NO. CAL Development Warehousing and Distribution Facility Project State Clearinghouse Number 2021080499. page 224.

**Table 27**
**Related Present and Future Projects Considered in the Cumulative Impact Analysis**

| Reference No. | Project Name | Location | Project Description | Project Status |
|---|---|---|---|---|
| 1 | Port of Stockton West Complex Development Plan: Marine Terminal Development | Port of Stockton | Marine terminal-related development associated with the Port's West Complex | In progress |
| 2 | Port of Stockton West Complex Development Plan: Commercial and Industrial Park Development | Port of Stockton | Upland commercial development associated with the Port's West Complex | In progress |
| 3 | Port of Stockton West Complex Development Plan: Infrastructure Improvements | Port of Stockton | Industrial development associated with the Port's West Complex | In progress |
| 10 | Nautilus Data Technology Data Storage Facility | Port of Stockton | Construction and operation of a waterborne data center facility at the West Complex | In progress |
| 23 | Denmar Natural Soda Ash Terminal | Port of Stockton | A new terminal to receive natural soda ash by rail and transport it out by ship | EIR Addendum certified; permitting in progress |
| 24 | Port of Stockton Rail Bridge Replacement and Rail Improvements | Port of Stockton | Replacing functionally obsolete rail bridge with a double-track rail bridge, adding a second Port lead track, constructing new yard track on the East Complex, and constructing a new rail classification yard on the West Complex to increase the overall efficiency of train operations within the Port | IS/MND certified; permitting not yet commenced |

The DEIR concludes that the majority of emissions from the proposed project and other cumulative projects would originate from non-road construction equipment and mobile sources. [7] The Port fails to create a set of mitigation measures that will have a significant impact on the emissions. Since the impact will be realized far beyond the confines of the Project site and immediate surroundings, the Port must revise its mitigation measures to reduce the emissions below the SJV-APCD's significance thresholds in a revised EIR.

[7] Port of Stockton. 2022. Draft Environmental Impact Report (DEIR) TC NO. CAL Development Warehousing and Distribution Facility Project State Clearinghouse Number 2021080499. page 226.

## 3. Acute Health Risks Of Diesel Particulate Matter Were Not Evaluated In The Construction Health Risk Analysis Or The Operational Health Risk Analysis

No acute risk was analyzed for in the DEIR. Diesel particulate matter (DPM) will be emitted from on-road and off-road equipment during Project construction and operation. Acute health impacts occur over a 1-hour exposure time. OEHHA has not established an acute reference exposure level (REL) for DPM, but other agencies have. The absence of an OEHHA acute risk exposure level does not excuse the Applicant from evaluating acute health risks. In the absence of an OEHHA significance threshold, it is standard practice to conduct a literature search to determine if other authorities have established a threshold. Since OEHHA last evaluated health impacts of DPM in 1998,[8] substantial additional research has been conducted on acute health impacts of DPM.[9] Based on this more current research, Canada recently established an acute REL for DPM of 10 $\mu g/m^3$ to protect against adverse effects on the respiratory system.[10] There is no regulation or guidance requiring that only OEHHA RELs be used be used in California health risk assessments. The DEIR must be revised and recirculated to include an acute health risk assessment for both Project construction and operation.

## 4. The Port Failed To Quantify All Of The Health Impacts From Project Emissions On The Surrounding Community.

The Port must assess the air quality impacts for *all* of the toxic air compounds that will be released during the construction and operational phases of the project. CARB[11] defines diesel exhaust as a complex mixture of inorganic and organic compounds that exists in gaseous, liquid, and solid phases. CARB and U.S. EPA identify 40 components of the exhaust as suspected human carcinogens,

---

[8] Findings of the Scientific Review Panel on the Report on Diesel Exhaust, 1998; https://www.arb.ca.gov/toxics/dieseltac/de-fnds.pdf.

[9] See, e.g., A. A. Mehus and others, Comparison of Acute Health Effects from Exposures to Diesel and Biodiesel Fuel Emissions and references cited therein, *Journal of Occupational and Environmental Medicine*, v. 57, no. 7, pp. 705-712, July 2015; https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4479787/.

[10] Government of Canada, Human Health Risk Assessment for Diesel Exhaust, March 4, 2016; http://publications.gc.ca/collections/collection_2016/sc-hc/H129-60-2016-eng.pdf.

[11] CARB. 1998. Report to the Air Resources Board on the Proposed Identification of Diesel Exhaust as a Toxic Air Contaminant, Part A, Public Exposure To, Sources and Emissions of Diesel Exhaust In California. April 22, 1998. Pg A-1.

including formaldehyde, 1,3-butadiene, and benzo[a]pyrene. The inhalation unit risk factor identified by OEHHA for use in risk assessments is for the particulate matter (DPM) fraction of diesel exhaust and not the vapor phase components identified by CARB and U.S. EPA.

The Port is only quantifying the health risk from one TAC associated with the exposure to operational TAC emissions. There is a notable precedent requiring a quantitative analysis of all TACs from diesel exhaust in CEQA documents. Moreover, the absence of this analysis renders the DEIR's health risk analysis incomplete. In a 2017 Air Quality Technical Report[12] submitted in support of a Draft EIR for the Turk Island Landfill Consolidation and Residential Subdivision[13], proponents accounted for the gaseous phase of diesel emission and detailed the speciated diesel total organic gas (TOG) emissions along with the DPM emissions for all construction equipment. The speciated diesel TOG emissions and DPM emissions were utilized in dispersion modeling to identify the maximally exposed individual sensitive receptor (MEISR) of the project to determine the health risks associated with all sources of air toxins from the construction phase of the project. This is a common and feasible analysis that is routinely performed for development projects like the TC NO. CAL. Development Warehousing and Distribution Facility Project.

Here, the Port's analysis ignores the presence of TACs being emitted with diesel exhaust during the construction and operational phases of the project without making any attempt to quantify the impacts. This omission is a continuing flaw that must be addressed by the Port. The results should then be presented in a revised DEIR.

## 5. The Port's Air Quality Analysis Underestimates Emissions and Omits Relevant Emissions Input Data.

The DEIR states that the California Air Resources Board's (CARB) CalEEMod, Version

[12] Ramboll Environ. 2017. Air Quality Technical Report Turk Island Landfill Consolidation And Residential Subdivision Project. Prepared For City of Union City, Union City, CA. Prepared by Ramboll Envion US Corporation, San Francisco, CA August, 2017. https://www.unioncity.org/DocumentCenter/View/1867/Turk-Island---App-D---AQ-Emissions-Report?bidId=

[13] Union City. 2018. Draft Environmental Impact Report (DEIR) Turk Island Landfill Consolidation And Residential Subdivision Project. SCH Number 20008112107. Dated 3/15/2018. https://www.unioncity.org/DocumentCenter/View/1863/Turk-Island-DEIR?bidId=

2016.3.2 was used to quantify construction-related and operational emissions. [14] On June 1, 2021, the latest version of CalEEMOD, Version 2020.4.0 was released for public use.[15] Several air districts have provided access to Version 2020.4.0 since that date.[16] The updates to the model include additional analysis and emissions factors which were added to ensure compliance with recent changes in law:

1. Incorporation of the latest EMFAC2017 data from CARB (https://www.arb.ca.gov/emfac/2017/).
2. Addition of CARB's EMFAC2017 N2O emissions.
3. Inclusion of the 2019 update to Title 24 (building efficiency % reduction, see http://www.energy.ca.gov/title24/2019standards/index.html).
4. Incorporation of the ITE 10th edition trip rate data for land uses previously programmed into the model.
5. Utility Intensity Factors for greenhouse gases were updated.

The updates in version 2020.4.0 provide a higher level of accuracy regarding emission estimates for the project impacts compared to older versions of the CalEEMOD model, as required by existing law. Instead, the Port used outdated modeling that does not correspond to current regulations that are applicable to the Project. As a result, the DEIR's conclusions regarding the Project's air quality impacts are not adequately supported.

Given that the DEIR was released for public review in January 2022, there was sufficient time for the Port to run the CalEEMOD analyses of the Project using the current version of the model. The Port must re-run the CalEEMOD analyses and present them in a revised DEIR in order to ensure that all elements of the air quality analyses required by current laws are performed for the project.

**6. The Port Fails To Quantify The Impact That Transportation Refrigeration Units (TRUs)**

---

[14] Port of Stockton. 2022. Draft Environmental Impact Report (DEIR) TC NO. CAL Development Warehousing and Distribution Facility Project State Clearinghouse Number 2021080499. Pg 67

[15] http://www.aqmd.gov/caleemod/download-model.

[16] See e.g. BAAQMD (https://www.baaqmd.gov/plans-and-climate/california-environmental-quality-act-ceqa/ceqa-tools( (NEW! CalEEMod 2020.4.0 – Statewide land-use emissions computer model designed to quantify potential criteria pollutant and GHG emissions associated with both construction and operations from a variety of land-use projects"); SCAQMD (http://www.aqmd.gov/caleemod/faqs, http://www.aqmd.gov/caleemod/download-model) (last visited 2/24/22).

**Will Have On Air Quality Impacts.**

The DEIR's air quality assessment describes the project as a bulk distribution warehouse. The DEIR does not include any measures prohibiting installation of refrigeration and cold-storage by building tenants, and does not otherwise preclude the use of the warehouse as a refrigerated warehouse or preclude the use of transportation refrigeration units (TRUs) onsite. Absent such restrictions, it is reasonably foreseeable that the Project could subsequently be used to support refrigeration-dependent uses. These impacts must therefore be analyzed in the DEIR. A clear and accurate analysis of the impacts would include not just the emissions from refrigeration units on site, but would also include diesel particulate matter emissions from TRUs installed on insulated cargo vans, rail cars and shipping containers used in transporting fresh produce, meat, dairy products, beverages, film, prescription drugs, and other temperature sensitive goods. In addition to the health impacts from exposure to DPM that must be assessed in the analysis, the impacts on greenhouse gas (GHG) emissions must be included in the analysis.

**7. The Port's Mitigation Measure MM-AQ-4 For Air Quality Will Not Substantially Change The Emission Of NOx, A Criteria Pollutant, From The Project Site**

In Section 3.2.3.4.2 of the DEIR, the Port states that "operational emissions would exceed annual SJVAPCD NOx threshold in the SJVAB. NOx emission would be generated by truck operation on terminal and travel and rail operation on terminal and travel. Accordingly, impacts would be considered significant." The Port lists 5 mitigation measures to reduce construction and operational emissions, including MM-AQ-4: Use of Clean Trucks. MM-AQ-4 states that TC NO. CAL Development will encourage its customers to use clean trucks (defined as model year 2017 or newer) to transport cargo. This measure clearly is voluntary and has no regulatory teeth. Yet, the Port has assumed that there will be enough voluntary use of newer trucks that they indicate there will be a 3.6 ton decrease in annual NOx emissions from delivery trucks. This 41% decrease in NOx emissions from the voluntary use of newer vehicles ignores the reality of the existing fleet of trucks in use. The Port cannot assume that the fleet of trucks servicing the facility will actually be 2017 or newer absent supporting evidence verifying availability. The Port must address the significant gap in the voluntary requirements in MM-AQ-4 and the reductions assumed in the DEIR.

Other recent Port projects have used Voluntary Emissions Reduction Agreements (VERAs) with the San Joaquin Valley Air Pollution Control District (SJVAPCD) as a mitigation measure to reduce NOx emissions (e.g. Contanda Project),[17] VERAs are voluntary mitigation agreements designed to provide developers with enforceable and legally defensible means to quantify and mitigate emission increases beyond emission reductions required by applicable laws and regulations. A VERA is a mitigation measure by which the project proponent provides pound-for-pound mitigation of air emissions increases through a process that funds and implements emission reduction projects administered through the SJVAPCD's emission reduction incentive grant programs. A VERA can be implemented to address air quality impacts from both construction and operational phases of a project. The emission reductions secured through VERAs are "surplus" of existing regulations, achieving reductions earlier or beyond those required by regulations.[18]

Entering into a VERA with the SJVAPCD would be a feasible method of further reducing the Project's unmitigated NOx emissions. Since the primary source of NOx emissions from the Project are associated with heavy and medium-duty trucks utilizing the Project site, the Port could enter into a VERA designed to fund grants to businesses to purchase new cleaner emitting trucks. As a condition of such a VERA grant, the Port must include contractual language that the trucks purchased would be primarily used at the Port site. Allowing purchases of vehicles without the restriction to the Port site would do little to ensure that emissions from the Project Site are offset by the VERA grant, actually mitigating the emissions from the Project.

## 8. There Are A Number Of Feasible Mitigation Measures That Could Further Reduce Operational NOx and GHG Emissions That Were Not Explored In The DEIR

Mitigation measures that have previously been recommended by the California Air Resources Board and the Air Quality Management Districts in California to reduce operational $NO_x$ and GHG emissions not included in the DEIR by the Port include:

---

[17] See 9/19/2019, SJVAPCD Action Minutes Approving Voluntary Emission Reduction Agreement With Contanda Terminals Llc To Mitigate Air Quality Impacts From The Contanda Renewable Diesel Bulk Liquid Terminal Development Project In The Port Of Stockton, available at https://www.valleyair.org/Board_meetings/GB/agenda_minutes/Minutes/2019/september.pdf.

[18] See e.g. SJVAPCD 2020 Annual Report Re Indirect Source Review Program, available at https://www.valleyair.org/ISR/Documents/2020-ISR-Final-Annual-Report.pdf.

1. Include contractual language in tenant lease agreements that requires tenants to use the cleanest technologies available, and to provide the necessary infrastructure to support zero-emission vehicles and equipment that will be operating on site.
2. Include contractual language in tenant lease agreements that requires all TRUs entering the project site be plug-in capable.
3. Include contractual language in tenant lease agreements that requires future tenants to exclusively use zero-emission light and medium-duty delivery trucks and vans.
4. Include contractual language in tenant lease agreements requiring all TRUs, trucks, and cars entering the Project site be zero-emission.
5. Include contractual language in tenant lease agreements that requires all heavy-duty trucks entering or on the project site to be model year 2019 or later, expedite a transition to zero-emission vehicles, and be fully zero-emission beginning in 2030.
6. Include contractual language in tenant lease agreements that requires the tenant be in, and monitor compliance with, all current air quality regulations for on-road trucks including CARB's Heavy-Duty (Tractor-Trailer) Greenhouse Gas Regulation,[19] Periodic Smoke Inspection Program (PSIP),[20] and the Statewide Truck and Bus Regulation.[21]
7. Include contractual language in tenant lease agreements restricting trucks and support equipment from idling longer than five minutes while on site.
8. Include rooftop solar panels for each proposed warehouse to the extent feasible, with a capacity that matches the maximum allowed for distributed solar connections to the grid.
9. Have truck routes clearly marked with trailblazer signs, so that trucks will not enter residential areas.

---

[19] In December 2008, CARB adopted a regulation to reduce greenhouse gas emissions by improving the fuel efficiency of heavy-duty tractors that pull 53-foot or longer box-type trailers. The regulation applies primarily to owners of 53-foot or longer box-type trailers, including both dry-van and refrigerated-van trailers, and owners of the heavy-duty tractors that pull them on California highways. CARB's Heavy-Duty (Tractor-Trailer) Greenhouse Gas Regulation is available at: https://www.arb.ca.gov/cc/hdghg/hdghg.htm.

[20] The PSIP program requires that diesel and bus fleet owners conduct annual smoke opacity inspections of their vehicles and repair those with excessive smoke emissions to ensure compliance. CARB's PSIP program is available at: https://www.arb.ca.gov/enf/hdvip/hdvip.htm.

[21] The regulation requires that newer heavier trucks and buses must meet particulate matter filter requirements beginning January 1, 2012. Lighter and older heavier trucks must be replaced starting January 1, 2015. By January 1, 2023, nearly all trucks and buses will need to have 201 0 model year engines or equivalent. CARB's Statewide Truck and Bus Regulation is available at: https://www.arb.ca.gov/msprog/onrdiesel/onrdiesel.htm

10. Limit the daily number of trucks allowed at the Proposed Project to levels analyzed in the CEQA document. If higher daily truck volumes are anticipated to visit the site, the Port as the Lead Agency should commit to re-evaluating the Proposed Project through CEQA prior to allowing this land use or higher activity level.
11. Ensure that any check-in point for trucks is well inside the Proposed Project site to ensure that there are no trucks queuing outside of the facility.
12. Establish overnight parking within the industrial building where trucks can rest overnight.
13. Establish area(s) within the Proposed Project site for repair needs.

## Conclusion

The facts identified and referenced in this comment letter lead me to reasonably conclude that approval of the Port's DEIR will result in significant impacts to workers on site and to the surrounding community.

Sincerely,

James Clark, Ph.D.

# EXHIBIT B

February 23, 2022

Kevin T. Carmichael
Adams Broadwell Joseph & Cardozo
520 Capitol Mall, Suite 350
Sacramento, CA 95814
kcarmichael@adamsbroadwell.com
(916) 444-6201

Subject: Comments on the Draft Environmental Impact Report for the TC NO. CAL. Development Warehousing and Distribution Facility Project State Clearinghouse Number: 2021080499

---

Dear Mr. Carmichael,

This letter contains my comments on the Draft Environmental Impact Report (DEIR) biological resources impact analysis for the TC NO. CAL. Development Warehousing and Distribution Facility Project (Project) to be developed by TC NO. CAL. Development (Applicant) pending approval by the Port of Stockton (Port).

I have reviewed the DEIR, its technical appendices, and available reference documents related to biological resources. Based on my decades of expertise in this arena, it is my professional opinion that the DEIR fails as an informational document under CEQA and lacks substantial evidence to support its conclusions that the Project's significant impacts to wildlife and related habitats would be mitigated to the greatest extent feasible. Below is a description of some of the omissions and inadequacies supporting this conclusion.

**I. DECLARATION OF EXPERTISE**

I am a conservation biologist and environmental consultant with 30 years of professional experience in natural resource management and wildlife ecology. I hold a M.S. degree in Environmental Science and a

M.S. degree in Ecology. My teaching experience includes instruction since 1991 at various colleges including San Diego State University, Palomar College, Boston University, and Imperial Valley College. I am President of an independent environmental consultancy I founded in 1993, contracted for work in the U.S. and Latin America. I have served as a biological resource expert on over 150 projects involving pipelines, water, residential and commercial developments, mines, and industrial scale energy projects: on private, public, and military lands.

I have experience studying the species and habitats discussed in the DEIR. The scope of work I have conducted as an independent environmental contractor, supervisor, and employee has involved assisting clients to evaluate and achieve environmental compliance, restoration, mitigation, and research as related to biological resources. My conservation and natural history research on endangered species in Latin America have received awards including the National Geographic Research and Exploration Award, and the National Commission for Scientific and Technological Research Award. My research has been featured on National Geographic and Discovery Channel documentaries; in 2017 I received a Special Commendation for contributions to environmental conservation from the City of San Diego. Comments herein are based upon first-hand observations, review of the environmental documents prepared for the Project, review of scientific literature pertaining to biological resources known to occur in the Project area, consultation with other biological resource experts, and the knowledge and experience I have acquired working in the field of natural resources research and management.

**II. PROJECT DESCRIPTION**

The Project is a proposed development of a new distribution facility and related activities on a 102-acre site on the Port's West Complex a.k.a. Rough and Ready Island. The Applicant proposes construction of a 655,200-square-foot (sf) warehouse, 293,951 sf outdoor storage area, employee parking, trailer parking, trailer storage, truck docks, rail service and spurs, detention ponds, water tank and pumphouse, guard house, and ancillary structures. The proposed project would also include remediation of contaminated soils from past Navy activities. The DEIR states that remediation in areas throughout the project site will include movement and consolidation of contaminated soil. Contaminants requiring remediation arsenic, PAHs, and OCPs, including DDT.

**As written the DEIR fails to adequately:**

- Describe the Project baseline,
- Analyze the significant environmental impacts to biological resources of the Project, and
- Propose and describe sufficient mitigation measures to reduce the various potentially significant impacts to less than significant.

**III. THE DEIR FAILS TO PROVIDE ESSENTIAL, ACCURATE DETAILS OF THE PROJECT BASELINE**

**A. Misleading Terms Minimize the Project's Biological Value**

The DEIR is misleading by repeatedly asserting that due to the Project site's "degraded condition" and proximity to industrialized development it has little likelihood for any wildlife present onsite, including all special status species mentioned. What it fails to mention is that is regionally located in close proximity to high value terrestrial and aquatic habitats occupied by a wide variety and richness of species; endangered, rare, protected, and otherwise. These fragmented but important habitats located in the midst of agricultural, urban, suburban, and industrial development serve as an oasis for many species and populations. Indeed, eBird observations from less than a quarter mile away note flocks of approximately 900 snow geese and 600 greater white-fronted gees in just one survey in 2021, as well as special-status species including the Swainson's hawk.[1]

The Port website states that "the Port of Stockton plays host to a wide array of plant and animal life, and, while commerce and trade are the primary objectives of the Port, the need to be good stewards of the environment is taken very seriously."[2] To underscore this the Port describes how it has erected dozens of bird and bat boxes in the vicinity of the Project. As such the Project has the potential to be utilized by a variety of wildlife, regardless if habitat onsite is lacking in high value breeding habitat for a given species. The Project lies adjacent to several high value wetlands to the north, south, and east, and may also be used as a corridor, stopover, and foraging resource by a host of species.

[1] EBird Hotspots: Stockton WTP. 2022**.** Retrieved from https://ebird.org/hotspot/L1318624; *See also* EBird Hotspots: Louis Park. 2022. Retrieved from https://ebird.org/hotspot/L595195

[2] Port of Stockton: Wildlife. (n.d.). Retrieved from https://www.scribbr.com/category/dissertation/ https://www.portofstockton.com/wildlife/

**B. Incomplete Descriptions of the Project Baseline**

The DEIR is replete with omissions and indeterminate descriptions of the Project's biological components, to the extent that upon review it appears the Applicant expedited submission of the DEIR before completion. As a result the environmental setting as presented is lacking in standard necessary detail for the public to determine with accuracy the scope of the Project actions and their impacts on the biological resources present on and in proximity to the site. Key examples of such omissions are as follows:

First, the DEIR presents a subjective, incomplete description of the project site regarding the biological baseline status, where in lieu of quantitative or ecologically standardized terminology it relies on unscientific phrases such as "highly industrialized,"[3] "largely vacant,"[4] "ruderal", partly covered with "lawn" and "some native and non-native trees". The DEIR refers to bordering habitat and riparian areas as "more natural", another undefined thus meaningless term where scientific detail or definition is lacking. It states that "emergent wetlands" are present along existing drainage ditches; but downplays their significance calling them "sparse".

Based upon these inadequate descriptors, the DEIR concludes the site's "degraded condition and existence in an industrialized area make it unlikely that most terrestrial special status species listed in Appendix E would be present."[5] and "overall, there is limited habitat for wildlife at the project site."[6] The term "limited" is misleading in the context of biological resource impact analysis; where a direct, indirect, or cumulative impact to just one or a few rare individuals or habitats can be significant. These terms are unscientific and lacking in quantitative and qualitative detail necessary for adequate analysis. As a result, the DEIR's impact conclusion are unsupported, and mitigation protocols cannot be adequately scripted or appropriately identified (e.g. with adequate scope, performance or success criteria, etc.) based on the terminology used in the DEIR.

[3] DEIR p. ES-9
[4] DEIR p. 49
[5] DEIR p. 83
[6] DEIR p. 81

Second, the DEIR presents conflicting information regarding the potential for wildlife. For example, the DEIR first explains that the Port land in the region of the Project site provides abundant barn owl nesting habitat stating that "the Port installed barn owl nest boxes throughout the East and West Complexes to provide nesting habitat for barn owls (*T. alba*). The Port currently has 15 barn owl nest boxes, which have housed more than 200 new owls. The nest boxes provide valuable and safe habitat and natural rodent control, and two boxes are outfitted with streaming cameras that allow the public to learn more about Port wildlife. The Port also maintains bat roosting boxes, which provide bat habitat and natural insect control."[7] The DEIR also explains that the Port land in the region of the Project site provides bat habitat, stating, "In addition to the Port's very successful Owl Nest Box Program, the Port established its Bat Roosting Box Program in 2012. All bats in California are protected. The goal of the program is to provide suitable roosting sites and encourage the bats to raise young and establish themselves in the area."[8]

For owls, bats, and their prey to exist in and/or around the Project site there must be adequate habitat for foraging, safe movement (through corridors), and other biotic and abiotic factors contributing to their reproductive success. The Port's own evidence conflicts with the DEIR's attempt to subjectively describe the site as not supportive of wildlife, a proposition which lacks evidentiary support in the DEIR. Meanwhile, there are an abundance of data that demonstrate use of urban and so-called industrialized areas by a host of species, including special status species noted recently (2021) near the Project site in the California natural Diversity Database (CNDDB), and on EBird, for breeding, foraging, as a stopover, and a migratory corridor.[9]

Third, the DEIR provides no illustrative maps of habitats within or bordering the Project, including the standard maps that illustrate scientifically recognized vegetation communities (utilizing geospatial and ecological data standards, i.e. scope, acreage, type, and location) necessary for mitigation and habitat remediation. There are no maps or descriptions of the vegetation communities present as described by

[7] Port of Stockton: Wildlife. (n.d.) Retrieved from https://www.scribbr.com/category/dissertation/ https://www.portofstockton.com/wildlife/
[8] *Ibid.*
[9] CDFW (California Department of Fish and Wildlife), 2021. CNDDB Rarefind Stockton West Quadrangle. Retrieved from https://apps.wildlife.ca.gov/bios/?tool=cnddbQuick;
*See also* EBird Hotspots: Stockton WTP. 2022**.** Retrieved from https://ebird.org/hotspot/L1318624; *See also* EBird Hotspots: Louis Park. 2022. Retrieved from https://ebird.org/hotspot/L595195

the U.S. National Vegetation Classification System[10] and the California Vegetation Classification and Mapping Standards,[11] created in part by the California Department of Fish and Wildlife (CDFW) and California Native Plant Society (CNPS). Scientifically defined ecological vegetation communities are standardized to be indicative of various biological factors, including vegetation where ecological processes primarily determine floral and faunal species and reflect other biotic and abiotic site characteristics, plus related abiotic characteristics including aspects of water cycles, fire patterns, and susceptibility to climate change and drought.

Descriptions of vegetation communities using universally adopted, scientifically defined vegetation communities not only allow for a thorough analysis of site impacts, they provide a standard that is used by the agencies when assisting with creation, review, and assessment of success of mitigation. This is of particular importance given that the DEIR's biological impact mitigation measures rely heavily on inappropriate deferral of mitigation by way of the assumption that most mitigation responsibilities will be met by applying for coverage San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP).[12] This leaves mitigation under the assumption of control of outside agency personnel (the SJMSCP's Habitat Technical Advisory Committee (HTAC)) that make recommendations to script, oversee, and enforce mitigation actions some time in the future, after public review by way of CEQA has ended.

Fourth, the DEIR's description of methods used to assess the biological baseline and resultant impacts is almost entirely limited to the following, "Biological conditions in the project area were observed during surveys of the project area and a jurisdictional waters and wetlands delineation conducted in 2021 (Anchor QEA 2021b; WRA 2021). A search of the CNDDB was conducted to identify recorded special status species occurrences within the U.S. Geological Survey Stockton West 7.5-minute quadrangle."[13] The DEIR claims that potential impacts to biological resources were "qualitatively evaluated" based on "recent" agency "lists" for special status species with the potential to inhabit the project site, the

[10] National Park Service. The National Vegetation Classification System, 2015. Retrieved from https://www.nps.gov/articles/sw-vegetation-mapping-national-classification-system.htm
[11] USFWS (US Fish and Wildlife Service). June 22, 2020. Survey of California Vegetation Classification and Mapping Retrieved from https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=102342&inline
[12] San Joaquin Council of Governments: Habitat Technical Advisory Committee. (n.d.) Retrieved from https://www.sjcog.org/151/Habitat-Technical-Advisory-Committee
[13] DEIR p. 81-82

wetland delineation report, and "local observations"[14] These terms are not defined or described and therefore do not contribute to scientific or statistical evidence to the degree necessary for CEQA review.

**C. Special Status Species Surveys Lacking**

The DEIR failed to present standardized or focused protocol surveys for any species or for any taxa (i.e. birds, rare plants, invertebrates, mammals, reptiles). This is wholly inadequate; such surveys are necessary to establish a thorough description of the biological baseline regardless of the project footprint, size, or nature of the habitat onsite. Conducting protocol surveys for protected species, and focused surveys for taxa (e.g. rare plants, birds, bats) is standard practice for impact analysis for construction development projects that will remove habitat and have been determined to require an EIR. Ground-truthing, scientifically collected field data is necessary an accurate CEQA analysis of biological impacts to special status species.

A due diligence effort to describe the baseline that is the basis for all biological resource mitigation analysis must include methodologies established to detect species and their regional status beyond desktop databases and anecdotal data (e.g. photos and unspecified "observations" as presented by the DEIR as evidence). Further, the Applicant has access to experienced biologists, consultants, and related personnel with the expertise to conduct studies in a timely manner prior to release of any final impact analysis, access that should not be prohibitive in cost or scale. The DEIR offers no rationale to explain the omission of this basic field data.

**D. Special Status Species Analysis and CNDDB**

The DEIR consistently bases its arguments for wildlife and habitat impact analysis almost entirely upon what is documented within the CNDDB to determine what species may occur onsite. Review of the literature and databases are an important part of gathering regional presence/absence data. However, they cannot replace focused or protocol surveys in terms of site-specific detail or accuracy. The CNDDB is limited in its ability to predict species currently present at any given locale. It presents a conservative

[14] DEIR p. 90

description of what may be present, but does not unilaterally provide details (i.e. related to population status, density, richness, breeding, corridor use, etc.) that protocol surveys might.

Many special status sightings are not actually reported to the CNDDB. For instance, according to CDFW's CNDDB coordinator, for most birds the CNDDB staff map only those occurrences that can be associated with "evidence of nesting." Observations of flyovers or foraging are generally not mapped into CNDDB as an "Element Occurrence," the standard mapping unit based on NatureServe natural heritage program methodology.[15] CNDDB biologists also state that the database represents summaries of species occurrences; not individual detections. "More than ever the CDFW is limited by staff resources to map submissions for public use, resulting in mapped occurrences being prioritized based on them having a high protected status or an important aspect of life history such as nesting or as a migratory stopover (*pers. comm,* J. Boland, CDFW, May 15, 2022)".

In a letter dated March 25, 2021 reporting a conversation between CDFW, the U.S. Fish and Wildlife Service (USFWS), and the California Energy Commission regarding the NOP for the San Jose Data Center DEIR, CDFW biologist K. Garrison stated, "It is important to note that CNDDB is a positive occurrence database...If areas are not surveyed at all, then there is no data in CNDDB. This does not mean that habitat and the species are not present if there is not an occurrence in any given area."[16]

CNDDB records are voluntarily reported and only exist for locations that have been surveyed to a greater extent than others. Therefore the lack of CNDDB observation of a species is not indicative of absence or definitive for potential to occur overall. In short, lack of evidence is not evidence. To reinforce this fact the CDFW posts a disclaimer on its CNDDB website: "We work very hard to keep the CNDDB [...] as current and up-to-date as possible given our capabilities and resources. However, we cannot and do not portray the CNDDB as an exhaustive and comprehensive inventory of all rare species and natural communities statewide. Field verification for the presence or absence of sensitive species will always be an important obligation of our customers."[17] Accordingly, the DEIR's heavy reliance on

[15] Nature Serve: Documenting Species and Ecosystems. (n.d.) Retrieved from: https://www.natureserve.org/documenting-species-ecosystems
[16] Report of Conversation- A Raabe USFWS and C Watson CEC May 18, 2021. Docketed date: 6/22/2021. Available at: https://efiling.energy.ca.gov/Lists/DocketLog.aspx?docketnumber=19-SPPE-04
[17] CDFW. About the CNDDB. 2022. Retrieved from https://www.wildlife.ca.gov/Data/CNDDB/About

CNDDB data alone to predict the nature and scope of wildlife onsite presents at best an incomplete analysis, at worst an incorrect one.

**IV. THE DEIR FAILS TO ADEQUATELY ANALYZE AND MITIGATE IMPACTS SPECIAL STATUS SPECIES**

**A. Special Status Wildlife Mitigation Improperly Deferred**

The DEIR mitigation measures for biological resources, MM-BIO-1, 2, and 3 do not describe how various special status species (including migratory and roosting bird species, bats, reptiles, and invertebrates) that were not surveyed and not analyzed appropriately for potential to occur onsite are impacted by habitat removal or disturbance, construction noise, dust, lighting, vehicles and other anthropogenic sources of hazards and habitat fragmentation, or other direct, indirect, and cumulative impacts. Such impacts are widely researched as significant detriment to individual and population measures of success, including resistance to limiting factors (e.g. drought, invasive competitors and predators, climate change) regarding health and fitness, including fecundity and neonate survival.[18]

Instead the DEIR either fails to acknowledge impacts to various special-status species (e.g. see rare plant discussion below), or it attempts to reduce impacts by way of deferred mitigation by way of various proposed plans to be scripted in the future,[19] including applying for coverage under the SJMSCP. In its

[18] National Academies of Sciences, Engineering, and Medicine. 2017. Estimating Exposure and Effects of Sound on Wildlife. *Approaches to Understanding the Cumulative Effects of Stressors on Marine Mammals*. Washington, DC: The National Academies Press. doi: 10.17226/23479.; *see also* Mason, J.T., C.J.W. McClure, and J.R. Barber. 2016. Anthropogenic noise impairs owl hunting behavior. *Biological Conservation* 199: 29-32.; *see also* Ware, H.E., C.J. McClure, J.D. Carlisle, and J.R. Barber. 2015. A phantom road experiment reveals traffic noise is an invisible source of habitat degradation. *Proceedings of the National Academy of Sciences of the United States of America* 112:12105-12109. *See also* Doody JS, West P, Stapley J, et al. 2003. Fauna by-catch in pipeline trenches: conservation, animal ethics, and
current practices in Australia. Australian Zoologist 32(3):410-419. *See also* Punjabi, G., Jayadevan, A., Jamalabad, A., Velho, N., Niphadkar-Bandekar, M., Baidya, P., Jambhekar, R., Rangnekar, P., Dharwadkar, O., Lopez, R., Rodrigues, M., Patel, F. D., Sagar, H. S. S. C., Banerjee, S., Chandi, M., Mehrotra, N., Srinivasan, S., Shahi, S., Atkore, V., & Kulkarni, N. (2020). On the inadequacy of environment impact assessments for projects in Bhagwan Mahavir Wildlife Sanctuary and National Park of Goa, India: a peer review. *Journal of Threatened Taxa*, *12*(18), 17387–17454. https://doi-org.prescottcollege.idm.oclc.org/10.11609/jott.6650.12.18.17387-17454.; *See also* Maruya, K. A., Schlenk, D., Anderson, P. D., Denslow, N. D., Drewes, J. E., Olivieri, A. W., Scott, G. I., & Snyder, S. A. (2014). An Adaptive, Comprehensive Monitoring Strategy for Chemicals of Emerging Concern (CECs) in California's Aquatic Ecosystems. *Integrated Environmental Assessment & Management*, *10*(1), 69–77. https://doi-org.prescottcollege.idm.oclc.org/10.1002/ieam.1483

[19] DEIR pp. 91-92

mitigation measures for biological impacts to species the DEIR relies heavily on claims the Applicant may conduct surveys and monitoring in the future to minimize impacts. Although surveys and monitoring are standard tools used for impact mitigation, a declaration to take mostly undescribed actions in the future - after a permit is issued and public review is over – in lieu of adequate detail or discussion in the EIR itself - is inappropriate deferral of mitigation, and thus fails to present necessary mitigation analysis under CEQA.

For mitigation actions to be successful, it must contain adequate detail and performance standards to ensure that the desired mitigation is achieved in practice. The devil is in the details, without such there can be no thorough or informative review of their potential for success. As an environmental consultant I have observed many times the failure of mitigation measures; often due to the lack of appropriate performance and success criteria not implemented, defined, or otherwise analyzed prior to project approval, followed by failures of mitigation success and enforcement. When details are almost entirely deferred to the future, as they are in this DEIR,[20] mitigation actions become highly indeterminate and unspecified. Further, stating that a plan intends to follow guidelines or agency recommendations does not reveal or address the specific and sometimes unprecedented requirements for mitigation for a specific location, including the unique characteristics of a specific project and its impact on a specific sensitive, rare, or otherwise at-risk population, including the long term, indirect, and cumulative impacts unique to every development.

Details are essential to understand and address the characteristics of a site and its unique species cohort and their relevant ecological status, and should include necessary distinctions in compensatory mitigation, i.e. revegetation or restoration that must rely on factors including types of habitat not just

[20] For example, the DEIR relies heavily on applying for coverage under the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP). "Assuming the proposed project is approved for coverage, a SJCOG biologist will conduct a site visit to determine which incidental take minimization measures (ITMMs) included in the SJMSCP are applicable to the project. SJCOG will then execute a final summary of applicable ITMMs for the project. ITMMs would include surveys, monitoring, and applying temporary construction buffers, if determined appropriate by SJCOG."(DEIR p. 92) As explained further herein, one site visit is wholly inadequate for analysis of various and biologically unique species, given the incomplete baseline presented in the DIER. Additionally, this brief summary provides no detail, such as performance or success criteria, for the reviewing public to assess.

onsite but nearby, as well as other variables like population densities located on and near the site, and cumulative impacts to the Project.[21, 22]

Deferring mitigation plans to a future date is also inadequate because the unscripted details are based largely upon anticipation of a future direction by personnel often yet to be determined. This has two inherent problems: (a) It disallows reviewers to adequately analyze efficacy of mitigation measures as required by CEQA, and (b) It leaves the process vulnerable to the political digressions, employee changes, financial shortfalls, and conflicts within agencies and staff, as well as to litigation and other unsolicited actions that are known to lead to mitigation failure and overall disruptions post-project approval. Resource experts on measuring effectiveness of mitigation measures, especially ones regarding compensatory tradeoffs as pivotal to mitigation success (as is likely the case with this Project), state that, "**Public choice theory profoundly suggests officials and traders have more incentive to facilitate barter than to ensure biodiversity protection**. Thus, given the option of saying to developers "yes, with conditions" or "no," officials will prefer "yes, with conditions"— particularly when compliance with conditions cannot be credibly measured and officials can avoid accountability for outcomes. Legitimized bartering can thus create a policy situation "obscure enough to please all parties and so ill-defined that failures will be difficult to detect not to mention rarely measured (emphasis added)."[23] When asked about the success of compensatory mitigation for wetland restoration, Dr. Joy Zedler, chair of the 2001 NRC Compensatory Mitigation Study Committee, said, "It could be the best of all worlds…or it could be the same old same old . . . It's all in the implementation."[24]

These statements underscore why many compensatory and other mitigation plans fail to meet the goals of mitigation for projects over the years and is something I have observed repeatedly as an environmental consultant working in the public and private energy, residential, and transportation development sectors. If the permitting authorities and enforcement agencies are committed to their role in ensuring adequate mitigation of all of the significant impacts imposed by this development – to

---

[21] Keeley. J., Baer-Keeley, M. C.J. Fotheringham (eds). (2000). 2nd lnterface Between Ecology and Land Development in California U.S. Geological Survey Open_file Report00-62. https://pubs.usgs.gov/of/2000/of00-062/

[22] Newton, G. and Claassen, V. (2003). Rehabilitation of Disturbed Lands In California: A Manual For Decision-Making. *California Geological Survey.* https://www.conservation.ca.gov/dmr/SMARA%20Mines/Documents/sp123.pdf

[23] Walker, S.; Brower, A.; Stephens, R,T.; and Lee, W. 2009. Why Bartering Biodiversity Fails. *Conservation Letters* 2:149–157. http://www.azoresbioportal.angra.uac.pt/files/publicacoes_Walker%20et%20al%202009.pdf

[24] Alice Kenny, April 27,2008. *Environmentalists Sound Off on EPA Wetland Regs*, Ecosystem Marketplace. http://staging.ecosystemmarketplace.com/articles/environmentalists-sound-off-on-epa-wetland-regs/.

both resident and migratory species - they will require detailed descriptions allowing for review and discussion of the adequacy of mitigation plans by independent experts for each protected species and habitat in question, prior to issuance of a development permit.

**B. Rare Plants**

The DEIR not only fails to present standardized vegetation community data, but the Applicant also failed to conduct any rare plant surveys. In fact, no Project-wide plant surveys of any kind are disclosed in the DEIR. The DEIR asserts that CNDDB records for the region indicate there are 20 rare species in the Project vicinity, and yet concludes in a brief summation that none will be present "due to lack of suitable habitat".[25] However, as outlined herein, there is insufficient evidence to support this conclusion.

The CNPS coordinated with CDFW to create "Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities"[26] stating that "The purpose of these protocols is to facilitate a consistent and systematic approach to botanical field surveys and assessments of special status plants and sensitive natural communities so that reliable information is produced and the potential for locating special status plants and sensitive natural communities is maximized."[27]

CDFW notes that,

> "Botanical field surveys should be floristic in nature, meaning that every plant taxon that occurs in the project area is identified to the taxonomic level necessary to determine rarity and listing status. **Surveys that are limited to habitats known to support special status plants or that are restricted to lists of likely potential special status plants are not considered floristic in nature and are not adequate to identify all plants in a project area to the level necessary to determine if they are special status plants**. For each botanical field survey conducted, include a list of **all plants** and natural communities detected in the project area. [These protocols serve to] help those who prepare and review environmental documents how botanical field surveys may be conducted, what

[25] DEIR Appendix E p. E-5
[26] CDFW. March 20, 2018. Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities.
https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline
[27] *Ibid*. p.1

> information to include in a botanical survey report…These protocols are meant to help people meet California Environmental Quality Act (CEQA) requirements for adequate disclosure of potential impacts to plants and sensitive natural communities (emphasis added)."[28]

In their Guidelines for Assessing The Effects of Proposed Developments On Rare, Threatened, And Endangered Plants and Plant Communities, the CDFW states that a complete species list of all plants should be included in every botanical survey report used to inform mitigation of impacts under CEQA.[29] The DEIR presents no such surveys, nor does it follow any such guidelines to support their argument as to why special status plants do not, and have no potential, to occur.

CNPS also states that, "Because the life history and ecological information needed to judge whether mitigation measures are adequate is often lacking, additional biological research may be necessary prior to mitigation design and/or implementation in order to determine which measures will be most appropriate. Of the five mitigation types in the California Environmental Quality Act, the California Native Plant Society fully supports those which avoid net reduction of population size or species viability. For most plant species this requires the protection of habitat essential to the survival of the species. In some instances, this also requires that impacts be fully avoided in order to prevent a significant impact (i.e., a net loss of plant numbers, habitat, or genetic variability essential to the future existence and recovery of the species). Alternatives such as site restoration and off-site introduction are generally unproven, and usually unsuccessful."[30] In summary, the DEIR failed to present an accurate floristic baseline and thus failed to provide an accurate analysis of the Project's impacts on plants and their associated habitats.

**C. Special Status Plants**

The plant species discussed below have not been analyzed accurately or comprehensively (if at all) in the DEIR. Contrary to the DEIR's conclusions, there is evidence that they have the potential to occur on or

---

[28] *Ibid*. p. 4

[29] CNPS (California Native Plant Society). April 1998. Policy On Mitigation Guidelines Regarding Impacts To Rare, Threatened, and Endangered Plants. https://www.cnps.org/wp-content/uploads/2018/01/policy-mitigation-guidelines.pdf p.9

[30] Hull, R. et al. Feb 2, 2020. California Environmental Quality Act Considerations When Evaluating Impacts to Aquatic and Other Biological Resources. Retrieved from https://argentco.com/post/california-environmental-quality-act-considerations-when-evaluating-impacts-to-aquatic-and-other-biological-resources/

bordering the Project. Thus they may be impacted directly by habitat disturbance or removal, indirectly from dust, erosion, alteration of soil or water regime microclimate, or by way of cumulative impacts. The DEIR fails to disclose this potentially significant impact and fails to offer any mitigation measures to reduce impacts to less than significant. The DEIR must be revised to adequately assess impacts to all habitats and floristic species on and near the site, and it must require binding, definitive measures to reduce any potentially significant impacts whether direct, indirect, or cumulative.

**1. Delta tule pea *Lathyrus jepsonii* var. *jepsonii***

Protected Status: California CNPS 1B.2 (rare, threatened, or endangered in CA and elsewhere).

This species is mapped in the CNDDB in the quad where the Project is located. A search of Calflora ("a comprehensive source of data on California's wild plants that provides analytical tools and an ability to display geographical plant occurrences" that also utilizes CNDDB data),[31] shows several observations made by California Native Plant Society (CNPS) staff of the Delta tule pea less than 500 feet north of the Project. The Calflora occurrences note it located in habitat just northwest of the Project that appears very similar to habitat located on the Project site. The DEIR erroneously states there is "no potential to occur, habitat not present"[32] for this species, therefore the DEIR has failed to accurately analyze its likelihood to occur and fails to offer any mitigation measure for potential impacts to this protected species.

**2. Alkali milkvetch *Astragalus tener* var*. tener***

Protected Status: CNPS 1B.2 (rare, threatened, or endangered in CA and elsewhere; fairly threatened in California)

The Alkali milk vetch is a protected species noted by Calflora to occur within a mile of the Project in an area similar to that of the Project site (e.g. arid land partly comprised of disturbed habitat, bordering industrial development, close to agricultural development, bordering roads, close to other urban development, close to fragmented undeveloped habitat) and is mapped in the CNDDB in the quad where the Project is located. It is known to grow in arid regions and in alkaline soils (also called

[31] Calfora. Calflora Case Statement. Jan 20, 2022. Retrieved from https://www.calflora.org/case-statement.html
[32] DEIR Appendix E p.5

flats).[33] The DEIR describes some of the areas onsite as occupied by alkaline soils and non-native grassland and acknowledges this species can be found in alkaline flats and grasslands. As such the Project site could host potential habitat for this species. The DEIR erroneously states there is "no potential to occur, habitat not present"[34] for this species, therefore the DEIR has failed to accurately analyze its likelihood to occur and fails to offer any mitigation measure for potential impacts to this protected species.

**3. Heartscale *Atriplex cordulata* var. *cordulata***

Protected Status: California CNPS 1B.2 (rare, threatened, or endangered in CA and elsewhere; fairly threatened in California)

The Heartscale is a protected species noted by Calflora to occur within 1-2 miles of the Project in an area similar to that of the Project site (e.g. arid land partly comprised of disturbed habitat, bordering industrial development, close to agricultural development, bordering roads, close to other urban development, close to fragmented undeveloped habitat) and is mapped in the CNDDB in the quad where the Project is located. It is known to grow in arid regions and in alkaline soils.[35] The DEIR describes some of the areas onsite as occupied by alkaline soils and non-native grassland and acknowledges this species can be found in alkaline flats, grasslands, and meadows. As such the Project site could host potential habitat for this species, something the DEIR failed to disclose. Instead, the DEIR states, with no supporting evidence, that there is "no potential to occur, habitat not present"[36] for this species. The DEIR has failed to accurately analyze the likelihood for this species to occur and fails to offer any mitigation measure for potentially significant impacts to this protected species.

**4. Big tarplant *Blepharizonia plumosa***

Protected Status: California CNPS 1B.1 (rare, threatened, or endangered in CA and elsewhere; seriously threatened in California)

---

[33] EJepson Manual. Jepson eFlora Taxon Page. 2022. Retrieved from https://ucjeps.berkeley.edu/eflora/eflora_display.php?tid=54950
[34] DEIR Appendix E p.4
[35] EJepson Manual. Jepson eFlora Taxon Page. 2022. Retrieved from https://ucjeps.berkeley.edu/eflora/eflora_display.php?tid=88895
[36] DEIR Appendix E p.4

Big tarplant is a protected species noted by Calflora to occur within 1-2 miles of the Project in an area similar to that of the Project site (e.g. arid land at least partly comprised of disturbed habitat, bordering industrial development, close to agricultural development, bordering roads, close to other urban development, close to fragmented undeveloped habitat) and is mapped in the CNDDB in the quad where the Project is located. It is known to grow in arid regions, grasslands.[37] The DEIR describes some of the areas onsite as occupied by alkaline soils and non-native grassland and acknowledges this species can be found in dry grasslands. As such the Project site could host potential habitat for this species, something the DEIR failed to disclose. Instead, the DEIR erroneously states there is "no potential to occur, habitat not present"[38] for this species. The DEIR has failed to accurately analyze its likelihood to occur and fails to offer any mitigation measure for potential impacts to this protected species. This species is also not covered under the SJMSCP, and therefore would not be protected by Mitigation Measure BIO-1.

**5. Palmate-bracted (a.k.a. Palmate salty) bird's-beak *Chloropyron palmatum***

Protected Status: Federally and State listed as Endangered

California CNPS 1B.1 (rare, threatened, or endangered in CA and elsewhere; seriously threatened in California)

Palmate-bracted bird's-beak is a federally Endangered species noted by Calflora to occur within 2 miles of the Project in an area similar to that of the Project site (e.g. arid land largely comprised of disturbed habitat, in the midst of industrial development, bordering roads, close to other urban development) and is mapped in the CNDDB in the quad where the Project is located. It is known to grow in arid regions, alkaline flats.[39] The DEIR describes some of the areas onsite as occupied by alkaline soils and acknowledges this species can be found in grasslands and meadows. As such the Project site could host potential habitat for this species something the DEIR failed to disclose. Instead, the DEIR erroneously states there is "no potential to occur, habitat not present"[40] for this

[37] EJepson Manual. Jepson eFlora Taxon Page. 2022. Retrieved from https://ucjeps.berkeley.edu/eflora/eflora_display.php?tid=1762

[38] DEIR Appendix E p. 4

[39] EJepson Manual. Jepson eFlora Taxon Page. 2022. https://ucjeps.berkeley.edu/eflora/eflora_display.php?tid=93768

[40] DEIR Appendix E p.4

species. The DEIR has failed to accurately analyze its likelihood to occur and fails to offer any mitigation measure for potential impacts to this protected species. This species is also not covered under the SJMSCP, and therefore would not be protected by Mitigation Measure BIO-1.

**6. San Joaquin spearscale *Extriplex joaquinana***

Protected Status: California CNPS 1B.2 (rare, threatened, or endangered in CA and elsewhere; fairly threatened in California)

The San Joaquin spearscale is a protected, endemic species noted by Calflora to occur within 1-2 miles of the Project in an area similar to that of the Project site (e.g. arid land at least partly comprised of disturbed habitat, bordering industrial development, close to agricultural development, bordering roads, close to other urban development, close to fragmented undeveloped habitat) and is mapped in the CNDDB in the quad where the Project is located. It is known to grow in alkaline soils in low elevations typically in non-wetlands.[41] The DEIR describes some of the areas onsite as occupied by alkaline soils and non-native grassland and acknowledges this species can be found in dry grasslands, meadows, alkaline sinks. As such the Project site could host potential habitat for this species, something the DEIR failed to disclose. Instead, the DEIR erroneously states there is "no potential to occur, habitat not present"[42] for this species. The DEIR has failed to accurately analyze its likelihood to occur and fails to offer any mitigation measure for potential impacts to this protected species. This species is also not covered under the SJMSCP, and therefore would not be protected by Mitigation Measure BIO-1.

**D. Trees and Related Wildlife**

The DEIR continues to rely on unscientific, subjective, and conflicting descriptors to describe sensitive habitats onsite, stating that the north end of the site has "a few trees" comprised in part of a "mix" of natives including cottonwood, valley oak, and arroyo willow. The DEIR then describes "approximately" 30 trees in one locale, and 20 in another. This is inadequate. To begin with, according to CDFW

[41] EJepson Manual. Jepson eFlora Taxon Page. 2022. https://ucjeps.berkeley.edu/eflora/eflora_display.php?tid=95362
[42] DEIR Appendix E p. 4

protocols, all trees (indeed, all plants) should be listed in a floristic survey, mapped and described as part of vegetation communities .[43]

Trees are obviously not only integral members of vegetation communities, but they are also prime habitat for nesting, roosting, foraging, and migratory species of birds, bats, and other species, including many bird species covered under the federal Migratory Bird Species Act (MBTA). As such, the DEIR should have included avian surveys in its baseline analysis, including protocol surveys for protected species such as the California Endangered Species Act (CESA) threatened Swainson's hawk, California Fully Protected white-tailed kite, and other state listed Species of Special Concern (e.g. Northern harrier), detected within 0.25 to 0.5 miles of the Project according to recent eBird observations.[44]

It is important to note that some of these special status bird species recorded as occurring within the Project quad in the CNDDB,[45] and on EBird,[46] including the Swainson's hawk, are subject to specific protocol surveys provided by the state and federal agencies to ensure accurate data collection including not only presence but also in regards to nesting, foraging, and as a stopover, movement, or migratory corridor status.[47] These protocols are not followed by the DEIR's proposed mitigation measure MM-BIO-1, where minimally described pre-construction surveys are presented by the DEIR, measures that the DEIR erroneously claims will completely mitigate impacts to nesting birds with no supporting evidence.

MM-BIO-1 states that one method of impact reduction will include a biologist monitoring any onsite active nest to see "if the birds show signs of disruption to nesting activities (e.g., defensive flights/vocalizations directed toward project personnel, standing up from a brooding position, or flying away from the nest)" to determine if buffers utilized to reduce impacts are not effective.[48] MM-BIO-1

---

[43] CDFW. March 28, 2018. Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities. file:///C:/Users/renee/AppData/Local/Temp/2018%20Protocols%2013%20rev1-1.pdf

[44] EBird Hotspots: Stockton WTP. 2022**.** Retrieved from https://ebird.org/hotspot/L1318624; *See also* EBird Hotspots: Louis Park. 2022. Retrieved from https://ebird.org/hotspot/L595195

[45] CDFW (California Department of Fish and Wildlife), 2021. CNDDB Rarefind 5 Stockton West Quadrangle. Retrieved from https://apps.wildlife.ca.gov/bios/?tool=cnddbQuick

[46] EBird Hotspots: Stockton WTP. 2022**.** Retrieved from https://ebird.org/hotspot/L1318624; *See also* EBird Hotspots: Louis Park. 2022. Retrieved from https://ebird.org/hotspot/L595195

[47] Swainson's Hawk Technical Advisory Committee. May 31, 2000. Recommended Timing And Methodology For Swainson's Hawk Nesting Surveys In California's Central Valley file:///C:/Users/renee/AppData/Local/Temp/swain_proto2000.pdf

[48] DEIR p. 92

does not describe how the biologist's credentials, including appropriate experience as an ornithologist, or independence from the Applicant's employment (e.g. contractual / employment expectations including being beholden to obligatory Non-Disclosure Agreements required by nearly all environmental consulting positions that prohibit reporting observations and actions to third parties - including wildlife agencies - without direct permission) are determined. Further, the behaviors iterated above represent overt signs of harassment that are not allowed under the statues protecting these species, whether it be the federal Endangered Species Act (ESA), California Endangered Species Act (CESA), MBTA, or CDFW Code.

As professional wildlife biologist specializing in ethology and natural history research for over 30 years, I can confirm that any avian (and other taxa) stress responses to an observer, and during baseline conditions prior to construction when no observer is present, will be different than stress responses to intense construction activities compounded by the presence of an observer. Additionally, avian behavior during breeding may vary on different days given limiting factors due to weather (e.g. cold, heat, precipitation, wind, may all contribute to changes in day-to-day behavior of nesting birds).

Relying on overt, immediate, visual indicators of nesting harassment, i.e. negative impacts to breeding success and fecundity, is unscientific and limited in utility. It is anthropomorphism by way of assuming any significant impacts due to construction harassment can be readily observed in a given moment by anecdotal (unscientific or non-standardized) visual or auditory observations. Many forms of such impacts to wildlife, including those incurred to tree nesting birds (and roosting or hibernating bats), are factors not readily observable by passive monitoring, including detrimental changes in metabolism, immune systems, competitor and predator response over time, and resistance to deadly pathogens. Such changes can be severe, significant, and yet cannot be readily observed in real time, hence the utility of avian research that measures effects of human interference and alterations to habitats over time by standardized experimental design and statistical analysis.[49] Therefore relying on momentary

[49] Veiga, J., & Valera, F. (2020). Nest Box Location Determines the Exposure of The Host To Ectoparasites. *Avian Conservation & Ecology*, *15*(2), 1–13. https://doi-org.prescottcollege.idm.oclc.org/10.5751/ACE-01657-150211. *See also* Soler, J. J., Morales, J., Cuervo, J. J., & Moreno, J. (2019). Conspicuousness Of Passerine Females Is Associated With The Nest-Building Behavior Of Males. *Biological Journal of the Linnean Society*, *126*(4), 824–835. https://doi-org.prescottcollege.idm.oclc.org/10.1093/biolinnean/blz015; *See also* Injaian, A. S., Uehling, J. J., Taff, C. C., & Vitousek, M. N. (2021). Effects of Artificial Light at Night on Avian Provisioning, Corticosterone, and Reproductive Success. *Integrative & Comparative Biology*, *61*(3), 1147–1159. https://doi-org.prescottcollege.idm.oclc.org/10.1093/icb/icab055; See also Livezey, K. B., Fernández-Juricic, E., & Blumstein, D. T. (2016). Database of Bird Flight Initiation Distances to Assist in Estimating Effects from Human Disturbance and

observations as the primary indicator to assess impacts to baseline conditions is a failed mitigation protocol. As such MM-BIO-1 fails to successfully mitigate impacts to birds and other special status species, whether they are nesting, hibernating, foraging, roosting, or migratory.

Other special status species not surveyed and not analyzed accurately - including migratory, foraging, and roosting birds, as well as bats, reptiles, and invertebrates, none of which were surveyed by the DEIR - may potentially be impacted directly or indirectly by tree and other habitat removal. The DEIR is misleading by stating that "In the **unlikely** event that nesting birds, western pond turtle, giant garter snake, and valley elderberry longhorn beetle are found on the project site, implementation of MM-BIO-1 and MM-BIO-2 would ensure that significant impacts to special status species are avoided (emphasis added)."[50] The DEIR describes as a minimum of 50 to 60 trees on site. In reality, it is more **unlikely** that no birds will use any of the tree (or other) habitats to nest onsite.

This is especially true considering the Port's claim that on or near the Project site it currently has 15 barn owl nest boxes which have "housed more than 200 new owls."[51] Nest boxes, no matter the size or construct, are used by more species than owls (or whatever the target species is). Most if not all avian species have high natal site fidelity, meaning they return to nest in the vicinity, and sometimes in very close proximity (within a few feet) to where they were born. Also, special status and other raptor species have been observed recently (2020, 2021) within 0.25 to 0.5 mile of the Project, including the red-tailed hawk, red-shoulder hawk, American kestrel, CESA threatened Swainson's hawk, Northern harrier, Cooper's hawk, state Fully Protected White-tailed kite, and sharp-shinned hawk.[52] This is further evidence that with dozens of trees onsite there is a high likelihood various raptors (as well as other bird species noted in eBird and the CNDDB) may use the site for roosting, foraging, as a corridor, or nesting.

However the DEIR posits that "MM-BIO-3 would ensure that roosting habitat opportunities are maintained on the project site for the long term," thus presenting a misleading description that reduces

---

Delineating Buffer Areas. *Journal of Fish & Wildlife Management*, *7*(1), 181–191. https://doi-org.prescottcollege.idm.oclc.org/10.3996/082015-JFWM-078

[50] DEIR p. 94

[51] Port of Stockton: Wildlife. (n.d.). Retrieved from https://www.scribbr.com/category/dissertation/ https://www.portofstockton.com/wildlife/

[52] EBird Hotspots: Stockton WTP. 2022**.** Retrieved from https://ebird.org/hotspot/L1318624; *See also* EBird Hotspots: Louis Park. 2022. Retrieved from https://ebird.org/hotspot/L595195

the biological role of trees to that of a random roosting spots, while ignoring the other roles trees play in their biotic and abiotic niche in its impact analysis. The DEIR does not explain how tree planting will "maintain" roosting sites when it appears several dozen trees are slated for removal and will not be immediately replaced in appropriate size, species (see discussion of invasives herein), or scope. The DEIR does not state whether local ordinances (see discussion of oaks herein) requiring tree replacement have been analyzed under CEQA, nor does it describe necessary timelines, restoration actions, or success criteria, instead inappropriately deferring such mitigation descriptions to an undefined future action after public review has ended. As such the DEIR needs to be revised to describe over what period of time, by what performance criteria, and with what success criteria trees and associated wildlife will be assessed for successful mitigation.

**E. Oak Trees**

The DEIR mentions valley oak in their brief description of trees onsite.[53] It also states that "Title 16, Division 5, Chapter 16.130 of the City Municipal Code provides protection for heritage oaks in the City."[54] Heritage oak trees here are defined as *Quercus lobata* (valley oak), *Quercus agrifolia* (coast live oak), or *Quercus wislizeni* (interior live oak) tree". Removal of any heritage oak (or "street" oak, according to another section of the ordinance not cited in the DEIR) requires a permit from the City Community Development Department. The DEIR states that "Construction and operation of the proposed project would require tree removal; however, none of the trees to be removed are heritage oaks protected under the Stockton Heritage Tree Ordinance or street trees protected under the City Municipal Code." It does not explain how the valley oaks mentioned do not fall under these ordinances, and lacks substantial evidence with which to say so, given that no floristic (comprehensive) surveys were reported, including any that that measured DBH, exact location, or other factors regarding trees onsite. Nor does the DEIR explain why not only construction, but operations would require tree removal, and how this additional impact would be mitigated in a timely manner. The DEIR must be revised to address these inadequacies.

**F. Invasive Plants**

[53] DEIR p. 81
[54] DEIR p. 88

The DEIR states the Applicant "is required to prepare a planting plan that must be reviewed and approved by the Port prior to planting."[55] This is deferral of mitigation and unacceptable for CEQA review. The DEIR then proposes to mitigate the loss of these 50-60 or more trees onsite by planting "a minimum of 30 trees" including Patmore ash (*Fraxinus p. 'Patmore'*), Chinese pistache (*Pistachia chinensis*), coast redwood (*Sequoia sempervirens*), and multi-trunk chaste tree (*Vitex agnus-castus*).[56] The DEIR does not explain why these species have been selected, or how 30 trees will replace 50 - 60 or more as inferred are onsite. It clearly does not follow CNPS or CDFW guidelines regarding mitigation protocols since there is no mention of planting the natives species that are now, and have historically been, onsite, including the oak, willow, and cottonwood mentioned in the DEIR.[57] .[58] The DEIR lacks supporting evidence demonstrating that this mitigation would be effective.

The DEIR's proposed mitigation may also have negative impacts on native species. The pistache and chaste tree are non-native. Planting non-native trees to compensate native tree loss is not mitigation, it is landscaping at best. *Pistachia chinensis* is considered by some as a problematic weedy species by producing over-competitive seedlings.[59] The coast redwood and Patmore ash are heavily reliant on adequate water during times of drought, especially the first few years after planting. Given the predictions about worsening drought in California as climate change worsens, and the ongoing drought, there is a high probability these species would not survive if not watered for at least the first several years of planting.

---

[55] DEIR p. 94
[56] *Ibid.*
[57] CNPS (California Native Plant Society). April 1998. Policy On Mitigation Guidelines Regarding Impacts To Rare, Threatened, and Endangered Plants. https://www.cnps.org/wp-content/uploads/2018/01/policy-mitigation-guidelines.pdf; *See also* CDFW. March 28, 2018. Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities. file:///C:/Users/renee/AppData/Local/Temp/2018%20Protocols%2013%20rev1-1.pdf
[58] *Ibid.*
[59] USDA. Nov 27, 2012. Weed Risk Assessment for *Pistacia chinensis* Bunge (Anacardiaceae) – Chinese pistache https://www.aphis.usda.gov/plant_health/plant_pest_info/weeds/downloads/wra/Pistacia_chinensis_WRA.pdf

Next to habitat loss, invasive species pose the greatest threat to our nation's biodiversity and natural resources.[60] According to the Invasive Plant Atlas of the U.S., *Vitex agnus-castus* is listed as invasive,[61] defined as "species [that] displace and alternative plant communities, impede forest regeneration and natural succession, change soil chemistry, alter hydrologic conditions, alter fire regimes, cause genetic changes in native plant relatives through hybridization and some serve as agents for the transmission of harmful plant pathogens."[62] Planting *Vitex agnus-castus* at the Project site could cause significant indirect impacts on surrounding ecosystems, and negatively impact the success of neighboring tree establishment and survival. Therefore planting these species could create more impacts as opposed to mitigating any. The DEIR fails to disclose, analyze, or incorporate mitigation for such impacts.

**G. Wetlands**

The DEIR poses conflicting and incomplete analyses of wetlands onsite. First, the DEIR describes the presence of wetlands, stating that "emergent wetlands" exist along drainage ditches onsite, and "these features may be considered waters of the state under the RWQCB's jurisdiction and are potentially under CDFW's jurisdiction," [63] that a "small seasonal wetland and alkaline scald mapped in the study area would likely be subject to RWQCB regulation pursuant to the Porter-Cologne Water Quality Control Act," and "the ultimate determination of jurisdiction is the responsibility of the regulatory agencies." The DEIR then claims, without supporting rationale, that it is "unlikely that …emergent vegetation would be subject to CDFW jurisdiction pursuant to Section 1602 of the California Fish and Game Code."[64] This assumption is based on an inaccurate description of the origin and function of the wetlands onsite. The DEIR's argument for exclusion of this wetland is not part of CDFW Code 1602 as defined, which states,

> "(a) An entity shall not substantially divert or obstruct the natural flow of, or substantially change or use any material from the bed, channel, or bank of, any river, stream, or lake, or deposit or dispose

[60] U.S. Department of the Interior, Office of Congressional and Legislative Affairs. 2013. Invasive Species Management. Statement for the Record: U.S. Department of the Interior Before the House Natural Resources Subcommittee on Public Lands and Environmental Regulation's oversight hearing on "Invasive Species Management on Federal Lands." https://www.doi.gov/ocl/hearings/113/invasivespeciesmanagement_051613
[61] Invasive Plant Atlas: Lilac chaste tree. (n.d.) Retrieved from https://www.invasiveplantatlas.org/subject.html?sub=14022
[62] Invasive Plant Atlas. (n.d.) Retrieved from https://www.invasiveplantatlas.org/index.cfm
[63] DEIR Appendix B p. 21
[64] DEIR p. 82

of debris, waste, or other material containing crumbled, flaked, or ground pavement where it may pass into any river, stream, or lake, unless all of the following occur:

(1) The department receives written notification regarding the activity in the manner prescribed by the department. The notification shall include, but is not limited to, all of the following:

(A) A detailed description of the project's location and a map.

(B) The name, if any, of the river, stream, or lake affected."

(C) A detailed project description, including, but not limited to, construction plans and drawings, if applicable.

(D) A copy of any document prepared pursuant to Division 13 (commencing with Section 21000) of the Public Resources Code.

(E) A copy of any other applicable local, state, or federal permit or agreement already issued.

(F) Any other information required by the department."[65]

CDFW does not conduct independent analysis for 1602 permit applications, and instead relies on CEQA documentation for its information and analysis. The DEIR therefore fails as a necessary informational resource to provide detail for Section 1602 requirements.

Additionally, "emergent", "small", and "alkaline scald" are not ecological terms that identify or characterize standardized wetland vegetation communities, and as iterated above no maps from the wetland delineation or other surveys are provided as supporting evidence. Elsewhere the DEIR claims 1.58 acres of stormwater ditches to be artificial and thus not considered waters of the state, as well as 0.2 acres of seasonal wetland and alkaline scald. [66] In summary the Project wetlands are not illustrated with maps or scientifically defined. Therefore the DEIR has failed to adequately disclose, analyze, or incorporate mitigation for impacts to wetlands.

**H. Giant Garter Snake**

Drainage ditches, as reported by the DEIR to include at least 1.58 acres onsite, are comprised of varying degrees and types of vegetation and are one type of habitat utilized by the giant garter snake,

[65] Retrieved from https://leginfo.legislature.ca.gov/faces/codes_displaySection.xhtml?lawCode=FGC&sectionNum=1602

[66] DEIR p. 94

(*Thamnophis gigas*), an ESA and CESA listed threatened species.[67] The CNDDB reports the species observed within the Project quad, including in an area that is industrialized, degraded (dominated by building structures, bare ground, roads, and marginal habitat), with drainage ditches in the vicinity. Despite this clear evidence of species presence, the DEIR erroneously claims the species has a low to very low potential to occur due to the site's "degraded condition" and proximity to an industrialized area.[68]

This is incorrect and unsupported. First, having conducted no surveys for reptiles, protocol or otherwise, the DEIR has provided no ground-truthed, standardized evidence that the species is not present. Second, surveying reptiles requires protocol surveys for various reasons. The Applicant did not conduct any focused surveys for any reptiles by way of methodical observations, scat, tracks, trapping, day or nighttime surveys; all standard protocols necessary to establish the presence and abundance of reptiles are observed in a given location. It is widely accepted in the scientific community that reptiles represent a key taxon that are highly sensitive to anthropogenic ground disturbances. They are also difficult to detect comprehensively via incidental observations. Yet the DEIR's MM-BIO-1 assumes a daytime, non-protocol pre-construction survey of an undefined time or season will be adequate for detection, or alternatively defers description of mitigation actions to the future, post-permitting, by way of its proposed application to the SJMSCP.[69]

Many reptiles are nocturnal, fossorial, or crepuscular, and like *T. gigas*, highly secretive and cryptic especially during the day.[70] Indeed most snake species do not lend themselves to easy detection via daytime, incidental observations (as the DEIR infers is adequate by making conclusions about impacts without conducting a survey for onsite reptiles). Neither can habitat type alone be a reliable or comprehensive indicator of potential for species to occur, and in what abundance, etc. Countless

---

[67] Halstead, B. J., Wylie, G. D., Coates, P. S.,and Casazza, M. L. (2011). Bayesian adaptive survey protocols for resource management. *Journal of Wildlife Management, 75*(2), 450-457. Retrieved from http://ezproxy.prescott.edu/login?url=https://www.proquest.com/scholarly-journals/bayesian-adaptive-survey-protocols-resource/docview/918081407/se-2?accountid=28426; *See also* Rose, J. P., Wylie, G. D., Casazza, M. L., & Halstead, B. J. (2018). Integrating growth and capture–mark–recapture models reveals size-dependent survival in an elusive species. *Ecosphere, 9*(8) doi:http://dx.doi.org/10.1002/ecs2.2384

[68] DEIR p. 83

[70] Rose, J. P., Wylie, G. D., Casazza, M. L., & Halstead, B. J. (2018). Integrating growth and capture–mark–recapture models reveals size-dependent survival in an elusive species. *Ecosphere, 9*(8) doi:http://dx.doi.org/10.1002/ecs2.2384

records of species occurrences demonstrate that many species of reptiles, while having a habitat preference, are known to occur in a variety of habitats within their known range, including disturbed to highly disturbed habitat.[71, 72, 73]

*T. gigas* researchers state that:

> "One of the most basic steps to mitigating anthropogenic effects on populations is determining if a population of a species occurs in an area that will be affected by human activity. Species are rarely detected with certainty, however, and falsely declaring a species absent can cause improper conservation decisions or even extirpation of populations…The giant garter snake is both wary and cryptic. In addition to its ability to evade surveyors, the giant garter snake also exhibits extensive periods with little or no movement, often in burrows or deep cracks in the soil (G. D. Wylie, U.S. Geological Survey, unpublished data). These characteristics make the giant garter snake difficult to survey. Because of difficulty surveying the giant garter snake and conservation concern for this species, it is imperative that surveys conducted for the species quantify the degree of confidence in declaring the species absent from sites where potential negative effects of anthropogenic activities have been identified."[74]

The U.S. Geological Service (USGS) recently completed a detailed study of reptile species found in arid alluvial sand habitat, in a 500-acre site that they characterized as "highly disturbed" due to the predominance of non-native, invasive plant species and disturbed scrub habitat, similar in part to the DEIR's description of Project site. The study findings resulted in 1,208 total captures, revealing an unexpected "high species richness and diversity" and "despite the relatively limited 12-month sampling period, a longstanding drought, and severe habitat disturbance, our study demonstrates that [this area]

---

[71] Vera, P., Sasa, M., Encabo, S. I., Barba, E., Belda, E. J., & Monrós, J. S. 2011. Land use and biodiversity congruences at local scale: applications to conservation strategies. *Biodiversity & Conservation*, *20*(6), 1287–1317. https://doi.org/10.1007/s10531-011-0028-x

[72] Dutcher, K. E. 2009. *Microhabitat patch use and movement patterns in Uta stansburiana populations fragmented by a 2005 wildfire in the Mojave national preserve, California* (Order No. 1466162). Available from ProQuest Dissertations & Theses Global. (305177324).

[73] Heaton, J. S. 2002. *The LizLand model: Geomorphic landform and surface composition analysis of lizard habitat in the California Mojave desert* (Order No. 3029564). Available from ProQuest Dissertations & Theses Global. (305504439).

[74] Halstead, B. J., Wylie, G. D., Coates, P. S., & Casazza, M. L. (2011). Bayesian adaptive survey protocols for resource management. *Journal of Wildlife Management, 75*(2), 450-457. Retrieved from http://ezproxy.prescott.edu/login?url=https://www.proquest.com/scholarly-journals/bayesian-adaptive-survey-protocols-resource/docview/918081407/se-2?accountid=28426 p. 450

harbors a rich herpetofauna that includes many sensitive species."[75] One of the researchers said that their results were "completely unexpected" and revealed an abundance and diversity "beyond what we ever would have imagined based on the habitat alone" (C. Rochester, *pers. comm*., Dec 2016).

These results underscore the need for focused, scientific surveys to establish the necessary evidence to create an accurate impact assessment. Due to their cryptic nature and difficulty to detect, many species of reptiles like *T. gigas* are historically and repeatedly underserved in conservation management plans, including those dependent on environmental impact analyses. [76, 77, 78, 79] As such the DEIR fails to disclose, analyze, or incorporate mitigation of significant impacts to this federally and state protected species.

**V. CONCLUSION**

Substantial evidence presented above demonstrates that the Project could have significant, unmitigated impacts on sensitive biological resources. The DEIR prepared for the Project does not adequately disclose and analyze those impacts, nor does it provide the mitigation necessary to ensure significant impacts are reduced to less than significant levels. The DEIR must be revised to disclose, adequately analyze, and mitigate the significant impacts. If the impacts cannot be reduced to less than significant, they are unavoidable. No further consideration should be given to the proposed Project until a complete DEIR is prepared and circulated that addresses the omissions and errors discussed herein.

[75] Richmond, J. Q., Rochester, C. J., Smith, N. W., Nordland, J. A., & Fisher, R. N. 2016. Rare Alluvial Sands Of El Monte Valley, California Support High Herpetofaunal Species Richness and Diversity, Despite Severe Habitat Disturbance. *The Southwestern Naturalist,* 61(4), 294-306. https://pubs.er.usgs.gov/publication/70185229
[76] Gerson, M. M. 2004. Aspects of the ecology of a desert lizard, *Callisaurus draconoides* (blainville 1835), in Joshua Tree National Park with an emphasis on home range and diet (Order No. 3146172).
[77] Heaton, J. S. 2002. The LizLand model: Geomorphic landform and surface composition analysis of lizard habitat in the California Mojave Desert (Order No. 3029564).
[78] Williams, A. K. 2004. The influence of probability of detection when modeling species occurrence using GIS and survey data (Order No. 3123715).
[79] Rosen, P. C. 2000. A monitoring study of vertebrate community ecology in the northern Sonoran Desert, Arizona (Order No. 9965915).

Sincerely,

Renée Owens

Conservation Ecologist

M.S. Ecology, M.S. Environmental Science

**Professional Background**

I am a conservation biologist and environmental consultant with over 30 years of professional experience in wildlife ecology and natural resource management. I hold a Master's of Science degree in Environmental Science and another Master's of Science degree in Ecology; my teaching experience includes college instruction since 1991 at various colleges and universities. I taught field courses in Tropical Ecology in Ecuador and the Galapagos for Boston University, and was a Visiting Full Time Professor in Environmental Science and Biology at Imperial Valley College.

I have managed an independent environmental consultancy I founded in 1993, contracted for work in the U.S. and Latin America, including in California, Tennessee, Oregon, New York, and Massachusetts. Since 1994 have and currently maintain U.S. Fish and Wildlife (FWS) Recovery permits for listed species under the federal Endangered Species Act (ESA). I hold several state and federal certifications for surveys and monitoring of protected and special status species. I have extensive experience monitoring and studying many species across several taxa, including herpetofauna, terrestrial invertebrates, passerines and raptors, and marine and terrestrial mammals. I have served as a biological resource expert on over 150 projects involving pipelines, water, urban and rural residential developments, mines, and industrial scale energy projects; on private, public, and military lands. I have experience observing the species and habitats discussed in the DEIR.

The scope of work I have conducted as an independent environmental contractor, supervisor, and employee has included assisting clients to evaluate and achieve environmental compliance, restoration, mitigation, and research as related to biological resources; as well as submitting analytical reports and comments for such work to oversight agencies. This work includes analyzing actions pursuant to the California Environmental Quality Act (CEQA), the National Environmental Policy Act (NEPA), the Endangered Species Act, the Clean Water Act (CWA), the Migratory Bird Treaty Act (MBTA), and other regulations, along with surveying for and preparing Biological Technical Reports and Assessments. I have been contracted as an environmental consultant by the FWS, the USDA Forest Service, Ultrasystems, ICF, Helix Environmental, URS, AECOM, AMEC, GeomorphIS, Dudek, ESA, Tetra Tech, among others.

My conservation and natural history research on endangered species in Latin America have received awards including the National Geographic Research and Exploration Award and the National

Commission for Scientific and Technological Research Award. My research has been featured on National Geographic Television and Discovery Channel documentaries, and I have served as technical consultant for wildlife documentaries filmed by National Geographic Television, Discovery Channel, BBC, and Animal Planet. In 2017 I received a Special Commendation for contributions to environmental conservation from the City of San Diego.

I have gained detailed knowledge of the biological resource issues associated with the Project through my extensive work on numerous research and consulting projects throughout California. My comments are based upon first-hand observations, review of the environmental documents prepared for the Project, review of scientific literature pertaining to biological resources known to occur in and near the Project area, consultation with other biological resource experts, and the knowledge and experience I have acquired throughout my 30 years of working in the field of natural resources research and management.

_____

**RENÉE OWENS**

**Curriculum Vitae**

---

- College Instruction in Biology and Environmental Science; Boston U, SDSU, Palomar College, Imperial Valley College
- Non-profit management
- National Geographic Research and Exploration Award
- Wildlife Conservation Society International Research Grant
- Endangered species Federal Recovery permits
- ESA, CEQA, NEPA, MMPA impact analyses
- Mitigation, Restoration, Project monitoring, HCP planning / implementation
- San Diego City, County, USFWS, BLM approved biologist
- U.S. National Championships Olympic Distance Triathlon
- Special Commendation for Contributions to Environmental Conservation, City of San Diego

**Ms. Owens has been a college instructor, environmental consultant and biologist, non-profit manager, writer, and public speaker for over 30 years.** Her experience includes work and research in the United States, Venezuela, Ecuador, Belize, Panama, and Honduras.

**College Instruction** of various courses includes teaching in the broad fields of Environmental Science and Biology at Boston University, Palomar College, Imperial Valley College, and San Diego State University. She has certification in Community College Instruction from the University of California San Diego.

**Award winning conservation research** by Ms. Owens has been featured by National Geographic, Discovery, BBC, Dateline NBC, Animal Planet, Sierra, and TIME magazine.

**Sage Wildlife Biology** consultancy co-founded by Ms. Owens in 1993 has provided services for projects involving endangered species, ethology, ecology, and conservation research, mitigation management, impact analysis, Habitat Conservation Plan design and implementation, and analytical reporting. Projects incorporate monitoring and regulatory compliance from the local to federal level with clients in the private, public, and government sectors, and include energy, housing, transportation projects. Contracts encompass many species, including but not limited to carnivores, passerines, raptors, shorebirds, herpetofauna, cetaceans, butterflies, and pinnipeds, and their associated habitats. She is an approved biologist for San Diego City and County, USFWS, and BLM.

**The Wild Zone Conservation League** is a wildlife conservation, education, and research non-profit. As Executive Director Ms. Owens applies her non-profit experience acquired over 30 years of volunteering to management of citizen science, environmental education, wildlife rescue, and advocacy training to promote conservation, stewardship, and land preserve acquisition.

Ms. Owens gives lectures enhanced by her nature photography and international experiences on endangered species conservation, advocacy, predator co-existence, animal behavior, ornithology, and the cognitive science of environmental leadership and communication.

**EDUCATION**

- MS Environmental Science, Concentration in Education. Green Mountain College, Poulsbo, VT.
- Community College Instruction Certification. University of California San Diego, La Jolla, CA.
- Advanced Statistical Programming Certification. U of Tennessee, Knoxville.
- MS Biology (Ecology and Evolution ABD). SDSU, San Diego, CA.
- BS Biology (Minor in Environmental Studies). State University of New York, Geneseo, NY.

**LANGUAGE SKILLS** Native English speaker, fluent in Spanish

**WORK EXPERIENCE**

***TEACHING***

**Adjunct Professor**, Instructor in Environmental Science, Biology. Department of Math, Science, and Engineering, Imperial Valley College, Imperial, CA. 2012 – 2018.

**Director/Instructor**, Wildlife Conservationist Certification Training Program, created by Ms. Owens with a San Diego Foundation Environmental Vision Fund grant. Provided education and training of adult volunteers for naturalist interpretive and conservation organizations. Wild Zone Conservation League, San Diego, CA. 2009-2011.

**Visiting Assistant Professor**, Department of Math, Science, and Engineering. Lecture, laboratory, and field trip instruction in Biology, Environmental Science, Botany. Imperial Valley College, Imperial, CA. 2008-2009.

**Environmental Education Instructor**, Outdoor instructor for educational youth program "Outdoor Explore" investigating Nearby Nature, grades k – 12. San Diego Audubon Society, CA. 2009 - 2010.

**Teaching Fellow**, Tropical Ecology Program, based at Universidad de San Francisco, Ecuador. Lecture and field instruction in advanced coursework on tropical habitats included cloud and mangrove forest, Pacific intertidal zones, inland rainforest, Galapagos Islands, and high elevation paramo. Boston University. 1999 –2000.

**Adjunct**, Instructor in General Biology lecture and laboratory. Palomar College, San Marcos, CA. 1994 - 1996.

**Teaching Assistant**, Instruction for laboratories in General Biology, Zoology, and Invertebrate Biology included creation of additions and updates to General Biology laboratory (with live marine specimens), adopted by the Biology Department for all General Biology laboratories. San Diego State University, San Diego, CA. 1990 – 1992.

**Instructional Tutor**, for classes in psychology, biology, ecology, anthropology, oceanography, and human fertility. SUNY Geneseo, Geneseo, NY. 1983 – 1987.

***PROFESSIONAL CONSULTING***

**Co-Founder, Sage Wildlife Biology LLC.** Biological consultant for over 200 hundred projects, specializing in wildlife biology of for environmental compliance, impact analysis, research, and conservation in California and South America. 1993 – present.

*Representative Projects:*

**Wind Turbine System Research.** Created and implemented a Bird and Bat Monitoring program and analysis for patent-pending turbine system, Primo Wind renewable energy design. San Diego Naval Base, CA. 2016-2017.

**Endangered Species.** Protocol surveys, monitoring, and reporting for federally threatened and endangered species, HELIX Environmental Planning Inc., San Diego, CA.

**CEQA/NEPA/ESA Consultant.** Provide expert biological testimony regarding impact analyses (i.e. MND/EIR/EIS) on conventional energy, renewable energy, residential development, and coastal development projects in California.

**Satellite Communications System LA-RICS.** Los Angeles Regional Interoperable Communications System county-wide project, federally funded to create broadband wireless network using Long-Term Evolution (LTE) technology while minimizing impacts to native habitats and ecosystems. Contributed to Biological Assessment for PEIR/ PEIS, 218-site project with coastal, mountain, and desert habitats. Management recommendations included maximizing use of existing structures while avoiding impacts to watersheds and other sensitive biological resources. Los Angeles County, CA.

**Habitat Conservation Planning.** Included federally permitted surveys and reporting for various endangered species; Migratory Bird Treaty Act nesting bird surveys; herptile surveys; population assessments; and concurrent development of Critical Habitat components of Habitat Conservation Plans including the San Diego Multiple Species Conservation Plan. San Diego, Los Angeles, Riverside, San Bernardino Counties, CA.

**Mitigation and Restoration.** Principal biologist, prepared biological Assessment plus mitigation and monitoring plan for Black Mountain Open Space Park development project; supervised biological components of mitigation management, including coordination with the City of San Diego to implement restoration efforts within the MHCP. San Diego, CA.

**Wildfire Habitat Management.** Principal investigator for California Fire Safe Council responsible for habitat management projects in areas adjacent to U.S. Forest Service land. Included habitat mapping, sensitive species surveys, GIS, management of work teams (5 to 50 individuals), and

preparation of the Biological Assessment for the Bureau of Land Management. Project development included consultation and coordination with private landowners, scientists, San Diego County Fire Authority, Homeowners Associations, USDA Forest Service and BLM. San Diego County, CA.

**Wind Energy Project.** Year-round monitoring and research contributed to Biological and Environmental Assessments, incorporating focused wildlife surveys throughout 15,000 acres of Bureau of Land Management land in Imperial County. Provided management recommendations for avoidance of impacts to sensitive habitats and species including golden eagles, Peninsular bighorn sheep, burrowing owls, and flat-tailed horned lizards, and post-construction monitoring and mortality surveys. Ocotillo, CA.

**Mitigation Land Trust Management.** Lead biologist for two Perpetual Land Management Habitat Conservation Plans managed by The Escondido Creek Land Conservancy. The Preserves incorporate 110 acres of riparian wetland, oak woodland, coastal sage scrub, and chaparral habitats; created in compliance with California Environmental Quality Act and Multiple Habitat Conservation Plan requirements, coordinated with third party trustees U.S. Fish & Wildlife Service (USFWS) and California Department of Fish and Wildlife 9CDFW). Escondido and San Marcos, CA.

**California Wild Heritage Campaign.** Wilderness Society contracted biologist and campaign organizer included biological surveys and mapping of proposed wilderness as well as coordination of volunteers, educational materials, and outreach with National Forest stakeholders. San Diego County, CA.

**Endangered Species Biologist.** Principal biologist, participated in a long-term research of the California gnatcatcher for Camp Pendleton Marine Base, including monitoring and Critical Habitat Assessment for USFWS and data collection for 40 + pairs spanning several thousand acres of habitat. Prepared reports on habitat suitability and contributed to critical habitat assessments and recovery planning. Oceanside, CA.

**Least Bell's Vireo Endangered Species Recovery Plan.** Conducted breeding season nest monitoring and invasive species management as part of the USFWS Species Recovery Plan for the Least Bell's Vireo; included monitoring, banding, and reporting monthly on 30 - 70 nesting pairs while providing reports for Critical Habitat evaluation and population recovery analysis. San Diego County, CA.

**Biologist**, HELIX Environmental Planning Inc., San Diego, CA. Responsible for terrestrial and aquatic fauna and flora surveys, monitoring, reporting, and research; Habitat Conservation Plans for private and government entities, mitigation and restoration implementation. 2000-2001.

**Biologist**, Sweetwater Biological, San Diego, CA. Conducted mammalian, ornithological, and herptile surveys and monitoring; mitigation and restoration monitoring, reporting, and management; included contributions to Habitat Conservation Plans for private and government entities. 1994-1996.

***RESEARCH***

*Representative Projects:*

**Pinniped Natural History,** breeding research and impact analysis of human interaction on Harbor seal and sea lion rookeries in San Diego, CA. 2010 – present.

**Endangered Species Conservation,** South American project funded by the National Geographic Research Foundation, CITES, Wildlife Conservation Society, The Venezuelan National Council for Scientific and Technological Research (CONICIT), and PROFAUNA of Venezuela; co-lead in multi-year study of the green anaconda; the first of its kind in the wild. Research incorporated radio telemetry, mark and recapture, natural history, and mating system analysis; findings contributed to various documentaries and a conservation and ecotourism program for 175,000 acres of Llanos in Apure State, Venezuela. 1996 – 2002.

**Avian Breeding System and Conservation**, research included manakin lekking behavior (Tiputini Tropical Research Station, Ecuador), California gnatcatcher, least Bells' vireo nesting success, cowbird parasitism (San Diego county), passerine and *Polybia* nesting associations in flooded wetlands, resource partitioning in 5 species of Ibis. Apure State, Venezuela. 1994 – 1997, 2000 – 2007.

**Predator Conservation and Ethology**, natural history and conservation research for the jaguar, mountain lion, endangered giant otter, included recommendations for management and co-existence on cattle ranches in the Llanos and Orinoco tributaries. Included observations of genetically distinct giant otter population where previously considered extinct. Apure State, Venezuela. 1996-1997.

**Endangered Species Reintroduction Programs**, of the Orinoco crocodile, Arrau turtle, Red-footed tortoise, funded by Wildlife conservation society, Venezuelan Profauna. Research in highly remote regions to assess long term species survival post-reintroduction and related influence of local indigenous tribes. Apure State, Venezuela. 1996 – 1998.

**Cetacean Bioacoustics**, research of the Commerson's dolphin included audiogram data collection on hearing thresholds and related recommendations for conservation management of this species and related genera. Hubbs Research Institute, San Diego, CA. 1991 – 1992.

**Primate Research**, Study of social and mating behavior dynamics of Pygmy chimpanzees (Bonobos). San Diego Wild Animal Park, Escondido, CA. 1990-1991.

**Avian Research Internship**, research of waterbird and passerine nesting predation and parasitism; included monitoring, banding, and mapping 250 nest boxes. Genesee Country Nature Center, Mumford, NY. 1987.

**Independent Study**, conducted undergraduate research on navigation and orientation of long distance avian migrant passerines using a planetarium equipped with an adjustable magnetic field. Principal investigator Dr. Robert Beason. SUNY Geneseo, Geneseo, NY. 1985-1987

***NON-PROFIT MANAGEMENT***

**Executive Director,** Wild Zone Conservation League. International wildlife non-profit focused on citizen science, education, research, and community collaboration for wildlife conservation. Long term mission of land acquisition in the U.S. and Central America for preservation and educational field study programs. 2015 - present.

**Latin America Assistant Director**, World Society for the Protection of Animals. Responsible for project development and campaign coordination for human-wildlife interface campaigns in Latin America. Included creation and implementation of training workshops, direction of campaigns for species in biodiversity hotspots including watersheds, coral reef, Pacific coastal rainforest and coasts. Coordinated emergency disaster relief with veterinary triage, organizational and material support, rescue training and oiled network response. Boston, MA. 1998-1999.

***LABORATORY***

**Laboratory Technician**, Palomar College, San Marcos, CA. Responsible for provisioning, preparation, and maintenance of biology and chemistry laboratories and equipment. 1994.

**Laboratory Assistant**, Toxicology and Physiology Departments. Included research in environmental toxicology, Muscular Sclerosis, Parkinson's disease. University of Rochester Medical Center, Rochester, NY. 1988 – 1990.

**AWARDS / HONORS**

- San Diego Sierra Club Silver Cup Conservation Award for Lifetime Achievement, 2017.
- Special Commendation for Contributions to Environmental Conservation, City of San Diego, 2017.
- San Diego County Democrats for Environmental Action Volunteer of the Year, 2017.
- Photo display, San Diego Museum of Natural History's "Best of Nature" Exhibit, 2016.
- San Diego Foundation Vision Fund Environmental Education and Conservation Grant, 2010.
- NOAA Environmental Hero Award, 2000.
- Photo, "TIME Great Images of the 20th Century", TIME Magazine Publications, 2000.
- CONICIT Award for the Novel Researcher, 1998.
- CITES and Profauna Joint Research Grant, 1996.

- National Geographic Film and Research Grant, 1996.
- National Geographic Research and Exploration Award, 1996.
- Wildlife Conservation Society Research Grant, 1996.
- Sierra Club Emily Durbin Leadership in Conservation Award, 1995.
- SDSU Harry Hamber Academic Graduate Scholarship, 1991.
- U.S. National Triathlon Championships, 1989.
- New York State Regents Academic Scholarship, 1983.

**CERTIFICATIONS**

- U.S. Fish and Wildlife Recovery Permit for the endangered Coastal California gnatcatcher, Least Bell's Vireo, Quino checkerspot butterfly. 1994 – present.
- Acoustic Monitoring of Bats, Field Techniques. Sonobat Workshop, Wildlife Society, 2012.
- Desert Tortoise Council, Survey Techniques Workshop, Certificate of Completion November 2010.
- Flat-tailed Horned Lizard BLM Survey Techniques Workshop, Certificate of Completion, 2010.
- Desert Tortoise Council, Survey Techniques Workshop, Certificate of Completion, 2006.
- USFWS Arroyo Toad Workshop, Certificate of Completion, Camp Pendleton Marine Base, 1999.
- Willow Flycatcher Workshop, SD Natural History Museum, Certificate of Completion, 1995.

**VOLUNTEERING**

- National Sierra Club Marine Team Committee, 2013- present.
- National Sierra Club Wildlife and Endangered Species Committee, 2010 – 2019.
- San Diego Audubon Society Conservation Committee, 2010 – 2014.
- San Diego Sierra Club (SDSC) Executive Committee, 2008 – 2010.
- SDSC Conservation Committee, 2007 – 2010; 2014 – 2018.
- SDSC Wildlife Committee Chair 2001 – 2008, 2015 – 2018.
- Wildlife Research Institute Scientific Advisory Committee, 2005 – 2008.
- Lakeside Emergency Wildlife Rehabilitation Center, 2000 – 2005.

**SOCIETY CONFERENCE PRESENTATIONS**

- "From Education to Stewardship: The Cognitive Science of Environmental Communication", Environmental Summit, San Diego, 2019.
- "The Cost of Mismanagement at a Pinniped Rookery and Coastal Urban Wildlife Interface", International Urban Wildlife Conference, San Diego, CA. June 2017.

- "Consorting with Coastal Wildlife: Conservation and Advocacy in the Real World", West Coast Ocean Forum, La Jolla, CA. 2016.
- "Conservation of the Green Anaconda in Venezuela", Annual Conference of the Society for the Study of Ichthyology and Herpetology, La Paz, Baja California, Mexico, 2000.
- "Trends in the International Reptile Pet Trade", Annual Conference for the Humane Society International, Boston, MA, 1998.
- "Bioacoustics and Conservation Implications for the Commerson's Dolphin", Biennial Conference for the Society for Marine Mammalogy, Orlando, FL, 1995.
- "Navigation and Orientation of Long-Distance Migrants: How Bobolinks use Stellar and Magnetic Cues for Migration", Annual Conference for the Society of Behavioral Ecology, Albany, NY, 1987.

**WORKSHOPS**

- Organized CEQA and NEPA Training Workshops, San Diego, CA. Presented instructional seminar regarding biological impact assessments. 2000, 2007, 2010, 2017.
- Organized the first annual West Coast Marine Environmental Forum, La Jolla. Held seminars on the National Ocean Policy, Ecosystem Based Management, critically endangered cetacean conservation, sustainable fishery science, and coastal wildlife conservation advocacy. 2017.

**PROFESSIONAL AFFILIATIONS**

- Association of Field Ornithologists
- Citizen Science League
- Marine Mammal Society
- National Association of Biology Teachers
- Society for the Study of Amphibians and Reptiles
- Wildlife Society
- Wildlife and Habitat Conservation Coalition

**SELECT PUBLICATIONS**

- Owens, R. Y. The Unpleasant Secrets of Clean Solar Energy: The Impacts to Wildlife in the Desert. *The Desert Report,* Dec 2016: pp 1, 8-9.
- Owens, R. Y. 2014. The USDA's Dirty Secret: A Century-Old Wildlife Killing Machine, *The EcoReport* (January). http://www.theecoreport.com/green-blogs/sustainability/conservation/wildzone/the-usdas-dirty-secret-a-century-old-wildlife-killing-machine/
- Owens, R. Y. and Hord. P. L. In revision. *Conservation Biology*. Economic and costs and ecological implications of "joint use" policy management of a Harbor seal rookery in an urban wildlife interface.
- Owens, R. Y. In revision. *Journal of Field Ornithology.* Nesting associations between wasps of the genus *Polybia* and passerine birds of the Venezuelan Llanos.
- Owens, R. Y. 2012. Rebirth of Green: Resolution for 2013. *San Diego Loves Green: The Wild Zone* (December).
- Owens, R. Y. 2012. Coyotes: The Media's Modern Bogeyman. *San Diego Loves Green*: *The Wild Zone* (October).
- Rivas, J.A. and Owens, R.Y. 1999. Teaching conservation effectively: a lesson from life history strategies. *Conservation Biology*, 13 (2): 453-454.
- Rivas, J.A. and Owens, R.Y. 2002. Orinoco crocodile (*Crocodylus intermedius*): Age at First Reproduction. *Herpetological Review*. 33 (3): 203.
- Rivas, J. A., R. Y. and S. A. Aktay, 2001. *Paleosuchus trigonatus* (Schneider's Smooth fronted Caiman): Nesting and hatching. *Herpetological Review*. 32: 251.
- Rivas, J. A., Owens R. Y. and Calle, P.P. 2001. *Eunectes murinus*: Juvenile predation. *Herpetological Review*. 32 (2): 107-108.
- Rivas, J. A. and R. Y. Owens. 2000. *Eunectes murinus* (green anaconda): cannibalism. *Herpetological Review.* 31(1):44-45
- Rivas, J. A., Thorbjarnarson, J. B., Owens, R. Y and M. C, Muñoz, 1999. *Eunectes murinus*: caiman predation. *Herpetological Review*. 30 (2): 101
- Owens, R.Y. Informe técnico al Servicio de Fauna de Venezuela: Regional population assessment of the endangered giant otter (*Pteronura brasiliensis*) in Apure State, Venezuela, and conservation recommendations for a highly endangered species. Dec 1997.
- Unpublished Master's Thesis, "Bioacoustics of the Commerson's Dolphin (*Cephalorhynchus commersonii*) with Recommendations for Applied Conservation" 1993.

# EXHIBIT C

SMITH ENGINEERING & MANAGEMENT

February 23, 2022

Mr. Kevin Carmichael
Adams Broadwell Joseph & Cardozo
520 Capitol Mall, Suite 350
Sacramento, CA 95814

**Subject**: **TC NO. CAL. Development Warehousing and Distribution Facility DEIR (SCH Number: 2021080499)** P22006

Dear Mr. Carmichael:

Per your request,I reviewed the Draft Environmental Impact Report (the "DEIR") for theTC NO. CAL. Development Warehousing and Distribution Facility Project (the "Project") in the Port of Stockton (the "Port"). My review is with respect to transportation and circulation considerations.

My qualifications to perform this review include registration as a Civil and Traffic Engineer in California, over 50 years professional consulting practice in these fields and both preparation and review of the traffic and transportation components of numerous environmental documents prepared under the California Environmental Quality Act ("CEQA"). My professional resume is attached hereto.

## Overview

The DEIR reasonably discloses the Project's significant transportation impacts. However, the mitigation measures proposed fall short of the term "all feasible mitigation" that CEQA requires be implemented for impacts that are considered significant and unavoidable. The sections below discuss the impacts and more effective feasible mitigation.

## Vehicle Miles Traveled Impact

The DEIR discloses that the Project would generate an average Vehicle Miles Traveled ("VMT") per employee of 21.96 miles daily. This is 38.98 percent over the significant impact threshold of 15.8 VMT daily per employee and would require a reduction of over 28 percent of the projected VMT per employee to

TRAFFIC • TRANSPORTATION • MANAGEMENT
5311 Lowry Road, Union City, CA 94587 tel: 510.489.9477 fax: 510.489.9478

bring the Project below the significant impact threshold. We agree that such a decrease is unlikely to be achieved. Nevertheless, CEQA requires the Project to implement all feasible mitigation. Given this requirement, the Transportation Demand Management ("TDM") program the DEIR recommends seems particularly feeble. MM-TRA-3 (the TDM program) as proposed in the DEIR includes the following components:

> – Identification of locations along the project frontage on the Port of StocktonExpressway/McCloy Avenue where bus stops could be constructed with a pedestrianconnection from the bus stop to primary building entrances.
> – Coordination with the San Joaquin RTD to determine if transit services could be providedto the project site and if service could be coordinated to accommodate future shiftchanges.
> – Implementation of a commute trip reduction program that could include a carpooling/ride-matching program and/or preferential carpool parking.

This TDM program can and should be significantly strengthened. The locations where bus stops could be placed should not be merely identified. They should be required built into the Project so that they are in place when and if regular bus or special shift-change shuttle services are implemented. The Project and the Port should not merely coordinate with San Joaquin RTD to see if transit service could be provided to the Port and Project site; they should pay San Joaquin RTD to operate a shuttle service to the Port and Project site, at least for the shift change times of the 'day' shift or organize such a shuttle themselves. (It is recognized that such a shuttle service is fairly useless for employees whose shifts start or end in the deep-night hours since connecting transit services are largely inoperative at that time.) Provision of such a shuttle service is feasible, and has the added benefit of potentially reducing VMT at other developments in the Project area of the Port.

**Queue Impacts on Charter Way at the Intersection with I-5 Northbound Ramps**

The DEIR discloses that Project traffic would increase the length of queues on the left turn movement from Charter Way eastbound to I-5 northbound on-ramp from 375 feet to 425 feet in the AM peak and from 675 feet to 725 feet in the PM peak. In both instances, the queues are far in excess of the queue storage capacity of the left turn pocket. In fact, the Project's increment to the AM peak queue would cause it to extend into the intersection of Charter Way with the I-5 southbound ramps while in the PM peak the queue would extend through and well west of the intersection of Charter Way with the I-5 southbound ramps, with or without the Project. This condition is a CEQA matter because queue overflows of such dimension constitute a hazard to public safety.

To mitigate the situation, the DEIR proposes retiming the traffic signal at the Charter Way/I-5 northbound ramps intersection. The problem with this is that the proposed change does offset the Project's increment to the queues. It reduces them further, yet it does not eliminate the problem condition. And it is entirely possible that other development projects have already claimed the benefits of retiming this signal as mitigating *their projects impactful queue contribution* at this location. Since the queue overflows are already blocking flows in the leftmost of the two eastbound through lanes at the subject intersection, it is worth consideration to combine revised signal timing with conversion of that left through eastbound lane to a second left turn lane.

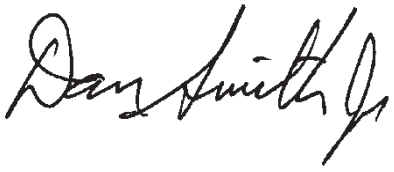
There are also other reasons for looking to a larger mitigation. Given the dimensions of queue overflows in the AM and PM peak hours, there is a high probability of such overflows in the shoulders of those peak hours, particularly in the PM. Also, traffic counts on which the conventional traffic analysis were based were taken in August, 2021. While Port traffic was probably normalized by that time (realizing that almost all jobs in the Port cannot be worked remotely from home), other general traffic passing through the subject intersection had probably not yet returned to pre-Covid levels.

**Conclusion**

Given the above, the DEIR should enhance the mitigation measures to the impacts discussed above.

Sincerely,

Smith Engineering & Management
A California Corporation




Daniel T. Smith Jr., P.E.
President

SMITH ENGINEERING & MANAGEMENT

## DANIEL T. SMITH, Jr.
## President

**EDUCATION**

Bachelor of Science, Engineering and Applied Science, Yale University, 1967
Master of Science, Transportation Planning, University of California, Berkeley, 1968

**PROFESSIONAL REGISTRATION**

California No. 21913 (Civil) Nevada No. 7969 (Civil) Washington No. 29337 (Civil)
California No. 938 (Traffic) Arizona No. 22131 (Civil)

**PROFESSIONAL EXPERIENCE**

Smith Engineering & Management, 1993 to present. President.
DKS Associates, 1979 to 1993. Founder, Vice President, Principal Transportation Engineer.
De Leuw, Cather & Company, 1968 to 1979. Senior Transportation Planner.
Personal specialties and project experience include:

**Litigation Consulting**. Provides consultation, investigations and expert witness testimony in highway design, transit design and traffic engineering matters including condemnations involving transportation access issues; traffic accidents involving highway design or traffic engineering factors; land use and development matters involving access and transportation impacts; parking and other traffic and transportation matters.

**Urban Corridor Studies/Alternatives Analysis**. Principal-in-charge for State Route (SR) 102 Feasibility Study, a 35-mile freeway alignment study north of Sacramento. Consultant on I-280 Interstate Transfer Concept Program, San Francisco, an AA/EIS for completion of I-280, demolition of Embarcadero freeway, substitute light rail and commuter rail projects. Principal-in-charge, SR 238 corridor freeway/expressway design/environmental study, Hayward (Calif.) Project manager, Sacramento Northeast Area multi-modal transportation corridor study. Transportation planner for I-80N West Terminal Study, and Harbor Drive Traffic Study, Portland, Oregon. Project manager for design of surface segment of Woodward Corridor LRT, Detroit, Michigan. Directed staff on I-80 National Strategic Corridor Study (Sacramento-San Francisco), US 101-Sonoma freeway operations study, SR 92 freeway operations study, I-880 freeway operations study, SR 152 alignment studies, Sacramento RTD light rail systems study, Tasman Corridor LRT AA/EIS, Fremont-Warm Springs BART extension plan/EIR, SRs 70/99 freeway alternatives study, and Richmond Parkway (SR 93) design study.

**Area Transportation Plans**. Principal-in charge for transportation element of City of Los Angeles General Plan Framework, shaping nations largest city two decades into 21'st century. Project manager for the transportation element of 300-acre Mission Bay development in downtown San Francisco. Mission Bay involves 7 million gsf office/commercial space, 8,500 dwelling units, and community facilities. Transportation features include relocation of commuter rail station; extension of MUNI-Metro LRT; a multi-modal terminal for LRT, commuter rail and local bus; removal of a quarter mile elevated freeway; replacement by new ramps and a boulevard; an internal roadway network overcoming constraints imposed by an internal tidal basin; freeway structures and rail facilities; and concept plans for 20,000 structured parking spaces. Principal-in-charge for circulation plan to accommodate 9 million gsf of office/commercial growth in downtown Bellevue (Wash.). Principal-in-charge for 64 acre, 2 million gsf multi-use complex for FMC adjacent to San Jose International Airport. Project manager for transportation element of Sacramento Capitol Area Plan for the state governmental complex, and for Downtown Sacramento Redevelopment Plan. Project manager for Napa (Calif.) General Plan Circulation Element and Downtown Riverfront Redevelopment Plan, on parking program for downtown Walnut Creek, on downtown transportation plan for San Mateo and redevelopment plan for downtown Mountain View (Calif.), for traffic circulation and safety plans for California cities of Davis, Pleasant Hill and Hayward, and for Salem, Oregon.

**Transportation Centers**. Project manager for Daly City Intermodal Study which developed a $7 million surface bus terminal, traffic access, parking and pedestrian circulation improvements at the Daly City BART station plus development of functional plans for a new BART station at Colma. Project manager for design of multi-modal terminal (commuter rail, light rail, bus) at Mission Bay, San Francisco. In Santa Clarita Long Range Transit Development Program, responsible for plan to relocate system's existing timed-transfer hub and development of three satellite transfer hubs. Performed airport ground transportation system evaluations for San Francisco International, Oakland International, Sea-Tac International, Oakland International, Los Angeles International, and San Diego Lindberg.

**Campus Transportation**. Campus transportation planning assignments for UC Davis, UC Berkeley, UC Santa Cruz and UC San Francisco Medical Center campuses; San Francisco State University; University of San Francisco; and the University of Alaska and others. Also developed master plans for institutional campuses including medical centers, headquarters complexes and research & development facilities.

**Special Event Facilities**. Evaluations and design studies for football/baseball stadiums, indoor sports arenas, horse and motor racing facilities, theme parks, fairgrounds and convention centers, ski complexes and destination resorts throughout western United States.

**Parking.** Parking programs and facilities for large area plans and individual sites including downtowns, special event facilities, university and institutional campuses and other large site developments; numerous parking feasibility and operations studies for parking structures and surface facilities; also, resident preferential parking.

**Transportation System Management & Traffic Restraint**. Project manager on FHWA program to develop techniques and guidelines for neighborhood street traffic limitation. Project manager for Berkeley, (Calif.), Neighborhood Traffic Study, pioneered application of traffic restraint techniques in the U.S. Developed residential traffic plans for Menlo Park, Santa Monica, Santa Cruz, Mill Valley, Oakland, Palo Alto, Piedmont, San Mateo County, Pasadena, Santa Ana and others. Participated in development of photo/radar speed enforcement device and experimented with speed humps. Co-author of Institute of Transportation Engineers reference publication on neighborhood traffic control.

**Bicycle Facilities**. Project manager to develop an FHWA manual for bicycle facility design and planning, on bikeway plans for Del Mar, (Calif.), the UC Davis and the City of Davis. Consultant to bikeway plans for Eugene, Oregon, Washington, D.C., Buffalo, New York, and Skokie, Illinois. Consultant to U.S. Bureau of Reclamation for development of hydraulically efficient, bicycle safe drainage inlets. Consultant on FHWA research on effective retrofits of undercrossing and overcrossing structures for bicyclists, pedestrians, and handicapped.

**MEMBERSHIPS**

Institute of Transportation Engineers Transportation Research Board

**PUBLICATIONS AND AWARDS**

*Residential Street Design and Traffic Control*, with W. Homburger *et al*. Prentice Hall, 1989.

Co-recipient, Progressive Architecture Citation, *Mission Bay Master Plan*, with I.M. Pei WRT Associated, 1984.

*Residential Traffic Management, State of the Art Report,* U.S. Department of Transportation, 1979.

*Improving The Residential Street Environment*, with Donald Appleyard et al., U.S. Department of Transportation, 1979.

*Strategic Concepts in Residential Neighborhood Traffic Control*, International Symposium on Traffic Control Systems, Berkeley, California, 1979.

*Planning and Design of Bicycle Facilities: Pitfalls and New Directions*, Transportation Research Board, Research Record 570, 1976.

Co-recipient, Progressive Architecture Award, *Livable Urban Streets, San Francisco Bay Area and London*, with Donald Appleyard, 1979.

# EXHIBIT D

DATE: September 19, 2019

TO: SJVUAPCD Governing Board

FROM: Samir Sheikh, Executive Director/APCO
Project Coordinator: Dave Warner

**RE:** **ITEM NUMBER 22: APPROVE VOLUNTARY EMISSION REDUCTION AGREEMENT WITH CONTANDA TERMINALS LLC TO MITIGATE AIR QUALITY IMPACTS FROM THE CONTANDA RENEWABLE DIESEL BULK LIQUID TERMINAL DEVELOPMENT PROJECT IN THE PORT OF STOCKTON**

## RECOMMENDATIONS:

1. Approve and authorize the Chair to sign the attached Voluntary Emission Reduction Agreement (VERA) with Contanda Terminals LLC (Contenda) to receive funds in the amount of $292,189 to mitigate air quality impacts from the Contanda Renewable Diesel Bulk Liquid Terminal Development Project (Project) located in the Port of Stockton.

2. Authorize staff to identify, fund, and manage air quality projects to mitigate emissions resulting from the Project.

## BACKGROUND:

Since 2005, the District has entered into 42 VERAs with project proponents to mitigate air quality impacts of their projects. These VERAs to date have generated over $105 million that the District has invested in local emission reduction projects, achieving total emission reductions of over 5,000 tons of Nitrogen Oxides (NOx), 380 tons Volatile Organic Compounds (VOC)/Reactive Organic Gases (ROG), and 670 tons of Particulate Matter 10 microns or less in size (PM10).

The Project proposed by Contanda is for the development of a new bulk liquid terminal located in the Port of Stockton to receive, store, and transfer renewable diesel fuel. The project includes the construction of sixteen aboveground storage tanks (ASTs) of varying capacity, along with construction of secondary containment, truck racks, and pumps and piping to transfer liquids between the new ASTs, berth, rail cars, trucks.

The Port of Stockton served as Lead Agency for the Project under the California Environmental Quality Act (CEQA) and has certified an Environmental Impact Report (EIR) on April 15, 2019 for CEQA purposes. On May 16, 2019, Safe Fuel and Energy Resources California (SAFER CA) and Contanda entered into an Environmental Settlement Agreement (Settlement), which requires Contanda to mitigate a portion of Project related operational NOx emissions by entering into a VERA with the District. The Settlement requires payment to the District prior to the commencement of construction for each of the Project's five Phases, as follows:

| Phase Number | Tank Capacity (barrels) | Payment Amount |
|---|---|---|
| 1 | 100,000 | $18,794.86 |
| 2 | Additional 60,000 | $58,595.74 |
| 3 | Additional 60,000 | $58,595.74 |
| 4 | Additional 80,000 | $78,101.33 |
| 5 | Additional 80,000 | $78,101.33 |
| | Total VERA Cost | $292,189.00 |

The purpose of this item is to seek your Board's approval of an agreement with Contanda to implement the Settlement. Under this agreement, the District would be obligated to invest the funds in NOx mitigation projects through our emission reduction incentive programs, as discussed below.

## ROLE OF VOLUNTARY EMISSION REDUCTION AGREEMENTS:

In 2005, at the urging of private developers, the District in collaboration with Kern County developed an innovative CEQA mitigation measure now known as a Voluntary Emission Reduction Agreement or VERA. These agreements are designed to provide developers with enforceable and legally defensible means to quantify and mitigate emission increases beyond emission reductions required by applicable laws and regulations. Approvals of VERAs by your Governing Board, however, do not constitute approval of the underlying development project as the decision rests with the lead agency, typically a city or county.

A VERA is a mitigation measure by which the project proponent provides pound-for-pound mitigation of air emissions increases through a process that funds and implements emission reduction projects administered through the District's emission

reduction incentive grant programs. A VERA can be implemented to address air quality impacts from both construction and operational phases of a project. The emission reductions secured through VERAs are "surplus" of existing regulations, achieving reductions earlier or beyond those required by regulations.

Dollars provided by the project proponent are reinvested in the Valley to reduce emissions. Utilizing the District's highly successful grant administration program, the funds generated will be awarded to Valley businesses, residents, and municipalities to generate real and quantifiable reductions in emissions. The following are some examples of how these funds will be utilized to reduce air pollution:

- Grants to Valley businesses to electrify or replace existing diesel-powered off-road equipment and agricultural tractors
- Grants to Valley businesses to replace old trucks with new low-emission trucks
- Grants to Valley school districts to replace older and high-polluting school buses
- Grants to Valley municipalities to replace older transit buses and other vehicles
- Grants to Valley residents to purchase cleaner personal vehicles
- Grants to Valley residents to repair older high polluting vehicles
- Grants to Valley residents to replace fireplaces and non-certified wood burning stoves with natural gas inserts or clean burning EPA-certified units

Over the years, the District has built a reputation for excellence in the implementation of these programs, as highlighted in multiple audits by state agencies that commended the District's incentive programs for their efficiency and effectiveness. The District's incentive programs have invested over $2.5 billion in public and private funding for clean air projects reducing over 158,000 tons of emissions.

## FISCAL IMPACT:

Under the terms of the agreement, Contanda is to pay the District a total of $292,189 in mitigation funds. The District's 2019-20 budget contains adequate revenue estimates and appropriations to facilitate the receipt of mitigation funds from Contanda and for expenditures of those funds in accordance with the agreement.

*Attachment: Voluntary Emission Reduction Agreement No. 20190402 (4 pages)*

San Joaquin Valley Unified Air Pollution Control District
Governing Board Meeting
September 19, 2019

# APPROVE VOLUNTARY EMISSION REDUCTION AGREEMENT WITH CONTANDA TERMINALS LLC TO MITIGATE AIR QUALITY IMPACTS FROM THE CONTANDA RENEWABLE DIESEL BULK LIQUID TERMINAL DEVELOPMENT PROJECT IN THE PORT OF STOCKTON

**Attachment**:

**VOLUNTARY EMISSION REDUCTION AGREEMENT NO. 20190402**
**(4 PAGES)**

**VOLUNTARY EMISSION REDUCTION AGREEMENT 20190402**

This Voluntary Emission Reduction Agreement ("Agreement") is entered into as of September 19, 2019 by and between Contanda Terminals LLC ("Developer"), and the SAN JOAQUIN VALLEY UNIFIED AIR POLLUTION CONTROL DISTRICT, an air pollution control district formed pursuant to California Health and Safety Code section 40150, et seq. ("District").

**RECITALS**

**WHEREAS**, the Contanda Renewable Diesel Bulk Liquid Terminal Development Project is to develop a new bulk liquid terminal to receive, store, and transfer renewable diesel, including the construction of sixteen aboveground storage tanks (ASTs) of varying capacity, along with construction of secondary containment, truck racks, and pumps and piping to transfer liquids between the new ASTs, berth, rail cars and trucks ("Project") and is located at the Port of Stockton, California; and

**WHEREAS**, on April 15, 2019 the Port of Stockton ("Lead Agency") certified a Final Environmental Impact Report ("EIR") for the Project; and

**WHEREAS**, on May 16, 2019 the Developer and Safe Fuel and Energy Resources California ("SAFER CA") agree to terms in the form of an Environmental Settlement Agreement ("Settlement") which requires the Developer to mitigate Project related operational NOx emissions; and

**WHEREAS**, under this Agreement the Developer desires to satisfy the terms within the Settlement; and

**WHEREAS**, District is an air pollution control district formed by the counties of Fresno, Kern, Kings, Madera, Merced, San Joaquin, Stanislaus and Tulare, pursuant to California Health and Safety Code section 40150, et seq.

**WHEREAS**, Developer and District desire to enter into this Agreement, as a result of the Settlement, wherein Developer will provide the District with funds in order to achieve emission reductions to reduce the Project's impacts on air quality.

///

## AGREEMENT

**NOW THEREFORE**, in exchange for the mutual covenants herein contained, Developer and District hereby agree as follows:

1. **Air Quality Emission Reductions Funds**

Developer shall provide $292,189 ("Air Quality Emission Reductions Funds") to the District in order to fund emission reductions projects. The Air Quality Emission Reductions Funds shall be provided to the District prior to the commencement of construction for each Project Phase, as follows:

| | |
|---|---|
| Phase 1 (100,000 barrels of tank capacity) | $18,794.86 |
| Phase 2 (Additional 60,000 barrels of tank capacity) | $58,595.74 |
| Phase 3 (Additional 60,000 barrels of tank capacity) | $58,595.74 |
| Phase 4 (Additional 80,000 barrels of tank capacity) | $78,101.33 |
| Phase 5 (Additional 80,000 barrels of tank capacity) | $78,101.33 |
| Total Agreement Cost | $292,189.00 |

The District and Developer both agree the above payment of Air Quality Emission Reduction Funds shall satisfy the Developer's obligations under the Settlement.

2. **Use of Air Quality Emission Reductions Funds**

Upon District's receipt of Air Quality Emission Reductions Funds, District shall use diligent efforts to enter into funding agreements with owners and/or operators of various pollution source equipment as identified by the District from its incentive programs ("Funding Agreements") in order to mitigate NOx emissions resulting from the Project.

3. **Acknowledgement Regarding Mitigation**

Upon successful fulfillment of mitigation of Project operational NOx emissions, District shall verify in writing to the Developer the quantity of NOx emissions that have been mitigated.

4. **Indemnification**

Developer agrees to indemnify, defend and hold harmless District for, from and in connection with any third party claims, losses and/or liabilities to the extent such claims,

losses and/or liabilities arise from or are in connection with District's performance of this Agreement, excluding such claims, losses and/or liabilities which result from or are in connection with District's sole negligence, act or omission.

5. **No Joint Venture or Partnership**

District and Developer agree that nothing contained in this Agreement or in any document executed in connection with this Agreement shall be construed as making District and Developer joint venturers or partners.

6. **Amendments and Waivers**

No addition to or modification of this Agreement shall be effective unless set forth in writing and signed by the party against whom the addition or modification is sought to be enforced. The party benefited by any condition or obligation may waive the same, but such waiver shall not be enforceable by another party unless made in writing and signed by the waiving party.

7. **Entire Agreement**

The terms of this Agreement are intended by the parties as the complete and final expression of their agreement with respect to such terms and may not be contradicted by evidence of any prior or contemporaneous agreement. This Agreement specifically supersedes any prior written or oral agreements between the parties with respect to the subject matter of this Agreement.

IN WITNESS WHEREOF, Developer and District have executed this Agreement and agree that it shall be effective on September 19, 2019.

**DEVELOPER**
**Contanda Terminals LLC**

_____
Gerald R. Cardillo
President & CEO

**DISTRICT**
**San Joaquin Valley Unified Air Pollution Control District**

_____
Ernest Buddy Mendes
Governing Board Chair

**DISTRICT**
**San Joaquin Valley Unified Air Pollution Control District**

_____
Samir Sheikh
Executive Director/APCO

***Approved as to legal form:***
San Joaquin Valley Unified Air Pollution Control District

_____
Annette Ballatore
District Counsel

***Approved as to accounting form:***

_____
Mehri Barati
Director of Administrative Services

***For accounting use only:***
San Joaquin Valley Unified Air Pollution Control District
Program: _____
Account No: _____

## *2.5.5 Response to Adams Broadwell Joseph and Cardozo (ABJC)*

| Comment Code | Response |
|---|---|
| **ABJC-1** | The Port thanks Adams Broadwe*ll* Joseph & Cardozo *f*or their comments. The DEIR provides adequate information regarding the 26-acre site. Figure 2 clearly identifies the area as the "Western Warehouse Area." Section 2.3.3.4 describes existing conditions in this area. Section 2.5.3 includes a discussion of the proposed project activities in this area and Table 2 identifies the equipment that would be used during each phase of construction. As described in several sections of the DEIR, there would be no removal of facilities and no major construction in this area following remediation. There is no known use for this area currently. Future use by an existing or prospective tenant would require a lease from the Port, which would trigger CEQA, at which time the proposed use would be considered against potential impacts. No changes to the EIR are required. |
| **ABJC-2** | Please see the Response to Comments ABJC 4 through 9, 13, and 15 through 24 that address specific comments related to the commentors' environmental concerns. Contrary to Comment ABJC-2, the DEIR fully complies with CEQA and fully analyzes the proposed project and alternatives consistent with CEQA. No changes to the EIR are required. |
| **ABJC-3** | Please see the Responses to Comments ABJC-4 through 9, 13, and 15 through 24 that address specific comments related to the commentors' environmental concerns. The proposed project is sufficiently analyzed in the DEIR. All feasible mitigation has been identified and applied. The EIR provides meaningful information to the decision-makers considering the proposed project. As required by CEQA, Port decision-makers (the Board of Commissioners) will consider the potential environmental impacts of the proposed project as part of the EIR certification process. The Board will also be presented with the Findings of Fact and a Statement of Overriding Consideration, which will describe the economic and commercial benefits of the proposed project in relation to the environmental impacts for the Board's consideration in approving the proposed project. No changes to the EIR are required. |
| **ABJC-4** | The commentor is conflating regional conditions with project-specific conditions. The Port is a 4,200-acre site spread over the East and West Complexes and encompassing upland and riverine areas. As accurately described on the Port's website and in other CEQA documentation prepared by the Port, the Port is home to a wide variety of animal and plant life in certain areas; however, not all Port lands nor all parcels at the Port support wildlife or habitat. The Port supports a variety of industrial facilities in its function as a multimodal transportation port. It also supports wildlife in areas where sufficient habitat is present. The project site is degraded and includes contamination that is required to be remediated by DTSC. These baseline conditions are accurately characterized in the DEIR. In preparing the DEIR, the project site was delineated by qualified biologists to fully assess the site for both habitat potential and species presence. No changes to the EIR are required. |
| **ABJC-5** | Please see the Response to Comment ABJC-4. The project site is described in several sections of the DEIR, including Section 3.3.1 which characterizes the site as a largely vacant 102-acre parcel on the Port's West Complex, located within a highly developed and industrialized area surrounded by existing industrial developments characterized by storage tanks, industrial buildings, concrete surface storage |

| Comment Code | Response |
|---|---|
| | or staging areas, stockpiles of various commodities, roadways, and rail lines. As discussed in the DEIR, biological conditions in the project area were observed during surveys of the project area and a jurisdictional waters and wetlands delineation conducted in 2021 (Anchor QEA 2021b; WRA 2021). A search of the CNDDB was conducted to identify recorded special status species occurrences within the U.S. Geological Survey Stockton West 7.5 minute quadrangle and surrounding quadrangles (Terminous, Lodi South, Waterloo, Stockton East, Manteca, Lathrop, Union Island, and Holt; CDFW 2021). The habitat description provided in the DEIR remains accurate in describing the vegetation as ruderal.<br><br>As noted by the commenter, the Port maintains barn owl nest boxes and bat roost boxes throughout the West Complex. The owl boxes were built by the Port to encourage owl populations to help control local rodent populations. However, neither barn owl nest boxes nor bat root boxes would be disturbed or destroyed because of the proposed project.<br><br>One bat box is located at the south end of Port Road 21 and approximately 20 barn owl boxes are located throughout the West Complex, including near the project site, but not within the development area. Barn owls are highly adaptable to urban environments and are supported by farmers in agricultural settings as well for their rodent hunting ability. Barn owls nest boxes do not need to be placed immediately adjacent to foraging areas as they fly up to a mile from the nest site to find prey (Audubon Society, 2023).<br><br>Approximately 60 aces of ruderal habitat at the project site would no longer be available for barn owl use; however, there would remain over 700 acres of foraging habitat (including seasonal wetland, alfalfa fields, fields farmed with row crops, and annual grassland) south and west of the proposed project area within a 1-mile radius, which will continue to sustain the barn owl population. Beyond this radius, additional foraging habitat exists for the barn owls that may nest in the Port lands. This information has been added to the FEIR but does not change any conclusions or require additional mitigation. |
| **ABJC-6** | In response to the comment regarding the potential use of the proposed project area by wildlife, the DEIR adequately considers the use of the area by a variety of wildlife, including migratory birds (see Section 3.3.3.4.1 of the DEIR). The DEIR also fully analyzed the potential for construction and operation of the proposed project to affect adjacent habitat (see Section 3.3.3.4.4 of the DEIR). Implementation of MM-BIO-1 and MM-BIO-3 include measures to reduce impacts to wildlife species. No changes to the EIR are required. |
| **ABJC-7** | Contrary to the comment, the DEIR provides an accurate description of the origin and function of the wetlands on site. As stated in the DEIR, a wetland delineation was conducted by a qualified professional and concluded that the project site contains approximately 0.09-acre of seasonal wetland, 0.09-acre alkaline scald area mapped as "other waters," and 1.58 acres (4,400.67 linear feet) of drainage ditches (WRA 2021). The delineation found that none of these features meet the definition of jurisdictional waters of the United States as confirmed by USACE (2021). The stormwater ditches on the project site do not meet the definition of a wetland under the State Wetland Definition and |

| Comment Code | Response |
|---|---|
| | Procedures for Discharges of Dredged or Fill Material to Waters of the State that was adopted on April 2, 2019, by the State Water Resources Control Board because the ditches are artificial (not a wetland created by modification of surface waters of the state) and are subject to ongoing operation and maintenance (WRA 2021). Per the Procedures, the stormwater ditches are not waters of the state since they are constructed artificial wetlands and are currently used and maintained. However, the small seasonal wetland and alkaline scald mapped in the study area would likely be subject to RWQCB regulation pursuant to the Porter-Cologne Water Quality Control Act. Based on input from CDFW, these resources could be subject to CDFW's LSAA regulatory authority so a notification will be submitted by TC NO. CAL. Development prior to construction. No changes to the EIR are required. |
| **ABJC-8** | Please see the Response to Comment CDFW-1 and ABJC-7**.** Regarding CDFW Section 1602 jurisdiction, the DEIR provides adequate information for CDFW consideration. As described accurately in the DEIR, the ditches were constructed in uplands to convey stormwater runoff; the ditches do not function as natural tributaries or streams because flows are managed by a pump that is activated only to remove accumulated stormwater from the site. Section 3.3.3.4.3 provides additional details about the history and uses of the ditches. Based on input from CDFW, these resources could be subject to CDFW's LSAA regulatory authority so a notification will be submitted by TC NO. CAL. Development prior to construction. No changes to the EIR are required. |
| **ABJC-9** | Contrary to the comment, the DEIR is not vague and does not lack rigorous analysis. Per CEQA regulations, an EIR is used to inform both the public and decision-makers on the potential impacts related to a proposed project. Specifically, CEQA Guideline Section 15140 requires that "EIRs shall be written in plain language and may use appropriate graphics so that decisionmakers and the public can rapidly understand the documents." As such, an EIR must not be overly scientific or technical so that the general public can understand the analysis, while also providing enough analysis to provide the responsible regulatory agencies with sufficient information on which to comment. The use of "unscientific phrases" is appropriate for a CEQA document which is read by the public at large and a mix of language is necessary to convey information to those of the public not versed in scientific names of plant species. EIR's normally strike this balance by providing general descriptions followed by more specific details to ensure meaningful feedback. The comment also cherry picks the more general terms without also acknowledging that details are also provided for in the DEIR. For example, the DEIR provides definitions for ruderal vegetation and provides examples of what species were found as part of delineation and define ruderal vegetation. No changes to the EIR are required. |
| **ABJC-10** | Please see the Responses to Comments ABJC-4 through ABJC-6, which address the difference between the regional and project-specific conditions as well as barn owl nest boxes and adjacency of foraging habitat. The study area is not well connected to movement corridors for wildlife, nor does the ruderal vegetation provide high quality habitat for owls or bats. No changes to the EIR are required. |

| Comment Code | Response |
|---|---|
| **ABJC-11** | Please see the Response to Comments ABJC-4 and ABJC-6 as well as Section 3.3.1 (Environmental Setting) of the DEIR which adequately describes the existing conditions in the proposed project area. CEQA does not require vegetation classification using the "National or California Vegetation Classification and Mapping Standards." The ruderal vegetation is described adequately in the DEIR.<br><br>Obtaining coverage under the SJMSCP is a strong preference for CDFW and is a requirement of the City of Stockton. Accordingly, the Port and TC NO. CAL. Development planning for obtaining coverage under the SJMSCP is not only appropriate but is also a required step to be taking in the EIR. No changes to the EIR are required. |
| **ABJC-12** | Contrary to the comment, the methods used to assess biological baseline conditions and resultant impacts in the DEIR are consistent with the methods used in other Port-prepared CEQA documents for which federal and state permits and coverage under the SJMSCP were successfully obtained. The methods used in the DEIR are also consistent with those used in recent CEQA documents prepared by other lead agencies. Therefore, it is within the range of reasonable methodology to apply when studying this environmental impact.<br><br>Site-specific evaluations were conducted to assess potentially jurisdictional resources and habitats present at the project site. Agency-maintained habitat and species information (CNDDB, iPAC, and SJMSCP sites) was also consulted. Based on the species lists for the site and the habitat conditions documented during the site evaluations, the potential for special status species to be present was evaluated. A comparison between the observed habitats and the required habitat for special status species resulted in the list of species presented in Section 3.3.1.3. This type of evaluation is qualitative by nature; one generally cannot deduce that a species will certainly be present somewhere unless it has been observed there in the past. Even a species not visibly observed at a site could be present there if the appropriate habitat and other environmental conditions exist. Agency staff work off the stance that non-detection of a species at a site does not confirm its absence, so evaluations must be qualitative to thoughtfully address possibilities. No changes to the EIR are required. |
| **ABJC-13** | Please see the Responses to Comments ABJC-4 through ABJC-12. No changes to the EIR are required. |
| **ABJC-14** | Please see the Responses to Comments ABJC-15, ABJC-16, and ABJC-17. All feasible mitigation measures to reduce potentially significant impacts were considered. Selected mitigation measures were described in adequate detail to assess effectiveness. |
| **ABJC-15** | The suggested measures to strengthen the Traffic Demand Management (TDM) Program would not affect the proposed project's VMT levels. As described in the DEIR, the project site is approximately 2 miles away from the closest transit stop. Additionally, Port security regulations and protocols discourage public transportation traversing through the Port. Therefore, the TDM Program requires that the Port and TC NO. CAL. Development coordinate with the San Joaquin RTD to determine if transit services could be provided to the project site and if service could be coordinated to accommodate future shift change. Requiring bus stops be built ahead of knowing the route could potentially lead to wasted energy and resources. While a shuttle service could reduce some VMT, as |

| Comment Code | Response |
|---|---|
| | noted, the transit services are largely inoperative at night and workers are expected to originate from the larger Stockton region. In the absence of connecting to a larger transit system, is unlikely that workers would use a shuttle system that could add significant time to their commute. The TDM instead focuses on carpooling that would link workers with similar destinations to reduce VMT while not adding significant travel times. Implementing the described TDM Plan is a sufficient and feasible mitigation measure that ensures that appropriate planning around developing public transit options near the project site is conducted and encourages measures that are more likely to be adopted by workers. No changes to the EIR are required. |
| **ABJC-16** | As stated in the DEIR, based on the results of the TIA, the addition of proposed project traffic causes the eastbound left turn movement at the intersection of I-5 NB Ramps and West Charter Way to exceed the available storage (350 feet) during the morning (95th percentile queue length increases from 375 to 425 feet) and afternoon (95th percentile queue length increases from 675 to 725 feet) peak hours. Since the proposed project causes the 95th percentile queue length to exceed the available storage and increases the 95th percentile queue length by more than 25 feet during the morning and afternoon peak hours, impacts are considered significant. However, implementation MM-TR-1 (Signal Timing) would improve the LOS at the intersection of I-5 NB Ramps and West Charter Way (Intersection 7) from E to B and would reduce the queue length to better than future without project conditions. This mitigation measure is sufficient on its own to reduce impacts to less than significant and would actually improve traffic at the I-5 NB Ramps and West Charter Way to better conditions then without project conditions. Therefore, no additional mitigation is warranted. |
| **ABJC-17** | Please see the Response to Comment ABJC-18. As detailed below, the DEIR discloses all potentially significant impacts of the proposed project and implements all feasible mitigation to reduce those impacts to less-than-significant levels. |
| **ABJC-18** | Contrary to the comment, the planned remediation will address the risk from soil and sediment contaminants. The DEIR summarizes the remedial activities that were evaluated in accordance with criteria in the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 Code of Federal Regulations (CFR) Part 300 and California Health and Safety Code Section 25356.1(d). In accordance with remediation objectives that the Port developed in consultation with the DTSC and the Central Valley RWQCB, the proposed covers and institutional controls would minimize exposure to soil and sediment contaminants and thereby reduce human health and ecological risks to acceptable levels.<br><br>Please see the Response to Comment SJVAPCD-5 for more information on the analysis of fugitive dust emissions to ensure the remediation will comply with San Joaquin Air Pollution Control District regulations.<br><br>The Port, in consultation with DTSC and RWQCB, has prepared a Remedial Action Plan (RAP) that further describes the planned remediation. Once approved by DTSC and CVRWQCB, the RAP will |

| Comment Code | Response |
|---|---|
| | provide the approval required (in accordance with the Pre-Decisional LUC) to construct the stormwater retention basins as part of the planned development.<br><br>For the reasons stated above, no changes to the EIR are required. |
| **ABJC-19** | Please see Master Responses 1 and 2, and the Responses to Comments CARB-2 through CARB-5. The mitigation provided in the DEIR is adequate to reduce NOx emissions to below significance. The DEIR has been modified to provide further information on the number of zero-emission yard hostlers and other terminal equipment, as well as a commitment to use newer trucks. Regarding VERA, SJVAPCD has developed a voluntary emissions control program in which project applicants can purchase emission reduction credits in lieu of direct mitigation. The Air District believes that VERAs are a feasible mitigation under CEQA for many projects but leaves the determination of feasibility up to the lead agency. While the Port believes VERAs can be valuable tools to address regional emissions, they do not directly offset criteria pollutant emissions within the Port. As the lead agency, the Port has the discretion to prioritize emission reductions within the Port. No changes to the EIR are needed. |
| **ABJC-20** | Please see Master Responses 1 and 2, and the Responses to Comments CARB-2-through CARB-5<br><br>The Port has modified MM-GHG-1 to include the requirement to install a 600 kW solar system.<br><br>The Port has also modified MM-AQ-3 to require that any check-in point for trucks are well inside the project site to ensure that there are no trucks queuing outside of the facility.<br><br>MM-AQ-4 to requires the tenant be in, and monitor compliance with, all current air quality regulations for on-road trucks including CARB's Heavy-Duty (Tractor-Trailer) Greenhouse Gas Regulation, 96 Periodic Smoke Inspection Program (PSIP), and the Statewide Truck and Bus Regulation. As discussed in the DEIR, while heavy-duty electric trucks are under development, they are not readily available throughout the state at commercial levels. CARB is currently developing an Advanced Clean Truck Program which will require zero-emission trucks statewide. As the program is under development, the Port and TC NO. CAL. Development will hold development of any infrastructure to ensure such infrastructure matches expected requirements and technologies (electric and/or hydrogen fuel cells). |
| **ABJC-21** | Please see Master Responses 1 and 2, and the Response to Comments CARB-2 through CARB-5 and ABJC-20.<br><br>Following mitigation, the emissions of the proposed project would be below SJVAPCD thresholds.<br><br>The DEIR included out-of-date text in the cumulative section The proposed project's emissions would not exceed applicable air thresholds and therefore, and impacts would not be considered cumulatively significant under CEQA. However, the Port recognizes that the air quality in the region has been impacted by a history of industrial operations and transportation sources, including from Port sources. As discussed in Master Response-1, the Port has several port-wide programs aimed at actively reducing emissions throughout the Port. |

| Comment Code | Response |
|---|---|
| **ABJC-22** | As lead agency, the Port chose to prepare the HRA in accordance with the 2015 OEHHA Risk Assessment Guidelines, which are widely used and accepted by CEQA practitioners in California, not Canadian guidelines.<br><br>Please see the Response to Comment SJVAPCD-5. The HRA completed for the proposed project (construction and operations) was based primarily on DPM. The HRA was revised to include 10 constituents of concern identified in the RI/FFS report. For the acute HI analysis, the maximum concentrations of each constituent were used to speciate the TSP to determine maximum hourly emissions. If the maximum concentration resulted in an estimated acute risk that exceeded a HI of 1, the acute HI risk calculation was rerun using the 99 percentile UCL from Attachment 1 of Appendix F of the RI/FFS report. This was the case for arsenic where the UCL was estimated for samples from the top 6 feet of soil. Ground-based area sources coinciding with the Western Remediation Area, Warehouse Development Area, and Eastern Remediation Area each with initial vertical dimensions of 1 meter, consistent with guidance from the SCAQMD, were added to the AERMOD model to simulate emissions from the fugitive dust sources.<br><br>The revised HRA was conducted using CARB's HARP Air Dispersion Modeling and Risk Tool (version 22118) to account for both inhalation and non-inhalation pathways from the TACs emitted from soil remediation activities. HARP was also used to estimate health risks from the DPM emissions previously included in the HRA. For residential and worker receptors, mandatory minimum (inhalation, soil, dermal, and mother's milk) and worker (inhalation, soil, and dermal) pathways were selected, respectively. Both receptor types used 95th percentile intake rates consistent with SJVACPD HRA guidance. As shown in Table 51, the estimated construction cancer risk was 0.32 in a million, which is below SJVACPD's CEQA threshold of 20 in a million. The estimated construction non-cancer chronic HI was 0.28 which is below SJVAPCD's CEQA threshold of 1. The estimated construction non-cancer acute HI was 0.23 which is below SJVAPCD's threshold of 1. The updated overall proposed project risks (construction plus operations) are summarized in Table 47 (Revised), and all results are below SJVAPCD's CEQA risk thresholds.<br><br>Fugitive dust emissions from site remediation activities have been added to the unmitigated and mitigated construction mass emissions tables (see Table 10 [Revised] and Table 11 [Revised]), respectively, and emissions remain below SJVAPCD mass emission thresholds for CEQA. |
| **ABJC-23** | Dr. Clark does not appear to appreciate that the health-based risk assessment factors of OEHHA and of USEPA are based on epidemiology studies of workers in diesel-dominated environments. These studies use DPM as a surrogate for diesel exposure (including both particulate and gaseous pollutants).<br><br>For example, the two studies of railway workers by Garshick et al. and supporting retrospective exposure assessments for the worker population, use respirable particulate matter as a surrogate of exposure to diesel exhaust. The Garshick et al. case-control study,[5] along with the Garshick et al. |

[5] Garshick, E., M.B. Schenker, A. Muñoz, M. Segal, T.J. Smith, S.R. Woskie, S.K. Hammond, and F.E. Speizer, 1987. "A Case-Control Study of Lung Cancer and Diesel Exhaust Exposure in Railroad Workers." *Am Rev Respir Dis* 135(6):1242–1248.

| Comment Code | Response |
|---|---|
| | cohort study[6] of U.S. railroad workers have often been considered as a basis for estimating the risk of lung cancer in the general population.<br><br>OEHHA uses the findings of these studies to derive a series of lifetime risk estimates. In addition, as stated in Appendix D of the 2015 Hot Spots Guidance[7], OEHHA recommends using the $PM_{10}$ portion of the DPM as a surrogate for evaluation of exposure and health risks to diesel emissions (both particulate and gaseous pollutants).<br><br>"In August 1998, the CARB identified diesel exhaust as a TAC (CARB 1998). In the identification report, OEHHA provided an inhalation noncancer chronic reference exposure level of 5 micrograms per cubic meter ($\mu g/m^3$) and a range of inhalation cancer potency factors of 1.3 x 10-4 to 2.4 x 10-3 ($\mu g/m^3$). The Scientific Review Panel on TACs recommended a "reasonable estimate" inhalation unit risk factor of 3.0 x 10-4 ($\mu g/m^3$). From the unit risk factor an inhalation cancer potency factor of 1.1 (mg/kg-day)-1 may be calculated. These noncancer and cancer health factors were developed based on whole (gas and particulate matter) diesel exhaust. The surrogate for whole diesel exhaust is diesel PM. $PM_{10}$ (particulate matter, 10 microns or less in size) is the basis for the risk calculations."<br><br>Similarly, the Health Canada report[8] that Dr. Clark cites related to noncancer health effects used DPM as a surrogate for diesel emissions. Health Canada states "diesel exhaust particles (DEP) was chosen as the basis for the development of a chronic exposure guidance value, for several reasons. Toxicological studies have demonstrated DEP to be the main causative agent of many of the health effects associated with diesel exhaust (DE) exposure. Removal of the particulate component of DE resulted in fewer or less severe health effects. The DEP component of exhaust contains compounds known to be hazardous to human health, and DEP contributes to ambient PM, which is also known to be harmful to human health. Lastly, DEP is typically the parameter used to set experimental exposure levels."<br><br>No changes to the EIR are required. |
| **ABJC-24** | The DEIR incorrectly stated that emissions were quantified using CalEEMod version 2016.3.2. As documented in Appendix D to the DEIR, emissions were quantified using CalEEMod version 2020.4.0, which was the current version of CalEEMod at the time of the Notice of Preparation (August 2021). The FEIR has been updated and the typographical correction does not influence the analysis or conclusions regarding the significance of the impact or the feasibility of mitigation measures. |
| **ABJC-25** | Please see the Response to Comment CARB-5. As described in the DEIR, the proposed project is the construction and operation of a warehouse and distribution facility for bulk building products and consumer goods. There are no designs or plans to construct or support refrigerated units per the |

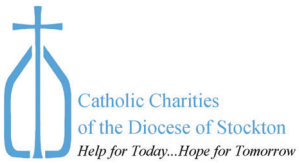
[6] Garshick, E., M.B. Schenker, A. Muñoz, M. Segal, T.J. Smith, S.R. Woskie, S.K. Hammond, and F.E. Speizer, 1988. "A Retrospective Cohort Study of Lung Cancer and Diesel Exhaust Exposure in Railroad Workers." *Am Rev Respir Dis* 137(4):820–825.

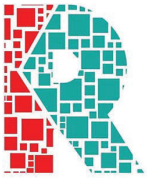
[7] OEHHA, 2015. *Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments*. Available at: https://oehha.ca.gov/air/crnr/notice-adoption-air-toxics-hot-spots-program-guidance-manual-preparation-health-risk-0.

[8] Health Canada, 2016. *Human Health Risk Assessment for Diesel Exhaust*. Health Canada. March 2016.

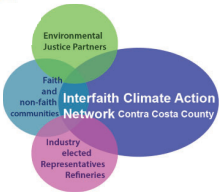
| Comment Code | Response |
|---|---|
| | applicant's proposal. CEQA does not require a lead analyze speculative situations. The following project condition has been added to the FEIR:<br><br>Project Condition 1: The applicant cannot support TRUs at the site without prior Port approval.<br><br>The project condition will be added as a lease measure. |
| **ABJC-26** | Section 3.3.3.4.1 of the DEIR identifies potential impacts to special status species from habitat loss. Section 3.3.1 of the DEIR provides details on the conditions and existing habitats on site. Focused protocol surveys are not required to prepare a CEQA document. Please see the Response to Comment ABJC-27, which expands on the plant species observed at the study area. The vegetation remains best described as ruderal as indicated in the DEIR text. MM-BIO-1 identifies the need for coverage under the SJMSCP and/or surveys for special status species with coordination with USFWS and/or CDFW. No changes to the EIR are required. |
| **ABJC-27** | Please see the Response to Comment ABJC-26. Based on the existing conditions verified by biologists in the field, the habitat required to support the special status plants listed below was not present at the project site. For example, the conditions of the undeveloped lands with ruderal vegetation and managed drainage ditches does not support habitat suitable for the delta tule pea or alkali milk vetch.<br><br>Additionally, rare plant surveys are not required where habitat to support them is absent, such as the areas within the project site. Please see Section 3.3.1.3.9 of the DEIR for further discussion on why habitat for special status plant species is not present on the project site. |
| **ABJC-28** | The Port is strongly encouraging tenant projects to seek coverage under the SJMSCP. Obtaining coverage under the SJMSCP is a strong preference for CDFW and is a requirement of the City of Stockton. Accordingly, the Port and TC NO. CAL. Development are planning to obtain coverage for this project under the SJMSCP.<br><br>Once a project is through the SJMSCP review and coverage process, a series of incidental take and minimization measures are assigned to the project based on a SJCOG biologist's site visit and findings; this step can only happen within 60 days of starting construction to ensure that site conditions mirror realistic conditions at the time of construction.<br><br>As described in MM-BIO-1, the intended plan is to obtain coverage under the SJMSCP. Coverage is expected and the alternative minimization means described in this mitigation measure are included based on the Port's past experience of CDFW asking for alternatives to SJMSCP coverage to be included in CEQA documents in case coverage cannot be issued. The Port does not expect any issues seeking coverage for the proposed project.<br><br>If SJMSCP coverage is issued, the Port would comply with the agreed upon nesting bird protection measures, which may include—among other possible conditions—preconstruction surveys during the nesting season, ongoing monitoring if nests are observed, or stopping work if nests are observed close to the construction area (San Joaquin County Multi-Species Habitat Conservation and Open Space |

| Comment Code | Response |
|---|---|
| | Plan, November 2000). The measures include the requirement for qualified biologists to conduct surveys and monitoring; the details of these requirements are not typically presented in an EIR.<br><br>If SJMSCP coverage is not able to be obtained, then CDFW standard protocol surveys for bird species would be conducted during the nesting bird window. Coordination with CDFW would be conducted to dictate initial buffer zones for any nesting raptor or passerine detected in the study area. CDFW requires a review of all qualified biologist resumes prior to construction—again, this is not a detail pointed out in a CEQA document. |
| **ABJC-29** | Please see the Response to Comment ABJC-5 for information on barn owl boxes, which would not be affected by the proposed project.<br><br>The DEIR evaluated the potential for special status species occurrence based on existing habitat and the regional setting. Species-specific surveys are not required under CEQA. MM-BIO-1 prescribes special status species surveys either through the SJCOG in accordance with SJMSCP-established ITMMs or by using CDFW protocol level efforts.<br><br>CDFW has requested all tree replanting to mitigate for the loss of landscape trees in the study area consist of native species such as live and valley oak, among other natives. They have also requested that the replacement ratio be between 1:1 and 5:1 as outlined in the Response to Comment CDFW-6 (and in MM-BIO-3) and have asked that the replacement trees be more suitable to the climate of the area than those being removed. The replanting of native trees at the proposed project site will provide higher quality habitat over time for bird species in the region than existing conditions. |
| **ABJC-30** | Protocol level surveys are not required in the preparation of a CEQA document. The SJMSCP was developed to mitigate impacts to covered species through coordination with regulatory agencies (through ESA Section 10(a)(1)(B) and CESA Section 2081(b) Incidental Take Permits), which are enforceable actions.<br><br>As fully discussed in the DEIR, if the proposed project is for some reason unable to obtain coverage under the SJMSCP, the proposed project would be fully mitigated though the alternative measures identified in MM-BIO-1 and implemented in coordination with CDFW or USFWS specifications, if special status species are found to be present. |
| **ABJC-31** | The comment is misunderstanding the analysis presented in the DEIR. While prior to mitigation there would be some inconsistencies with the General Plan, Implementation of MM-GHG-1 through MM-GHG-3, MM-AQ-1, and MM-AQ-3 would reduce GHG emissions consistent with the City's 2040 General Plan policies. MM-GHG-1 and MM-GHG-2 are designed to address direct energy use and off-site indirect sources like product and electricity production consistent with state climate plans and the City's 2040 General Plan. No changes are required. |
| **ABJC-32** | See response to ABJC-2. The DEIR's findings are correct as presented and recirculation is not warranted. |










February 24th, 2022

Kirk DeJesus- Port Director
kdejesus@stocktonport.com

Jeff Wingfield- Deputy Port Director,
Regulatory & Public Affairs
jwingfield@stocktonport.com

Jason Cashman- Environmental Manager
jcashman@stocktonport.com

Port of Stockton
2201 West Washington Street
Stockton, CA 95203
ceqa@stocktonport.com

**RE: TC NO. CAL. Development Warehousing and Distribution Facility Project DEIR comment letter**

Dear Port of Stockton staff:

CC-1

We, the undersigned, have concerns that the planned Development Warehousing and Distribution Facility project will impact the air quality and health of local Stockton residents already enduring some of the state's most severe environmental and economic burdens. In addition, the project's impacts related to greenhouse gas (GHG) emissions have not been sufficiently considered. Without proper emissions inventory baseline data and a Port of Stockton Clean Air Plan, we strongly urge the Port to withhold its certification of the Final EIR and approval of the project. In addition, we urge placing a hold on any future planned projects that will result in a significant increase of emissions and corresponding public health impacts.

We were encouraged to learn in the January 19th, 2022 Port Outreach Committee meeting that the Port is developing a Clean Air Plan and hope this plan includes target dates, enforcement measures, and related tenant incentives for emissions reductions. Also, we commend the Port for securing funding from the California Energy Commission to develop a blueprint for converting medium- and heavy-duty vehicle fleets and port cargo-handling equipment to zero emissions as soon as possible. Finally, we understand the port is currently updating its emissions inventory data, which has only disclosed 2018 data.

While we see good intentions with these efforts, we find it deeply concerning that such a sizable warehouse project would potentially be approved in advance of the Port developing the Clean Air Plan, electrification blueprint, and updating its GHG emissions inventory. Without baseline emission data to assess where the Port of Stockton is currently, we are unable to evaluate the Port's greenhouse-gas emissions trajectory. We urge the Port to withhold its certification of the Final EIR and approval of the project until the Port has adopted a community-vetted Clean Air Plan with stringent emissions standards and accountability mechanisms for current and prospective tenants. Clearly, this Clean Air Plan should also be formulated with updated emissions inventory data and electrification blueprint mapping feasible pathways for rapid zero-emission transition of medium- and heavy-duty electric vehicles and port cargo-handling equipment.

After these initiatives are completed, we strongly urge that future Port developments prioritize the following objectives:

1) Increase emission reduction measures and air quality analysis for warehouses and distribution centers
2) Truck traffic reduction enforcement in nearby communities
3) Establishing a community benefits package (agreement)

We explain these in more detail below.

1) **<u>Increase emission reduction measures and air quality analysis for warehouses and distribution centers</u>**

CC-2

Continuing to propose Port development plans without acknowledging OEHHA's tool, CalEnviroScreen, in the draft EIRs ignores the fact that communities surrounding the Port are disadvantaged communities. CalEnviroScreen is a mapping tool that helps identify California communities most affected by numerous sources of pollution, and especially vulnerable to pollution's detrimental health effects. CalEnviroScreen uses environmental, health, and socioeconomic information to produce scores for every census tract in the state.

According to CalEnviroScreen 3.0, the AB 617 Stockton community has a CES overall score of 100, an asthma score of 100, and a cardiovascular disease score of 97[1].[2] These CalEnviroScreen scores are indicative of South Stockton community's health already severely impacted due to high sources of pollution in the South Stockton area such as industrial warehousing and trucking activity associated with the Port of Stockton.

Mitigation measures would reduce pollution, but can only be established with proper infrastructure from the landowner in place. Proper infrastructure, such as an established Port electrification blueprint, would ensure a smooth transition toward zero-emission trucks and other warehousing equipment for current and prospective tenants.

A strategy to increase air quality analysis could include: Installing and maintaining an air monitoring station proximate to sensitive receptors and the facility for the life of the project, and making the data publicly available in real time. Although air quality monitor installation is not a mitigation measure, it would set a standard for the tenant to be transparent with their air quality data.

We urge the Port of Stockton to further adopt mitigation measures and air quality analysis as recommended by CARB and the CA Attorney General's Bureau of Environmental Justice's (EJ Bureau) Best Practices and Mitigation Measures for Warehouse Projects document.[3]

---

[1] 2019 Community Recommendations Staff Report – November 2019: https://ww2.arb.ca.gov/sites/default/files/2019-12/2019_community_recommendations_staff_report_november_8_acc_3.pdf

[2] Data Source: https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-30

[3] California Department of Justice. (2021, March 16). *Warehouse Projects: Best Practices and Mitigation Measures to Comply with the California Environmental Quality Act*. Office of Attorney General of California. https://oag.ca.gov/sites/all/files/agweb/pdfs/environment/warehouse-best-practices.pdf

2) **Truck traffic reduction enforcement near surrounding communities:**

CC-3

An increase in warehousing development at the Port means an increase in heavy truck traffic and associated diesel emissions. This brings concern from both Boggs Tract residents and environmental justice organizations due to the massive influx and outflow of heavy duty trucks utilizing Fresno Avenue and Washington Street to enter and exit the Port of Stockton. Many of those heavy-duty trucks idle across the street from George Washington Elementary school for lunch at a local restaurant. Even though this heavy truck activity takes place outside of the Port's boundaries, there are still mitigation efforts that the Port can take to ensure they are reducing communities' air pollution burdens.

- As a mitigation measure, we recommend providing meal options onsite or shuttles between the facility and nearby meal destinations for construction, warehouse employees, and truck drivers.

We acknowledge from the collaboration with the Port Outreach committee, the Port is evaluating improvements to several in-Port roads that can be used as alternative truck routes. Unfortunately, without any clear strategy to make sure no heavy duty trucks from this project will take Fresno Avenue and Washington Street, there is not any reassurance for the protection of the Boggs Tract community's health. Strategies that we recommend include:

- Posting signs at every truck exit driveway providing directional information to the truck route as referenced by the EJ Bureau's warehousing guidelines.[3]
- Requiring tenants to enroll in the United States EPA's SmartWay program, and requiring tenants to use carriers that are SmartWay carriers.

3) **Establishing a Community Benefits Package (Agreement)**

CC-4

According to CalEnviroScreen 3.0, the AB 617 Stockton community has an unemployment score of 100.[1] This provides context on the years of disinvestment in this community. In addition to incorporating mitigation measures from the tenant to protect the health of surrounding communities, it is important to incorporate Community Benefits Agreements (CBA) that are tailored to a community's particular need. Although not a new concept, CBAs are fairly new for the Stockton area. This brings an opportunity for the Port of Stockton and its tenants to work with the community in establishing a CBA framework. The CBA Handbook[4] by Julian Gross is a great example that provides clear direction for all parties interested in starting a CBA. A CBA with the Port of Stockton, their tenant, and the local community could introduce approaches such as workforce development standards with local hiring provisions, along with assurance of union-negotiated wages, benefits, and worker safety protections. For port-specific Community Benefits Agreements, we recommend the West Oakland Howard Terminal Community Benefits process.[5]

---

[4] CBA guideline source: https://juliangross.net/docs/CBA_Handbook.pdf

[5] Port-Specific CBA: https://www.oaklandca.gov/topics/community-benefits-agreement-cba-for-the-oakland-as-waterfront-ballpark-district-at-howard-terminal#resources

CC-5

In closing, prioritizing environmental justice communities in Stockton is vital to protecting communities from shouldering environmental burdens while improving their public health. We shared our preferred standards for future Port projects. The Port of Stockton has an opportunity to be a zero-emission port, while being a strong regional economic hub. But we will not be able to get there without a foundational Clean Air Plan, a current GHG emissions inventory, and an electrification blueprint that offers pollution-burdened community members a seat at the table. That is why we strongly urge the Port of Stockton to withhold its certification of the Final EIR and approval of the TC NO. CAL. project at this time.

Sincerely,

Jonathan Pruitt, Environmental Justice Program Coordinator
Catholic Charities of the Diocese of Stockton

Davis Harper, San Joaquin County Community Organizer
The Climate Center

Matt Holmes, Environmental Justice Director
Little Manila Rising

Victoria Moreno
Boggs Tract Community Resident

Regina Griffin
Stockton Resident

Mary Meninga
Manteca Resident

Iris Stewart-Frey,
Professor[6]Department of Environmental Studies and Sciences, Santa Clara University
Co-coordinator of the Environmental Justice and the Common Good Initiative, Santa Clara University

Tina Katopodes Chow
Professor[7], Civil and Environmental Engineering, University of California, Berkeley

[6] Title is for identification purposes only. The endorsement does not reflect the view of Santa Clara University
[7] Title is for identification purposes only. The endorsement does not reflect the view of the University of California

Susan Stephenson, Executive Director
California Interfaith Power and Light

Jasmine Leek, Managing Director
Third City Coalition

Kevin D Hamilton, Co-Executive Director
Central California Asthma Collaborative

Marven Norman, Policy Specialist
Center for Community Action and Environmental Justice

Darryl Rutherford, Executive Director
Reinvent South Stockton Coalition

Barbara Born, PhD
Coordinator CA Laudato Si

Mariah Looney, Campaign Coordinator
Restore the Delta

Tiffany Eng, Interim Co-Director
California Environmental Justice Alliance

Nayamin Martinez, MPH, Director
Central California Environmental Justice Network

Margo Praus
Sierra Club, Delta-Sierra Group Mother Lode Chapter

Taylor Williams, Program Manager - Workforce & Green Economy
Edge Collaborative

Darren Kumar, Associate Director, Central Valley
Rising Sun Center for Opportunity

Sandy Naranjo,
Port Commissioner Representing National City for Port of San Diego[8]

Dulce Lopez, Program Director
Changeist

[8] Title is for identification purposes only. The endorsement does not reflect the view of the Unified Port of San Diego.

Jan Warren, Chair
Interfaith Climate Action Network of CCC

Nailah Pope-Harden, Executive Director
ClimatePlan

Shoshana Wechsler
Sunflower-Alliance

cc: Stanley Armstrong, Air Pollution Specialist, Risk Reduction Branch
*stanley.armstrong@arb.ca.gov*

Rica V. Garcia, California Attorney General's Office, Bureau of Environmental Justice
*Rica.Garcia@doj.ca.gov*

Morgan Capilla, NEPA Reviewer, U.S. Environmental Protection Agency, Air Division, Region 9
*capilla.morgan@epa.gov*

Patia Siong, Supervising Air Quality Specialist, San Joaquin Valley Air Pollution Control District
*patia.siong@valleyair.org*

## *2.5.6 Response to Catholic Charities (CC)*

| Comment Code | Response |
|---|---|
| **CC-1** | The Port thanks Catholic Charities for its comments. Please see the Port's responses to your specific comments below as well as Master Responses 1 and 2. The Port is actively developing a CAP to address criteria pollutant and GHG emissions. However, as a port authority with a mandate to support port operations, the Port cannot hold all development until the CAP is finalized. The Port, however, has incorporated relevant measures from the CAP into the EIR. |
| **CC-2** | The DEIR includes a project-specific HRA that provides detailed information on the proposed project's potential to impact area residents and workers. While CalEnviroScreen is a useful tool, it presents cumulative risk from a variety of sources. The goal of a CEQA document is to isolate the proposed project contribution to environmental impacts.<br><br>Contrary to the comment, the DEIR provides several discussions regarding the AB 617 program and efforts to reduce regional impacts for all and especially disadvantaged communities.<br><br>The proposed project includes mitigation aimed at reducing air impacts. Following implementation, the projects mass emissions and health risk are below significance. No additional mitigation is required. |
| **CC-3** | As stated in Section 3.11.3.5.4 of the DEIR, all vehicular access to and from the project site would be provided from the Port of Stockton Expressway and McCloy Avenue, on the Port's West Complex. No traffic would be routed through the Boggs Track community, on the Port's East Complex. |
| **CC-4** | As stated in Response to Comment CC-3, the Port is committed to improving environmental and socioeconomic conditions for communities in and around the Port. The Port is currently working on developing and implementing a community mitigation fund program that would directly benefit the neighboring communities in and around the Port. |
| **CC-5** | Thank you for taking the time to provide comments. The Port appreciates the opportunity to work with the community. |

SIERRA CLUB
DELTA-SIERRA GROUP
MOTHER LODE CHAPTER

*Delta-Sierra Group*
*Mother Lode Chapter*
*P.O. Box 9258*
*Stockton CA 95208*

Jason Cashman, Environmental and Regulatory Affairs Manager 2.22.2022
Port of Stockton
2201 West Washington Street
Stockton, California 95203
via email: ceqa@stocktonport.com

Re: TC NO. CAL. Development Warehousing and Distribution Facility Project DEIR

The Delta-Sierra Group of the Sierra Club has reviewed the Draft Environmental Impact Report (DEIR) for the proposed TC NO. CAL. Development warehousing and distributing facility project. We hope that our prepared DEIR comments will be included and considered when developing a revised DEIR or a Final Environmental Impact Report (FEIR) in order to minimize the environmental impacts associated with the Port of Stockton entering into a long-term lease with project proponents.

**PROPOSED PROJECT SETTING**

The proposed project consists of the construction of a 655,200 square foot, 36-foot-tall concrete warehouse, 293,951 square foot outdoor storage area (exterior slab-on-grade), 418 car and truck trailer parking spaces (for employee parking, truck parking, and trailer storage), truck docks, extension of two rail spurs, a railcar storage track, and construction of minor ancillary structures on the existing vacant Warehouse Development Area on 60 acres of the 102-acre project. The warehouse would be built using a concrete tilt-wall process where pre-constructed concrete panels would be installed on-site. Five existing warehouses on the western part of the project area will remain.

Operations are expected to begin following warehouse construction and would involve truck and rail deliveries of commercial products. The warehouse will allow for the receiving, storing, and distribution of bulk building products, and consumer goods. Within two miles of the project are three rail lines: Burlington Northern-Santa Fe (BNSF) Central California Traction (CCT), and Union Pacific (UP). Rail lines are located adjacent to the northern part of the project.

DSG-1

Under the proposed project, the Port would issue a lease to TC NO. CAL. Development to construct and hold operations within the warehouse. TC NO. CAL. Development would sublease the warehousing facility to a commercial operator for distribution services. This speculatory aspect of the project presents uncertainty regarding implementation of mitigation measures associated with the operation of the facility, as put forth in the DEIR. No information in the DEIR was provided as to the potential lessor, and this must be included in the FEIR as the Port is forming a long-term partnership for the development and remediation of a contaminated site. Construction would occur in three phases over approximately three years and would be expected to begin in 2022. The project is already being advertised by Cushman and Wakefield[1].

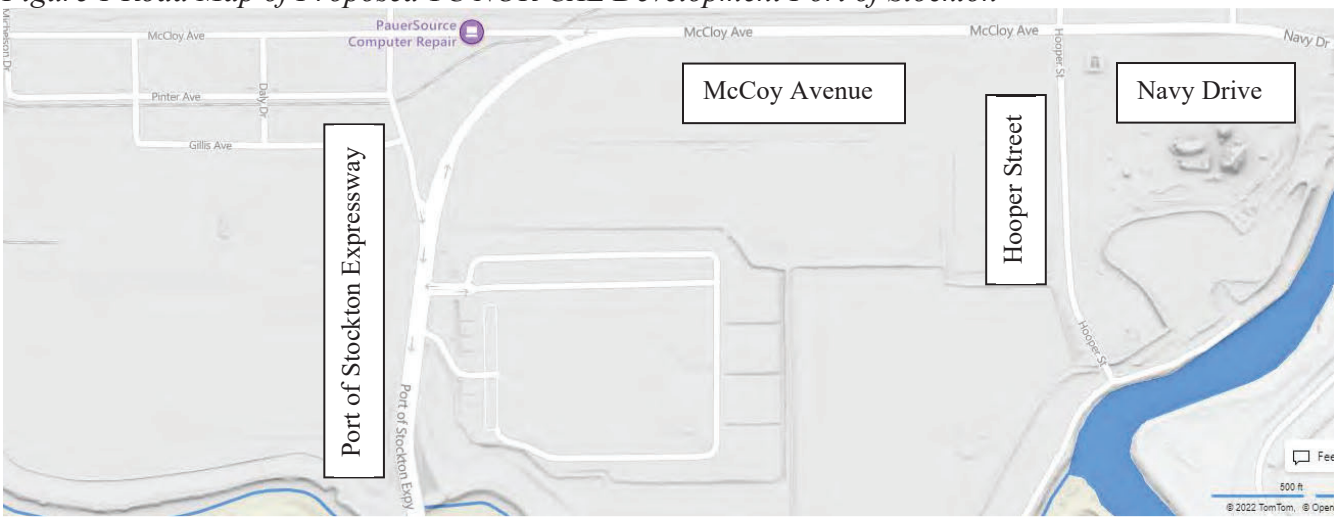
DSG-2

[1] https://www.loopnet.com/Listing/McCloy-Avenue-Port-Of-Stockton-Stockton-CA/14029685/

DSG-2 (cont.)

The project is located on Rough and Ready Island west of Hooper Street, south of McCloy Avenue and east and west of Port of Stockton Expressway as shown on the street map below.

*Figure 1 Road Map of Proposed TC NOR CAL Development Port of Stockton*




DSG-2 (cont.)

As part of the proposed project, remediation would occur in areas throughout the 102-acre project site, which includes the proposed 60-acre site on which the warehouse would be developed, as well as approximately 42 acres to the east and west. The remediation site is referred to as Site 47. The DEIR reported the status of remediation as in the Remedial Investigation/Focused Feasibility Study (RI/FFS) phase which is under development by the Port and TC NO. CAL. Development. The purpose of the Site 47 RI/FFS is to assess site conditions and evaluate alternatives to the extent necessary to select a remedy that will be documented in the Remedial Action Plan (RAP). Please forward notification to the Delta-Sierra Group when the RI/FFS is available for public review while under review by the California Department of Toxic Substance Control and the Central Valley Regional Water Quality Control Board, as it is reportedly still under development.

*Figure 2 TC NOR CAL Development DEIR Site Map with Mitigation*

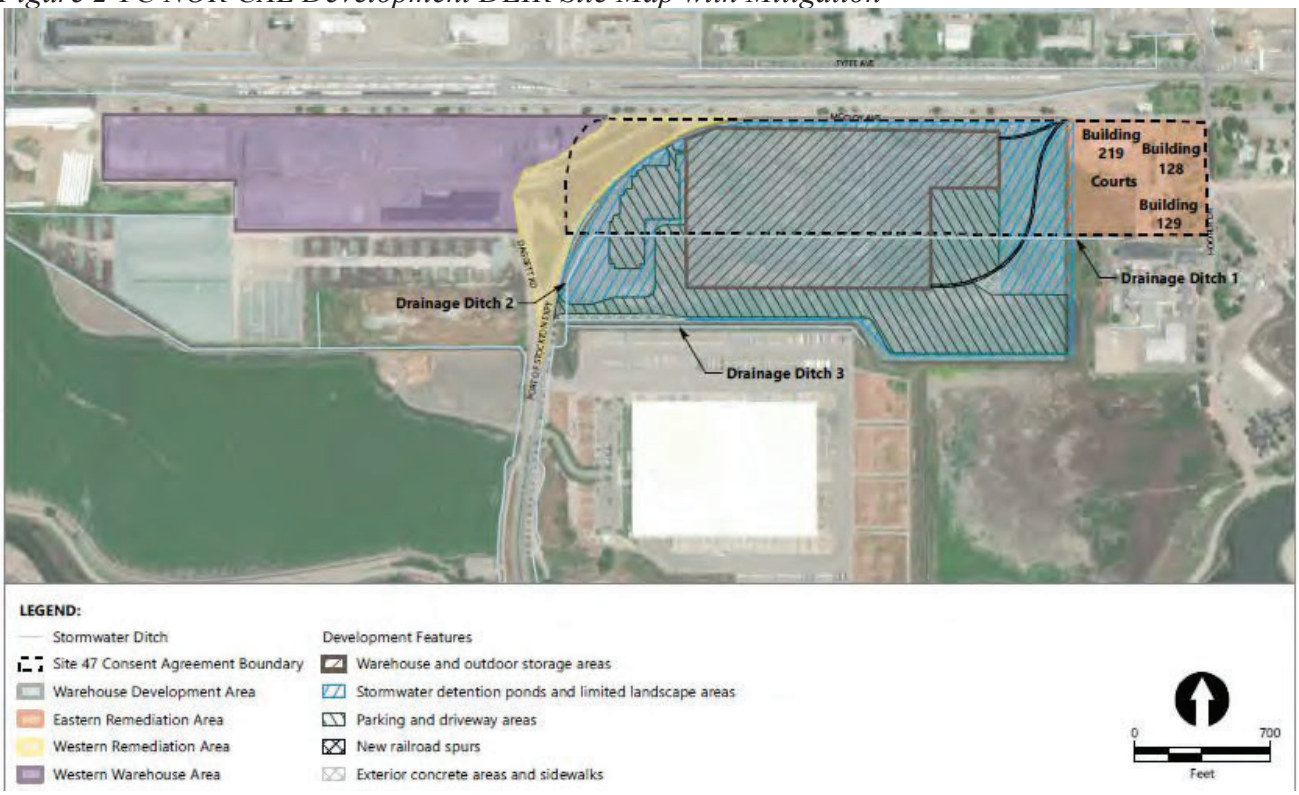


*Figure 3 Aerial View of Vicinity where the TC NO CAL Development Project is Planned*

DSG-3 South of the proposed project is the Ferguson Building warehouse parking lot at 530 Port of Stockton Expressway. The nearest residential receptors are located approximately 3,300 feet south and 3,500 feet north of the project site, off Rough and Ready Island. The site can be accessed from the east by means of Navy Drive which can be accessed by Washington Street or the Interstate Highway 5. The site can be accessed from the south by means of the Port of Stockton Expressway which intersects with Charter Way/Highway 4. There is no legal means by which truck traffic can be prohibited from using Washington Street which travels through the Boggs Tract neighborhood. Perhaps a check point is needed on the Washington Street entrance/exit to Port of Stockton property and a turn-around made available to redirect trucks that may have gotten lost.

**DEIR IDENTIFIED IMPACTS AND PROPOSED MITIGATION MEASURES**

The DEIR included the following statements regarding identified impacts and proposed mitigation measures:

> As required by CEQA, the Port must evaluate the information in this DEIR, including the proposed mitigation measures and potentially feasible alternatives, before deciding whether to approve the proposed project or an alternative. By following prescribed procedures, a public agency may approve a project even if an EIR concludes there are one or more unavoidable significant environmental effects.

The point we would like to make regarding these statements is that the surrounding community has been disproportionately impacted by pollution and poverty and will suffer the most if the Port of Stockton Commissioners approve the project without ensuring that all feasible mitigation measures be employed. We ask that the Port of Stockton Commissioners consider rejecting the project until there is a project proponent willing to fully mitigate impacts so that the community is not harmed. The DEIR concludes that the proposed project would result in significant and unavoidable project-level impacts in the following resource areas: air quality, GHG, and transportation. Furthermore, the DEIR concluded that implementation of the proposed project—cumulatively combined with other related past, present, or probable future projects—may result in significant and unavoidable cumulative adverse impacts related to air quality, GHG, and transportation. Innovative mitigation measures are necessary when approving projects located in communities disproportionately burdened with pollutants. Business as usual, following the minimum requirements of the California Environmental Quality Act, cannot continue if environmental justice is ever to occur.

## Proposed Operations

The project would include wholesaling, distributing, and warehousing. The DEIR was developed under the assumption that the distribution facility would operate 365 days a year from 6:30 a.m. to 10:30 p.m., with truck operations occurring primarily Monday through Saturday with reduced operation hours on Saturday and Sunday. The materials housed and delivered to the facility by truck or rail would be nationally sourced and exported primarily from the site by truck to locations within the local Stockton region. Although export shipments by rail may also occur. The following is a description of truck and rail trips in the DEIR:

DSG-4

**Table 4**
**Proposed Project Cargo Throughput (Maximum)**

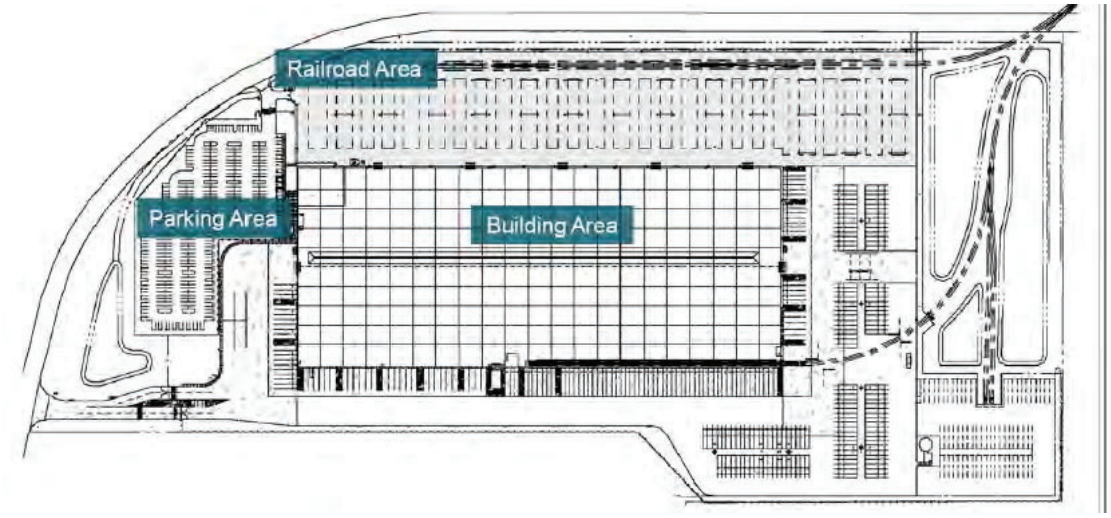
| Mode[1] | Maximum Annual Calls[2] |
|---|---|
| Inbound Truck Calls | 32,287 |
| Outbound Truck Calls | 63,211 |
| Total Truck Calls | 95,498 |
| Total Rail Calls[3] | 2,053 |

Notes:
1. Cargo would be delivered to the facility by truck and rail. All cargo would be distributed from the facility by truck.
2. Calls are expressed in round trips. Each truck and train call makes two trips: one trip in and one trip out.
3. Rail cargo would be shipped via manifest rail.

Operations at the proposed facility are anticipated to require 100 employees working over two daily shifts with a 30-minute overlap between shifts (6:30 a.m. to 2:30 p.m. and 2:00 p.m. to 10:30 p.m.). Parking would be accommodated on site through the proposed employee parking. The site design includes entry and exit points and other design measures to accommodate the anticipated volume of vehicular traffic, minimize queueing, and facilitate traffic flow within the boundary of the project site and adjoining roadways.

Additional information regarding how the site plan will achieve the logistical goals set forth in the DEIR is needed and should be included in a FEIR. The number of truck docks was not specified in words although the DEIR included the following site plan.

*Figure 4 DEIR Site Plan*



DSG-4 (cont.)

A single emergency generator would be installed and operated as needed. Up to 56 forklifts and two power saws would operate at the site daily (7 days a week).

These forklifts can be required to be electric and the emergency generator non-diesel to further minimize air quality impacts on the community residents of Stockton.

**AIR QUALITY AND TRANSPORTATION**

DSG-5

The air quality impacts which the DEIR has deemed significant and unavoidable are based primarily on transportation related impacts. We are concerned that these impacts may be under-reported based on the vehicular trip length proposed. No analysis was included for the possible use of rail for exporting goods from the project.

The DEIR states the following: "Winds are predominantly up valley (from the north) in all seasons, but more so in the summer and spring months. Winds in the fall and winter are generally lighter and more variable in direction, but generally blow toward the south and southeast." Data that conflicts with the description of prevailing winds has been obtained from two sources: Western Regional Climate Center[2] and the California Air Resources Board (CARB) air quality monitoring station located formerly at Public Health Services on Hazelton Avenue in Stockton CA. The data from Western Regional Climate Center includes prevailing wind direction based on the hourly data from 1992-2002 obtained from the Stockton Municipal Airport and is defined as the direction with the highest percent of frequency.

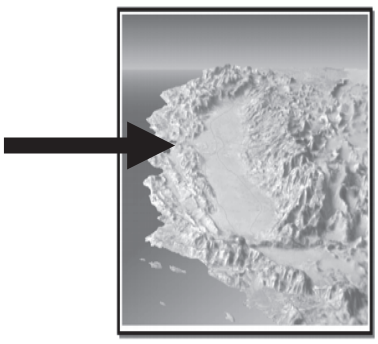
**Western Regional Climate Center Data 1992-2002**

| STATION | JAN | FEB | MAR | APR | MAY | JUN | JUL | AUG | SEP | OCT | NOV | DEC | ANN |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| STK Airport | SE | SE | W | W | W | W | W | W | W | W | W | SE | W |

The San Joaquin Valley Air Pollution Control District (SJVAPCD) accessed the CARB hourly wind speed and wind direction data for the former Stockton-Hazelton air monitoring site during the period of 2017-2019. These summarized data shown below describe the predominant wind direction with significant west or northwesterly components. The marine wind direction into the Central Valley is shown with an arrow through the Sacramento-San Joaquin Delta to the Central Valley on the topographic map below.

**Hazelton Station 2017-2019**

| Direction | Percent of Time for 3-year period |
|---|---|
| WNW | 16.89% |
| WSW | 12.47% |
| NW | 12.28% |
| W | 12.02% |
| NNW | 7.93% |
| Summary | **61.58%** |



The California Environmental Quality Act requires environmental impacts of a proposed project be identified, assessed, and avoided or mitigated as feasible, if these impacts are significant. The Port of Stockton is within the SJVAPCD and the most current related attainment status is shown below.[3] The SJVAPCD's IS/NOP letter included many feasible mitigation measures which were

[2] https://wrcc.dri.edu/Climate/comp_table_show.php?stype=wind_dir_avg

[3] http://www.valleyair.org/aqinfo/attainment.htm

DSG-5 (cont.)

not included in the DEIR proposed mitigation measures. All those feasible mitigation measures should have been proposed in the DEIR.

**San Joaquin Valley Attainment Status**

| Pollutant | Federal Standards | State Standards |
|---|---|---|
| Ozone- One hour | No Federal Standard | Nonattainment/Severe |
| Ozone – Eight hour | Nonattainment/Extreme | Nonattainment |
| Particulate Matter 10 *u*g ($PM_{10}$) | Attainment | Nonattainment |
| Particulate Matter 2.5 *u*g ($PM_{2.5}$) | Nonattainment | Nonattainment |

DSG-6

The DEIR included the following table to describe impacts on Stockton community members related to air pollutants generated on the Port facility and off-site trucking and rail operations associated with business operations of Port of Stockton lessors.

**Table 6**
**National and California Ambient Air Quality Standards**

| Pollutant | Averaging Period | California Standards | National Standards | Health Effects |
|---|---|---|---|---|
| $O_3$ | 1-hour | 0.09 ppm | -- | Breathing difficulties, lung tissue damage |
| | 8-hour[b] | 0.070 ppm | 0.070 ppm | |
| $PM_{10}$ | 24-hour | 50 µg/m³ | 150 µg/m³ | Increased respiratory disease, lung damage, cancer, premature death |
| | Annual | 20 µg/m³ | -- | |
| $PM_{2.5}$ | 24-hour[c] | -- | 35 µg/m³ | Increased respiratory disease, lung damage, cancer, premature death |
| | Annual | 12 µg/m³ | 12 µg/m³ | |

Air quality monitoring data reported in the DEIR were from 2013-2015 without an apparent reason why more contemporary data were not included in the DEIR. Data from 2020 is readily available for constituents of concern at the same data site referenced in the DEIR: https://www.epa.gov/outdoor-air-quality-data/monitor-values-report . The FEIR should include contemporary air quality data from 2017-2020.

The impacts may be underestimated based on trip length assumptions used:

> **"Truck trips would be a mixture of local and regional travel deliveries. The average truck trip was assumed to be 22 miles per conversations with TC NO. CAL. Development."**

Evidence for this very low assumption is needed to verify that impacts associated with the below truck trips are valid; otherwise additionally analyses are required.

**Table 11**
**Fleet Travel Assumptions**

| Fleet Type | Average Trip Rate one-way trips/day | Average Trip Length miles/one-way trip | Annual Activity days/year | Annual Trips one-way trips/year | Annual VMT miles/year |
|---|---|---|---|---|---|
| Passenger | 200 | 16.8 | 313 | 62,600 | 1,051,680 |
| Delivery Trucks | 610 | 22 | 313 | 190,996 | 4,165,324 |
| Yard Hostler | 202 | 1.5 | 313 | 63,211 | 94,817 |

Furthermore, the DEIR and associated Appendix F Traffic Study failed to include consideration of the San Joaquin County Boggs Tract Sustainable Community Transportation Plan under development with goals to develop a community transportation plan that:

DSG-7

- Is safe, sustainable, and efficient
- Supports public health, environmental justice, environmental conditions (GHG) and quality of life
- Enhances livability within community through alternative transportation improvements
- Preserves the community's distinctive character
- Prioritizes identified transportation improvements for implementation
- Identifies sources of funding

The FEIR must include consideration of the Sustainable Community Transportation Plan under development.

DSG-8

**AIR QUALITY MITIGATION MEASURES**

Only five mitigation measure were identified as feasible and proposed in the DEIR to reduce construction and operational emissions.

*MM-AQ-1: Construction Idling Reductions. TC NO. CAL. Development and the Port will require construction contractors to minimize heavy-duty construction idling time to 2 minutes where feasible. Exceptions include vehicles that need to idle to perform work (such as a crane providing hydraulic power to the boom), vehicles being serviced, or vehicles in a queue waiting for work.*

The Delta-Sierra Group is concerned that this mitigation does not have an associated enforcement plan and does not apply if there is queuing related to poor site design or excessive throughput which the site plan did not consider. Using the DEIR truck trips of 95,498 and 313 days (52 days of Sundays when truck traffic is not expected) and 16-hour day operations (6:30 AM to 10:30 PM): 95,498 trucks entering or leaving/313 days =305 truck trips per day which over 16 hours corresponds to 25 trucks per hour. The FEIR should include a description of the operational activities that will achieve this throughput within the 60 acres planned for this warehouse project.

All mitigation must be feasible and fully enforceable, and all feasible mitigation must be imposed by lead agencies. (CEQA Guidelines, § 15041.) The measure MM-AQ-1 is feasible but not enforceable based on information presented in the DEIR or during an associated DEIR meeting held by the Port of Stockton on February 1, 2022, when verbal and written comments were collected.

DSG-9

The traffic study included in Appendix F of the DEIR included recommendations: "Turn pockets lengths should be designed to accommodate the 95$^{th}$ percentile queue length plus a deceleration distance. The speed limit adjacent to the project driveways is 35 miles per hour, thereby requiring a deceleration length between 235 and 315 feet." This recommendation and others in the Appendix F traffic study were not specifically included as feasible mitigation measures despite being critical to decrease queue lengths and associated emissions.

DSG-10

*MM-AQ-2: Use of Tier 4 Engines During Construction. All off-road diesel-powered heavy equipment exceeding 50 horsepower used to construct the proposed project will be equipped with Tier 4 engines, except for specialized equipment or when Tier 4 engines are not available. In place of Tier 4 engines, off-road diesel-powered heavy equipment will incorporate retrofits such that emission reductions achieved equal or exceed that of a Tier 4 engine.*

DSG-10 (cont.)

Mitigation monitoring must be employed to verify that these cleaner engines and/or retrofits are being used during construction activities. Mitigation monitoring must be made available to the public.

DSG-11

*MM-AQ-3: Truck Idling Reductions. TC NO. CAL. Development will require trucks to minimize idling time to 2 minutes while on terminal.*

The Delta-Sierra Group is concerned that this is not enforceable, especially since the Port of Stockton potential lessor TC NOR. CAL. Development intends to sublease the warehousing facility to a commercial operator for distribution services. All mitigation must be feasible and fully enforceable, and all feasible mitigation must be imposed by lead agencies. (CEQA Guidelines, § 15041.) The measure MM-AQ-3 is feasible, but no enforcement plan was included in the DEIR.

DSG-12

*MM-AQ-4: Use of Clean Trucks. TC NO. CAL. Development will encourage its customers to use clean trucks (defined as model year 2017 or newer) to transport cargo. TC NO. CAL. Development will also educate customers about the SJVAPCD Truck Replacement Program via direct or electronic mailings. In addition, TC NO. CAL. Development will require all trucks be in compliance with ARB air quality regulations for on-road trucks, including ARB's Heavy-Duty (Tractor-Trailer) Greenhouse Gas Regulation, Periodic Smoke Inspection Program (PSIP), and the Statewide Truck and Bus Regulation. TC NO. CAL. Development will post a copy of the SJVAPCD Truck Replacement Program information currently available at http://valleyair.org/grants/truck-replacement.htm and applicable ARB regulations at the terminal.*

The Delta-Sierra Group is concerned that this mitigation measure will not result in decreased emissions without a commitment to incentive-based fees. An opportunity to reduce emissions is lost without some type of site incentive pricing for those operators that have invested in cleaner burning engines.

DSG-13

*MM-AQ-5: Use of Clean Yard Equipment. TC NO. CAL. Development will require terminal and yard equipment, including yard hostlers, yard equipment, forklifts, and pallet jacks to be the cleanest available equipment (for future purchases). Considerations for clean equipment will include a first preference for zero-emission equipment, a second preference for near-zero equipment, and then for the cleanest available equipment if neither zero nor near-zero equipment are available or feasible. TC NO. CAL. Development will ensure the proper infrastructure to support such equipment is available.*

Mitigation monitoring must be conducted and made available to the public to verify that these cleaner types of yard equipment are being used and a full description of infrastructure planned and committed to by TC NO. CAL Development must be included in the FEIR. Mitigation monitoring must be readily available for the public. The proposed mitigation measures do not include all feasible mitigation measures as outlined in the California Air Resources Board's IS/NOP comment letter[4] which was not included in the DEIR Appendix C. These feasible measures include construction contract and lease contract requirements which are more enforceable than the existing language put forth in the DEIR, which is the publicly available document, unlike the proposed lease with TC NOR. CAL. Development which is not available to the public until adopted by all parties and a public information request is made.

Onsite measures such as requiring electric on-site equipment (forklifts and yard trucks), requiring all heavy-duty vehicles entering or operated on the project site to be zero emission beginning in

[4] https://files.ceqanet.opr.ca.gov/272455-2/attachment/IKNsxX33kX63-VZtI4Ftt4iaMZD_omxiVEhGwoafF9lNNcudfkNNW7m5USJOmBbe5IQWYzSGcX42CXA00

DSG-13 (cont.)

2030, constructing electric truck charging stations and electric plugs to reduce diesel idling emissions, are reasonable mitigation measures and should have been proposed in the DEIR.

The DEIR states:

> Although not required by Stockton Municipal Code, the California Green Building Standards Code (2016) recommends that 6% of passenger vehicle parking spaces are equipped with electric vehicle charging infrastructure for developments of this size. To address this recommendation, the final site plan should identify which parking spaces could be easily upgraded to accommodate electric vehicle charging infrastructure.

All reports associated with compliance with the California Green Building Standards must be made readily available to the public and can serve as a model for the community.

DSG-14

Vegetative barriers maintained by the project to reduce exposure of nearby residents to air pollutants associated with site operations and to provide shade reducing the heat island effect associated with paved surfaces should be required throughout the site, in addition to the planned 30 trees. Enhanced fugitive dust control to reduce road dust moving through the community should have been proposed. Without these onsite measures, the project will add to the residents of Stockton's already high pollutant burden.

DSG-15

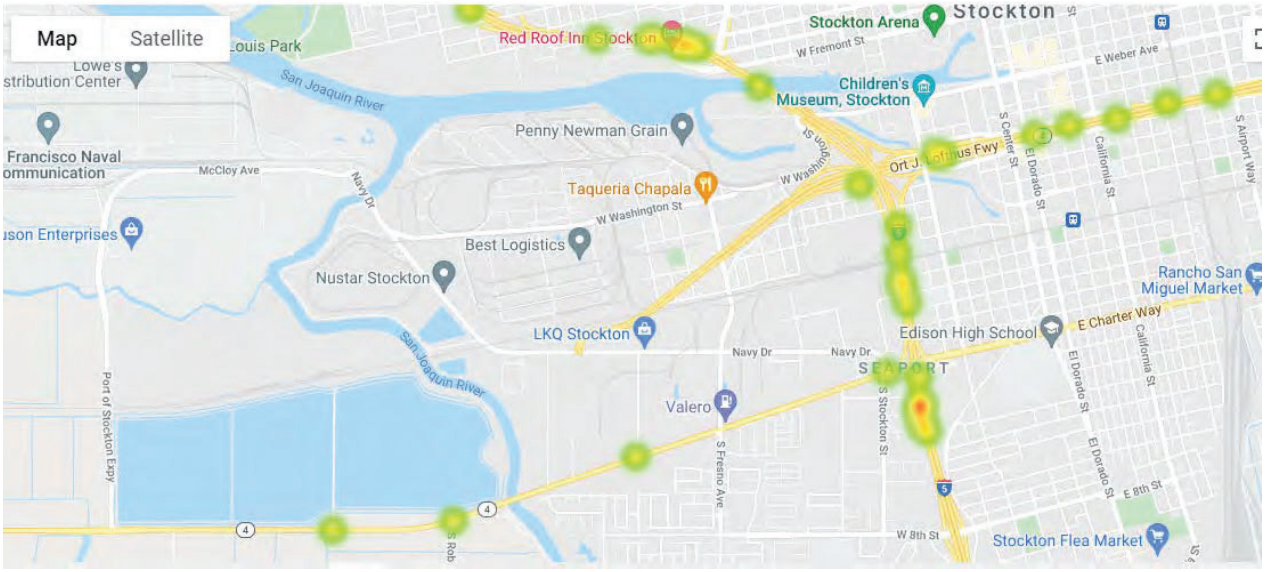
Air quality impacts are not adequately characterized, relating to the low trip miles assumption, to disclose potential effects or to prevent or minimize significant, avoidable damage to the environment and health of Stockton residents.

## TRANSPORTATION

DSG-16

Increased truck traffic will not only result in decreased levels of service on roadways and increased wait times but will increase the likelihood of traffic accidents. The following is a heat map showing where truck involved accidents have occurred between 2018 and 2020 on Interstate 5 and Highway 4 (Charter Way) in the general area of the Port of Stockton[5].

*Figure 5 Transportation Injury Mapping System, UC Berkeley – Truck involved Accidents*




The DEIR stated that "SJCOG has formed a SB 743 Technical Working Group to address shifting from LOS to VMT in local agency and SJCOG CEQA analysis, and adapting related SJCOG

[5] https://tims.berkeley.edu/

DSG-16 (cont.)

programs such as the RTP, if necessary. No draft guidance is available at this time." According to the February 1, 2022, CEQA meeting video at 12:48 minutes, the City of Stockton has a new transportation model which was not found in the DEIR references. The FEIR should include specific reference to this model and public availability as well as the status of the SB743 Technical Working Group efforts.

DSG-17

Consideration should be given to provide lunch vendor services on-site or in a nearby area within safe walking distance to minimize the need for off-site vehicle trips during construction or operational phases. Discussions in several meetings have identified the restaurant located at the intersection of Washington Street and South Fresno Avenue as source of extra truck trips through the Boggs Tract neighborhood increasing neighborhood exposure to diesel pollutants. Also, consideration should be given to walking areas for truck drivers to safely stretch their legs during down time. Safe truck travel requires alert and healthy truck drivers.

**CULTURAL AND TRIBAL RESOURCES**

DSG-18

The DEIR documents the Tribal entities contacted to request consultation on CEQA documentation for projects at the Port: Confederated Villages of Lisjan, Muwekma Ohlone Indian Tribe of the San Francisco Bay Area, the Northern Valley Yokuts Tribe, the Tule River Indian Tribe, and the Wilton Rancheria Tribe. The Port received responses from the following three Tribes requesting consultation on the proposed project: the Buena Vista Rancheria of Me-Wuk Indians of California, the Wilton Rancheria Tribe, and the Northern Valley Yokuts Tribe. The DEIR stated that consultation is ongoing, but no evidence is provided in the DEIR other than this statement, "Recent consultation by the Port with Native American Tribes has indicated increased concern with areas of Rough and Ready Island that are adjacent to the San Joaquin River, where natural levees could have existed, and cultural practices are known to have occurred." Documentation of dates and times of consultation should be included in the FEIR.

DSG-19

*MM-CHR-1: Stop Work in the Area If Prehistoric or Historical Archaeological Resources Are Encountered. A qualified archaeologist will provide training materials to the construction contractor in identification of cultural resources, and in the event that any artifact, or an unusual amount of bone, shell, or non-native stone, is encountered during construction, work would be immediately stopped and relocated to another area. The contractor would stop construction within 10 meters (30 feet) of the exposure of these finds until a qualified archaeologist can be retained by the Port to evaluate the find (see 36 CFR 800.11.1 and 14 CCR 15064.5[f]). Examples of such cultural materials might include concentrations of ground stone tools such as mortars, bowls, pestles, and manos; chipped stone tools such as projectile points or choppers; flakes of stone not consistent with the immediate geology, such as obsidian or fused shale; a historic trash pit containing bottles and/or ceramics; or structural remains. Native American Tribes and the Office of Historic Preservation would be notified of the find. If the resources are found to be significant, they would be avoided or if avoidance is not possible, mitigated. Mitigation would be developed in coordination with Native American Tribes and could include development of a treatment plan to guide data recovery and interpretation of results for the public. This interpretation could include adding information on the resources to the Port's website, which will include a history portal site, developing informational brochures or signage on site or in the Port administrative building, and/or providing material to the Tribes.*

Tribal representatives should be invited to review and comment on the training materials that are to be made available to construction contractors prior to commencement of work. The construction

DSG-19 (cont.)

contractor must then inform and train construction workers that are involved with land disturbance activities. If any tribal artifact or remains are identified, a paid Tribal representative should be present during the unearthing. In addition to the Office of Historic Preservation, the California Native American Heritage Commission should be contacted as the primary government agency responsible for identifying and cataloging Native American cultural resources. The project is located on unceded Northern Valley Yokuts lands.

**GREENHOUSE GASES, CLIMATE CHANGE AND ENERGY MITIGATION MEASURE**

DSG-20

The following table from the DEIR summarize the energy and water needs associated with operation of the proposed project.

**Table 5**
**Operational Utility Demand**

| Utility | Operations | |
|---|---|---|
| | Annual | Peak Daily |
| Gas | 13,868 therms | 42 therms |
| Electricity | 3,316,962 kWh | 9,500 kWh |
| Water (potable) | 3,975 kgal | 12 kgal |

Construction would result in the removal of several mature trees in the Warehouse Development Area. As part of the project, TC NO. CAL. Development would plant at least 30 trees, including Patmore ash, Chinese pistache, coast redwood, and multi-trunk chaste tree, on the Warehouse Development Area. Planted trees would be visible from adjacent roads and benefit views in the immediate vicinity of the project site. The selection of trees should be based on benefits to air quality with an emphasis on using native plant species.

The DEIR stated that the distribution facility will meet all required measures of California Green Building Standards Code, which requires sustainable building practices as part of all new buildings in California. Mandatory requirements involve water and energy efficiencies, indoor air quality, and the use of sustainable building materials. The proposed design will also include energy-efficient lighting fixtures.

There were no mitigation measures proposed to reduce energy usage during operation other than energy-efficient lighting fixtures, such as the use of energy efficient equipment that are in use in a typical warehousing/commercial/industrial operations, installation of solar photovoltaic systems to equal the project's energy needs, using electric on-site warehousing equipment such as forklifts and yard trucks, and constructing electric truck charging and plug in stations suitable for heavy duty trucks to reduce idling exhaust emissions at docks. According to the DEIR, trucks with refrigeration were not considered and should not be allowed.

DSG-21

The following mitigation measure was included in the DEIR relating to greenhouse gas production:

*MM-GHG-1: Energy Audit (See also GHG-1 in Section 3.7.3.4, "Impact Analysis"): Within 9 months of the effective date of the new lease, TC NO. CAL. Development will conduct an energy audit and develop a plan for reducing overall terminal energy from 2021 levels by within 5 years of the effective date of the lease. The plan must be submitted to the Port for review and approval. The plan will incorporate the following measures at a minimum:*

*– Evaluate the level of solar panels that are required to meet the facility's electrical needs, both on buildings and for high mast lighting. Based on the evaluation, TC NO. CAL. Development will install solar unless a technical feasibility issue is identified.*

DSG-21 (cont.)

All this mitigation measure ensures is that an energy audit be prepared. The Delta-Sierra Group is unsure of the goals for the plan to be developed to reduce energy or what "technical feasibility issue" could be identified. The time for energy efficiency projects is at the time of construction rather than when the operation is in full swing and interfering with operations is deemed a hardship creating an "infeasible" finding. Additionally, the language of this mitigation is more open-ended than the mitigation measure related to tree removal and replacement: "TC NO. CAL. Development is required to prepare a planting plan that must be reviewed and approved by the Port prior to planting."

*MM-GHG-2: Waste Reduction (see GHG-1 for more information).*

*MM-GHG-3: Construction Recycling. TC NO. CAL. Development will require construction contractors to recycle construction and demolition debris where feasible.*

DSG-22

Please clarify how this construction recycling is different from non-residential required measures of California Green Building Standards Code. The 2019 California Green Building Standards Code, Title 24, Part 11, Section 5.408[6] includes the following requirements for construction waste reduction, disposal and recycling: "Recycle and/or salvage for reuse a minimum of 65 percent of the nonhazardous construction and demolition waste." Section 5.408.1.1 outlines the information for a construction waste management plan if a local jurisdiction does not have a construction and demolition waste management ordinance that is more stringent. Please make available to the public all reports submitted for compliance with the California Green Building Standard Code in effect at the time of construction.

**SUMMARY**

DSG-23

The Port of Stockton's choice to approve projects with an intense trucking component and to make a Statement of Overriding Consideration means that the Port of Stockton is knowingly adding new emission sources which will increase the exposure of our residents to pollution without adequate mitigation.

Mitigation is needed to reduce the impact of the project and should be paid for by the developer not the residents of Stockton. Innovative mitigation measures such as decreasing emissions of local truck owners with the purchasing of newer trucks for residents parking their trucks in residential area around the Port, installing HVAC units that can filter out emissions that enter homes, and increasing vegetation throughout adjacent neighborhoods and train tracks to decrease exposures, and enhancing workplace opportunities for locals are all feasible mitigation measures.

DSG-24

Setting aside undeveloped areas of the Port of Stockton to mitigate for the loss of open space habitat due to site development, will improve our community's climate resiliency. These open spaces can be developed into wetland buffers that help reduce the impacts of increased sea levels on Stockton residents, related to global climate change. The TC NO. CAL Development proposed project is located on Rough and Ready Island within 5.5 miles of non-project levee managed by Reclamation District 403. Reclamation District 403 includes1,451 acres with 102 of those acres encompassing the TC NO. CAL Development proposed project site. The levee around

[6] https://codes.iccsafe.org/content/CAGBSC2019/chapter-5-nonresidential-mandatory-measures

DSG-24 (cont.)

Reclamation District 403 is a non-project levee and is accredited by FEMA as providing protection against a 100-yr flood event, according to the Reclamation District 403 Emergency Operations Plan[7]. According to the Emergency Operations Plan, Reclamation District 403 is to maintain 100-yr certification, but not to seek 200-year flood protection certification.

Reclamation District 403 has experienced minor seepage along Burns Cutoff. A local response to seepage repairs included the following measures: cut-off walls, seepage berms, crown widening, flattening slopes and installing chimney drains, including a levee setback with plantings for habitat mitigation and enhancement[8]. Protection of the residents of Stockton from the effects of sea level rise begins on the west side of the community, with Rough and Ready Island as a first defense. Increasing natural sustainable wetlands will increase our climate resiliency and provide a community benefit.

Reclamation District 403 does not have any residents nor are any planned, in accordance with the Navy land transfer agreement. All workers should be briefed at least annually about any emergency evacuation and response activities that can occur on Port of Stockton property. Nearby neighbors along evacuation routes should also receive emergency preparedness material and training opportunities, as a community benefit.

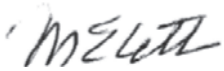
DSG-25

These residential, habitat and emergency preparedness mitigations are examples of innovative community-based mitigation measures that can be part of a community benefits agreement established between private developers such as Trammel Crow Northern California Development and the community. Several agencies have developed guidance information for implementing community benefit agreements including the United States Department of Energy[9], Partnership for Working Families[10], and the California High Speed Rail Authority[11].

The residents of Stockton invested in the Port of Stockton from the beginning and now it is the Port of Stockton's turn to invest in the Community.

If you have any questions, you may contact me by email at mebeth@outlook.com.

Sincerely,



Mary Elizabeth M.S., R.E.H.S.
Delta-Sierra Group Conservation Chair, Sierra Club
California Naturalist

[7] http://www.sjmap.org/oesfcm/eops/RD%20403%20Rough%20and%20Ready%20Island%20EOP.pdf
[8] https://ceqanet.opr.ca.gov/2010042073/3
[9] https://www.energy.gov/diversity/community-benefit-agreement-cba-toolkit
[10] https://www.forworkingfamilies.org/page/community-benefits-101
[11] https://hsr.ca.gov/wp-content/uploads/docs/communication/info_center/factsheets/CBA_Factsheet.pdf

## *2.5.7 Response to Delta-Sierra Group (DSG)*

| Comment Code | Response |
|---|---|
| **DSG-1** | The Port thanks the Delta-Sierra Group for their comments. Information on the lessor is not confirmed or known at this time. The Port and TC NO. CAL. Development would be responsible for the remediation activities and the implementation of mitigation measures. |
| **DSG-2** | The Port will forward notification when the RI/FFS is available for public review.<br><br>Cushman and Wakefield is the Port's property management company and routinely advertises available port properties.<br><br>Please see Comment CCC-3. The Port's efforts to manage traffic within the Port so that truck travel through the Boggs Tract Neighborhood is reduced or restricted are outlined in Section 1.5.4 of the DEIR. |
| **DSG-3** | Please see the Response to Comment SJVAPCD-2. The Port is evaluating improvements to several in-Port roads that could be used as alternative truck routes. The Port is also working with the City and County to evaluate restricting access to West Washington Street from South Fresno Avenue. South Fresno Avenue is controlled by the City, so the Port does not have the authority to change its truck designation, but the Port can put into place restrictions on West Washington Street. |
| **DSG-4** | As stated in the transportation section of the DEIR (Section 3.11.3.4), vehicular access to the project site is provided by two driveways along the Port of Stockton Expressway and McCloy Avenue. Passenger car and truck conflicts are limited since employees must utilize the northern driveway located on McCloy Avenue and trucks must utilize the southern driveway located on Port of Stockton Expressway.<br><br>Truck trips would be a mixture of local and regional travel deliveries. The average truck trip was assumed to be 22 miles. The warehouse would operate 365 days a year from 6:30 a.m. to 10:30 p.m. between Monday and Friday with inbound-only operations occurring on Saturday (6:30 a.m. to 2:30 p.m.) and outbound-only operations occurring on Sunday (2:00 p.m. to 10:30 p.m.). The facility would require 100 daily employees working two shifts with a 30-minute overlap (6:30 a.m. to 2:30 p.m. and 2:00 p.m. to 10:30 p.m.).<br><br>As discussed in Section 2.7 of the DEIR, the proposed project expects to operate with total of 100 daily employees split evenly over two shifts, and 312 daily truck calls. The number of truck docks was not specified as it was not necessary for analysis. However, the DEIR shows the site plans for disclosure.<br><br>The proposed project has been modified to include installation of solar photovoltaic systems to lessen energy needs and includes the use of at least 25 electrical forklifts and 20 propane forklifts. A more developed response to this comment is provided in Response to Comment ABJC-16. |

| Comment Code | Response |
|---|---|
| **DSG-5** | Contrary to the comment, the air quality impacts evaluated in the DEIR were not found to be significant and unavoidable.<br>The truck lengths analyzed in the air quality analysis were provided by the applicant based on similar regional warehousing operations.<br>As discussed in Section 3.2.3.3.2, the proposed project would use rail as well as trucks to ship goods. Rail operations were fully analyzed in the air quality assessment both in terms of mass emissions and health risk.<br>The general discussion on wind patterns is correct and simply provides a general overview of the patterns. The HRA considered detailed dispersion modeling relative to the expected source and project area.<br>Please see Master Responses 1 and 2 for additional information on mitigation measures and port-wide emissions. |
| **DSG-6** | Please see Response to Comment DSG-4. The truck lengths were obtained from the tenant who has the most up-to-date information on expected operations.<br>Regarding the Air quality monitoring data, the 2020 data has been added to Table 8 as requested. |
| **DSG-7** | Section 3.11 of the DEIR has been revised to include a discussion of the San Joaquin County Boggs Tract Sustainable Community Transportation Plan. |
| **DSG-8** | Please see Master Response 1 and 2 which provide additional information regarding mitigation measures. Please also see Table ES-2 in the FEIR, which provides additional detail on implementation of the mitigation measures required as part of the proposed project. |
| **DSG-9** | The full discussion in Appendix F is as follows:<br>*The addition of Project traffic, under Background with Project Conditions, causes the eastbound left turn movement at the intersection of I-5 NB Ramps & West Charter Way (Intersection 7) to exceed the available storage (350 feet) during the AM (95th percentile queue length increases from 375' to 425') and PM (95th percentile queue length increases from 675' to 725') peak hours. Since the Project causes Trammel Crow Warehouse Transportation Impact Analysis October 2021 32 the 95th percentile queue length to exceed the available storage and increases the 95th percentile queue length by more than 25 feet during the AM and PM peak hours, this is considered a significant impact.*<br>*Mitigation Measure TR-1: The applicant will work with the City of Stockton and Caltrans to revise the signal timing at the I-5 NB Ramps/Charter Way intersection to accommodate Project traffic.*<br>The mitigation measures as identified was included in the DEIR. No changes are required. |
| **DSG-10** | Please see Master Response 1 and 2 which provide additional information regarding mitigation measures. Please also see Table ES-2 in the FEIR, which provides additional detail on implementation of the mitigation measures required as part of the proposed project. |

| Comment Code | Response |
|---|---|
| **DSG-11** | Please see Master Response 1 and 2 which provide additional information regarding mitigation measures. Please also see Table ES-2 in the FEIR, which provides additional detail on implementation of the mitigation measures required as part of the proposed project. |
| **DSG-12** | Please see Master Response 1 and 2 which provide additional information regarding mitigation measures. Please also see Table ES-2 in the FEIR, which provides additional detail on implementation of the mitigation measures required as part of the proposed project. |
| **DSG-13** | Please see Master Response 1 and 2 which provide additional information regarding mitigation measures. Please also see Table ES-2 in the FEIR, which provides additional detail on implementation of the mitigation measures required as part of the proposed project. |
| **DSG-14** | Please see MM-BIO-3, which requires tree plants and will provide new vegetation at the Port. |
| **DSG-15** | Please see Response to Comments DSG-3 through DSG-4. Truck miles were provided by the applicant and were analyzed. No changes are required. |
| **DSG-16** | As noted in Section 3.11.2.2.1 of the DEIR, the "SJCOG has formed a SB 743 Technical Working Group to address shifting from LOS to VMT in local agency and SJCOG CEQA analysis, and adapting related SJCOG programs such as the RTP, if necessary. No draft guidance is available at this time." No additional updates are available and no changes to the EIR are required. |
| **DSG-17** | As stated in Section 3.11.3.5.4 of the DEIR, all vehicular access to and from the project site would be provided from the Port of Stockton Expressway and McCloy Avenue, on the Port's West Complex. No traffic would be routed through the Boggs Track community, on the Port's East Complex. |
| **DSG-18** | The FEIR provides updated Tribal consultation information. In summary:<br>The Port received responses from three Tribes requesting consultation on the proposed project. The Northern Valley Yokuts Tribe responded by email on March 27, 2021, stating interest in the project and requesting additional information. The Port responded by email on April 28, 2021, acknowledging the concerns and providing the CEQA timeline. The Port provided the DEIR on January 11, 2022. No further responses were received from the Tribe. The Buena Vista Rancheria of Me-Wuk Indians of California replied to the Port's letter by email on April 21. 2021 stating that the Tribe had concerns with the area. The Port responded by email on April 28, 2021, acknowledging the concerns and providing the CEQA timeline. The Port provided the DEIR on January 11, 2022. No further responses were received from the Tribe. The Wilton Rancheria Tribe responded on June 1, 2021, requesting consultation. The Port responded on June 7, 2021, acknowledging the request and providing the CEQA timeline. No further responses were received from the Tribe. The Port responded to each Tribe, acknowledging the requests and providing further information on the CEQA timeline. The Port provided the DEIR on January 11, 2022. The DEIR was provided to the remaining Tribes (who had not previously responded to the consultation request) on January 11, 2022. This addition does not invoke substantial changes to the project, implicate substantial changes to the circumstances surrounding the project, constitute new information that the project may have other significant effects not addressed in the DEIR, show significant impacts are substantially more severe or show mitigation measures/alternatives that were infeasible are now |

| Comment Code | Response |
|---|---|
| | feasible, or that mitigation measures/alternatives that were rejected now substantially reduce significant impacts. |
| **DSG-19** | The Port has modified mitigation measure MM-CHR-1 as requested and as identified below:<br>**MM-CHR-1: Stop Work in the Area If Prehistoric or Historical Archaeological Resources Are Encountered.** A qualified archaeologist will provide training materials to TC NO. CAL. Development's contractor in identification of cultural resources, and in the event that any artifact, or an unusual amount of bone, shell, or non-native stone, is encountered during construction, work would be immediately stopped and relocated to another area. The contractor would stop construction within 10 meters (30 feet) of the exposure of these finds until a qualified archaeologist can be retained by the Port to evaluate the find (see 36 CFR 800.11.1 and 14 CCR 15064.5[f]). Examples of such cultural materials might include concentrations of ground stone tools such as mortars, bowls, pestles, and manos; chipped stone tools such as projectile points or choppers; flakes of stone not consistent with the immediate geology, such as obsidian or fused shale; a historic trash pit containing bottles and/or ceramics; or structural remains. Native American Tribes and the Office of Historic Preservation would be notified of the find. If the resources are found to be significant, they would be avoided or if avoidance is not possible, mitigated. Mitigation would be developed in coordination with Native American Tribes and could include development of a treatment plan to guide data recovery and interpretation of results for the public. This interpretation could include adding information on the resources to the Port's website, which will include a history portal site, developing informational brochures or signage on site or in the Port administrative building, and/or providing material to the Tribes.<br>Tribal representatives will be invited to review and comment on the training materials that are to be made available to construction contractors prior to commencement of work. The construction contractor must then inform and train construction workers that are involved with land disturbance activities.<br>If any Tribal artifact or remains are identified, a paid Tribal representative should be present during the unearthing. In addition to the Office of Historic Preservation, the California Native American Heritage Commission should be contacted as the primary government agency responsible for identifying and cataloging Native American cultural resource. |

| Comment Code | Response |
|---|---|
| **DSG-20** | At the time of the DEIR, there were questions related to the Port's local energy grid and capacity concerns that needed to be addressed before the Port could require solar be implemented as part of the proposed project. Since that time, the Port has addressed system issues and solar is now considered feasible and therefore implementable. Accordingly, MM-GHG-1 has been modified to require installing solar panels. Regarding lighting—an older standard Port mitigation measure was added in error to the DEIR; MM-GHG-1 has been modified to clarify the requirements specific to the proposed project. The measure is triggered within 6 months of the effective day of the lease, which would be prior to construction. The measure requires the applicant to consider additional energy-saving measures during final design and construction of the warehouse. Specifically, MM-GHG-1 now reads:<br>• **MM-GHG-1: Solar Requirements and Energy Audit:**<br>TC NO. CAL. Development will install a 600 kW solar system as part of warehouse construction. The warehouse operator will be required to use the solar system at its maximum capacity.<br>In addition, within 6 ~~Within 9~~ months of the effective date of the new lease, TC NO. CAL. Development will conduct an energy audit of warehouse design plans to determine if there are additional energy-saving features that can be implemented as part of construction and warehouse design and operations. ~~and develop a plan for reducing overall terminal energy from 2021 levels by within 5 years of the effective date of the lease.~~ The plan must be submitted to the Port for review and approval. The plan will incorporate the following measures at a minimum:<br>– ~~Evaluate the level of solar panels that are required to meet the facility's electrical needs, both on buildings and for high mast lighting. Based on the evaluation, TC NO. CAL. Development will install solar unless a technical feasibility issue is identified.~~<br>– Replace less-efficient lighting ~~bulbs~~ with energy-efficient lighting ~~bulbs~~, where applicable and in compliance with safety requirements, ~~. Lighting within the interior of buildings~~ on the premises and outdoors including the parking lot, loading dock, security, and exit signs. High mast parking lot ~~terminal~~ lighting will use ~~be replaced with~~ LED lighting or a technology with similar energy-saving capabilities and motion sensors will be installed where lighting is not used for security ~~within 2 years after the effective date of a new lease~~.<br>– Install ENERGY STAR qualified HVAC equipment and variable frequency drives. When installing new equipment, ensure that the system is not oversized for the building's heating and cooling needs.<br>No additional changes to the EIR are required. |
| **DSG-21** | Please see the Response to Comment DSG-19, which addresses this comment. |
| **DSG-22** | The comment is correct; the mitigation measure is similar to California Green Building Standards Code, Title 24, Part 11, Section 5.4086. Mitigation compliance records will be made available to the public. |

| Comment Code | Response |
|---|---|
| **DSG-23** | As stated in the Response to Comment CC-3, the Port is committed to improving environmental and socioeconomic conditions for communities in and around the Port. Separate from the proposed project, the Port is currently working on developing and implementing a community mitigation fund program that would directly benefit the neighboring communities in and around the Port. |
| **DSG-24** | While the Port appreciates this comment, this approach is beyond the scope of this project. |
| **DSG-25** | As stated in Response to Comment CC-3, the Port is committed to improving environmental and socioeconomic conditions for communities in and around the Port. Separate from the proposed project, the Port is currently working on developing and implementing a community mitigation fund program that would directly benefit the neighboring communities in and around the Port. |

LOZEAU DRURY LLP

T 510.836.4200
F 510.836.4205

1939 Harrison Street, Ste. 150
Oakland, CA 94612

www.lozeaudrury.com
rebecca@lozeaudrury.com

February 24, 2022

Jason Cashman
Environmental Manger
Port of Stockton
2201 West Washington Street
Stockton, CA 95203
ceqa@stocktonport.com

Re: Comments Regarding T.C. No Cal. Development Warehousing and Distribution Facility Project Draft Environmental Impact Report

Dear Mr. Cashman,

LD-1

I am writing on behalf of Laborers International Union of North America Local Union 73 ("LIUNA") concerning the Draft Environmental Impact Report ("EIR") prepared for the T.C. No Cal. Development Warehousing and Distribution Facility Project ("Project"). The Project is located on a 102-acre stie at the Port of Stockton's West Complex (Rough and Ready Island) and involves the development of 655,200-square-foot (sf) warehouse, 293,951-sf outdoor storage area, employee parking, trailer parking, trailer storage, truck docks, rail service and spurs, detention ponds, water tank and pumphouse, guard house, and minor ancillary structures. (DEIR, p. 15.) The Project also includes remediation of existing contaminated sediment and soils at the site, including contamination by arsenic, PAHs, and OCPs, including DDT. (*Id.*)

Under the proposed project, the Port would issue a lease to TC NO. CAL. Development to construct and operate a new warehouse facility and associated infrastructure over approximately 60 acres of the project site to receive, store, and distribute bulk building products and consumer goods (warehousing or wholesaling/distribution). Operations are expected to begin following warehouse construction and would involve truck and rail deliveries of commercial products. Following construction, TC NO. CAL. Development would sublease the warehousing facility to a commercial operator for distribution services. The site is largely vacant except for five warehouses on a 26-acre parcel on the western side of the site.

After reviewing the DEIR, we conclude that it fails as an informational document, and that the EIR is insufficient as a matter of law and not supported by substantial evidence. We have identified a number of significant omissions and flaws in the EIR's analysis of energy and greenhouse gas ("GHG") impacts. Therefore, we request that the Port of Stockton ("Port")

LD-1 (cont.)

revised the EIR in order to address the following shortcomings. We reserve the right to supplement these comments during public hearings concerning the Project. *Galante Vineyards v. Monterey Peninsula Water Management Dist*., 60 Cal. App. 4th 1109, 1121 (1997).

## I. Legal Background.

The California Environmental Quality Act ("CEQA") requires that an agency analyze the potential environmental impacts of its proposed actions in an environmental impact report ("EIR") (except in certain limited circumstances). *See, e.g.* Pub. Res. Code § 21100. The EIR is the very heart of CEQA. *Dunn-Edwards v. BAAQMD* (1992) 9 Cal.App.4th 644, 652. "The 'foremost principle' in interpreting CEQA is that the Legislature intended the act to be read so as to afford the fullest possible protection to the environment within the reasonable scope of the statutory language." *Communities for a Better Environment v. Calif. Resources Agency* (2002) 103 Cal. App. 4th 98, 109.

CEQA has two primary purposes. First, CEQA is designed to inform decision makers and the public about the potential, significant environmental effects of a project. 14 Cal. Code Regs. ("CEQA Guidelines") § 15002(a)(1). "Its purpose is to inform the public and its responsible officials of the environmental consequences of their decisions before they are made. Thus, the EIR 'protects not only the environment but also informed self-government.'" *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564. The EIR has been described as "an environmental 'alarm bell' whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return." *Berkeley Keep Jets Over the Bay v. Bd. of Port Comm'rs*. (2001) 91 Cal. App. 4th 1344, 1354 ("*Berkeley Jets*"); *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

Second, CEQA requires public agencies to avoid or reduce environmental damage when "feasible" by requiring "environmentally superior" alternatives and all feasible mitigation measures. CEQA Guidelines § 15002(a)(2) and (3); *see also*, *Berkeley Jets*, 91 Cal.App.4th at pp. 1344, 1354; *Citizens of Goleta Valley*, 52 Cal.3d at 564. The EIR serves to provide agencies and the public with information about the environmental impacts of a proposed project and to "identify ways that environmental damage can be avoided or significantly reduced." CEQA Guidelines §15002(a)(2). If the project will have a significant effect on the environment, the agency may approve the project only if it finds that it has "eliminated or substantially lessened all significant effects on the environment where feasible" and that any unavoidable significant effects on the environment are "acceptable due to overriding concerns." Pub. Res. Code § 21081; 14 Cal.Code Regs. § 15092(b)(2)(A) & (B). The lead agency may deem a particular impact to be insignificant only if it produces rigorous analysis and concrete substantial evidence justifying the finding. *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 732.

While the courts review an EIR using an "abuse of discretion" standard, "the reviewing court is not to 'uncritically rely on every study or analysis presented by a project proponent in support of its position. A 'clearly inadequate or unsupported study is entitled to no judicial deference.'" *Berkeley Jets*, 91 Cal. App. 4th at p. 1355 (emphasis added) (quoting *Laurel Heights*

*Improvement Assn. v. Regents of University of California* (1988) 47 Cal. 3d 376, 391 409, fn. 12). As the court stated in *Berkeley Jets*:

> A prejudicial abuse of discretion occurs "if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process." (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 722; *Galante Vineyards v. Monterey Peninsula Water Management Dist*. (1997) 60 Cal. App. 4th 1109, 1117; *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal. App. 4th 931, 946.)

More recently, the California Supreme Court has emphasized that:

> When reviewing whether a discussion is sufficient to satisfy CEQA, a court must be satisfied that the EIR (1) includes sufficient detail to enable those who did not participate in its preparation to understand and to consider meaningfully the issues the proposed project raises [citation omitted], and (2) makes a reasonable effort to substantively connect a project's air quality impacts to likely health consequences.

*Sierra Club v. Cty. of Fresno* (2018) 6 Cal.5th 502, 510 (2018), citing *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 405. "Whether or not the alleged inadequacy is the complete omission of a required discussion or a patently inadequate one-paragraph discussion devoid of analysis, the reviewing court must decide whether the EIR serves its purpose as an informational document." *Sierra Club v. Cty. of Fresno*, 6 Cal.5th at 516. Although an agency has discretion to decide the manner of discussing potentially significant effects in an EIR, "a reviewing court must determine whether the discussion of a potentially significant effect is sufficient or insufficient, i.e., whether the EIR comports with its intended function of including 'detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.'" 6 Cal.5th at 516, citing *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1197. "The determination whether a discussion is sufficient is not solely a matter of discerning whether there is substantial evidence to support the agency's factual conclusions." 6 Cal.5th at 516. Whether a discussion of a potential impact is sufficient "presents a mixed question of law and fact. As such, it is generally subject to independent review. However, underlying factual determinations—including, for example, an agency's decision as to which methodologies to employ for analyzing an environmental effect—may warrant deference." *Sierra Club v. Cty. of Fresno*, 6 Cal.5th at 516. As the Court emphasized:

> [W]hether a description of an environmental impact is insufficient because it lacks analysis or omits the magnitude of the impact is not a substantial evidence question. A conclusory discussion of an environmental impact that an EIR deems significant can be determined by a court to be inadequate as an informational document without reference to substantial evidence.

*Sierra Club v. Cty. of Fresno*, 6 Cal.5th at 514.

## II. DISCUSSION.

### A. The EIR's Analysis of Energy Impacts Is Conclusory, Fails to Include Required Information, and Fails To Provide Substantial Evidence That The Project's Energy Impacts Are Less Than Significant.

LD-2

It is rather shocking that the EIR devoted barely two pages to its energy analysis for developing nearly 1 million square feet of warehousing and storage space that will rely on ships, trains, and diesel trucks to transport goods all over the region. (EIR, pp. 108-109.) The EIR is missing crucial information about the Project's energy use as well as an analysis of the ability to integrate renewable energy into the Project. As a result, the discussion is not supported by substantial evidence, violates CEQA's procedural requirements, and fails as an informational document.

The standard under CEQA is whether the Project would result in wasteful, inefficient, or unnecessary consumption of energy resources. Failing to undertake "an investigation into renewable energy options that might be available or appropriate for a project" violates CEQA. (*California Clean Energy Committee v. City of Woodland* (2014) 225 Cal.App.4th 173, 213.) Energy conservation under CEQA is defined as the "wise and efficient use of energy." (CEQA Guidelines, app. F, § I.) The "wise and efficient use of energy" is achieved by "(1) decreasing overall per capita energy consumption, (2) decreasing reliance on fossil fuels such as coal, natural gas and oil, and (3) increasing reliance on renewable energy resources." (*Id.*)

According to the DEIR, "Construction of the proposed project would use equipment that consumes fossil fuels but would not require any unusual or excessive equipment or practices compared to projects of similar type and size." (DEIR, 108.) It also found that "energy use associated with the distribution facility would be comparable to similar warehouse structures." (*Id*.) This, in addition to a statement that the Project will comply with all mandatory green building code standards under Title 24, leads the EIR to conclude that the Project will not "result in potentially significant environmental impact due to wasteful, inefficient, or unnecessary consumption of energy resources, during project construction or operation." (DEIR, 108.) However, neither compliance with Title 24 standards nor the generic comparison of Project's energy use compared to "similar warehouse structures" provide substantial evidence that the Project's energy impacts are less than significant.

Numerous courts have rejected nearly identical analyses. (See *Ukiah Citizens for Safety First v. City of Ukiah* (2016) 248 Cal.App.4th 256, 264-65 (*Ukiah Citizens*) [noting compliance with Building Energy Efficiency Standards (Cal.Code Regs., tit. 24, part 6 (Title 24) does not constitute an adequate analysis of energy]; see also *California Clean Energy Committee v. City of Woodland* (2014) 225 Cal.App.4th 173, 213 (*City of Woodland*).) As such, the EIR's reliance

LD-2 (cont)

on Title 24 compliance does not satisfy the requirements for an adequate discussion of the Project's energy impacts.

1. **Failure to discuss whether the Project could increase reliance on renewable energy sources to meet its energy demand as part of determining if its energy impacts are significant.**

An EIR's analysis of a project's impacts on energy resources must include a discussion of whether the project could increase its reliance on renewable energy sources to meet its energy demands as part of determining if energy impacts are significant. (*League to Save Lake Tahoe Mountain Preservation Foundation v. County of Placer* 2022 WL 442815, *61 [citing *California Clean Energy Com. v. City of Woodland* (2014) 225 Cal.App.4th 173, 209].)

In *League to Save Lake Tahoe*, the EIR at issue noted that project construction and operation would be comparable to similar types of uses and similar construction projects, and that the project would be required to comply with the Title 24 building efficiency standards. (*League to Save Lake Tahoe Mountain Preservation Foundation v. County of Placer* 2022 WL 442815, *61.) According to the EIR, on this basis, the EIR found the project would not result in an inefficient or wasteful consumption of energy, and the impact would be less than significant. (*Id*. at *62.) The court determined this was not enough, explaining:

> Guidelines section 15126.2, subdivision (b), and Appendix F to the Guidelines thus indicate an EIR should address the project's potential to increase its use of renewable energy sources for at least two purposes. First, when the EIR analyzes the project's energy use to determine if it creates significant effects, it should discuss whether any renewable energy features could be incorporated into the project. (Guidelines, § 15126.2, subdivision (b).) The EIR's determination of whether the potential impact is significant is to be based on this discussion. Second, if the EIR concludes the project's impact on energy resources is significant, it should consider mitigating the impact by requiring uses of alternate fuels, particularly renewable ones, if applicable. (Guidelines, Appendix F., II. D. 4.)

(*Id*. at *63 [emphasis added].)

LD-3

Similarly, in *California Energy Commission v. City of Woodland*, the court held that an EIR's discussion of a large retail project's energy impacts did not comply with CEQA because it omitted an analysis of renewable energy options that may have been available for the project. (*California Clean Energy Committee v. City of Woodland* (2014) 225 Cal.App.4th 173, 213.) The court reached this conclusion despite the EIR finding the impact on energy resources to be less-than-significant. (*Id*. at 208.)

Here, the 655,200 square feet of warehouse roof space, 293,951 square feet of storage space, plus an dozens of additional acres of remediated land provide ample space for solar panels

LD-3 cont

that could power the Project. Because the EIR does not address whether any renewable energy features could be incorporated into the project as part of determining if the Project's impacts on energy resources is significant, it did not comply with CEQA's procedural requirements. (*League to Save Lake Tahoe*, at *63.)

In addition to improperly relying on compliance with Title 24, and failing to analyze renewable energy impacts, the EIR's analysis omits vital elements of the Project, its energy requirements.

**2. Transportation Energy Impacts.**

LD-4

Guidelines Appendix F states that environmental impacts subject to the EIR process include "[t]he project's projected transportation energy use requirements and its overall use of efficient transportation alternatives." (Guidelines, appen. F, § II, subd. C.6.) Here, the EIR discloses that Project operation will generate 1,024 daily vehicle trips, 624 of which would be truck trips. (DEIR, p. 196.) Project construction will also involve vehicle trips, and Project operation includes ships and rail. Yet in concluding the Project's energy impacts will not be significant, the EIR's energy analysis does not include energy required by any of the Project-related transportation. The EIR's analysis is deficient insofar as it does not assess or consider mitigation for transportation energy impacts of the project. (*California Clean Energy Committee v. City of Woodland* (2014) 225 Cal.App.4th 173, 210.)

**3. Construction and Operational Impacts.**

LD-5

Guidelines Appendix F states that when relevant to a project, an EIR should consider: "Energy consuming equipment and processes which will be used during *construction, operation* and/or removal of the project. If appropriate, this discussion should consider the energy intensiveness of materials and equipment required for the project." (Guidelines, appen. F, § II subd. A.1, italics added.) Further, appendix F notes an EIR should consider whether the project involves "Unavoidable Adverse Effects" such as "wasteful, inefficient and unnecessary consumption of energy during the project construction, operation, maintenance and/or removal that cannot be feasibly mitigated." (*Id.,* subd. F.)

The EIR summarily concludes that the project would not result in the inefficient, wasteful and unnecessary consumption of energy. There is no discussion of the project's cost effectiveness in terms of energy requirements. There is no discussion of energy consuming equipment and processes that will be used during the construction or operation of the project, including the energy necessary to transport goods to, from, and at the Port and warehouses. The Project's energy use efficiencies by amount and fuel type for each stage of the project including construction, operation, and maintenance were not identified. The effect of the project on peak and base period demands for electricity has not been addressed. The greenhouse gas (GHG) discussion in the EIR does not analyze energy conservation. As such, the EIR's conclusions are unsupported by the necessary discussions of the Project's energy impacts under CEQA.

Guidelines Appendix F also requires discussion of "Total energy requirements of the project by fuel type and end use." (Guidelines, Appendix F, II.A.2.) For construction-related energy use, the EIR provides in full that:

> Construction of the proposed project would use equipment that consumes fossil fuels but would not require any unusual or excessive equipment or practices compared to projects of similar type and size. The proposed project would comply with all federal, state, and local regulations related to energy usage and fuel consumption.

LD-5 (cont.)

(DEIR, p. 108.) The EIR does not disclose the energy requirements for: 1) project-related transportation, 2) the remediation portion of the project, or 3) total operational energy over the life or the project, or 4) total energy requirements of the project.

Guidelines Appendix F also requires discussion of "Energy conservation equipment and design features." (Guidelines, Appendix F, II.A.3.) The most the EIR discloses here is that "Mandatory requirements involve water and energy efficiencies, indoor air quality, and the use of sustainable building materials. The proposed design will also include energy-efficient lighting fixtures." (DEIR, p. 108.) The EIR's vague statements on energy efficient features is insufficient to meet CEQA's information disclosure requirements.

The EIR must be revised that discloses the Project's energy use, analyzes the signficance of the energy impact, and mitigates significant impacts.

**B. Mitigation Measures to Reduce GHG Emissions Violate CEQA.**

The EIR's response to addressing the significant and unavoidable impacts identified for the Project's emissions of GHGs falls short of complying with CEQA by deferring the establishment of mitigation measures for the Project until after the Project is approved and not establishing now all feasible mitigation measures that are available.

Lead agencies may defer formulating mitigation until after project approval only "when it is impractical or infeasible to include those details during the project's environmental review." (CEQA Guidelines § 15126.4(a)(1)(B); *see also POET, LLC v. State Air Res. Bd.* (2013) 218 Cal.App.4th 681, 736.) An EIR must also explain an agency's decision to defer finalizing the specifics of mitigation. (*Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260, 281.) In the limited circumstances where deferring mitigation is justified, the EIR must (1) commit itself to the mitigation, (2) adopt specific performance standards the mitigation will achieve, and (3) identify the types of potential actions that can feasibly achieve that performance standard. (Guidelines § 15126.4, subd. (a)(1)(B).)

LD-6

Here, the Project's GHG emissions will be nearly three times the threshold of significance. (DEIR, p. 138.) To reduce this impact, the EIR proposes Mitigation Measure MM-

LD-6 (cont.)

GHG-1: Energy Audit. (*Id.*) This measure would require that, 9-months after a lease has been signed with for an operator of the warehousing and distribution operation, "TC NO. CAL. Development will conduct an energy audit and develop a plan for reducing overall terminal energy from 2021 levels by within 5 years of the effective date of the lease. The plan must be submitted to the Port for review and approval." (DEIR, p. 138.) The measure goes on to state that the plan will incorporate the following measures at a minimum:

- Evaluate the level of solar panels that are required to meet the facility's electrical needs, both on buildings and for high mast lighting. Based on the evaluation, TC NO. CAL. Development will install solar unless a technical feasibility issue is identified.
- Replace less-efficient bulbs with energy-efficient light bulbs, where applicable and safe. Lighting within the interior of buildings on the premises and outdoor high mast terminal lighting will be replaced with LED lighting or a technology with similar energy saving capabilities within 2 years after the effective date of a new lease.

(DEIR, p. 138-39.) There are numerous reasons why MM-GHG-1 does not comply with CEQA.

First, it constitutes deferred mitigation, but the EIR provides no explanation or evidence that it is impractical or infeasible to conduct the energy audit now, and include the details in the EIR. Indeed, the information that would be contained in the energy audit is mandatory information required to analyze the project's energy impacts, as just discussed in Section I.A. The information the measure claims would be obtained by the energy audit must be obtained now, and disclosed to the public and decision makers as part of the EIR's analysis of the Project's energy impacts. Making the mitigation measure even more inappropriate is the arbitrary delay of the energy audit – not just to a time after project approval, but to 9 months after a new lease is signed. And once the energy audit occurs, any plan would not need to be implemented for another 5 years. In other words, the Project's massive GHG emissions would go unmitigated for a minimum of 5 years. CEQA does not permit this.

LD-7

Second, MM-GHG-1 does not include any specific performance standards the Project would be required to achieve, including a level of GHG reductions or an amount of solar installation. Instead, it required TC No. CAL. to come up with a "plan for reducing overall terminal energy from 2021 levels" but does not specify an amount of reduction from those levels. Similarly, while the measure required an evaluation of the level of solar required to meet the facility's electrical needs," it does not require TC No. Cal. to install that level of solar. It merely requires TC No. Cal. to "install solar" of an unspecified amount.

LD-8

Third, MM-GHG-1 does not require any solar panels if "a technical infeasibility issue is identified." (*Id.* at 138.) Solar panels are not new technology, and placing solar panels on top of warehouses, high mast lighting, or anywhere else on the property is not a new concept. There is no reason the technical feasibility of installing solar panels to meet and/or offset the Project's energy needs cannot be determined now, at a time when the public has an opportunity to review

LD-8 (cont.)

and comment on that determination. Solar should also be evaluated as a means of offsetting the Project's transportation-related GHG emissions by selling excess solar production back to the grid, and a combination of solar and battery storage should be evaluated as well.

LD-9

Fourth, MM-GHG-1's requirement to "[r]eplace less-efficient bulbs with energy-efficient light bulbs" is at odds with the EIR's section on energy which states that the Project will be using energy efficient light bulbs already. (DEIR, p. 108 [The proposed design will also include energy-efficient lighting fixtures."]) The measure's further requirement that "Lighting within the interior of buildings on the premises and outdoor high mast terminal lighting will be replaced with LED lighting or a technology with similar energy saving capabilities within 2 years after the effective date of a new lease." Is similarly flawed. If the Project will not be using energy efficient light bulbs from day one, this is clearly not a wise and efficient use of energy and must be documented, disclosed, and mitigated in the energy impacts section. Further, there is no justification for waiting 2 years after a new lease to install energy efficient light bulbs. This is a basic requirement and there is no reason or evidence that energy efficient lighting cannot be used from day one. The fact that such a basic feature as energy efficient lighting is not already part of the Project design of a massive new development such as this is extremely troubling.

Mitigation Measure MM-GHG-2: Waste Reduction is equally improper. That measure requires that:

> Within 9 months of the effective date of the new lease, TC NO. CAL. Development will perform an audit of its waste stream to identify areas for total waste reduction, including reductions of single use products and details for transitioning to a procurement process that prioritizes recycled goods and products. For resultant waste, TC NO. CAL. Development will develop a plan to ensure waste is recycled where available.

(DEIR, p. 139.)

As with MM-GHG-1, there is no reason the EIR cannot study and determine at this point in time the waste streams generated by the Project, and to determine and disclose which waste will and will not be recycled. The measure contains no performance standard. It does not require any reduction in single use products or a procurement process that prioritizes recycled goods and products, but merely requires it be studied. It does not commit the applicant to any reduction in GHGs at all.

A revised EIR is needed to address these issues.

Sincerely,

Rebecca L. Davis

## *2.5.8 Response to Lozeau Drury (LD)*

| Comment Code | Response |
|---|---|
| **LD-1** | The Port thanks Lozeau Drury for its comments on the DEIR. Please see the Response to Comments below, which address your specific comments. The Port respectfully disagrees that the EIR fails as an informational document. Based on the responses presented to your comments as well as the responses to other comments, the document does not meet the standard for recirculation. |
| **LD-2** | Please see Master Response 1 and 2. The Energy section of the DEIR provides an adequate assessment of the proposed project and its potential use of energy.<br>Appendix F states "*Potentially significant energy implications of a project shall be considered in an EIR to the extent relevant and applicable to the project. The following list of energy impact possibilities and potential conservation measures is designed to assist in the preparation of an EIR. In many instances specific items may not apply or additional items may be needed. Where items listed below are applicable or relevant to the project, they should be considered in the EIR.*"<br>Appendix F makes clear that the topics listed should be addressed "to the extent relevant and applicable to the project." Thus a discussion should be considered only "[w]hen items listed below are applicable or relevant to the project." In the opinion of the EIR consultants and authors, the relevant and applicable topics were addressed in the DEIR.<br>While the proposed project would support truck and rail trips through third part contracts, the tenant is not responsible for fueling those transportation sources. However, the tenant is responsible for terminal operations and therefore the Energy section focused on those operations.<br>Contrary to the comment, the DEIR does not solely rely on compliance with Title 24 to determine significance. The DEIR discloses the proposed project's annual energy demand in both kilowatt hours (kWh) for electricity and therms of natural gas. The energy demand is compared to regional uses to provide context for energy use within the Stockton area. The analysis also presents the amount of electricity and natural gas consumption per square foot and compares that number to similar warehouses in the United States. The proposed project was found to have a lower than average consumption per square foot. As discussed in the DEIR and modified as part of Master Response 1, MM-GHG-1 includes measures to reduce energy use further including installing enough solar power to meet the terminal's daily electricity needs, providing a significant source of renewable energy at the site. MM-AQ-1 through MM-AQ-5 also reduce fossil fuel use by requiring the use of more efficient equipment and reducing idling time. No edits to the EIR are required. |
| **LD-3** | Please see Master Responses 1 and 2, and the Responses to Comments LD-2 and ABJC-16. The DEIR included MM-GHG-1, which required installation of solar panels, if feasible. Since the release of the DEIR, the Port and TC NO. CAL. Development have determined that solar is compatible with the local grid. Accordingly, MM-GHG-1 has been modified in the FEIR to require the installation of a 600 kw solar system that will meet the warehouse's average electrical load. MM-AQ-5 requires that at least 25 of the forklifts at the terminal be zero emissions. All remaining forklifts shall be low emissions using alternative fuels. No additional changes are required. |
| **LD-4** | Please see the Response to Comment LD-2. Truck trips and fuel usage are discussed in Sections 3.2, 3.7, and 3.11 of the DEIR. As noted, Appendix F does not encourage the use of any specific methodology to perform a CEQA energy analysis but instead leaves the question of how to study energy impacts to the sound discretion of the lead agency. |

| Comment Code | Response |
|---|---|
| | CEQA requires that EIRs include a discussion of the potential energy impacts of proposed projects, with particular emphasis on avoiding or reducing inefficient, wasteful, and unnecessary consumption of energy (see Public Resources Code section 21100(b)(3)). The DEIR meets that standard of analysis, and no additional changes are required. |
| **LD-5** | Please see the Responses to Comments LD-1 and LD-4. As stated in the DEIR, construction and operation of the proposed project would not include energy consumption that is wasteful, inefficient, or unnecessary compared to projects of a similar size and scope. Because the proposed project would be designed and constructed to comply with CALGreen, install solar, include provisions to use new trucks and electric terminal equipment, and comply with other state and local plans and policies, the energy consumption from the proposed project would not be wasteful, inefficient, or unnecessary, and thus would be less than significant. The proposed project's energy demand was calculated and presented in the DEIR, and several measures are included in the DEIR to reduce energy needs. As noted above, CEQA requires that EIRs include a discussion of the potential energy impacts of proposed projects, with particular emphasis on avoiding or reducing inefficient, wasteful, and unnecessary consumption of energy (see Public Resources Code section 21100(b)(3)). The DEIR meets that standard of analysis, and no additional changes are required. |
| **LD-6** | Please see Master Response 2. At the time of the DEIR, there were questions related to the Port's local energy grid and capacity concerns that needed to be addressed before the Port could require solar be implemented as part of the proposed project. Since that time, the Port has addressed system issues and solar is now considered feasible and therefore implementable. Accordingly, MM-GHG-1 has been modified to require installing solar panels. Regarding lighting—an older standard Port mitigation measure was added in error to the DEIR; MM-GHG-1 has been modified to clarify the requirements specific to the proposed project. The measure is triggered within 6 months of the effective day of the lease, which would be prior to construction. The measure requires the applicant to consider additional energy-saving measures during final design and construction of the warehouse. Specifically, MM-GHG-1 now reads:<br>• **MM-GHG-1: <u>Solar Requirements and</u> Energy Audit:**<br><u>TC NO. CAL. Development will install a 600 kW solar system as part of warehouse construction. The warehouse operator will be required to use the solar system at its maximum capacity.</u><br><u>In addition, within 6</u> ~~Within 9~~ months of the effective date of the new lease, TC NO. CAL. Development will conduct an energy audit <u>of warehouse design plans to determine if there are additional energy-saving features that can be implemented as part of construction and warehouse design and operations.</u> ~~and develop a plan for reducing overall terminal energy from 2021 levels by within 5 years of the effective date of the lease.~~ The plan must be submitted to the Port for review and approval. The plan will incorporate the following measures at a minimum:<br>– ~~Evaluate the level of solar panels that are required to meet the facility's electrical needs, both on buildings and for high mast lighting. Based on the evaluation, TC NO. CAL. Development will install solar unless a technical feasibility issue is identified.~~<br>– Replace less-efficient <u>lighting</u> ~~bulbs~~ with energy-efficient <u>lighting</u> ~~bulbs~~, where applicable and <u>in compliance with</u> safe<u>ty requirements,</u> ~~. Lighting within the interior of buildings~~ on the premises and outdoor<u>s including the parking lot, loading dock,</u> |

| Comment Code | Response |
|---|---|
| | security, and exit signs. High mast parking lot ~~terminal~~ lighting will use ~~be replaced with~~ LED lighting or a technology with similar energy-saving capabilities and motion sensors will be installed where lighting is not used for security ~~within 2 years after the effective date of a new lease~~.<br>– Install ENERGY STAR qualified HVAC equipment and variable frequency drives. When installing new equipment, ensure that the system is not oversized for the building's heating and cooling needs.<br>No additional changes to the EIR are required. |
| **LD-7** | Please see the Response to Comment LD-6. MM-GHG-1 has been modified to clarify the requirements specific to the proposed project. The measure is triggered within 6 months of the effective day of the lease, which would be prior to construction. The measure requires the applicant to consider additional energy-saving measures during final design and construction of the warehouse. MM-GHG-1 now reads:<br>• **MM-GHG-1: Solar Requirements and Energy Audit:**<br>TC NO. CAL. Development will install a 600 kW solar system as part of warehouse construction. The warehouse operator will be required to use the solar system at its maximum capacity.<br>In addition, within 6 ~~Within 9~~ months of the effective date of the new lease, TC NO. CAL. Development will conduct an energy audit of warehouse design plans to determine if there are additional energy-saving features that can be implemented as part of construction and warehouse design and operations. ~~and develop a plan for reducing overall terminal energy from 2021 levels by within 5 years of the effective date of the lease.~~ The plan must be submitted to the Port for review and approval. The plan will incorporate the following measures at a minimum:<br>– ~~Evaluate the level of solar panels that are required to meet the facility's electrical needs, both on buildings and for high mast lighting. Based on the evaluation, TC NO. CAL. Development will install solar unless a technical feasibility issue is identified.~~<br>– Replace less-efficient lighting ~~bulbs~~ with energy-efficient lighting ~~bulbs~~, where applicable and in compliance with safety requirements, ~~. Lighting within the interior of buildings~~ on the premises and outdoors including the parking lot, loading dock, security, and exit signs. High mast parking lot ~~terminal~~ lighting will use ~~be replaced with~~ LED lighting or a technology with similar energy-saving capabilities and motion sensors will be installed where lighting is not used for security ~~within 2 years after the effective date of a new lease~~.<br>– Install ENERGY STAR qualified HVAC equipment and variable frequency drives. When installing new equipment, ensure that the system is not oversized for the building's heating and cooling needs.<br>No additional changes to the EIR are required. |

| Comment Code | Response |
|---|---|
| **LD-8** | Please see the Responses to Comments LD-6 and LD-7. The proposed project has been modified to include installation of a 600 kw solar system to meet the warehouse's calculated average electrical load. No additional changes to the EIR are required. |
| **LD-9** | Please see the Responses to Comments LD-6, LD-7 and LD-8. The text is correct as written in Section 3.5.3.4.1 of the DEIR; the proposed project would use energy-efficient lighting throughout the warehouse. Regarding lighting requirements, an older standard Port mitigation measure was added in error to the DEIR. MM-GHG-1 has been modified to clarify the requirements specific to the proposed project. The measure is triggered within 6 months of the effective day of the lease, which would be prior to construction. The measure requires the applicant to consider additional energy-saving measures during final design and construction of the warehouse.<br>MM-GHG-1 now reads:<br>• **MM-GHG-1: Solar Requirements and Energy Audit:**<br>TC NO. CAL. Development will install a 600 kW solar system as part of warehouse construction. The warehouse operator will be required to use the solar system at its maximum capacity.<br>In addition, within 6 ~~Within 9~~ months of the effective date of the new lease, TC NO. CAL. Development will conduct an energy audit of warehouse design plans to determine if there are additional energy-saving features that can be implemented as part of construction and warehouse design and operations. ~~and develop a plan for reducing overall terminal energy from 2021 levels by within 5 years of the effective date of the lease.~~ The plan must be submitted to the Port for review and approval. The plan will incorporate the following measures at a minimum:<br>– ~~Evaluate the level of solar panels that are required to meet the facility's electrical needs, both on buildings and for high mast lighting. Based on the evaluation, TC NO. CAL. Development will install solar unless a technical feasibility issue is identified.~~<br>– Replace less-efficient lighting ~~bulbs~~ with energy-efficient lighting ~~bulbs~~, where applicable and in compliance with safety requirements, ~~. Lighting within the interior of buildings~~ on the premises and outdoors including the parking lot, loading dock, security, and exit signs. High mast parking lot ~~terminal~~ lighting will use ~~be replaced with~~ LED lighting or a technology with similar energy-saving capabilities and motion sensors will be installed where lighting is not used for security ~~within 2 years after the effective date of a new lease~~.<br>– Install ENERGY STAR qualified HVAC equipment and variable frequency drives. When installing new equipment, ensure that the system is not oversized for the building's heating and cooling needs.<br><br>MM-GHG-2 is also effective at a point where the applicant is finalizing construction and operational design to identify additional waste management based on the ultimate user of the site. No additional changes to the EIR are required. |

# 3 Modifications to the DEIR

This section of the FEIR documents changes and additions to the DEIR that have been made to clarify, correct, or add to the information provided in that document. Text and table changes presented below are incorporated into the FEIR. Deleted text is ~~crossed-out~~ and new text is underlined. Table numbering is retained from the DEIR; hence, they are not inherently sequential.

## 3.1 Modifications Based on Public Comment

The changes and additions listed in this section are a result of public and agency comments received in response to the DEIR and/or new information that has become available since publication of the DEIR. Any revisions to supporting documentation, such as the references, list of preparers, acronyms and abbreviations, and appendices are also presented. The numbering format from the DEIR is maintained in the sections presented here.

## 3.2 DEIR Modifications

### *3.2.1 Section 1 Introduction*

#### Section 1.5.2 Port Environmental Programs, Air Quality

The Port is developing longer-term plans and strategies to better understand and reduce air emissions related to its development and projects. As part of this effort, the Port ~~is conducting~~ has conducted a Port-wide criteria pollutant and GHG emissions inventory. The Technical Working Group for the emissions inventory includes Port representatives and technical experts, including stakeholder agency representatives from the USEPA, CARB, and SJVAPCD. The draft inventory was shared with the Technical Working Group and is currently being revised and updated.

The Port is also developing a comprehensive Clean Air Plan (CAP). The CAP strategies are intended to guide the Port's policy, land use, and procurement decisions to reduce air- and climate-related community impacts. The strategies may be implemented in any number of ways, including the following:

- New voluntary programs, such as incentive or recognition programs;
- Requirements in the tariff—the Port's "rulebook";
- Conditions in new leases or in existing leases that are under active renewal and negotiations;
- Mitigation measures in environmental documents under CEQA or through partnerships with other agencies.

For each strategy, the Port will assess the implementation options to figure out the most effective approach, working with its many stakeholders every step of the way. The draft CAP was also shared with the Technical Working Group and is currently being revised and updated.

~~The Port is also working with tenants and the SJVAPCD to repower and retrofit its existing cargo-handling equipment with lower emission engines for improved air quality. Projects that have resulted in direct emissions reductions, demonstrating the beginning of the Port's longer-term emissions plans and strategies, include the following:~~

- ~~Replacing four older gasoline-powered trucks with new zero-emission electric vehicles for use on docks and implementing more than 30 electrical vehicle charging stations.~~
- ~~Acquiring two zero-emission, multiuse DANNAR mobile power sources fitted with forklift, scissor lift, and dump capabilities.~~
- ~~Working in tandem with the Ports of Long Beach and Oakland, the Port was awarded grant funding as part of CARB's Zero- and Near-Zero Emission Freight Facilities Program to receive 34 forklifts from XL Lifts, a company specializing in zero- and near-zero-emissions forklifts.~~

~~Obtaining a zero-emissions railcar mover in late 2020.~~ Recently, the Port was awarded a $50 million grant from CARB for a transformative demonstration of a near-zero and zero-emissions supply chain. The larger START project also includes the Ports of Oakland as well as more than 100 pieces of zero-emission terminal equipment.

The Port is also working with tenants and the SJVAPCD to repower and retrofit its existing cargo-handling equipment with lower emission engines for improved air quality. Projects that have resulted in direct emissions reductions, demonstrating the beginning of the Port's longer-term emissions plans and strategies, include the following:

- Replacing four older gasoline-powered trucks with new zero-emission electric vehicles for use on docks and implementing more than 30 electrical vehicle charging stations.
- Acquiring two zero-emission, multiuse DANNAR mobile power sources fitted with forklift, scissor lift, and dump capabilities.
- Working in tandem with the Ports of Long Beach and Oakland, the Port was awarded grant funding as part of CARB's Zero- and Near-Zero Emission Freight Facilities Program to receive 34 forklifts from XL Lifts, a company specializing in zero- and near-zero-emissions forklifts.
- Obtaining a zero-emissions railcar mover in late 2020.

Other measures include:

- The Port has installed shore-side electrical power for tugs, which significantly reduces tug idling time and emissions.
- During dredging activities, port contractors operate an electric rather than diesel-powered dredge. This reduces air emissions by using a clean, renewable energy source instead of burning fossil fuels.

- The Port's Truck Traffic Control Plan has been finalized. The Port has installed signage on Rough & Ready Island directing truck traffic to the Stockton Port Expressway. This will ease congestion and reduce emissions in the nearby Boggs Tract neighborhood.
- The Port is also developing a comprehensive CAP. The CAP strategies are intended to guide the Port's policy, land use, and procurement decisions to reduce air- and climate-related community impacts. The strategies may be implemented in any number of ways, including the following:
  - New voluntary programs, such as incentive or recognition programs;
  - Requirements in the tariff—the Port's "rulebook";
  - Conditions in new leases or in existing leases that are under active renewal and negotiations;
  - Mitigation measures in environmental documents under CEQA; or through
  - Partnerships with other agencies.
  - For each strategy, the Port will assess the implementation options to figure out the most effective approach, working with its many stakeholders every step of the way.

### *3.2.2 Section 3.1 Aesthetics*

**Section 3.1.3.4.3 AES-3: Except as provided in Public Resources Code Section 21099, would the project, in non-urbanized areas, substantially degrade the existing visual character or quality of public views of the site and its surroundings? (Public views are those that are experienced from publicly accessible vantage point). If the project is in an urbanized area, would the project conflict with applicable zoning and other regulations governing scenic quality?**

The project site is largely vacant (outside of the Western Warehouse Area) and on primarily flat terrain with ruderal vegetation, including non-native grasses, lawn, mature native and non-native ornamental trees, remnant asphalt, concrete paving, compacted dirt, three derelict abandoned structures, and degraded tennis and basketball courts. The most prominent permanent visual change resulting from the proposed project would be from the construction of the warehouse, which would be 36 feet tall. Proposed site conditions, including the warehouse, would be consistent with the existing visual character of the project site and its surroundings, which includes other industrial features similar in scale, such as the Ferguson Building warehouse.

Construction would result in the removal of several mature trees in the Warehouse Development Area. As part of the project, TC NO. CAL. Development would plant at least 30 trees~~, including Patmore ash, Chinese pistache, coast redwood, and multi-trunk chaste tree,~~ on the Warehouse Development Area. Planted trees would be visible from adjacent roads and benefit views in the immediate vicinity of the project site.

Although the project proposed warehouse would be visible from adjacent roads, including McCloy Avenue, Humphreys Street, Pinter Avenue, Gillis Avenue, North Hooper Street, and the Port of Stockton Expressway, these roads exclusively serve to provide access to industrial sites in the immediate project vicinity. Views of the project site are largely obscured on all sides by existing topography, industrial developments, rail lines, railcars, landscaping, and buildings; the project site is not visible from the nearest residential areas, located approximately 3,300 feet south and 3,500 feet north of the project site, off of Rough and Ready Island.

The warehouse color palette would include grey tones similar to warehouses in the project site's surrounding environment. The warehouse would fit into and complement its ultimate surroundings, which are Port industrial uses. The proposed project is consistent with all applicable zoning and regulations discussed above governing aesthetics and scenic quality.

The proposed project would result in new truck and rail calls in the project area, which constitutes a change in the existing landscape. However, truck and rail operations under the proposed project would be aesthetically similar and consistent with those of existing conditions within the immediately adjacent industrialized areas, including truck operations at the Ferguson Building warehouse, and would not be visible except from adjacent roads that exclusively serve to provide access to industrial sites within the Port. Short-term construction activities, including warehouse construction and remediation activities, would be similarly obscured from view by on-site and adjoining developments. Therefore, truck, rail, or other vehicle traffic generated by construction and operation would not alter the visual character of the project site and surroundings due to its location within an industrialized area.

No changes to the existing visual character and quality of public views of the site and its surroundings would occur as a result of implementing ICs in the Western Warehouse Area, because of the non-engineering nature of ICs.

**Impact Determination:** While the proposed project would result in a change in the visual character of the project area itself, specifically from changing the Warehouse Development Area from a largely vacant site mostly with ruderal vegetation to a fully constructed and operational 36-foot-tall warehouse, the coherence and unity of the established patterns of landscape features with the adjoining properties would be maintained due to the proposed project's similar aesthetic. Moreover, public views of the project site are limited. Based on the conditions described above, there would be a less-than-significant impact to the existing visual character or quality of the project site from the proposed project.

**Mitigation Measures:** None required.

**Residual Impact:** No impact.

### Section 3.1.3.4.4 AES-4: Except as provided in Public Resources Code Section 21099, would the project create a new source of substantial light or glare which would adversely affect day or nighttime views in the area?

Artificial light impacts are typically associated with light that occurs during the evening and nighttime hours, and may include streetlights, illuminated signage, vehicle headlights, and other point sources. Glare is primarily caused by the reflection of sunlight or artificial light from highly polished surfaces or reflective materials. As described, the Warehouse Development Area is currently vacant with no lighting. The new development would include new exterior lights on all buildings and structures and light stations throughout the parking lots and outdoor storage areas.

New sources of glare would include new windows on the building and from cars and trucks accessing and parking on site. The warehouse facility would be opened and operational during periods of the night. Short-term construction activities, including warehouse construction and remediation activities, would similarly introduce temporary but new sources of light and glare.

No changes to light and glare would occur as a result of implementing ICs in the Western Warehouse Area, because of the non-engineering nature of ICs.

While the new development would introduce new sources of light and glare, these new sources would not be visible from any residential areas or other sensitive visual receptors and would be consistent with adjacent day and nighttime views in the project area, including the Ferguson Building warehouse.

**Impact Determination:** As discussed, the warehouse facility would be operational throughout the night, and operational and security lighting changes are anticipated as part of the proposed project. Additionally, the proposed project would introduce new sources of glare. However, these new sources of light and glare would be limited to an industrial area with day and nighttime views that are both already affected as well as shielded from sensitive visual receptors by existing topography, industrial developments, rail lines, railcars, landscaping, and buildings. Based on the conditions described above, there would be a less-than-significant impact to daytime and nighttime views from the proposed project.

**Mitigation Measures:** While impacts would be less than significant, implementation of the following mitigation measure would ensure that project lighting and sources of glare are shielded from surrounding areas. The following mitigation measure would be implemented to ensure that no day or nighttime views would be adversely affected in the project area:

- **MM-AES-1: Lighting Plan.** TC NO. CAL. Development will submit for approval a lighting plan for the proposed warehouse and related facilities prior to the start of construction ~~building permit issuance~~. The lighting plan shall demonstrate that project lighting is shielded from surrounding areas, and that only the minimum amount of lighting required for safety

purposes is provided to avoid adverse effects on surrounding areas. The lighting plan shall also include shielding that would be installed to meet City and Port requirements. In general, lighting fixtures shall be shielded downward and away from the adjacent streets and properties. Construction of the warehouse and related facilities shall be in conformance with the approved plan.

**Residual Impact:** Implementation of MM-AES-1 would ensure that any new source of substantial light or glare would not adversely affect day or nighttime views in the area as compared to existing conditions. Impacts would remain less than significant.

## *3.2.3 Section 3.2 Air Quality*

### Section 3.2.1.1.2 Local Air Monitoring Levels

Table 8 shows the most recent 4 ~~3~~ years of monitored values for those criteria pollutants currently monitored at the Hazelton Street station (1593 East Hazelton Street, Stockton, California) located approximately 4.5 miles east of the project site. During this time, there were exceedances of the state and national 8-hour $O_3$ standard, the state $PM_{10}$ standard, and the state and national $PM_{2.5}$ 24-hour standard. No violations were recorded of the $NO_2$ or CO standards.

**Table 8**
**Maximum Pollutant Concentrations Measured at the Stockton-Hazelton Street Monitoring Station**

| Pollutant/Parameter | 2013 | 2014 | 2015 | 2020 |
|---|---|---|---|---|
| **$O_3$** | | | | |
| Maximum 1-hour/8-hour average concentration (ppm) | 0.080/0.067 | 0.090/0.077 | 0.094/0.078 | 0.088/0.072 |
| Number of days state/national 1-hour standard exceeded (ppm) | 0 | 0 | 0 | 0 |
| Number of days state/national 8-hour standard exceeded | 0 | 4 | 2 | 1 |
| **$PM_{10}$** | | | | |
| Maximum state/national 24-hour concentration ($\mu g/m^3$) | 95.5/90.1 | 94.0/90.0 | 55.3/54.1 | |
| Number of days state/national 24-hour standard exceeded | 58.2/0.0 | 18.0/0.0 | 24.5/0.0 | 0.0 |
| **$PM_{2.5}$** | | | | |
| Maximum state/national 24-hour concentration ($\mu g/m^3$) | 66.5/66.5 | 56.8/56.8 | 58.8/58.8 | |
| Annual state/national average | --/17.6 | 12.3/12.1 | 12/12.8 | |
| Number of days national 24-hour standard exceeded | 27.6 | 16.0 | 12.2 | |
| **$NO_2$** | | | | |
| Maximum 1-hour average concentration (ppb) | 62.4 | 66.9 | 58.0 | |
| Annual average (ppb) | 16 | 13 | 12 | |
| Number of days state/national standard exceeded | 0/0 | 0/0 | 0/0 | 0/0 |

| Pollutant/Parameter | 2013 | 2014 | 2015 | 2020 |
|---|---|---|---|---|
| **CO** | | | | |
| Maximum 1-hour/8-hour average concentration (ppm) | 2.7/1.8 | 2.8/2.1 | 2.3/1.5 | 2.2/1.7 |
| Number of days state/national 1-hour standard exceeded | 0 | 0 | 0 | 0 |
| Number of days state/national 8-hour standard exceeded | 0 | 0 | 0 | 0 |

Notes:
Sources: ARB 2021b; USEPA 2021a
$O_3$ 8-hour exceedances are based on 0.070 ppm.

### Section 3.2.3.4.2 AQ-2: Would the project result in a cumulatively considerable net increase of any criteria pollutant for which the project region is non-attainment under an applicable federal or state ambient air quality standard?

SJVAPCD has developed quantitative criteria to evaluate the significance of air emissions under CEQA. Specifically, a significant impact would occur if implementation of a project would result in emissions that exceed the SJVAPCD-established thresholds shown in Table 9. SJVAPCD's CEQA thresholds represent the emission levels that would result in a direct or indirect project impact, as well as impacts resulting in a cumulatively considerable net increase in pollutants. SJVAPCD applies the CEQA thresholds separately to three emission categories: 1) construction emissions; 2) operational non-exempt equipment emissions; and 3) operational exempt emissions.

**Construction.** Table 13 shows that the proposed project would not generate construction emissions that exceed SJVAPCD's thresholds.

**Table 13**
**Proposed Project Construction Emissions (Tons per Year)**

| Year | ROG | NOx | $PM_{10}$ | $PM_{2.5}$ | CO | SOx |
|---|---|---|---|---|---|---|
| 2022 | 0.9 | 3.4 | 2.1 | 0.010 | 0.23 | 0.12 |
| 2023 | 3.7 | 1.9 | 2.6 | 0.0103 | 0.29 | 0.10 |
| 2024 | 0.0139 | 0.0065 | 0.0042 | 0.0000 | 0.0005 | 0.0002 |
| 2025 | 0.12 | 1.0 | 0.85 | 0.0025 | 0.053 | 0.039 |
| **SJVAPCD Air Quality Thresholds of Significance** | **10** | **10** | **15** | **15** | **10** | **27** |
| Exceed Significance? | No | No | No | No | No | No |

Notes:
Emissions may not add precisely due to rounding.
Emissions estimated using CalEEMod 2016.3.1.

**Operations.** Operational non-permitted emissions include emissions from all operational sources that are exempt from stationary source air permitting, including both stationary and mobile sources.

Operational permitted emissions include emissions from any operational source subject to stationary source air permitting (SJVAPCD 2015a). Section 3.2.3.3 presents as summary of assumptions related to the air quality analysis, including emission sources and travel distances within SJVAPCD. Table 14 presents the unmitigated emissions of all sources assuming full operations.

**Table 14**
**Proposed Project Operational Emissions (Full Build-Out, 2024), Unmitigated (Tons per Year)**

| Emissions Source | ROG | NOx | $PM_{10}$ | $PM_{2.5}$ | CO | SOx |
|---|---|---|---|---|---|---|
| **Non-Permitted Sources** | | | | | | |
| Architectural Coating | 4.8 | -- | -- | -- | -- | -- |
| Consumer Products | 2 | -- | -- | -- | -- | -- |
| Natural Gas Use | 0.0075 | 0.068 | 0.0052 | 0.0052 | 0.057 | 4.10E-04 |
| Vehicles (Employees) | 0.11 | 0.1 | 0.192 | 0.0329 | 1.4 | 0.0039 |
| Delivery Trucks | 0.397 | 8.69 | 1.2721 | 0.392 | 1.41 | 0.397 |
| Yard Hostlers | 0.0047 | 0.315 | 2.26E-02 | 5.91E-03 | 6.10E-02 | 0.0047 |
| Class I Rail (Mainline) | 0.081 | 1.9 | 0.044 | 0.04 | 0.45 | 0.0016 |
| Class III Rail (Switching) | 0.027 | 0.42 | 0.015 | 0.013 | 0.13 | 5.30E-04 |
| Terminal Equipment | 0.0025 | 0.033 | 0.0018 | 0.0018 | 0.019 | 4.60E-05 |
| **Total Non-Permitted Emissions** | **7.4** | **12** | **1.5** | **0.49** | **3.6** | **0.061** |
| **SJVAPCD Air Quality Thresholds of Significance** | **10** | **10** | **15** | **15** | **100** | **27** |
| Exceeds Significance | No | **Yes** | No | No | No | No |
| **Permitted Sources** | | | | | | |
| Emergency Generator | 0.0078 | 0.69 | 0.0074 | 0.0074 | 0.065 | 7.60E-04 |
| **Total Permitted Emissions** | **0.0078** | **0.69** | **0.0074** | **0.0074** | **0.065** | **7.60E-04** |
| **SJVAPCD Air Quality Thresholds of Significance** | **10** | **10** | **15** | **15** | **100** | **27** |
| Exceeds Significance | No | No | No | No | No | No |

**Emissions within Other Air Districts.** ~~As discussed previously,~~ A portion of trucks and all trains would also travel within other air districts. Rail would travel to various destinations in northern California, including through areas overseen by Sacramento Metropolitan Air Quality Management District (SMAQMD). While determining actual travel routes (and the specific numbers of trains on each route) in the regional area is somewhat speculative, some mainline trains would travel to north to the Roseville rail yard within the SMAQMD. However, emissions would be less than 0.1 ton per year for both $PM_{10}$ and $PM_{2.5}$, which would be well under SMAQMD thresholds. Some truck trips may travel regionally, and a small portion could travel within the SMAQMD and the Bay Area Air Quality Management District (BAAQMD). However, as total truck emissions are less than applicable

thresholds, emissions generated by a smaller portion would be under SMAQMD and BAAQMD and thresholds.

**Impact Determination:** As shown in Table 13, construction emissions would be below SJVAPCD significance thresholds.

As shown in Table 14, operational emissions would exceed annual SJVAPCD $NO_X$ thresholds in the San Joaquin Valley Air Basin (SJVAB). $NO_X$ emissions would be generated by truck operations on terminal and travel within the region and rail operations on terminal and travel within the region. Accordingly, impacts would be considered significant.

**Mitigation Measures:** The following mitigation measures would be implemented to reduce construction and operational emissions:

- **MM-AQ-1: Construction Idling Reductions.** TC NO. CAL. Development and the Port will require construction contractors to minimize heavy-duty construction idling time to 2 minutes where feasible. Exceptions include vehicles that need to idle to perform work (such as a crane providing hydraulic power to ~~the~~ a boom), vehicles being serviced, or vehicles in a queue waiting for work. This requirement will be included as a specification in construction contracts.
- **MM-AQ-2: Use of ~~Tier 4 Engines~~ Clean Equipment and Clean Trucks During Construction.** All off-road engines less than 50 horsepower used to construct the proposed project will be equipped with Tier 2 engines, except for specialized equipment or when Tier 2 engines are not available. All off-road diesel-powered heavy equipment exceeding 50 horsepower used to construct the proposed project will be equipped with Tier 4 engines, except for specialized equipment or when Tier 4 engines are not available. In place of Tier 4 engines for equipment exceeding 50 horsepower, off-road diesel-powered heavy equipment will incorporate retrofits such that emission reductions achieved equal or exceed that of a Tier 4 engine. In addition, all heavy-duty on-road trucks used during construction shall be model year 2014 or newer, with a preference for zero-emission trucks where available. These requirements will be included as specifications in construction contracts. The contractor shall also prioritize the use of zero-emission construction equipment.
- **MM-AQ-3: Operational Truck Idling Reductions.** TC NO. CAL. Development will require trucks to minimize idling time to 2 minutes while on terminal. These requirements will be posted on site and included as a contract provision. TC NO. CAL. Development will design the gate check-in so that the check-in point for trucks is well inside the project site to ensure that there are no trucks queuing outside of the facility.
- **MM-AQ-4: Use of Clean Trucks During Operations.** TC NO. CAL. Development will require all cargo trucks entering the warehouse site to be model year 2017 or newer and encourage its customers to use ~~clean trucks (defined as model year 2017 or newer)~~ zero-emission trucks to transport cargo. ~~TC NO. CAL. Development will also educate customers about the SJVAPCD~~

~~Truck Replacement Program via direct or electronic mailings. In addition,~~ TC NO. CAL. Development will require all trucks be in compliance with CARB air quality regulations for on-road trucks, including CARB's Heavy-Duty (Tractor-Trailer) Greenhouse Gas Regulation, Periodic Smoke Inspection Program (PSIP), and the Statewide Truck and Bus Regulation. TC NO. CAL. Development will also educate customers about the SJVAPCD Truck Replacement Program and CARB's Advanced Clean Truck Program, including funding opportunities, via direct or electronic mailings. TC NO. CAL. Development will post a copy of the SJVAPCD Truck Replacement Program information currently available at http://valleyair.org/grants/truck-replacement.htm and applicable CARB regulations at the terminal. These requirements will be posted on site and included as a contract provision. In addition, TC NO. CAL. Development shall install at minimum one Level 3 electric charger on the terminal in a place convenient for heavy-duty truck access within 12 months of facility operations.

- **MM-AQ-5: Use of Clean Yard Equipment.** TC NO. CAL. Development will require terminal and yard equipment, including yard hostlers, yard equipment, forklifts, and pallet jacks, to be the cleanest available equipment (for future purchases). Considerations for clean equipment will include a first preference for zero-emission equipment, a second preference for near-zero equipment, and then for the cleanest available equipment if neither zero nor near-zero equipment are available or feasible. TC NO. CAL. Development will ensure the proper infrastructure to support such equipment is available. At a minimum, TC NO. CAL. Development will require at least 25 of the forklifts be zero emissions. All remaining forklifts shall be low emissions using alternative fuels.

**Residual Impact:** Table 15 presents the mitigated emissions.

**Table 15**
**Proposed Project Construction and Operational Emissions (Full Build-Out, 2024), Mitigated (Tons per Year)**

| Emissions Source | ROG | NOx | $PM_{10}$ | $PM_{2.5}$ | CO | SOx |
|---|---|---|---|---|---|---|
| **Construction Emissions** | | | | | | |
| 2022 | 0.7 | 1.2 | 2.0 | 0.010 | 0.14 | 0.042 |
| 2023 | 3.7 | 0.9 | 2.6 | 0.0103 | 0.25 | 0.057 |
| 2024 | 0.014 | 0.003 | 0.004 | 0.00003 | 0.0003 | 0.0001 |
| 2025 | 0.024 | 0.22 | 0.65 | 0.0025 | 0.018 | 0.0065 |
| SJVAPCD Air Quality Thresholds of Significance | 10 | 10 | 100 | 27 | 15 | 15 |
| **Exceeds Significance** | No | No | No | No | No | No |
| **Operational Emissions; Non-Permitted Sources** | | | | | | |
| Architectural Coating | 4.8 | -- | -- | -- | -- | -- |
| Consumer Products | 2.0 | -- | -- | -- | -- | -- |
| Natural Gas Use | 0.0075 | 0.068 | 0.0052 | 0.0052 | 0.057 | 4.1E-04 |
| Vehicles (Employees) | 0.11 | 0.10 | 0.02 | 0.01 | 1.44 | 0.00 |
| Delivery Trucks | 0.18 | 5.09 | 0.55 | 0.24 | 0.65 | 0.06 |
| Yard Hostlers | | | | | | |
| Class I Rail (Mainline) | 0.081 | 1.9 | 0.044 | 0.040 | 0.45 | 0.0016 |
| Class III Rail (Switching) | 0.027 | 0.42 | 0.015 | 0.013 | 0.13 | 5.3E-04 |
| Terminal Equipment | 9.0E-04 | 0.012 | 6.3E-04 | 6.3E-04 | 0.0068 | 1.6E-05 |
| **Total Non-Permitted Emissions** | **7.2** | **7.8** | **1.5** | **0.44** | **2.8** | **0.064** |
| SJVAPCD Air Quality Thresholds of Significance | 10 | 10 | 15 | 15 | 100 | 27 |
| **Exceeds Significance** | No | No | No | No | No | No |
| **Operational Emissions; Permitted Sources** | | | | | | |
| Emergency Generator | 0.0078 | 0.69 | 0.0074 | 0.0074 | 0.065 | 7.60E-04 |
| **Total Permitted Emissions** | **0.0078** | **0.69** | **0.0074** | **0.0074** | **0.065** | **7.60E-04** |
| SJVAPCD Air Quality Thresholds of Significance | 10 | 10 | 15 | 15 | 100 | 27 |
| Exceeds Significance | No | No | No | No | No | No |

As shown in Tables 14 and 15, the proposed project's operational emissions in the SJVAB are mainly the result of truck emissions. While truck idling restrictions would reduce emissions slightly, truck emissions are being generated mainly through transit; therefore, MM-AQ-3 would not reduce emissions below significance. Through MM-AQ-4, use of cleaner trucks (defined as model year 2017 or newer) implemented through contracts with material suppliers would result in reduced transit

emissions. ~~However, it is unknown at this time how many such trucks would visit the terminal.~~ While heavy-duty electric trucks are under development, they are not readily available throughout the state at commercial levels. However, ~~and it is unknown whether they would be by 2030~~.

Implementation of MM-AQ-5 would reduce emissions from terminal equipment. While not a significant source of emissions, transitioning to clean cargo-handling equipment is consistent with state and regional plans and provides for electrical infrastructure, which could potentially be used for zero-emission trucks in the future.

Because there are only two mainline rail companies (UP and BNSF) that service the entire rail network as well as interstate commerce, mainline locomotives are regulated by the federal and state governments. CARB is addressing rail emissions through a statewide rail plan, which includes agreements directly with the two mainline locomotive companies. The 2005 Statewide Railyard Agreement, which was completed in 2015, included a statewide idle reduction program, maximized the use of state and federal ultra-low-sulfur (15 ppm maximum) diesel fuel, and established a statewide visible emissions reduction and repair program. The agreement also required the preparation of 17 railyard inventories and Health Risk Assessments (HRAs). Switcher engines are also a source of emissions. CCT has also recently upgraded several of its locomotives, including upgrading gensets and adding a new ultra-low-emissions locomotive purchased through USEPA's Diesel Emissions Reduction Program. To achieve further emissions reductions would require purchases of new equipment or a move to electrification, which is beyond the scope of one terminal project.

All feasible mitigation has been applied. For the reasons noted above, emissions are below significance and no additional mitigation is required.

### Section 3.2.3.4.3 AQ-3: Would the project expose sensitive receptors to substantial pollutant concentrations?

A significant impact would occur if a project would emit toxic air contaminants (TACs) that could cause a significant increase in health risks, including both carcinogenic and non-carcinogenic risks. A project is considered to have a significant TAC impact if it would:

- Result in ground-level concentrations of carcinogenic TACs that would increase the probability of contracting cancer for the maximally exposed individual by 20 in 1 million or more (SJVAPCD 2015b)
- Increase ground-level concentrations of non-carcinogenic TACs that would result in an acute or chronic hazard index exceeding 1 for the maximally exposed individual receptor (SJVAPCD 2015b)

Impacts to sensitive receptors are typically evaluated in terms of exposure to TACs. CARB classifies diesel particulate matter (DPM) as a TAC and uses $PM_{10}$ emissions from diesel exhaust as a surrogate for DPM. Health effects from carcinogenic TACs are described in terms of individual cancer risk, which is based on a 30-year lifetime exposure to TACs. More than 90% of DPM is less than 1 micrometer in diameter, and thus is a subset of $PM_{2.5}$. $PM_{2.5}$ comes from a variety of sources, but primarily from the burning of carbon-based fuels, such as gasoline, diesel, and wood. Numerous scientific studies have linked exposure to airborne $PM_{2.5}$ to increased severity of asthma attacks, development of chronic bronchitis, decreased lung function in children, respiratory and cardiovascular hospitalizations, and even premature death in people with existing heart or lung disease (ARB 2021b). Because DPM is a subset of $PM_{2.5}$, DPM also contributes to the same non-cancer health effects as $PM_{2.5}$ exposure. These effects include premature death, hospitalizations, and emergency department visits for exacerbated chronic heart and lung disease, including asthma, increased respiratory symptoms, and decreased lung function in children. Several studies suggest that exposure to DPM may also facilitate development of new allergies. Those most vulnerable to non-cancer health effects are children whose lungs are still developing and the elderly, who often have chronic health problems (ARB 2021b)

CEQA does not require comprehensive quantification of health risk for every project. Rather, projects are evaluated or screened for a need to quantify health risks and a quantitative HRA is conducted if it is determined that impacts could potentially exceed thresholds of significance. An HRA is dependent on several key variables: TAC emissions, TAC potency, exposure duration, and distance from sensitive receptors. If one of these variables (such as TAC emissions) is low, that, by itself, is not a basis for determining whether an HRA is needed. However, taken together these variables make a compelling argument for determining the need for a quantitative HRA. For example, low TAC emissions emitted far from sensitive receptors and for a short duration would indicate that impacts are unlikely to exceed thresholds of significance.

SJVAPCD recommends conducting a screening analysis that includes all sources of emissions and recommends using the California Air Pollution Control Officers Association's (CAPCOA's) updated methodology to determine prioritization. However, CAPCOA's Prioritization Guidance is intended as a screening methodology for facilities subject to AB 2588,[9] which is applicable to stationary sources and does not account for mobile sources (i.e., sources which move around on site or transit off site) which are the majority of the proposed project's source of emissions. CAPCOA's Prioritization Guidelines for stationary sources includes two methodologies. The first and most conservative serves as the basis for SJVAPCD's prioritization calculator. This conservative approach, called the Emissions

[9] The Air Toxics "Hot Spots" Information and Assessment Act (AB 2588) requires stationary sources to report the types and quantities of certain substances routinely released into the air. The goals of the Air Toxics "Hot Spots" Act are to collect emission data, to identify facilities having localized impacts, to ascertain health risks, to notify nearby residents of significant risks, and to reduce those significant risks to acceptable levels.

and Potency Procedure, is based on three parameters: emissions, toxicity, and proximity to receptors. CAPCOA's second screening approach, called the Dispersion Adjustment Procedure, adjusts the first screening approach to address dispersion of pollutants for sources with different release heights. SJVAPCD's prioritization calculator is based on CAPCOA's Emissions and Potency Procedure and as such does not account for dispersion of pollutants for sources with different release heights. CAPCOA's Dispersion Adjustment Procedure shows that the prioritization score calculated using the Emissions and Potency Procedure would be reduced by 85% and 99% for sources with stacks that are greater than 20 and 45 meters, respectively. Because nearly all proposed project emissions would occur from mobile sources such as locomotive and trucks, and stationary sources are electric and therefore would not have stack emissions, CAPCOA's Prioritization Guidance would not provide a useful screening tool in determining health impacts from these sources. For these reasons, the CAPCOA methodology is not applicable to the proposed project and a HRA was performed.

Proposed project construction activities would result in temporary DPM emissions, from the combustion of diesel fuel in off-road construction equipment engines and on-road trucks. Operation of the proposed project would result in DPM emissions from trucks, rail, and other diesel-fueled equipment. Table 16 presents the results of the HRA analysis. As shown, the proposed project would be under applicable thresholds and would not result in acute or chronic health risk.

**Table 16**
**Maximum Health Impacts Associated with Construction and Operation (Unmitigated)**

| Source Category[1] | Excess Lifetime Cancer Risk[2,3] (in 1 million) | Chronic HI[4] | Acute HI |
|---|---|---|---|
| **Construction Sources** | | | |
| Off-Road Construction Equipment | 0.276 | 0.031 | |
| On-Road Mobile Vehicles | 3.0E-04 | 2.2E-05 | |
| Construction Subtotal | 0.276 | 0.031 | |
| **Operational Sources** | | | |
| Emergency Generator | 0.16 | -- | |
| Cargo-Handling Equipment – Forklifts | 1.3 | -- | |
| Cargo-Handling Equipment – Yard Hostler | 0.36 | -- | |
| Delivery Truck Operations | 1.9 | -- | |
| Class III Rail Operations | 0.14 | -- | |
| Operations Subtotal | 3.8 | -- | |
| **Total Risk** | | | |
| Construction + Operations Total | 4.1 | 0.031 | |
| Significance Threshold[5] | 20 | 1.0 | |
| Exceeds Threshold? | No | No | |

| Source Category[1] | Excess Lifetime Cancer Risk[2,3] (in 1 million) | Chronic HI[4] | Acute HI |
|---|---|---|---|
| **Maximum Receptor (2022)** | | | |
| UTMx | 644,720 | 645,060 | |
| UTMy | 4,201,000 | 4,201,080 | |
| **Receptor Type[6]** | | | |
| Classification | Worker | Worker | |

Notes:

1. Excess lifetime cancer risk and chronic HI from operational sources represent full build-out operations of the proposed project. Per conversations with the Port, operations are expected to begin in June 2024. For the purposes of this analysis, operations are conservatively assumed to begin on January 1, 2024.
2. Excess lifetime cancer risks were estimated using Equation 1:

   **Equation 1**

   $$\text{Risk}_{\text{inh}} = \Sigma \text{C}_\text{i} \times \text{CF} \times \text{IF}_{\text{inh}} \times \text{CPF}_\text{i} \times \text{ASF}$$

   where:

   $\text{Risk}_{\text{inh}}$ = cancer risk for the inhalation pathway (unitless)
   $\text{C}_\text{i}$ = annual average air concentration for chemical "i" µg/m$^3$
   $\text{CF}$ = conversion factor (mg/µg)
   $\text{IF}_{\text{inh}}$ = intake factor for inhalation (m$^3$/kg-day)
   $\text{CPF}_\text{i}$ = cancer potency factor (mg/kg-day$^{-1}$)
   $\text{ASF}$ = age sensitivity factor (unitless)

   Excess lifetime cancer risk was evaluated for two exposure scenarios, with the intent of identifying the most conservative scenario. Scenario 1 started exposure at the start of construction; Scenario 2 started exposure at the start of operation. Scenario 1 included overlapping construction and operational emissions, whereas Scenario 2 included operational emissions and the remediation phase of construction only. Ultimately, Scenario 1 yielded the highest risk results of the exposure scenarios, which are shown in Table 16. The other scenario resulted in lower risks, which are not presented for that reason.
3. Chronic HI for each receptor was estimated using Equation 2:

   **Equation 2**

   $$\text{HI}_{\text{inh}} = \Sigma \text{C}_\text{i} / \text{cREL}$$

   where:

   $\text{HI}_{\text{inh}}$ = cancer risk for the inhalation pathway (unitless)
   $\text{C}_\text{i}$ = annual average air concentration for chemical "i" (µg/m$^3$)
   $\text{cREL}$ = chronic reference exposure level (µg/m$^3$)
4. Thresholds of significance are based on information from San Joaquin Valley Air Pollution Control District, Air Quality Thresholds of Significance – Toxic Air Contaminants.
5. This table shows the maximum exposed individual receptor, but two different receptor types were analyzed for this analysis: residential and worker.
6. Only the subset of off-site receptors located on residential buildings or homes were considered residential receptors. The remaining receptors were analyzed as workers.

Source: San Joaquin Valley Air Pollution Control District, Air Quality Thresholds of Significance – Toxic Air Contaminants. Available at: http://www.valleyair.org/transportation/0714-GAMAQI-TACs-Thresholds-of-Significance.pdf.

**Impact Determination:** As shown in Table 16, the proposed project would be under the applicable acute or chronic health risk thresholds; therefore, impacts would be considered less than significant. ~~Less than Significant~~

**Mitigation Measures:** While not required to meet health risk thresholds, MM-AQ-1 through MM-AQ-5 would further reduce emissions and result in less risk than was identified in Table 16.

**Residual Impact:** Less-than-significant impact.

## *3.2.4 Section 3.3 Biological Resources*

### Section 3.3.1.2 Wetlands and Jurisdictional Waters

A wetland delineation conducted for the proposed project concluded that the project site contains approximately 0.09-acre of seasonal wetland, 0.09-acre alkaline scald area mapped as "other waters," and 1.58 acres (4,400.67 linear feet) of drainage ditches (WRA 2021). The delineation found that none of these features meet the definition of jurisdictional waters of the United States as confirmed by the U.S. Army Corps of Engineers (USACE; 2021).

Alkaline refers to the soil type, and scald means that it is burned such that hydrology (surface water) cannot be absorbed. For the proposed project, scald refers to an area that has been burnt or scarred by environmental conditions—in this case, due to the alkaline nature of the soil.

Water is conveyed from the drainage ditches to the Port's stormwater system, which is actively managed and ultimately discharges into Burns Cutoff. The stormwater ditches in the project area do not meet the definition of a wetland under the State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State that was adopted on April 2, 2019, by the RWQCB as the ditches are artificial (not a wetland created by modification of surface waters of the state) and are subject to ongoing operation and maintenance (WRA 2021). Per the Procedures, the stormwater ditches are not waters of the state because they are artificial wetlands that were constructed and are currently used and maintained primarily for one or more of the following purposes:

- Settling of sediment
- Detention, retention, infiltration, or treatment of stormwater runoff and other pollutants or runoff subject to regulation under a municipal, construction, or industrial stormwater permitting program
- Treatment of surface waters

The small seasonal wetland and alkaline scald mapped in the study area would likely be subject to RWQCB regulation pursuant to the Porter-Cologne Water Quality Control Act.

The drainage ditches on site include narrow bands of freshwater emergent wetlands along the channel edges; however, it is unlikely that the ditches or bands of emergent vegetation would be subject to CDFW jurisdiction pursuant to Section 1602 of the California Fish and Game Code since they are ditches that were constructed in uplands to convey stormwater runoff; the ditches do not function as natural tributaries or streams because flows are managed by a pump that is activated

only to remove accumulated stormwater from the site. However, the ultimate determination of jurisdiction is the responsibility of the regulatory agencies and TC NO. CAL. Development will submit a Lake or Streambed Alteration Agreement (LSAA) notification so that CDFW may determine whether proposed project elements are subject CDFW's LSAA regulatory authority.

### Section 3.3.3.4.1 BIO-1: Would the project have a substantial adverse effect, either directly or through habitat modifications, on any species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Wildlife or U.S. Fish and Wildlife Service?

The proposed project would be constructed within a lot that is largely vacant (outside of the Western Warehouse Area) and is not likely to have habitat suitable for special status wildlife. Most vegetation removal during remediation and construction would be limited to grubbing sparse ruderal vegetation with little or no habitat value. In addition, several existing native and non-native mature trees would be removed in the Warehouse Development Area. TC NO. CAL. Development would plant 30 trees to replace the trees removed.

Features away from the project site may have habitat value to special status species (e.g., the Burns Cutoff or the San Joaquin River), but these features would not be directly affected by the proposed project. Construction of the proposed project is not anticipated to generate significant noise or other effects that would disturb special status species away from the project site. Stormwater runoff from the project site would be conveyed through a new drainage ditch to the Port's existing drainage system.

The project area is within the Pacific Flyway, an established air route of waterfowl and other birds migrating between wintering grounds in Central and South America and nesting grounds in Pacific Coast states and provinces of North America. Migratory birds have been known to roost on trees within the Port. There are mature trees on site that have the potential to serve as roosting sites, and while unlikely, some birds may forage in the existing vegetation on site. Several of the existing trees would be removed to construct the warehouse, which could remove roosting sites. Site grading, excavation, and construction activities associated with remediation and terminal construction could also temporarily affect or displace potential bird nesting activities on site.

While the Port maintains barn owl nest and bat roost boxes on the West Complex, the proposed project footprint does not overlap with existing boxes. Barn owls are highly adaptable to urban environments. Approximately 60 aces of ruderal habitat at the project site would no longer be available for barn owl use; however, there would remain over 700 acres of foraging habitat (including seasonal wetland, alfalfa fields, fields farmed with row crops, and annual grassland) south and west of the project area within a 1-mile radius available to barn owls.

Construction has the potential to result in accidental spills, if improperly managed. Various contaminants, such as fuel oils, grease, and other petroleum products used in construction activities, could be introduced into the system either directly or through surface runoff. Contaminants may be toxic to wildlife. Because the proposed project would include more than 1 acre of ground disturbance, a NPDES Construction Stormwater General Permit addressing these types of impacts would be required.

Operations of the proposed project would not result in additional impacts to habitats or special status species. There would be an additional 80 railcars and 320 trucks per month calling on the project site. This increase would be negligible when considered in the context of total Port facility operations. Railcars and trucks would operate on existing roads and railways. The Western and Eastern Remediation Areas are anticipated to remain vacant and unused.

**Impact Determination:** While the existing habitat at the project site is not likely to support special status species, there remains the possibility that special status species could use the mature trees, drainage channels, and grasslands on the site for foraging or possibly nesting. Accordingly, tree removal and construction activities have the potential to significantly impact special status species should they be present on site during construction. Impacts would be considered potentially significant.

**Mitigation Measures:** The following mitigation measures would be implemented to reduce the potential impacts to biological resources:

- **MM-BIO-1: Obtain Coverage under the SJMSCP or Implement Protective Measures for Nesting Birds, Swainson's Hawk, Western Pond Turtle, Giant Garter Snake, and Valley Elderberry Longhorn Beetle.** To avoid impacts on potentially present special status species, the proposed project proponent will obtain coverage under the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (SJMSCP). For the 60-acre area, TC NO. CAL. Development will submit an application for coverage to the San Joaquin Council of Governments (SJCOG) within 60 days of project construction. For the remedial activities in the remaining areas of the site, the Port will submit an application for coverage to SJCOG within 60 days of remediation activities. SJCOG will review the proposed project, prepare a staff report, and submit the report to the SJMSCP Habitat Technical Advisory Committee, which determines whether the proposed project will be covered under the SJMSCP. Assuming the proposed project is approved for coverage, a SJCOG biologist will conduct a site visit to determine which incidental take minimization measures (ITMMs) included in the SJMSCP are applicable to the project. SJCOG will then execute a final summary of applicable ITMMs for the project. ITMMs would include surveys, monitoring, and applying temporary construction buffers, if determined appropriate by SJCOG. TC NO. CAL. Development and the Port will

implement all required ITMMs identified by the SJCOG. Ground disturbance will not occur until the ITMMs have been satisfied.

If the proposed project is not able to obtain coverage under the SJMSCP, TC NO. CAL. Development and the Port will implement avoidance and minimization measures specific to nesting birds, Swainson's hawk, western pond turtle, giant garter snake, and valley elderberry longhorn beetle as detailed below.

- For nesting birds, alternatives to SJMSCP coverage will include surveys and avoidance measures consistent with CDFW's standard requirements. If equipment staging, site preparation, or other project-related construction work is scheduled to occur between February 1 and September 15, the nesting season of protected raptors and other avian species, a CDFW-approved biologist will conduct a pre-construction survey of the project area for active nests within 7 days prior to commencing project construction. The minimum survey area will be 250 feet for passerines, 500 feet for small raptors, and 1,000 feet for larger raptors. Surveys will be conducted during periods of peak activity (early morning or dusk) and be of sufficient duration to observe movement patterns. If a lapse in project-related work of 15 days or longer occurs, another survey will be performed before construction is reinitiated. If any active bird nests are found, a buffer around the nest will be established by the biologist in coordination with CDFW. The buffer area will be fenced off from work activities and avoided until the young have fledged, as determined by the biologist. The biologist will monitor the active nest until the young have fledged for at least 2 hours per day when project activities are occurring to observe the behavior of the nesting birds. If the birds show signs of disruption to nesting activities (e.g., defensive flights/vocalizations directed toward project personnel, standing up from a brooding position, or flying away from the nest), the buffers will be expanded by the biologist until no further interruptions to nesting behavior are detectable.
- For Swainson's hawks, proposed project construction activities will occur outside of the Swainson's hawk breeding season (March 20 to September 15). If proposed project construction activities are to be conducted during breeding season, surveys for Swainson's hawks and their nests shall be conducted by a qualified biologist prior to the beginning of proposed project-related activities at each phase of the project site. Surveys shall be conducted in a manner consistent with the *Recommended Timing and Methodology for Swainson's Hawk Nesting Surveys in California's Central Valley* (https://www.wildlife.ca.gov/Conservation/Survey-Protocols#377281284-birds). Surveys shall cover a minimum of two survey periods with the minimum number of surveys prior to project initiation as follows:
    - January to March 20: survey for raptor nests over 1 day, with a minimum of one survey.

    - March 20 to April 5: survey from either sunrise to 10:00 a.m. or 4:00 p.m. to sunset, with a minimum of three surveys.
    - April 5 to April 20: survey from either sunrise to 12:00 p.m. or 4:30 p.m. to sunset, with a minimum of three surveys.
  - For western pond turtle, alternatives to SJMSCP coverage will include establishing a buffer area of 300 feet between any nesting turtle sites and the waters located near the nesting site. These buffers shall be indicated by temporary fencing if construction has or will begin before nesting periods are ended (the period from egg laying to emergence of hatchlings is normally April to November).
  - For giant garter snake, alternatives to SJMSCP coverage will include limiting construction activities that may disturb potential giant garter snake habitat to between May 1 and September 30 to the extent practicable. If construction activities are necessary in giant garter snake habitat between October 1 and April 30, a qualified biologist would conduct a survey within 24 hours prior to construction and monitor construction activities to ensure that individuals of giant garter snake encountered during construction are avoided. If a giant garter snake is encountered during construction activities, the biologist will have the authority to stop construction activities until appropriate corrective measures are completed or it is determined that the snake will not be harmed. Giant garter snakes encountered during construction activities will be allowed to move away from the construction area on their own. If giant garter snakes are observed in burrows or other wintering habitat, burrows will be flagged, and a 200-foot buffer will be established and maintained until the biologist confirms that snakes are no longer present. The project area will be reinspected by the biologist whenever a lapse in construction activity of 2 weeks or more has occurred.
  - For valley elderberry longhorn beetle, alternatives to SJMSCP coverage will include conducting a survey of the project site to confirm the presence of any elderberry shrubs. If elderberry shrubs are identified on the project site and cannot be avoided, TC NO. CAL. Development and the Port will coordinate a removal and replanting effort with ~~CDFW~~ the U.S. Fish and Wildlife Service.
- **MM-BIO-2: Obtain and Implement NPDES Construction Stormwater General Permit.** A NPDES Construction Stormwater General Permit will be obtained for the proposed project, which will require the development of a construction Stormwater Pollution Prevention Plan (SWPPP). The construction SWPPP would include BMPs including or similar to use of barriers (e.g., netting or sandbags) to prevent pollutants from entering drainage channels, equipment inspection for spills, and maintenance and implementation of material spill prevention and cleanup plans. The construction SWPPP would ensure that contaminants are not accidentally introduced into the drainage channels.

- **MM-BIO-3: Tree Replanting.** TC NO. CAL. Development will plant a minimum of 30 trees~~,~~ ~~including Patmore ash (*Fraxinus p. 'Patmore'*), Chinese pistache (*Pistachia chinensis*), coast redwood (*Sequoia sempervirens*), and multi-trunk chaste tree (*Vitex agnus-castus*),~~ on the project Warehouse Development Area in locations where future removal is not likely to be required.

  If any trees are removed as part of the Port's remedial activities, the Port will plant trees based on the ratios identified below at locations where future removal is not likely to be required.

  Only native species of trees adapted to the lighting, soil, and hydrological conditions shall be replanted at the replanting site. Each tree slated for removal that is 4 inches diameter at breast height (DBH) or larger will be mitigated. For oaks 4 to 12 inches DBH to be removed, trees will be replanted at a 3:1 ratio. For oaks 13 to 24 inches DBH, trees will be replanted at a 5:1 ratio. For other native trees, trees will be replanted at a 3:1 ratio. For non-native trees, trees will be replanted at a 1:1 ratio. Replanted trees will consist of California native tree species, including valley oak (*Quercus lobata*), interior live oak (*Quercus wizlizeni*), coast live oak (*Quercus agrifolia*), box elder (*Acer negundo*), western redbud (*Cercis occidentalis*), Oregon ash (*Fraxinus latifolia*), red willow (*Salix laevigata*), giant sequoia (*Sequoiadenron giganticum*), or native pine trees. Other suitable native tree species may be considered if necessary. TC NO. CAL. Development is required to prepare a planting plan that must be reviewed and approved by the Port prior to planting.

**Residual Impact:** In the unlikely event that nesting birds, Swainson's hawk, western pond turtle, giant garter snake, and valley elderberry longhorn beetle are found on the project site, implementation of MM-BIO-1 and MM-BIO-2 would ensure that significant impacts to special status species are avoided. Mitigation measure MM-BIO-1 would reduce the potential exposure of special status species to construction impacts. This includes reducing potential presence of special status species by completing surveys, establishing buffer zones, complying with construction windows, and conducting monitoring. Mitigation measure MM-BIO-2 would reduce the potential for pollutant inputs into drainage channels, which could adversely impact special status aquatic species. Mitigation measure MM-BIO-3 would ensure that roosting habitat opportunities are maintained on the project site for the long term. With implementation of mitigation measures, impacts would be less than significant.

### Section 3.3.3.4.3 BIO-3: Would the project have a substantial adverse effect on state or federally protected wetlands (including, but not limited to, marshes, vernal pools, coastal wetlands, etc.) through direct removal, filling, hydrological interruption, or other means?

The jurisdictional waters delineation conducted for this project concluded that the project site contains approximately 0.09-acre of seasonal wetland, 0.09-acre alkaline scald mapped as "other waters," and 1.58 acres (4,400.67 linear feet) of drainage ditches (WRA 2021). As discussed below, while these features meet the technical criteria for a wetland or non-wetland waters, they were determined to be exempt from USACE regulation based on a review of information regarding their creation and use. None of these features are jurisdictional waters of the United States as confirmed by USACE (USACE 2021).

The manufactured drainage ditches were constructed in the uplands with no connection to historical watercourses. Topographic maps as far back as 1913 indicate no stream or other aquatic features in the vicinity of the existing ditches. The central and western drainage ditches were constructed in upland areas in 1954 to drain stormwater runoff on Rough and Ready Island. The southern ditch was constructed in 2006 to route water around the Ferguson development that was constructed immediately to the south of the project site. The alignment of the ditches does not fall within the footprint of a historical stream, marsh, or wetland boundary. The exemption of the manufactured ditches is consistent with the USACE's long-standing, historic position that nontidal ditches excavated in upland (and historically described as ''dry land'') are not jurisdictional, including stormwater control features constructed or excavated in upland areas. The seasonal wetland and alkaline scald are not subject to Section 404 jurisdiction since these features are not adjacent to traditional navigable waters or other bodies of water over which the USACE has jurisdiction (WRA 2021).

The stormwater ditches on the project site do not meet the definition of a wetland under the *State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State* that was adopted on April 2, 2019, by the State Water Resources Control Board because the ditches are artificial (not a wetland created by modification of surface waters of the state) and are subject to ongoing operation and maintenance (WRA 2021). Per the Procedures, the stormwater ditches are not waters of the state since they are constructed artificial wetlands and are currently used and maintained.

However, it is anticipated that the 0.09-acre area determined to be seasonal wetland and the 0.09-acre alkaline scald mapped as "other waters" will be subject to CVRWQCB jurisdiction as waters of the state (WRA 2021). Both of these areas would be filled and converted to parking lots. <u>These areas to be impacted may also be subject CDFW's LSAA regulatory authority.</u>

**Impact Determination:** There would be no impacts to federally jurisdictional waters from the proposed project. However, construction of the proposed project would fill wetlands and other waters present on the project site that are likely to be jurisdictional under state law. This would constitute a potentially significant impact.

**Mitigation Measures:** The following mitigation measure would be implemented to offset impacts on jurisdictional waters:

- **MM-BIO-4: Compensatory Wetland and Waters Mitigation.** If determined to be subject to CVRWQCB jurisdiction as waters of the state, TC NO. CAL. Development will purchase appropriate wetland mitigation credits at a minimum ratio of 1:1 to compensate for the loss of state waters. Mitigation credits shall be purchased from an agency-approved bank, potentially including Liberty Island Conservation Bank, Elsie Gridley Mitigation Bank, or possibly ~~To compensate for permanent impacts to the small seasonal wetland and alkaline scald totaling 0.18 acre, TC NO. CAL. Development shall purchase credits from~~ the National Fish and Wildlife Foundation in lieu fee program (Aquatic Resource Service Area – San Joaquin River) at a minimum ratio of 1:1.

**Residual Impact:** With implementation of MM-BIO-4, the proposed project would have less-than-significant impacts on state protected wetlands.

## *3.2.5 Section 3.4 Cultural Resources*

### Section 3.4.3.4.2 CHR-2: Would the project cause a substantial adverse change in the significance of an archaeological resource pursuant to Section 15064.5?

The proposed project would include the following ground disturbance:

- Site grading: up to 3 feet below the ground surface
- Construction of stormwater detention ponds and utility vaults, and removal of the existing fire water line: up to 6 feet below the ground surface
- Utility trenching: up to 12 feet below the ground surface
- Installation of drilled displacement columns below the outdoor storage area and building: up to 55 feet below the ground surface

Excavation would encounter native sediments, which are present across the project area. However, Rough and Ready Island has low potential for archaeological resources due to its low elevation and seasonal flooding prior to the construction of levees (Uribe & Associates 1996). Recent consultation by the Port with Native American Tribes has indicated increased concern with areas of Rough and Ready Island that are adjacent to the San Joaquin River, where natural levees could have existed, and cultural practices are known to have occurred. The proposed project is not near any of these higher-potential areas. It is unlikely that archaeological materials would be encountered.

**Impact Determination:** The proposed project is not expected to encounter intact archaeological resources. However, because the proposed project includes disturbance of soil through direct removal, if archaeological materials are present in previously undisturbed native sediments, they could potentially be disturbed during construction, which would constitute a potentially significant impact.

**Mitigation Measures:** While the proposed project is not expected to encounter archaeological resources, in the unlikely event of such a discovery, the following mitigation measure would be implemented to reduce any impacts:

- **MM-CHR-1: Stop Work in the Area If Prehistoric or Historical Archaeological Resources Are Encountered.** A qualified archaeologist will provide training materials to the construction contractor in identification of cultural resources, and in the event that any artifact, or an unusual amount of bone, shell, or non-native stone, is encountered during construction, work would be immediately stopped and relocated to another area. The contractor would stop construction within 10 meters (30 feet) of the exposure of these finds until a qualified archaeologist can be retained by the Port to evaluate the find (see 36 CFR 800.11.1 and 14 CCR 15064.5[f]). Examples of such cultural materials might include concentrations of ground stone tools such as mortars, bowls, pestles, and manos; chipped stone tools such as projectile points or choppers; flakes of stone not consistent with the immediate geology, such as obsidian or fused shale; a historic trash pit containing bottles and/or ceramics; or structural remains. Native American Tribes and the Office of Historic Preservation would be notified of the find. If the resources are found to be significant, they would be avoided or if avoidance is not possible, mitigated. Mitigation would be developed in coordination with Native American Tribes and could include development of a treatment plan to guide data recovery and interpretation of results for the public. This interpretation could include adding information on the resources to the Port's website, which will include a history portal site, developing informational brochures or signage on site or in the Port administrative building, and/or providing material to the Tribes.

  Tribal representatives will be invited to review and comment on the training materials that are to be made available to construction contractors prior to commencement of work. The construction contractor must then inform and train construction workers that are involved with land disturbance activities.

  If any Tribal artifact or remains are identified, a paid Tribal representative should be present during the unearthing. In addition to the Office of Historic Preservation, the California Native American Heritage Commission should be contacted as the primary government agency responsible for identifying and cataloging Native American cultural resource.

**Residual Impact:** With implementation of MM-CHR-1, impacts would be less than significant.

## *3.2.6 Section 3.5 Energy*

### Section 3.5.3.4.2 ENE-2: Would the project conflict with or obstruct a state or local plan for renewable energy or energy efficiency?

To comply with the *Renewable Portfolio Standard Procurement Plan* (Port 2016), the Port has committed to purchasing state-approved renewable energy from the active California market. Energy use associated with construction and operation of the warehouse would comply with this plan as the warehouse would connect to the existing power grid at the Port. The Port would also offer TC NO. CAL. Development financial incentives to install high-efficiency equipment during warehouse construction as required by the *Renewable Portfolio Standard Procurement Plan*.

In addition, the City's 2040 General Plan (City 2018a) requires that new developments incorporate energy conservation and green building practices. As noted above in ENE-1, the proposed project would comply with all required provisions of the California Green Building Standards Code, which requires green building practices.

**Impact Determination:** Because the proposed warehouse incorporates energy conservation and green building practices, impacts would be considered less than significant.

**Mitigation Measures:** The following mitigation measures would be implemented to address further reduce energy consumption:

- **MM-GHG-1: Solar Requirements and Energy Audit** (See also GHG-1 in Section 3.7.3.4, "Impact Analysis"): TC NO. CAL. Development will install a 600 kW solar system as part of warehouse construction. The warehouse operator will be required to use the solar system at its maximum capacity.
  In addition, within 6 ~~Within 9~~ months of the effective date of the new lease, TC NO. CAL. Development will conduct an energy audit of warehouse design plans to determine if there are additional energy-saving features that can be implemented as part of construction and warehouse design and operations. ~~and develop a plan for reducing overall terminal energy from 2021 levels by within 5 years of the effective date of the lease.~~ The plan must be submitted to the Port for review and approval. The plan will incorporate the following measures at a minimum:
  - ~~Evaluate the level of solar panels that are required to meet the facility's electrical needs, both on buildings and for high mast lighting. Based on the evaluation, TC NO. CAL. Development will install solar unless a technical feasibility issue is identified.~~
  - Replace less-efficient lighting ~~bulbs~~ with energy-efficient lighting ~~bulbs~~, where applicable and in compliance with safety requirements, ~~. Lighting within the interior of~~

~~buildings~~ on the premises and outdoors including the parking lot, loading dock, security, and exit signs. High mast parking lot ~~terminal~~ lighting will use ~~be replaced with~~ LED lighting or a technology with similar energy-saving capabilities and motion sensors will be installed where lighting is not used for security ~~within 2 years after the effective date of a new lease~~.

- Install ENERGY STAR qualified HVAC equipment and variable frequency drives. When installing new equipment, ensure that the system is not oversized for the building's heating and cooling needs.

## *3.2.7 Section 3.7 Greenhouse Gases*

### Section 3.7.3.4.1 GHG-1: Would the project generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment?

The lead agency has discretion to select the model or methodology it considers most appropriate to enable decision-makers to intelligently consider a project's incremental contribution to climate change (CEQA Guidelines Section 15064.4[c]). As discussed above, the Port will use SCAQMD's Tier 3 quantitative thresholds to determine whether GHG emissions generated either directly or indirectly may have a significant impact. As discussed above, construction emissions are added to the operational emissions. The proposed project is considered Residential, Commercial, and Mixed-Use Projects (including industrial parks, warehouses), with a threshold of 3,000 $MTCO_2e$ per year.

Table 17 presents the proposed project's construction and operational emissions.

**Table 17**
**Proposed Project Greenhouse Gas Emissions (MT per Year) in $CO_2e$, Unmitigated**

| Emissions Source | GHG Emissions $CO_2e$ (MT/yr) |
|---|---|
| **Construction** | |
| 2022 Construction Equipment | **977** |
| 2022 Construction Equipment | **979** |
| 2022 Construction Equipment | **3** |
| 2022 Construction Equipment | **210** |
| **Operations** | |
| Electricity Use | 304 |
| Natural Gas Use | 74 |
| Water Use | 7.4 |
| Waste Disposed | 314 |
| On-Road Mobile | 357 |

| Emissions Source | GHG Emissions $CO_2e$ (MT/yr) |
|---|---|
| Trucks | 5,310 |
| Yard Hostler | 125 |
| Rail | 208 |
| Warehouse Equipment | 25 |
| Emergency Generator | 78 |
| **Total Proposed Project Emissions** | 8,971 |
| **Threshold** | 3,000 |
| **Exceeds Thresholds** | Yes |

**Impact Determination:** As shown in Table 17, the proposed project would result in increase of 5,971 metric tons of GHG emissions over the threshold; therefore, impacts would be considered significant.

**Mitigation Measures:** The following mitigation measures would be implemented to reduce GHG:

- **MM-GHG-1: Solar Requirements and Energy Audit** (See also GHG-1 in Section 3.7.3.4, "Impact Analysis"): TC NO. CAL. Development will install a 600 kW solar system as part of warehouse construction. The warehouse operator will be required to use the solar system at its maximum capacity.
  In addition, within 6 ~~Within 9~~ months of the effective date of the new lease, TC NO. CAL. Development will conduct an energy audit of warehouse design plans to determine if there are additional energy-saving features that can be implemented as part of construction and warehouse design and operations. ~~and develop a plan for reducing overall terminal energy from 2021 levels by within 5 years of the effective date of the lease.~~ The plan must be submitted to the Port for review and approval. The plan will incorporate the following measures at a minimum:
  - ~~Evaluate the level of solar panels that are required to meet the facility's electrical needs, both on buildings and for high mast lighting. Based on the evaluation, TC NO. CAL. Development will install solar unless a technical feasibility issue is identified.~~
  - Replace less-efficient lighting ~~bulbs~~ with energy-efficient lighting ~~bulbs~~, where applicable and in compliance with safety requirements, ~~. Lighting within the interior of buildings~~ on the premises and outdoors including the parking lot, loading dock, security, and exit signs. High mast parking lot ~~terminal~~ lighting will use ~~be replaced with~~ LED lighting or a technology with similar energy-saving capabilities and motion sensors will be installed where lighting is not used for security ~~within 2 years after the effective date of a new lease~~.

  - Install ENERGY STAR qualified HVAC equipment and variable frequency drives. When installing new equipment, ensure that the system is not oversized for the building's heating and cooling needs.
- **MM-GHG-2: Waste Reduction.** Within 9 months of the effective date of the new lease, TC NO. CAL. Development will perform an audit of its waste stream to identify areas for total waste reduction, including reductions of single use products and details for transitioning to a procurement process that prioritizes recycled goods and products. For resultant waste, TC NO. CAL. Development will develop a plan to ensure waste is recycled where available.
- **MM-AQ-1: Construction Idling Reductions.** TC NO. CAL. Development and the Port will require construction contractors to minimize heavy-duty construction idling time to 2 minutes where feasible. Exceptions include vehicles that need to idle to perform work (such as a crane providing hydraulic power to ~~the~~ a boom), vehicles being serviced, or vehicles in a queue waiting for work. This requirement will be included as a specification in construction contracts.
- **MM-AQ-2: Use of ~~Tier 4 Engines~~ Clean Equipment and Clean Trucks During Construction.** All off-road engines less than 50 horsepower used to construct the proposed project will be equipped with Tier 2 engines, except for specialized equipment or when Tier 2 engines are not available. All off-road diesel-powered heavy equipment exceeding 50 horsepower used to construct the proposed project will be equipped with Tier 4 engines, except for specialized equipment or when Tier 4 engines are not available. In place of Tier 4 engines for equipment exceeding 50 horsepower, off-road diesel-powered heavy equipment will incorporate retrofits such that emission reductions achieved equal or exceed that of a Tier 4 engine. In addition, all heavy-duty on-road trucks used during construction shall be model year 2014 or newer, with a preference for zero-emission trucks where available. These requirements will be included as specifications in construction contracts. The contractor shall also prioritize the use of zero-emission construction equipment.
- **MM-AQ-3: Operational Truck Idling Reductions.** TC NO. CAL. Development will require trucks to minimize idling time to 2 minutes while on terminal. These requirements will be posted on site and included as a contract provision. TC NO. CAL. Development shall design the gate check-in so that the check-in point for trucks is well inside the project site to ensure that there are no trucks queuing outside of the facility.
- **MM-AQ-4: Use of Clean Trucks During Operations.** TC NO. CAL. Development will require all cargo trucks entering the warehouse site to be model year 2017 or newer and encourage its customers to use ~~clean trucks (defined as model year 2017 or newer)~~ zero-emission trucks to transport cargo. ~~TC NO. CAL. Development will also educate customers about the SJVAPCD Truck Replacement Program via direct or electronic mailings. In addition,~~ TC NO. CAL. Development will require all trucks be in compliance with CARB air quality regulations for on-road trucks, including CARB's Heavy-Duty (Tractor-Trailer) Greenhouse Gas Regulation, Periodic Smoke Inspection Program (PSIP), and the Statewide Truck and Bus Regulation. TC

NO. CAL. Development will also educate customers about the SJVAPCD Truck Replacement Program and CARB's Advanced Clean Truck Program, including funding opportunities, via direct or electronic mailings. TC NO. CAL. Development will post a copy of the SJVAPCD Truck Replacement Program information currently available at http://valleyair.org/grants/truck-replacement.htm and applicable CARB regulations at the terminal. These requirements will be posted on site and included as a contract provision. In addition, TC NO. CAL. Development shall install at minimum one Level 3 electric charger on the terminal in a place convenient for heavy-duty truck access within 12 months of facility operations.

- **MM-AQ-5: Use of Clean Yard Equipment. TC NO. CAL.** Development will require terminal and yard equipment, including yard hostlers, yard equipment, forklifts, and pallet jacks, to be the cleanest available equipment (for future purchases). Considerations for clean equipment will include a first preference for zero-emission equipment, a second preference for near-zero equipment, and then for the cleanest available equipment if neither zero nor near-zero equipment are available or feasible. TC NO. CAL. Development will ensure the proper infrastructure to support such equipment is available. At a minimum, TC NO. CAL. Development shall require at least 25 of the forklifts be zero emissions. All remaining forklifts shall be low emissions using alternative fuels.

**Residual Impact:** Table 18 presents the results mitigation on GHG emissions.

**Table 18**
**Proposed Project Greenhouse Gas Emissions (MT per Year) in $CO_2e$, Mitigated**

| Emissions Source | GHG Emissions $CO_2e$ (MT/yr) |
|---|---|
| **Construction** | |
| 2022 Construction Equipment | **977** |
| 2022 Construction Equipment | **979** |
| 2022 Construction Equipment | **3** |
| 2022 Construction Equipment | **210** |
| **Operations** | |
| Electricity Use | ~~304~~ 30 |
| Natural Gas Use | 74 |
| Water Use | 7.4 |
| Waste Disposed | 314 |
| On-Road Mobile | 357 |
| Trucks | 5,680 |
| Yard Hostler | 129 |
| Rail | 208 |

| Emissions Source | GHG Emissions $CO_2e$ (MT/yr) |
|---|---|
| Warehouse Equipment | 12 |
| Emergency Generator | 78 |
| **Total Proposed Project Emissions** | ~~9332~~ 9,058 |
| **Threshold** | 3,000 |
| **Exceeds Thresholds** | Yes |

As shown in Table 18, the majority of the proposed project's GHG emissions are from trucks. Implementation of MM-AQ-4 and MM-AQ-5 would help to reduce mobile source criteria pollutant emissions by requiring use of newer trucks. While truck idling restrictions would reduce emissions slightly, truck emissions are being generated mainly through transit and therefore would not reduce emissions below significance. As discussed in Section 3.7.2, the state has several programs aimed at reducing GHG from mobile sources, including the *California Sustainable Freight Action Plan* (Brown 2016) and the Low Carbon Fuel Standards. The proposed project's emission sources are mobile sources that would be captured under state initiatives such as low carbon energy and fuel standards.

Indirect emissions from electricity production also produce a large percentage of emissions. Through state initiatives, these emissions will likely decrease over the life of the proposed project as the grid is powered by a greater percentage of renewable energy sources and potentially on terminal and/or on Port renewable sources, such as solar. MM-GHG-1 and MM-GHG-2 are designed to address direct energy use and off-site indirect sources like product and electricity production. Implementation of MM-GHG-1 would result in identifying direct energy savings and opportunities for use of renewable energy. Solar energy is a viable option for the distribution facility and MM-GHG-1 will require TC NO. CAL. Development to install a 600 kW solar system that will, when operated, supply renewable electricity to meet average daily loads (conservatively assumed to reduce emissions by 90% to address peak load days). ~~would require one-quarter of the warehouse roof space to be dedicated to solar panels to supply 100% of electrical needs, thereby reducing the GHG identified to zero. The Port is currently working with TC NO. CAL. Development on determining whether the electrical grid in the project area is designed to accommodate the variable load.~~ Implementation of MM-GHG-2 would reduce emissions from production and waste generation and emphasize a total reduction in waste generation, as well as purchasing recycled goods. Waste deposited in landfills are a source of methane, a potent GHG. While not a large source of emissions at the terminal, procurement decisions can drive emission reductions over supply chains. For example, recent studies have found that GHG emissions from virgin pulp used to make paper products are about 30% higher than production of recycled paper products.

Emissions would continue to be considered significant and unavoidable.

## *3.2.8 Section 3.8 Hazards and Hazardous Materials*

### Section 3.8.3.4.1 HAZ-1: Would the project create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials?

The proposed project includes remediation of existing sediment and soil contamination and construction to develop and operate a commercial distribution facility on a portion of the site. Please see HAZ-4 regarding the potential transport of contaminated material during remediation. Routine transport, use, or disposal of hazardous materials would be limited as part of the proposed project. Operation of the proposed project is expected to be restricted to consumer goods and building supplies which would be transported per applicable regulations. Some transport of hazardous material products such as paints is expected, and operations may use or generate hazardous material products such as paints and cleaners during operations. Potential adverse impacts associated with management of such materials would be avoided through adherence with federal, state, and local regulations, including but not limited to maintaining hazardous waste inventories, complying with building and fire codes, and providing storage and shipment of potentially hazardous materials per regulatory requirements. Operations would also follow City and County provisions for emergency response for accidental release of hazardous materials.

**Impact Determination:** Remediation and construction of the proposed project are designed to minimize potential hazardous material impacts to workers and the environment. However, the proposed project involves handling of limited hazardous materials, which is considered potentially significant.

**Mitigation Measures:** The following mitigation measures would be implemented to reduce potential impacts:

- **MM-HAZ-1 Maintain and Implement Facility-Wide Site Management Program.** To address potential impacts to persons and the environment from management of common industrial materials, TC NO. CAL. Development will develop, implement, and update as needed a Facility-Wide Site Management Program.
- **MM-GEO-1 Maintain, Update, and Implement Emergency Response Plans (see "Impact GEO-1" in Section 3.6.3.4.1 for more information).** TC NO. CAL. Development will implement and update as frequently as needed an emergency response plan, Contingency Plan, and Emergency Action Plan. The Plan will identify response procedures for chemical spills, fires, and earthquakes involving hazardous materials and hazardous wastes and will establish requirements and procedures needed to protect employees from serious injury, property loss, or loss of life in the event of fires, other emergencies, or major disasters.

**Residual Impact:** Implementation of MM-HAZ-1~~2~~ and MM-GEO-1 would address potential impacts from operations including accidents by establishing appropriate material management and emergency response procedures. Implementation of these mitigation measures would reduce potential impacts to less than significant.

### Section 3.8.3.4.2 HAZ-2: Would the project create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment?

The proposed project includes excavation and consolidation of contaminated sediment and soils, which could result in the release of arsenic, PAHs, and/or OCPs, including DDT into the environment. In addition, the proposed project would use small quantities of potentially hazardous common industrial materials for site construction and operations, and the commercial operator of the warehouse facility may store small consumer quantities of hazardous materials in appropriate containers.

As discussed, remedial activities will be overseen by regulatory agencies and include the development of several plans to ensure contaminated materials will be handled to prevent exposure to workers, the public, and the environment. While some limited construction material may be hauled off site, the majority of contaminated material will be handled, consolidated, and capped on site, limiting exposure to the public. Any transport of material would be per applicable regulations. The use of other hazardous materials, such as paint and cleaners, will be handled using BMPs to prevent accidental spills and release of contaminants into the environment.

**Impact Determination:** Remediation and construction of the proposed project are designed to minimize potential hazardous material impacts to persons and the environment. However, the proposed project involves remediation and handling of hazardous materials, which is considered potentially significant.

**Mitigation Measures:** The following mitigation measures would be implemented to reduce potential impacts:

- **MM-HAZ-1 Maintain and Implement Facility-Wide Site Management Program (see HAZ-1 for more information).**
- **MM-HAZ-2 Minimize Human and Environmental Exposure to Potentially Hazardous Materials During Construction.** Prior to remedial activities, the Port and TC NO. CAL. Development will develop a plan that ensures worker training and develop contingencies for responding to hazardous material conditions that may be encountered on site consistent with the DTSC-approved site-wide RAP and RDIP for the Warehouse Development Area.
- **MM-GEO-1 Maintain, Update, and Implement Emergency Response Plans (see HAZ-1 for more information).**

**Residual Impact:** Implementation of MM-HAZ-1 and MM-GEO-1 would address potential impacts from operations, including accidents, by establishing appropriate material management and emergency response procedures. Implementation of MM-HAZ-2 would ensure any necessary training or practices as dictated by the RAP are included as part of construction. Implementation of these mitigation measures would reduce potential impacts to less than significant.

## *3.2.9 Section 3.12 Tribal Cultural Resources*

### Section 3.12.1 Environmental Setting

As noted in Section 3.4.1, the project area is in the traditional territory of the Yokuts people and may also have been used or settled by Plains Miwok and Wintun peoples. Two Native American Tribes have requested to be contacted regarding projects at the Port: the Buena Vista Rancheria of Me-Wuk Indians of California and the Wilton Rancheria Tribe. The Port routinely consults with three other Tribes under AB 52: the Northern Valley Yokuts Tribe, the Confederated Villages of Lisjan, and the Tule River Indian Tribe. Under AB 52, the California Native American Heritage Commission (NAHC) must also be consulted.

The Port sent letters to the five aforementioned Tribes and the NAHC on March 26, 2021. The NAHC responded on April 23, 2021, noting that a search of the Sacred Lands File was negative and suggesting that the Port consult with a sixth Tribe, the Muwekma Ohlone Indian Tribe of the San Francisco Bay Area. The Port sent a letter to the Muwekma Ohlone on April 26, 2021.

The Port received responses from three Tribes requesting consultation on the proposed project. The Northern Valley Yokuts Tribe responded by email on March 27, 2021, stating interest in the proposed project and requesting additional information. The Port responded by email on April 28, 2021, acknowledging the concerns and providing the CEQA timeline. The Port provided the DEIR on January 11, 2022. No further responses were received from the Tribe. The Buena Vista Rancheria of Me-Wuk Indians of California replied to the Port's letter by email on April 21, 2021, stating that the Tribe had concerns with the area. The Port responded by email on April 28, 2021, acknowledging the concerns and providing the CEQA timeline. The Port provided the DEIR on January 11, 2022. No further responses were received from the Tribe. The Wilton Rancheria Tribe responded on June 1, 2021, requesting consultation. The Port responded on June 7, 2021, acknowledging the request and providing the CEQA timeline. The Port provided the DEIR on January 11, 2022. No further responses were received from the Tribe. The Port responded to each Tribe, acknowledging the requests and providing further information on the CEQA timeline. The DEIR was provided to the remaining Tribes (who had not previously responded to the consultation request) on January 11, 2022.~~: the Buena Vista Rancheria of Me-Wuk Indians of California, the Wilton Rancheria Tribe, and the Northern Valley Yokuts Tribe. The Port responded to each Tribe, acknowledging the requests and providing further information on the CEQA timeline. Consultation is ongoing.~~

## *3.2.10 Section 4 Cumulative Impact Analysis*

### Section 4.2.1.2 Air Quality

The geographic scope of the cumulative air quality analysis is the SJVAB. The proposed project would contribute air emissions from construction and operational activities. As discussed in Section 3.2.1, the SJVAB is an "extreme" nonattainment area for 8-hour $O_3$ under the National Ambient Air Quality Standards (NAAQS). Under the California Ambient Air Quality Standards (CAAQS), the SJVAB is presently in nonattainment for $O_3$, $PM_{10}$, and $PM_{2.5}$. Therefore, projects emitting $O_3$, $PM_{10}$, and $PM_{2.5}$, along with $O_3$ precursors such as $NO_X$, would contribute to nonattainment levels and subsequent adverse air quality effects.

As discussed in Section 3.2, SJVAPCD has developed plans to address $PM_{10}$, $PM_{2.5}$, and $O_3$ emissions in the region. The most recent plans include development of emission thresholds such as those used in this analysis and region-wide programs to reduce emissions. The plans also acknowledge that reducing mobile source emissions, including those from cars, trucks, aircraft, and farm vehicles, are critical to attaining the standard but are not under the direct authority of SJVAPCD. The proposed project-specific air emissions were found to exceed SJVAPCD significance thresholds, and because of the existing air quality violations in the SJVAB, the proposed project has the potential to contribute to cumulative impacts when considered in conjunction with other related projects resulting in such emissions.

#### Section 4.2.1.2.1 Cumulative Impact Analysis

**Criteria Air Pollutants.** Construction and operational emissions are the source of impacts related to air quality. Each of the projects listed in Table 27 would occur within the SJVAB and include emissions from construction or operations. Therefore, air quality impacts from all of the projects in Table 27 were considered in terms of their cumulative impacts. Projects listed in Table 27 have been or would be required to perform their own analyses of associated air quality impacts, including development of mitigation measures to address significant impacts, if necessary.

Several of the projects listed in Table 27 include or have included the construction and operation of industrial facilities within the Port, including Projects 1 through 3, 5 through 11, and 16 through 22. Emissions from these projects would be generated from construction equipment and activities, as well as from stationary and mobile source operational emissions. Several of the project construction schedules, including for Projects 2, 3, 23, 24, and 25, may overlap with that of the proposed project. Projects 1 through 3, 8 through 11, 13, and 16 through 25 include truck, rail, and/or ship movements that would result in mobile source emissions and/or result in emissions from on-terminal equipment. Emissions from these projects combined with the proposed project would emit $O_3$, $PM_{10}$, and $PM_{2.5}$, along with $O_3$ precursors such as $NO_X$, and contribute to nonattainment levels and subsequent adverse air quality effects.

**Health Risk.** Because the NAAQS and CAAQS are health-based standards and air quality in the San Joaquin Valley routinely violates the state and federal standards, ambient air quality in the valley already puts sensitive receptors at risk. The San Joaquin Valley also has some of the highest PM concentrations in the state. For example, health surveys reported in 2001 show a 24% higher prevalence of asthma in children in the San Joaquin Valley than in the rest of the state and a 19% higher prevalence for adults (ARB 2015). Similar to the discussion on criteria pollutants, related projects in Table 27 resulting in new or expanded sources of air emissions would combine with emissions from the proposed project and could potentially contribute to existing health risks in the region.

Unlike air quality standards that measure mass emissions within a region, an HRA considers the specific effects of criteria pollutants and air toxic on the closest sensitive receptors. Projects 1 through 3, 10, 23, and 24 in Table 27 would all occur in the same general area as the proposed project and would generate new rail, truck, and on-terminal equipment emissions that may affect the same sensitive receptors.

**Conclusion.** Because the proposed project's emissions would not exceed thresholds ~~and because of the proximity of other industrial projects that exceed thresholds~~, its implementation combined with other related past, present, or probable future projects would not result in substantial combined cumulative adverse effects related to air quality and health risk, and impacts would not be considered cumulatively significant. ~~This cumulative impact would primarily result from the combined $O_3$, (including $O_3$ precursors such as $NO_x$), $PM_{10}$, and $PM_{2.5}$ emissions from related projects, including Projects 1 through 3, 10, 23, and 24 in Table 27, combined with those of the proposed project. Cumulative health risks would primarily result from DPM emissions.~~

As discussed in Section 1.5 of the DEIR, the Port is located in an AB 617 area which identifies the area as being significantly impacted by air quality from a variety of sources. The City of Stockton directly impacted by large freeways, Port operations, freight locomotives, industrial sources, and emissions traveling downwind from the northern portion of the city. As compared to regional census tracts, the Stockton AB 61 area ranked highest in PM2.5 impacts, and second highest in diesel PM exposure. While the proposed project would not result in a cumulative impact in terms of the CEQA analysis, the Port recognizes that criteria pollutant emissions should be reduced to the extent feasible. As discussed in Section 1, the Port has several port-wide programs to reduce emissions.

~~While some emissions contributing to cumulative risk are generated by on-terminal stationary sources in the project area, the majority of~~ Most of the emissions from the proposed project and other cumulative projects in the Port would originate from non-road construction equipment and mobile sources. Construction equipment is regulated by CARB through a comprehensive program aimed at accelerating the turnover of the oldest equipment to newer, cleaner models. Because construction is directly contracted by the project owner/operator, additional mitigation can be

written into construction contracts and the proposed project includes several mitigation measures aimed at reducing construction emissions, namely MM-AQ-1 and MM-AQ-2.

As discussed in Section 3.2.3, mobile sources, however, are often not directly controlled by the project owner/operator at the Port. Rather, those sources are contracted through third parties, making direct control via mitigation complicated. For example, rail movements are controlled almost exclusively by the two mainline locomotive companies (BNSF and UP). While trucks are also contracted by terminal operators, trucking companies and owner/operators are more numerous and operate within a more local market presenting more opportunities for choice. The proposed project includes several measures focused on reducing truck emissions including restricting idling and requiring trucks meeting at least 2017 engine standards (MM-AQ-3 and MM-AQ-4). These measures, along with MM-AQ-5 which requires clean terminal equipment, will help to reduce emissions in the project area and in the region. ~~Therefore, mitigation is generally focused on construction equipment and trucks. However, because the area is in nonattainment and the effects of mitigation may be limited, impacts are considered cumulatively significant.~~

### Section 4.2.1.11 Traffic and Transportation

The geographic scope for cumulative impacts on transportation and traffic includes existing transportation resources in the area surrounding the project site, consisting of roads, highways, and rail lines. As discussed in Section 3.11, aspects of a traffic analysis are by nature a cumulative issue. Traffic can be caused by poor infrastructure design, short-term construction, or mass accumulation of vehicles on a roadway during peak travel hours. Like the analysis in Section 3.11, the cumulative analysis considers regional traffic plans and projections.

#### Section 4.2.1.11.1 Cumulative Impact Analysis

The projects listed in Table 27 include a mix of industrial and infrastructure projects. Projects 3 through 7 include congestion relief projects that provide wider roads, bridge overpasses, and intersection improvements affecting roadways into and through the Port and adjacent areas, to reduce impacts on local road networks. Project 15 includes upgrades to the local rail network. Each of these projects may contribute to short-term traffic during construction but in the long term would increase the operational capacity of Port roads and infrastructure thereby reducing traffic levels.

Development projects listed in Table 27, including Projects 1 through 3, 8 through 11, 16 through 22, and 25 would contribute additional vehicles to the roadway and could contribute to traffic within the general Stockton area. Any development projects would be reviewed for impacts related to transportation and traffic using the same guidance from the City's TIA Guidelines, which considers regional conditions and would be required to address any potential impacts with mitigation. Because the proposed project is expected to generate more than 100 net-new vehicle trips in either the morning or evening peak hour, a vehicle miles traveled (VMT) assessment was completed and levels

were found to exceed regional VMT standards. As discussed in Section 3.11.3, MM-TRA-3 (Implement a Transportation Demand Management [TDM] Plan) would require TC NO. CAL. Development to develop and implement a TDM Plan. However, the proposed project would require a 39.2% reduction in VMT to meet the threshold of 15% below the City-wide average. Although the implementation of a TDM Plan would reduce the proposed project's VMT, reduction to 15% below the City-wide average is ambitious and achieving this goal cannot be guaranteed. Therefore, impacts of the proposed project remain significant and unavoidable.

~~there would be no feasible mitigation measures to reduce VMT impacts.~~

Because the number of construction workers is relatively low and public transportation access is limited at the site, the proposed project is not expected to increase public transit use and impacts would be less than significant. All of the projects listed in Table 27 would occur in areas with similarly low levels of public transportation service and are therefore not anticipated to have high demand for public transportation services. Any development projects would be reviewed for impacts related to public transportation services and would be required to address any potential impacts with mitigation. Because the proposed project does not include construction or operations that would affect alternative transportation plans, policies, or programs, there would be no impact on these resources, which precludes the proposed project from cumulatively contributing impacts to these resources.

**Conclusion.** Based on these analyses, it is concluded that the proposed project and projects listed in Table 27 would have cumulatively considerable impacts related to traffic and transportation.

## *3.2.11 Section 5 Other Required Analyses*

### Section 5.1 Unavoidable Significant Impacts

As required by CEQA Guidelines Section 15126.2(b), an EIR must describe any significant impacts that cannot be avoided, including those impacts that can be mitigated but not reduced to a less-than-significant level. Sections 3 and 4 of this DEIR describe the potential environmental impacts of the proposed project and recommend mitigation measures to reduce impacts, where feasible. As presented in Section 3, construction and operation of the proposed project would result in exceedances of ~~air quality,~~ GHG~~,~~ and transportation thresholds. These impacts are considered significant and unavoidable.

## *3.2.12 Section 6 Alternatives*

### Section 6.1.2.2 Air Quality

Because construction activities under the Reduced Project Alternative would be reduced as compared to the proposed project, construction emissions would be less than those of the proposed project. Operationally, reducing throughput would reduce train and truck trips, which would reduce emissions. ~~Air quality impacts resulting from implementation of the No Project Alternative have not been quantified.~~ As shown in Table 28, throughput would be two-thirds of that of the proposed project. Emissions would exceed annual thresholds; therefore, emissions would also be considered significant and unavoidable for the Reduced Project Alternative prior to mitigation. Mitigation measures MM-AQ-1 through MM-AQ-5 would likely apply to the Reduced Project Alternative which would be expected to reduce impact to less-than-significant levels.

### Section 6.1.3.2 Air Quality

Because construction and operation activities under the Alternative Site Locations would be similar to the proposed project, construction emissions would be similar to those of the proposed project. Mitigation measures MM-AQ-1 through MM-AQ-5 would likely apply to the Alternative Site Locations. As with the proposed project, emissions would not exceed annual thresholds; therefore, emissions would also be considered ~~significant and unavoidable~~ less than significant for the Alternative Site Locations.

## *3.2.13 Section 7 References*

CAPCOA (California Air Pollution Control Officers Association), 2016. CalEEMod: California Emissions Estimator Model. Version ~~2016.3.2~~2020.4.0.