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Via email to jcashman@stocktonport.com

Re: May 2020 Lehigh Southwest Stockton Terminal Project State Clearinghouse Number: 2019100510 Draft Environmental Impact Report (DEIR) located at 205 Port Road 1, Berth 2.

The Delta-Sierra Group of the Sierra Club (DSG) has reviewed the May 2020 Lehigh Southwest Stockton Terminal Project DEIR and has the following comments for your consideration as the Final Environmental Impact Report (FEIR) is prepared or as a Recirculated DEIR with new information and analysis is prepared.

The Delta-Sierra Group demands that the Port of Stockton as Lead Agency complies with the California Environmental Quality Act (CEQA) requirements via posting on the Port Web site the entire Final EIR and related documents, including the Mitigation Monitoring and Reporting Program and CEQA Findings. The Port must post the FEIR with all DEIR comment letters and responses to the letters from State and other agencies at least 10 days before adoption of the Final EIR and project approval will be considered by the Port of Stockton Commission (required by Public Resources Code Sec. 21092.5(a)).

As noted below in our detailed comments, we believe the DEIR analyses and proposed mitigation measures are deficient and inadequate in a number of areas, most notably response to state agencies guidance, public outreach, air quality, transportation, greenhouse gas emissions, cumulative impacts, water quality, hazards/hazardous materials, noise, and tribal cultural and historical resources. Our review indicates that additional environmental analyses and mitigation are necessary to comply with local, regional, and state regulatory guidance related to the facility's construction and proposed operational activities.

DEIR Fails to Include a Health Risk Assessment

We are extremely concerned that, once again, the Port has dismissed comments and recommendations received from key State agencies in responses to the Notice of Preparation/Initial Study for the DEIR (NOP). If the Port continues such unlawful behavior, the Sierra Club will be forced to take legal action to stop this and other major projects until an environmental analysis and meaningful mitigation measures in accordance with CEQA have been prepared and approved.

Perhaps the most glaring and indefensible deficiency of the DEIR is the Port's refusal to prepare and include a Health Risk Assessment (HRA) to identify potential impacts to the low income community within close proximity to the Port, and to mitigate those impacts caused by project generated air pollutants such as diesel particulate matter, and others. The California Air Resources Board (CARB) in its letter in response to the NOP noted that:

CARB staff is concerned about the air pollution and health risk impacts that may result from the Project. If the throughput maximum occurs on a regular basis, the Project would result in more than doubling of the number of bulk marine vessels, heavy-duty trucks, and trains visiting the Project site over existing conditions. This net increase in activity could negatively impact local air quality by the health-harming emissions, including particulate matter, toxic air contaminants, and diesel emissions generated during the construction and operation of the Project. These emissions also contribute to regional air pollution by emitting precursors that lead to the formation of secondary air pollutants, like ozone, and contribute to an increase in greenhouse gas (GHG) emissions.

There are residences, schools, and senior centers for the community located near the Project, [in addition to several places of worship]. The communities near the Project are surrounded by existing emission sources, which include warehouses, other industrial uses, vehicular traffic along Interstate 5 (1-5), the Ort J. Lofthus/Crosstown Freeway *[to Navy Drive bypass, and marine traffic on the Stockton Deep Water Channel]*.

Due to the Project's proximity to residences, school and senior centers already disproportionately burdened by multiple sources of pollution, CARB staff is concerned with the potential cumulative health impacts associated with the buildout of the Project, *[as is the DSG]*. *[clarification and emphasis added]*

The CARB letter goes on to say that "The Health Risk Assessment (HRA) prepared in support of the Project should be based on the latest Office of Environmental Health Hazard Assessment (OEHHA) guidance (2015 Air Toxics Hot Spots Program Guidance Manual for Preparation of Health Risk Assessments).¹ 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 city planners will have a complete understanding of the potential health impacts that would result from the Project. CARB staff is more than willing to share any inventory, air quality, or regulatory data that may assist during the HRA process."

In dismissing the CARB guidance, the Port's argument that an HRA is not required to comply with CEQA is specious and reflects a disregard for the adjacent community. Although the Contanda Renewable HRA has not been reviewed (as will be discussed later) several more projects have been approved which increases the nearby disadvantaged community exposure to air pollutants. The DEIR casually explains away the need to spend the money to prepare an HRA by stating:

Operation of the proposed project would result in incremental DPM [diesel particulate matter] emissions from trucks, OGVs [ocean going vessel], rail, and other diesel-fueled equipment of less than 0.2 ton per year. Even overlapping construction and operational emissions would result in less than 0.5 ton per year. These emissions would be substantially less than other recent Port projects for which cancer risk was quantified to be below SJVAPCD's threshold of 20 in 1 million. For example, the HRA completed for the

¹ <https://oehha.ca.gov/air/cmr/notice-adoption-air-toxics-hot-spots-program-guidance-manual-preparation-health-risk-0>

Contanda Renewable Diesel Bulk Liquid Terminal Development Project (2019; Port 2019a) showed an increased particulate matter risk of 6.7 in 1 million at 1 ton of PM per year, well under the threshold of 10 in 1 million. While the receptors are not identical, the Contanda Renewable Diesel Bulk Liquid Terminal Development Project had similar vessel truck and rail routes within the Port (areas most affecting local receptors) and is located in close proximity to the Lehigh terminal with similar air dispersion patterns.

DEIR Fails to Include Specific Mitigation Measures Recommended by CARB and SJVAPCD

To add insult to injury, the DEIR also refuses to incorporate many of the specific mitigation measures related to construction and operational impacts that the agency requested be included as part of the project. In its letter in response to the NOP, CARB argued that:

To reduce the exposure of emissions in disadvantaged communities already disproportionately impacted by air pollution, the final design of industrial uses proposed under the Project should include all existing and emerging zero-emission technologies to minimize exposure to all neighboring communities, as well as the GHGs that contribute to climate change. CARB encourages the Port to implement the measures listed in Attachment A of this comment letter. During the Project's development, the Port should engage with CARB, SJVAPCD, and community residents to address community concerns and mitigate air quality and GHG impacts.

These measures CARB proposes are standard measures that are normally accepted by lead agencies and made conditions of approval for Port projects throughout the State.

The CARB recommended construction measures include the following:

1. 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 onsite. Necessary infrastructure may include the physical (e.g., needed footprint), energy, and fueling infrastructure for construction equipment, onsite 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 equal 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-NOx standard starting in the year 2022.
6. In construction contracts, include language that requires all construction equipment and fleets to be in compliance with all current air quality regulations.

The CARB recommended operation measures to apply to the project include the following:

1. Include contractual language in tenant lease agreements that requires all cargo handling equipment be zero-emission and the terminal has sufficient infrastructure to such equipment.
2. Include contractual language in tenant lease agreements requiring all terminals be shore power capable.

3. Include contractual language in tenant lease agreements requiring all cargo and bulk container marine vessels accessing the terminal be shore power 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 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 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,⁴ Periodic Smoke Inspection Program (PSIP),⁵ and the Statewide Truck and Bus Regulation.

The Port has refused to adopt the majority of these mitigation measures, directly contradicting the guidance of CARB. The DEIR recommends only five mitigation measures to reduce air quality impacts, and none of the verbatim measures recommended by CARB are included. The DEIR fails to address each one of the twelve measures proposed by CARB and offers no justification for rejecting the measures. The two CARB measures that are addressed in the DEIR reasons are summarily dismissed on economic issues, with no quantification of why the measure could be considered economically infeasible.

For example, the DEIR includes the following dismissal of the CARB measures to require that all cargo handling equipment be zero-emission, requiring all terminals be shore power capable, and requiring all cargo and bulk container marine vessels accessing the terminal be shore power capable (operation measures 1, 2, and 3, above):

[T]here are several issues, including cost and equipment availability, which would need to be addressed prior to expanding this rule to the Port and operations such as Lehigh's. For example, most vessel calls related to the proposed project are one-time visits, meaning they would call at the Port only one time per year; therefore, the cost to retrofit a ship to accept shore power would be cost-prohibitive (page 97).

For the CARB measures requiring all heavy-duty trucks entering or on the project site to be model year 2014 or later, [to] expedite a transition to zero-emission vehicles, and be fully zero-emission beginning in 2030, the DEIR similarly dismisses the recommendation with this brief reply:

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 not a significant source of emissions, transitioning to clean yard equipment would reduce on-terminal emissions. While heavy-duty electric trucks are under development, they are not readily available throughout the state at commercial levels, and it is unknown if they would be by 2030 (page 96).

The DEIR mitigation measure MM-AQ-4 on the issue is weak and does not comply with the CARB recommendations that would place specific requirements in Port lease agreements. MM-AQ-4 is toothless: “Where possible, Lehigh will encourage the use of clean trucks (defined as model year 2017 or newer) to transport cementitious material. Lehigh will also educate customers about the SJVAPCD Truck Replacement Program via direct mailings. In addition, Lehigh 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. Lehigh Hanson will post a copy of the SJVAPCD Truck Replacement Program information” [emphasis added].

Rejection of potential mitigation measures that would reduce environmental impacts without sufficient legal justification is contrary to CEQA requirements.

The San Joaquin Valley Air Pollution Control District (SJVAPCD) proposed several mitigation measures and requirements that the Port's DEIR has summarily rejected or ignored: including characterization of the effectiveness of each mitigation measure incorporated into the project and a Health Risk Screening/Assessment. The SJVAPCD recommends the project be evaluated for potential health impacts to surrounding receptors (on-site and off-site) resulting from operational and multiyear construction toxic air contaminants emissions such as those that can be attributed to diesel exhaust emitted from both mobile and stationary sources.

The DEIR fails to include a project specific Health Risk Assessment, yet makes an unsupported conclusion that "the majority of the PM_{2.5}, of which DPM would be a component, would be generated from ships at berth, which would be located 1,300 feet from the nearest receptor. Overall incremental PM levels are lower than similar projects that did not produce health risks. The proposed project would result in a less-than-significant cancer risk, chronic health hazard, and acute health hazard at the maximally affected individual receptors. Therefore, the proposed project's health risk impacts would be less than significant," and no mitigation is required" (page 108). We strongly disagree with this conclusion.

The DEIR has illegally rejected specific mitigation measure proposed by the State and other agencies which is in violation of CEQA case law. CEQA states that "while local agencies have much discretion in determining the significance of impacts under CEQA, where, as in this case, state guidance is an expression or synthesis of scientific data and scientific judgment, agencies may not ignore it."

CEQA requires that mitigation measures relied upon to mitigate impacts must be "fully enforceable" through permit conditions, agreements, or other legally binding instruments (Public Resources Code Sec. 21081.6(b) and CEQA Guidelines Sec. 15126.4(a)(2)). Similarly, the mitigation must provide assurance that it will be implemented, and not merely adopted and then disregarded. *Anderson First Coalition v. City of Anderson* (2005) 130 Cal. App. 4th 1173, 1186-87; *Fed'n of Hillside & Canyon Assn's v. City of Los Angeles* (2000) 83 Cal. App. 4th 1252, 1261. The five Air Quality mitigation measures recommended by the DEIR are not "fully enforceable." The DEIR measures are insufficient without substantial evidence that further mitigation, such as the measures proposed by CARB and SJVAPCD, are infeasible.

An EIR is inadequate if it fails to suggest feasible mitigation measures, or if its suggested mitigation measures are so undefined that it is impossible to evaluate their effectiveness. *San Franciscans for Reasonable Growth v. City and County of San Francisco* (1984) 151 Cal.App.3d 61, 79. Of course, the Port may not use the inadequacy of its impacts review to avoid mitigation in the Air Quality section: "The agency should not be allowed to hide behind its own failure to collect data." *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 36.

DEIR Fails to Include a Traffic Impact Study

Similarly, the Port has rejected Caltrans direction to complete a comprehensive Traffic Impact Study. In its letter to the NOP dated November 6, 2019, Caltrans stated unambiguously that:

A Traffic Impact Study (TIS) will be required to determine this proposed project's near-term and long-term impacts to State facilities - both existing and proposed - and to propose appropriate mitigation measures and funding responsibility. The Traffic Impact Study should be done in

accordance with the Caltrans "Guide for the Preparation of Traffic Impact Studies", December 2002 edition. The TIS must include Trip Generation Figures showing how vehicle trips from this project will impact State facilities. This study and accompanying electronic files must be submitted to Caltrans for review prior to project approval.

Public Outreach

The Delta-Sierra Group (DSG) submitted comments on the NOP and requested that a workshop be held to hear the concerns of the community before the DEIR is prepared and briefing notices provided so that the community can be informed and knowledgeable when reviewing the DEIR.² The following organizations additionally requested the Port of Stockton's plan for notifying and engaging the community: Environmental Justice 58 of Café Coop, Environmental Justice Coalition for Water, Sunflower Alliance, Central California Environmental Justice Network, Central Valley Air Quality Coalition, California Interfaith Power and Light, Central California Asthma Collaborative, Environmental Justice Program, Catholic Charities of the Stockton Diocese, Valley Improvement Projects, and Coalition for Clean Air in response to the NOP.³ No outreach was performed.

Why did the Port not engage the local community during the project's development, as the California Air Resources Board Office of Community Air Protection, and the other non-governmental organizations requested, to address community concerns and mitigate air quality and GHG impacts?

Best practices for public outreach have been proposed by a group of European Ports because these Ports have determined that good public outreach and engagement leads to greater opportunities for successful acceptance of policies and measures. The communication process is twofold: informing the public about what is going on from the very beginning of the planning process and to give the public the chance to participate before final decisions are made.⁴

Public outreach and notification of comment periods involving environmental projects continues to require improvement. The DSG became aware of this project via email from a Port of Stockton representative on May 22, 2020 and after communicating with a Port of Stockton representative the DEIR was then posted on the Port of Stockton CEQA webpage ; however, the document and webpage do not include the comment period which can be found on the CEQAnet website.

The Port of Stockton as the lead public agency has the principal responsibility for approving the project and has stated that the project could have a significant effect on the environment. Outreach to the nearby affected residents and school facilities was not performed and is necessary for disclosure to nearby sensitive receptors such as Boggs Tract neighborhood residents 500 feet to the south as shown below in Figure 1. The Boggs Tract Community Center Advisory Board located in the neighborhood can be notified by contacting via email to the following individuals Rick Aguilera at raguilera@sjgov.org, Erté Boyette at eboyette@sjgov.org, and Frank Rodriguez at frodriguez@sjgov.org.

The DSG continues to welcome dialogue regarding increased public outreach and involvement and disagrees with the Port of Stockton's characterization of their Public participation practices: "The Port's public participation process ensures that interested persons are informed about discretionary decisions and have the opportunity to provide input".

² https://www.sierraclub.org/sites/www.sierraclub.org/files/sce-authors/u14441/20191122_Lehigh_Terminal_Port_of_Stkn_final.pdf

³ <https://www.sierraclub.org/sites/www.sierraclub.org/files/sce-authors/u14441/Comment%20letter%20to%20Port%20of%20Stkn%2011.12.19%20UpdatedCommunity.pdf>

⁴ https://ec.europa.eu/environment/life/project/Projects/index.cfm?fuseaction=home.showFile&rep=file&fil=NoMEports_GPG_PANMM1.pdf

Most recently the Port of Stockton approved the NuStar Final EIR and statements of over-riding consideration without circulating these documents to members of the public or making them available on the Port of Stockton CEQA webpage and by restricting input to 250 words for Port Commission consideration, thereby severely limiting information availability and the opportunity of the public to provide input.⁵

Several documents referenced have not been made available by public information request (June 18, 2020) in a timely manner nor are these documents available on the Port's website, as of July 5, 2020. Documents not available as of June 29, 2020 include Lehigh Lease Modification Terms and Lehigh 2019 and Stockton Estimated Electrical Consumption 12-20-2019.pdf which were referenced in the DEIR. Documents available on July 7, 2020, after the due date for comments on the DEIR include: Contanda Terminals Mitigated measures were made a condition of the approval of the project, Contanda Terminals mitigation reporting or monitoring plan was adopted for this project, and Contanda Terminals A Statement of Overriding Considerations was adopted for this project and Findings. The Contanda Terminal analyses were relied upon for air quality health risk assessment conclusions referenced within the DEIR but will not be available to the public until after comments are due by the Port of Stockton Commission. No health risk assessment data is available.

The DSG has been informed by Port staff on July 2, 2020 that the Port is working on a health risk assessment that is not part of the DEIR.⁶ The Port has a tendency to approve projects before releasing final environmental documents to the public who is directly impacted by Port operations and the operations of their leaseholders and this cannot continue to occur.

Why did the Port release an inadequate DEIR for public comment?

Figure 1 – Lehigh distribution terminal and January 9, 2020 Noise Monitoring Sample Sites: #1, #2, and #3.



Air Quality

The DEIR proposed five mitigation measures for air quality impacts associated with air quality compliance plans. The DEIR reports an increase in one or more non-attainment air quality criteria which are not mitigated resulting in significant negative air quality impacts associated with the proposed project. The DEIR stated that there will be a less than significant impact due to the project's exposure of sensitive receptors to substantial pollutants and

⁵ <https://www.sierraclub.org/sites/www.sierraclub.org/files/sce-authors/u14441/4.5.2020%20POS%20250%20Comment%20DSG%20Collective.pdf>

⁶ Email communication 7.2.2020 between Steve Harvath, DSG and Jeff Wingfield, Port of Stockton

emissions. The project's operations will have significant impact on sensitive receptors to substantial or potentially substantial pollutant concentrations and will adversely affect a substantial number of people. The closest sensitive receptor to the terminal according to the DEIR is a residential area located approximately 500 feet to the south. The facility is a distribution facility and besides potential releases during the loading and unloading process or catastrophic failure of storage facilities air quality impacts associated with ship, rail, and truck transit extend throughout the distribution reach.

Why did the Port not include all of the suggested mitigation measures and health assessment requested by the California Air Resources Board Office of Community Air Protection and San Joaquin Valley Air Pollution Control District to mitigate air quality impacts and assess air pollutant exposure of the sensitive population in the Disadvantaged Community of Boggs Tract?

The following is a description of the proposed mitigation measures for air quality impacts which are inadequate to mitigate the hazardous air quality conditions experienced by the disadvantaged communities of Boggs Tract and Stockton, and contain no firm commitments, nor was implementation quantified.

- MM-AQ-1: Construction Truck Idling (Lehigh will require construction contractors to minimize heavy-duty construction idling time to 2 minutes where feasible.).
- 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.).
- MM-AQ-3: Truck Idling Reductions (Lehigh will require trucks to minimize idling time to 2 minutes while on terminal.).
- MM-AQ-4: Use of Clean Trucks (Where possible, Lehigh will encourage the use of clean trucks (defined as model year 2017 or newer) to transport cementitious material. Lehigh will also educate customers about the SJVAPCD Truck Replacement Program via direct mailings. In addition, Lehigh 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. Lehigh Hanson will post a copy of the SJVAPCD Truck Replacement Program information at the project site.).
- MM-AQ-5: Use of Clean Yard Equipment (Lehigh will replace cargo handling equipment with the cleanest available equipment anytime new or replacement equipment is purchased. 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. If zero emission equipment is available, Lehigh will ensure the proper infrastructure to support such equipment is available. Based on the type of yard equipment used, infrastructure will be limited to charging stations.).

The criteria pollutants of primary concern assessed in the DEIR are O₃, PM₁₀, PM_{2.5}, carbon monoxide (CO), nitrogen dioxide (NO₂), and sulfur dioxide (SO₂). The DEIR included a Table 7 that shows three years (2013-2015) of monitored values for those criteria pollutants, currently monitored by CARB at the Hazelton Street station (1593 East Hazelton Street, Stockton, California). This monitoring station is located approximately 2.5 miles east of the project site which is generally downwind. During this time period, there were exceedances of the state and national 8-hour O₃ standard, the state PM₁₀ standard, and the state and national PM_{2.5} 24-hour standard. No violations were recorded of the NO₂ or CO standards.

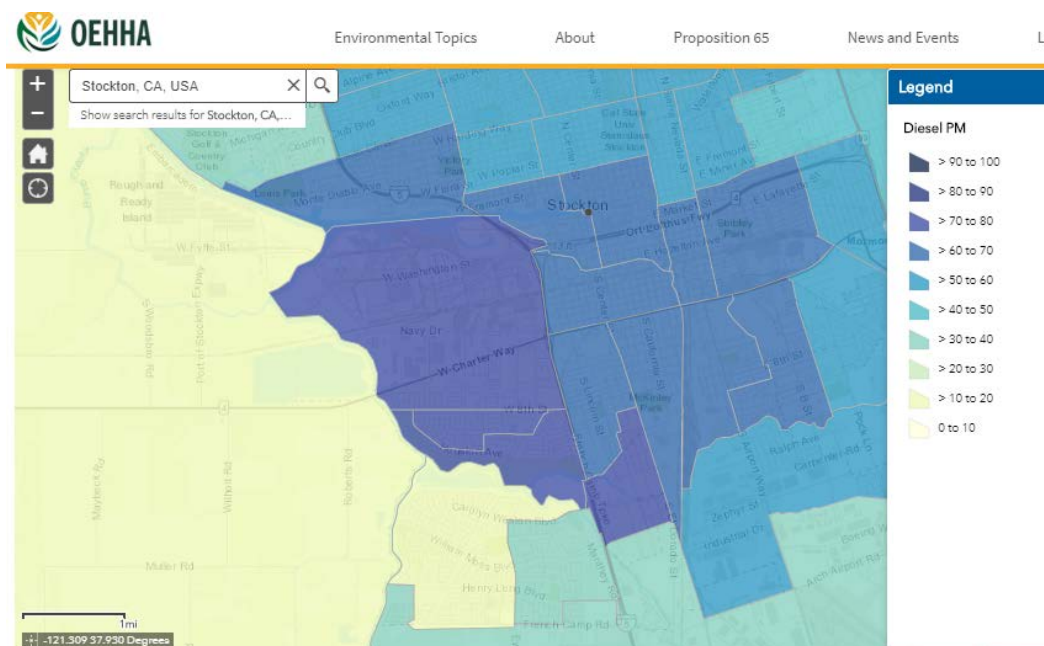
The DEIR stated that the most recent 3 years was 2013, 2014, and 2015 for which these data are available which is not correct. The DEIR failed to adequately disclose available governmental information that is readily available on the California Air Resources Board website.⁷

Diesel particulate matter (DPM) from combustion engines in ships, rail and trucks is the primary toxic air contamination of concern. The DEIR characterizes diesel particulate matter as having the following health effects: respiratory damage and premature death and may result in increased risk of contracting cancer. The Office of Environmental Health Hazard Assessment (OEHHA) diesel particulate matter fact sheet expands further on these health effects.⁸

Exposure to diesel exhaust also causes inflammation in the lungs and aggravates chronic respiratory symptoms and increases the frequency and/or intensity of asthma attacks. The elderly and people with emphysema, asthma, and chronic heart and lung disease are especially sensitive to fine-particle pollution. Elevated particle levels in the air from diesel exhaust have been linked to increased hospital admissions, emergency room visits, asthma attacks and premature deaths among those suffering from respiratory problems. Children’s lungs and respiratory systems are still developing and so the young are more susceptible, than healthy adults, to fine particles. Exposure to fine particles is associated with increased frequency of childhood illnesses, as well as learning.⁹

The OEHHA has developed the CalEnviroScreen 3.0 using available CARB emissions data which is shown in Figure 2 below.¹⁰ The highest exposures are shown with the darkest colors and include the Boggs Tract community and the greater Seaport area.

Figure 2 – Gradient of Environmental Exposure to Diesel Particulate Matter based on CARB data.



The existing permit to operate (Facility Number N-153), issued by SJVAPCD in 2016, allows for a combined permitted truck and rail shipping capacity of 6,000 tons of cementitious material per day, or 2.19 million tons per

⁷ <https://www.arb.ca.gov/> accessed on 7.1.2020 where data as recent as 2019 are available for the Hazelton site.

⁸ <https://oehha.ca.gov/media/downloads/calenviroscreen/indicators/diesel4-02.pdf> accessed on 7.1.2020

⁹ <https://healthyschoolscampaign.org/blog/air-pollution-how-it-affects-student-health-and-academic-performance-6583/>

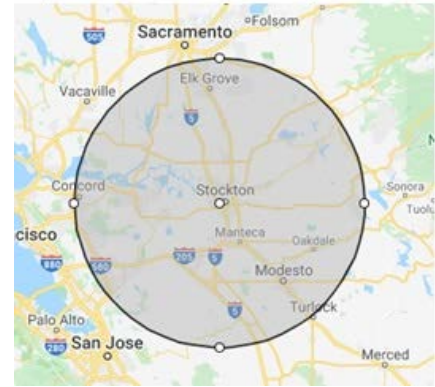
¹⁰ <https://oehha.ca.gov/calenviroscreen/indicator/diesel-particulate-matter> accessed on 7.1.2020

year and the facility is permitted to receive 18,000 tons per day and 2.628 million tons per year via ship or rail. Under permitted limits, the existing terminal can handle any combination of a maximum of approximately 200 trucks per day or 18 rail cars per day. Table 9 Baseline (2018) Throughput Levels and Modal Move may have an error regarding ship trips since daily ship modal moves is greater than the annual moves. The DSG NOP comment letter included a request for a copy of the SJVAPCB permit and port staff air monitoring data which was not provided in the DEIR and must be included in the FEIR or recirculated DEIR.

Truck trips would be a mixture of local deliveries and regional travel to the Bay Area to the west. The average truck trip is 30 miles in the baseline and would grow to 40 miles as part of the proposed project as deliveries to the Bay Area are expected to increase.

Operational hours of the Lehigh terminal would vary. In some cases, the terminal would operate 24 hours a day, which is consistent with current operations. In general, the terminal would operate Monday through Saturday, with occasional Sunday operations.

Figure 3 - 40 mile around Lehigh



Proposed project throughput and transportation mode split numbers are presented in Table 4 from the DEIR. As shown in Table 4, throughput levels in the future would exceed existing SJVAPCD permit to operate (PTO) limits, according to the DEIR.

**Table 4
Expected Maximum Proposed Project Throughput Compared to Existing Levels (Annual)**

| | Baseline (2018) | | Year 1 | | Year 5 | | Year 15 | |
|----------------------------------|-----------------|------------------|-----------|------------------|-----------|------------------|-----------|------------------|
| | Tons | Annual Activity | Tons | Annual Activity | Tons | Annual Activity | Tons | Annual Activity |
| Throughput (cement/slag volumes) | 883,793 | -- | 1,523,500 | -- | 2,785,000 | -- | 3,345,000 | -- |
| Truck Shipping ¹ | 505,432 | 18,720 | 561,750 | 20,806 | 950,000 | 35,185 | 1,072,500 | 39,722 |
| Truck Receiving | | 0 | 24,300 | 900 | 50,000 | 1,852 | 75,000 | 2,778 |
| Rail Cars | 61,663 | 587 | 200,000 | 1,905 | 400,000 | 3,810 | 500,000 | 4,762 |
| Rail Trips | | 117 ² | | 190 ³ | | 190 ³ | | 238 ³ |
| Ships Calls | 316,698 | 9 | 737,450 | 21 | 1,385,000 | 39 | 1,697,500 | 48 |
| Barges Calls | 0 | 0 | 0 | 0 | 0 | 0 | 200,000 | 40 |

Notes:

1. Truck calls are expressed in one-way moves.
2. Assumes an average of five cars per train
3. Assumes an average of 20 cars per train

Lehigh has reportedly submitted an application for an Authority to Construct Permit to the SJVAPCD. The DEIR stated that December 2019 permit application requests authorization for the upgrade of the current ship unloader, the addition of a new rail loading operation, the replacement of existing Storage Bunker 7 with a larger and taller storage dome, and the addition and removal of baghouses and does not include a request to increase the daily or annual throughput limits, according to the DEIR. According to SJVAPCD the “triggers” for public review of permit applications were not achieved in the December 2019 permit application, so the public will not be able to provide input regarding the permit application before it is issued.¹¹

¹¹ Telephone communication between Mary Elizabeth, DSG and Kia Chan, SJVAPCD July 6, 2020.

Why did the Port not include in the DEIR the SJVAPCD permitting information and Port staff air monitoring data requested, as an appendix?

The SJVAPCD reminded the Port of a recent court case which is relevant when characterizing pollutant levels and health impacts: *Sierra Club v. County of Fresno (2018)* calls for a reasonable effort to discuss relevant specifics regarding the connection between potential adverse air quality impacts from the project with the likely nature and magnitude of potential health impacts. If the potential health impacts from the Project cannot be specifically correlated, explain what is known and why, given scientific constraints, potential health impacts cannot be translated.

The exhaust from trucks, rail and ocean-going vessels were characterized for three airsheds, the Bay Area Air Quality Management District, San Joaquin Valley Air Pollution Control District, and Sacramento Metropolitan Air Quality Management District. Significant transportation emissions are projected to occur in San Joaquin Valley and the Bay Area (DEIR Tables 12, 14, and 15), despite the proposed mitigation measures. The San Francisco Bay Chapter of the Sierra Club is within the Bay Area airshed and is significantly affected by proposed Lehigh and perhaps existing Lehigh operations which were not characterized nor were existing Bay Area air quality conditions included in the DEIR. Despite the fact that significant transportation emission is disclosed, potential health impacts were not assessed. **Why not?**

The SJVAPCD further offered the Port the opportunity to pay for offset mitigations through the Voluntary Emission Reduction Agreement (VERA) mitigation measure. A VERA is a mitigation measure by which the project proponent provides pound-for-pound mitigation of emissions increases through a process that develops, funds, and implements emission reduction projects, with the SJVAPCD serving a role of administrator of the emissions reduction projects and verifier of the successful mitigation effort. The Port's response that the VERA may allow for a lapse between funding and emissions savings and/or emissions not being offset at all and that VERA's cannot ensure timely and effective CEQA mitigation of on-site emissions does not include any evidence of infeasibility. The SJVAPCD's VERA program continues to grow, and successfully off-set air pollutants as described in the most recent Indirect Source Program 2019 Annual Review.¹² The Port assert that no additional mitigation is available is unfounded.

Transportation

The Lehigh facility that operates at the Port is currently served by truck, rail, and ocean-going vessels via the Deep-Water Ship Channel. Several of the roads that serve the facility go through the adjacent neighborhood which is in San Joaquin County's jurisdictional area. The Port of Stockton was notified during a June 2020 that San Joaquin County intended to approve a contract with AECOM to develop a community vision for multimodal connectivity improvements within Boggs Tract, including alternative modes of transportation such as bicycles. The contract was approved June 16, 2020. The Boggs Tract Sustainable Community Plan will be the vision for sustainable transportation improvements by combining existing and future community assets and needs related to accessible health, nutrition, education and human services, housing assistance, and employment opportunities for this Disadvantaged Community. While bike and pedestrian facilities may now be extremely limited within the Boggs Tract neighborhood through which Lehigh trucks travel along with public Port roads, this will not remain so.

Why did the Port not use State guidance when assessing transportation impacts as the City of Stockton does during this interim time, especially considering the transportation will directly have an impact on nearby neighborhoods, state and local roads within areas identified as disadvantaged?

¹² <https://www.valleyair.org/ISR/Documents/2019-Annual-Report.pdf>

The 2040 City of Stockton General Plan includes policies for updating traffic analysis; however, in the meantime City of Stockton CEQA projects are utilizing guidance Section 15064.3 which incorporates SB763 into CEQA analysis.¹³ Balancing congestion management needs and mitigation of the environmental impacts of traffic and statewide greenhouse gas (GHG) emission reduction goals is the purpose of SB74 enacted in 2013. Vehicle miles traveled (VMT) is the preferred method for evaluating transportation impacts, rather than the commonly used level of service (LOS). The VMT metric measures the total miles traveled by vehicles because of a given project by multiplying the number of vehicle trips by the length of vehicle trips, the amount and distance of travel attributable to the project. Unlike LOS, VMT accounts for the total environmental impact of transportation associated with a project, including use of non-vehicle travel modes. This analysis is similar to the analysis performed when the Port analyzed air quality impacts using emission factors applied to miles traveled.

Statewide guidance is available for use until Stockton specific guidance is available. Methodologies to determine and assess VMT is outlined in Section 15064.3. The City of Stockton has performed CEQA analysis of transportation impacts using the criteria set form in Section 15064.3(b) including:

The City's Stockton General Plan Action TR-4.3A states that the City shall establish a threshold of 15% below baseline VMT per capita to determine a significant transportation impact under CEQA. The 15% threshold in General Plan Action TR-4.3A is similar to thresholds for residential and office land use types recommended by the Office of Planning and Research in its Technical Advisory on Evaluating Transportation Impacts in CEQA.¹⁴

The City of Stockton CEQA uses a traffic study – similar to what Caltrans has requested – to determine the significance of VMT impacts associated with a project. The City does not recommend using solely the old transportation analysis just because new analyses are not specifically developed for Stockton. The City continues to incorporate all forms of traffic review, but the revised traffic standards will prioritize measurements consistent with state law changes and other internal policies.¹⁵

The Port's review of Google Maps midweek traffic flow during the AM and PM peak hours and the conclusion in the DEIR that that neither I-5 or SR-4 freeway -to- freeway ramp connections experience slow or forced traffic flow conditions in the Port area is grossly inadequate. The DEIR traffic analysis must consider Lehigh's proposed expansion of operations, in addition to existing and future impacts related to projects the Port has approved and cannot blithely assume that trucks will solely be using I-5 or SR-4.

The traffic study should include travel times for City of Stockton Fire Department response times to the neighborhood with increased traffic and maneuverability limitations of haul trucks. Not only is the Port served by the City of Stockton Fire Department but so too is the Boggs Tract community. The VMT CEQA analysis directly has impacts on the environmental justice treatment of disadvantaged communities.

This is one more example of how the Port has shown disregard of the environmental conditions that nearby vulnerable populations experience directly as an effect of the Port's actions. The Port's use of outdated criteria is unacceptable. A traffic study considering the project and cumulative effects of Port operations and those of their tenants must be performed and the traffic study be made available to the public and affected agencies.

¹³ https://resources.ca.gov/CNRALegacyFiles/ceqa/docs/2018_CEQA_FINAL_TEXT_122818.pdf

¹⁴ https://opr.ca.gov/docs/20190122-743_Technical_Advisory.pdf

¹⁵ Email communication 7.6.2020 between Mary Elizabeth, DSG and Matt Diaz, City of Stockton

Greenhouse Gas Emissions

The DEIR refers to the San Joaquin Council of Governments (SJCOG) 2014 Sustainable Communities Strategy that would reduce on-road GHG emissions by 24.4% by 2020 (compared to the 2005 baseline) and by 23.7% by 2035 (compared to the 2005 baseline). The SJCOG regularly updates this report and the most recent report is dated 2018.¹⁶ The total daily VMT per capita is 21.98 for the Plan in 2042, compared to 24.61 in the baseline condition (2015). This means that the Plan reduces daily per capita VMT by nearly 11% or 2.63 miles. Current applicable SB 375 targets for each planning agency in the San Joaquin Valley are a 5 percent per capita reduction in GHG emissions by the year 2020, and a 10 percent per capita reduction in GHG emissions by the year 2035.¹⁷

Why did the Port base their analysis on a report that has been updated more than 18 months ago, particularly since the Port Commission was involved with approving it's update via Port Commission representation on SJCOG? Why did the Port not use the most current 2018 Sustainable Communities Strategy Report?

As shown in Table 18 of the DEIR, the proposed project would result in a net increase of 15,950 metric tons of GHG emission per year over baseline conditions by analysis year 15. Emissions would exceed the industrial threshold of 10,000 metric tons per year and therefore are considered significant.

The same five air quality mitigation measures and unknown implementation success were proposed and none other. The SJVAPCD requires all projects to reduce their GHG emissions, whether through project design elements or mitigation. Projects achieving performance-based standards that have been demonstrated to be best performance standards (BPS) would be considered to have a less-than-significant cumulative impact on global climate change. Clearly, additional mitigation measures are needed. Several standard mitigation measures were recently adopted by the City of Stockton after a Final EIR was approved by the City of Stockton Planning Commission. These standard mitigation measures are applicable for the distribution aspects of the project and should be analyzed for implementation during construction and operation of the Lehigh project. These mitigation measures will assist the Port to comply with regulatory directives and City of Stockton 2040 General Plan Climate Action policies: Policy TR-3.2: Require new development and transportation projects to reduce travel demand and GHG emissions, support electric vehicle charging, and accommodate multipassenger autonomous vehicle travel as much as feasible.¹⁸

While local agencies have much discretion in determining the significance of impacts under CEQA, state guidance is an expression or synthesis of scientific data and scientific judgment, that agencies may not ignore. State and Regional guidance is available to assess air quality and greenhouse gas emissions that the Port ignored.

Cumulative Impacts

The DEIR concluded that the Project's air pollutant emissions and cancer risks would not contribute to a significant cumulative impact. Although the Port did evaluate the Project's air quality impacts, it did not consider the Project's cumulative effects in conjunction with other industrial projects planned or already in operation at the Port, nor did the DEIR include a health risk assessment of cumulative impacts on the nearby sensitive receptors (500 feet) which is the disadvantaged community of Boggs Tract. There are numerous existing and planned projects within the Port that will be in operation at the same time as the Project and which require San Joaquin

¹⁶ <https://www.sjco.org/278/Adopted-2018-RTPSCS>

¹⁷ <https://www.sjco.org/DocumentCenter/View/4155/Final-RTPSCS-2018--Appendix-Y-Sustainable-Communities-Strategy-Technical-Methodology-MemorandumFinal>

¹⁸ June 23, 2020 Memo from William Crew, Community Development Director to the Stockton City County regarding Agenda Item 15.1- Revised Resolution

Valley Air Pollution Control District permits to construct and/or operate. These cumulative projects include the Port of Stockton West Complex Redevelopment, Eco-Energy Liquid Bulk Receiving Terminal Development Project, NuStar Ethanol Infrastructure Upgrades Project, and NuStar Domestic Renewable Diesel Project, NuStar MOTEMS, Contanda Renewable Diesel Bulk Liquid Terminal Development, SATCO Marine Terminal (in operation not in progress), CVAG Bulk Whole Cottonseed Transloading Facility terminal (in operation with pending permitting), and the San Francisco Bay to Stockton (John F. Baldwin and Stockton Ship Channels) Navigation Improvement (planning underway). Emissions from these projects combined with the proposed project would according to the DEIR emit O₃, PM₁₀, and PM_{2.5}, along with O₃ precursors such as NO_x, and contribute to non-attainment levels and subsequent adverse air quality effects.

The National and State Air Quality Standards 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 puts sensitive receptors at risk. These standards are risk based thusly as exceedances due to additional sources increases, the risks to sensitive populations increases. Construction and operation of the proposed project that exceeds health standards contributes to the exposure of the sensitive population to substantial pollutant concentrations; therefore, an HRA should have been completed and included in the DEIR. Many of the cumulative projects listed for the Port all occur in the same general area as the proposed project. These cumulative projects along with the proposed project will generate new rail, truck, and/or vessel calls or on-terminal equipment emissions that may affect the same sensitive receptors. impacts are considered cumulatively significant. The DEIR did not acknowledge impacts associated with an eastern alignment of the proposed Delta tunnel.

CEQA requires lead agencies to consider whether the incremental effects of a proposed project are cumulatively significant when viewed in connection with the effects of past projects, other current projects, and probable future projects. The Port should commence as soon as possible to commission an air emissions inventory and modeling of cumulative impacts on the AB617 area which are directly affected with the prevailing westerly winds.¹⁹

Why did the Port not include a discussion of the San Francisco Bay to Stockton (John F. Baldwin and Stockton Ship Channels) Navigation Improvement Project planning and cumulative impacts? The Port is the non-Federal sponsor of a distant portion of the waterway span for which the Port has no jurisdictional control.

The DSG submitted comments on the San Francisco Bay to Stockton (John F. Baldwin and Stockton Ship Channels) Navigation Improvement Project Final Integrated General Reevaluation Report and Environmental Impact Statement for the San Francisco to Stockton Navigation Improvement Project (Final IGRR/EIS). We found that the (Final IGRR/EIS) analysis ignored cumulative growth inducing effects of deepening the channel on further dredging upriver or the overall trend of larger vessels as illustrated in changes in the distribution of vessel size. In the year 2000, the three smallest classes (20k, 25k, and 35k deadweight tons) comprised 53% of the vessel fleet; in 2015 those three classes comprised just 18% of the fleet. If larger vessels can be accommodated, then larger vessels will call on affected ports. Recent improvements at the Port of Stockton and projects in planning are specifically designed to accommodate larger vessels (NuStar and Lehigh).²⁰ Additionally, the Sierra Club submitted comments on the Draft IGRR/EIS²¹ and on the Final IGRR/EIS²².

¹⁹ https://www.sierraclub.org/sites/www.sierraclub.org/files/sce-authors/u14441/Cottonseed_POS_DSG_06.15.2020_submitted.pdf

²⁰ https://www.sierraclub.org/sites/www.sierraclub.org/files/sce-authors/u14441/DSG_SF_to_Stockton_04.11.2020_Collective.pdf

²¹ https://www.sierraclub.org/sites/www.sierraclub.org/files/sce-authors/u14441/Comments_of_Environmental_Groups_on_the_DEIS_for_the_San_Francisco_Bay.pdf

²² <https://www.sierraclub.org/sites/www.sierraclub.org/files/sce-authors/u14441/FINAL%20Dredge%20FEIS%20Comments.pdf>

Why did the Port not include the following information requested in DSG NOP Comments in the DEIR: Describe the size of the larger and wider vessels that Lehigh charters, how the existing channel depths will be redesigned to handle these larger vessels, and how the project’s necessity for deeper channel depths will affect the benefit/cost ratio for the deepening of the navigation channels to Stockton?

Water Quality

Unless there is a spill, groundwater is not expected to be impacted by the construction and operation of the facility. However, as the facility is mostly paved except for a portion of the eastern lease land where trees could be planted, the greatest hazard to water quality is due to surface water runoff either through applied water or due to rainfall events. There are eight storm drain inlets within the existing and proposed lease areas. Storm drains are equipped with Revel Environmental Manufacturing filter inserts and some are surrounded with wattle filters. All facility drains discharge through a common pipe into the San Joaquin River. The Lehigh facility also receives run-on from areas to the south of the site. Run-on enters the facility’s storm drain system, co-mingles with the facility’s stormwater, and discharges at the San Joaquin River stormwater discharge outfall. The discharge outfall occurs adjacent to the Stockton Deep Water Ship Channel. According to the CVRWQCB and DEIR (referenced Lehigh 2015 report which is not readily available to the public), the Deep Water Ship Channel is listed as impaired for the following Total Maximum Daily Load (TMDL)/Section 303(d) list constituents: chlorpyrifos; dichlorodiphenyltrichloroethane (DDT); diazinon; dioxin; furan compounds; Group A pesticides; invasive species, polychlorinated biphenyls (PCB’s), temperature, mercury; organic enrichment/low dissolved oxygen; and unknown toxicity. Efforts being made by the Port and reported on the Green Marine score card should be improved regarding control of ballast water should be improved to not contribute to an existing invasive species problem in the Delta.²³

The Lehigh facility drainage system is part of the Port’s Municipal Separate Storm Sewer System (MS4) and is regulated accordingly. Any modifications to the drainage system are required to occur under Port oversight and in compliance with MS4 permit terms.²⁴ Cementitious material is caustic and can degrade water quality if released. According to the DEIR, the proposed project’s construction or operations may result in water quality impacts to an already impaired water body, which would constitute a potentially significant impact.

The Port of Stockton’s East Complex is divided into two separate drainage zones. The area north of “A” Street, for the most part, drains directly to the Stockton Deep Water Channel through a series of storm water collection basins, drains, piping, and outfalls. Outfalls D2, D4, D10, and D11 are shown on the Figure 4 below.²⁵

Figure 4 – Stormwater Outfall location for Lehigh’s North of A Street Zone



²³ <https://www.portofstockton.com/green-marine/>

²⁴ https://www.waterboards.ca.gov/centralvalley/board_decisions/adopted_orders/san_joaquin/r5-2011-0005_npdes.pdf

²⁵ https://www.sjgov.org/uploadedfiles/sjc/departments/supportserv/open_bids/bids/exhibit%20d%20to%20addendum%201_port%20development%20standards%20plan.pdf

The Port completed the Port of Stockton Storm Water Development Standards Plan (DSP) and approval was received from the CVRWQCB on November 17, 2005 becoming the Port and its tenants on February 17, 2006. In response to the United States Environmental Protection Agency audit findings²⁶, the DSP was revised, and the changes became effective on June 1, 2009. The Port of Stockton DSP is a public accessible document and may be obtained by contacting the Port of Stockton Environmental Department at (209) 946-0246, but is not available by downloading it at <http://www.stocktonport.com> as indicated in the DSP.

Why does not the Port of Stockton, as a public agency, make available important environmental documents related to the area that the Port of Stockton has stewardship responsibility, including the DSP? Why not make available a summary of all environmental documents that affect soil, water and air quality and made readily accessible to the public? Why was not a copy of the Port's stormwater management plan and permit included in the DEIR as requested by the DSG NOP Comments?

The DSG requested on November 22, 2019 the stormwater plan for the proposed facility (briefly described in DEIR) and a copy of the Port's stormwater management plan and permit. None of these requests for information was provided in the DEIR. Several other Lehigh specific reports were referenced which were not made available to the public during DEIR review: Facility-wide Site Management Program, Storm Water Pollution Prevention Plan (SWPPP) and Monitoring Implementation Plan for the Stockton Cement Terminal Facility, WIDID No. 5S39I020191, Emergency Action Plan OSHA Operations, California Environmental Reporting System Consolidated Emergency Response/Contingency Plan, Lehigh facility California Environmental Reporting System and Hazardous Materials and Wastes Inventory Matrix Report submittals.

The following mitigation measure were proposed to mitigate stormwater related impacts:

- 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.)
- MM-BIO-5: Compliance with Permitting Requirements for In-Water Work (For in-water work, Lehigh would comply with permitting requirements from USACE, RWQCB, and CDFW to avoid water quality and other natural habitat impacts. Requirements will likely include implementing erosion controls, designating appropriate staging and fueling areas, requiring equipment inspections and maintenance, and additional standard construction BMPs.)
- MM-GEO-1: Maintain, Update, and Implement Emergency Response Plans (Lehigh will continue to implement and update as needed its existing Consolidated Emergency Response/Contingency Plan and Emergency Action Plan.)
- MM-HAZ-1: Maintain, Update, and Implement Facility-wide Site Management Program (To address potential impacts to persons and the environment from management of cementitious materials and common industrial materials, Lehigh will implement and update as needed the Facility-wide Site Management Program. Updates would address changes in hazards from increased throughput, such as proper management of increased quantities of cementitious materials. The existing and revised Facility-wide Site Management Program would mandate BMPs, including but not limited to regular sweeping and vacuuming, equipping storm drains with filters, and restricting vehicle movement to designated areas.)
- MM-HAZ-2: Minimize Human and Environmental Exposure to Potentially Hazardous Materials During Construction (Lehigh will complete an asbestos and lead paint investigation prior to construction activities. In the event that asbestos or lead paint are encountered, Lehigh will manage and dispose of such materials per OSHA regulations. Creosote piles will also be properly managed during removal, likely through mandates established during the project permitting process (see MM-BIO-

²⁶<https://www3.epa.gov/region9/water/npdes/pdf/ms4/ca/Port-of-Stockton.pdf>
https://www3.epa.gov/region9/water/npdes/pdf/ms4/ca/StocktonPort_AOC.pdf

5); this may include measures such as pulling piles as efficiently as possible and storing removed piles outside of the waterbody. Lehigh shall also ensure compliance with OSHA regulations to address potential hazards associated with the site's designation as a military evaluation site, including through measures such as appropriate training of workers and developing contingencies for responding to hazardous material conditions that may be encountered on site.))

The DEIR did not include a characterization of stormwater originating from the facility, characterization of co-mingled stormwater, or the conditions of the receiving water. These data are needed as a baseline to evaluate water quality impacts related to the implementation of these mitigation measures and must be included in a Final EIR.

Why are not all Port of Stockton annual inspection reports for all facilities, including the project site, and NPDES annual reports made available on the Port of Stockton website under the environmental page²⁷?

Hazards/Hazardous Materials

The two types of cementitious materials included in the DEIR that are currently handled are portland cement and ground granulated blast furnace slag cement (waste from the steel industry) both of which are considered hazardous materials according to safety data sheets.²⁸ Additionally, in the future Lehigh will be distributing cementitious material containing fly ash (waste from coal combustion) which is similarly toxic. Sierra Club opposes mixing hazardous materials into cement. Based on these safety data sheets, if a fire were to occur and cementitious materials released, City of Stockton fire fighters would need to wear respirators.

Why was not a description of the relative proportions of cement and ground granulated blast furnace slag that are handled currently and what are the proposed proportions of these cementitious materials, including cement with fly ash, as requested by the DSG in NOP Comments?

Why were not the identities and amounts of commodities stockpiled on site at the Port disclosed as requested by the DSG in NOP Comments as these may be a source of fugitive dust upwind?

Why has not Port developed an emergency response plan for the adjacent disadvantaged community and held periodic educational safety meeting so residents can be informed in the event of an emergency and respond appropriately?

While the Port is not within any fire hazard severity zone the Port operates a bio-incinerator power plant which under the CPUC is required to perform a wildfire analysis related to operation and transmission which should be presented and discussed in the FEIR or recirculated DEIR.

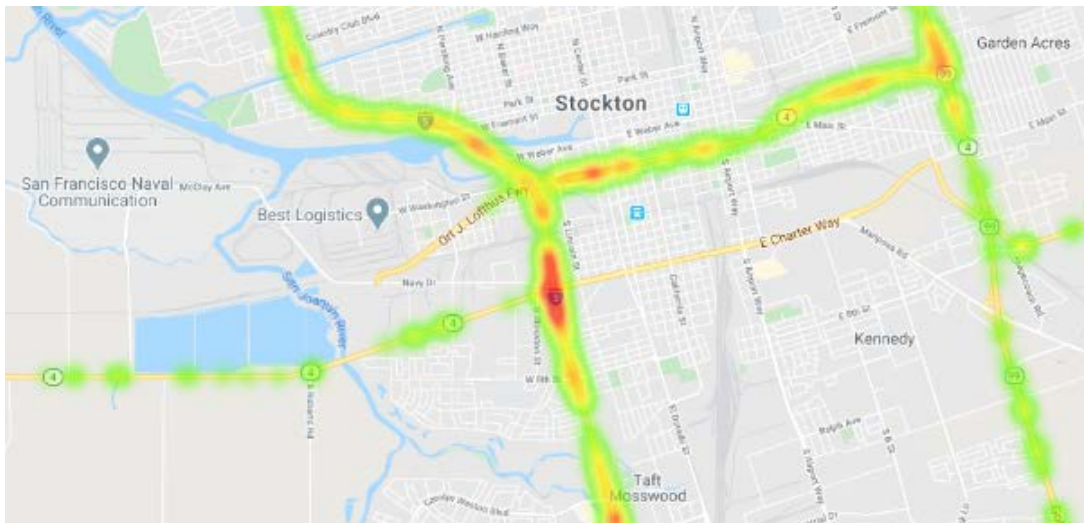
The amount of traffic within the Port and adjacent areas is significant. The DSG November 22, 2019 NOP comment letter included a request for a discussion regarding spills as well as anticipated truck and rail accidents based on actual port data, California Highway Patrol data, and/or other regional transportation data sources. No traffic or safety study was included in the DEIR and should be included in the FEIR. We performed a two year query, 2017-2019, using the UC Berkeley Transportation Injury Mapping System as shown in Figure 5 below.²⁹ Accidents on the I-5 Navy drive ramp are troubling, supporting the request for a traffic study which can also be used to improve Boggs Tract Sustainability Plan development.

²⁷ <https://www.portofstockton.com/storm-drain-vs-sewer-drain/>

²⁸ https://www.lehighhanson.com/docs/default-source/safety-data-sheets/sds-portland-cement.pdf?sfvrsn=9af4a05f_2 and https://www.lehighhanson.com/docs/default-source/safety-data-sheets/sds-slag-cement.pdf?sfvrsn=c2c71cbf_2

²⁹ <https://tims.berkeley.edu/tools/query/summary.php>

Figure 5 – Traffic Accidents with Red the Highest Density on Interstate Roadways



Why were not any health hazards associated with the transport, storage, and distribution of these waste materials disclosed as requested by the DSG in NOP comments?

Noise

The DEIR stated that there would be a significant and unavoidable noise impact and proposed no mitigation measure for the following CEQA analysis : 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?

The CEQA Public Resource Code Division 13 Environmental Quality states § 21001. The Legislature further finds and declares that it is the policy of the state to: (a) Develop and maintain a high-quality environment now and in the future, and take all action necessary to protect, rehabilitate, and enhance the environmental quality of the state. (b) Take all action necessary to provide the people of this state with clean air and water, enjoyment of aesthetic, natural, scenic, and historic environmental qualities, and freedom from excessive noise. The DEIR finding of significant without a mitigation proposed fails to provide substantial evidence that no feasible mitigation measures are available to mitigate noise impacts to the Boggs Tract community.

The City of Stockton’s Municipal Code Chapter 8.20³⁰ and 2040 Envision Stockton General Plan³¹ include findings, definitions, remedies, policies and actions. The General Plan Policy SAF-2.5 Protect the community from health hazards and annoyance associated with excessive noise levels includes two action items:

- Action SAF-2.5A Prohibit new commercial, industrial, or other noise generating land uses adjacent to existing sensitive noise receptors such as residential uses, schools, health care facilities, libraries, and churches if noise levels are expected to exceed 70 dBA Community Noise Equivalent (CNEL) (decibels on A-weighted scale CNEL) when measured at the property line of the noise sensitive land use.
- Action SAF-2.5B Require projects that would locate noise sensitive land uses where the projected ambient noise level is greater than the "normally acceptable" conduct an acoustical analysis that shall: not incrementally increase noise levels by more than 3 dBA.

³⁰ http://qcode.us/codes/stockton/view.php?topic=8-8_20&showAll=1&frames=on

³¹ http://www.stocktongov.com/files/Adopted_Plan.pdf

- Action SAF-2.5C Require noise produced by commercial uses to not exceed 75 dB Ldn/CNEL at the nearest property line.
- Action SAF-2.5D Grant exceptions to the noise standards for commercial and industrial uses only if a recorded noise easement is conveyed by the affected property owners.

Why was noise measurement only collected on one day instead of over multiple days and seasons within the study period to adequately characterize local conditions?

The acoustical analysis did not include representative noise level measurements with sufficient sampling periods and locations to adequately describe local conditions. Background noise measurements were taken on January 9, 2020 as shown on the previous Figure 1:

- Location 1: Residential Area located on West Main Street. This area was selected because it is the closest residential area to the terminal. This area is 500 feet south of the terminal gate, and 1,300 feet south of Berth 2. (Minimum 56.3 dB to Maximum 65.4 dB)
- Location 2: Residential Area located on South Los Angeles (South of Washington Street). This area was selected because it is located south of Washington Street. (Minimum 49 dB to Maximum 72.4 dB)
- Location 3: Residential Area Facing Washington Street (between Del Norte Street and South Los Angeles Avenue). This area was selected because it is located along Washington Street, which is a major truck route supporting Port trucks. (Minimum 53.5 dB to Maximum 87.7 dB)

The time of day that measurements were collected, and atmospheric conditions were not disclosed. According to National Oceanic Atmospheric Administration National Climate Data and CARB, the conditions on January 9, 2020 were foggy (relative humidity 90%) with slight precipitation, average temperature 49°F (40°F-52°F) with average SE winds around 4 mph.³² Weather affects the noise you hear depending on air absorption of sound waves based on temperature and relative humidity.³³ Modeling traffic noise has several sources of error that should be considered when presenting noise modeling result: refraction of the propagating sound due to atmospheric effects. Differences in wind speed and temperature with height, wind direction, and turbulence in the air can all influence the propagation of the wave direction and sound levels, as well as diffraction due to screening. Wind direction attenuation and amplification was evaluated, and it was found that upwind conditions such as was present on January 9, 2020 is associated with attenuation. Immediately south Port Road 2 at some time in the last few years was a large structure with many old car frames which would also have an attenuating effect which may explain why Location #1 which is closest to the existing operations at Lehigh had the lowest sound levels. Additional noise study is necessary not just during the construction period but the City of Stockton General Plan policies call for estimate existing and projected (20-year) noise levels in terms of Ldn/CNEL and compare the levels to the adopted noise policies and actions in this General Plan. Full buildout and operational noise effects were not estimated and must be included in the FEIR or recirculated DEIR to comply with local planning policies.

Why were mitigation measures not proposed to decrease the adverse noise impacts that will be experienced by the disadvantaged community of Boggs Tract?

No mitigation was proposed despite there being significant impact for the only part of the project that was analyzed, construction noise. No operational effects for the increased traffic was estimated using roadway models. The increased traffic is shown to be related to truck, ship and rail traffic as shown in Table 4 from the

³² January 9, 2020 data from NOAA <https://www.ncdc.noaa.gov/> and CARB <https://www.arb.ca.gov/aqmis2/metsselect.php>

³³ How Weather Affects the Noise You Hear from Highways (2018) <http://nap.edu/25226>

DEIR. Traffic noises contribute significantly to the noise originating from Port operations including tenant distribution operations.

Numerous noise management measures have been outlined specifically for Ports by the Noise Management in European Ports Partners.³⁴ This European Port report seeking best practice status provide a guide that the Port of Stockton can use to assess noise and to get feedback from the affected neighbors. The report states that “the public must be informed in time and given the opportunity to take part in the elaboration and reviewing of the action plans. The authorities have to take into consideration the results of the participation, and they have to inform the public in respect to the decisions taken. In all phases of information and participation “reasonable periods of time” have to be regarded. Also, the results of the participation have to be put on record afterwards.”

Tribal Cultural and Historical Resources

According to the City of Stockton when Europeans arrived, they found the Yatchicumne, a group of Northern Valley Yokuts people, living in the Stockton area. The Yokuts built their villages on low mounds to keep their homes above floods. A Yokuts village called Pisasimas was located on a mound between Edison and Harrison Streets on what is now the Stockton Channel in downtown Stockton.³⁵ The DEIR acknowledge that while the project area is in the traditional territory of the Yokuts tribe the area 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 Miwok Indians and the Wilton Rancheria according to the DEIR.

The DEIR states that while the potential is low, native sediments may contain previously unrecorded archaeological sites or human remains could be tribal cultural resources. Therefore, because the proposed project includes disturbance of soil through direct removal, if archaeological materials or remains are present in previously undisturbed native sediments, they could potentially be disturbed during construction. If archaeological materials or human remains are encountered during construction, impacts could be considered potentially significant. The mitigation measure, MM-CHR-2: Stop Work in the Area If Prehistoric or Historical Archaeological Resources Are Encountered, is wholly inadequate because no next steps are provided.

The following are standard mitigation measures that should be included in the Final EIR or a Recirculated DEIR:

- Prior to construction, construction personnel shall receive brief “tailgate” training by a qualified archaeologist in the identification of buried cultural resources, including human remains, and protocol for notification should such resources be discovered during construction work. A tribal representative shall be invited to this training to provide information on potential tribal cultural resources with a stipend.
- If any subsurface historical or archaeological, resources, including human burials and associated funerary objects, are encountered during construction, all construction activities within a 50-foot radius of the encounter shall be immediately halted until a qualified archaeologist can examine these materials, initially evaluate their significance and, if potentially significant, recommend measures on the disposition of the resource. The Port shall be immediately notified in the event of a discovery, and if burial resources or tribal cultural resources are discovered, the Port shall notify the appropriate Native American representatives. The Port shall be responsible for retaining qualified professionals and tribal representation and implementing recommended mitigation measures. Documentation of mitigation efforts in written reports for Tribal review.

³⁴ https://ec.europa.eu/environment/life/project/Projects/index.cfm?fuseaction=home.showFile&rep=file&fil=NoMEports_GPG_PANMM1.pdf

³⁵ <http://www.stocktongov.com/discover/history/hist.html>

- If tribal cultural resources other than human remains and associated funerary objects are encountered, the Port shall be immediately notified of the find, and the Port shall notify the tribal representative. The contracted qualified archaeologist and tribal representative shall examine the materials and determine their “uniqueness” or significance as tribal cultural resources and shall recommend mitigation measures needed to reduce potential cultural resource effects to a level that is less than significant in a written report to the Port, with a copy to the tribal representative. The Port will be responsible for implementing the report recommendations. Avoidance is the preferred means of disposition of tribal cultural resources.
- If project construction encounters evidence of human burial or scattered human remains, the contractor shall immediately notify the County Coroner and the Port, which shall in turn notify the Yokuts tribal representative. The Port shall notify other federal and State agencies as required. The Port will be responsible for compliance with the requirements of California Health and Safety Code Section 7050.5 and with any direction provided by the County Coroner. If the human remains are determined to be Native American, the County Coroner shall notify the Native American Heritage Commission, which will notify and appoint a Most Likely Descendant. The Most Likely Descendant will work with the archaeologist to decide the proper treatment of the human remains and any associated funerary objects in accordance with California Public Resources Code Sections 5097.98 and 5097.991. Avoidance is the preferred means of disposition of the burial resources.

The project also involves the destruction and removal of part of a historical wooden railroad trestle. According to DEIR The citizens of Stockton approved a \$3,000,000 bond in 1924 to cover their share of the cost. The State of California put up \$419,000, and the federal government committed \$2,230,000 in 1927 to pay for the Port. The primary cost came from creating a Deep Water Channel leading from San Francisco to Stockton. The Great Depression also brought about many federal New Deal projects for the Sacramento District.³⁶ Dredging began in 1930 and was overseen by the U.S. Army Corps of Engineers, Sacramento District. In order to accommodate the large ships, the channel was planned to extend 50 miles. The river was widened to 300 feet and a variety of dredges, including clamshell, chain bucket ladder, dragline, and hydraulic dredges got to work straightening out the river route and deepening the channel to 26 feet to accommodate the larger ships. Numerous Delta islands, including Tinsley, Fen, Headreach, and Tule, were cut through to allow passage of the channel. Historical records indicate that many different groups of immigrants were involved with reclamation projects in the Delta.

The installation of an on-Berth railroad to accommodate movement of goods from the Port to market and was installed along with the construction of the original eastern port complex in 1932 and represents one of the first examples of on-Berth rail services in California. The Belt Line Railroad connected three transcontinental lines, and was completed by then Stockton mayor, Con Franke, who drove the last spike in 1932.

The Port’s historical analysis performed by PAR Environmental found that that the Belt Line Railroad trestle meets Criteria A and C and recommend that it is eligible for inclusion in the National Register of Historic Places (NRHP) both as an individual property and as a contributing element of a Port of Stockton Historic District, should one be defined at a future date.

The mitigation measures proposed in the DEIR are vague and inadequate given the City’s historical investment in Port infrastructure. The proposed mitigation measure is as follows:

MM-CHR-1: Implement Section 106-Directed Mitigation (Recordation, Research, and Interpretation). As a NRHP- and CRHR-eligible resource, demolition of the rail trestle will require consultation with USACE, the SHPO, and Native American tribes. Section 106-directed measures will be determined by USACE in coordination with consulting parties. Measures could include recordation of the structure to

³⁶ <https://www.spk.usace.army.mil/About/History/>

standards used by the Historic American Engineering Record, additional historical research, and/or interpretation for the public. This interpretation could include adding information on the structure to the Port's website, which will include a history portal site, and/or developing informational brochures or signage on site or in the Port administrative building.

MM-CHR-2: Stop Work in the Area If Prehistoric or Historical Archaeological Resources Are Encountered. In the event that any artifact, or an unusual amount of bone, shell, or nonnative 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. Native American tribes consulted on the proposed project to date include the Wilton Rancheria and the Buena Vista Tribe of Miwuk Indians. 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 SHPO and Native American tribes, and could include 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.

Trestle mitigations for criterion A and criterion C that were proposed by the Port's consultant are more detailed than the mitigation measure proposed in the DEIR and should replace MM-CHR-1. The mitigations for criterion A and criterion C follow:

For Criterion A:

The Port of Stockton is in the process of upgrading and revising their website. Currently the website has a short history of the construction and use of the Port in the 1930s. The website provides a vehicle for presenting the history and importance of the trestle within the context of the Belt Line Railroad and the Port of Stockton. There are several episodes that would be considered important to inform the public on the importance of the trestle and railroad. First, a history of the railroad in the 1930s, including its design (and uniqueness of the on-berth system at the time); need for a trestle to bridge the gap between land and the berths; construction (including engineering, funding); and opening is important. Second, the history should include the importance of the Belt Line Railroad during World War II and the role it played in the decision-making process of the United States Navy in establishing a base at Rough and Ready Island. The role of the Port after the War, growth into the fourth largest Port in California, and the second largest inland Port in the west should also be examined. A copy of the history should be provided to the San Joaquin County Historical Society for inclusion in their research files

Criterion C:

In order to capture the engineering design of the trestle in relationship to the Belt Line Railroad and the Port of Stockton, documentation following the Historic American Engineering Record standards is recommended. This HAER-like documentation includes photography and engineering plans, as well as detailed physical descriptions, plans, and profiles. The photography should include both detailed views of the trestle construction, as well as overviews of the setting, and the relationship with the Belt Line Railroad, Port of Stockton, and berths. The documentation should be filed at the San Joaquin County

Historical Society, Central California Information Center, State Office of Historic Preservation, and posted on the Port of Stockton web page.


The second mitigation measure, MM-CHR-2: Stop Work in the Area If Prehistoric or Historical Archaeological Resources Are Encountered, should be included in the separate Tribal Cultural Resources Section of either the Final EIR or a recirculated DEIR. The tribal mitigation measures which we proposed should serve as the framework for the mitigation measures alluded to should something be uncovered during construction.

Energy

A new electrical room will be constructed to manage the electricity from Pacific Gas and Electric. The proposed project includes an expansion of existing operations. The DEIR states that the new ship unloader and cementitious material distribution system would be more efficient and would result in a decreased energy demand as compared to existing operations. The conclusion that, the proposed project would not result in any wasteful, inefficient, or unnecessary consumption of energy resources is not supported with evidence. The DEIR references a Lehigh report: Stockton Estimated Electrical Consumption 12-30-2019.pdf, but this like the new lease terms was not available from the Port of Stockton. Insufficient electrical infrastructure will impede state goals on renewable energy or energy efficiency.

Thank you for considering our comments on the May 2020 Lehigh Southwest Stockton Terminal Project State DEIR. We look forward to obtaining and reviewing the additional information requested. The DSG welcomes opportunities to discuss the Port of Stockton's public outreach efforts related to this project and to the Port of Stockton's public information dissemination.

Sincerely,



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Restore the Delta
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Central Valley Water Quality Control Board, yang.jenna@waterboards, elizabeth.lee@waterboards.ca.gov
City of Stockton Council Members, city.clerk@stocktonca.gov
Board of Supervisors, rdebord@sjgov.org
The Record Editor, dblount@recordnet.com

Attachment: Port of Stockton CEQA webpage 7.5.2020

Update 7.8.2020 M.Elizabeth

The following is a list of additional people and organizations which the correspondence was later sent:
Skott Wall, State of California Air Resources Board, Skott.Wall@arb.ca.gov
Kevin Hamilton, Central California Asthma Collaborative, KevinHamilton@centralcalasthma.org
Cherilyn Neider, United Auburn Indian Community, cneider@auburnrancheria.com
Katherine Erolinda Perez, North Valley Yokuts Tribe, canutes@verizon.net



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CEQA Documents

The Port of Stockton is committed to environmental stewardship and enhancement of the Delta and surrounding communities. The Port is currently unveiling and implementing a program that identifies opportunities the Port could engage to enhance the Delta. The Delta provides drinking water for two-thirds of the state of California and acts as a habitat for more than 70 fish species and abundant wildlife. The Delta provides a key resting or wintering spot along the Pacific Flyway for migrating bird species. The Port understands the importance of maintaining this delicate environment and providing a habitat for wildlife within an ever-growing population.

The Port of Stockton is committed to improving the region's quality of life by balancing environmental enhancement with the economic benefits of Port activity. This commitment is reflected in the Port's Delta Environmental Enhancement Program which aims to enhance air quality, water quality, and wildlife habitats in the Delta and surrounding communities.

Documents:

[Lehigh DEIR - PDF](#)

[CVAG Whole Cottonseed ISMND 05122020.PDF](#)

[Cyber security technology consolidation-enhancement remediation NOE 2015-9-22 PDF - RTE](#)

[Sanguinetti property NOE 2015-9-22 PDF - RTE](#)

[San Joaquin International Gateway Project NOE 3-17-14 PDF - RTE](#)

[Calamco NOE 12-18-13 PDF - RTE](#)

[Forward Command Post NOE 8-20-13 PDF - RTE](#)

[Dock 14-15 2013 NOE 6-26-13 PDF - RTE](#)

[Dock 4-11 2013 NOE 6-17-13 PDF - RTE](#)

Endicott:

[Endicott NOD 2-4-14](#)

[Endicott IS-MND 11-18-2013 - RTE](#)

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