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July 6, 2020

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Re: Preliminary Comments on the Draft Environmental Impact Report for Lehigh Southwest Stockton Terminal Project (SCH: 2019100510)

Dear Mr. Cashman & Mr. Aschieris:

On behalf of San Joaquin Residents for Responsible Industry (“San Joaquin Residents”), we submit these preliminary comments on the Draft Environmental Impact Report (“DEIR”) for the Lehigh Southwest Stockton Terminal (“Project”)¹ prepared pursuant to the California Environmental Quality Act (“CEQA”)² by the Port of Stockton (“the Port”). The Project is proposed by Lehigh Southwest Stockton (“Applicant”) and would redevelop an existing bulk cementitious material receiving and distribution terminal at the Port to accommodate additional capacity and improve operational efficiency. The proposed project consists of: (1) Berth 2 rehabilitation; (2) ship unloader replacement; (3) rail trestle replacement; (4) barge loading component installation; and (5) upland facility improvements, including dome construction, truck loading station modifications, a new higher-capacity rail car loading station, demolition of structures and equipment, and existing bunker dust collector replacements. The Project is located at 205 Port Road 1 and the adjacent Berth 2 in Stockton, California.

¹ Anchor QEA, Draft Environmental Impact Report: Lehigh Southwest Stockton Terminal Project, State Clearinghouse Number: 2019100510, Prepared for the Port of Stockton (May 2020) (“DEIR”).

² Public Resources Code § 21000 *et seq.*; 14 Cal. Code Regs. (“C.C.R.”) §§ 15000 *et seq.*

This letter contains the preliminary comments of San Joaquin Residents and its technical consultants based on an initial review of the DEIR and a limited set of DEIR reference documents. As discussed below, the Port failed to provide San Joaquin Residents with timely access to the DEIR reference documents, as required by CEQA.³ The Port also refused San Joaquin Residents' June 22, 2020 and July 1, 2020 requests to extend the public comment period to allow additional time to review DEIR reference documents that were provided just days before. The Port also withheld critical air pollution emissions data from disclosure, in violation of CEQA, the California Public Records Act, and the California Clean Air Act.⁴ Due to the limited time provided for public comment and San Joaquin Residents' limited access to documents underlying the DEIR's analysis, we have not had adequate time to fully review and comment on the DEIR. We reserve the right to supplement these comments at a later date, and at any and all later proceedings related to this Project.⁵

Based on our preliminary review of the DEIR, we have concluded that it fails to comply with CEQA. The DEIR suffers from an unsupported throughput baseline and an incomplete and inconsistent project description. The Project poses significant air quality impacts from construction and operation that are both understated in the DEIR and inadequately mitigated. The DEIR also fails to conduct a quantitative health risk analysis to evaluate the public health consequences of toxic diesel emissions on nearby residences and workers from Project construction and operation. And the DEIR fails to commit to adequate mitigation measures to reduce significant greenhouse gas ("GHG") emissions impacts to the greatest extent feasible.

These comments were prepared with the assistance of air quality and health risk experts Phyllis Fox, Ph.D., P.E., and James Clark, Ph.D. Comments and curriculum vitae of Dr. Fox are attached to this letter as Attachment A.⁶ Dr. Clark's

³ Pub. Resources Code § 21092(b)(1); 14 C.C.R. § 15087(c)(5).

⁴ Pub. Resources Code § 21092(b)(1); 14 C.C.R. § 15087(c)(5); Gov. Code §6254.7(a), (e) ("Notwithstanding any other provision of law, all air pollution emission data, including those emission data which constitute trade secrets as defined in subdivision (d), are public records."); and Health and Safety Code §44346(h).

⁵ Gov. Code § 65009(b); Pub. Resources Code § 21177(a); *Bakersfield Citizens for Local Control v. Bakersfield* ("Bakersfield") (2004) 124 Cal. App. 4th 1184, 1199-1203; see *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal. App. 4th 1109, 1121.

⁶ **Attachment A:** Comments on the Draft Environmental Impact Report for the Lehigh Southwest Stockton Terminal Project by Phyllis Fox (July 6, 2020) ("Fox Comments").

comments and curriculum vitae are included as Attachment B.⁷ Attachments A and B are fully incorporated herein and submitted to the Port herewith. Therefore, the Port must separately respond to the technical comments in Attachments A and B.

For the reasons discussed herein, and in the attached expert comments, San Joaquin Residents urges the Port to remedy the deficiencies in the DEIR by preparing a legally adequate revised DEIR and recirculating it for public review and comment.

I. STATEMENT OF INTEREST

San Joaquin Residents is an unincorporated association of individuals and labor organizations whose members live, work, and recreate in San Joaquin County and are concerned about environmental and public health impacts from development in the region. The association includes the San Joaquin Building and Construction Trades Council (“SJBCTC”), their affiliate organizations, members, and families, and City of Stockton residents Steven M. Dickinson, David Gracian, and Tim Knoeb.

San Joaquin Residents has an interest in enforcing environmental laws that encourage sustainable development and ensure a safe working and living environment for its individual members and member organizations. Industrial transport and distribution facilities are uniquely dangerous and capable of generating significant emission of air pollutants and toxic substances that adversely impact air quality, water quality, biological resources, and public health and safety. Absent adequate disclosure and mitigation of these impacts, terminal workers and surrounding communities may be subject to chronic health problems, reduced air quality, and even the risk of bodily injury and death.

Environmental degradation jeopardizes future jobs by causing construction moratoriums, eliminating protected species and habitat, and putting added stresses on the environmental carrying capacity of the state. In particular, poorly planned industrial distribution facility projects can adversely impact the economic wellbeing of people who perform construction and maintenance work in aggregate processing facilities, port terminals, refineries and other industrial facilities, and the

⁷ **Attachment B:** Letter from J. Clark to W. Mumby re Comment Letter on Draft Environmental Impact Report (DEIR) for Lehigh Southwest Stockton Terminal Project, Stockton, California, State Clearing House Number 2019100510 (July 5, 2020) (“Clark Comments”).

surrounding communities. This reduces future employment opportunities. In contrast, well designed projects that reduce the environmental impacts of industrial processing and transport improve long-term economic prospects and reduce adverse impacts on local communities and the environment.

Individual members of San Joaquin Residents and its affiliated labor organizations live, work, recreate, and raise their families in San Joaquin County. They would be directly affected by the Project's environmental and health and safety impacts. Individual members may also work on the Project itself. They will, therefore, be first in line to be exposed to any hazardous materials, air contaminants or other health and safety hazards that exist onsite. The members of San Joaquin Residents have an interest in enforcing environmental laws that encourage sustainable development and ensure a safe working environment for its members.

II. LEGAL BACKGROUND

CEQA requires public agencies to analyze the potential environmental impacts of their proposed actions in an EIR.⁸ The EIR is a critical informational document, the "heart of CEQA."⁹ "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."¹⁰

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.¹¹ "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

⁸ Public Resources Code § 21100.

⁹ *Friends of College of San Mateo Gardens v. San Mateo County Community College Dist.* (2016) 1 Cal.5th 937, 944 (citation omitted).

¹⁰ *Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 390 (internal quotations omitted).

¹¹ Public Resources Code § 21061; 14 C.C.R. §§ 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 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.").

‘protects not only the environment but also informed self-government.’”¹² 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.”¹³ 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.”¹⁴

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.¹⁵ 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.”¹⁶ 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.”¹⁷

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.*”¹⁸ As the courts have explained, a prejudicial abuse of discretion occurs “if the failure to include relevant information precludes informed decision-making and informed public participation, thereby thwarting the statutory goals of the EIR process.”¹⁹ “The ultimate inquiry, as case

¹² *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564, quoting *Laurel Heights*, 47 Cal.3d at 392.

¹³ *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).

¹⁴ 14 C.C.R. § 15003(b).

¹⁵ 14 C.C.R. § 15002(a)(2), (3); see also *Berkeley Jets*, 91 Cal.App.4th at 1354; *Citizens of Goleta Valley*, 52 Cal.3d at 564.

¹⁶ 14 C.C.R. § 15002(a)(2).

¹⁷ Public Resources Code § 21081; 14 C.C.R. § 15092(b)(2)(A) & (B).

¹⁸ *Berkeley Jets*, 91 Cal.App.4th 1344, 1355 (emphasis added), quoting *Laurel Heights*, 47 Cal.3d at 391, 409, fn. 12.

¹⁹ *Berkeley Jets*, 91 Cal.App.4th at 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 decision-making and informed public participation, thereby

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.’”²⁰

III. THE PORT FAILED TO PROVIDE TIMELY ACCESS TO DEIR REFERENCE DOCUMENTS, WHICH MAY NECESSITATE FURTHER COMMENT SUBMISSION

The Port failed to make all documents referenced or relied upon in the DEIR available for public review during the DEIR’s public comment period, thereby truncating the public comment period, in violation of CEQA.²¹ As a result, San Joaquin Residents was unable to complete its review and analysis of the DEIR and its supporting evidence during the current public comment period. Our requests for a further extension were denied. We therefore provide preliminary comments on the DEIR and reserve our right to submit supplemental comments on the DEIR at a future date.

This office initially requested access to the DEIR reference documents from the Port on behalf of San Joaquin Residents member SJBTC on June 3, 2020, and received a partial production of documents from the Port on June 12, 2020.²² Between June 12 and June 22, 2020, SJBTC sought access to the remaining DEIR reference documents, but was advised by the Port that access to outstanding responsive DEIR reference documents would not be provided until July 17, 2020, almost two weeks after the close of the DEIR comment period.²³

On June 22, 2020, SJBTC submitted its first extension request to the Port, identifying approximately 40 outstanding DEIR reference documents that were

thwarting the statutory goals of the EIR process); *Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal.App.4th 1109, 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).

²⁰ *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 516, quoting *Laurel Heights*, 47 Cal.3d at 405.

²¹ **Attachment C:** Letter from ABJC to Port of Stockton re *Second Request to Extend the Public Review and Comment Period for the Draft Environmental Impact Report for Lehigh Southwest Stockton Terminal (SCH: 2019100510)* (July 1, 2020), pp. 1–2.

²² *Id.* at 2–3.

²³ *Id.* at 3.

missing from the Port's June 12 response.²⁴ The Port did not inform SJBCTC that it had located the outstanding responsive documents until June 25, 2020.²⁵ The Port then further delayed the release of the outstanding DEIR reference documents to June 26, 2020, due to the Port's stated need for final review by Port Counsel.²⁶ The Port denied SJBCTC's first request for an extension.²⁷

Our review of the Port's June 26, 2020 production of additional DEIR reference documents determined that at least three (3) sets of DEIR reference documents were still missing from the Port's response. On July 1, 2020, we submitted a second request for an extension of the DEIR public comment period which identified the missing reference documents and again requested access.

On July 2, 2020, counsel for the Port denied SJBCTC's second extension request, asserting that the DEIR reference documents would have been timely available if SJBCTC had appeared in person at the Port office asking to review the DEIR reference documents, rather than sending letters, emails, and making phone calls to the Port to request access to the documents.²⁸ Of course, Port counsel's response was inconsistent with SJBCTC's basic request for "access" to the DEIR reference documents in any form, and was inconsistent with written statements made by Port staff, which explained to SJBCTC that the Port did not locate outstanding responsive documents until June 25, 2020, and could not provide access to them until June 26, 2020, after review by Port counsel. As our July 1, 2020 letter explained, even if SJBCTC had sent a person to physically review the DEIR reference documents at the Port's office, the reference documents would not have been available until at least June 25, 2020.²⁹ Moreover, CEQA does not require the public to violate public health orders and COVID-19 social distancing protocols while risking serious viral infection to participate in a public comment process.³⁰

²⁴ *Id.*

²⁵ *Id.*

²⁶ *Id.*

²⁷ *Id.*

²⁸ **Attachment D:** Email from S. Herum to W. Mumby re Second Request to Extend the Public Review and Comment Period for the Draft Environmental Impact Report for Lehigh Southwest Stockton Terminal (SCH: 2019100510) (July 2, 2020).

²⁹ **Attachment C:** Letter from ABJC to Port of Stockton re *Second Request to Extend the Public Review and Comment Period for the Draft Environmental Impact Report for Lehigh Southwest Stockton Terminal (SCH: 2019100510)* (July 1, 2020), p. 3.

³⁰ *Id.* at 3–4.

CEQA requires that “all documents referenced in the draft environmental impact report” be available for review and “readily accessible” during the entire comment period.³¹ Courts have held that the failure to provide even a few pages of an EIR for a portion of the CEQA public review period invalidates the entire CEQA process, and that such a failure must be remedied by permitting additional public comment.³² Contrary to these clear mandates, and despite the Port’s failure to provide timely access to the DEIR reference documents, the Port refused to grant SJBCTC’s reasonable requests for an extension of the comment period.

The Port continues to withhold the following DEIR reference documents:

- Air quality modeling files relied upon for DEIR Appendix E in unlocked Excel/Word files as requested
- Caltrans (California Department of Transportation), 2015. Compendium of Pile Driving Sound Data. October 2015.
- NMFS (National Marine Fisheries Service), 2014. Biological Opinion for the Downtown San Francisco Ferry Terminal Expansion project, San Francisco, California. June 30, 2014.³³

The Port also asserts that the Port is not required to provide access to the unlocked Excel spreadsheets containing the DEIR’s emissions calculations and air modeling inputs.³⁴ But CEQA affords the public a right of access to all documents referenced and relied upon to support the conclusions and findings in an EIR.³⁵ It is also well settled that an EIR may not rely on hidden studies or documents that are not provided to the public.³⁶ The DEIR’s emissions calculations and modeling files are referenced in the DEIR and are directly relied upon to support the DEIR’s conclusions regarding the nature and severity of the Project’s air quality impacts, and to support the DEIR’s conclusions regarding air quality mitigation. These files

³¹ Public Resources Code § 21092(b)(1) (emphasis added); 14 C.C.R. § 15072(g)(4).

³² *Ultramar v. South Coast Air Quality Management District* (1993) 17 Cal.App.4th 689, 702–703.

³³ See **Attachment C**: Letter from ABJC to Port of Stockton re *Second Request to Extend the Public Review and Comment Period for the Draft Environmental Impact Report for Lehigh Southwest Stockton Terminal (SCH: 2019100510)* (July 1, 2020), p. 4.

³⁴ **Attachment D**: Email from S. Herum to W. Mumby re *Second Request to Extend the Public Review and Comment Period for the Draft Environmental Impact Report for Lehigh Southwest Stockton Terminal (SCH: 2019100510)* (July 2, 2020).

³⁵ Public Resources Code § 21092(b)(1); 14 C.C.R. § 15087(c)(5).

³⁶ *Santiago County Water District v. County of Orange* (1981) 118 Cal.App.3rd 818, 831 (“Whatever is required to be considered in an EIR must be in that formal report; what any official might have known from other writings or oral presentations cannot supply what is lacking in the report.”).

are therefore within the scope of documents that the public has a right to access under CEQA, and are necessary to facilitate an effective public review process.

Despite our month-long efforts to obtain “immediate access” to all materials referenced in the DEIR, the Port only granted us access to a portion of the reference materials, and in an untimely manner. The Port’s responses were provided in a piecemealed fashion, at the end of which the Port denied San Joaquin Residents’ right to access some of the DEIR’s most critical supporting materials for its air quality analysis. The Port’s actions flout CEQA’s disclosure requirements and have resulted in a violation of San Joaquin Residents’ due process rights.³⁷

A. Emissions Data and Modeling Files Used to Support the DEIR’s Air Quality Analysis are Not Exempt from Public Disclosure.

The Port erroneously asserts that the unlocked air quality emissions and modeling files we requested are proprietary information exempt from disclosure under the Public Records Act.³⁸ Port Counsel also inaccurately claims that this office has never disputed the Port’s prior decisions to withhold emissions modeling data based on purported proprietary information.³⁹ This is false. Contrary to the Port’s assertions, and as Port Counsel is aware, we have disputed the Port’s claims of privilege related to emissions data on prior occasions, and have clearly explained that withholding this information is contrary to law.

The requested emissions data is not exempt from disclosure under the California Public Records Act or any other state law.⁴⁰ The Public Records Act states that “[a]ll information, analyses, plans, or specifications that disclose the nature, extent, *quantity, or degree of air contaminants* or other pollution which any article, machine, equipment or other contrivance will produce, which any . . . air quality management district, or any other state or local agency or district, requires

³⁷ *Id.*; Gov. Code § 6253(a) (requires public records to be “open to inspection at all times during the office hours of the state or local agency” and provides that “every person has a right to inspect any public record.”).

³⁸ **Attachment D:** Email from S. Herum to W. Mumby re Second Request to Extend the Public Review and Comment Period for the Draft Environmental Impact Report for Lehigh Southwest Stockton Terminal (SCH: 2019100510) (July 2, 2020).

³⁹ *Id.*

⁴⁰ See Gov. Code § 6254 (enumerating PRA exemptions and not stating any exemption for emissions data); *Marken v. Santa Monica-Malibu Unified School Dist.* (2012) 202 Cal.App.4th 1250, 1262 (statutory exemptions from mandatory disclosure under PRA must be narrowly construed where they limit the public’s right to access).

any applicant to provide before the applicant builds, erects, alters, replaces, operates, sells, rents, or uses the article, machine, equipment, or other contrivance, **are public records.**⁴¹ The Public Records Act further states, “**Notwithstanding any other provision of law, all air pollution emission data**, including those emission data which constitute trade secrets as defined in subdivision (d), **are public records.**”⁴² The Health and Safety Code further states that “[a]ll information collected pursuant to this chapter . . . shall be considered ‘air pollution emission data,’ for the purposes of this section.”⁴³

Here, the Project would occur in the northern portion of the San Joaquin Valley Air Basin (“SJVAB”), within the jurisdiction of the San Joaquin Valley Air Pollution Control District (“SJVAPCD”).⁴⁴ In addition to permitting and rule compliance, air quality management at the local level is also accomplished through SJVAPCD imposition of mitigation measures on project EIRs. CEQA requires mitigation of air quality impacts that exceed certain significance thresholds set by the local air district. The DEIR explains that SJVAPCD’s CEQA significance thresholds are applicable to the Project, along with SJVAPCD Rules 4101, 4102, 4201, 4202, 8021, 8041, and 8061.⁴⁵ The DEIR’s emissions data is thus being used to assert that the Project complies with CEQA, SJVAPCD emissions limits, SJVAPCD’s CEQA thresholds, and with SJVAPCD rules related to localized emissions sources.⁴⁶ The emissions data sought by San Joaquin Residents clearly would “disclose the nature, extent, quantity or degree of air contaminants or other pollution which [the facility] will produce” within the meaning of the California Public Records Act and California Clean Air Act.⁴⁷ Therefore, it is clear under state law that the requested emissions records are not subject to trade secret or other proprietary protection, and are subject to disclosure under the Public Records Act pursuant to Gov. Code sections 6254.7(a) and (e).

⁴¹ Gov. Code § 6254.7(a) (emphasis added).

⁴² Gov. Code § 6254.7(e) (emphasis added).

⁴³ Health & Safety Code § 44346(h) (emphasis added).

⁴⁴ DEIR, p. 71.

⁴⁵ DEIR, pp. 80–81.

⁴⁶ DEIR, pp. 80–81, 87–90.

⁴⁷ Gov. Code § 6254.7(a).

IV. THE DEIR'S BASELINE FOR THE PROJECT'S AIR POLLUTION IMPACTS FAILS TO COMPLY WITH CEQA

An unsupported baseline renders an EIR deficient under CEQA.⁴⁸ 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.”⁴⁹ 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.⁵⁰ The Court explained that failure to represent actual operational conditions, undermines the purpose of CEQA to fully inform decision makers and the public.⁵¹

In *Association of Irrigated 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.⁵² In *AIR v. Kern County*, the Court of Appeal reasoned that the 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 throughput from 2001 to 2008.⁵³

A. The DEIR’s Selection of a 2018 Baseline is Unsupported

The DEIR selected 2018 throughput at the existing terminal on the Project site as its baseline to calculate the emissions increases from the Project. The 2018 baseline data included 883,793 tons of cement using 18,720 trucks, 587 rail cars, and 9 ships and represented the most recent full year of data.⁵⁴ As Dr. Fox observes, the DEIR acknowledges fluctuations in throughput since 2016, but asserts, without supporting evidence, that 2018 was a representative year of baseline operations.⁵⁵

⁴⁸ *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (“*CBE v. SCAQMD*”) (2010) 48 Cal.4th 310, 328.

⁴⁹ *CBE v. SCAQMD*, 48 Cal.4th at 322.

⁵⁰ *Id.* at 320–322, 328.

⁵¹ *Id.* at 328.

⁵² *Association of Irrigated Residents v. Kern County Board of Supervisors* (“*AIR v. Kern County*”) (2017) 17 Cal.App.5th 708, 728–729.

⁵³ *Id.*

⁵⁴ DEIR, pp. 31–32.

⁵⁵ DEIR, p. 32; Fox Comments, p. 10.

Without evidence demonstrating that the 2018 throughput amounts used in the DEIR track closely with typical operations and were not an outlier year, the Port lacks substantial evidence to support the DEIR's claim that this baseline selection complies with CEQA's requirement that the baseline reflects "establish levels of particular use" and properly informs decision makers and the public of an appropriate frame of reference.⁵⁶ Moreover, unlike in *AIR v. Kern County*, the DEIR here lacks any evidentiary support that the choice of baseline is representative of typical throughput prior to implementation of the Project.⁵⁷

A revised DEIR which establishes a legally adequate baseline supported by substantial evidence is necessary to comply with CEQA.

B. The DEIR's Baseline for NO_x Emissions Is Underestimated by the Port's Own Calculations

The DEIR substantially underestimates the Project's baseline NO_x emissions by failing to accurately disclose baseline daily NO_x emissions. Dr. Clark used the annual average NO_x emissions from Table 12 of the DEIR and converted tons/year to lbs/day to show that the baseline emissions derived from the DEIR's own emissions calculations are 53.26 lbs of NO_x/day, an emissions rate that is much higher than the DEIR's reported 17.1 lbs/day.⁵⁸ Thus, the reported baseline for daily emissions is about two-thirds less than it should be, based on the DEIR's own analysis.⁵⁹

An inaccurate baseline renders an EIR deficient under CEQA.⁶⁰ As discussed above, 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 emissions associated with actual operations.⁶¹ Failure to represent actual operational conditions, undermines the purpose of CEQA to fully inform decision makers and the public.⁶²

⁵⁶ *CBE v. SCAQMD*, 48 Cal.4th at 322, 328.

⁵⁷ *AIR v. Kern County*, 17 Cal.App.5th at 728–729.

⁵⁸ Clark Comments, p. 2.

⁵⁹ Clark Comments, p. 4.

⁶⁰ *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (“*CBE v. SCAQMD*”) (2010) 48 Cal.4th 310, 328; *Communities for a Better Environment v. City of Richmond* (“*CBE v. City of Richmond*”) (2010) 184 Cal.App.4th 70, 89.

⁶¹ *CBE v. SCAQMD*, 48 Cal.4th at 320–322, 328.

⁶² *Id.* at 328.

In *Communities for a Better Environment v. City of Richmond*, the Court of Appeal held that an EIR failed as an informational document because inconsistencies in the project description obscured the degree to which the project would enable the refinery to process heavier crude oil and because the EIR completely failed “to properly establish, analyze, and consider an environmental baseline.”⁶³ The Court of Appeal reasoned that when an EIR “omits relevant baseline information, the agency cannot make an informed assessment of the project’s impacts.”⁶⁴

As with the CEQA documents in both of the above cases, the DEIR here mischaracterizes information relevant to the baseline air pollution levels and how the Project will impact air quality.⁶⁵ The DEIR must clearly state the baseline level of daily NO_x emissions under current operational conditions in order to lay the foundation for an accurate environmental analysis.⁶⁶ Given that the DEIR contains inconsistent information about its baseline for daily operational NO_x emissions and apparently underreports daily emissions under current operations, the DEIR is 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 PROVIDE A COMPLETE AND ACCURATE PROJECT DESCRIPTION

CEQA requires that an EIR “set forth a project description that is sufficient to allow an adequate evaluation and review of the environmental impact.”⁶⁷ Yet, the DEIR states that it does not know how many trucks will visit the Project terminal.⁶⁸ The absence of information about the number of trucks that will pass through the terminal after the Project is complete renders the DEIR’s analysis of the Project’s operational air quality impacts from mobile sources unsupported and potentially inaccurate. The lack of information about Project truck trips also casts doubt on the efficacy of truck-related mitigation measures, such as the idling restrictions in Air Quality Mitigation Measure 3 (“MM-AQ-3”), and renders the DEIR’s conclusions

⁶³ *CBE v. City of Richmond*, 184 Cal.App.4th at 89.

⁶⁴ *Id.*

⁶⁵ *CBE v. SCAQMD*, 48 Cal.4th at 320–322, 328; *CBE v. City of Richmond*, 184 Cal.App.4th at 89.

⁶⁶ *CBE v. SCAQMD*, 48 Cal.4th at 320–322, 328; *CBE v. City of Richmond*, 184 Cal.App.4th at 89.

⁶⁷ *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 654 (citing 14 C.C.R. § 15124).

⁶⁸ DEIR, p. 96.

regarding truck mitigation equally unsupported.⁶⁹ The project description requirements of CEQA mandate that this piece of information—which is central to the analysis of the Project’s air quality impacts—be investigated and disclosed to the public.

In addition, the Project description suffers from inconsistencies regarding the proximity of sensitive receptors that could be subjected to heightened health risk from emissions of toxic air contaminants (“TACs”), such as diesel particulate matter (“DPM”). While the DEIR’s air quality analysis claims that the nearest sensitive receptors are residences 1,300 feet away from the Project site, the DEIR contradicts itself by stating elsewhere that the “closest sensitive receptor to the terminal is a residential area located approximately 500 feet to the south.”⁷⁰ Furthermore, the Project’s Authority to Construct Application to SJVAPCD documents a residence within 690 feet of a Project truck/railroad loading spout.⁷¹

Dr. Clark’s comments describe these inconsistencies and explain that they undermine the DEIR’s claim that health risk from air pollution is negligible.⁷² The proximity of sensitive receptors to the sources of the Project’s TAC emissions is a key factor in evaluating the nature and severity of the Project’s health risk impacts. If sensitive receptors are closer to TAC emissions sources than the DEIR considered for purposes of evaluating health risk, then the DEIR’s conclusions regarding health risk are entirely inaccurate and unsupported. The proximity of sensitive receptors within 1000 feet of the Project site also provides additional support for the need to conduct a quantitative health risk assessment—an analysis the Port neglected to include in the DEIR.

Without a complete and accurate project description, the DEIR fails as an informational document under CEQA. A revised EIR must be prepared.

VI. THE DEIR FAILS TO ADEQUATELY DISCLOSE, ANALYZE, AND MITIGATE SIGNIFICANT 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

⁶⁹ DEIR, pp. 95–96.

⁷⁰ DEIR, pp. 71, 100.

⁷¹ Authority to Construct Application: Lehigh Southwest Cement Co., Stockton, CA, Facility No. N-153, San Joaquin Valley Air Pollution Control District (December 2019).

⁷² Clark Comments, pp. 9–13.

levels. The lead agency's significance determination for each impact must be supported by accurate scientific and factual data.⁷³

An agency cannot conclude that an impact is less than significant unless it produces rigorous analysis and concrete substantial evidence justifying the finding.⁷⁴ The failure to provide information required by CEQA is a failure to proceed in the manner required by law.⁷⁵ 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.⁷⁶

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.'⁷⁷

As explained below, the DEIR fails to adequately support its analysis of construction impacts with substantial evidence 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 Lacks Support for its Analysis of Project Construction and Underestimates Significant Construction Emissions

While the DEIR relies on CalEEMod 2016.3.1 to estimate construction emissions, Dr. Fox explains that the use of this model requires supporting construction plans, including a schedule identifying equipment, detailed

⁷³ 14 C.C.R. § 15064(b).

⁷⁴ *Kings Cty. Farm Bur. v. Hanford* (1990) 221 Cal.App.3d 692, 732.

⁷⁵ *Sierra Club v. State Bd. Of Forestry* (1994) 7 Cal.4th 1215, 1236.

⁷⁶ *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 518–522.

⁷⁷ *Berkeley Jets*, 91 Cal.App.4th at 1355.

descriptions of construction equipment activity, and other data.⁷⁸ Appendix E to the DEIR includes a summary of the Project's construction schedule, but Dr. Fox points out that it omits key construction data, such as hours of use per day for each piece of equipment, horsepower, and engine tiers.⁷⁹ As Dr. Fox explains, Moreover, the DEIR, Appendix E, and materials produced in response to our record requests only included the CalEEMod output and not any of the underlying modeling files with the inputs used. Without the unlocked modeling files, the construction calculations cannot be verified without detailed information about the construction equipment, a detailed construction schedule, and a description of the engine tier used for each piece of equipment.⁸⁰

In addition, Dr. Fox explains that the CalEEMod model fails to calculate windblown dust as a source of PM₁₀ and PM_{2.5}.⁸¹ The DEIR's reliance on SJVAPCD Rule 8021 to control fugitive dust during construction does not replace CEQA's requirement to analyze the potential for particulate emissions generated by Project construction and windblown dust.⁸² For example, Dr. Fox explains that the Diablo winds can reach speeds of up to 50 miles per hour and produce substantial dust particulate matter.⁸³ This condition may be exacerbated by Project construction, and could be particularly problematic for graded areas and stockpiles, yet the intensity of the winds is not reflected by the DEIR's CalEEMod modeling.⁸⁴ Dr. Fox concludes that air dispersion modeling is necessary to evaluate the Project's potential for crate potentially significant dust impacts on local ambient air quality and public health.⁸⁵

Relatedly, the DEIR fails to include any calculations of wind erosion emissions.⁸⁶ Using U.S. EPA's generic construction emissions factor of 1.2 tons of total suspended material per acre per month of activity, Dr. Fox calculated wind erosion emissions of 208 lbs of total suspended particulate ("TSP")/day.⁸⁷ Dr. Fox explains that PM10 accounts for 34 to 52 percent of TSP when water is used for

⁷⁸ Fox Comments, pp. 3–8.

⁷⁹ DEIR, Appendix E, at PDF p. 385; Fox Comments.

⁸⁰ Fox Comments, pp. 3–8.

⁸¹ Fox Comments, pp. 3–8.

⁸² DEIR, p. 80; Fox Comments, pp. 3–8.

⁸³ Fox Comments, pp. 3–8.

⁸⁴ Fox Comments, pp. 3–8.

⁸⁵ Fox Comments, pp. 3–8.

⁸⁶ Fox Comments, pp. 3–8.

⁸⁷ Fox Comments, pp. 3–8. Dr. Fox acknowledged inconsistencies in the DEIR about the appropriate acreage to be graded during construction but stated her assumptions in her calculations.

dust control.⁸⁸ Therefore, up to 108 lbs/day of PM₁₀ could be generated during earthmoving activities, even assuming compliance with SJVAPCD Rule 8021.⁸⁹ This amount is in excess of the significance threshold of 100 lbs/day.⁹⁰ The DEIR fails to analyze these impacts and presents no proposed mitigation measures to reduce potentially significant impacts to less than significant levels.⁹¹ Therefore, the DEIR fails as an informational document as it does not analyze or address a potentially significant environmental impact with potential for severe public health consequences.

B. The DEIR Misrepresents the Severity of Daily and Annual Operational Emissions⁹²

The DEIR misrepresents the daily emissions amounts attributable to the Project based on the data disclosed in the DEIR. Dr. Clark identifies several emissions sources that are omitted from the DEIR's daily emissions analysis, including transiting ocean-going vessels ("OGVs") and harbor crafts passing through the SJVAB, rail car movement into the Port, employee vehicle emissions, and truck emissions transiting to and from the site.⁹³ These omissions account for another 36.06 lbs/day of unreported NO_x emissions.⁹⁴ Therefore, Dr. Clark explains, daily operational emissions in Year 1 of Project operation should actually be 107.5 lbs/day, 85 lbs/day higher than the DEIR states.⁹⁵ Consequently, Year 1, Year 5, and Year 15 of the Project all have daily operational emissions rates that exceed the significance threshold of 100 lbs/day.⁹⁶

Dr. Fox remodeled the DEIR's daily emission calculations to include all omitted emissions sources while assuming just 312 days/year of operation

⁸⁸ Fox Comments, pp. 3–8.

⁸⁹ Fox Comments, pp. 3–8.

⁹⁰ Fox Comments, pp. 3–8.

⁹¹ Fox Comments, pp. 3–8.

⁹² Dr. Fox explains in her comments that the operational emissions calculations cannot be verified due to the Port's failure to provide unlocked Excel spreadsheets with the supporting data. (Fox Comments, p. 11.) Nevertheless, Dr. Clark and she used the information available to critique the DEIR's conclusions.

⁹³ Clark Comments, pp. 2–5.

⁹⁴ Clark Comments, pp. 2–5.

⁹⁵ Clark Comments, pp. 2–5.

⁹⁶ Clark Comments, pp. 2–5.

(approximately 6 days/week).⁹⁷ The results, summarized in her comments, indicate significant daily NO_x emissions in the SJVAB that were not disclosed in the DEIR.⁹⁸

Under both Dr. Clark's and Dr. Fox's analysis, the Project results in significant daily NO_x emissions which exceed the estimates presented in the DEIR. In its current form, the DEIR fails to disclose the extent of this significant air quality impact and fails to analyze the consequences it may have on regional air quality, as required by CEQA.⁹⁹ As explained by Dr. Clark, "[t]he Port must provide an accurate accounting of emissions in a revised DEIR."¹⁰⁰

In addition, while the DEIR acknowledges that annual operational emissions of NO_x from the Project exceed the SJVAPCD significance threshold and are therefore significant, the DEIR still underestimates these emissions. The DEIR consistently explains that emissions modeling is based on one-way trips rather than roundtrip travel of trucks, ships, and trains.¹⁰¹ Therefore, as Dr. Fox explains, emissions as report in the DEIR are merely half of what they should be.¹⁰² The DEIR should be revised to fully reflect the degree to which the significance thresholds for NO_x and the Project's other mobile source air pollutant emissions will be exceeded and to consider feasible mitigation in light of these potentially severe air quality impacts.

C. 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

CEQA requires agencies to commit to all feasible mitigation measures to reduce significant environmental impacts.¹⁰³ 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

⁹⁷ Fox Comments, pp. 13–14.

⁹⁸ Fox Comments, pp. 13–14.

⁹⁹ See *Sierra Club*, 6 Cal.5th at 518–522.

¹⁰⁰ Clark Comments, p. 6.

¹⁰¹ DEIR, Tables E2.11, E2.22 (PDF pp. 287, 435.)

¹⁰² Fox Comments, p. 13.

¹⁰³ 14 C.C.R. § 15002(a)(2).

extent feasible.¹⁰⁴ 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.

Air Quality Mitigation Measure 2 (“MM-AQ-2”) requires the use of equipment with Tier 4 engines or equivalent for construction.¹⁰⁵ However, as Dr. Clark explains, the DEIR is vague about whether this requirement is for Tier 4 Interim or Tier 4 Final construction equipment.¹⁰⁶ The U.S. EPA has gradually adopted improving tiers of cleaner off-road construction equipment since 1994: Tier 1, Tier 2, Tier 3, Tier 4 Interim, and Tier 4 Final.¹⁰⁷ Tier 4 Final is the “cleanest burning equipment and therefore has the lowest emissions compared to other tiers, including Tier 4 Interim equipment.”¹⁰⁸ In fact, as Dr. Clark explains, Tier 4 Final technology can remove more than 90 percent of PM_{2.5} emissions, whereas Tier 4 Interim only removes between 80 percent to 90 percent of PM_{2.5} exhaust.¹⁰⁹

The disparity in emissions reduction potential between Tier 4 Final and Tier 4 Interim equipment undermines the effectiveness of MM-AQ-2.¹¹⁰ Dr. Fox also explains that it is impossible to determine the engine tiers assumed in the CalEEMod modeling because the modeling inputs are omitted from the DEIR and were not produced in response to our records requests.¹¹¹ Therefore, Dr. Fox was unable to verify the effectiveness of the use of Tier 4 equipment in mitigating air quality effects and the potential for significant construction emissions impacts.¹¹² CEQA forbids a public agency from relying on mitigation measures of uncertain efficacy.¹¹³ MM-AQ-2 should be revised to commit to using Tier 4 Final equipment to maximize potential construction emissions reductions.

Furthermore, MM-AQ-2 fails to define “specialized equipment,” excludes equipment of 50 horsepower or less from the Tier 4 requirement, and does not

¹⁰⁴ 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.

¹⁰⁵ DEIR, p. 95.

¹⁰⁶ Clark Comments, pp. 13–15.

¹⁰⁷ Clark Comments, pp. 13–15.

¹⁰⁸ Clark Comments, pp. 13–15.

¹⁰⁹ Clark Comments, pp. 13–15.

¹¹⁰ Clark Comments, pp. 13–15.

¹¹¹ Fox Comments, p. 8.

¹¹² Fox Comments, p. 8.

¹¹³ *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 727–728.

require Tier 4 engines where they are “not available.”¹¹⁴ These are potentially gaping exceptions given that “specialized equipment” and “available” are not defined¹¹⁵ The DEIR indicates that generator sets and welders used in the CalEEMod analysis are less than the 50 horsepower exclusion.¹¹⁶ Therefore, there is substantial evidence in the DEIR demonstrating that at least some of the Project’s construction equipment are not subject to MM AQ-2. Finally, it is unclear what retrofits for equivalent Tier 4 reductions means or how retrofits will be documented to ensure compliance.¹¹⁷ Thus, MM-AQ-2 should be revised to clarify what is actually required and to close these mitigation loopholes, in order to assure that MM-AQ-2’s claimed construction emissions reductions are actually achieved.

The DEIR also relies on ineffective mitigation measures and improperly dismisses other potentially effective measures. Mitigation measures must be enforceable through binding conditions.¹¹⁸ Yet, Air Quality Mitigation Measure 4 (“MM-AQ-4”) reads, “**Where possible**, Lehigh will encourage the use of clean trucks (defined as model year 2017 or newer) to transport cementitious material.”¹¹⁹ This mitigation measure’s use of weak, noncommittal language makes it virtually useless in reducing air quality impacts.¹²⁰ Qualifying language like “where possible” creates a massive loophole that Lehigh can exploit to avoid the use of clean trucks altogether.¹²¹ Moreover, as written, MM-AQ-4 merely requires Lehigh to “encourage” the use of clean trucks.¹²² It does not require the use of clean trucks. Therefore, MM-AQ-4 lacks the enforceability to assure that any clean trucks will be used for the Project, and, as a result, fails to guarantee that MM-AQ-2 will be effective at reducing the Project’s admittedly significant NOx and GHG emissions from on-road trucks, as required by CEQA.¹²³

As Dr. Fox explains, the DEIR’s emission calculations already assume the use of 2017 trucks.¹²⁴ This assumption is unsupported because neither MM-AQ-2, nor any other mitigation measure in the DEIR, affirmatively require the use of

¹¹⁴ DEIR, p. 95.

¹¹⁵ DEIR, p. 95.

¹¹⁶ DEIR, Appendix E (PDF pp. 399–400.)

¹¹⁷ Fox Comments, p. 9.

¹¹⁸ 14 C.C.R. § 15126.4(a)(2).

¹¹⁹ DEIR, p. 95 (emphasis added).

¹²⁰ Clark Comments, p. 8.

¹²¹ Clark Comments, p. 8.

¹²² Clark Comments, p. 8.

¹²³ 14 C.C.R. § 15126.4(a)(2); *Kings County*, 221 Cal.App.3d at 727–728.

¹²⁴ Fox Comments, p. 15.

clean trucks. The Port therefore lacks substantial evidence to support the DEIR's on-road truck emissions calculations, and MM-AQ-4 fails to assure that the significant emissions from trucks will be mitigated.¹²⁵

In addition, Dr. Clark notes that the DEIR fails to properly evaluate the feasibility of obtaining clean trucks.¹²⁶ The Port should consider the following information in revising the mitigation measure to require feasible and meaningful steps to reduce truck emissions associated with the Project: CARB recently began its Advanced Clean Trucks Program, which will require increasing percentages of truck sales to be zero-emissions.¹²⁷ By 2024, five percent of Class 7-8 tractor group trucks sold will be zero-emission vehicles.¹²⁸ By 2035, 40 percent of truck tractor sales for Classes 4-8 will be zero-emission trucks.¹²⁹ While zero-emission trucks may be difficult to come by now, the infeasibility argument against requiring such vehicles will become less persuasive over time. Therefore, MM-AQ-4 should be revised to not only commit to using clean trucks without exception, but to require use of zero-emission trucks to the extent they are available for purchase during the Project's operational life. With sales of zero-emission trucks ramping up between 2024 and 2035, it is reasonable to expect feasible access to zero-emission trucks for the Project by at least 2030. In light of this readily available information, the burden is on the Port to explain specifically why such additional mitigation is not feasible.¹³⁰

Air Quality Mitigation Measure 5 ("MM-AQ-5") requires obtaining clean yard equipment whenever new or replacement equipment is purchased.¹³¹ However, the DEIR concedes that yard equipment was not included in the air quality emissions modeling anyway and may not be a significant source of emissions, meaning that any reductions would not help reduce emissions below the significance threshold.¹³²

¹²⁵ Fox Comments.

¹²⁶ Clark Comments.

¹²⁷ NY Times, New Rule in California Will Require Zero-Emissions Trucks (June 25, 2020), available at https://www.nytimes.com/2020/06/25/climate/zero-emissions-trucks-california.html?campaign_id=49&emc=edit_ca_20200626&instance_id=19776&nl=california-today®i_id=77081991&segment_id=31936&te=1&user_id=8130478fe5d425835020177bbd142aaa.

¹²⁸ California Air Resources Board, Advanced Clean Trucks Fact Sheet, available at <https://ww2.arb.ca.gov/resources/fact-sheets/advanced-clean-trucks-fact-sheet>.

¹²⁹ *Id.*

¹³⁰ See *Covington* 43 Cal.App.5th at 879–883 (holding that revised EIR was required where respondent failed to explain why the petitioners' proposed mitigation measure was not feasible).

¹³¹ DEIR, p. 96.

¹³² Fox Comments.

Dr. Clark explains that, although a substantial portion of NO_x emissions come from ships, the DEIR neglects to incorporate mitigation measures to address those “substantial sources” of pollution.¹³³ The DEIR estimates that emissions from ships at berth, ships maneuvering through the SJVAB, and tugboats account for 51.5 percent of the baseline NO_x emissions and 60 to 65 percent of operational NO_x emissions in the following years.¹³⁴ By year 15, the emissions from ships increase 172 percent from the baseline emissions.¹³⁵ At that time, truck emissions will account for about 30 percent of NO_x emissions from the Project.¹³⁶ Therefore, Dr. Clark explains that the Port must implement additional mitigation measures to reduce substantial NO_x emissions from non-truck sources.¹³⁷

Dr. Fox explains that NO_x emissions can be mitigated using the Voluntary Emissions Reduction Agreement (“VERA”) program offered by SJVAPCD.¹³⁸ The DEIR claims that the Port cannot require VERAs as mitigation for the Project based on the erroneous assumption that VERAs cannot ensure timely and effective CEQA mitigation of on-site emissions.¹³⁹ To the contrary, as explained by Dr. Fox and the SJVAPCD, 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.¹⁴⁰

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 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.”¹⁴¹ As of 2019, in addition to avoiding approximately 15,230 tons of NO_x and PM₁₀ emissions from new development through the incorporation of on-site mitigation and clean-air design measures into projects subject to Rule 9510, SJVAPCD has confirmed approximately 10,286 tons of reductions in NO_x and PM₁₀ emissions have been achieved through the investment of ISR and VERA funds in its

¹³³ Clark Comments.

¹³⁴ DEIR, Table E2-2; Clark Comments.

¹³⁵ Clark Comments.

¹³⁶ Clark Comments.

¹³⁷ Clark Comments.

¹³⁸ Fox Comments.

¹³⁹ DEIR, p. 97; Fox Comments.

¹⁴⁰ Fox Comments.

¹⁴¹ SJVAPCD Staff Report: Approve VERA with Contanda Terminals LLC (September 19, 2019).

emission reduction incentive programs.¹⁴² VERAs have also been implemented for other Port projects to offset operational NO_x emissions from both on-site and off-site sources.¹⁴³

There is also substantial evidence in SJVAPCD's annual VERA reports that VERA funds are used annually to implement direct NO_x reduction projects within the SJVAB, with no shortage of NO_x reduction projects in queue for VERA funding.¹⁴⁴ The DEIR's contention that there is no guarantee that VERA funds would be used to offset NO_x in a timely manner is unsupported by any evidence and is belied by the substantial evidence of ongoing NO_x reduction projects contained in SJVAPCD's annual VERA reports.

SJVAPCD has designed flexibility into the VERA such that the final mitigation can be based on actual emissions related to the project as determined by actual equipment used, hours of operation, etc. After the project is mitigated, the District certifies to the Lead Agency that the mitigation is completed, providing the Lead Agency with an enforceable mitigation measure demonstrating that project specific emissions have been mitigated to less than significant levels.¹⁴⁵

Finally, the DEIR's claim that VERAs are infeasible because they provide only off-site NO_x mitigation is a red herring. NO_x is a regional pollutant, and an ozone precursor. As such, NO_x reductions in any location within the SJVAB effectively result in regional reductions of NO_x emissions. There is substantial evidence demonstrating that "[VERA] dollars provided by the project proponent are reinvested in the Valley to reduce emissions."¹⁴⁶ Additionally, a large component of the Project's operational NO_x emissions will come from truck and vessel transport. These emissions will occur off-site, as well as on-site. Off-site NO_x mitigation must therefore be evaluated and implemented for the Project in order to reduce NO_x emissions to the greatest extent feasible, as required by CEQA.

¹⁴² SJVAPCD, 2019 Annual Report: Indirect Source Review Program (July 1, 2018 to June 30, 2019), p. 2.

¹⁴³ SJVAPCD Staff Report: Approve VERA with Contanda Terminals LLC (September 19, 2019).

¹⁴⁴ SJVAPCD, 2019 Annual Report: Indirect Source Review Program (July 1, 2018 to June 30, 2019), pp. 2, 12.

¹⁴⁵ SJVAPCD, Guidance for Assessing and Mitigating Air Quality Impacts (February 19, 2015), pp. 116–117.

¹⁴⁶ SJVAPCD Staff Report: Approve VERA with Contanda Terminals LLC (September 19, 2019).

Furthermore, Dr. Fox explains that the VERAs can be tailored to fund measures with localized NO_x reduction effects.¹⁴⁷ Some examples include:

- Emissions from ships and rail lines that pass through irrigated farmland could be mitigated under VERAs by electrifying irrigation pumps or replacing old, dirty tractors with cleaner equipment.¹⁴⁸
- Emissions impacting residential neighborhoods could be mitigated by installing solar panels or by replacing fireplaces with more efficient heating methods.¹⁴⁹
- Emissions from trucks that transport product to market could be mitigated by upgrading to cleaner engines.¹⁵⁰

Therefore, the DEIR should, in accordance with SJVAPCD recommendations, require \$8,123 per ton of NO_x in excess of the significance threshold as part of a VERA as a mitigation measure.¹⁵¹ A revised DEIR should be prepared and recirculated.

Notably, the DEIR's discussion of VERAs mentions that NO_x emissions will exceed the threshold of 10 tons/year by 4.1 tons/year by year 5 and 6.1 tons/year by year 15.¹⁵² But this information is inaccurate and contradicted by DEIR Table 12, which shows that the annual operational NO_x emissions exceed the threshold by 9.62 tons in year 1, by 14.3 tons in year 5, and by 15.87 tons in year 15.¹⁵³ Therefore, it is crucial that any NO_x offsets purchases as part of a VERA address the correct amount of excess pollution rather than the erroneous numbers mentioned in the DEIR.

¹⁴⁷ Fox Comments.

¹⁴⁸ Fox Comments.

¹⁴⁹ Fox Comments.

¹⁵⁰ Fox Comments.

¹⁵¹ Fox Comments.

¹⁵² DEIR, p. 97.

¹⁵³ Clark Comments; DEIR, pp. 88–89, 97.

VII. THE DEIR FAILS TO ADEQUATELY DISCLOSE, ANALYZE, AND MITIGATE POTENTIALLY SIGNIFICANT HEALTH RISK IMPACTS FROM DPM EMISSIONS

A lead agency's significance determination must be supported by accurate scientific and factual data.¹⁵⁴ An agency cannot conclude that an impact is less than significant unless it produces rigorous analysis and concrete substantial evidence justifying the finding.¹⁵⁵

These standards apply to an EIR's analysis of public health 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.¹⁵⁶ 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 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.¹⁵⁷ 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.”¹⁵⁸ 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. As the Court explained, the EIR failed to comply with CEQA because after reading the EIR, “the public would have no idea of the health consequences that result when more pollutants are added to a nonattainment basin.”¹⁵⁹ CEQA mandates

¹⁵⁴ 14 C.C.R. § 15064(b).

¹⁵⁵ *Kings County Farm Bureau*, 221 Cal.App.3d at 732.

¹⁵⁶ *Sierra Club*, 6 Cal.5th at 518–522.

¹⁵⁷ *Id.* at 507–508, 518–522.

¹⁵⁸ *Id.* at 519, citing *Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497, 514–515.

¹⁵⁹ *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).)

discussion, supported by substantial evidence, of the nature and magnitude of impacts of air pollution on public health.¹⁶⁰

Furthermore, in *Berkeley Jets*, the Court of Appeal held that an EIR must analyze the impacts from human exposure to toxic substances.¹⁶¹ In that case, the Port of Oakland approved a development plan for the Oakland International Airport.¹⁶² 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.¹⁶³ 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.¹⁶⁴ 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."¹⁶⁵

The failure to provide information required by CEQA makes meaningful assessment of potentially significant impacts impossible and is presumed to be prejudicial.¹⁶⁶ 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.¹⁶⁷ 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."¹⁶⁸

Here, the DEIR asserts that CEQA "does not require comprehensive quantification of health risk for every project," and incorrectly claims that the DEIR is justified in not conducting a quantitative health risk analysis ("HRA") for the Project's emissions of TACs, including DPM.¹⁶⁹ As explained by Dr. Clark, without a

¹⁶⁰ *Sierra Club*, 6 Cal.5th at 518–522.

¹⁶¹ *Berkeley Jets*, 91 Cal.App.4th at 1369–1371.

¹⁶² *Id.* at 1349–1350.

¹⁶³ *Id.* at 1364–1371.

¹⁶⁴ *Id.*

¹⁶⁵ 14 C.C.R. § 15003(b).

¹⁶⁶ *Sierra Club v. State Bd. Of Forestry* (1994) 7 Cal.4th 1215, 1236–1237.

¹⁶⁷ *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435.

¹⁶⁸ *Id.* (internal quotations omitted).

¹⁶⁹ DEIR, p. 98.

quantitative HRA, the DEIR's conclusion that the Project will pose a less than significant health risk impact is entirely unsupported.¹⁷⁰ Citing extensive scientific and state regulatory evidence, Dr. Clark explains that TACs such as DPM present severe acute and long-term health risks that warrant an analysis separate from the Port's criteria pollutant analysis.¹⁷¹ Specifically, DPM contains toxins, unlike other particulates, and has been linked to respiratory disease, lung damage, cancer, and premature death.¹⁷²

Moreover, the need for a site-specific HRA of the Project's construction and operational emissions was identified by both the California Air Resources Board ("CARB") and SJVAPCD when those agencies commented on the Notice of Preparation ("NOP") for the Project's DEIR.¹⁷³ CARB explained that the Project would result in more than doubling the number of bulk marine vessels, heavy-duty trucks, and trains visiting the Port and that the increased activity could negatively impact local and regional air quality.¹⁷⁴ Therefore, CARB requested that an HRA be prepared in accordance with OEHHA guidance.¹⁷⁵

SJVAPCD similarly urged the Port to conduct a screening analysis that included all sources of emissions to further evaluate the need for a site-specific HRA.¹⁷⁶ A screening analysis establishes a prioritization score based on the proximity potentially impacted residences and the degree of health risk to those receptors.¹⁷⁷ A prioritization score of 10 or higher is considered significant and

¹⁷⁰ Clark Comments, pp. 7–12.

¹⁷¹ Clark Comments, pp. 7–8.

¹⁷² Clark Comments, pp. 7–8.

¹⁷³ Clark Comments, p. 9; Letter from Karen Magliano, California Air Resources Board, to Jason Cashman, Port of Stockton re Comment on Notice of Preparation for Lehigh Southwest Stockton Terminal Project DEIR (January 10, 2020), available at PDF p. 321 of DEIR; SJVAPCD. 2019. Comment Letter Project: Notice of Preparation/Initial Study for Lehigh Southwest Stockton Terminal Project District CEQA Reference No: 20191267, available at PDF p. 354 of DEIR.

¹⁷⁴ Letter from Karen Magliano, California Air Resources Board, to Jason Cashman, Port of Stockton re Comment on Notice of Preparation for Lehigh Southwest Stockton Terminal Project DEIR (January 10, 2020), available at PDF p. 321 of DEIR

¹⁷⁵ *Id.*

¹⁷⁶ SJVAPCD. 2019. Comment Letter Project: Notice of Preparation/Initial Study for Lehigh Southwest Stockton Terminal Project District CEQA Reference No: 20191267, available at PDF p. 354 of DEIR; CAPCOA. 2009. Health Risk Assessments For Proposed Land Use Projects: A CAPCOA Guidance Document, p. 10, available at http://www.valleyair.org/transportation/CAPCOA_HRA_LU_Guidelines_8-6-09.pdf.

¹⁷⁷ *Id.*

triggers the need to prepare a refined HRA.¹⁷⁸ SJVAPCD added that projects that result in significant health risk should not be approved.¹⁷⁹

The DEIR calculated a prioritization score of 7.67 using the baseline DPM values for OGVs at berth, harbor crafts servicing OGVs, and trucking idling on site.¹⁸⁰ However, Dr. Clark explains that the analysis omitted emissions from trucks traveling to the Project site (rather than just idling).¹⁸¹ These emissions account for 43.35 lbs/year and results in a prioritization score of 11.7.¹⁸² By year 5, the DPM emissions yield a prioritization score of 18.3 for the closest receptors.¹⁸³ Because these values exceed the SJVAPCD's prioritization threshold of 10, the need for a refined HRA is clearly established.

Instead of conducting a quantitative HRA, the DEIR asserts, without supporting evidence, that operation of the proposed project would result in incremental DPM emissions of less than 0.2 tons and produce an insignificant health risk of 6.7 in 1 million.¹⁸⁴

The DEIR attempts to support this claim by citing to an HRA completed for a different Port project in 2019, which showed an increased risk of 6.7 million in 1 million at 1 ton of PM per year.¹⁸⁵ The DEIR assumes that the two projects are comparable enough to conclude that health risk would be the same for the Lehigh Project as it was for the other.¹⁸⁶ Yet, the DEIR admits that the projects are not comparable. The DEIR explains that their "receptors are not identical" and the projects' air dispersion patterns, while "similar," are not the same.¹⁸⁷ Moreover, Dr.

¹⁷⁸ SJVAPCD. 2019. Comment Letter Project: Notice of Preparation/Initial Study for Lehigh Southwest Stockton Terminal Project District CEQA Reference No: 20191267, available at PDF p. 354 of DEIR; CAPCOA. 2009. Health Risk Assessments For Proposed Land Use Projects: A CAPCOA Guidance Document, p. 10, available at http://www.valleyair.org/transportation/CAPCOA_HRA_LU_Guidelines_8-6-09.pdf.

¹⁷⁹ SJVAPCD. 2019. Comment Letter Project: Notice of Preparation/Initial Study for Lehigh Southwest Stockton Terminal Project District CEQA Reference No: 20191267, available at PDF p. 354 of DEIR.

¹⁸⁰ Clark Comments.

¹⁸¹ Clark Comments.

¹⁸² Clark Comments.

¹⁸³ Clark Comments.

¹⁸⁴ DEIR, p. 99.

¹⁸⁵ DEIR, pp. 99–100.

¹⁸⁶ DEIR, p. 100.

¹⁸⁷ DEIR, p. 100.

Clark explains that the DEIR fails to consider other critical differences between the two projects which make the nature and extent of their health risk impacts different, including the distance of each project from the ship channel, the sources of DPM emissions, the condition of the homes affected by the emissions, and the proximity of sensitive receptors.¹⁸⁸ The DEIR also fails to consider the potential cumulative health risks posed by the Project in conjunction with other 2020 projects at the Port. In sum, “[t]he two projects are clearly different” and the differences between the projects demonstrate that an HRA performed for the 2019 Contanda project “cannot substitute for the required analysis of health risks posed by this project.”¹⁸⁹ Therefore, the DEIR contains no analysis of the health risk posed by this Project’s unique conditions—a violation of CEQA.

The Port’s next assertion, based on a 2005 CARB study, that exposure from TACs decline approximately 70 percent at 500 feet from the emission source is a red herring which does not support the DEIR’s health risk conclusions.¹⁹⁰ Dr. Clark explains that the 2005 study involved roadway emissions and did not include stacked sources, such as OGV smokestacks.¹⁹¹ Moreover, as discussed above, the DEIR contains inconsistent information regarding the proximity of sensitive receptors, rendering the Port’s reliance on the CARB study as a basis not to perform an HRA additionally unsupported.¹⁹² While page 100 DEIR’s air quality analysis claims that the nearest sensitive receptors are 1,300 feet away, page 71 of the DEIR states that the “closest sensitive receptor to the terminal is a residential area located approximately 500 feet to the south.”¹⁹³ In addition, PDF page 66 of the Project’s Authority to Construct Application to SJVAPCD shows a residence within 690 feet of a truck/railcar loading spout.¹⁹⁴ As explained by Dr. Clark, these inconsistencies “undermine the DEIR’s claim that health risk from air pollution is negligible, and further demonstrate that a quantitative health risk analysis is required for the project.”¹⁹⁵

¹⁸⁸ Clark Comments.

¹⁸⁹ Clark Comments.

¹⁹⁰ DEIR, p. 100; Clark Comments.

¹⁹¹ Clark Comments.

¹⁹² Clark Comments.

¹⁹³ DEIR, pp. 71, 100.

¹⁹⁴ Authority to Construct Application: Lehigh Southwest Cement Co., Stockton, CA, Facility No. N-153, San Joaquin Valley Air Pollution Control District (December 2019).

¹⁹⁵ Clark Comments.

In light of the above shortcomings, the DEIR fails to provide the public with basic information about the Project's health impacts, as required by CEQA.¹⁹⁶ As explained by Dr. Clark, "the DEIR made no attempt to quantify potentially significant health risks that would occur to nearby sensitive receptors, including workers, school children at nearby Washington Elementary, and residents within the Seaport Neighborhood" running along Interstate Highway 5 where trucks will travel.¹⁹⁷

The Port's subsequent conclusion that there will be negligible health risks without actually evaluating the nature and magnitude of the impacts of DPM emissions from the Project is entirely unsupported, and runs afoul of the holding of *Sierra Club v. County of Fresno*.¹⁹⁸ Furthermore, just as the Port of Oakland in *Berkeley Jets* could not get away with its failure to quantify the severity of the impacts of TACs on human health, the Port here cannot neglect to conduct an HRA to measure the likely health impacts of the Project's DPM emissions.¹⁹⁹ In fact, the Port's position here is even more attenuated than the Port of Oakland's in *Berkeley Jets*. While the Port of Oakland assumed significance and adopted mitigation measures, the Port in this case did neither, instead opting to assume less than significant impacts without conducting a complete HRA.²⁰⁰

The Port attempts to rely on the 2019 Contanda HRA and the CARB 2005 study to argue that health risks will not be significant, but these are precisely the kinds of unsupported and inapplicable analyses that *Berkeley Jets* held was not entitled to deference.²⁰¹ With clear discrepancies between the Contanda project and this one and with inconsistent information regarding the proximity of sensitive receptors undermining the applicability of the CARB 2005 study, the Port lacks substantial evidence to support its conclusion that the Project's health risk impacts will be less than significant, and its decision to forgo including an HRA in the DEIR is a violation of law.

As Dr. Clark recommends, "a site-specific dispersion modeling of emissions from all sources associated with the Project to assess the Project's direct and

¹⁹⁶ See *Sierra Club*, 6 Cal.5th at 518–522 (mandating discussion of the nature and magnitude of impacts of air pollution on public health with substantial evidentiary support).

¹⁹⁷ Clark Comments.

¹⁹⁸ *Sierra Club*, 6 Cal.5th at 518–522.

¹⁹⁹ *Berkeley Jets*, 91 Cal.App.4th at 1364–1371.

²⁰⁰ *Id.*

²⁰¹ *Id.* at 1355, quoting *Laurel Heights*, 47 Cal.3d at 409, fn.12.

cumulative health impacts to construction workers and the community” must be conducted by the Port.²⁰² A revised DEIR should be prepared which incorporates an HRA with a thorough description of the public health hazards presented by the Project. This revised DEIR must then be recirculated for public comment.

VIII. THE DEIR FAILS TO ADEQUATELY MITIGATE SIGNIFICANT GREENHOUSE GAS (“GHG”) EMISSIONS IMPACTS

CEQA requires the lead agency to use scientific data to evaluate GHG impacts directly and indirectly associated with a project.²⁰³ The analysis must “reasonably reflect evolving scientific knowledge and state regulatory schemes.”²⁰⁴ In determining the significance of GHG emissions impacts, the agency must consider the “extent to which the project complies with regulations or requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of greenhouse gas emissions.”²⁰⁵

The DEIR concludes that GHG emissions are significant and unavoidable. As explained above, Mitigation Measures AQ-1 through AQ-4 fail to significantly reduce construction and mobile emissions. For the same reasons, these mitigation measures fail to reduce the Project’s GHG emissions to the greatest extent feasible, in violation of CEQA. Dr. Fox recommends the use of VERAs and carbon offsets as effective and feasible mitigation measures required under CEQA.²⁰⁶ Dr. Fox explains that other DEIR’s have committed to such measures to offset GHG

²⁰² Clark Comments.

²⁰³ See 14 C.C.R. § 15064.4(a) (lead agencies “shall make a good-faith effort, based to the extent possible on scientific and factual data, to describe, calculate or estimate the amount of greenhouse gas emissions resulting from a project); 14 C.C.R. § 15064(d) (evaluating significance of the environmental effect of a project requires consideration of reasonably foreseeable indirect physical changes caused by the project); 14 C.C.R. § 15358(a)(2) (defining “effects” or “impacts” to include indirect or secondary effects caused by the project and are “later in time or farther removed in distance, but are still reasonably foreseeable” including “effects on air”); CEQA Guidelines, Appendix G, § VIII: Greenhouse Gas Emissions (stating agencies should consider whether the project would “generate greenhouse gas emissions, *either directly or indirectly*, that may have a significant impact on the environment.”) (emphasis added).

²⁰⁴ 14 C.C.R. § 15064.4(b); see also *Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497, 504 (holding that lead agencies have an obligation to track shifting regulations and to prepare EIRs in a fashion that keeps “in step with evolving scientific knowledge and state regulatory schemes”).

²⁰⁵ 14 C.C.R. § 15064.4(b)(3).

²⁰⁶ Fox Comments.

emissions by paying for investments in building retrofits, solar panels, and energy efficient lighting.²⁰⁷

Furthermore, GHG Mitigation Measure 3 (“MM-GHG-3”) can and should be improved to comply with CEQA’s requirements. MM-GHG-3 requires the development of an energy use reduction plan by the Applicant.²⁰⁸ The plan will in turn require replacement of less-efficient light bulbs with more efficient ones and installation of LED or other energy-saving lighting within two years of the effective date of a new lease.²⁰⁹ Lehigh will also evaluate the applicability of solar on the terminal.²¹⁰

This mitigation measure suffers from two key flaws. First, CEQA forbids delayed implementation of mitigation measures. Once a project “reaches the point where activity will have a significant adverse effect on the environment, the mitigation measures must be in place.”²¹¹ The DEIR fails to explain why it would require two years to install energy efficient lighting at the terminal. The DEIR acknowledges significant GHG emissions impacts, but fails to commit to a feasibly expedited timeline to install energy efficiency measures before work on the Project commences. The DEIR therefore lacks substantial evidence to conclude that MM-GHG-3 will effectively reduce GHG emissions in any reasonable timeframe.

Second, CEQA prohibits deferring identification of mitigation measures when there is uncertainty about the efficacy of those measures.²¹² An agency may only defer formulation of mitigation measures when there is a clear commitment to mitigation that will be measured against specific performance criteria.²¹³ Here,

²⁰⁷ Fox Comments.

²⁰⁸ DEIR, p. 151.

²⁰⁹ *Id.*

²¹⁰ *Id.*

²¹¹ *King & Gardiner Farms LLC v. County of Kern* (2020) 45 Cal.App.5th 814, 860 (quoting *POET, LLC v. California Air Res. Bd.* (2013) 218 Cal.App.4th 681, 738.

²¹² 14 C.C.R. § 15126.4(a)(1)(B); *City of Marina v. Board of Trustees of the California State University* (2006) 39 Cal.4th 341, 366; *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 308–309.)

²¹³ *POET, LLC v. California Air Res. Bd.* (2013) 218 Cal.App.4th 681, 736, 739–740, as modified on denial of reh’g (Aug. 8, 2013), review denied (Nov. 20, 2013); see also *Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260, 281 (EIR deficient for failure to specify performance standards in plan for active habitat management of open space preserve); *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 794 (EIR’s deferral of acoustical report demonstrating structures designed to meet noise standards without setting the actual standards is inadequate for purposes of CEQA).

MM-GHG-3 improperly defers formulation of the plan to reduce energy use and the evaluation of the potential for solar panels on the site. The plan for energy use reduction lacks any specific performance criteria to measure success, such as what measurable energy efficiency improvements the plan must achieve. Moreover, the measure improperly defers the evaluation of the potential for solar to some later date, potentially after Project approval. There is no reason why Lehigh could not conduct this study of solar potential in advance of Project approval such that solar panels too could be included as a binding mitigation measure to help reduce significant GHG emissions impacts.

Therefore, the DEIR must be revised to include additional feasible mitigation requirements as mandated by CEQA.

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

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.²¹⁴ 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.²¹⁵ While the DEIR has some measures to reduce GHG emissions, 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, whether for employee passenger vehicles or for future zero-emission trucks. 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

²¹⁴ *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).

²¹⁵ DEIR, p. 145.

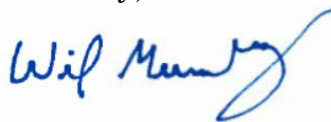
mobile and stationary sources of air pollution, including through entering into VERAs with SJVAPCD.²¹⁶ The DEIR attempts to finagle its way out of this requirement by claiming infeasibility and ineffectiveness. Yet, as our comments show, there is substantial evidence to show that the Port's assertions 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 failure to adopt all feasible and effective mitigation measures to reduce significant environmental impacts. And 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.²¹⁷ A revised EIR is necessary to commit to all feasible mitigation and remedy inconsistencies with the City of Stockton's clean air goals.

X. CONCLUSION

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,



William Mumby

WM:acp

Attachments

²¹⁶ Envision Stockton: 2040 General Plan (December 4, 2018), p. 5-24 (Policy SAF-4.1).

²¹⁷ 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).

ATTACHMENT A

Comments

on the

**Draft Environmental
Impact Report**

for the

Lehigh Southwest Stockton Terminal

Stockton, California

July 6, 2020

By

Phyllis Fox, PhD, PE

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1. INTRODUCTION

Lehigh Southwest Cement Company (Lehigh or the Applicant) owns and operates the Lehigh Southwest Stockton Terminal (Terminal) at 205 Port Road 1 and the adjacent Berth 2 in Stockton, California. This facility is a cementitious material distribution terminal at the Port of Stockton, which receives and ships bulk material. The Applicant is proposing to redevelop this Terminal to accommodate additional capacity and improve operational efficiency. The Project includes a lease modification to increase the terminal leasehold from 5.43 to 7.34 acres. The Project consists of rehabilitation of Berth 2, replacing the ship unloader and rail trestle, installing a barge loading component, and various upland improvements – including replacing an existing storage bunker with a larger storage dome, adding and removing various baghouses, modifications to a truck loading station, a new higher-capacity rail car loading station, and demolition of structures and equipment.

I reviewed the DEIR¹ for this Project prepared by the Port of Stockton (Port), the CEQA lead agency. The public review period granted by the Port is not adequate to review a document as technically complex as this DEIR. The DEIR consists of 594 pages of inadequately supported technical analysis plus many thousands of pages of supporting documents. The allotted review period, May 22 to July 6, contains 46 days, of which 14 are weekend days, including one national holiday, July 4. Assuming a reviewer worked every workday of the review period, she/he would have to read and evaluate 19 pages of dense technical material plus supporting references every single day to finish just the DEIR, leaving little time to review supporting documents and to critically evaluate and reverse engineer the many unsupported calculations in the appendices and then write comments. Few people could devote entire days, including weekends and holidays, to doing nothing but reading and analyzing this DEIR and even fewer are speed readers with the training to figure out how emissions were calculated without inputs, unlocked spreadsheets, modeling inputs, and supporting references, and equations to review.

The DEIR asserts that Appendix E supports the air quality and greenhouse (GHG) gas emissions. However, the majority of the tables in this appendix are illegible photocopies of live Excel spreadsheets that hide the underlying emission calculations, preventing any meaningful review. Moreover, the Port refused to provide unlocked Excel spreadsheets that support air quality and greenhouse gas emission data that the DEIR relies on for its air quality and GHG analyses and significance conclusions. The

¹ Anchor QEA, Draft Environmental Impact Report (DEIR), Lehigh Southwest Terminal Project, State Clearinghouse Number 2019100510, May 2020; https://www.portofstockton.com/wp-content/uploads/2020/05/LehighSWStocktonTerminal_2019100510_DEIR_small.pdf.

DEIR appendices also contain many inconsistencies, requiring the reviewer to sort through hundreds of pages of complex calculations and pdf versions of model inputs and outputs, using reverse engineering to deduce the DEIR's key impact assumptions which should have been clearly laid out for readers to understand. This is beyond the ability of average members of the public and even technical experts, especially without supporting electronic files and cited sources that were withheld by the Port and are not otherwise publicly available during the allotted 46-day review period.

Based on the available material and limited review time, in my opinion the DEIR is substantially deficient and does not fulfill its mandate as an informational document under CEQA to inform the public of potential impacts. It has omitted sources of emissions and underestimated others, thus underestimating air quality, greenhouse gas, and public health impacts. It has further failed to require adequate mitigation for significant impacts that it did identify. My analysis indicates that:

- Construction emissions are unsupported.
- Construction PM10 emissions are significant and unmitigated.
- The operational baseline, 2018, is not supported.
- Operational emissions are not supported.
- Operational emissions are underestimated as they are based on one-way trips for trains, ships, harbor craft, and trucks.
- Significant operational NOx emissions are not mitigated even though feasible mitigation is available.
- Significant cumulative NOx emissions are not mitigated even though feasible mitigation is available.
- Daily NOx emissions in the San Joaquin Valley Air Pollution Control District (SJVAPCD) are significant and unmitigated.
- The DEIR concluded that cumulative operational NOx emissions are significant but failed to require any mitigation.
- The significant GHG emissions can be fully mitigated using carbon offsets and VERAs.

In sum, in my opinion the DEIR is substantially deficient. My analysis below indicates that the Project will result in significant air quality and GHG impacts that have not been identified and/or mitigated. I recommend that the Port recirculate a revised DEIR that addresses the issues discussed below.

My resume is included in Exhibit 1 to these Comments. I have over 40 years of experience in the field of environmental engineering, including air emissions and air pollution control; greenhouse gas (GHG) emission inventory and control; water quality and water supply investigations; hazardous waste investigations; risk of upset modeling; environmental permitting; nuisance investigations (odor, noise);

environmental impact reports (EIRs), including CEQA/NEPA documentation; risk assessments; and litigation support. I have MS and PhD degrees in environmental engineering from the University of California at Berkeley and am a licensed professional engineer in California.

I have prepared comments, responses to comments and sections of CEQA and NEPA documents on air quality, greenhouse gas emissions, water supply, water quality, hazardous waste, public health, risk assessment, worker health and safety, odor, risk of upset, noise, land use, traffic, and other areas for well over 500 CEQA and NEPA documents. This work includes EIRs, EISs, Initial Studies (ISs), Negative Declarations (NDs), and Mitigated Negative Declarations (MNDs). My work has been specifically cited in two published CEQA opinions: *Berkeley Keep Jets Over the Bay Committee, City of San Leandro, and City of Alameda et al. v. Board of Port Commissioners* (2001) 111 Cal. Rptr. 2d 598, and *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal. 4th 310; and has supported the record in many other CEQA and NEPA cases.

2. CONSTRUCTION IMPACTS

2.1. Construction Emissions Are Unsupported, Underestimated, and Significant

The DEIR used the CalEEMod 2016.3.1 model to estimate construction emissions. The use of this model requires supporting construction plans, including a detailed construction schedule that identifies all equipment that will be required to build the Project; phasing descriptions and schedule; detailed construction equipment activity use; the horsepower rating and engine tier for each piece of construction equipment; and employee, delivery, water truck, and other truck use data, including distance traveled.² The text of Appendix E to the DEIR asserts: “The construction schedule and equipment utilization, which form the basis for the emission calculations, are summarized in Appendix E as part of the CalEEMod output.”³ The summary construction schedule in DEIR Table 3 is not adequate to support the construction emissions because it excludes key operational data such as hours of use per day for each piece of equipment, equipment horsepower, and engine tiers.

² See User’s Guide for CalEEMod Version 2016.3.2; <http://www.caleemod.com/>.

³ DEIR, pdf 385.

2.1.1. Missing Information

The DEIR asserts that “[a] full description of construction assumptions, including equipment horsepower rating, can be found in Appendix E, Tables E1.1 through E1.4.”⁴ However, these tables do not contain any assumptions, but rather only the results of complex calculations based on undisclosed assumptions.

The table of contents of Appendix E1: Construction Calculations, indicates that only the “CalEEMod Output” is included.⁵ My review of the complete DEIR, Appendix E, and files produced in response to PRAs confirms that only the “output” is provided. My client requested the native format input and output files generated by the CalEEMod model, which was used to estimate construction emissions. They were not provided.

The accuracy of construction emissions cannot be determined without unlocked modeling files or hardcopies thereof, containing the CalEEMod inputs. My review of the DEIR and all produced documents indicates that most CalEEMod inputs are not disclosed in the DEIR or in any of the produced documents. The missing information includes a detailed construction schedule⁶ and construction equipment tiers assumed in the CalEEMod analyses. The assumed engine tiers determine construction emissions and are missing from the DEIR. Native format CalEEMod inputs and outputs, requested in PRAs, were not produced and are essential to verify the construction emissions. These are critical omissions because the construction calculations cannot be verified without a detailed construction schedule, engine tier for each piece of equipment, and native format CalEEMod modeling files.

2.1.2. Engine Tier

The engine tier is particularly critical because it directly determines emissions from construction equipment. If the calculations are based on Tier 4 equipment, which has the lowest emissions, and the EIR fails to require Tier 4 equipment for all construction equipment, construction emissions and construction health impacts would be higher than calculated in the DEIR and therefore could be significant. Thus, the DEIR fails as an informational document under CEQA.

2.1.3. Fugitive Dust

Finally, the CalEEMod model does not calculate all sources of construction emissions. Some must be separately estimated and added to the CalEEMod output.

⁴ DEIR, pdf 97.

⁵ DEIR, pdf 391.

⁶ A summary is in Table 3, pdf 47.

Windblown dust, for example, can be a significant source of fugitive PM10 and PM2.5 dust. CalEEMod does not estimate “fugitive dust generated by wind over land and storage piles”⁷ because of the number of input parameters required – such as soil type, moisture content, wind speed, and so on. The CalEEMod Technical Paper states that this limitation “could result in underestimated fugitive dust emissions if high winds and loose soil are substantial characteristics for a given land use/construction scenario.”⁸

This DEIR has resulted in a significant underestimate of fugitive PM10 and PM2.5 emissions during construction for failure to estimate fugitive dust emissions. Instead, the DEIR has tacitly assumed these emissions are zero by failing to calculate them (they are excluded from CalEEMod). The DEIR, for example, states the Project will comply with SJVAPCD fugitive dust rules 8021, 8061, and 8041.⁹ However, reliance on fugitive dust rules does not eliminate 100% of fugitive PM10 and PM2.5 emissions. Further, these rules do not address disturbed surfaces left overnight. These emissions must still be calculated.

These rules provide fugitive dust control requirements for construction, demolition, excavation, extraction, and other earthmoving activities.¹⁰ However, reliance on a rule, without first calculating the emissions and applying the proposed controls to determine if the impact is eliminated does not satisfy CEQA.

Frequent hot, dry, high-wind events occur in the area in spring and fall, with wind speeds of up to 40–50 mph, known as Diablo winds. Figure 1.

Figure 1. Diablo Winds.¹¹



⁷ CalEEMod User’s Guide, p. 55.

⁸ CalEEMod, Technical Paper, Methodology Reasoning and Policy Development of the California Emission Estimator Model, July 2011, p. 4.

⁹ DEIR, pdf 94-95.

¹⁰ DEIR, pdf 94.

¹¹ AccuWeather, What are Diablo Winds; <https://www.accuweather.com/en/severe-weather/what-are-diablo-winds/613878>.

My analysis of Stockton wind data¹² for the period 2013 to 2017 identified the highest wind speed of 110 mph on November 29, 2016 at 10 AM. Winds exceeded 50 mph for 128 hours over these 5 years.¹³ The CalEEMod analysis, on the other hand, assumed a wind speed of 6 mph,¹⁴ but failed to calculate any fugitive PM_{2.5} or PM₁₀ emissions. The much higher winds that occur at the Project site can cause substantial emissions of fugitive dust particulate matter, particularly from disturbed surfaces, even assuming Rules 8011 and 8021 are fully complied with.

Further, high winds also occur at night. Thus, unless the construction contractor is required to water throughout the night to maintain soil moisture, wind erosion could occur in the period when the water from the last watering event in the evening has evaporated and before the first watering event the next morning. The controls in SJVAPCD Rule 8021 are for “temporary stabilization during periods of inactivity apply to areas that are unused for seven or more day.” Thus, they do not require dust control when the site is not being actively constructed during shorter periods, such as nighttime hours and weekends. This is of particular concern during the hot summer months, when average high temperatures can exceed 100°F and evaporation rates are high. Rules 8011 and 8021 contain no requirement to water throughout the night or to increase watering on hot day.

As high winds can reach 30 to 50 mph, even up to hurricane speeds,¹⁵ they can raise significant amounts of dust, even when conventional tracking and other such controls are used to control dust, often prompting alerts from air pollution control districts. The DEIR did not include any wind data, not even a wind rose, which is commonly found in CEQA documents. Instead, the only reference to winds is the CalEEMod default of 2.7 m/s.¹⁶ If high winds occurred during grading, cut and fill, or soil movement, or from bare graded soil surfaces during non-working hours, even if periodically wetted, significant amounts of fugitive dust would be released. These emissions could result in public health impacts due to violations of state and federal ambient air quality standards for PM₁₀ and PM_{2.5}. PM₁₀ and PM_{2.5} emissions from these events were not included in the DEIR, and no air dispersion modeling was

¹² Stockton Wind Data, 2013-2017; https://www.valleyair.org/busind/pto/Tox_Resources/AirQualityMonitoring.htm#met_data.

¹³ Stockton Wind Data, Exhibit 2.

¹⁴ DEIR, pdf 394, 2.7 m/s = 6.0 mph (mi/hr).

¹⁵ Daphne Thompson, The Diablo Winds of California; <https://blog.wdtinc.com/the-devil-winds-of-california>.

¹⁶ DEIR, pdf 394.

conducted to evaluate their impact on local ambient air quality. Thus, the DEIR fails as an informational document under CEQA.

2.1.4. Construction PM10 Emissions Are Significant

The major source of PM2.5 and PM10 emissions, for example, is windblown dust from disturbed surfaces such as graded areas and stockpiles. Significant grading will be required. The geology section of the DEIR, for example, explains that the entirety of the project site contains expansive soils and that “[g]rading, site preparations, and backfill operations” will be required to eliminate the potential for expansion.¹⁷ In spite of these recognized geological conditions, the CalEEMod calculations assumed no grading for either site preparation or the grading phase!¹⁸ The DEIR does not provide separate emission estimates for windblown dust from the areas that would be graded or otherwise disturbed and thus has underestimated fugitive PM10 and PM2.5 emissions.

Wind erosion emissions are typically calculated using methods in AP-42,¹⁹ which require detailed information on site topography, wind profiles, and dispersion modeling. The EIR does not include any calculations of wind erosion emissions or their resulting ambient air quality impacts. Further, none of the information required to estimate wind erosion emissions is included or cited in the DEIR. Thus, the DEIR fails as an information document under CEQA.

In the absence of this information, AP-42 includes a generic construction emission factor of 1.2 tons of total suspended material per acre per month of construction activity.²⁰ This calculation requires the acres to be graded. The DEIR is inconsistent on this fundamental piece of information. The Project is variously asserted to increase the Terminal area from 5.43 to 7.43 acres²¹ and elsewhere, from 6.24 to 8.08 acres,²² while the CalEEMod calculations are based on 8.03 acres.²³ Regardless of the area, the DEIR failed to estimate any fugitive dust emissions, because they are excluded from CalEEMod and thus have been omitted from the DEIR. Therefore, the DEIR fails as an informational document under CEQA.

¹⁷ DEIR, pdf 144.

¹⁸ DEIR, pdf 399.

¹⁹ U.S. EPA, AP-42, Section 13.2.5, Industrial Wind Erosion;
<https://www3.epa.gov/ttnchie1/ap42/ch13/final/c13s0205.pdf>.

²⁰ AP-42, Section 13.2.3.3: Heavy Construction Operations, p. 13.2.3-1.

²¹ DEIR, pdf 3, 26, 37.

²² DEIR, pdf 273, 345, 354.

²³ DEIR, pdf 394.

Assuming that the newly added acreage of $8.03 - 5.43 = 2.6$ acres is disturbed on the maximum day, TSP emissions would be 208 lb/day.²⁴ Studies indicate that on average, PM10 accounts for 34% to 52% of the TSP when watering is used for dust control.²⁵ Thus, earthmoving activities could generate up to 108 lb/day of PM10 when grading only the new acreage added to the Port's property,²⁶ exceeding the significance threshold of 100 lb/day.²⁷ Actual emissions could be higher if existing acreage were graded on the same day. There is nothing in the DEIR that would prevent this. In sum, construction PM10 emissions are significant and unmitigated because my calculations assume compliance with SJVAPCD Rule 8021.

2.2. Construction Mitigation Is Inadequate

Even though the DEIR did not acknowledge any significant construction air quality impacts, it nevertheless included construction mitigation. In my opinion, this is likely due to undisclosed and infeasible assumptions buried in the missing CalEEMod input.

Air quality mitigation measure MM-AQ-2 requires the use of Tier 4 engines during construction with some notable exceptions:²⁸

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.

The efficacy of this mitigation measure depends on the engine tiers assumed in the CalEEMod analysis. As noted in Comment 2.1.2, it is impossible to determine the engine tiers assumed in the construction emission calculations because the CalEEMod inputs are omitted from the DEIR and were not produced despite numerous PRA requests.

However, in my opinion, based on decades of work on similar projects, the nature of the project and the DEIR's estimate of construction emissions, it is likely that the CalEEMod analysis assumed 100% Tier 4 equipment. Thus, this mitigation measure

²⁴ Earthmoving TSP emissions = $(1.2 \text{ ton/acre-month})(2.6 \text{ acres})(2000 \text{ lb/ton}) / (30 \text{ day/month}) = 208 \text{ lb/day}$.

²⁵ Ingrid P.S. Araujo, Dayana B. Costa, and Rita J.B. de Moraes, Identification and Characterization of Particulate Matter Concentrations at Construction Job Sites, *Sustainability*, v. 6, pp. 7666-7688, 2014, Table 5. <https://ideas.repec.org/a/gam/jsusta/v6y2014i11p7666-7688d41878.html>.

²⁶ Earthmoving PM10 emissions = $(208 \text{ lb/day})(0.52) = 108 \text{ lb/day}$.

²⁷ DEIR, Table 11, pdf 101 (construction PM10 significance threshold = 100 lb/day).

²⁸ DEIR, pdf 109.

is not mitigation, but an after-the-fact attempt to align Project construction emissions with assumptions used to calculate emissions but hidden from view in withheld modeling files. However, it may not be possible to construct the Project with all Tier 4 equipment due to its limited availability. Thus, construction emissions are underestimated and the exceptions in this mitigation measure could result in significant impacts.

First, “specialized equipment” in this mitigation measure is not defined or identified. Without a list of “specialized equipment” and a justification for excluding them from Tier 4 standards, this classification could be used to exempt significant portions of the construction fleet from meeting Tier 4 standards. Further, the DEIR fails to disclose what engine tiers were assumed for “specialized equipment” in the CalEEMod analysis. If Tier 4 was assumed, this exclusion would increase construction emissions significantly if the term “specialized equipment” is broadly defined to include a significant fraction of the construction fleet. Thus, it is impossible to determine whether this exclusion would result in a significant impact. This mitigation measure should be expanded to list all “specialized equipment” subject to this exemption to avoid a broad application that would exempt a significant fraction of the construction fleet.

Second, the DEIR indicates that generator sets and welders that were included in the CalEEMod analysis are less than the 50 hp exclusion.²⁹ The DEIR fails to disclose the engine tiers assumed for this equipment, but presumably they were Tier 4. These can be major sources of emissions if not controlled. The DEIR did not disclose the emission factors or engine tier assumed for this equipment.

Third, the DEIR is silent on what constitutes “availability.” Does this mean that if the chosen contractor based on, for example the low bid, does not have a Tier 4 fleet, the Applicant is off the hook? If the construction emission calculations assume Tier 4 for all construction equipment, the Request for Proposal (RFP) should specifically require Tier 4 equipment. Further, the Applicant should be required to specify this as a condition for any contract that is let for construction.

Fourth, the DEIR is silent on the nature of “retrofits” that could meet Tier 4 standards. Is a “retrofit” a new Tier 4 engine or a Tier 3 engine? Or is a “retrofit” an add-on control device? Some retrofits, for example, such as selective catalytic reduction (SCR) used to control NO_x, have secondary impacts that must be considered (e.g., ammonia slip), which result in PM_{2.5} emissions. And how would it be documented that a retrofit meets Tier 4?

²⁹ DEIR, pdf 399-400.

Fifth, construction NOx emissions may be significant even assuming this mitigation measure because it is likely that the CalEEMod assumed Tier 4 for all construction equipment. Exempting a potentially significant portion of the construction fleet from Tier 4 standards as proposed in this “mitigation” measure could result in undisclosed significant construction NOx impacts. Thus, the DEIR fails as an informational document under CEQA.

3. OPERATIONAL EMISSIONS

The DEIR concludes that the increase in annual operational NOx emissions in the San Joaquin Valley Air Basin³⁰ and the Bay Area Air Quality Management District (BAAQMD)³¹ are significant relative to a 2018 baseline. The DEIR also concludes that annual operational emissions of all other pollutants and daily operational emissions of all pollutants in all air basins relative to the 2018 baseline are not significant³² with the exception of daily NOx emissions in the BAAQMD.³³ However, the DEIR has significantly underestimated operational emissions, thus hiding other significant impacts.

3.1. The Baseline Is Unsupported

The Project will increase product throughput at the Terminal. Emissions are calculated relative to the pre-Project baseline throughput. The DEIR selected 2018 as the baseline for calculating the increase in emissions.³⁴ The DEIR asserts that “At the time the NOP was issued for the proposed project, the calendar year 2018 was chosen as the baseline because it represented the most recent full year of throughput data.”³⁵ In 2018, the facility received and transferred 883,793 tons of cement and slag, arriving and/or leaving in 18,720 trucks, 587 rail cars, and 9 ships.³⁶ This is the wrong reason for selecting a baseline under CEQA.

The baseline for calculating the increase in emissions should be based on the average conditions prior to implementation of a Project, to avoid cherry picking a high number to minimize impacts. The DEIR admits that “[t]hroughput has fluctuated since the SJVAPCD permit was granted in 2016; however it has not exceeded 1 million annual

³⁰ DEIR, Table 12 and pdf 102-103.

³¹ DEIR, Table 14.

³² DEIR, Tables 13 and 17.

³³ DEIR, Table 15.

³⁴ DEIR, Tables 2, 9.

³⁵ DEIR, pdf 45.

³⁶ DEIR, Table 2, pdf 46.

tons.”³⁷ The DEIR then asserts with no support that “2018 is a representative year of baseline operations.”³⁸ However, if the actual baseline is substantially lower than in 2018, the increase in emissions would be much higher than disclosed in the DEIR, potentially resulting in additional air quality and GHG impacts that are not disclosed in the DEIR.

In my experience, CEQA documents and permit applications generally include a table showing the prior 5 to 10 years of throughput data to assure that a representative baseline is selected. The DEIR based its emission calculations on 2018, without addressing whether it is representative of Terminal throughput for the subject materials. If 2018 throughputs were anomalously high, the use of 2018 would underestimate emissions. Thus, the DEIR has failed to support the basis of its emission calculations, the average throughput prior to implementation of the Project.

3.2. Operational Emissions Are Unsupported

The DEIR fails to support its emissions and the conclusion that all air quality impacts are not significant, with the exception of annual operational NOx emissions in the San Joaquin Valley Air Basin. The supporting calculations are theoretically included in Appendix E.³⁹ However, my review of Appendix E indicates that the appendix only reports the results of complex emission calculations. The subject tables are in pdf format, which is a photo of the results of hundreds of complex calculations imbedded in the electronic version of the underlying Excel spreadsheets. Further, the tables are not standalone, but rather linked in ways that are not obvious. Thus, the actual emission calculations themselves are hidden from view in pdf versions of the native Excel spreadsheets used to make the calculations. In order to confirm the operational emissions calculations, I would have to re-create the emission spreadsheets from scratch, which would take far more time (and information) than included in the DEIR, within the allotted 45-day review period.

My client requested unlocked Excel spreadsheets that support the operational emissions calculations. However, the Port thus far has declined to supply the unlocked Excel spreadsheets. Thus, as a practical matter, the emission calculations in the DEIR are unsupported as no one could verify the emission calculations during the 45-day review period based on the limited information in DEIR Appendix E because all of the inputs and calculations are hidden in Excel cells that can only be seen with unlocked spreadsheets.

³⁷ DEIR, pdf 46.

³⁸ DEIR, pdf 46.

³⁹ DEIR, Appendix E, Air Quality and Greenhouse Gas Emissions, pdf 384-511.

The emissions could be verified by tedious trial and error calculations, but certainly not by members of the public and certainly not even by an expert within the available review time (45 days). They can only be verified with the unlocked version of the Excel spreadsheet tables in Appendix E, so that calculations can be confirmed, assumptions identified, and cross-links among the tables can be found.

I have worked on hundreds of CEQA and other cases that included emission calculations summarized in pdf versions of Excel spreadsheets. It is standard practice to file a Public Records Act (PRA) or other similar request, depending upon the state and agency, to obtain the unlocked Excel spreadsheets to facilitate review. In response, the lead agency generally supplies the unlocked spreadsheets. In cases where the lead agency has declined (which are very few) and my client challenged the decision, we obtained the unlocked Excel spreadsheets. In cases where some of the information is confidential, the unlocked Excel spreadsheets are provided under a confidentiality agreement.

For example, in the Newland Sierra case, the County of San Diego declined to provide unlocked Excel spreadsheets in response to PRAs. My client sued.⁴⁰ In response to the lawsuit, the County agreed that the unlocked Excel spreadsheets constituted public records under the California Public Records Act and were not subject to any exemptions from disclosure.

These spreadsheets are critical to understanding and evaluating the accuracy of the emission calculations in Appendix E. Many undisclosed complex calculations and assumptions are required to convert the information in the Appendix E tables into the emissions in DEIR Tables 12-17. The supporting emission calculations that yield emissions in ton/yr and lb/day in these tables are based on information that is not disclosed in the DEIR, but rather that is buried in the pdf versions of the Excel spreadsheets used to make the calculations.

In sum, my review of Appendix E indicates that the emission summaries in Tables 12-17 are not supported by Appendix E. There are significant gaps between the inputs in Tables E2.11 to E2.54 and the emission summaries in Tables 12-17. The equations required to convert the inputs in Tables E2.11 to E2.54 into the emission summaries in Tables 12-17 are missing from the record. Further, emissions from electricity to operate the equipment required to support ships at berth and other ancillary equipment are missing from the calculations. Thus, the emissions in DEIR

⁴⁰ Verified Petition for Peremptory Writ of Mandate and Complaint for Declaratory and Injunctive Relief, *Golden Door Properties, LLC v. County of San Diego*, Case No. 37-2017-00038561-CU-MC-CTL, filed October 13, 2017, Exhibit 3.

Tables 12-17 are unsupported and underestimated. The DEIR fails as an informational document under CEQA.

3.3. Operational Emissions Are Underestimated

The DEIR text⁴¹ and tables in Appendix E⁴² indicate that the emission summaries in Tables 12-17 are based on one-way trips for trucks, barges, and train. The truck emissions in Table E2.11,⁴³ for example, are based on up to 39,722 “1-way” annual truck trips in 2036 and “1-way” distance traveled of 153 miles. Similarly, barge shipping and rail shipping activity is based on “1-way” trips.⁴⁴ Finally, a note to Table E2.11 indicates that “all calls are expressed in one-way moves.” The emissions should be based on roundtrip trips and miles. Thus, emissions are underestimated by a factor of two. While this does not result in any new impacts, it doubles the amount of mitigation that will be required for significant NOx operational impacts reported in DEIR Tables 12, 14, and 15.

Finally, the emissions calculated in Appendix 4 are based on many assumptions, most of which are hidden from view because the Port failed to provide unlocked Excel spreadsheets. These include assumed engine tiers and energy use. The DEIR does not impose any mitigation or restrictions limiting operation of the facility in accordance with the assumptions in the emission calculations. Thus, the emissions are unenforceable.

3.4. Daily Operational NOx Emissions Are Significant

The DEIR concludes that daily operational NOx emissions are not significant in all air basins that were evaluated. This conclusion is incorrect because the DEIR omitted many sources of NOx emissions from the daily emission inventory that were included in the annual emission inventory. Further, the DEIR’s emission calculations assume that the Terminal operates 365 days per year. However, the DEIR explains that the Terminal only operates Monday through Saturday, with occasional Sunday operations.⁴⁵ Thus, I revised the DEIR’s daily emission calculations to include all emission sources included in the annual inventory and to further assume 312 days of operation. The results, summarized in Table 1, indicate that the increase in daily NOx

⁴¹ DEIR, pdf 385 (23,780 one-way trips).

⁴² DEIR, Table E2-11, pdf 435 [annual truck trips (1-way)].

⁴³ DEIR, Table E2.22, pdf 287.

⁴⁴ DEIR, Table E2.11, pdf 435 [barge shipping activity: miles traveled (1-way) and rail shipping activity: annual train trips (1-way)].

⁴⁵ DEIR, pdf 44.

emissions in the SJV air basin in Year 15 (105 lb/day>100 lb/day) due to the Project are significant. This a new significant impact that was not disclosed in the DEIR and is not mitigated.

Table 1: Revised Daily NOx Emissions (lb/day)

	Project SJVAPCD						pdf	Net Increase Relative to Baseline		
	Baseline	Year 1	Year 5	Year 15a	Year 15b	Year 15c		Year 1	Year 5	Year 15
Trucks On-Site	1.01	1.20	1.87	2.20			494	0.20	0.86	1.19
Trucks Off-Site	24.57	36.50	42.35	47.73			494	11.93	17.78	23.16
Ships Maneuvering	4.28	9.98	18.54	22.82			485	5.70	14.26	18.54
Ships Transit	5.28	12.31	18.54	28.12			485	7.03	13.27	22.85
Ships at Berth	17.20	40.01	37.20	45.74	45.74	45.74	484	22.81	20.00	28.54
Tug Boats Maneuvering	4.80	11.35	20.94	5.39	2.25	7.64	489	6.55	16.14	2.84
Tug Boats Transit	0	0	0	0	2.46	2.46	489	0.00	0.00	2.46
Tug Boats Berth	0.58	1.28	2.37	0.61	0.26	0.87	489	0.69	1.79	0.28
Rail In Transit (Switching + Transit)	4.31	12.54	8.56	7.11			503	8.24	4.26	2.81
Rail On Site (Switching)	1.04	3.36	1.68	2.11			503, 508	2.32	0.64	1.06
Employee Vehicles	0.09	0.09	0.05	0.02			496	0.00	-0.05	-0.07
Conveying/Loading	0	0	0	0			509	0.00	0.00	0.00
Mobile On-Site	0.19	0.45	0.90	1.09			509	0.26	0.71	0.90
TOTAL	63.34	129.06	153.01	162.95				65.72	89.67	104.57

3.5. Operational NOx Mitigation Is Inadequate

The DEIR concludes that Project and cumulative air quality impacts are “significant and unavoidable.”⁴⁶ The only mitigation proposed for the significant operational NOx impacts is mitigation measures MM-AQ-3, MM-AQ-4, and MM-AQ-5.⁴⁷ These measures are drops in the bucket compared to the significant increases in NOx.

First, MM-AQ-3 limits on-site idling time to 2 minutes.⁴⁸ Idling is a very minor source of NOx emissions. The emission calculations indicate that reducing idling time from 20 minutes assumed in the emission calculations to 2 minutes would reduce 2.6% to 3.8% of the NOx emissions between year 1 and year 15 of the Project.⁴⁹

Second, MM-AQ-4 requires the use of “clean trucks” to transport cementitious material “where possible.” Conditions that define “possibility” are not disclosed.

⁴⁶ DEIR, Table ES-1.

⁴⁷ DEIR, pdf 100.

⁴⁸ DEIR, pdf 109.

⁴⁹ DEIR, pdf 450, Table E2.24, idling time.

Further, clean trucks are defined as model year 2017 or newer.⁵⁰ The Project emission calculations assumed 2017 trucks.⁵¹ Thus, this mitigation would do nothing to mitigate the significant NOx emissions in Tables 12, 14, and 15.

Third, the use of clean yard equipment is non-specific. The DEIR identifies yard equipment as including a sweeper, front-end loaders, and a rail-mounted yard wagon to move rail cars.⁵² However, my review of the emission calculations in Appendix E did not identify any emissions from “yard equipment.” Thus, if NOx emissions from this equipment were omitted from the emission calculations, this mitigation measure would not mitigate any NOx emissions. Regardless, the DEIR itself admits that yard equipment is not a significant source of emissions.⁵³

The significant NOx emissions can be fully mitigated using the Voluntary Emission Reduction Agreement (VERA) program developed and widely used by the SJVAPCD. The DEIR acknowledges VERAs, but fails to require them as mitigation, erroneously assuming that VERAs cannot ensure timely and effective CEQA mitigation of on-site emissions.⁵⁴ This is incorrect.

The significant increase in NOx emissions could be fully mitigated using VERAs. Various agencies already use them as CEQA mitigation, as discussed below. A *Voluntary Emission Reduction Agreement* would require Lehigh to make a one-time payment for its significant NOx emissions in excess of significance thresholds to each affected air district.

Kern County has used Development Mitigation Contracts (DMCs) to mitigate CEQA impacts since 2008. They are mandated by enforceable mitigation measures under CEQA and thus are called DMCs.⁵⁵

The SJVAPCD uses VERAs to implement its Rule 9510 and to address mitigation requirements under CEQA. Under a VERA, the developer (in this case Lehigh) fully mitigates project emission impacts by providing funds to the affected air district, in this case the BAAQMD and the SJVAPCD. The air district then uses these funds to

⁵⁰ DEIR, pdf 109.

⁵¹ DEIR, pdf 427 and Table E2.51.

⁵² DEIR, pdf 44.

⁵³ DEIR, pdf 110.

⁵⁴ DEIR, pdf 111.

⁵⁵ Kern County, Final Environmental Impact Report for Revisions to the Kern County Zoning Ordinance – 2015, 2015, p. 4.3-49, 4.3-102/103; <https://kernplanning.com/final-environmental-impact-report-revisions-kern-county-zoning-ordinance-2015-c-focused-oil-gas-local-permitting/>.

administer emission reduction projects on behalf of the developer. These agreements are incorporated into the SJVAPCD's CEQA Guidelines, which explain:

Design elements, mitigation measures, and compliance with District rules and regulations may not be sufficient to reduce project-related impacts on air quality to a less than significant level. In such situations, project proponents may enter into a Voluntary Emission Reduction Agreement (VERA) with the District to reduce the project related impact on air quality to a less than significant level. 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. A VERA can be implemented to address impacts from both construction and operational phases of a project.

To implement a VERA, the project proponent and the District enter into a contractual agreement in which the project proponent agrees to mitigate project specific emissions by providing funds to the District. The District's role is to administer the implementation of the VERA consisting of identifying emissions reductions projects, funding those projects and verifying that emission reductions have been successfully achieved. The VERA implementation process also provides opportunity for the project proponent to identify specific emission reduction projects to be administered by the District. The funds are disbursed by the District in the form of grants. Types of emission reduction projects that have been funded in the past include electrification of stationary internal combustion engines (such as agricultural irrigation pumps), replacing old heavy-duty trucks with new, cleaner, more efficient heavy-duty trucks, and replacement of old farm tractors.

The District verifies the actual emission reductions that have been achieved as a result of completed grant contracts, monitors the emission reduction projects, and ensures the enforceability of achieved reductions. The initial agreement is generally based on the projected maximum emissions increases as calculated by a District approved air quality impact assessment, and contains the corresponding maximum fiscal obligation. However, the District has designed flexibility into the VERA such that the final mitigation can be based on actual emissions related to the project as determined by actual equipment used, hours of operation, etc. After the project is mitigated, the District certifies to the Lead Agency that the mitigation is completed, providing the Lead Agency with an enforceable

mitigation measure demonstrating that project specific emissions have been mitigated to less than significant.

To ensure all feasible mitigation measures are incorporated into the project to reduce project air quality impact to less than significant, the District recommends the project proponent (and/or Lead Agency) engage in discussion with the District to have the VERA adopted by the District prior to the finalization of the environmental document. This process will allow the environmental document to appropriately characterize the project emissions and demonstrate that the project impact on air quality will be mitigated to less than significant under CEQA as a result of the implementation of the adopted VERA. The District has been developing and implementing VERA contracts with project proponents to mitigate project specific emissions since 2005. It is the District's experience that implementation of a VERA is a feasible mitigation measure, which effectively achieves the emission reductions required by a Lead Agency, including mitigation of project-related impacts on air quality by supplying real and contemporaneous emissions reductions. Therefore, Lead Agencies should require the project proponent to negotiate a VERA with the District prior to the Lead Agency's final approval of the CEQA document. This allows the Lead Agency to disclose to the public the certainty that the VERA is assuring full mitigation of air quality impacts as specified in the environmental review document or equivalent documentation certified by the Lead Agency.⁵⁶

The SJVAPCD is one of the two air districts where significant Project NO_x impacts would occur. From 2005 through June 30, 2017, the SJVAPCD has entered into over 32 VERAs.⁵⁷ VERAs have been identified as mitigation measures within other environmental documents that underwent public review under CEQA.⁵⁸ Types of projects that have been funded include electrification of stationary internal combustion engines (such as agricultural irrigation pumps, present throughout the SJVAPCD and in the vicinity of the Project), replacing old heavy-duty trucks with new, cleaner, more efficient heavy-duty trucks (present in both affected air districts), and replacing old

⁵⁶ SJVAPCD, Final Draft Guidance for Assessing and Mitigating Air Quality Impact, February 19, 2015, pp. 116-117; <https://www.valleyair.org/transportation/GAMAQI-2015/FINAL-DRAFT-GAMAQI.PDF>.

⁵⁷ SJVAPCD, 2017 Annual Report, Indirect Source Review Program, Reporting Period: July 1, 2016 to June 30, 2017, pp. 5, 9; <https://valleyair.org/ISR/Documents/2017-ISR-Annual-Report.pdf>.

⁵⁸ SJVAPCD, Summary of Comments and Responses to Proposed Revisions to the GAMAQI-2012, May 31, 2012, p. 3; <https://www.valleyair.org/transportation/GAMAQIDRAFT-2012/GAMAQIResponsetoComments5-10-12%20.pdf>.

farm tractors (present throughout the SJVAPCD and in the vicinity of the Project). The SJVAPCD has repeatedly concluded that a VERA “is a feasible mitigation measure under CEQA, effectively achieving emission reductions necessary to reduce impacts to a less than significant level.”⁵⁹

This approach, for example, was recently proposed by Kern County to mitigate impacts from oil and gas drilling and was vigorously upheld in the response to comments, concluding that it is “an enforceable mitigation measure that will effectively ‘zero out’ new project emissions of NO_x, PM₁₀, and ROG_s by generating equivalent emissions reduction through equipment replacements and other measures funded by the mitigation fees.”⁶⁰ Other air districts also use this approach, including Placer County APCD and Sacramento Metropolitan AQMD.

This approach has been found legally sufficient by court rulings in the following cases: *California Building Industry Assn. v. San Joaquin Valley APCD*, Fresno County Case No. 06 CECG 02100 DS13; *National Association of Home Builders v. San Joaquin Valley Unified Air Pollution Control District*; Federal District Court, Eastern District of California, Case No. 1:07-CV-00820-LJO-DLB; and *Center for Biological Diversity et al v Kern County*, Fifth Appellate District, Case No. F061908.

The Port should require the use of VERAs as binding mitigation to reduce the Project’s significant and unavoidable NO_x air quality impacts in the SJVAPCD and the BAAQMD. Under such an agreement, Lehigh would pay an air emission mitigation fee pursuant to an agreement between the Port of Stockton and the affected air district to fully offset new emission increases. The air district would then use the fees to reduce emissions within the district. The SJVUAPCD has found that the cost for NO_x reductions is \$8,123 per ton.⁶¹

The voluntary mitigation program would have to be designed to ensure that impacts are reduced at the place and time that they actually occur – that is, continuously in areas in the vicinity of the terminal, rail lines, and shipping routes. For example, emissions from ships and rail lines that pass through irrigated farmlands, which are abundant in the Sacramento-San Joaquin Delta where the Port is located, could be mitigated under VERAs by electrifying irrigation pumps or replacing low tier tractors and other farm equipment with higher tier equivalents. Emissions from rail lines that pass through residential areas could be mitigated by installing solar panels on

⁵⁹ SJVAPCD 2017, pp. 5, 9.

⁶⁰ Kern County Oil & Gas FEIR, Responses to Comments, September 2015, pp. 7-184/185; http://psbweb.co.kern.ca.us/UtilityPages/Planning/EIRS/oil_gas/RTC/Oil_Gas_FEIR_Vol3_Chapter_7.2.1.pdf.

⁶¹ SJVAPCD 2017, Table 3, pdf 11.

homes and commercial buildings in the vicinity of the rail tracks, or by replacing fireplaces and woodburning stoves with more efficient heating methods such as heat pumps. Emissions from trucks that transport product to market could be mitigated by upgrading the engines of an equivalent number of trucks that service the Port to Tier 4.

3.6. Cumulative NOx Mitigation Is Inadequate

The DEIR concluded that the Project would result in a significant cumulatively considerable net increase in NOx, but asserted this impact is “significant and unavoidable.” However, the DEIR only proposes mitigation measures MM-AQ-1 to MM-AQ-5.⁶² As explained in Comment 3.5, these mitigation measures reduce very little of the significant increase in NOx emissions. The significant cumulative NOx impact can be fully mitigated using VERAs, discussed in Comment 3.5.

4. GREENHOUSE GAS EMISSIONS

The DEIR concludes that greenhouse gas (GHG) emissions are significant and unavoidable after requiring air quality mitigation measures MM-AQ-1 to MM-AQ-4.⁶³ As explained in Comment 3.5, these cited air quality mitigation measures do not significantly reduce emissions. There are other feasible methods that should be required to fully reduce GHG emissions.

The significant GHG impact can be fully mitigated by using direct GHG emission reduction activities and/or carbon offsets. Other EIRs have relied on these methods to mitigate significant GHG impacts.

First, the use of VERAs to mitigate significant NOx impacts will also mitigate GHG impacts.

Second, carbon offsets are viable methods to reduce GHG impacts and have been used to mitigate significant GHG impacts in other EIRs. For example, the CARB Southern California Consolidation Project DEIR⁶⁴ requires CARB to fully mitigate the construction related GHG emissions using offsets before any grading takes place and to fully mitigate 100% of its annual operational GHG emissions each year for the life of the project. This would be achieved as follows:

⁶² DEIR, Table ES-1, pdf 9 and Section 4.2.2.2.

⁶³ DEIR, pdf 11.

⁶⁴ CARB, Southern California Consolidation Project Draft Environmental Impact Report, March 2017 (CARB, March 2017); https://www.dudek.com/SoCalConsolidationCEQA/ARB_SCCP_Draft_EIR_March2017.pdf.

Direct Reduction Activities

Under this option, ARB will seek to directly undertake or fund feasible and cost-effective activities that reduce or sequester GHG emissions on a ton per ton basis to mitigate operational emissions. Direct investment opportunities include, but are not limited to, funding building retrofits programs that invest in: cool roofs, solar panels, solar water heaters, smart meters, energy efficient lighting (including, but not limited to, light bulb replacement), energy efficient appliances, energy efficient windows, insulation, water conservation measures, and any other similar retrofit measures associated with green buildings within the geographic area of the South Coast Air Quality Management District. As part of the Monitoring and Mitigation Reporting Program, ARB shall prepare a report that quantifies the emissions and credits and provides supporting technical documentation. ARB will post the report on ARB's webpage. ARB will select the methodologies and self-monitor the Mitigation Monitoring and Reporting Program during the operations phase as described below in the 'Approach to Implementation on MM-GHG-2'.

Carbon Credits

If the mitigation measures above do not reduce annual operational emission to zero, ARB may consider purchasing and retiring offsets from an accredited registry. As part of the Monitoring and Mitigation Reporting Program, ARB shall prepare a report that quantifies the emissions and credits and provides supporting technical documentation. ARB will post the report on ARB's webpage. ARB will select the methodologies and self-monitor the Mitigation Monitoring and Reporting Program during the operations phase as described below in the 'Approach to Implementation on MM-GHG-2'.

The Bilby Ridge Sphere of Influence DEIR also encourages the applicant “to consider generating or purchasing local and California-only carbon credits as the preferred mechanism to implement its off-site mitigation measure for GHG emissions and that will facilitate the State’s efforts in achieving the GHG emission reduction goal.” Compliance “shall be provided” in the application to the lead agency, LAFCO.⁶⁵ For example, Table ES-1, pp. ES-32/33 states:

- ▲ Require the project to purchase carbon credits from the CAPCOA GHG Reduction Exchange Program, American Carbon Registry, Climate Action Reserve or other similar carbon credit registry determined to be acceptable by the local air district
 - ▲ Encourage the applicant to consider generating or purchasing local and California-only carbon credits as the preferred mechanism to implement its off-site mitigation measure for GHG emissions and that will facilitate the State’s efforts in achieving the GHG emission reduction goal
- Evidence of compliance with this mitigation measure shall be provided in the annexation application to LAFCo.

Alternatively, the Chevron Refinery FEIR, for example, required Chevron to provide \$30 million over 10 years to fund the implementation of the “Community Greenhouse Gas Reduction Measures,” which measures “shall be selected by the City

⁶⁵ Sacramento Local Agency Formation Commission (LAFCO), Draft Environmental Impact Report, Bilby Ridge Sphere of Influence Amendment, December 2017 (LAFCO, December 2017), Prepared by Ascent, Table ES-1, pp. ES-33, ES-39-40; <https://ceqanet.opr.ca.gov/2017042071/2>.

through a public process with input from stakeholders from the City, North Richmond, and Chevron...”⁶⁶

This and many other approaches are available and feasible to fully mitigate the Project’s significant GHG impact.

⁶⁶ Chevron Refinery Modernization Project Final EIR, Revisions to Draft EIR Volumes 1 & 2, June 2014, p. 4-26 (Chevron FEIR); available at https://s3.amazonaws.com/chevron/Final+EIR/Volume+3_Final+EIR.pdf and Chevron Refinery Modernization Project Environmental and Community Investment Agreement Between City of Richmond, California and Chevron Products Company, A Division of Chevron U.S.A. Inc.

EXHIBIT 1

Phyllis Fox, PhD, PE
Environmental Management

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321-626-6885
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Dr. Fox has over 40 years of experience in the field of environmental engineering, including air pollution control (BACT, BART, MACT, LAER, RACT), greenhouse gas emissions and control, cost effectiveness analyses, water quality and water supply investigations, hydrology, hazardous waste investigations, environmental permitting, nuisance investigations (odor, noise), environmental impact reports, CEQA/NEPA documentation, risk assessments, and litigation support.

EDUCATION

Ph.D. Environmental/Civil Engineering, University of California, Berkeley, 1980.
M.S. Environmental/Civil Engineering, University of California, Berkeley, 1975.
B.S. Physics (with high honors), University of Florida, Gainesville, 1971.

REGISTRATION

Registered Professional Engineer: Arizona (2001-2014; #36701; retired), California (2002-present; CH 6058), Florida (2001-2016; #57886; retired), Georgia (2002-2014; #PE027643; retired), Washington (2002-2014; #38692; retired), Wisconsin (2005-2014; #37595-006; retired)
Board Certified Environmental Engineer, American Academy of Environmental Engineers,
Certified in Air Pollution Control (DEE #01-20014), 2002-2014; retired)
Qualified Environmental Professional (QEP), Institute of Professional Environmental Practice (QEP #02-010007, 2001-2015: retired).

PROFESSIONAL HISTORY

Environmental Management, Principal, 1981-present
Lawrence Berkeley National Laboratory, Principal Investigator, 1977-1981
University of California, Berkeley, Program Manager, 1976-1977
Bechtel, Inc., Engineer, 1971-1976, 1964-1966

PROFESSIONAL AFFILIATIONS

American Chemical Society (1981-2010)
Phi Beta Kappa (1970-present)
Sigma Pi Sigma (1970-present)
Who's Who Environmental Registry, PH Publishing, Fort Collins, CO, 1992.
Who's Who in the World, Marquis Who's Who, Inc., Chicago, IL, 11th Ed., p. 371, 1993-present.

Who's Who of American Women, Marquis Who's Who, Inc., Chicago, IL, 13th Ed., p. 264, 1984-present.

Who's Who in Science and Engineering, Marquis Who's Who, Inc., New Providence, NJ, 5th Ed., p. 414, 1999-present.

Who's Who in America, Marquis Who's Who, Inc., 59th Ed., 2005.

Guide to Specialists on Toxic Substances, World Environment Center, New York, NY, p. 80, 1980.

National Research Council Committee on Irrigation-Induced Water Quality Problems (Selenium), Subcommittee on Quality Control/Quality Assurance (1985-1990).

National Research Council Committee on Surface Mining and Reclamation, Subcommittee on Oil Shale (1978-80)

REPRESENTATIVE EXPERIENCE

Performed environmental and engineering investigations, as outlined below, for a wide range of industrial and commercial facilities including: petroleum refineries and upgrades thereto; reformulated fuels projects; refinery upgrades to process heavy sour crudes, including tar sands and light sweet crudes from the Eagle Ford and Bakken Formations; petroleum, gasoline and ethanol distribution terminals; coal, coke, and ore/mineral export terminals; LNG export, import, and storage terminals; crude-by-rail projects; shale oil plants; crude oil/condensate marine and rail terminals; coal gasification and liquefaction plants; oil and gas production, including conventional, thermally enhanced, hydraulic fracking, and acid stimulation techniques; underground storage tanks; pipelines; compressor stations; gasoline stations; landfills; railyards; hazardous waste treatment facilities; nuclear, hydroelectric, geothermal, wood, biomass, waste, tire-derived fuel, gas, oil, coke and coal-fired power plants; wind farms; solar energy facilities; battery storage facilities; transmission lines; airports; hydrogen plants; petroleum coke calcining plants; coke plants; activated carbon manufacturing facilities; asphalt plants; cement plants; incinerators; flares; manufacturing facilities (e.g., semiconductors, electronic assembly, aerospace components, printed circuit boards, amusement park rides); lanthanide processing plants; ammonia plants; nitric acid plants; urea plants; food processing plants; wineries; almond hulling facilities; composting facilities; grain processing facilities; grain elevators; ethanol production facilities; soy bean oil extraction plants; biodiesel plants; paint formulation plants; wastewater treatment plants; marine terminals and ports; gas processing plants; steel mills; iron nugget production facilities; pig iron plant, based on blast furnace technology; direct reduced iron plant; acid regeneration facilities; railcar refinishing facility; battery manufacturing plants; pesticide manufacturing and repackaging facilities; pulp and paper mills; olefin plants; methanol plants; ethylene crackers; alumina plants, desalination plants; battery storage facilities; data centers; covered lagoon anaerobic digesters with biogas generators and upgrading equipment to produce renewable natural gas and electricity; selective catalytic reduction (SCR) systems; selective noncatalytic reduction (SNCR) systems; halogen acid furnaces; contaminated property

redevelopment projects (e.g., Mission Bay, Southern Pacific Railyards, Moscone Center expansion, San Diego Padres Ballpark); residential developments; commercial office parks, campuses, and shopping centers; server farms; transportation plans; and a wide range of mines including sand and gravel, hard rock, limestone, nacholite, coal, molybdenum, gold, zinc, and oil shale.

EXPERT WITNESS/LITIGATION SUPPORT

- For plaintiffs-intervenors (Sierra Club), in civil action relating to alleged violations of the Clean Air Act, Prevention of Significant Deterioration, for historic modifications at Rush Island Units 1 and 2 and Labadie Energy Center, assist counsel in evaluating best available control technology (BACT) to reduce SO₂ emissions, including wet and dry scrubbing, sorbent injection, and offsets. Case settled. *U.S. and Sierra Club vs. Ameren Missouri*, Case No. 4-11 CV 77 RWS, U.S. District Court, Eastern District of Missouri, Eastern Division, September 30, 2019.
- For the California Attorney General, assist in determining compliance with probation terms in the matter of *People v. Chevron USA*.
- For plaintiffs, assist in developing Petitioners' proof brief for *National Parks Conservation Association et al v. U.S. EPA*, Petition for Review of Final Administrative Action of the U.S. EPA, In the U.S. Court of Appeals for the Third Circuit, Docket No. 14-3147.
- For plaintiffs, expert witness in civil action relating to alleged violations of the Clean Air Act, Prevention of Significant Deterioration, for historic modifications (1997-2000) at the Cemex cement plant in Lyons, Colorado. Reviewed produced documents, prepared expert and rebuttal reports on PSD applicability based on NO_x emission calculations for a collection of changes considered both individually and collectively. Deposed August 2011. *United States v. Cemex, Inc.*, In U.S. District Court for the District of Colorado (Civil Action No. 09-cv-00019-MSK-MEH). Case settled June 13, 2013.
- For plaintiffs, in civil action relating to alleged violations of the Clean Air Act, Prevention of Significant Deterioration, for historic modifications (1988 – 2000) at James De Young Units 3, 4, and 5. Reviewed produced documents, analyzed CEMS and EIA data, and prepared netting and BACT analyses for NO_x, SO₂, and PM₁₀ (PSD case). Expert report February 24, 2010 and affidavit February 20, 2010. *Sierra Club v. City of Holland, et al.*, U.S. District Court, Western District of Michigan (Civil Action 1:08-cv-1183). Case settled. Consent Decree 1/19/14.
- For plaintiffs, in civil action alleging failure to obtain MACT permit, expert on potential to emit hydrogen chloride (HCl) from a new coal-fired boiler. Reviewed record, estimated HCl emissions, wrote expert report June 2010 and March 2013 (Cost to Install a Scrubber at the Lamar Repowering Project Pursuant to Case-by-Case MACT), deposed August 2010 and

March 2013. *Wildearth Guardian et al. v. Lamar Utilities Board*, Civil Action No. 09-cv-02974, U.S. District Court, District of Colorado. Case settled August 2013.

- For plaintiffs, expert witness on permitting, emission calculations, and wastewater treatment for coal-to-gasoline plant. Reviewed produced documents. Assisted in preparation of comments on draft minor source permit. Wrote two affidavits on key issues in case. Presented direct and rebuttal testimony 10/27 - 10/28/10 on permit enforceability and failure to properly calculate potential to emit, including underestimate of flaring emissions and omission of VOC and CO emissions from wastewater treatment, cooling tower, tank roof landings, and malfunctions. *Sierra Club, Ohio Valley Environmental Coalition, Coal River Mountain Watch, West Virginia Highlands Conservancy v. John Benedict, Director, Division of Air Quality, West Virginia Department of Environmental Protection and TransGas Development System, LLC*, Appeal No. 10-01-AQB. Virginia Air Quality Board remanded the permit on March 28, 2011 ordering reconsideration of potential to emit calculations, including: (1) support for assumed flare efficiency; (2) inclusion of startup, shutdown and malfunction emissions; and (3) inclusion of wastewater treatment emissions in potential to emit calculations.
- For plaintiffs, expert on BACT emission limits for gas-fired combined cycle power plant. Prepared declaration in support of CBE's Opposition to the United States' Motion for Entry of Proposed Amended Consent Decree. Assisted in settlement discussions. *U.S. EPA, Plaintiff, Communities for a Better Environment, Intervenor Plaintiff, v. Pacific Gas & Electric Company, et al.*, U.S. District Court, Northern District of California, San Francisco Division, Case No. C-09-4503 SI.
- Technical expert in confidential settlement discussions with large coal-fired utility on BACT control technology and emission limits for NO_x, SO₂, PM, PM_{2.5}, and CO for new natural gas fired combined cycle and simple cycle turbines with oil backup. (July 2010). Case settled.
- For plaintiffs, expert witness in remedy phase of civil action relating to alleged violations of the Clean Air Act, Prevention of Significant Deterioration, for historic modifications (1998-99) at Gallagher Units 1 and 3. Reviewed produced documents, prepared expert and rebuttal reports on historic and current-day BACT for SO₂, control costs, and excess emissions of SO₂. Deposed 11/18/09. *United States et al. v. Cinergy, et al.*, In U.S. District Court for the Southern District of Indiana, Indianapolis Division, Civil Action No. IP99-1693 C-M/S. Settled 12/22/09.
- For plaintiffs, expert witness on MACT, BACT for NO_x, and enforceability in an administrative appeal of draft state air permit issued for four 300-MW pet-coke-fired CFBs. Reviewed produced documents and prepared prefiled testimony. Deposed 10/8/09 and 11/9/09. Testified 11/10/09. *Application of Las Brisas Energy Center, LLC for State Air Quality Permit*; before the State Office of Administrative Hearings, Texas. Permit remanded 3/29/10 as LBEC failed to meet burden of proof on a number of issues including MACT.

Texas Court of Appeals dismissed an appeal to reinstate the permit. The Texas Commission on Environmental Quality and Las Brisas Energy Center, LLC sought to overturn the Court of Appeals decision but moved to have their appeal dismissed in August 2013.

- For defense, expert witness in unlawful detainer case involving a gasoline station, minimart, and residential property with contamination from leaking underground storage tanks. Reviewed agency files and inspected site. Presented expert testimony on July 6, 2009, on causes of, nature and extent of subsurface contamination. *A. Singh v. S. Assaedi*, in Contra Costa County Superior Court, CA. Settled August 2009.
- For plaintiffs, expert witness on netting and enforceability for refinery being upgraded to process tar sands crude. Reviewed produced documents. Prepared expert and rebuttal reports addressing use of emission factors for baseline, omitted sources including coker, flares, tank landings and cleaning, and enforceability. Deposed. *In the Matter of Objection to the Issuance of Significant Source Modification Permit No. 089-25484-00453 to BP Products North America Inc., Whiting Business Unit, Save the Dunes Council, Inc., Sierra Club., Inc., Hoosier Environmental Council et al., Petitioners, B. P. Products North American, Respondents/Permittee*, before the Indiana Office of Environmental Adjudication. Case settled.
- For plaintiffs, expert witness on BACT, MACT, and enforceability in appeal of Title V permit issued to 600 MW coal-fired power plant burning Powder River Basin coal. Prepared technical comments on draft air permit. Reviewed record on appeal, drafted BACT, MACT, and enforceability pre-filed testimony. Drafted MACT and enforceability pre-filed rebuttal testimony. Deposed March 24, 2009. Testified June 10, 2009. *In Re: Southwestern Electric Power Company*, Arkansas Pollution Control and Ecology Commission, Consolidated Docket No. 08-006-P. Recommended Decision issued December 9, 2009 upholding issued permit. Commission adopted Recommended Decision January 22, 2010.
- For plaintiffs, expert witness in remedy phase of civil action relating to alleged violations of the Clean Air Act, Prevention of Significant Deterioration, for historic modifications (1989-1992) at Wabash Units 2, 3 and 5. Reviewed produced documents, prepared expert and rebuttal report on historic and current-day BACT for NOx and SO2, control costs, and excess emissions of NOx, SO2, and mercury. Deposed 10/21/08. *United States et al. v. Cinergy, et al.*, In U.S. District Court for the Southern District of Indiana, Indianapolis Division, Civil Action No. IP99-1693 C-M/S. Testified 2/3/09. Memorandum Opinion & Order 5-29-09 requiring shutdown of Wabash River Units 2, 3, 5 by September 30, 2009, run at baseline until shutdown, and permanently surrender SO2 emission allowances.
- For plaintiffs, expert witness in liability phase of civil action relating to alleged violations of the Clean Air Act, Prevention of Significant Deterioration, for three historic modifications (1997-2001) at two portland cement plants involving three cement kilns. Reviewed produced documents, analyzed CEMS data covering subject period, prepared netting analysis for NOx, SO2 and CO, and prepared expert and rebuttal reports. *United States v. Cemex California*

Cement, In U.S. District Court for the Central District of California, Eastern Division, Case No. ED CV 07-00223-GW (JCRx). Settled 1/15/09.

- For intervenors Clean Wisconsin and Citizens Utility Board, prepared data requests, reviewed discovery and expert report. Prepared prefiled direct, rebuttal and surrebuttal testimony on cost to extend life of existing Oak Creek Units 5-8 and cost to address future regulatory requirements to determine whether to control or shutdown one or more of the units. Oral testimony 2/5/08. Application for a Certificate of Authority to Install Wet Flue Gas Desulfurization and Selective Catalytic Reduction Facilities and Associated Equipment for Control of Sulfur Dioxide and Nitrogen Oxide Emissions at Oak Creek Power Plant Units 5, 6, 7 and 8, WPSC Docket No. 6630-CE-299.
- For plaintiffs, expert witness on alternatives analysis and BACT for NO_x, SO₂, total PM₁₀, and sulfuric acid mist in appeal of PSD permit issued to 1200 MW coal fired power plant burning Powder River Basin and/or Central Appalachian coal (Longleaf). Assisted in drafting technical comments on NO_x on draft permit. Prepared expert disclosure. Presented 8+ days of direct and rebuttal expert testimony. Attended all 21 days of evidentiary hearing from 9/5/07 – 10/30/07 assisting in all aspects of hearing. *Friends of the Chatahooche and Sierra Club v. Dr. Carol Couch, Director, Environmental Protection Division of Natural Resources Department, Respondent, and Longleaf Energy Associates, Intervener*. ALJ Final Decision 1/11/08 denying petition. ALJ Order vacated & remanded for further proceedings, Fulton County Superior Court, 6/30/08. Court of Appeals of GA remanded the case with directions that the ALJ's final decision be vacated to consider the evidence under the correct standard of review, July 9, 2009. The ALJ issued an opinion April 2, 2010 in favor of the applicant. Final permit issued April 2010.
- For plaintiffs, expert witness on diesel exhaust in inverse condemnation case in which Port expanded maritime operations into residential neighborhoods, subjecting plaintiffs to noise, light, and diesel fumes. Measured real-time diesel particulate concentrations from marine vessels and tugboats on plaintiffs' property. Reviewed documents, depositions, DVDs, and photographs provided by counsel. Deposed. Testified October 24, 2006. *Ann Chargin, Richard Hackett, Carolyn Hackett, et al. v. Stockton Port District*, Superior Court of California, County of San Joaquin, Stockton Branch, No. CV021015. Judge ruled for plaintiffs.
- For plaintiffs, expert witness on NO_x emissions and BACT in case alleging failure to obtain necessary permits and install controls on gas-fired combined-cycle turbines. Prepared and reviewed (applicant analyses) of NO_x emissions, BACT analyses (water injection, SCR, ultra low NO_x burners), and cost-effectiveness analyses based on site visit, plant operating records, stack tests, CEMS data, and turbine and catalyst vendor design information. Participated in negotiations to scope out consent order. *United States v. Nevada Power*. Case settled June 2007, resulting in installation of dry low NO_x burners (5 ppm NO_x averaged over 1 hr) on four units and a separate solar array at a local business.

- For plaintiffs, expert witness in appeal of PSD permit issued to 850 MW coal fired boiler burning Powder River Basin coal (Iatan Unit 2) on BACT for particulate matter, sulfuric acid mist and opacity and emission calculations for alleged historic violations of PSD. Assisted in drafting technical comments, petition for review, discovery requests, and responses to discovery requests. Reviewed produced documents. Prepared expert report on BACT for particulate matter. Assisted with expert depositions. Deposed February 7, 8, 27, and 28, 2007. *In Re PSD Construction Permit Issued to Great Plains Energy, Kansas City Power & Light – Iatan Generating Station, Sierra Club v. Missouri Department of Natural Resources, Great Plains Energy, and Kansas City Power & Light*. Case settled March 27, 2007, providing offsets for over 6 million ton/yr of CO₂ and lower NO_x and SO₂ emission limits.
- For plaintiffs, expert witness in remedy phase of civil action relating to alleged violations of the Clean Air Act, Prevention of Significant Deterioration, for historic modifications of coal-fired boilers and associated equipment. Reviewed produced documents, prepared expert report on cost to retrofit 24 coal-fired power plants with scrubbers designed to remove 99% of the sulfur dioxide from flue gases. Prepared supplemental and expert report on cost estimates and BACT for SO₂ for these 24 complaint units. Deposed 1/30/07 and 3/14/07. *United States and State of New York et al. v. American Electric Power*, In U.S. District Court for the Southern District of Ohio, Eastern Division, Consolidated Civil Action Nos. C2-99-1182 and C2-99-1250. Settlement announced 10/9/07.
- For plaintiffs, expert witness on BACT, enforceability, and alternatives analysis in appeal of PSD permit issued for a 270-MW pulverized coal fired boiler burning Powder River Basin coal (City Utilities Springfield Unit 2). Reviewed permitting file and assisted counsel draft petition and prepare and respond to interrogatories and document requests. Reviewed interrogatory responses and produced documents. Assisted with expert depositions. Deposed August 2005. Evidentiary hearings October 2005. *In the Matter of Linda Chipperfield and Sierra Club v. Missouri Department of Natural Resources*. Missouri Supreme Court denied review of adverse lower court rulings August 2007.
- For plaintiffs, expert witness in civil action relating to plume touchdowns at AEP's Gavin coal-fired power plant. Assisted counsel draft interrogatories and document requests. Reviewed responses to interrogatories and produced documents. Prepared expert report "Releases of Sulfuric Acid Mist from the Gavin Power Station." The report evaluates sulfuric acid mist releases to determine if AEP complied with the requirements of CERCLA Section 103(a) and EPCRA Section 304. This report also discusses the formation, chemistry, release characteristics, and abatement of sulfuric acid mist in support of the claim that these releases present an imminent and substantial endangerment to public health under Section 7002(a)(1)(B) of the Resource Conservation and Recovery Act ("RCRA"). *Citizens Against Pollution v. Ohio Power Company*, In the U.S. District Court for the Southern District of Ohio, Eastern Division, Civil Action No. 2-04-cv-371. Case settled 12-8-06.

- For petitioners, expert witness in contested case hearing on BACT, enforceability, and emission estimates for an air permit issued to a 500-MW supercritical Power River Basin coal-fired boiler (Weston Unit 4). Assisted counsel prepare comments on draft air permit and respond to and draft discovery. Reviewed produced file, deposed (7/05), and prepared expert report on BACT and enforceability. Evidentiary hearings September 2005. *In the Matter of an Air Pollution Control Construction Permit Issued to Wisconsin Public Service Corporation for the Construction and Operation of a 500 MW Pulverized Coal-fired Power Plant Known as Weston Unit 4 in Marathon County, Wisconsin*, Case No. IH-04-21. The Final Order, issued 2/10/06, lowered the NO_x BACT limit from 0.07 lb/MMBtu to 0.06 lb/MMBtu based on a 30-day average, added a BACT SO₂ control efficiency, and required a 0.0005% high efficiency drift eliminator as BACT for the cooling tower. The modified permit, including these provisions, was issued 3/28/07. Additional appeals in progress.
- For plaintiffs, adviser on technical issues related to Citizen Suit against U.S. EPA regarding failure to update New Source Performance Standards for petroleum refineries, 40 CFR 60, Subparts J, VV, and GGG. *Our Children's Earth Foundation and Sierra Club v. U.S. EPA et al.* Case settled July 2005. CD No. C 05-00094 CW, U.S. District Court, Northern District of California – Oakland Division. Proposed revisions to standards of performance for petroleum refineries published 72 FR 27178 (5/14/07).
- For interveners, reviewed proposed Consent Decree settling Clean Air Act violations due to historic modifications of boilers and associated equipment at two coal-fired power plants. In response to stay order, reviewed the record, selected one representative activity at each of seven generating units, and analyzed to identify CAA violations. Identified NSPS and NSR violations for NO_x, SO₂, PM/PM₁₀, and sulfuric acid mist. Summarized results in an expert report. *United States of America, and Michael A. Cox, Attorney General of the State of Michigan, ex rel. Michigan Department of Environmental Quality, Plaintiffs, and Clean Wisconsin, Sierra Club, and Citizens' Utility Board, Intervenors, v. Wisconsin Electric Power Company, Defendant*, U.S. District Court for the Eastern District of Wisconsin, Civil Action No. 2:03-CV-00371-CNC. Order issued 10-1-07 denying petition.
- For a coalition of Nevada labor organizations (ACE), reviewed preliminary determination to issue a Class I Air Quality Operating Permit to Construct and supporting files for a 250-MW pulverized coal-fired boiler (Newmont). Prepared about 100 pages of technical analyses and comments on BACT, MACT, emission calculations, and enforceability. Assisted counsel draft petition and reply brief appealing PSD permit to U.S. EPA Environmental Appeals Board (EAB). Order denying review issued 12/21/05. *In re Newmont Nevada Energy Investment, LLC, TS Power Plant*, PSD Appeal No. 05-04 (EAB 2005).
- For petitioners and plaintiffs, reviewed and prepared comments on air quality and hazardous waste based on negative declaration for refinery ultra low sulfur diesel project located in SCAQMD. Reviewed responses to comments and prepared responses. Prepared declaration and presented oral testimony before SCAQMD Hearing Board on exempt sources (cooling towers) and calculation of potential to emit under NSR. Petition for writ of mandate filed

March 2005. Case remanded by Court of Appeals to trial court to direct SCAQMD to re-evaluate the potential environmental significance of NOx emissions resulting from the project in accordance with court's opinion. California Court of Appeals, Second Appellate Division, on December 18, 2007, affirmed in part (as to baseline) and denied in part. *Communities for a Better Environment v. South Coast Air Quality Management District and ConocoPhillips and Carlos Valdez et al v. South Coast Air Quality Management District and ConocoPhillips*. Certified for partial publication 1/16/08. Appellate Court opinion upheld by CA Supreme Court 3/15/10. (2010) 48 Cal.4th 310.

- For amici seeking to amend a proposed Consent Decree to settle alleged NSR violations at Chevron refineries, reviewed proposed settlement, related files, subject modifications, and emission calculations. Prepared declaration on emission reductions, identification of NSR and NSPS violations, and BACT/LAER for FCCUs, heaters and boilers, flares, and sulfur recovery plants. *U.S. et al. v. Chevron U.S.A.*, Northern District of California, Case No. C 03-04650. Memorandum and Order Entering Consent Decree issued June 2005. Case No. C 03-4650 CRB.
- For petitioners, prepared declaration on enforceability of periodic monitoring requirements, in response to EPA's revised interpretation of 40 CFR 70.6(c)(1). This revision limited additional monitoring required in Title V permits. 69 FR 3203 (Jan. 22, 2004). *Environmental Integrity Project et al. v. EPA* (U.S. Court of Appeals for the District of Columbia). Court ruled the Act requires all Title V permits to contain monitoring requirements to assure compliance. *Sierra Club v. EPA*, 536 F.3d 673 (D.C. Cir. 2008).
- For interveners in application for authority to construct a 500 MW supercritical coal-fired generating unit before the Wisconsin Public Service Commission, prepared pre-filed written direct and rebuttal testimony with oral cross examination and rebuttal on BACT and MACT (Weston 4). Prepared written comments on BACT, MACT, and enforceability on draft air permit for same facility.
- For property owners in Nevada, evaluated the environmental impacts of a 1,450-MW coal-fired power plant proposed in a rural area adjacent to the Black Rock Desert and Granite Range, including emission calculations, air quality modeling, comments on proposed use permit to collect preconstruction monitoring data, and coordination with agencies and other interested parties. Project cancelled.
- For environmental organizations, reviewed draft PSD permit for a 600-MW coal-fired power plant in West Virginia (Longview). Prepared comments on permit enforceability; coal washing; BACT for SO₂ and PM₁₀; Hg MACT; and MACT for HCl, HF, non-Hg metallic HAPs, and enforceability. Assist plaintiffs draft petition appealing air permit. Retained as expert to develop testimony on MACT, BACT, offsets, enforceability. Participate in settlement discussions. Case settled July 2004.
- For petitioners, reviewed record produced in discovery and prepared affidavit on emissions of carbon monoxide and volatile organic compounds during startup of GE 7FA combustion

turbines to successfully establish plaintiff standing. *Sierra Club et al. v. Georgia Power Company* (Northern District of Georgia).

- For building trades, reviewed air quality permitting action for 1500-MW coal-fired power plant before the Kentucky Department for Environmental Protection (Thoroughbred).
- For petitioners, expert witness in administrative appeal of the PSD/Title V permit issued to a 1500-MW coal-fired power plant. Reviewed over 60,000 pages of produced documents, prepared discovery index, identified and assembled plaintiff exhibits. Deposed. Assisted counsel in drafting discovery requests, with over 30 depositions, witness cross examination, and brief drafting. Presented over 20 days of direct testimony, rebuttal and sur-rebuttal, with cross examination on BACT for NO_x, SO₂, and PM/PM₁₀; MACT for Hg and non-Hg metallic HAPs; emission estimates for purposes of Class I and II air modeling; risk assessment; and enforceability of permit limits. Evidentiary hearings from November 2003 to June 2004. *Sierra Club et al. v. Natural Resources & Environmental Protection Cabinet, Division of Air Quality and Thoroughbred Generating Company et al.* Hearing Officer Decision issued August 9, 2005 finding in favor of plaintiffs on counts as to risk, BACT (IGCC/CFB, NO_x, SO₂, Hg, Be), single source, enforceability, and errors and omissions. Assist counsel draft exceptions. Cabinet Secretary issued Order April 11, 2006 denying Hearing Offer's report, except as to NO_x BACT, Hg, 99% SO₂ control and certain errors and omissions.
- For citizens group in Massachusetts, reviewed, commented on, and participated in permitting of pollution control retrofits of coal-fired power plant (Salem Harbor).
- Assisted citizens group and labor union challenge issuance of conditional use permit for a 317,000 ft² discount store in Honolulu without any environmental review. In support of a motion for preliminary injunction, prepared 7-page declaration addressing public health impacts of diesel exhaust from vehicles serving the Project. In preparation for trial, prepared 20-page preliminary expert report summarizing results of diesel exhaust and noise measurements at two big box retail stores in Honolulu, estimated diesel PM₁₀ concentrations for Project using ISCST, prepared a cancer health risk assessment based on these analyses, and evaluated noise impacts.
- Assisted environmental organizations to challenge the DOE Finding of No Significant Impact (FONSI) for the Baja California Power and Sempra Energy Resources Cross-Border Transmissions Lines in the U.S. and four associated power plants located in Mexico (DOE EA-1391). Prepared 20-page declaration in support of motion for summary judgment addressing emissions, including CO₂ and NH₃, offsets, BACT, cumulative air quality impacts, alternative cooling systems, and water use and water quality impacts. Plaintiff's motion for summary judgment granted in part. U.S. District Court, Southern District decision concluded that the Environmental Assessment and FONSI violated NEPA and the APA due to their inadequate analysis of the potential controversy surrounding the project, water impacts, impacts from NH₃ and CO₂, alternatives, and cumulative impacts. *Border Power Plant Working Group v. Department of Energy and Bureau of Land Management*, Case No. 02-CV-513-IEG (POR) (May 2, 2003).

- For Sacramento school, reviewed draft air permit issued for diesel generator located across from playfield. Prepared comments on emission estimates, enforceability, BACT, and health impacts of diesel exhaust. Case settled. BUG trap installed on the diesel generator.
- Assisted unions in appeal of Title V permit issued by BAAQMD to carbon plant that manufactured coke. Reviewed District files, identified historic modifications that should have triggered PSD review, and prepared technical comments on Title V permit. Reviewed responses to comments and assisted counsel draft appeal to BAAQMD hearing board, opening brief, motion to strike, and rebuttal brief. Case settled.
- Assisted California Central Coast city obtain controls on a proposed new city that would straddle the Ventura-Los Angeles County boundary. Reviewed several environmental impact reports, prepared an air quality analysis, a diesel exhaust health risk assessment, and detailed review comments. Governor intervened and State dedicated the land for conservation purposes April 2004.
- Assisted Central California city to obtain controls on large alluvial sand quarry and asphalt plant proposing a modernization. Prepared comments on Negative Declaration on air quality, public health, noise, and traffic. Evaluated process flow diagrams and engineering reports to determine whether proposed changes increased plant capacity or substantially modified plant operations. Prepared comments on application for categorical exemption from CEQA. Presented testimony to County Board of Supervisors. Developed controls to mitigate impacts. Assisted counsel draft Petition for Writ. Case settled June 2002. Substantial improvements in plant operations were obtained including cap on throughput, dust control measures, asphalt plant loadout enclosure, and restrictions on truck routes.
- Assisted oil companies on the California Central Coast in defending class action citizen's lawsuit alleging health effects due to emissions from gas processing plant and leaking underground storage tanks. Reviewed regulatory and other files and advised counsel on merits of case. Case settled November 2001.
- Assisted oil company on the California Central Coast in defending property damage claims arising out of a historic oil spill. Reviewed site investigation reports, pump tests, leachability studies, and health risk assessments, participated in design of additional site characterization studies to assess health impacts, and advised counsel on merits of case. Prepare health risk assessment.
- Assisted unions in appeal of Initial Study/Negative Declaration ("IS/ND") for an MTBE phaseout project at a Bay Area refinery. Reviewed IS/ND and supporting agency permitting files and prepared technical comments on air quality, groundwater, and public health impacts. Reviewed responses to comments and final IS/ND and ATC permits and assisted counsel to draft petitions and briefs appealing decision to Air District Hearing Board. Presented sworn direct and rebuttal testimony with cross examination on groundwater impacts of ethanol spills on hydrocarbon contamination at refinery. Hearing Board ruled 5 to 0 in favor of appellants, remanding ATC to district to prepare an EIR.

- Assisted Florida cities in challenging the use of diesel and proposed BACT determinations in prevention of significant deterioration (PSD) permits issued to two 510-MW simple cycle peaking electric generating facilities and one 1,080-MW simple cycle/combined cycle facility. Reviewed permit applications, draft permits, and FDEP engineering evaluations, assisted counsel in drafting petitions and responding to discovery. Participated in settlement discussions. Cases settled or applications withdrawn.
- Assisted large California city in federal lawsuit alleging peaker power plant was violating its federal permit. Reviewed permit file and applicant's engineering and cost feasibility study to reduce emissions through retrofit controls. Advised counsel on feasible and cost-effective NO_x, SO_x, and PM₁₀ controls for several 1960s diesel-fired Pratt and Whitney peaker turbines. Case settled.
- Assisted coalition of Georgia environmental groups in evaluating BACT determinations and permit conditions in PSD permits issued to several large natural gas-fired simple cycle and combined-cycle power plants. Prepared technical comments on draft PSD permits on BACT, enforceability of limits, and toxic emissions. Reviewed responses to comments, advised counsel on merits of cases, participated in settlement discussions, presented oral and written testimony in adjudicatory hearings, and provided technical assistance as required. Cases settled or won at trial.
- Assisted construction unions in review of air quality permitting actions before the Indiana Department of Environmental Management ("IDEM") for several natural gas-fired simple cycle peaker and combined cycle power plants.
- Assisted coalition of towns and environmental groups in challenging air permits issued to 523 MW dual fuel (natural gas and distillate) combined-cycle power plant in Connecticut. Prepared technical comments on draft permits and 60 pages of written testimony addressing emission estimates, startup/shutdown issues, BACT/LAER analyses, and toxic air emissions. Presented testimony in adjudicatory administrative hearings before the Connecticut Department of Environmental Protection in June 2001 and December 2001.
- Assisted various coalitions of unions, citizens groups, cities, public agencies, and developers in licensing and permitting of over 110 coal, gas, oil, biomass, and pet coke-fired power plants generating over 75,000 MW of electricity. These included base-load, combined cycle, simple cycle, and peaker power plants in Alaska, Arizona, Arkansas, California, Colorado, Georgia, Florida, Illinois, Indiana, Kentucky, Michigan, Missouri, Ohio, Oklahoma, Oregon, Texas, West Virginia, Wisconsin, and elsewhere. Prepared analyses of and comments on applications for certification, preliminary and final staff assessments, and various air, water, wastewater, and solid waste permits issued by local agencies. Presented written and oral testimony before various administrative bodies on hazards of ammonia use and transportation, health effects of air emissions, contaminated property issues, BACT/LAER issues related to SCR and SCONO_x, criteria and toxic pollutant emission estimates, MACT analyses, air quality modeling, water supply and water quality issues, and methods to reduce

water use, including dry cooling, parallel dry-wet cooling, hybrid cooling, and zero liquid discharge systems.

- Assisted unions, cities, and neighborhood associations in challenging an EIR issued for the proposed expansion of the Oakland Airport. Reviewed two draft EIRs and prepared a health risk assessment and extensive technical comments on air quality and public health impacts. The California Court of Appeals, First Appellate District, ruled in favor of appellants and plaintiffs, concluding that the EIR "2) erred in using outdated information in assessing the emission of toxic air contaminants (TACs) from jet aircraft; 3) failed to support its decision not to evaluate the health risks associated with the emission of TACs with meaningful analysis," thus accepting my technical arguments and requiring the Port to prepare a new EIR. See *Berkeley Keep Jets Over the Bay Committee, City of San Leandro, and City of Alameda et al. v. Board of Port Commissioners* (August 30, 2001) 111 Cal.Rptr.2d 598.
- Assisted lessor of former gas station with leaking underground storage tanks and TCE contamination from adjacent property. Lessor held option to purchase, which was forfeited based on misrepresentation by remediation contractor as to nature and extent of contamination. Remediation contractor purchased property. Reviewed regulatory agency files and advised counsel on merits of case. Case not filed.
- Advised counsel on merits of several pending actions, including a Proposition 65 case involving groundwater contamination at an explosives manufacturing firm and two former gas stations with leaking underground storage tanks.
- Assisted defendant foundry in Oakland in a lawsuit brought by neighbors alleging property contamination, nuisance, trespass, smoke, and health effects from foundry operation. Inspected and sampled plaintiff's property. Advised counsel on merits of case. Case settled.
- Assisted business owner facing eminent domain eviction. Prepared technical comments on a negative declaration for soil contamination and public health risks from air emissions from a proposed redevelopment project in San Francisco in support of a CEQA lawsuit. Case settled.
- Assisted neighborhood association representing residents living downwind of a Berkeley asphalt plant in separate nuisance and CEQA lawsuits. Prepared technical comments on air quality, odor, and noise impacts, presented testimony at commission and council meetings, participated in community workshops, and participated in settlement discussions. Cases settled. Asphalt plant was upgraded to include air emission and noise controls, including vapor collection system at truck loading station, enclosures for noisy equipment, and improved housekeeping.
- Assisted a Fortune 500 residential home builder in claims alleging health effects from faulty installation of gas appliances. Conducted indoor air quality study, advised counsel on merits of case, and participated in discussions with plaintiffs. Case settled.

- Assisted property owners in Silicon Valley in lawsuit to recover remediation costs from insurer for large TCE plume originating from a manufacturing facility. Conducted investigations to demonstrate sudden and accidental release of TCE, including groundwater modeling, development of method to date spill, preparation of chemical inventory, investigation of historical waste disposal practices and standards, and on-site sewer and storm drainage inspections and sampling. Prepared declaration in opposition to motion for summary judgment. Case settled.
- Assisted residents in east Oakland downwind of a former battery plant in class action lawsuit alleging property contamination from lead emissions. Conducted historical research and dry deposition modeling that substantiated claim. Participated in mediation at JAMS. Case settled.
- Assisted property owners in West Oakland who purchased a former gas station that had leaking underground storage tanks and groundwater contamination. Reviewed agency files and advised counsel on merits of case. Prepared declaration in opposition to summary judgment. Prepared cost estimate to remediate site. Participated in settlement discussions. Case settled.
- Consultant to counsel representing plaintiffs in two Clean Water Act lawsuits involving selenium discharges into San Francisco Bay from refineries. Reviewed files and advised counsel on merits of case. Prepared interrogatory and discovery questions, assisted in deposing opposing experts, and reviewed and interpreted treatability and other technical studies. Judge ruled in favor of plaintiffs.
- Assisted oil company in a complaint filed by a resident of a small California beach community alleging that discharges of tank farm rinse water into the sanitary sewer system caused hydrogen sulfide gas to infiltrate residence, sending occupants to hospital. Inspected accident site, interviewed parties to the event, and reviewed extensive agency files related to incident. Used chemical analysis, field simulations, mass balance calculations, sewer hydraulic simulations with SWMM44, atmospheric dispersion modeling with SCREEN3, odor analyses, and risk assessment calculations to demonstrate that the incident was caused by a faulty drain trap and inadequate slope of sewer lateral on resident's property. Prepared a detailed technical report summarizing these studies. Case settled.
- Assisted large West Coast city in suit alleging that leaking underground storage tanks on city property had damaged the waterproofing on downgradient building, causing leaks in an underground parking structure. Reviewed subsurface hydrogeologic investigations and evaluated studies conducted by others documenting leakage from underground diesel and gasoline tanks. Inspected, tested, and evaluated waterproofing on subsurface parking structure. Waterproofing was substandard. Case settled.
- Assisted residents downwind of gravel mine and asphalt plant in Siskiyou County, California, in suit to obtain CEQA review of air permitting action. Prepared two declarations analyzing

air quality and public health impacts. Judge ruled in favor of plaintiffs, closing mine and asphalt plant.

- Assisted defendant oil company on the California Central Coast in class action lawsuit alleging property damage and health effects from subsurface petroleum contamination. Reviewed documents, prepared risk calculations, and advised counsel on merits of case. Participated in settlement discussions. Case settled.
- Assisted defendant oil company in class action lawsuit alleging health impacts from remediation of petroleum contaminated site on California Central Coast. Reviewed documents, designed and conducted monitoring program, and participated in settlement discussions. Case settled.
- Consultant to attorneys representing irrigation districts and municipal water districts to evaluate a potential challenge of USFWS actions under CVPIA section 3406(b)(2). Reviewed agency files and collected and analyzed hydrology, water quality, and fishery data. Advised counsel on merits of case. Case not filed.
- Assisted residents downwind of a Carson refinery in class action lawsuit involving soil and groundwater contamination, nuisance, property damage, and health effects from air emissions. Reviewed files and provided advice on contaminated soil and groundwater, toxic emissions, and health risks. Prepared declaration on refinery fugitive emissions. Prepared deposition questions and reviewed deposition transcripts on air quality, soil contamination, odors, and health impacts. Case settled.
- Assisted residents downwind of a Contra Costa refinery who were affected by an accidental release of naphtha. Characterized spilled naphtha, estimated emissions, and modeled ambient concentrations of hydrocarbons and sulfur compounds. Deposed. Presented testimony in binding arbitration at JAMS. Judge found in favor of plaintiffs.
- Assisted residents downwind of Contra Costa County refinery in class action lawsuit alleging property damage, nuisance, and health effects from several large accidents as well as routine operations. Reviewed files and prepared analyses of environmental impacts. Prepared declarations, deposed, and presented testimony before jury in one trial and judge in second. Case settled.
- Assisted business owner claiming damages from dust, noise, and vibration during a sewer construction project in San Francisco. Reviewed agency files and PM10 monitoring data and advised counsel on merits of case. Case settled.
- Assisted residents downwind of Contra Costa County refinery in class action lawsuit alleging property damage, nuisance, and health effects. Prepared declaration in opposition to summary judgment, deposed, and presented expert testimony on accidental releases, odor, and nuisance before jury. Case thrown out by judge, but reversed on appeal and not retried.

- Presented testimony in small claims court on behalf of residents claiming health effects from hydrogen sulfide from flaring emissions triggered by a power outage at a Contra Costa County refinery. Analyzed meteorological and air quality data and evaluated potential health risks of exposure to low concentrations of hydrogen sulfide. Judge awarded damages to plaintiffs.
- Assisted construction unions in challenging PSD permit for an Indiana steel mill. Prepared technical comments on draft PSD permit, drafted 70-page appeal of agency permit action to the Environmental Appeals Board challenging permit based on faulty BACT analysis for electric arc furnace and reheat furnace and faulty permit conditions, among others, and drafted briefs responding to four parties. EPA Region V and the EPA General Counsel intervened as amici, supporting petitioners. EAB ruled in favor of petitioners, remanding permit to IDEM on three key issues, including BACT for the reheat furnace and lead emissions from the EAF. Drafted motion to reconsider three issues. Prepared 69 pages of technical comments on revised draft PSD permit. Drafted second EAB appeal addressing lead emissions from the EAF and BACT for reheat furnace based on European experience with SCR/SNCR. Case settled. Permit was substantially improved. See *In re: Steel Dynamics, Inc.*, PSD Appeal Nos. 99-4 & 99-5 (EAB June 22, 2000).
- Assisted defendant urea manufacturer in Alaska in negotiations with USEPA to seek relief from penalties for alleged violations of the Clean Air Act. Reviewed and evaluated regulatory files and monitoring data, prepared technical analysis demonstrating that permit limits were not violated, and participated in negotiations with EPA to dismiss action. Fines were substantially reduced and case closed.
- Assisted construction unions in challenging PSD permitting action for an Indiana grain mill. Prepared technical comments on draft PSD permit and assisted counsel draft appeal of agency permit action to the Environmental Appeals Board challenging permit based on faulty BACT analyses for heaters and boilers and faulty permit conditions, among others. Case settled.
- As part of a consent decree settling a CEQA lawsuit, assisted neighbors of a large west coast port in negotiations with port authority to secure mitigation for air quality impacts. Prepared technical comments on mobile source air quality impacts and mitigation and negotiated a \$9 million CEQA mitigation package. Represented neighbors on technical advisory committee established by port to implement the air quality mitigation program. Program successfully implemented.
- Assisted construction unions in challenging permitting action for a California hazardous waste incinerator. Prepared technical comments on draft permit, assisted counsel prepare appeal of EPA permit to the Environmental Appeals Board. Participated in settlement discussions on technical issues with applicant and EPA Region 9. Case settled.

- Assisted environmental group in challenging DTSC Negative Declaration on a hazardous waste treatment facility. Prepared technical comments on risk of upset, water, and health risks. Writ of mandamus issued.
- Assisted several neighborhood associations and cities impacted by quarries, asphalt plants, and cement plants in Alameda, Shasta, Sonoma, and Mendocino counties in obtaining mitigations for dust, air quality, public health, traffic, and noise impacts from facility operations and proposed expansions.
- For over 100 industrial facilities, commercial/campus, and redevelopment projects, developed the record in preparation for CEQA and NEPA lawsuits. Prepared technical comments on hazardous materials, solid wastes, public utilities, noise, worker safety, air quality, public health, water resources, water quality, traffic, and risk of upset sections of EIRs, EISs, FONSI, initial studies, and negative declarations. Assisted counsel in drafting petitions and briefs and prepared declarations.
- For several large commercial development projects and airports, assisted applicant and counsel prepare defensible CEQA documents, respond to comments, and identify and evaluate "all feasible" mitigation to avoid CEQA challenges. This work included developing mitigation programs to reduce traffic-related air quality impacts based on energy conservation programs, solar, low-emission vehicles, alternative fuels, exhaust treatments, and transportation management associations.

SITE INVESTIGATION/REMEDATION/CLOSURE

- Technical manager and principal engineer for characterization, remediation, and closure of waste management units at former Colorado oil shale plant. Constituents of concern included BTEX, As, 1,1,1-TCA, and TPH. Completed groundwater monitoring programs, site assessments, work plans, and closure plans for seven process water holding ponds, a refinery sewer system, and processed shale disposal area. Managed design and construction of groundwater treatment system and removal actions and obtained clean closure.
- Principal engineer for characterization, remediation, and closure of process water ponds at a former lanthanide processing plant in Colorado. Designed and implemented groundwater monitoring program and site assessments and prepared closure plan.
- Advised the city of Sacramento on redevelopment of two former railyards. Reviewed work plans, site investigations, risk assessment, RAPS, RI/FSs, and CEQA documents. Participated in the development of mitigation strategies to protect construction and utility workers and the public during remediation, redevelopment, and use of the site, including buffer zones, subslab venting, rail berm containment structure, and an environmental oversight plan.

- Provided technical support for the investigation of a former sanitary landfill that was redeveloped as single family homes. Reviewed and/or prepared portions of numerous documents, including health risk assessments, preliminary endangerment assessments, site investigation reports, work plans, and RI/FSs. Historical research to identify historic waste disposal practices to prepare a preliminary endangerment assessment. Acquired, reviewed, and analyzed the files of 18 federal, state, and local agencies, three sets of construction field notes, analyzed 21 aerial photographs and interviewed 14 individuals associated with operation of former landfill. Assisted counsel in defending lawsuit brought by residents alleging health impacts and diminution of property value due to residual contamination. Prepared summary reports.
- Technical oversight of characterization and remediation of a nitrate plume at an explosives manufacturing facility in Lincoln, CA. Provided interface between owners and consultants. Reviewed site assessments, work plans, closure plans, and RI/FSs.
- Consultant to owner of large western molybdenum mine proposed for NPL listing. Participated in negotiations to scope out consent order and develop scope of work. Participated in studies to determine premining groundwater background to evaluate applicability of water quality standards. Served on technical committees to develop alternatives to mitigate impacts and close the facility, including resloping and grading, various thickness and types of covers, and reclamation. This work included developing and evaluating methods to control surface runoff and erosion, mitigate impacts of acid rock drainage on surface and ground waters, and stabilize nine waste rock piles containing 328 million tons of pyrite-rich, mixed volcanic waste rock (andesites, rhyolite, tuff). Evaluated stability of waste rock piles. Represented client in hearings and meetings with state and federal oversight agencies.

REGULATORY (PARTIAL LIST)

- In March 2020, researched and wrote 30 pages of comments on IS/MND for data center in San Jose on operational GHG and criteria pollutant emissions, cumulative impacts, and public health risks.
- In February-March 2020, researched and wrote 27 pages on an IS/MND for a data center in San Jose on operational NOx and GHG emissions, cumulative impacts, health risks, and odor.
- In February 2020, researched and wrote 33 pages of comments on Initial Study for a battery storage facility in Ventura County on criteria pollutant and GHG emissions, worker and public health impacts, cumulative impacts, valley fever, and consistency with general plan.
- In February 2020, researched and wrote 20 pages of comments on valley fever in response to applicant's global response to comments on Valley Fever for a wind project in San Diego County.

- In January 2020, researched and wrote 32 pages of comments on the Orni battery storage facility (BESS) on incomplete project description, cumulative GHG and NO_x impacts, BESS accidents, and health impacts, including soil contamination and valley fever.
- In January 2020, research and wrote 41 pages of comments on the DEIR for the NuStar Port of Stockton Liquid Bulk Terminal on operational emission calculations, significant NO_x emissions, significant GHG emissions. GHG mitigation, and cumulative impacts.
- In December 2019, researched and wrote 3 pages of comments on the Silverstrand Grid battery storage facility on greenhouse gas emissions.
- In December 2019, researched and wrote 15 pages of comments on the Initial Study for the K2 Pure – Chlorine Rail Transportation Curtailment Project, including on air quality baseline, project description, emissions, cancer risks, risk of upset.
- In November 2019, reviewed agency files and researched and wrote 42 pages of comments on the Belridge Solar Project on compliance with local zoning ordinances, water quality impacts, air quality impacts, and worker and public health impacts due to soil contamination and valley fever.
- In October 2019, researched and wrote 49 pages of comments on IS/MND for data center in Santa Clara, CA on operational criteria pollutants (mobile sources, off-site electricity generation, emergency generators), ambient air quality impacts, greenhouse gas emissions and mitigation, and cumulative impacts.
- In October 2019, researched and wrote 9 pages of comments on the Application, Statement of Basis and draft Permit to Construct and Temporary Permit to Operate for proposed changes at the Paramount Refinery to facilitate refining of biomass-based feedstock to produce renewable fuels.
- In September 2019, reviewed City of Sunnyvale's file on Google's proposed Central Utility Plant and researched and wrote 34 pages of comments on construction and operational air quality impacts, cumulative impacts, and battery fire and explosion impacts. In October 2019, researched and wrote 15 pages of responses to comments.
- In August 2019, research and wrote 37 pages of comments on the DSEIR for the Le Conte Battery Energy Storage System on GHG emissions, hazards and hazardous material impacts, and health impacts.
- In August 2019, researched and wrote 38 pages of comments on IS/MND for the Hanford-Lakeside Dairy digester Project, Kings County, on project description (piecemealing), cumulative impacts, construction impacts, air quality impacts, valley fever and risk of upset.
- In July 2019, researched and wrote 48 pages of comments on IS/MND for the Five Points Pipeline Dairy Digester Cluster Project, including on air quality, cumulative impacts, worker

and public health impacts (including on pesticide-contaminated soils), Valley Fever, construction air quality impacts, and risk of upset.

- In June 2019, researched and wrote 15 pages of responses to comments on IS/MND for SV1 Data Center, including operational NOx emissions, air quality analyses, construction emissions, battery hazards, and mitigation plans for noise, vibration, risk management, storm water pollution, and emergency response and evacuation plans.
- In June 2019, researched and wrote 30 pages of comments on DEIR for the Humboldt Wind Energy Project on fire and aesthetic impacts of transmission line, construction air quality impacts and mitigation, and greenhouse gas emissions.
- In May 2019, researched and wrote 25 pages of comments on the DEIR for the ExxonMobil Interim Trucking for Santa Ynez Phased Restart Project on project description, baseline, and mitigation.
- In April 2019, researched and wrote a 16 page letter critiquing the adequacy of the FEIR for CalAm Desalination Project to support a Monterey County Combined Development Permit, consisting of a Use Permit, an Administrative Permit, and Design Approval for the Desalination Plant and Carmel Valley Pump Station.
- In April 2019, researched and wrote 22 pages of comments on DEIR for the Eco-Energy Liquid Bulk Terminal at the Port of Stockton on emissions, air quality impact mitigation, and health risk assessment.
- In March 2019, researched and wrote 43 pages of comments on DEIR for Contanda Renewable Diesel Bulk Liquid Terminal at the Port of Stockton on operational emissions, air quality impacts and mitigation and health risks.
- In February 2019, researched and wrote 36 pages of comments on general cumulative impacts, air quality, accidents, and valley fever for IS/MND for biogas cluster project in Kings County.
- In January 2019, researched and wrote 30 pages of comments on air quality and valley fever for IS/MND for energy storage facility in Kings County.
- In December 2018, researched and wrote 11 pages of comments on air quality for IS/MND for biomass gasification facility in Madera County.
- In December 2018, researched and wrote 10 pages of responses to comments on IS/MND for a wind energy project in Riverside County.
- In December 2018, researched and wrote 12 pages of responses to comments on IS/MND for a large Safeway fueling station in Petaluma. The Planning Commission voted unanimously to require an EIR.

- In November 2018, researched and wrote 30 pages of comments on IS/MND on wind energy project in Riverside County on construction health risks, odor impacts, waste disposal, transportation, construction emissions and mitigation and Valley Fever.
- In November 2018, researched and wrote 32 pages of comments on the DEIR for a solar energy generation and storage project in San Bernardino County on hazards, health risks, odor, construction emissions and mitigation, and Valley Fever.
- In September 2018, researched and wrote 36 pages of comments on the FEIR for the Newland Sierra Project including on greenhouse gas emissions, construction emissions, and cumulative impacts.
- In August 2018, researched and wrote 20 pages of comments on the health risk assessment in the IS/MND for a large Safeway fueling station in Petaluma.
- In August 2018, researched and wrote responses to comments on DEIR for the Newland Sierra Project, San Diego County on greenhouse gas emissions, construction emissions, odor, and Valley Fever.
- In July/August 2018, researched and wrote 12 pages of comments on DEIR for proposed Doheny Desal Project, on GHG, criteria pollutant, and TAC emissions and public health impacts during construction and indirect emissions during operation.
- In June 2018, researched and wrote 12 pages of technical comments rebutting NDDH responses to comments on Meridian Davis Refinery.
- In April 2018, researched and wrote 26 pages of comments on greenhouse gas emissions and mitigation as proposed in the San Diego County Climate Action Plan.
- In April 2018, researched and wrote 24 pages of comments on the FEIR for Monterey County water supply project, including GHG mitigation, air quality impacts and mitigation, and Valley Fever.
- In March-June 2018, researched and wrote 37 pages of comments on the IS/MND for the 2305 Mission College Boulevard Data Center, Santa Clara, California and responded to responses to comments.
- In March 2018, researched and wrote 40 pages of comments on the IS/MND for the Diablo Energy Storage Facility in Pittsburg, California.
- In March 2018, researched and wrote 19 pages of comments on Infill Checklist/Mitigated Negative Declaration for the Legacy@Livermore Project on CalEEMod emission calculations, including NOx and PM10 and construction health risk assessment, including Valley Fever.
- In January 2018, researched and wrote 28 pages of comments on draft Permit to Construct for the Davis Refinery Project, North Dakota, as a minor source of criteria pollutants and HAPs.

- In December 2017, researched and wrote 19 pages of comments on DEIR for the Rialto Bioenergy Facility, Rialto, California.
- In November and December 2017, researched and wrote 6 pages of comments on the Ventura County Air Pollution Control District's Preliminary Determination of Compliance (PDOC) for Mission Rock Energy Center.
- In November 2017, researched and wrote 11 pages of comments on control technology evaluation for the National Emission Standards for Hazardous Air Pollutants from the Portland Cement Manufacturing Industry Residual Risk and Technology Review.
- In September and November 2017, prepared comments on revised Negative Declaration for Delicato Winery in San Joaquin County, California.
- In October and November 2017, researched and wrote comments on North City Project Pure Water San Diego Program DEIR/DEIS to reclaim wastewater for municipal use.
- In August 2017, reviewed DEIR on a new residential community in eastern San Diego County (Newland Sierra) and research and wrote 60 pages of comments on air quality, greenhouse gas emissions and health impacts, including Valley Fever.
- In August 2017, reviewed responses to comments on Part 70 operating permit for IGP Methanol's Gulf Coast Methanol Complex, near Myrtle Grove, Louisiana, and researched and wrote comments on metallic HAP issues.
- In July 2017, reviewed the FEIS for an expansion of the Port of Gulfport and researched and wrote 10 pages of comments on air quality and public health.
- In June 2017, reviewed and prepared technical report on an Application for a synthetic minor source construction permit for a new Refinery in North Dakota.
- In June 2017, reviewed responses to NPCA and other comments on the BP Cherry Point Refinery modifications and assisted counsel in evaluating issues to appeal, including GHG BACT, coker heater SCR cost effectiveness analysis, and SO₂ BACT.
- In June 2017, reviewed Part 70 Operating Permit Renewal/Modification for the Noranda Alumina LC/Gramercy Holdings I, LLC alumina processing plant, St. James, Louisiana, and prepared comments on HAP emissions from bauxite feedstock.
- In May and June 2017, reviewed FEIR on Tesoro Integration Project and prepared responses to comments on the DEIR.
- In May 2017, prepared comments on tank VOC and HAP emissions from Tesoro Integration Project, based on real time monitoring at the Tesoro and other refineries in the SCAQMD.
- In April 2017, prepared comments on Negative Declaration for Delicato Winery in San Joaquin County, California.

- In March 2017, reviewed Negative Declaration for Ellmore geothermal facility in Imperial County, California and prepared summary of issues.
- In March 2017, prepared response to Phillips 66 Company's Appeal of the San Luis Obispo County Planning Commission's Decision Denying the Rail Spur Extension Project Proposed for the Santa Maria Refinery.
- In February 2017, researched and wrote comments on Kalama draft Title V permit for 10,000 MT/day methanol production and marine export facility in Kalama, Washington.
- In January 2017, researched and wrote 51 pages of comments on proposed Title V and PSD permits for the St. James Methanol Plant, St. James Louisiana, on BACT and enforceability of permit conditions.
- In December 2016, researched and wrote comments on draft Title V Permit for Yuhuang Chemical Inc. Methanol Plant, St. James, Louisiana, responding to EPA Order addressing enforceability issues.
- In November 2016, researched and wrote comments on Initial Study/Mitigated Negative Declaration for the AES Battery Energy Storage Facility, Long Beach, CA.
- In November 2016, researched and wrote comments on Campo Verde Battery Energy Storage System Draft Environmental Impact Report.
- In October 2016, researched and wrote comments on Title V Permit for NuStar Terminal Operations Partnership L.P, Stockton, CA.
- In October 2016, prepared expert report, Technical Assessment of Achieving the 40 CFR Part 423 Zero Discharge Standard for Bottom Ash Transport Water at the Belle River Power Plant, East China, Michigan. Reported resulted in a 2 year reduction in compliance date for elimination of bottom ash transport water. 1/30/17 DEQ Letter.
- In September 2016, researched and wrote comments on Proposed Title V Permit and Environmental Assessment Statement, Yuhuang Chemical Inc. Methanol Plant, St. James, Louisiana.
- In September 2016, researched and wrote response to "Further Rebuttal in Support of Appeal of Planning Commission Resolution No. 16-1, Denying Use Permit Application 12PLN-00063 and Declining to Certify Final Environmental Impact Report for the Valero Benicia Crude-by-Rail Project.
- In August 2016, reviewed and prepared comments on manuscript: Hutton et al., Freshwater Flows to the San Francisco Bay-Delta Estuary over Nine Decades: Trends Evaluation.
- In August/September 2016, researched and wrote comments on Mitigated Negative Declaration for the Chevron Long Wharf Maintenance and Efficiency Project.

- In July 2016, researched and wrote comments on the Ventura County APCD Preliminary Determination of Compliance and the California Energy Commission Revised Preliminary Staff Assessment for the Puente Power Project.
- In June 2016, researched and wrote comments on an Ordinance (1) Amending the Oakland Municipal Code to Prohibit the Storage and Handling of Coal and Coke at Bulk Material Facilities or Terminals Throughout the City of Oakland and (2) Adopting CEQA Exemption Findings and supporting technical reports. Council approved Ordinance on an 8 to 0 vote on June 27, 2016.
- In May 2016, researched and wrote comments on Draft Title V Permit and Draft Environmental Impact Report for the Tesoro Los Angeles Refinery Integration and Compliance Project.
- In March 2016, researched and wrote comments on Valero's Appeal of Planning Commission's Denial of Valero Crude-by-Rail Project.
- In February 2016, researched and wrote comments on Final Environmental Impact Report, Santa Maria Rail Spur Project.
- In February 2016, researched and wrote comments on Final Environmental Impact Report, Valero Benicia Crude by Rail Project.
- In January 2016, researched and wrote comments on Draft Programmatic Environmental Impact Report for the Southern California Association of Government's (SCAG) 2016-2040 Regional Transportation Plan/Sustainable Communities Strategy.
- In November 2015, researched and wrote comments on Final Environmental Impact Report for Revisions to the Kern County Zoning Ordinance – 2015(C) (Focused on Oil and Gas Local Permitting), November 2015.
- In October 2015, researched and wrote comments on Revised Draft Environmental Report, Valero Benicia Crude by Rail Project.
- In September 2015, prepared report, "Environmental, Health and Safety Impacts of the Proposed Oakland Bulk and Oversized Terminal, and presented oral testimony on September 21, 2015 before Oakland City Council on behalf of the Sierra Club.
- In September 2015, researched and wrote comments on revisions to two chapters of EPA's Air Pollution Control Cost Manual: Docket ID No. EPA-HQ-OAR-2015-0341.
- In June 2015, researched and wrote comments on DEIR for the CalAm Monterey Peninsula Water Supply Project.
- In April 2015, researched and wrote comments on proposed Title V Operating Permit Revision and Prevention of Significant Deterioration Permit for Arizona Public Service's Ocotillo Power Plant Modernization Project (5 GE LMS100 105-MW simple cycle turbines operated as peakers), in Tempe, Arizona; Final permit appealed to EAB.

- In March 2015, researched and wrote “Comments on Proposed Title V Air Permit, Yuhuang Chemical Inc. Methanol Plant, St. James, Louisiana”. Client filed petition objecting to the permit. EPA granted majority of issues. In the Matter of Yuhuang Chemical Inc. Methanol Plant, St. James Parish, Louisiana, Permit No. 2560-00295-V0, Issued by the Louisiana Department of Environmental Quality, Petition No. VI-2015-03, Order Responding to the Petitioners’ Request for Objection to the Issuance of a Title V Operating Permit, September 1, 2016.
- In February 2015, prepared compilation of BACT cost effectiveness values in support of comments on draft PSD Permit for Bonanza Power Project.
- In January 2015, prepared cost effectiveness analysis for SCR for a 500-MW coal fire power plant, to address unpermitted upgrades in 2000.
- In January 2015, researched and wrote comments on Revised Final Environmental Impact Report for the Phillips 66 Propane Recovery Project. *Communities for a Better Environment et al. v. Contra Costa County et al. Contra Costa County (Superior Court, Contra Costa County, Case No. MSN15-0301, December 1, 2016).*
- In December 2014, researched and wrote “Report on Bakersfield Crude Terminal Permits to Operate.” In response, the U.S. EPA cited the Terminal for 10 violations of the Clean Air Act. The Fifth Appellate District Court upheld the finding in this report in CBE et al v. San Joaquin Valley Unified Air Pollution Control District and Bakersfield Crude Terminal LLC et al, Super. Ct. No. 284013, June 23, 2017.
- In December 2014, researched and wrote comments on Revised Draft Environmental Impact Report for the Phillips 66 Propane Recovery Project.
- In November 2014, researched and wrote comments on Revised Draft Environmental Impact Report for Phillips 66 Rail Spur Extension Project and Crude Unloading Project, Santa Maria, CA to allow the import of tar sands crudes.
- In November 2014, researched and wrote comments on Draft Environmental Impact Report for Phillips 66 Ultra Low Sulfur Diesel Project, responding to the California Supreme Court Decision, *Communities for a Better Environment v. South Coast Air Quality Management Dist. (2010) 48 Cal.4th 310.*
- In November 2014, researched and wrote comments on Draft Environmental Impact Report for the Tesoro Avon Marine Oil Terminal Lease Consideration.
- In October 2014, prepared: “Report on Hydrogen Cyanide Emissions from Fluid Catalytic Cracking Units”, pursuant to the Petroleum Refinery Sector Risk and Technology Review and New Source Performance Standards, 79 FR 36880.
- In October 2014, researched and wrote technical comments on Final Environmental Impact Reports for Alon Bakersfield Crude Flexibility Project to build a rail terminal to allow the

import/export of tar sands and Bakken crude oils and to upgrade an existing refinery to allow it to process a wide range of crudes.

- In October 2014, researched and wrote technical comments on the Title V Permit Renewal and three De Minimus Significant Revisions for the Tesoro Logistics Marine Terminal in the SCAQMD.
- In September 2014, researched and wrote technical comments on the Draft Environmental Impact Report for the Valero Crude by Rail Project.
- In August 2014, for EPA Region 6, prepared technical report on costing methods for upgrades to existing scrubbers at coal-fired power plants.
- In July 2014, researched and wrote technical comments on Draft Final Environmental Impact Reports for Alon Bakersfield Crude Flexibility Project to build a rail terminal to allow the import/export of tar sands and Bakken crude oils and to upgrade an existing refinery to allow it to process a wide range of crudes.
- In June 2014, researched and wrote technical report on Initial Study and Draft Negative Declaration for the Tesoro Logistics Storage Tank Replacement and Modification Project.
- In May 2014, researched and wrote technical comments on Intent to Approve a new refinery and petroleum transloading operation in Utah.
- In March and April 2014, prepared declarations on air permits issued for two crude-by-rail terminals in California, modified to switch from importing ethanol to importing Bakken crude oils by rail and transferring to tanker cars. Permits were issued without undergoing CEQA review. One permit was upheld by the San Francisco Superior Court as statute of limitations had run. The Sacramento Air Quality Management District withdrew the second one due to failure to require BACT and conduct CEQA review.
- In March 2014, researched and wrote technical report on Negative Declaration for a proposed modification of the air permit for a bulk petroleum and storage terminal to allow the import of tar sands and Bakken crude oil by rail and its export by barge, under the New York State Environmental Quality Review Act (SEQRA).
- In February 2014, researched and wrote technical report on proposed modification of air permit for midwest refinery upgrade/expansion to process tar sands crudes.
- In January 2014, prepared cost estimates to capture, transport, and use CO₂ in enhanced oil recovery, from the Freeport LNG project based on both Selexol and Amine systems.
- In January 2014, researched and wrote technical report on Draft Environmental Impact Report for Phillips 66 Rail Spur Extension Project, Santa Maria, CA. Comments addressed project description (piecemealing, crude slate), risk of upset analyses, mitigation measures, alternative analyses and cumulative impacts.

- In November 2013, researched and wrote technical report on the Phillips 66 Propane Recovery Project, Rodeo, CA. Comments addressed project description (piecemealing, crude slate) and air quality impacts.
- In September 2013, researched and wrote technical report on the Draft Authority to Construct Permit for the Casa Diablo IV Geothermal Development Project Environmental Impact Report and Declaration in Support of Appeal and Petition for Stay, U.S. Department of the Interior, Board of Land Appeals, Appeal of Decision Record for the Casa Diablo IV Geothermal Development Project.
- In September 2013, researched and wrote technical report on Effluent Limitation Guidelines for Best Available Technology Economically Available (BAT) for Bottom Ash Transport Waters from Coal-Fired Power Plants in the Steam Electric Power Generating Point Source Category.
- In July 2013, researched and wrote technical report on Initial Study/Mitigated Negative Declaration for the Valero Crude by Rail Project, Benicia, California, Use Permit Application 12PLN-00063.
- In July 2013, researched and wrote technical report on fugitive particulate matter emissions from coal train staging at the proposed Coyote Island Terminal, Oregon, for draft Permit No. 25-0015-ST-01.
- In July 2013, researched and wrote technical comments on air quality impacts of the Finger Lakes LPG Storage Facility as reported in various Environmental Impact Statements.
- In July 2013, researched and wrote technical comments on proposed Greenhouse Gas PSD Permit for the Celanese Clear Lake Plant, including cost analysis of CO₂ capture, transport, and sequestration.
- In June/July 2013, researched and wrote technical comments on proposed Draft PSD Preconstruction Permit for Greenhouse Gas Emission for the ExxonMobil Chemical Company Baytown Olefins Plant, including cost analysis of CO₂ capture, transport, and sequestration.
- In June 2013, researched and wrote technical report on a Mitigated Negative Declaration for a new rail terminal at the Valero Benicia Refinery to import increased amounts of "North American" crudes. Comments addressed air quality impacts of refining increased amounts of tar sands crudes.
- In June 2013, researched and wrote technical report on Draft Environmental Impact Report for the California Ethanol and Power Imperial Valley 1 Project.
- In May 2013, researched and wrote comments on draft PSD permit for major expansion of midwest refinery to process 100% tar sands crudes, including a complex netting analysis involving debottlenecking, piecemealing, and BACT analyses.

- In April 2013, researched and wrote technical report on the Draft Supplemental Environmental Impact Statement (DSEIS) for the Keystone XL Pipeline on air quality impacts from refining increased amount of tar sands crudes at Refineries in PADD 3.
- In October 2012, researched and wrote technical report on the Environmental Review for the Coyote Island Terminal Dock at the Port of Morrow on fugitive particulate matter emissions.
- In October 2012-October 2014, review and evaluate Flint Hills West Application for an expansion/modification for increased (Texas, Eagle Ford Shale) crude processing and related modification, including netting and BACT analysis. Assist in settlement discussions.
- In February 2012, researched and wrote comments on BART analysis in PA Regional Haze SIP, 77 FR 3984 (Jan. 26, 2012). On Sept. 29, 2015, a federal appeals court overturned the U.S. EPA's approval of this plan, based in part on my comments, concluding "...we will vacate the 2014 Final Rule to the extent it approved Pennsylvania's source-specific BART analysis and remand to the EPA for further proceedings consistent with this Opinion." Nat'l Parks Conservation Assoc. v. EPA, 3d Cir., No. 14-3147, 9/19/15.
- Prepared cost analyses and comments on New York's proposed BART determinations for NO_x, SO₂, and PM and EPA's proposed approval of BART determinations for Danskammer Generating Station under New York Regional Haze State Implementation Plan and Federal Implementation Plan, 77 FR 51915 (August 28, 2012).
- Prepared cost analyses and comments on NO_x BART determinations for Regional Haze State Implementation Plan for State of Nevada, 77 FR 23191 (April 18, 2012) and 77 FR 25660 (May 1, 2012).
- Prepared analyses of and comments on New Source Performance Standards for Greenhouse Gas Emissions for New Stationary Sources: Electric Utility Generating Units, 77 FR 22392 (April 13, 2012).
- Researched and wrote comments on CASPR-BART emission equivalency and NO_x and PM BART determinations in EPA proposed approval of State Implementation Plan for Pennsylvania Regional Haze Implementation Plan, 77 FR 3984 (January 26, 2012).
- Researched and wrote comments and statistical analyses on hazardous air pollutants (HAPs) emission controls, monitoring, compliance methods, and the use of surrogates for acid gases, organic HAPs, and metallic HAPs for proposed National Emission Standards for Hazardous Air Pollutants from Coal- and Oil-Fired Electric Utility Steam Generating Units, 76 FR 24976 (May 3, 2011).
- Prepared cost analyses and comments on NO_x BART determinations and emission reductions for proposed Federal Implementation Plan for Four Corners Power Plant, 75 FR 64221 (October 19, 2010).

- Prepared cost analyses and comments on NO_x BART determinations for Colstrip Units 1- 4 for Montana State Implementation Plan and Regional Haze Federal Implementation Plan, 77 FR 23988 (April 20, 2010).
- For EPA Region 8, prepared report: Revised BART Cost Effectiveness Analysis for Tail-End Selective Catalytic Reduction at the Basin Electric Power Cooperative Leland Olds Station Unit 2 Final Report, March 2011, in support of 76 FR 58570 (Sept. 21, 2011).
- For EPA Region 6, prepared report: Revised BART Cost-Effectiveness Analysis for Selective Catalytic Reduction at the Public Service Company of New Mexico San Juan Generating Station, November 2010, in support of 76 FR 52388 (Aug. 22, 2011).
- For EPA Region 6, prepared report: Revised BART Cost-Effectiveness Analysis for Flue Gas Desulfurization at Coal-Fired Electric Generating Units in Oklahoma: Sooner Units 1 & 2, Muskogee Units 4 & 5, Northeastern Units 3 & 4, October 2010, in support of 76 FR 16168 (March 26, 2011). My work was upheld in: *State of Oklahoma v. EPA*, App. Case 12-9526 (10th Cir. July 19, 2013).
- Identified errors in N₂O emission factors in the Mandatory Greenhouse Gas Reporting Rule, 40 CFR 98, and prepared technical analysis to support Petition for Rulemaking to Correct Emissions Factors in the Mandatory Greenhouse Gas Reporting Rule, filed with EPA on 10/28/10.
- Assisted interested parties develop input for and prepare comments on the Information Collection Request for Petroleum Refinery Sector NSPS and NESHAP Residual Risk and Technology Review, 75 FR 60107 (9/29/10).
- Technical reviewer of EPA's "Emission Estimation Protocol for Petroleum Refineries," posted for public comments on CHIEF on 12/23/09, prepared in response to the City of Houston's petition under the Data Quality Act (March 2010).
- Researched and wrote comments on SCR cost effectiveness for EPA's Advanced Notice of Proposed Rulemaking, Assessment of Anticipated Visibility Improvements at Surrounding Class I Areas and Cost Effectiveness of Best Available Retrofit Technology for Four Corners Power Plant and Navajo Generating Station, 74 FR 44313 (August 28, 2009).
- Researched and wrote comments on Proposed Rule for Standards of Performance for Coal Preparation and Processing Plants, 74 FR 25304 (May 27, 2009).
- Prepared comments on draft PSD permit for major expansion of midwest refinery to process up to 100% tar sands crudes. Participated in development of monitoring and controls to mitigate impacts and in negotiating a Consent Decree to settle claims in 2008.
- Reviewed and assisted interested parties prepare comments on proposed Kentucky air toxic regulations at 401 KAR 64:005, 64:010, 64:020, and 64:030 (June 2007).

- Prepared comments on proposed Standards of Performance for Electric Utility Steam Generating Units and Small Industrial-Commercial-Industrial Steam Generating Units, 70 FR 9706 (February 28, 2005).
- Prepared comments on Louisville Air Pollution Control District proposed Strategic Toxic Air Reduction regulations.
- Prepared comments and analysis of BAAQMD Regulation, Rule 11, Flare Monitoring at Petroleum Refineries.
- Prepared comments on Proposed National Emission Standards for Hazardous Air Pollutants; and, in the Alternative, Proposed Standards of Performance for New and Existing Stationary Sources: Electricity Utility Steam Generating Units (MACT standards for coal-fired power plants).
- Prepared Authority to Construct Permit for remediation of a large petroleum-contaminated site on the California Central Coast. Negotiated conditions with agencies and secured permits.
- Prepared Authority to Construct Permit for remediation of a former oil field on the California Central Coast. Participated in negotiations with agencies and secured permits.
- Prepared and/or reviewed hundreds of environmental permits, including NPDES, UIC, Stormwater, Authority to Construct, Prevention of Significant Deterioration, Nonattainment New Source Review, Title V, and RCRA, among others.
- Participated in the development of the CARB document, *Guidance for Power Plant Siting and Best Available Control Technology*, including attending public workshops and filing technical comments.
- Performed data analyses in support of adoption of emergency power restoration standards by the California Public Utilities Commission for “major” power outages, where major is an outage that simultaneously affects 10% of the customer base.
- Drafted portions of the Good Neighbor Ordinance to grant Contra Costa County greater authority over safety of local industry, particularly chemical plants and refineries.
- Participated in drafting BAAQMD Regulation 8, Rule 28, Pressure Relief Devices, including participation in public workshops, review of staff reports, draft rules and other technical materials, preparation of technical comments on staff proposals, research on availability and costs of methods to control PRV releases, and negotiations with staff.
- Participated in amending BAAQMD Regulation 8, Rule 18, Valves and Connectors, including participation in public workshops, review of staff reports, proposed rules and other supporting technical material, preparation of technical comments on staff proposals, research on availability and cost of low-leak technology, and negotiations with staff.

- Participated in amending BAAQMD Regulation 8, Rule 25, Pumps and Compressors, including participation in public workshops, review of staff reports, proposed rules, and other supporting technical material, preparation of technical comments on staff proposals, research on availability and costs of low-leak and seal-less technology, and negotiations with staff.
- Participated in amending BAAQMD Regulation 8, Rule 5, Storage of Organic Liquids, including participation in public workshops, review of staff reports, proposed rules, and other supporting technical material, preparation of technical comments on staff proposals, research on availability and costs of controlling tank emissions, and presentation of testimony before the Board.
- Participated in amending BAAQMD Regulation 8, Rule 18, Valves and Connectors at Petroleum Refinery Complexes, including participation in public workshops, review of staff reports, proposed rules and other supporting technical material, preparation of technical comments on staff proposals, research on availability and costs of low-leak technology, and presentation of testimony before the Board.
- Participated in amending BAAQMD Regulation 8, Rule 22, Valves and Flanges at Chemical Plants, etc, including participation in public workshops, review of staff reports, proposed rules, and other supporting technical material, preparation of technical comments on staff proposals, research on availability and costs of low-leak technology, and presentation of testimony before the Board.
- Participated in amending BAAQMD Regulation 8, Rule 25, Pump and Compressor Seals, including participation in public workshops, review of staff reports, proposed rules, and other supporting technical material, preparation of technical comments on staff proposals, research on availability of low-leak technology, and presentation of testimony before the Board.
- Participated in the development of the BAAQMD Regulation 2, Rule 5, Toxics, including participation in public workshops, review of staff proposals, and preparation of technical comments.
- Participated in the development of SCAQMD Rule 1402, Control of Toxic Air Contaminants from Existing Sources, and proposed amendments to Rule 1401, New Source Review of Toxic Air Contaminants, in 1993, including review of staff proposals and preparation of technical comments on same.
- Participated in the development of the Sunnyvale Ordinance to Regulate the Storage, Use and Handling of Toxic Gas, which was designed to provide engineering controls for gases that are not otherwise regulated by the Uniform Fire Code.
- Participated in the drafting of the Statewide Water Quality Control Plans for Inland Surface Waters and Enclosed Bays and Estuaries, including participation in workshops, review of draft plans, preparation of technical comments on draft plans, and presentation of testimony before the SWRCB.

- Participated in developing Se permit effluent limitations for the five Bay Area refineries, including review of staff proposals, statistical analyses of Se effluent data, review of literature on aquatic toxicity of Se, preparation of technical comments on several staff proposals, and presentation of testimony before the Bay Area RWQCB.
- Represented the California Department of Water Resources in the 1991 Bay-Delta Hearings before the State Water Resources Control Board, presenting sworn expert testimony with cross examination and rebuttal on a striped bass model developed by the California Department of Fish and Game.
- Represented the State Water Contractors in the 1987 Bay-Delta Hearings before the State Water Resources Control Board, presenting sworn expert testimony with cross examination and rebuttal on natural flows, historical salinity trends in San Francisco Bay, Delta outflow, and hydrodynamics of the South Bay.
- Represented interveners in the licensing of over 20 natural-gas-fired power plants and one coal gasification plant at the California Energy Commission and elsewhere. Reviewed and prepared technical comments on applications for certification, preliminary staff assessments, final staff assessments, preliminary determinations of compliance, final determinations of compliance, and prevention of significant deterioration permits in the areas of air quality, water supply, water quality, biology, public health, worker safety, transportation, site contamination, cooling systems, and hazardous materials. Presented written and oral testimony in evidentiary hearings with cross examination and rebuttal. Participated in technical workshops.
- Represented several parties in the proposed merger of San Diego Gas & Electric and Southern California Edison. Prepared independent technical analyses on health risks, air quality, and water quality. Presented written and oral testimony before the Public Utilities Commission administrative law judge with cross examination and rebuttal.
- Represented a PRP in negotiations with local health and other agencies to establish impact of subsurface contamination on overlying residential properties. Reviewed health studies prepared by agency consultants and worked with agencies and their consultants to evaluate health risks.

WATER QUALITY/RESOURCES

- Directed and participated in research on environmental impacts of energy development in the Colorado River Basin, including contamination of surface and subsurface waters and modeling of flow and chemical transport through fractured aquifers.
- Played a major role in Northern California water resource planning studies since the early 1970s. Prepared portions of the Basin Plans for the Sacramento, San Joaquin, and Delta basins including sections on water supply, water quality, beneficial uses, waste load

allocation, and agricultural drainage. Developed water quality models for the Sacramento and San Joaquin Rivers.

- Conducted hundreds of studies over the past 40 years on Delta water supplies and the impacts of exports from the Delta on water quality and biological resources of the Central Valley, Sacramento-San Joaquin Delta, and San Francisco Bay. Typical examples include:
 1. Evaluate historical trends in salinity, temperature, and flow in San Francisco Bay and upstream rivers to determine impacts of water exports on the estuary;
 2. Evaluate the role of exports and natural factors on the food web by exploring the relationship between salinity and primary productivity in San Francisco Bay, upstream rivers, and ocean;
 3. Evaluate the effects of exports, other in-Delta, and upstream factors on the abundance of salmon and striped bass;
 4. Review and critique agency fishery models that link water exports with the abundance of striped bass and salmon;
 5. Develop a model based on GLMs to estimate the relative impact of exports, water facility operating variables, tidal phase, salinity, temperature, and other variables on the survival of salmon smolts as they migrate through the Delta;
 6. Reconstruct the natural hydrology of the Central Valley using water balances, vegetation mapping, reservoir operation models to simulate flood basins, precipitation records, tree ring research, and historical research;
 7. Evaluate the relationship between biological indicators of estuary health and down-estuary position of a salinity surrogate (X2);
 8. Use real-time fisheries monitoring data to quantify impact of exports on fish migration;
 9. Refine/develop statistical theory of autocorrelation and use to assess strength of relationships between biological and flow variables;
 10. Collect, compile, and analyze water quality and toxicity data for surface waters in the Central Valley to assess the role of water quality in fishery declines;
 11. Assess mitigation measures, including habitat restoration and changes in water project operation, to minimize fishery impacts;
 12. Evaluate the impact of unscreened agricultural water diversions on abundance of larval fish;
 13. Prepare and present testimony on the impacts of water resources development on Bay hydrodynamics, salinity, and temperature in water rights hearings;

14. Evaluate the impact of boat wakes on shallow water habitat, including interpretation of historical aerial photographs;
 15. Evaluate the hydrodynamic and water quality impacts of converting Delta islands into reservoirs;
 16. Use a hydrodynamic model to simulate the distribution of larval fish in a tidally influenced estuary;
 17. Identify and evaluate non-export factors that may have contributed to fishery declines, including predation, shifts in oceanic conditions, aquatic toxicity from pesticides and mining wastes, salinity intrusion from channel dredging, loss of riparian and marsh habitat, sedimentation from upstream land alternations, and changes in dissolved oxygen, flow, and temperature below dams.
- Developed, directed, and participated in a broad-based research program on environmental issues and control technology for energy industries including petroleum, oil shale, coal mining, and coal slurry transport. Research included evaluation of air and water pollution, development of novel, low-cost technology to treat and dispose of wastes, and development and application of geohydrologic models to evaluate subsurface contamination from in-situ retorting. The program consisted of government and industry contracts and employed 45 technical and administrative personnel.
 - Coordinated an industry task force established to investigate the occurrence, causes, and solutions for corrosion/erosion and mechanical/engineering failures in the waterside systems (e.g., condensers, steam generation equipment) of power plants. Corrosion/erosion failures caused by water and steam contamination that were investigated included waterside corrosion caused by poor microbiological treatment of cooling water, steam-side corrosion caused by ammonia-oxygen attack of copper alloys, stress-corrosion cracking of copper alloys in the air cooling sections of condensers, tube sheet leaks, oxygen in-leakage through condensers, volatilization of silica in boilers and carry over and deposition on turbine blades, and iron corrosion on boiler tube walls. Mechanical/engineering failures investigated included: steam impingement attack on the steam side of condenser tubes, tube-to-tube-sheet joint leakage, flow-induced vibration, structural design problems, and mechanical failures due to stresses induced by shutdown, startup and cycling duty, among others. Worked with electric utility plant owners/operators, condenser and boiler vendors, and architect/engineers to collect data to document the occurrence of and causes for these problems, prepared reports summarizing the investigations, and presented the results and participated on a committee of industry experts tasked with identifying solutions to prevent condenser failures.
 - Evaluated the cost effectiveness and technical feasibility of using dry cooling and parallel dry-wet cooling to reduce water demands of several large natural-gas fired power plants in California and Arizona.

- Designed and prepared cost estimates for several dry cooling systems (e.g., fin fan heat exchangers) used in chemical plants and refineries.
- Designed, evaluated, and costed several zero liquid discharge systems for power plants.
- Evaluated the impact of agricultural and mining practices on surface water quality of Central Valley streams. Represented municipal water agencies on several federal and state advisory committees tasked with gathering and assessing relevant technical information, developing work plans, and providing oversight of technical work to investigate toxicity issues in the watershed.

AIR QUALITY/PUBLIC HEALTH

- Prepared or reviewed the air quality and public health sections of hundreds of EIRs and EISs on a wide range of industrial, commercial and residential projects.
- Prepared or reviewed hundreds of NSR and PSD permits for a wide range of industrial facilities.
- Designed, implemented, and directed a 2-year-long community air quality monitoring program to assure that residents downwind of a petroleum-contaminated site were not impacted during remediation of petroleum-contaminated soils. The program included real-time monitoring of particulates, diesel exhaust, and BTEX and time integrated monitoring for over 100 chemicals.
- Designed, implemented, and directed a 5-year long source, industrial hygiene, and ambient monitoring program to characterize air emissions, employee exposure, and downwind environmental impacts of a first-generation shale oil plant. The program included stack monitoring of heaters, boilers, incinerators, sulfur recovery units, rock crushers, API separator vents, and wastewater pond fugitives for arsenic, cadmium, chlorine, chromium, mercury, 15 organic indicators (e.g., quinoline, pyrrole, benzo(a)pyrene, thiophene, benzene), sulfur gases, hydrogen cyanide, and ammonia. In many cases, new methods had to be developed or existing methods modified to accommodate the complex matrices of shale plant gases.
- Conducted investigations on the impact of diesel exhaust from truck traffic from a wide range of facilities including mines, large retail centers, light industrial uses, and sports facilities. Conducted traffic surveys, continuously monitored diesel exhaust using an aethalometer, and prepared health risk assessments using resulting data.
- Conducted indoor air quality investigations to assess exposure to natural gas leaks, pesticides, molds and fungi, soil gas from subsurface contamination, and outgassing of carpets, drapes, furniture and construction materials. Prepared health risk assessments using collected data.
- Prepared health risk assessments, emission inventories, air quality analyses, and assisted in the permitting of over 70 1 to 2 MW emergency diesel generators.

- Prepare over 100 health risk assessments, endangerment assessments, and other health-based studies for a wide range of industrial facilities.
- Developed methods to monitor trace elements in gas streams, including a continuous real-time monitor based on the Zeeman atomic absorption spectrometer, to continuously measure mercury and other elements.
- Performed nuisance investigations (odor, noise, dust, smoke, indoor air quality, soil contamination) for businesses, industrial facilities, and residences located proximate to and downwind of pollution sources.

PUBLICATIONS AND PRESENTATIONS (Partial List - Representative Publications)

J.P. Fox, P.H. Hutton, D.J. Howes, A.J. Draper, and L. Sears, Reconstructing the Natural Hydrology of the San Francisco Bay-Delta Watershed, *Hydrology and Earth System Sciences*, Special Issue: Predictions under Change: Water, Earth, and Biota in the Anthropocene, v. 19, pp. 4257-4274, 2015. <http://www.hydrol-earth-syst-sci.net/19/4257/2015/hess-19-4257-2015.pdf>. See also: Estimates of Natural and Unimpaired Flows for the Central Valley of California: Water Years 1922-2014 at: <https://msb.water.ca.gov/documents/86728/a702a57f-ae7a-41a3-8bff-722e144059d6>.

D. Howes, P. Fox, and P. Hutton, Evapotranspiration from Natural Vegetation in the Central Valley of California: Monthly Grass Reference Based Vegetation Coefficients and the Dual Crop Coefficient Approach, *Journal of Hydrologic Engineering*, v.20, no. 10, October 2015.

Phyllis Fox and Lindsey Sears, *Natural Vegetation in the Central Valley of California*, June 2014, Prepared for State Water Contractors and San Luis & Delta-Mendota Water Authority, 311 pg.

J.P. Fox, T.P. Rose, and T.L. Sawyer, Isotope Hydrology of a Spring-fed Waterfall in Fractured Volcanic Rock, 2007.

C.E. Lambert, E.D. Winegar, and Phyllis Fox, Ambient and Human Sources of Hydrogen Sulfide: An Explosive Topic, Air & Waste Management Association, June 2000, Salt Lake City, UT.

San Luis Obispo County Air Pollution Control District and San Luis Obispo County Public Health Department, *Community Monitoring Program*, February 8, 1999.

The Bay Institute, *From the Sierra to the Sea. The Ecological History of the San Francisco Bay-Delta Watershed*, 1998.

J. Phyllis Fox, *Well Interference Effects of HDPP's Proposed Wellfield in the Victor Valley Water District*, Prepared for the California Unions for Reliable Energy (CURE), October 12, 1998.

J. Phyllis Fox, *Air Quality Impacts of Using CPVC Pipe in Indoor Residential Potable Water Systems*, Report Prepared for California Pipe Trades Council, California Firefighters Association, and other trade associations, August 29, 1998.

J. Phyllis Fox and others, *Authority to Construct Avila Beach Remediation Project*, Prepared for Unocal Corporation and submitted to San Luis Obispo Air Pollution Control District, June 1998.

J. Phyllis Fox and others, *Authority to Construct Former Guadalupe Oil Field Remediation Project*, Prepared for Unocal Corporation and submitted to San Luis Obispo Air Pollution Control District, May 1998.

J. Phyllis Fox and Robert Sears, *Health Risk Assessment for the Metropolitan Oakland International Airport Proposed Airport Development Program*, Prepared for Plumbers & Steamfitters U.A. Local 342, December 15, 1997.

Levine-Fricke-Recon (Phyllis Fox and others), *Preliminary Endangerment Assessment Work Plan for the Study Area Operable Unit, Former Solano County Sanitary Landfill, Benicia, California*, Prepared for Granite Management Co. for submittal to DTSC, September 26, 1997.

Phyllis Fox and Jeff Miller, "Fathead Minnow Mortality in the Sacramento River," *IEP Newsletter*, v. 9, n. 3, 1996.

Jud Monroe, Phyllis Fox, Karen Levy, Robert Nuzum, Randy Bailey, Rod Fujita, and Charles Hanson, *Habitat Restoration in Aquatic Ecosystems. A Review of the Scientific Literature Related to the Principles of Habitat Restoration*, Part Two, Metropolitan Water District of Southern California (MWD) Report, 1996.

Phyllis Fox and Elaine Archibald, *Aquatic Toxicity and Pesticides in Surface Waters of the Central Valley*, California Urban Water Agencies (CUWA) Report, September 1997.

Phyllis Fox and Alison Britton, *Evaluation of the Relationship Between Biological Indicators and the Position of X2*, CUWA Report, 1994.

Phyllis Fox and Alison Britton, *Predictive Ability of the Striped Bass Model*, WRINT DWR-206, 1992.

J. Phyllis Fox, *An Historical Overview of Environmental Conditions at the North Canyon Area of the Former Solano County Sanitary Landfill*, Report Prepared for Solano County Department of Environmental Management, 1991.

J. Phyllis Fox, *An Historical Overview of Environmental Conditions at the East Canyon Area of the Former Solano County Sanitary Landfill*, Report Prepared for Solano County Department of Environmental Management, 1991.

Phyllis Fox, *Trip 2 Report, Environmental Monitoring Plan, Parachute Creek Shale Oil Program*, Unocal Report, 1991.

J. P. Fox and others, "Long-Term Annual and Seasonal Trends in Surface Salinity of San Francisco Bay," *Journal of Hydrology*, v. 122, p. 93-117, 1991.

J. P. Fox and others, "Reply to Discussion by D.R. Helsel and E.D. Andrews on Trends in Freshwater Inflow to San Francisco Bay from the Sacramento-San Joaquin Delta," *Water Resources Bulletin*, v. 27, no. 2, 1991.

J. P. Fox and others, "Reply to Discussion by Philip B. Williams on Trends in Freshwater Inflow to San Francisco Bay from the Sacramento-San Joaquin Delta," *Water Resources Bulletin*, v. 27, no. 2, 1991.

J. P. Fox and others, "Trends in Freshwater Inflow to San Francisco Bay from the Sacramento-San Joaquin Delta," *Water Resources Bulletin*, v. 26, no. 1, 1990.

J. P. Fox, "Water Development Increases Freshwater Flow to San Francisco Bay," *SCWC Update*, v. 4, no. 2, 1988.

J. P. Fox, *Freshwater Inflow to San Francisco Bay Under Natural Conditions*, State Water Contractors, Exhibit 262, 58 pp., 1987;
http://www.waterboards.ca.gov/waterrights/water_issues/programs/bay_delta/deltaflow/docs/exhibits/ccwd/spprt_docs/ccwd_fox_1987a.pdf.

J. P. Fox, "The Distribution of Mercury During Simulated In-Situ Oil Shale Retorting," *Environmental Science and Technology*, v. 19, no. 4, pp. 316-322, 1985.

J. P. Fox, "El Mercurio en el Medio Ambiente: Aspectos Referentes al Peru," (Mercury in the Environment: Factors Relevant to Peru) Proceedings of Simposio Los Pesticidas y el Medio Ambiente," ONERN-CONCYTEC, Lima, Peru, April 25-27, 1984. (Also presented at Instituto Tecnológico Pesquero and Instituto del Mar del Peru.)

J. P. Fox, "Mercury, Fish, and the Peruvian Diet," *Boletín de Investigación*, Instituto Tecnológico Pesquero, Lima, Peru, v. 2, no. 1, pp. 97-116, 1984.

J. P. Fox, P. Persoff, A. Newton, and R. N. Heistand, "The Mobility of Organic Compounds in a Codisposal System," *Proceedings of the Seventeenth Oil Shale Symposium*, Colorado School of Mines Press, Golden, CO, 1984.

P. Persoff and J. P. Fox, "Evaluation of Control Technology for Modified In-Situ Oil Shale Retorts," *Proceedings of the Sixteenth Oil Shale Symposium*, Colorado School of Mines Press, Golden, CO, 1983.

J. P. Fox, *Leaching of Oil Shale Solid Wastes: A Critical Review*, University of Colorado Report, 245 pp., July 1983.

J. P. Fox, *Source Monitoring for Unregulated Pollutants from the White River Oil Shale Project*, VTN Consolidated Report, June 1983.

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POST-GRADUATE COURSES

(Partial)

S-Plus Data Analysis, MathSoft, 6/94.

Air Pollutant Emission Calculations, UC Berkeley Extension, 6-7/94

Assessment, Control and Remediation of LNAPL Contaminated Sites, API and USEPA, 9/94

Pesticides in the TIE Process, SETAC, 6/96

Sulfate Minerals: Geochemistry, Crystallography, and Environmental Significance,
Mineralogical Society of America/Geochemical Society, 11/00.

Design of Gas Turbine Combined Cycle and Cogeneration Systems, Thermoflow, 12/00

Air-Cooled Steam Condensers and Dry- and Hybrid-Cooling Towers, Power-Gen, 12/01

Combustion Turbine Power Augmentation with Inlet Cooling and Wet Compression,
Power-Gen, 12/01

CEQA Update, UC Berkeley Extension, 3/02

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Noise Exposure Assessment: Sampling Strategy and Data Acquisition, AIHA PDC 205, 6/02

Noise Exposure Measurement Instruments and Techniques, AIHA PDC 302, 6/02

Noise Control Engineering, AIHA PDC 432, 6/02

Optimizing Generation and Air Emissions, Power-Gen, 12/02

Utility Industry Issues, Power-Gen, 12/02

Multipollutant Emission Control, Coal-Gen, 8/03

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Cutting-Edge Topics in Noise and Hearing Conservation, AIHA 5/04

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Improving the FGD Decision Process, Power-Gen, 12/05

E-Discovery, CEB, 6/06

McIlvaine Hot Topic Hour, FGD Project Delay Factors, 8/10/06

McIlvaine Hot Topic Hour, What Mercury Technologies Are Available, 9/14/06

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McIlvaine Hot Topic Hour, Particulate Choices for Low Sulfur Coal, 10/19/06

McIlvaine Hot Topic Hour, Impact of PM2.5 on Power Plant Choices, 11/2/06

McIlvaine Hot Topic Hour, Dry Scrubbers, 11/9/06

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Process Equipment Cost Estimating by Ratio & Proportion, PDH G127 11/19/06

Power Plant Air Quality Decisions, Power-Gen 11/06

McIlvaine Hot Topic Hour, WE Energies Hg Control Update, 1/12/07

Negotiating Permit Conditions, EEUC, 1/21/07

BACT for Utilities, EEUC, 1/21/07

McIlvaine Hot Topic Hour, Chinese FGD/SCR Program & Impact on World, 2/1/07

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Coal-to-Liquids – A Timely Revival, 9th Electric Power, 4/30/07
Advances in Multi-Pollutant and CO₂ Control Technologies, 9th Electric Power, 4/30/07
McIlvaine Hot Topic Hour, Measurement & Control of PM_{2.5}, 5/17/07
McIlvaine Hot Topic Hour, Co-firing and Gasifying Biomass, 5/31/07
McIlvaine Hot Topic Hour, Mercury Cost and Performance, 6/14/07
Ethanol 101: Points to Consider When Building an Ethanol Plant, BBI International, 6/26/07
Low Cost Optimization of Flue Gas Desulfurization Equipment, Fluent, Inc., 7/6/07.
McIlvaine Hot Topic Hour, CEMS for Measurement of NH₃, SO₃, Low NO_x, 7/12/07
McIlvaine Hot Topic Hour, Mercury Removal Status & Cost, 8/9/07
McIlvaine Hot Topic Hour, Filter Media Selection for Coal-Fired Boilers, 9/13/07
McIlvaine Hot Topic Hour, Catalyst Performance on NO_x, SO₃, Mercury, 10/11/07
PRB Coal Users Group, PRB 101, 12/4/07
McIlvaine Hot Topic Hour, Mercury Control Update, 10/25/07
Circulating Fluidized Bed Boilers, Their Operation, Control and Optimization, Power-Gen, 12/8/07
Renewable Energy Credits & Greenhouse Gas Offsets, Power-Gen, 12/9/07
Petroleum Engineering & Petroleum Downstream Marketing, PDH K117, 1/5/08
Estimating Greenhouse Gas Emissions from Manufacturing, PDH C191, 1/6/08
McIlvaine Hot Topic Hour, NO_x Reagents, 1/17/08
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McIlvaine Hot Topic Hour, SCR Catalysts, 3/13/08
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McIlvaine Hot Topic Hour, Mercury Control, 4/24/08
McIlvaine Hot Topic Hour, Co-Firing Biomass, 5/1/08
McIlvaine Hot Topic Hour, Coal Gasification, 6/5/08
McIlvaine Hot Topic Hour, Spray Driers vs. CFBs, 7/3/08
McIlvaine Hot Topic Hour, Air Pollution Control Cost Escalation, 9/25/08
McIlvaine Hot Topic Hour, Greenhouse Gas Strategies for Coal Fired Power Plant Operators, 10/2/08
McIlvaine Hot Topic Hour, Mercury and Toxics Monitoring, 2/5/09
McIlvaine Hot Topic Hour, Dry Precipitator Efficiency Improvements, 2/12/09
McIlvaine Hot Topic Hour, Coal Selection & Impact on Emissions, 2/26/09
McIlvaine Hot Topic Hour, 98% Limestone Scrubber Efficiency, 7/9/09
McIlvaine Hot Topic Hour, Carbon Management Strategies and Technologies, 6/24/10
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Interest Rates, PDH P204, 3/9/12

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EXHIBIT 2

	A1			f _x	Year								
	A	B	C	D	E	F	G	H	I	J	K	L	
1	Year	Month	Day	Hour			Direction	Speed	Speed				
2								m/sec	mph				
3	16	11	29	10	10	1	8	50.16	110.4	99.9	99	99	
4	16	11	30	4	10	1	14	48.66	107.1	99.9	99	99	
5	17	8	26	16	10	1	356	46.06	101.3	99.9	99	99	
6	16	11	29	16	10	1	6	45.06	99.1	99.9	99	99	
7	16	11	29	22	10	1	14	45.06	99.1	99.9	99	99	
8	17	8	27	22	10	1	359	44.56	98.0	99.9	99	99	
9	17	8	28	4	10	1	4	42.46	93.4	99.9	99	99	
10	17	8	27	16	10	1	360	40.96	90.1	99.9	99	99	
11	16	11	29	4	10	1	10	31.16	68.6	99.9	99	99	
12	16	11	28	22	10	1	8	27.56	60.6	99.9	99	99	
13	16	11	28	16	10	1	13	24.46	53.8	99.9	99	99	
14	17	1	22	3	10	1	147	16.51	36.3	10	99	99	
15	17	1	22	4	10	1	146	16.12	35.5	10	99	99	
16	17	1	18	18	10	1	144	14.68	32.3	8.9	99	99	
17	17	2	17	14	10	1	138	14.64	32.2	14.4	99	99	
18	17	1	22	5	10	1	141	14.47	31.8	10	99	99	
19	17	2	17	10	10	1	131	14.32	31.5	13.3	99	99	
20	17	1	22	2	10	1	146	14.29	31.4	9.4	99	99	
21	17	2	17	19	10	1	139	14.22	31.3	14.4	99	99	
22	17	1	18	17	10	1	144	14.15	31.1	9.4	99	99	
23	17	1	18	20	10	1	149	14.1	31.0	9.4	99	99	
24	17	12	16	15	10	1	333	13.98	30.8	17.2	99	99	
25	17	2	17	12	10	1	135	13.93	30.6	12.8	99	99	
26	17	1	22	1	10	1	143	13.91	30.6	10	99	99	
27	17	2	17	11	10	1	134	13.84	30.4	12.8	99	99	
28	17	1	22	6	10	1	144	13.71	30.2	9.4	99	99	
29	13	10	27	18	10	1	252	13.69	30.1	13.3	99	99	
30	16	3	5	22	10	1	150	13.66	30.1	15	99	99	
31	13	10	27	17	10	1	267	13.62	30.0	13.9	99	99	
32	16	3	5	21	10	1	144	13.45	29.6	16.1	99	99	
33	17	12	16	16	10	1	337	13.25	29.2	16.7	99	99	
34	17	2	17	15	10	1	133	13.23	29.1	13.9	99	99	
35	13	4	8	11	10	1	328	13.21	29.1	17.2	99	99	
36	15	2	6	16	10	1	152	13.15	28.9	20	99	99	
37	17	1	18	21	10	1	153	13.09	28.8	9.4	99	99	
38	17	1	20	5	10	1	138	13.04	28.7	8.9	99	99	

EXHIBIT 3

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County of San Diego

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Clerk of the Superior Court
By Erika Engel, Deputy Clerk

7 Attorneys for Petitioner and Plaintiff
8 GOLDEN DOOR PROPERTIES, LLC

9
10 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

11 **COUNTY OF SAN DIEGO**

12 GOLDEN DOOR PROPERTIES, LLC, a
California limited liability company,

13 Petitioner and Plaintiff,

14 v.

15 COUNTY OF SAN DIEGO, a political
subdivision of the State of California, and
16 DOES 1 through 50, inclusive,

17 Respondents and Defendants,

CASE NO. 37-2017-00038561-CU-MC-CTL

**VERIFIED PETITION FOR PEREMPTORY
WRIT OF MANDATE AND COMPLAINT
FOR DECLARATORY AND INJUNCTIVE
RELIEF**

[Code of Civil Procedure §§ 1060, 1085]

Petition Filed: _____, 2017

1 **I. INTRODUCTION**

2 1. This case concerns the public’s right to access basic information about
3 how their local land use planning agencies review and analyze environmental impacts regarding
4 large-scale development projects in San Diego County—in particular, information relied upon by
5 the County’s environmental consultant in order to review and analyze air quality and other
6 environmental impacts associated with the proposed Newland Sierra project,¹ which proposes
7 over 2,100 new residential units with over 6,000 new residents (a population the size of the City
8 of Del Mar) in a mostly undeveloped, Very High Severity fire hazard area in a rural,
9 unincorporated area of the County located far from transit infrastructure and job centers.

10 2. The Newland Sierra developer filed an application with the County in
11 January 2015, and a Notice of Preparation of an environmental impact report (“EIR”) was issued
12 in February 2015. Nearly two-and-a-half years later, in June 2017, the County published a
13 voluminous (nearly 22,000 pages including the EIR text and appendices) draft EIR under the
14 California Environmental Quality Act (“CEQA”) for the Newland Sierra project. The County
15 provided the public just 60 days to review and comment on this enormously complicated set of
16 documents, despite multiple requests for extension from members of the public.

17 3. In July and August 2017, in order to facilitate review of the project’s air
18 quality and greenhouse gases technical analyses, the Golden Door (among other members of the
19 public, including the Sierra Club and the Endangered Habitats League) requested technical
20 documentation relied upon by the County’s environmental consultant to prepare the EIR.
21 Specifically, “unlocked Excel spreadsheets supporting all emission calculations in Appendices G
22 and K” and “electronic input and output files for all CalEEMod, AERMOD, and HARP runs”
23 were requested. “Appendix G” is the EIR’s Air Quality Technical Report. “Appendix K” is the
24 EIR’s “Greenhouse Gas Emissions Technical Report.” Without this information, it is impossible
25 to fully and meaningfully evaluate the conclusions the County made in the project’s draft EIR.

26 _____
27 ¹ The Newland Sierra project is being processed by the County of San Diego as case number
28 PDS2015-SP-15-001; PDS2015-GPA-15-001; PDS2015-REZ-15-001; PDS2015-TM-5597;
PDS2015-ER-15-08-001.

1 4. The County of San Diego summarily denied the request, stating that the
2 requested documents could not be disclosed because “these documents are prepared, owned,
3 used, or retained exclusively by Dudek, the County’s environmental consultant for the Newland
4 Sierra draft EIR.”

5 5. In adopting the California Public Records Act (“CPRA”), the California
6 legislature declared, “access to information concerning the conduct of the people’s business is a
7 fundamental and necessary right of every person in this state.” (Gov. Code, § 6250.) This
8 principle of transparency has also been enshrined in Section 3(b) of Article I of the California
9 Constitution.

10 6. Similarly, the fundamental purpose of CEQA is by nature informational:
11 “The purpose of an environmental impact report is to provide public agencies and the public in
12 general with detailed information about the effect which a proposed project is likely to have on
13 the environment; to list ways in which the significant effects of such a project might be
14 minimized; and to indicate alternatives to such a project.” (Pub. Res. Code, § 21061; California
15 Code of Regulations, title 14 (“14 CCR”), § 15003.) Meaningful public review under CEQA
16 cannot be accomplished without adequate transparency in public records.

17 7. The documents requested pertain to the Newland Sierra project’s air
18 quality and greenhouse gas (“GHG”) impacts analysis. Climate change is a global issue that
19 threatens California. According to the California Air Resource Board’s First Update to the
20 Climate Change Scoping Plan, dated May 2014, California faces a variety of threats from global
21 warming, “including increases in extreme heat, wildfires, drought, extreme storms, coastal
22 flooding, and erosion, and reductions in the Sierra Nevada springtime snowpack” as well as
23 threats to water availability and agriculture. Scientific research shows that anthropogenic GHG
24 emissions contribute to global climate change. By adding urban density in a rural area far from
25 existing transit and job centers, the Newland Sierra project would cause long single-occupant
26 automobile trips and could result in significant GHG and air quality emissions. The Newland
27 Sierra project would also result in air quality and GHG emissions throughout a 10-year
28 construction schedule with over 10,000,000 cubic yards of cut and fill, substantial blasting and

1 crushing of rocks and granite on the mountainous project site, and significant widening of Deer
2 Springs Road, which abut the Golden Door’s property. The complex calculations required to
3 analyze the air quality and GHG impacts cannot be fully understood without the documents that
4 were requested and denied by the County.

5 8. The records the Petitioner seeks in this action are at the core of these
6 statutory and constitutional purposes: the people have the right to review and evaluate the
7 analysis the government uses to approve (or disapprove) massive development projects that
8 affect land use and quality of life of County residents. By this petition and pursuant to
9 Government Code, sections 6250-70, the Petitioner now seeks a peremptory writ of mandate,
10 declaratory relief, and other appropriate relief to compel the County to disclose documents in
11 compliance with the CPRA.

12 **II. THE PARTIES**

13 9. Petitioner and Plaintiff Golden Door Properties, LLC, (the “Golden
14 Door”) is a California limited liability company, with its principal place of business in San Diego
15 County, California. The Golden Door is the owner and operator of a spa and resort that opened in
16 1958, situated on approximately 600 acres along Deer Springs Road in northern San Diego
17 County. The Golden Door’s guest experience and agricultural operations could be impacted by
18 global climate change. Further, the Golden Door’s guiding philosophy emphasizes harmony with
19 the environment. The Golden Door has a direct and beneficial interest in the County’s
20 compliance with CEQA and the County’s own mitigation measures and with ensuring a legally
21 adequate air quality and GHG analysis for development proposals on unincorporated County
22 lands. In particular, Newland Sierra, LLC, has proposed an unplanned development project with
23 2,135 residential units, 81,000 square feet of commercial development, a school site, and various
24 parks and equestrian facilities in close proximity to the Golden Door’s property, and the Golden
25 Door is concerned that the Newland project’s location in rural Twin Oaks Valley would require
26 long single-occupant vehicle trips resulting in substantial air quality and GHG emissions.

27 10. Petitioner is unaware of the true names and capacities of Respondents and
28 Defendants fictitiously named herein as Does 1 through 50, inclusive, and sue such Respondents

1 and Defendants by fictitious names. Petitioner is informed and believes, and thereon alleges, that
2 such fictitiously named Respondents and Defendants are also responsible for the actions
3 described in this Petition and Complaint. Petitioner will amend this Petition and Complaint, with
4 leave of the Court if necessary, to allege the fictitiously named Respondents' and Defendants'
5 true names and capacities when ascertained.

6 11. Petitioner is a member of the public with the right under the CPRA to
7 inspect public records and to seek relief in a court of competent jurisdiction to enforce that right.
8 (Gov. Code, §§ 6252, 6253, 6258, 6259.)

9 12. Respondent and Defendant County of San Diego is a political subdivision
10 of the State of California. The County is a local agency and/or local public agency with the
11 meaning of the CPRA. (Gov. Code, § 6252.) The County is also the lead agency under CEQA
12 responsible for preparing the EIR for the Newland Sierra project.

13 **III. JURISDICTION AND VENUE**

14 13. This Court has jurisdiction under Government Code, sections 6258 and
15 6259, Code of Civil Procedure, sections 1060 and 1085, and Article 6, section 10, of the
16 California Constitution.

17 14. Venue is proper in this Court under Code of Civil Procedure, section 394,
18 because the County is a local agency situated in San Diego County. The records in question, or
19 some portion of them, are situated in San Diego County, where the Attorney General has an
20 office. (Gov. Code, § 6259; Code Civ. Proc., § 401.)

21 **IV. THE CALIFORNIA PUBLIC RECORDS ACT**

22 15. Under the CPRA, upon request, any public agency must make publicly
23 available for inspection and copying any record that it prepared, owns, uses, or retains that is not
24 subject to the CPRA's statutory exemptions to disclosure. (Gov. Code, § 6253.)

25 16. The Court of Appeal noted in *Community Youth Athletic Center v. City of*
26 *National City* (2013) 220 Cal.App.4th 1385, that Government Code, section 6253.3, provides that
27 "a public agency 'may not allow another party to control the disclosure of information that is
28 otherwise subject to disclosure pursuant to this chapter[.]'"

1 17. The California Supreme Court in *City of San Jose v. Superior Court*
2 (2016) 2 Cal.5th 608, explained that “a document’s status as public or confidential does not turn
3 on the arbitrary circumstance of where the document is located.”

4 18. The California Supreme Court in *City of San Jose v. Superior Court*
5 (2016) 2 Cal.5th 608, also explained that “records related to public business are subject to
6 disclosure if they are in an agency’s actual or constructive possession.”

7 19. Before withholding any record responsive to a valid request under the
8 CPRA, the agency must “demonstrat[e] that the record in question is exempt under [the CPRA’s]
9 express provisions ... or that on the facts of the particular case the public interest served by not
10 disclosing the record clearly outweighs the public interest served by disclosure of the record.”
11 (Gov. Code, § 6255.)

12 20. The CPRA also provides that records responsive to a valid request must be
13 provided even if a portion of the document may be exempted. “Any reasonably segregable
14 portion of a record shall be available for inspection by any person requesting the record after
15 deletion of the portions that are exempted by law.” (Gov. Code, § 6253.)

16 21. Any person may institute proceedings by verified petition for a writ of
17 mandate or complaint for declaratory relief to enforce her right to inspect or receive a copy of
18 any public record or class of public records. (Gov. Code, §§ 6258, 6259.)

19 22. “The court shall decide the case after examining the record in camera, if
20 permitted by subdivision (b) of Section 915 of the Evidence Code, papers filed by the parties and
21 any oral argument and additional evidence as the court may allow.” (Gov. Code, § 6259(a).) “If
22 the court finds that the failure to disclose is not justified, it shall order the public official to make
23 the record public.” (Gov. Code, § 6259(b).)

24 23. The court must award court costs and reasonable attorney fees to
25 prevailing petitioner(s), to be paid by the agency from which the petitioner(s) requested the
26 records. (Gov. Code, § 6259(d).)

27 **V. THE CALIFORNIA CONSTITUTION**

28 24. Section 3(b) of Article 1 of the California Constitution entrenches and

1 venerates the public’s right to access information as set forth in the CPRA. “The people have the
2 right of access to information concerning the conduct of the people’s business, and, therefore, the
3 meetings of public bodies and the writings of public officials and agencies shall be open to
4 public scrutiny.” (Cal. Const. Art. 1, § 3(b)(1).) The California Constitution instructs that a CPRA
5 provision must “be broadly construed if it furthers the people’s right of access, and narrowly
6 construed if it limits the right of access.” (*Id.* § 3(b)(2).)

7 **VI. FACTUAL ALLEGATIONS**

8 25. As noted above, currently in process with the County are various land use
9 applications related to the Newland Sierra project, which include the preparation and proposed
10 certification of an EIR under CEQA. The project proposes 2,135 residential units, 81,000 square
11 feet of commercial development, a school site, and various parks and equestrian facilities, and
12 will result in the addition of a population approximately equivalent to the City of Del Mar in a
13 mostly undeveloped area of unincorporated San Diego County.

14 26. In June 2017, the County released for public review and comment the
15 draft EIR for the project. The draft EIR, together with its technical appendices, is nearly 22,000
16 pages long. The County provided the public a 60-day comment period to review and comment on
17 this enormous and complex document. The County declined to provide for a longer public
18 comment period, even though it had the discretion to do so, despite multiple requests from
19 different members of the public for a longer review period due to the complexity and length of
20 the EIR.

21 27. On July 14, 2017, in the midst of the EIR’s public review and comment
22 period, Petitioner Golden Door requested from the County the following records from
23 Appendices G and K of the EIR. (As noted, Appendix G is the EIR’s Air Quality technical
24 analysis, and Appendix K is the EIR’s greenhouse gases technical analysis.) (Exhibit A: The
25 Golden Door’s July 14, 2017 request for public records.)

26 a. “unlocked Excel spreadsheets supporting all emission calculations
27 in Appendices G and K”; and

28 b. “electronic input and output files for all CalEEMod, AERMOD,

1 and HARP runs.”

2 28. On July 27, 2017, after invoking an extension of time to respond to the
3 Golden Door’s July 14 request under Gov. Code, section 6253(c)(3) (Exhibit B), the County
4 summarily denied the request (Exhibit C: County’s July 27, 2017 response), stating the following
5 reasons:

6 a. “[T]hese documents are not public records as defined in the
7 California Public Records Act because they do not contain information prepared, owned, used, or
8 retained by the County pursuant to Government Code section 6252(e). Instead, these documents
9 are prepared, owned, used, or retained exclusively by Dudek, the County’s environmental
10 consultant for the Newland Sierra draft EIR.”

11 b. “Furthermore, the Public Records Act applies to disclosable public
12 records in the possession of a public agency pursuant to Government Code section 6253(c). The
13 County does not possess the unlocked Excel spreadsheets supporting emission calculations in
14 Appendices G and K or unlocked electronic input files for all CalEEMod, AERMOD, and HARP
15 runs from the Newland Sierra draft EIR. These documents are in the possession of Dudek, and
16 the County may not require Dudek to disclose these files.”

17 c. “In addition, it is not the County’s standard practice to review
18 documents like the unlocked excel spreadsheets during the review of air quality or greenhouse
19 gas emissions analysis, and these specific documents were not reviewed by the County as part of
20 the California Environmental Quality Act (CEQA) review for this project. All the PDF files
21 provided in Appendices G and K and all the information contained in the draft EIR are adequate
22 for the County to evaluate the, project’s potential air quality and greenhouse gas impacts.”

23 d. Even though the County conceded earlier in the letter that it had
24 not reviewed the requested documents, it nonetheless arbitrarily concluded that the requested
25 documents were exempt from disclosure under the CPRA: “Finally, even if the unlocked Excel
26 spreadsheets supporting emission calculations in Appendices G and K and electronic input files
27 for all CalEEMod, AERMOD, and HARP runs are public records in the County’s possession,
28 they contain Dudek’s proprietary information and are exempt from disclosure under Government

1 Code section 6254.15. These documents contain Dudek’s proprietary formulas and processes
2 which have commercial value and provide Dudek a business advantage over competitors who do
3 not know or use this information.”

4 29. The County’s statement in its July 27 response that it could not require
5 Dudek to disclose the requested files contradicts the County’s May 7, 2015 Scoping Letter to
6 Newland Sierra, LLC (the project applicant) and the County’s CEQA Guidelines. In the Scoping
7 Letter, the County required Newland to retain technical consultants, including an air quality
8 consultant, pursuant to the County’s standard Memorandum of Understanding and the County’s
9 CEQA Guidelines. (See, e.g., Letter from County of San Diego Planning and Development
10 Services, to Newland Sierra, LLC, *Newland Sierra Scoping Letter*, at Attachment A, Item 17-1
11 & Attachment C (May 7, 2015) [relevant excerpt attached as Exhibit D].)²

12 a. Specifically, in the May 7, 2015 scoping letter, the County stated,
13 “The County of San Diego’s CEQA guidelines require that environmental technical studies be
14 prepared by a consultant from the County’s CEQA Consultant List[.]”

15 b. The County also specifically required this contract for the EIR’s air
16 quality analysis in Attachment C to the May 7, 2015 scoping letter.

17 c. Dudek is on the County’s authorized consultant list. (Exhibit E.)³

18 30. The County’s CEQA Guidelines and its standard Memorandum of
19 Understanding (Exhibit F)⁴ provide that environmental consultants (like Dudek) owe the County
20 several contractual duties and obligations providing for the disclosure of information. For
21 example:

22 a. **“The CONSULTANT shall have an ongoing obligation and**
23 **commitment to the COUNTY to disclose all information within its Subject Area that is**
24 **relevant to the environmental consequences of the PROJECT and the preparation of the**
25 **TECHNICAL STUDIES / EIR.”** (Emphasis added.)

26 _____
27 ² The full version (190 pages) is available as noted in the table of exhibits, *infra*.

28 ³ The full version is available as noted in the table of exhibits, *infra*.

⁴ The full version is available as noted in the table of exhibits, *infra*.

1 b. The CONSULTANT **shall not omit or withhold any relevant**
2 **information from the COUNTY** at the request of the APPLICANT or **for any other reason.**”

3 (Emphasis added.)

4 c. “Upon request from the COUNTY, **the CONSULTANT shall**
5 **submit all field notes, resource documents and supplemental technical studies used in the**
6 **preparation of the TECHNICAL STUDY / EIR** to the COUNTY.” (Emphasis added.)

7 d. “**The CONSULTANT shall not enter into any form of**
8 **confidentiality agreement** with the APPLICANT or any subconsultant(s), **which prohibits**
9 **disclosure of information related to substantive land use or environmental issues to the**
10 **COUNTY.** This provision may be waived or modified at the discretion of the COUNTY, if such
11 an agreement would reveal a trade secret as defined by Government Code Section 6254.7.”

12 (Emphasis added.)

13 31. On August 11, 2017, the Endangered Habitats League (“EHL”) requested
14 the same files from the County. (Exhibit G: EHL request letter.) On August 14, the Sierra Club
15 also sought disclosure of these documents by the County. (Exhibit H: Sierra Club comment
16 letter.) The County disclosed two grading plans and a parcel map in response to EHL’s August
17 11 request or Sierra Club’s August 14 request, but again refused to disclose the documents at
18 issue in this lawsuit.

19 32. Indeed, an expert commenter on the draft EIR who specializes in air
20 quality and GHG analysis noted that the County’s refusal to disclose the requested files was
21 unusual and the negative effect that it had on her review of the draft EIR, stating “the County
22 declined the request to provide electronic files, a routine matter in hundreds of similar cases that
23 I have worked on, thus further complicating the review of this draft EIR.” Indeed, input data and
24 files for third-party software programs such as CalEEMod have been made publicly available as
25 part of the CEQA or other public process for projects throughout the state.

26 33. The Golden Door’s primary concern is in obtaining the requested records
27 in a manner that facilitates public review and comment under CEQA, without strings attached, as
28 is contemplated by the CPRA. Accordingly, though it was not obligated to, on September 12,

1 2017, Petitioner Golden Door, through counsel, sent a letter to the County providing notice of the
2 nature of the allegations contained herein and offered an opportunity to cure its CPRA violation
3 by disclosing the requested files by September 19, 2017. (Exhibit I: Golden Door’s Notice of
4 CPRA Violation and Opportunity for Cure letter.) Subsequently, Golden Door met and conferred
5 with the County (through counsel) regarding resolving this records disclosure dispute without
6 having to resort to litigation. The County stated that the requested records would be “voluntarily”
7 disclosed by October 4, 2017, and it reiterated its position that the requested records were not
8 “public records” under the CPRA because the records were not in the actual/physical possession
9 of the County. The Golden Door understood that this voluntary disclosure, though the County
10 maintained its CPRA position regarding the actual/physical possession of the records, would not
11 be accompanied by any additional conditions or restrictions and would therefore allow the
12 Golden Door (and the public) to meaningfully evaluate the EIR’s air quality and greenhouse
13 gases analysis. The County Counsel’s office failed to advise the Golden Door that this supposed
14 “voluntary disclosure” would be subject to additional restrictions on use and/or disclosure. The
15 County Counsel’s office also did not tell the Golden Door that this “disclosure” process would
16 be wholly delegated to the County’s private consultant Dudek who would insist upon the right to
17 impose sweeping and uncertain contractual conditions on the Golden Door’s counsel as a
18 condition for downloading or using the documents.

19 34. As it happened, this promised “voluntary” disclosure of the documents to
20 the public was not made. Instead, the County’s private consultant, Dudek, required the Golden
21 Door’s counsel to consent to conditions and restrictions on use in order to download and use the
22 documents from the consultant. These contractual terms made the documents useless for the
23 Golden Door’s (and the public) right to meaningfully evaluate and review the data relied upon in
24 the County’s EIR analysis and imposed upon the Golden Door and its lawyers (and other parties
25 who requested the documents) the potential that they could be held liable for “[im]proper use” of
26 the documents in some manner contrary to Dudek’s so-called “proprietary” interest in the
27 documents. No authority was provided as to a “proprietary interest” exception to the Public
28 Records Act, nor did Dudek claim that the documents were “trade secrets” under the Act. On

1 October 3, 2017, a senior project manager from Dudek emailed Golden Door counsel with a link
2 at which the requested files could be downloaded. However, this “voluntary” disclosure from
3 Dudek was accompanied with an admonition that “we do not waive our rights concerning the
4 proprietary nature of the files.” There was no explanation as to why the information being
5 provided was “proprietary” or why the information qualified for any of the exemptions under the
6 CPRA. (Exhibit J: October 3, 2017 “voluntary” disclosure email to Golden Door counsel [file-
7 sharing link is redacted, due to claim of proprietary information, even though the claim is
8 unsubstantiated].) No explanation was given by Dudek or the County as to the means by which
9 Dudek’s continuing rights would be enforced against the Golden Door, its legal counsel, and
10 other receiving parties, or the nature and scope of damages that Dudek would attempt to claim
11 for an alleged “violation” of those “proprietary” rights. Because Dudek and the County continue
12 to maintain that the information is “proprietary” in nature and therefore exempt from disclosure
13 under the CPRA, this “voluntary” disclosure is meaningless for purposes of the CPRA and
14 CEQA.

15 35. On October 11, 2017, the Endangered Habitats League refused to
16 download the documents as offered by Dudek due to the conditions placed upon acceptance and
17 the potential liability that could result for the Endangered Habitats League. The County provided
18 no response to this email. On October 12, 2017, the senior project manager from Dudek
19 responded to the Endangered Habitats League, with a copy also sent to counsel for the Golden
20 Door, attempting to renegotiate the conditions that Dudek had placed on acceptance of the
21 requested documents. In the response, Dudek asserted paradoxically that “there is no potential
22 liability associated with use of the files” while simultaneously continuing to maintain that the
23 information was proprietary in nature and that the “voluntary” disclosure was conditioned on an
24 “obvious restriction” to help protect Dudek’s proprietary claim to the files, “as a fair
25 accommodation to Dudek’s work product.” Dudek stated that the documents were “responsive”
26 to the Public Records Act but did not explain why Dudek, rather than the County, was offering
27 the documents or why the documents were offered with these conditions. Furthermore, the
28 Dudek response again asserted that anyone receiving the files would be subject to the

1 “restriction” that the offered materials could not be “used” for “private benefit or profit” “with
2 regard to other projects for other clientele.” An additional claim was made by Dudek that the
3 documents were subject to restricted use as “Dudek’s work product.” A further condition was
4 imposed that anyone receiving the documents must also undertake the obligation of “passing
5 along our request to others that they not use the files to privately gain or profit ... to advance
6 their own private business interests.” Dudek also asserted that the restrictions on use that it
7 provided were to make sure that “third-party reviewers would not input the data incorrectly –
8 leading to inaccurate or misleading results.” (Exhibit K: October 12, 2017 email to Golden Door
9 counsel [file-sharing link is redacted, due to claim of proprietary information, even though the
10 claim continued to be unsubstantiated].)

11 36. The Golden Door does not intend to “misuse” these public records;
12 however, the process undertaken by the County with respect to these records runs directly
13 contrary to the fundamental purposes of the CPRA. First, it is contrary to the purposes of the
14 CPRA for members of the public to subject themselves to contractual use restrictions imposed by
15 private contractors working for the County that could be the basis for potential liability for the
16 use (or alleged “misuse”) of allegedly “proprietary” and/or “work product” information in order
17 to review and evaluate the County’s analysis of air quality and greenhouse gas impacts contained
18 in a public EIR. For example, a consulting firm hired by a member of the public to use the
19 Dudek information to attempt to duplicate or critique the Dudek analysis could be liable for
20 alleged use of the data “for private profit or gain” or “calling the data their own” when included
21 in the consultant’s report on the County’s project. Members of the public who use the data as the
22 basis for public comment to the County to demonstrate that the data shows that their homes
23 could be damaged by excessive air pollution or traffic could also be accused of using the data for
24 “private profit or gain.” Second, there is no provision in the CPRA that allows the County to
25 disclose public records through the “voluntary” actions of a private third party, in order to
26 disclose public records while simultaneously claiming that the records are not actually public
27 records. Third, the CPRA does not provide for “disclosure with conditions,” whereby the County
28 (or a private third party at the County’s direction) discloses records but maintains vague claims

1 that the records are “proprietary” and/or subject to “work product” protection and/or vague
2 warnings that the records should not be “misuse[d].” Finally, nothing in the CPRA suggests that
3 access to public records may be conditioned upon a requirement that each member of the public
4 who receives the records must enter into a vague contract or agreement with the private, third-
5 party originator of the records regarding “proper use,” or that each member of the public who
6 receives the records must pass along certain information from the private, third-party originator
7 of the records.

8 37. Meanwhile, the County’s processing of the Newland Sierra project EIR
9 continues unabated. The public comment period closed on August 14, 2017. Because the
10 requested records were not disclosed as requested by the public, the public was deprived of
11 meaningful opportunity to review and comment on the project draft EIR’s air quality and
12 greenhouse gas analyses (see *supra* ¶¶ 31-32). The County’s and Dudek’s delays in responding
13 to the August requests for this data during the EIR comment period and refusal to provide it
14 during the EIR comment period have prejudiced Petitioner and other members of the public, by
15 preventing Petitioner and members of the public from having an adequate time to review,
16 analyze, and comment upon this information related to the proposed project. Additionally, the
17 County has employed a strategy of delay and obstruction in responding to the public’s request
18 for this data, in an effort to avoid providing a new public comment period to allow the public to
19 comment as provided under CEQA in response to the withheld information. This strategy has
20 included successive steps to refuse to review the data, assert that the County does not physically
21 possess the data, then claim that the County will cause the data to be provided but only by
22 directing its private consultant Dudek to provide the documents, and even then only with
23 conditions that set up members of the public for potential future liability. The final step
24 employed by the County was to have its private consultant make the paradoxical claim that the
25 information is “in the public realm” but nonetheless will be subject to claims for “misuse” since
26 it remains Dudek’s own “work product” rather than a public document. Continued preparation
27 and publication of a final EIR for the project, while continuing to employ this protracted strategy
28 deny members of the public these public records therefore constitutes irreparable injury to

1 Petitioner and the general public, because they will have been permanently deprived of the
2 opportunity to review and comment on the project’s environmental review before the
3 environmental analysis is finalized. Transparency in public records is a right secured by the
4 California Constitution and by statute. Similarly, the right to meaningful public review and
5 comment on the environmental impacts of development projects is secured by statute. Violation
6 of either of these rights constitutes injury for which pecuniary compensation would not afford
7 adequate relief.

8 **CLAIMS FOR RELIEF**

9 **FIRST CAUSE OF ACTION**

10 **Violation of the California Public Records Act**

11 **– Gov. Code, §§ 6253, 6255; Code of Civil Procedure, §§ 1060, 1085**

12 **Improper Invocation of Exemption from Disclosure**

13 38. Petitioner incorporates in full all preceding paragraphs as though fully set
14 forth herein.

15 39. Government Code, section 6253(a), states, “Public records are open to
16 inspection at all times during the office hours of the state or local agency and every person has a
17 right to inspect any public record, except as hereafter provided. Any reasonably segregable
18 portion of a record shall be available for inspection by any person requesting the record after
19 deletion of the portions that are exempted by law.”

20 40. Government Code, section 6255, states, “The agency shall justify
21 withholding any record by demonstrating that the record in question is exempt under express
22 provisions of this chapter or that on the facts of the particular case the public interest served by
23 not disclosing the record clearly outweighs the public interest served by disclosure of the
24 record.”

25 41. The County invoked the exemption from CPRA disclosure in Government
26 Code, section 6254.15, in an arbitrary manner and in violation of the law.

27 42. The County stated that it “does not possess the unlocked Excel
28 spreadsheets supporting emission calculations in Appendices G and K or unlocked electronic

1 input files for all CalEEMod, AERMOD, and HARP runs from the Newland Sierra draft EIR.”

2 43. The County stated that “it is not the County's standard practice to review
3 documents like the unlocked excel spreadsheets during the review of air quality or greenhouse
4 gas emissions analysis, and these specific documents were not reviewed by the County as part of
5 the California Environmental Quality Act (CEQA) review for this project.”

6 44. The CPRA requires the agency to review the requested documents and
7 justify its invocation of an exemption before invoking the exemption. In addition, the CPRA
8 requires that the agency take appropriate action to disclose as much of the record as reasonably
9 possible.

10 45. The County may not outsource its public duty to comply with the CPRA
11 to a private party such as Dudek. If the requested information is indeed exempt from disclosure
12 under the CPRA, the County – not a private third party – had the duty to invoke and substantiate
13 the exemption. The County – not a private third party – had the duty to disclose the information
14 that was responsive to the request and not subject to an exemption.

15 46. The County admitted that it did not review the requested records in
16 connection with CEQA and does not physically possess the requested records. The County had
17 the express right, established by its own CEQA Guidelines and the contracts that it requires that
18 consultants like Dudek execute, to review and disclose any and all documents and materials used
19 by Dudek in the preparation of the County’s Environmental Impact Report. Despite having these
20 express rights, the County refused to review these records. Accordingly, it could not have
21 complied with the CPRA’s exemption and segregation requirements and therefore violated
22 Government Code, sections 6253 and 6255.

23 **SECOND CAUSE OF ACTION**

24 **Violation of the California Public Records Act**

25 **– Gov. Code, §§ 6250 et seq.; Code of Civil Procedure, §§ 1060, 1085**

26 **Failure to Undertake Reasonable Search for Public Records**

27 47. Petitioner incorporates in full all preceding paragraphs as though fully set
28 forth herein.

1 48. The County violated the CPRA by refusing to undertake a reasonable
2 search for public records in response to Petitioner’s requests.

3 49. The California Supreme Court in *City of San Jose v. Superior Court*
4 (2016) 2 Cal.5th 608, explained that “records related to public business are subject to disclosure
5 if they are in an agency’s actual or constructive possession.”

6 50. The California Court of Appeal in *Community Youth Athletic Center v.*
7 *City of National City* (2013) 220 Cal.App.4th 1385, explained that “No exact duplication or
8 ‘parroting’ of the precise language of the requests by the agency to its known custodians is
9 required, but the agency is obligated to make reasonable efforts toward clarification and
10 production.”

11 51. The County refused to disclose the requested records at issue on the
12 grounds that “These documents are in the possession of Dudek, and the County may not require
13 Dudek to disclose these files.”

14 52. However, the County’s standard form contract that it requires
15 environmental consultants to enter into requires the disclosure of records from the consultant to
16 the County at the County’s request. The County required Dudek to enter into this contract when
17 it stated in its May 7, 2015 scoping letter, “The County of San Diego’s CEQA guidelines require
18 that environmental technical studies be prepared by a consultant from the County’s CEQA
19 Consultant List” (which includes Dudek). The County specifically required this contract for the
20 EIR’s air quality analysis in Attachment C to the May 7, 2015 scoping letter.

21 53. The County’s statement that “the County may not require Dudek to
22 disclose these files” is not true, as the County has a contractual right to the requested records.

23 54. As noted, the County could and should have examined the requested
24 records regarding whether the claims regarding confidentiality for “proprietary formulas and
25 processes” were actually true. The County did not take these actions and by its inaction violated
26 the CPRA.

27 55. Indeed, because the County did not follow the appropriate process under
28 the CPRA, the County has been unable to meaningfully articulate or substantiate why input data

1 into third-party software programs is propriety in nature, or why spreadsheets of data containing
2 mathematical calculations used to derive publicly available data disclosed under the California
3 Environmental Quality Act are propriety in nature. The County’s failure to meaningfully
4 articulate or substantiate the basis for this exemption from disclosure a priori means that such
5 exemption does not apply.

6 56. The County also violated the CPRA when it refused to ask Dudek to
7 provide the requested records to County staff for review and disclosure to the public even though
8 the County had a contractual right to the requested records, and did not make reasonable efforts
9 towards a CPRA-compliant disclosure.

10 **THIRD CAUSE OF ACTION**

11 **Violation of the California Public Records Act**

12 **– Gov. Code, §§ 6250 et seq.; Code of Civil Procedure, §§ 1060, 1085**

13 **Improper Withholding Based on Location of Records**

14 57. Petitioner incorporates in full all preceding paragraphs as though fully set
15 forth herein.

16 58. The California Supreme Court in *City of San Jose v. Superior Court*
17 (2016) 2 Cal.5th 608, explained that “a document’s status as public or confidential does not turn
18 on the arbitrary circumstance of where the document is located.”

19 59. The County refused to disclose the requested records at issue on the
20 grounds that the requested records were in the possession of Dudek, not the County:
21 “[T]hese documents are prepared, owned, used, or retained exclusively by Dudek, the County's
22 environmental consultant for the Newland Sierra draft EIR. Furthermore, the Public Records
23 Act applies to disclosable public records in the possession of a public agency pursuant to
24 Government Code section 6253(c). The County does not possess the unlocked Excel
25 spreadsheets supporting emission calculations in Appendices G and K or unlocked electronic
26 input files for all CalEEMod, AERMOD, and HARP runs from the Newland Sierra draft EIR.”

27 60. The County violated the CPRA by refusing to disclose public records on
28 the basis of the location of the records.

1 **PRAYER FOR RELIEF**

2 WHEREFORE, Petitioner prays for the following:

3 1. That the Court issue a declaration that the County of San Diego has
4 violated the CPRA as alleged herein;

5 2. That the Court issue a peremptory writ of mandate directing the County of
6 San Diego to disclose, in full compliance with the California Public Records Act, to Petitioner all
7 requested records within 30 calendar days of the writ and demonstrate compliance with the writ
8 within 60 calendar days by way of return, and prohibiting further processing of the Newland
9 Sierra project EIR until the Court determines that the County has complied with the writ;

10 3. That the Court issue a preliminary and/or permanent injunction ordering
11 the County of San Diego to re-open the public comment period under the California
12 Environmental Quality Act for an additional 60 days from the date of full disclosure of the
13 requested records and accept all comments from the public, both written and verbal, regarding
14 the Newland Sierra project, comply with the applicable provisions of the California
15 Environmental Quality Act in responding to such comments, and demonstrate compliance with
16 the injunction within 90 calendar days by way of return;

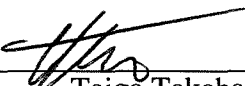
17 4. That the Court award the Petitioner attorneys' fees and costs; and

18 5. For such and any other relief as the Court deems proper and just.
19
20

21 Dated: October 13, 2017

Respectfully submitted,

LATHAM & WATKINS LLP

23 By  _____
24 Taiga Takahashi

25 Attorneys for Petitioner and Plaintiff
26 GOLDEN DOOR PROPERTIES, LLC
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VERIFICATION

I, Kathy Van Ness, am the General Manager/Chief Operating Officer for Petitioner and Plaintiff Golden Door Properties, LLC, in this action and am authorized to make this verification on its behalf. I have read the foregoing VERIFIED PETITION FOR PEREMPTORY WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF and am familiar with its contents. All facts alleged in the VERIFIED PETITION FOR PEREMPTORY WRIT OF MANDATE AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF are either true of my own knowledge, or I am informed and believe them to be true, and on that basis allege them to be true. I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed this 13th day of October, 2017, at in the County of San Diego, California.

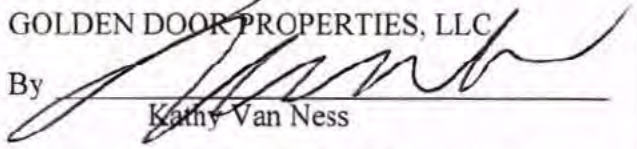
GOLDEN DOOR PROPERTIES, LLC
By 
Kathy Van Ness
General Manager/Chief Operating Officer

TABLE OF EXHIBITS

No.	Exhibit Description	Page No.
A	Email from Andrew Yancey, Outside Counsel, Golden Door, to Ashley Smith, County Planning and Development Services, <i>GHG and AQ Files for Newland EIR</i> (July 14, 2017)	22 - 23
B	Letter from Sharon Ippolito, Public Records Act Request Coordinator, County of San Diego Planning and Development Services, to Andrew Yancey, Outside Counsel, Golden Door, <i>Re: Notice of Extension of Time to Respond to Public Records Act Request</i> (July 24, 2017)	24 - 25
C	Letter from Sharon Ippolito, Public Records Act Request Coordinator, County of San Diego Planning and Development Services, to Andrew Yancey, Outside Counsel, Golden Door, <i>Re: Public Records Act Response Regarding Newland Sierra</i> (July 27, 2017)	26 - 28
D	Excerpt of Letter from Ashley Gungle, County of San Diego Planning and Development Services, to Rita Brandin, Newland Sierra, LLC, Newland Sierra Scoping Letter (May 7, 2015), full version available at http://www.sandiegocounty.gov/content/dam/sdc/pds/regulatory/docs/newlandsierra/NewlandSierraScopingLetter.pdf as of the undersigned date below.	29 - 32
E	Excerpt of County of San Diego, <i>CEQA Consultants List for Privately Initiated Projects</i> (Mar. 9, 2007), full version available at http://www.sandiegocounty.gov/content/dam/sdc/pds/ProjectPlanning/docs/CeqaConsultantsList.pdf as of the undersigned date below.	33 - 37
F	Excerpt of County of San Diego, <i>CEQA Guidelines</i> (Oct. 21, 2009), full version available at http://www.sandiegocounty.gov/pds/docs/CEQAGDLN.pdf as of the undersigned date below.	38 - 49
G	Letter from Dan Silver, Executive Director, Endangered Habitats League, to Ashley Smith, County of San Diego Planning and Development Services, <i>RE: Public Records Act request regarding Newland Sierra DEIR</i> (Aug. 11, 2017)	50 - 51
H	Letter from Josh Chatten-Brown, Outside Counsel, Sierra Club, to Ashley Smith, County of San Diego Planning and Development Services, <i>Re: Comments on Newland Sierra Draft Environmental Impact Report</i> (Aug. 14, 2017)	52 - 70
I	Letter from Taiga Takahashi, Outside Counsel, Golden Door, to Sharon Ippolito, Public Records Act Request Coordinator, County of San Diego Planning and Development Services, <i>Re: Notice of Violation of Public Records Act; Opportunity to Cure</i> (Sept. 12, 2017)	71 - 74
J	Redacted Email from Brian Grover, Senior Project Manager, Dudek, to Andrew Yancey, Outside Counsel, Golden Door, <i>RE: GHG and AQ Files for Newland EIR</i> (Oct. 3, 2017) (including attachment).	75 - 103
K	Redacted Email from Brian Grover, Senior Project Manager, Dudek, cc'ing Andrew Yancey, Outside Counsel, Golden Door (among others), <i>RE: GHG and AQ Files for Newland EIR</i> (Oct. 12, 2017).	104 - 107

EXHIBIT A

From: Yancey, Andrew (SD)
Sent: Friday, July 14, 2017 11:59 AM
To: Smith, Ashley
Cc: Slovick, Mark; Garrett, Christopher (SD)
Subject: GHG and AQ Files for Newland EIR

Ashley – For the Newland Draft EIR, could you provide the unlocked Excel spreadsheets supporting all emission calculations in Appendices G and K and electronic input and output files for all CalEEMod, AERMOD, and HARP runs? These do not appear to be available from the documents posted online, and they are necessary for an analysis of the Project’s GHG and air quality emissions impacts. Thank you very much. Please let me know if you have any questions.

Andrew D. Yancey

LATHAM & WATKINS LLP
12670 High Bluff Drive
San Diego, CA 92130
Direct Dial: +1.858.523.5496
Fax: +1.858.523.5450
Email: andrew.yancey@lw.com
<http://www.lw.com>

EXHIBIT B



County of San Diego

MARK WARDLAW
DIRECTOR

PLANNING & DEVELOPMENT SERVICES
5510 OVERLAND AVENUE, SUITE 310, SAN DIEGO, CA 92123
(858) 694-2962 • Fax (858) 694-2555
www.sdcountry.ca.gov/pds

July 24, 2017

Mr. Andrew D. Yancey
Latham & Watkins, LLP
12670 High Bluff Drive
San Diego, CA 92130-3086

Sent via email to: Andrew.Yancey@lw.com

Re: Notice of Extension of Time to Respond to Public Records Act Request

Dear Mr. Yancey:

Planning & Development Services received your Public Records Act request related to The Newland Sierra project on July 14, 2017. Per your email, you have requested that the County provide the unlocked Excel spreadsheets supporting all emission calculations in Appendices G and K and electronic input and output files for all CalEEMod, AERMOD, and HARP runs.

Pursuant to Government Code section 6253(c)(3), due to the need for consultation, which shall be conducted with all practicable speed, with another agency having substantial interest in the determination of the request or among two or more components of the agency having substantial subject matter interest therein, we are extending the time for our determination to August 7, 2017.

If you have any questions or concerns about this response, please feel free to contact me at (858) 495-5450, or by email at Sharon.Ippolito@sdcounty.ca.gov.

Sincerely,

A handwritten signature in blue ink that reads "Sharon Ippolito".

Sharon Ippolito
Public Records Act Request Coordinator
Administrative Analyst III
Planning & Development Services

EXHIBIT C



County of San Diego

MARK WARDLAW
DIRECTOR

PLANNING & DEVELOPMENT SERVICES
5510 OVERLAND AVENUE, SUITE 310, SAN DIEGO, CA 92123
(858) 694-2962 • Fax (858) 694-2555
www.sdcountry.ca.gov/pds

July 27, 2017

Mr. Andrew D. Yancey
Latham & Watkins, LLP
12670 High Bluff Drive
San Diego, CA 92130-3086

Sent via email to: Andrew.Yancey@lw.com

Re: Public Records Act Response Regarding Newland Sierra

Dear Mr. Yancey:

In your email, dated July 14, 2017, you requested "unlocked Excel spreadsheets supporting all emission calculations in Appendices G and K and electronic input and output files for all CalEEMod, AERMOD, and HARP runs" from the Newland Sierra draft Environmental Impact Report (EIR).

Regarding your request for unlocked Excel spreadsheets supporting emission calculations in Appendices G and K and electronic input files for all CalEEMod, AERMOD, and HARP runs from the Newland Sierra draft EIR, these documents are not public records as defined in the California Public Records Act because they do not contain information prepared, owned, used, or retained by the County pursuant to Government Code section 6252(e). Instead, these documents are prepared, owned, used, or retained exclusively by Dudek, the County's environmental consultant for the Newland Sierra draft EIR. Furthermore, the Public Records Act applies to disclosable public records in the possession of a public agency pursuant to Government Code section 6253(c). The County does not possess the unlocked Excel spreadsheets supporting emission calculations in Appendices G and K or unlocked electronic input files for all CalEEMod, AERMOD, and HARP runs from the Newland Sierra draft EIR. These documents are in the possession of Dudek, and the County may not require Dudek to disclose these files. In addition, it is not the County's standard practice to review documents like the unlocked excel spreadsheets during the review of air quality or greenhouse gas emissions analysis, and these specific documents were not reviewed by the County as part of the California Environmental Quality Act (CEQA) review for this project. All the PDF files provided in Appendices G and K and all the information contained in the draft EIR are adequate for the County to evaluate the project's potential air quality and greenhouse gas impacts.

Mr. Andrew D. Yancey
July 27, 2017
Page 2

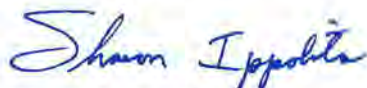
Finally, even if the unlocked Excel spreadsheets supporting emission calculations in Appendices G and K and electronic input files for all CalEEMod, AERMOD, and HARP runs are public records in the County's possession, they contain Dudek's proprietary information and are exempt from disclosure under Government Code section 6254.15. These documents contain Dudek's proprietary formulas and processes which have commercial value and provide Dudek a business advantage over competitors who do not know or use this information.

Regarding your request for electronic output files, these are included in the Air Quality Technical Report (Appendix G) and Greenhouse Gas Emissions Technical Report (Appendix K). However, copies of these output files will be sent to you via WorkSpaces (an electronic file sharing system) in PDF format for your convenience.

Please note that, regarding any non-exempt electronic documents responsive to your request, release of files in an unlocked Excel spreadsheet could jeopardize the security and integrity of the original County draft EIR documents pursuant to Government Code section 6253.9(f), and an alternative electronic format will be used if disclosure is required.

Please let us know if we have misinterpreted your request for records or if you have any additional document requests. You may contact me at (858) 495-5450, or by email at Sharon.Ippolito@sdcounty.ca.gov.

Sincerely,



Sharon Ippolito
Public Records Act Request Coordinator
Administrative Analyst III
Planning & Development Services

EXHIBIT D



County of San Diego

MARK WARDLAW
DIRECTOR
PHONE (858) 694-2962
FAX (858) 694-2555

PLANNING & DEVELOPMENT SERVICES
5510 OVERLAND AVENUE, SUITE 310, SAN DIEGO, CA 92123
www.sdcounty.ca.gov/pds

DARREN GRETLER
ASSISTANT DIRECTOR
PHONE (858) 694-2962
FAX (858) 694-2555

May 7, 2015

Newland Sierra, LLC
Attn: Rita Brandin
9820 Towne Centre Drive, Suite 100
San Diego, CA 92121

NEWLAND SIERRA SCOPING LETTER

RECORD ID: PDS2015-GPA-15-001, PDS2015-SP-15-001, PDS2015-REZ-15-001, & PDS2015-TM-5597;

PROJECT ADDRESS: North of Deer Springs Road, east of North Twin Oaks Valley Road and west of Interstate 15;

APNs: 172-091-07, 172-220-14, 16, & 18, 174-190-12, 13, 20, 41, 43, & 44, 174-210-01, 05, 07, 08, 11, 12, 17, & 18, 174-211-04, 05, 06, & 07, 174-280-11 & 14, 174-290-02, 178-100-05 & 26, 178-101-01, 16, 17, 25 through 28, 178-221-09, 182-040-36 & 69, 186-250-13, 186-611-01, 07 through 09, 11, 14 through 17 & 23, and 187-540-49 through 51;

TRUST ACCOUNT NO.: 2024843-D-01775

Dear Ms. Brandin:

The County appreciates your continued efforts and coordination with us on the Newland Sierra project. The information provided in this letter is intended to identify the major issues and additional information and analysis needed to complete the processing of the applications. We are committed to work with you and your team to help resolve the issues outlined in this letter and where possible provide alternatives. We will proactively be scheduling meetings with the individual team members and responsible agencies to provide guidance on specific issues identified in the letter.

PROJECT DESCRIPTION

Below is the project description that staff has generated from the information provided in the application package and the Application for Environmental Initial Study (AEIS). Please review this project description and verify with staff that the project description is correct:

The project site is comprised of 51 parcels and approximately 1,985 acres and would include the development of a new master planned community consisting of 2,135 dwelling units (1.08 dwelling units per acre), 81,000 square feet of general commercial uses, an optional six-acre charter school site, approximately 37 acres of parks and 1,202 acres of biological open space. The project would include approximately 4.7 miles

**ATTACHMENT A
PROJECT ISSUE CHECKLIST**

PROJECT NAME: Newland Sierra **Project Number: PDS2015-GPA-15-001, PDS2015-SP-15-001, PDS2015-REZ-15-001, & PDS2015-TM-5597**

Planning & Development Services (PDS) Planning and CEQA Comments						
Item	No.	Subject Area	Issue, Revision or Information Required	Issue Resolution Summary (Include Conditions)	Date Identified	Date Resolved
17-	1	Memorandums of Understanding	<p>The County of San Diego's CEQA guidelines require that environmental technical studies be prepared by a consultant from the County's CEQA Consultant List, which can be found on the County of San Diego's website at: http://www.co.san-diego.ca.us/PDS/procguid.html (item number 4 under "General Guidance"). No list is maintained for hydrology and stormwater management planning. With the exception of minor stormwater management plans, only registered engineers registered in the State of California shall be permitted to submit hydrology/drainage studies and only registered engineers or Certified Professionals in Storm Water Quality certified by CPESC, Inc., or an equivalent entity approved by the Director of Public Works, shall be permitted to submit stormwater management plans.</p> <p><u>Please see Attachment C. MOUs have not been submitted for Air Quality, EIR Preparer, Noise and Visual.</u></p>		10/22/2014 5/7/15	

ATTACHMENT C
MEMORANDUMS OF UNDERSTANDING

CONSULTANT LIST & MEMORANDUM OF UNDERSTANDING (MOU)

The County of San Diego's CEQA guidelines require that environmental technical studies be prepared by a consultant from the County's CEQA Consultant List, which can be found on the County of San Diego Planning & Development Services website at: <http://www.sdcounty.ca.gov/PDS/docs/CONSULTANT.xls> and that technical studies be prepared using the Guidelines for Determining Significance and Report Format & Content Requirements for applicable subject areas. The Guidelines and Report Format & Content Requirements can be found on the Department's website at <http://www.co.san-diego.ca.us/PDS/procguid.html#guide> (listed in alphabetical order).

Technical studies for the following subject areas are required to continue processing your project. For these subjects, a Memorandum(s) of Understanding (MOU) must be completed and signed by the applicable consultant and the applicant. The MOU outlines the roles and responsibilities for all parties in the preparation of technical studies and is intended to contribute to improved environmental document quality.

The MOU can be found on the Department's website at:

<http://www.sdcounty.ca.gov/luegdocs/Templates/Boilerplate%20Templates/MOU.doc>.

Signed MOU's must be submitted for the following subject areas:

- Air Quality
- EIR Preparer
- Noise
- Visual Analysis

Signed MOUs have been received for agricultural resources, biological resources, cultural resources, fire protection and the health risk assessment.

Applicants are responsible for selecting and direct contracting with specific consultants from the County's approved consultant list to prepare the required technical studies. The responsibilities of all parties involved in the preparation of environmental documents for the County (i.e. applicant, individual CEQA consultants/sub-consultants, consulting/sub-consultant firms, and County) are clearly established in the MOU.

EXHIBIT E

COUNTY OF SAN DIEGO

CEQA CONSULTANTS LIST FOR PRIVATELY INITIATED PROJECTS

KEY FOR SUBJECT AREA ABBREVIATIONS

AG	AGRICULTURAL RESOURCES
AQ	AIR QUALITY
AR	ARCHAEOLOGICAL RESOURCES
BI	BIOLOGICAL RESOURCES
EP	EIR PREPARER
FP	FIRE PROTECTION PLANNING
GW	GROUNDWATER
HS	HISTORIC RESOURCES
MN	MINERAL RESOURCES
NO	NOISE
RP	REVEGETATION PLANNING
TT	TRANSPORTATION & TRAFFIC
VA	VISUAL ANALYSIS

Pursuant to the County CEQA Guidelines, Planning & Development Services (PDS) selects lists of individuals (not firms) that are approved to prepare CEQA documents for the County for privately initiated projects through a Request for Qualifications (RFQ) and selection process. Consultant lists are reestablished periodically. Applicants are responsible for selecting and direct contracting with specific consultants from the County's list to prepare CEQA documents for private projects. Prior to the first submittal of a CEQA document prepared by a listed consultant for a private project, the applicant, consultant, consultant's firm (if applicable) and County shall execute a Memorandum of Understanding (MOU) or similar agreement that addresses payment, communications, confidentiality of information, and report preparation and handling. Consultants that prepare CEQA documents for County initiated projects will continue to be selected through the standard County procurement processes.

CEQA CONSULTANTS LIST - AIR QUALITY

Last Name	First Name	Firm	Address	City	ST	ZIP	Phone	Email
Alberson	Michael	Geosphere Consultants, Inc.	1150 Hamilton Drive	Escondido	CA	92029	760-294-5000	malberson@wavesenv.com
Boparai	Poonam	Ascent Environmental, Inc.	455 Capitol Mall, Suite 300	Sacramento	CA	958144	858-354-4151	Poonam.Boparai@ascentenvironmental.com
Brugger	Ron	LSA Associates, Inc.	20 Executive Park, Suite 200	Irvine	CA	92614	949-553-0666	ron.brugger@lsa-assoc.com
Bull	Charles	RECON Environmental	1927 Fifth Avenue, Suite 200	San Diego	CA	92101	619-308-9333	cbull@recon-us.com
Byrne	Dana	PAN Environmental	11551 Corte Playa Las Brisas, Suite 110	San Diego	CA	92124	858-560-6585	dbyrne@panenvironmental.com
Cohen	Scott		5920 Friars Road, Suite 103	San Diego	CA	92108	619-894-8670	scohen@sespeconsulting.com
Deckman	David	Dudek & Associates	11641 Blocker Drive, Suite 240	Auburn	CA	95603	530-885-8232	ddeckman@dudek.com
Dramko	Joanne	Helix Environmental Planning, Inc.	7578 El Cajon Boulevard, Suite 200	La Mesa	CA	91942	619-462-1515	JoanneD@helixepi.com
Gottfredson	David	RECON Environmental	1927 Fifth Avenue, Suite 200	San Diego	CA	92101-2358	619-308-9333	dgottfredson@recon-us.com
Hendrix	Michael	Chambers Group, Inc.	17671 Cowan Avenue, Suite 100	Irvine	CA	92614	949-261-5414	
Kurtz	James	Bon Terra Psomas	2 Executive Circle, Suite 175	Irvine	CA	92614	714-444-9199	jkurtz@bonterraconsulting.com
Louden	Jeremy	LDN Consulting	446 Crestcourt Lane	Fallbrook	CA	92028	760-473-1253	jlouden@ldnconsulting.net
Maddux	Bill	RECON Environmental	1927 Fifth Avenue	San Diego	CA	92101	619-308-9333	wmaddux@reconenvironmental.com
O'Bannon	Joe	OB-1 Air Analyses	9909 Huennekens Street, Suite 206	San Diego	CA	92121	760-691-6486	joe@ob1air.com
Qureshi	Haseeb	Urban Crossroads	41 Corporate Park, Suite 300	Irvine	CA	92606	949-660-1994	hqureshi@urbanxroads.com
Rous	Heidi	PCR Services Corporation	80 South Lake Avenue, Suite 570	Pasadena	CA	91101	626-204-6170	h.rous@pcrnet.com
Silverman	Sam	Terry A. Hayes Associates, LLC	8522 National Boulevard, Suite 102	Culver City	CA	90232	310-839-4200	ssilverman@webtaha.com
Slavick	Michael	Helix Environmental Planning, Inc.	7578 El Cajon Boulevard, Suite 200	La Mesa	CA	91941	619-462-1515	msslavick@helixepi.com
Tavares	Rick	Investigative Science & Engineering, Inc.	1134 D Street, PO BOX 488	Ramona	CA	92065	760-787-0016	rtavares@ise.us
Thompson	Valerie	Scientific Resource Associated	927 Wilbur Avenue	San Diego	CA	92109	858-488-2987	vltsra@earthlink.net
Vander Pluym	Duane	Rincon Consultants, Inc.	790 East Santa Clara Street	Ventura	CA	93001	805-641-1000	duane@rinconconsultants.com
Vermillion	Nicole	PlaceWorks	3 MacArthur Place, Suite 1100	Santa Ana	CA	92707	714-966-9220	nvermillion@placeworks.com

Established March 9, 2007

Supplemented July 26, 2013

CEQA CONSULTANTS LIST - EIR PREPARER

Last Name	First Name	Firm	Address	City	ST	ZIP	Phone	Email
Adams	Marcia	Affinis	847 Jamacha Road	El Cajon	CA	92019	619-441-0144	lonestar@affinis.net
Alido	Josephine	David Evans and Associates	800 North Haven Avenue, Suite 300	Ontario	CA	91764	909-481-5750	jalido@deainc.com
Amberg	Paul	Dudek	605 Third Street	Encinitas	CA	92024	760-479-4242	pamberg@dudek.com
Angell	Pat	PMC	6020 Cornerstone Court, Suite 350	San Diego	CA	92121	858-453-3602	pangell@pmcworld.com
Arkin-Gbeh	Hannah	REC Consultants, Inc.	2442 Second Avenue	San Diego	CA	92101	619-232-9200	Hannah@rec-consultants.com
Balen	Rob	LSA Associates	20 Executive Park, Suite 200	Irvine	CA	92614	949-553-0666	rob.balen@lsa-assoc.com
Baranek	Kim	HELIX Environmental Planning, Inc.	7578 El Cajon Boulevard, Suite 200	La Mesa	CA	91941	619-462-1515	kimb@helixepi.com
Biddulph	Bobbette	Environmental Science Associates, Inc.	9191 Towne Centre Drive, Suite 340	San Diego	CA	92122	858-638-0900	bbiddulph@esassoc.com
Binns	Ryan	AMEC Earth & Environmental, Inc.	9210 Sky Park Court, Suite 200	San Diego	CA	92123	858-300-4334	ryan.binns@amec.com
Bitterling	Andrea	HELIX Environmental Planning, Inc.	7578 El Cajon Boulevard, Suite 200	La Mesa	CA	91941	619-462-1515	andreab@helixepi.com
Bleier	Asha	Dudek	605 Third Street	Encinitas	CA	92024	760-479-4858	ableier@dudek.com
Bridges	John	EDAW, Inc.	1420 Kettner Boulevard, Suite 620	San Diego	CA	92101	619-233-1454	john.bridges@edaw.aecom.com
Bull	Charles	RECON	1927 Fifth Avenue	San Diego	CA	92101	619-308-9333	cbull@recon-us.com
Busdosh	Michael	AFFINIS	847 Jamacha Road	El Cajon	CA	92019	619-441-0144	mike@affinis.net
Capper	Lisa	HELIX Environmental Planning, Inc.	7578 El Cajon Boulevard, Suite 200	La Mesa	CA	91941	619-462-1515	lisac@helixepi.com
Cardenas	Sean	HELIX Environmental Planning, Inc.	7578 El Cajon Boulevard, Suite 200	La Mesa	CA	91941	619-462-1515	seanc@helixepi.com
Catalano	Diane	Atkins	9275 Sky Park Court, Suite 200	San Diego	CA	92123	858-874-1810	diane.catalano@atkinsglobal.com
Ching	Tammy	HELIX Environmental Planning, Inc.	7578 El Cajon Boulevard, Suite 200	La Mesa	CA	91941	619-462-1515	tammyc@helixepi.com
Collins	June	Dudek	605 Third Street	Encinitas	CA	92024	760-479-4246	jcollins@dudek.com
Davison	Lisa	PMC	6020 Cornerstone Court, Suite 350	San Diego	CA	92121	858-453-3602	ldavison@pmcworld.com
Dehoney	Betty	HDR Engineering, Inc.	8690 Balboa Avenue, Suite 200	San Diego	CA	92123	858-712-8400	betty.dehoney@hdrinc.com
DeLeon	Mona	LSA Associates	703 Palomar Airport Road, Suite 260	Carlsbad	CA	92011	760-931-5471	mona.deleon@lsa-assoc.com
Doalson	Elizabeth	Dudek	605 Third Street	Encinitas	CA	92024	760-479-4271	edoalson@dudek.com
Dramko	Joanne	HELIX Environmental Planning, Inc.	7578 El Cajon Boulevard, Suite 200	La Mesa	CA	91942	619-462-1515	JoanneD@helixpi.com
Edgerton	Robert	HDR, Inc.	8690 Balboa Avenue, Suite 200	San Diego	CA	92123	858-712-8226	robert.edgerton@hdrinc.com
Fenner	Teri	EDAW, Inc.	1420 Kettner Boulevard, Suite 620	San Diego	CA	92101	619-223-1454	FennerT@edaw.com
Fernandes	Carey	Dudek & Associates, Inc.	605 Third Street	Encinitas	CA	92024	760-479-4299	cfernandes@dudek.com
Fink	Gary	Greystone Environmental, an Arcadis Co.	9474 Kearny Villa Road, Suite 103	San Diego	CA	92126	858-530-8772	gfink@arcadis-us.com
Fisher	Yara	EDAW, Inc.	1420 Kettner Boulevard, Suite 620	San Diego	CA	92101	619-233-1454	yara.fisher@edaw.aecom.com
Gnibus	Tim	BRG Consulting, Inc.	304 Ivy Street	San Diego	CA	92101	619-298-7127	tim@brginc.net
Gonzales	Michael	RBF Consulting	9755 Clairemont Mesa Boulevard, Suite 100	San Diego	CA	92124	858-614-5087	mgonzales@rbf.com
Harding	Jerrica	T&B Planning, Inc.	1419 University Avenue, Suite C	San Diego	CA	92103	619-501-6041	jharding@tbplanning.com
Harry	Jim	ICF Jones & Stokes	9775 Business Park Avenue, Suite 200	San Diego	CA	92131	858-578-8964	jharry@jsanet.com
Herdes	Bobbi	RECON	1927 Fifth Avenue	San Diego	CA	92101	619-308-9333	bherdes@recon-us.com
Heyman	Barbara	PlaceWorks	501 W. Broadway, Suite 800	San Diego	CA	92101	619-400-4965	bheyman@placeworks.com
Hinshaw	Philip	A. D. Hinshaw Associates	PO BOX 13200	El Cajon	CA	92022	619-258-8213	philiphinshaw@cox.net
Hochart	David	Dudek & Associates	605 Third Street	Encinitas	CA	92024	760-479-4259	dhochart@dudek.com
Holm	Thomas	Michael Brandman Associates	220 Commerce, Suite 200	Irvine	CA	92602	714-508-4100	tholm@brandman.com
Hon	Katherine	Hon Consulting, Inc.	2226 Dwight Street	San Diego	CA	92104	619-294-8990	khon@honconsultinginc.com
Howlett	Kim	Atkins	9275 Sky Park Court, Suite 200	San Diego	CA	92123	858-874-1810	kim.howlett@atkinsglobal.com
Jewell	Alex	Kimley-Horn and Associates, Inc.	11919 Foundation Place, Suite 200	Gold River	CA	95670	916-859-3625	alex.jewell@kimley-horn.com
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Keller	Christina	HELIX Environmental Planning, Inc.	7578 El Cajon Boulevard, Suite 200	La Mesa	CA	91941	619-462-1515	ChristinaK@helixepi.com
Knopp	Christopher	POWER Engineers	3944 Murphy Canyon Road, Suite 100	San Diego	CA	92123	858-810-5381	chris.knopp@powereng.com

CEQA CONSULTANTS LIST - EIR PREPARER

Last Name	First Name	Firm	Address	City	ST	ZIP	Phone	Email
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Ziff	Jay	PCR Services Corporation	200 Santa Monica Boulevard, Suite 500	Santa Monica	CA	90401	310-451-4488	j.ziff@pcrnet.com
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Established September 8, 2006

Supplemented May 5, 2016

EXHIBIT F

COUNTY OF SAN DIEGO

CEQA GUIDELINES

Revised Version
Adopted by
Board of Supervisors
October 21, 2009

CERTIFICATE OF ADOPTION

I hereby certify that this is the text of the **County of San Diego CEQA Guidelines**, as amended by POD 09-011, and that this was considered and approved by the San Diego County Board of Supervisors on the 21st day of October 2009.

A handwritten signature in black ink, appearing to read 'Eric Gibson', written over a horizontal line.

Attest: ERIC GIBSON, Director
Department of Planning and Land Use

Text

Latest Amendment October 21, 2009

Amended October 17, 2007

Amended March 21, 2007

Amended May 21, 1997

Adopted April 6, 1983

COUNTY OF SAN DIEGO CEQA GUIDELINES

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1. Introduction

The following guidelines are adopted by the Board of Supervisors of the County of San Diego pursuant to Section 21082 of the California Public Resources Code (Environmental Quality Act of 1970, "CEQA"), and Section 15022 of Title 14 of the California Administrative Code, Guidelines for Implementation of the California Environmental Quality Act of 1970 (hereinafter referred to as the "State CEQA Guidelines" as amended).

2. Purpose

The purpose of these guidelines is to provide objectives, criteria, and procedures for the orderly evaluation of projects and the preparation of CEQA documents pursuant to CEQA and the State CEQA Guidelines. The County CEQA Guidelines are intended to supplement the State CEQA Guidelines for practical application to specific projects approved or undertaken by the County of San Diego. The following procedures,

COUNTY OF SAN DIEGO CEQA GUIDELINES

ATTACHMENT B

THIS IS AN EXAMPLE OF A TYPICAL MEMORANDUM OF UNDERSTANDING. THE FORMAT AND CONTENT OF THIS DOCUMENT MAY BE MODIFIED FOR PRACTICAL AND LOGISITICAL REASONS AT THE DISCRETION OF COUNTY COUNSEL.

COUNTY OF SAN DIEGO

**MEMORANDUM OF UNDERSTANDING
ENVIRONMENTAL IMPACT REPORT / TECHNICAL STUDY PREPARATION
AND HANDLING OF _____ ;**

This AGREEMENT, hereinafter referred as the "MOU", is made and entered into by and between the **County of San Diego, ("COUNTY")**, **_____ ("APPLICANT")**, **_____ ("CONSULTANT")**, and **_____ ("FIRM" which employs the consultant, if applicable)** for the purpose of establishing rights and responsibilities of all undersigned parties hereto in relation to the preparation and handling of a TECHNICAL STUDY or ENVIRONMENTAL IMPACT REPORT ("EIR") for the above-referenced project ("PROJECT").

WHEREAS, the COUNTY is the Lead Agency with the land use and planning jurisdiction in the above-referenced PROJECT area of unincorporated San Diego County, as it pertains to the California Environmental Quality Act ("CEQA"); and

WHEREAS, the APPLICANT has submitted an application for development of the above-referenced PROJECT; and

WHEREAS, the COUNTY has determined that the PROJECT necessitates the preparation of a TECHNICAL STUDY / EIR; and

WHEREAS, the CONSULTANT is a professional environmental consultant included on the County official CEQA Consultant List for the applicable Subject Area (All CONSULTANT rights and responsibilities within this MOU extend to the FIRM, which employs the consultant (if applicable), and any consultant hired to assist with the preparation of the TECHNICAL STUDY / EIR); and

WHEREAS, the APPLICANT, CONSULTANT, and COUNTY understand and agree that CONSULTANT has the primary responsibility to ensure that the TECHNICAL STUDY / EIR is adequate and COUNTY review is for the benefit of the public generally and not for the benefit of the APPLICANT or CONSULTANT; and

WHEREAS, the APPLICANT, CONSULTANT, and COUNTY wish to define their relationships and areas of responsibility in the preparation and management of a TECHNICAL STUDY / EIR and the CEQA process.

NOW, THEREFORE, in view of the foregoing, and in consideration of the mutual covenants and agreements contained herein, the APPLICANT, CONSULTANT, and COUNTY do hereby agree as follows:

I. NECESSITY OF A TECHNICAL STUDY OR EIR

The COUNTY has determined that the PROJECT necessitates the preparation of a TECHNICAL STUDY / EIR.

II. SUBMISSION OF DOCUMENTS AND DISCLOSURE OF INFORMATION

The APPLICANT and CONSULTANT shall submit all environmental documents under this MOU pursuant to the terms and conditions set forth herein and in accordance with the "County of San Diego CEQA Guidelines."

This MOU requires the disclosure of certain information by the APPLICANT and CONSULTANT to the COUNTY. Disclosure may initially be through verbal communication with the COUNTY Project Manager. The COUNTY maintains the right, upon reasonable notice to the APPLICANT and CONSULTANT, to: 1) review draft documents and relevant correspondence; 2) require that it be copied on correspondence subject to the disclosure requirements; and/or 3) require a written or emailed (instead of verbal) report of disclosures.

III. CERTIFICATIONS

By executing this MOU:

A. The APPLICANT certifies that it has an ongoing obligation and commitment to the COUNTY to disclose all information that is relevant to the environmental consequences of the PROJECT and the preparation of the TECHNICAL STUDY / EIR, and further certifies that no relevant information has been or will be omitted or withheld from the COUNTY, the CONSULTANT, or any sub-consultant(s).

B. The CONSULTANT certifies:

That it is included on the COUNTY official CEQA Consultant List for the applicable Subject Area (or the COUNTY official Environmental Consultants List if the list has not been reestablished pursuant to the February 28, 2006 COUNTY CEQA Guidelines) and it is prepared to undertake all necessary technical and analytical work required in conjunction with the TECHNICAL STUDY / EIR, either directly, under the CONSULTANT's direct supervision and management, and/or through the use of any sub-consultant(s); and

IV. APPLICANT'S RIGHTS AND RESPONSIBILITIES

- A. Subject to the terms and conditions of this MOU and County CEQA Guidelines, the COUNTY agrees to allow the APPLICANT to select and retain the undersigned CONSULTANT for preparation of the TECHNICAL STUDY / EIR. For this purpose, the APPLICANT shall enter into a direct agreement with the CONSULTANT, and such agreement shall govern the entire scope of their arrangement. Such agreement shall comply with all terms and conditions set forth in this MOU, and no term therein shall be inconsistent with any provision herein.
- B. The APPLICANT shall be responsible for one hundred-percent (100%) of all costs associated with the CONSULTANT's work, including but not limited to, any sub-consultant(s) costs, TECHNICAL STUDY / EIR preparation and document circulation costs incurred by the APPLICANT or CONSULTANT, and all costs associated with participation in scoping meetings or community outreach meetings, as necessary. The APPLICANT shall also be responsible for one hundred-percent (100%) of all costs incurred by the COUNTY related to its independent review of the TECHNICAL STUDY / EIR.
- C. The APPLICANT shall ensure that any consultant(s) hired in conjunction with the preparation of the TECHNICAL STUDY / EIR and related to the PROJECT shall comply with the COUNTY CEQA Guidelines and all relevant terms and conditions set forth in this MOU.
- D. The APPLICANT shall not enter into any form of confidentiality agreement with the CONSULTANT or any other consultant hired to assist with the preparation of the TECHNICAL STUDY / EIR, which prohibits disclosure of information related to substantive land use or environmental issues to the COUNTY. This provision may be waived or modified at the discretion of the COUNTY, if

such an agreement would reveal a trade secret as defined by Government Code Section 6254.7.

V. CONSULTANT'S RIGHTS AND RESPONSIBILITIES

- A. The CONSULTANT shall have an ongoing obligation and commitment to the COUNTY to disclose all information within its Subject Area that is relevant to the environmental consequences of the PROJECT and the preparation of the TECHNICAL STUDIES / EIR. The CONSULTANT shall not omit or withhold any relevant information from the COUNTY at the request of the APPLICANT or for any other reason. The CONSULTANT shall require any CONSULTANT-hired sub-consultant(s) to certify these same obligations and commitments to the COUNTY as a condition of their contract or by signing a copy of this MOU and shall provide a copy of such certification to the COUNTY within ten (10) days of retaining such sub-consultant(s).
- B. The CONSULTANT shall enter into a direct agreement with the APPLICANT for purposes of preparing the TECHNICAL STUDY / EIR, and such agreement shall govern the entire scope of their arrangement. Such agreement shall comply with all terms and conditions set forth in this MOU, and no term therein shall be inconsistent with any provision herein.
- C. The CONSULTANT's responsibility is to provide a complete and accurate TECHNICAL STUDY / EIR. The CONSULTANT's accountability under this MOU shall be solely to the COUNTY, and not to the APPLICANT or to any other person or entity.
- D. The CONSULTANT shall ensure that any sub-consultant(s) hired by the CONSULTANT in conjunction with the preparation of the TECHNICAL STUDY / EIR shall comply with the COUNTY CEQA Guidelines and all relevant terms and conditions set forth in this MOU.
- E. The CONSULTANT shall draft the TECHNICAL STUDY / EIR for the PROJECT in accordance with CEQA, State CEQA Guidelines, COUNTY CEQA Guidelines, relevant COUNTY technical study and EIR content and report formats, and with the directions and specifications set forth by the COUNTY.
- F. The CONSULTANT shall verify and ensure that all TECHNICAL STUDY / EIR documents prepared under its contract utilize accurate and verifiable field techniques and professional work

performance standards, and are in conformance with all applicable CEQA requirements, and all applicable County, State, and Federal rules, regulations and laws.

- G. The CONSULTANT shall verify and ensure that all TECHNICAL STUDY / EIR documents prepared under its contract, including the draft EIR, final EIR, TECHNICAL STUDIES, and response to comments (as applicable), represent its complete and independent professional judgment including all COUNTY direction and provide an analysis of the specific environmental issues, setting, potential impacts, and mitigation measures associated with the PROJECT. Notwithstanding the above responsibility, all CEQA documents shall reflect the independent judgment of the COUNTY. The TECHNICAL STUDY / EIR shall be signed as true and accurate by CONSULTANT.
- H. The CONSULTANT shall disclose any revisions made to the draft TECHNICAL STUDY / EIR and specifically identify any revisions made at the request of the applicant. Unless waived by the COUNTY, all revisions to CEQA documents prior to submittal for public review shall be shown in ~~strikeout~~/underline.
- I. The CONSULTANT shall maintain a record of communications with the APPLICANT related to substantive land use or environmental issues, and such record shall be submitted to the COUNTY for review upon request.
- J. The COUNTY shall retain the right to attend, or participate in, meetings (including conference calls) between the APPLICANT and the CONSULTANT when such meetings include discussion of substantive land use or environmental issues and has the right to request such meetings. The CONSULTANT shall provide the COUNTY with reasonable notice of all such meetings at the earliest time possible and no less than one business day. Upon the request of the COUNTY, the CONSULTANT shall disclose all substantive land use and environmental issues discussed at meetings the COUNTY does not attend. At the discretion of the COUNTY, notice of meetings may be waived in lieu of periodic summary reports disclosing issues discussed.
- K. The CONSULTANT may not be a subsidiary or division of the APPLICANT or have an ownership interest in the proposed PROJECT or any other property or development in which the APPLICANT has a financial interest. Additionally, the CONSULTANT shall not accept performance incentives

associated with a certain density, intensity, or configuration of development. This prohibition does not preclude performance incentives related to project schedules.

- L. The CONSULTANT shall not enter into any form of confidentiality agreement with the APPLICANT or any sub-consultant(s), which prohibits disclosure of information related to substantive land use or environmental issues to the COUNTY. This provision may be waived or modified at the discretion of the COUNTY, if such an agreement would reveal a trade secret as defined by Government Code Section 6254.7.
- M. The CONSULTANT shall always disclose to the COUNTY Project Manager all project related emails and written correspondence between the APPLICANT and CONSULTANT regarding substantive land use or environmental issues, unless waived by the COUNTY.
- N. Upon request from the COUNTY, the CONSULTANT shall submit all field notes, resource documents and supplemental technical studies used in the preparation of the TECHNICAL STUDY / EIR to the COUNTY.
- O. Upon request from the COUNTY, the CONSULTANT shall allow the COUNTY to view its contract with the APPLICANT. The COUNTY maintains the right to require submittal of the contract to the COUNTY. Any cost estimates or hourly rates may be blacked out or omitted.

VI. COUNTY'S RIGHTS AND RESPONSIBILITIES

- A. In accordance with the Public Resources Code Section 21082.1, it is the responsibility of the COUNTY to provide its independent review and analysis of all documentation for the PROJECT prepared and submitted by the CONSULTANT, and sub-consultant(s), and the APPLICANT. This independent review is undertaken for the benefit of the general public and is not intended to relieve the consultant of any of its responsibilities.
- B. The COUNTY shall be responsible for evaluating the extent and detail of topic area discussions in the TECHNICAL STUDY / EIR. The COUNTY shall also be responsible for scheduling and providing the public notice for the public meetings and hearings related to the PROJECT, and for distributing the draft and final EIR or other applicable CEQA document.

- C. The COUNTY shall have the right to reasonable notice and to attend, or participate in, any and all meetings or conference calls as described in paragraph V.J of this MOU, and has the right to request such meetings and be informed of the subject matter.
- D. The COUNTY shall have the right to request copies of any and all correspondence, meeting schedules, minutes, and draft documents generated by the CONSULTANT, any sub-consultant(s) and the APPLICANT, in connection with the preparation of the TECHNICAL STUDY / EIR. Upon request by the COUNTY, the CONSULTANT shall make available to the COUNTY any and all field notes, resource documents, and supplemental technical studies used in the preparation of the TECHNICAL STUDY / EIR.
- E. The COUNTY shall be responsible for reviewing the content of the draft TECHNICAL STUDY / EIR and providing clear and consistent comments on the scope and adequacy of the document in a timely manner. The COUNTY shall strive to provide thorough reviews and comments on initial reviews to avoid raising new issues that should have been known as the project progresses. The COUNTY shall always inform the APPLICANT of comments requiring additional information or substantive changes to the TECHNICAL STUDY / EIR.
- F. At the request of the APPLICANT or CONSULTANT and after completion of the PROJECT, the COUNTY shall provide an evaluation of the CONSULTANT's performance on the project.

VII. EXPIRATION

This MOU shall expire upon any of the following:

- A. The PROJECT and the TECHNICAL STUDY / EIR becomes final by decision of the authorized County decision-maker, all appeal timelines have expired, and all legal challenges associated with the PROJECT and the TECHNICAL STUDY / EIR have been finally adjudicated; or
- B. The PROJECT is withdrawn or denied and all appeal timelines have expired; or
- C. Written notice from the COUNTY, APPLICANT, or CONSULTANT to the other parties to this agreement terminating the MOU.

Notwithstanding expiration of the MOU, all information obtained prior to said expiration shall be disclosed to the COUNTY pursuant to the MOU disclosure requirements. Expiration of the MOU does not relieve the parties of their responsibilities under the MOU for activities that took place prior to the expiration date.

IN WITNESS WHEREOF, the COUNTY, the APPLICANT and the CONSULTANT/FIRM have caused this agreement to be executed. Further, the APPLICANT and CONSULTANT, under penalty of perjury, agree that all documents submitted to the COUNTY are in conformance with all requirements set forth in this MOU.

ATTESTED:

COUNTY OF SAN DIEGO

APPLICANT

Director of Planning

Principal

Dated: _____

Company Name

Dated: _____

CONSULTANT

FIRM

Consultant

Firm Name

Dated: _____

Principal of Firm

Dated: _____

SUB-CONSULTANT

Sub-Consultant Firm Name

Principal of Firm

Dated: _____

EXHIBIT G



VIA ELECTRONIC MAIL

August 11, 2017

Ashley Smith
Dept of Planning and Development Services
County of San Diego
5510 Overland Ave, Third Floor
San Diego CA 92123

RE: Public Records Act request regarding Newland Sierra DEIR

Dear Ms. Smith:

Endangered Habitats League (EHL) and other interested members of the public are seeking to provide the best possible input to your Department regarding the DEIR issued for this project. Air quality and greenhouse gas (GHG) analyses are important parts of this review. Further, as the applicant is charting new ground in the treatment of GHG emissions, it is essential that the public be given all the information it needs. If members of the public have the technical expertise to review information in a way the County itself either does not have or does not wish to exercise, it should welcome the chance to provide such information in a useable format. While it is easy for a consultant to invoke proprietary methods, supplying the raw data in digital format does not infringe on this. Outside parties will use different, non-proprietary methods to evaluate the data.

We urge a transparent process as the basis for the best decisions. If the following could be provided pursuant to the PRA, it would be much appreciated.

1. Unlocked Excel spreadsheets for emissions calculations in Appendices G and K
2. Electronic input files for CalEEMod, AERMOD, and HARP runs for DEIR calculations
3. Fuscoe Engineering, 2015, Conceptual Grading Plans, for Newland Sierra, provided June, 2015
4. Fuscoe Engineering, 2014, Newland Sierra APN Exhibit, dated November 25, 2014

Thank you in advance.

With best regards,

Dan Silver
Executive Director

EXHIBIT H



Chatten-Brown & Carstens LLP

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August 14, 2017

By e-mail:

Ashley.Smith2@sdcounty.ca.gov

Darin.Neufeld@sdcounty.ca.gov

Planning and Development Services
County of San Diego
Attn: Ashley Smith, Darin Neufeld
5510 Overland Avenue
San Diego, CA 92123

Re: Comments on Newland Sierra Draft Environmental Impact Report

Dear Ms. Smith and Mr. Neufeld:

The law firm of Chatten-Brown & Carstens represents the Sierra Club on matters relating to the proposal by Newland Sierra LLC to build the Newland Sierra Project (“Project”). At the Sierra Club’s request, we have reviewed portions of the Draft Environmental Impact Report (“Draft EIR”) and accompanying studies. George Courser and Mary Clarke, Co-Chairs of the Sierra Club Conservation Committee, have also reviewed the Draft EIR and have provided extensive comments regarding the Project, and these comments are incorporated herein.

We have found numerous flaws, inconsistencies, and omissions such that the Draft EIR fails to comply with the California Environmental Quality Act (“CEQA”), Public Resources Code section 21000 et seq., and the CEQA Guidelines, California Code of Regulations, Title 14, section 15000 et seq. These problems relate to the analysis of greenhouse gases (GHGs), biological impacts, traffic impacts, fire safety impacts, and impacts to Native American resources. Additionally, we strongly believe that the EIR should not be finalized until the Climate Action Plan (CAP) is adopted and no project requiring amendment to the 2011 General Plan should be approved until the County is on target to meet the GHG emission reduction goals it set.

Once sufficient analysis has been performed, enforceable and effective mitigation measures and a reasonable range of potentially feasible alternatives must be set forth in a Revised Draft EIR. The Draft EIR must then be recirculated so that the public and public

agencies may comment on this information, as required by CEQA. Although prepared by Newland and its consultants, the EIR is ultimately the responsibility of the County and it cannot be lawfully certified nor the project approved until substantial revisions to it are completed.

I. Greenhouse Gas Emissions Analysis.

a. The Project's Ability to Use Offsets From Outside the County of San Diego Is Inconsistent with the County General Plan's Requirement to Achieve Specified Greenhouse Gas Emissions Reductions in the County.

Mitigation Measure CC-1.2 of the County's General Plan Update requires the County to:

Prepare a County Climate Change Action Plan with an update[d] baseline inventory of greenhouse gas emissions from all sources, more detailed greenhouse gas emissions reductions targets and deadlines; and a comprehensive and enforceable GHG emissions reduction measures that will achieve a 17% reduction in emissions from County operations from 2006 by 2020 and a 9% reduction in community emissions between 2006 and 2020. Once prepared, the plan's implementation will be monitored and progress reported on a regular basis.

The Project authorizes the use of offsets from outside the County of San Diego. The Draft EIR identifies the County's "priority" list for consideration of GHG reduction features as follows:

1) project design features/on-site reduction measures; 2) off-site within the unincorporated areas of the County of San Diego; 3) off-site within the County of San Diego; 4) off-site within the State of California; 5) off-site within the United States; and 6) off-site internationally.

(DEIR, 2.7-48.)

However, the use of offsets is inconsistent with the County's Mitigation Measure CC-1.2 to reduce GHG emissions within the County of San Diego by specified reduction amounts.

b. The County Should Explain the Relationship Between the Project's Efficiency Metric and the Unlawful County Efficiency Metric.

In its Second Supplemental Petition for Writ of Mandate, the Sierra Club (along with the Golden Door) challenged the County's publication of the "County Efficiency Metric," contained within the overturn the County's "2016 Document for Determining Significance of Greenhouse Gases." The Superior Court ordered the County to set aside the 2016 Document for Determining Significance of Greenhouse Gases and enjoined use of the County Efficiency Metric in the County's environmental review. The County should analyze whether the Project's Efficiency Metric violates the Superior Court's order enjoining the County from using the "County Efficiency Metric."

c. List of Additional Concerns Regarding the Draft EIR's Greenhouse Gas Emissions Analysis.

In reviewing the Draft EIR, we share the following concerns identified by Dr. Phyllis Fox, PhD, PE in her August 14, 2017 correspondence entitled, "Comments on the Draft Environmental Impact Report for the Newland Sierra Project":

- The DEIR underestimated emissions from construction and vegetation. The information is not presented consistently in the DEIR, but emissions from construction and vegetation could be as much as 30 times higher than disclosed. (See Dr. Fox's August 14, 2017 letter, Section 2.1.)
- The DEIR underestimates emission from vegetation, because it characterizes 100% of removed vegetation as "scrub," when in fact, most of the vegetation on site is chaparral. (See Section 2.2.)
- Emissions for construction equipment are underestimated, because the analysis assumes Tier 4 engines that are not required by the Project's mitigation measures. (See Section 2.4.)
- Emissions from construction of off-site road and utility improvements do not appear to have been included. (See Sections 2.5 and 2.6.)
- Emissions from induced VMT by surface road improvements were not considered. Also, congestion leads to inefficient auto use, which increases emissions. These emissions were not included either. (See Section 2.9.2.)
- The DEIR gives too much emissions reduction credit for weak transportation demand management measures. (See Section 2.9.3.)
- The DEIR did not account for emissions from increased freeway congestion. (See Section 2.9.4.)

- Emissions from moving upstream water supply were not properly accounted for. (See Section 2.10.)
- The DEIR omits emissions from residential electricity use because it does not provide enough evidence that its residential solar and EV charging proposals will offset 100% of all residential electricity demand. (See Section 2.12.)
- The DEIR fails to address increased emissions resulting from climate change. (See Section 2.14.)
- Mitigation measures are inadequate because emissions were underestimated, the “priority” system should be mandatory, and the DEIR’s “true up” provision enables the County to allow the developer to decrease the amount of emissions required to be offset without any further CEQA review. (See Section 2.15.)

II. The Draft EIR Fails to Adequately Analyze the Project’s Biological Impacts.

a. Background.

In the early 2000’s, the San Diego Chapter of the Sierra Club established a North County Multiple Species Conservation Program (MSCP) / Multiple Habitat Conservation Program (MHCP) Task Force to help plan, develop, and implement the two Habitat Conservation Plans (HCPs) / Natural Community Conservation Plans (NCCPs) in North San Diego County. The Newland Sierra project is in the Planning Area of the County’s North County MSCP (NC-MSCP). The County has been developing the NC-MSCP for many years. On February 19, 2009, the County released a Preliminary Public Review Draft MSCP North County Plan. The Sierra Club’s Task Force reviewed and commented on that Plan.

Since 2009, the County has been working to finalize the NC-MSCP; however, to our knowledge, no public documents have been forthcoming since 2009. Sierra Club has been advised that the County intends to circulate a public review draft later this year. In the meantime, we will refer our analysis of the Newland DEIR to the 2009 Preliminary Public Review Draft, North County Plan (2009 Draft Plan) and to the 2017 Draft North County Plan (2017 Draft MSCP Plan). [Note: In the DEIR, Section 2.4, page 2.4-1, there is a reference to a 2016 North County MSCP. We have been advised by a County representative that this is an error and there is no 2016 North County MSCP document. If so, please remove or correct this reference.]

The Newland project is sited in a large, core area of natural habitat designated as a Pre-Approved Mitigation Area in the NC-MSCP. This area, the Merriam Mountains, is

one of the largest remaining blocks of natural habitat west of Interstate 15 in the Pre-Approved Mitigation Area. The quality of the habitat on the site is rated in the NC-MSCP as moderate to very high. The site is mountainous, with steep, rocky slopes. Gopher Canyon Creek runs through the site. The South Fork of Moosa Canyon also runs from the northern to the northeastern area of the project site.

The project site supports a huge variety of native wildlife, from large mammals such as mountain lions and mule deer to reptiles and amphibians, and numerous bird species, including the federally listed Coastal California gnatcatcher. Flora on the site include large blocks of Southern Mixed Chaparral with interspersed patches of Diegan Coastal Sage Scrub, Coast Live Oak Woodlands, and Southern Willow Scrub.

b. Inclusion of the Newland Project in the 2017 Draft North County MSCP as a Private Hardline Project Is Improper.

As part of its process in preparing a public review draft NC-MSCP, the County has developed a “Working Draft of the North County Plan,” dated May 23, 2017. The 2017 Draft MSCP Plan includes Section D.4, Private Hardline Preserves, with a notation, “(Pending Board Approval/Pending Concurrence from Wildlife Agencies).” Hardline areas are those in which landowners have negotiated with the Wildlife Agencies and the County for areas that will be set aside as preserve lands in perpetuity. The Newland project is included in the list of “Private Hardline Preserves” in Section D.4.1.

The hardline Preserve configuration in the proposed Newland project has not been agreed upon by the Wildlife Agencies, nor has it been approved by the County Board of Supervisors. The Sierra Club’s understanding is that there are no entitlements pertaining to the site. Section D.4 states, “[A]t the applicant’s request, this project is being presented in this chapter of the North County MSCP....” To include a project that has no approvals in the Hardline Projects section of the NC-MSCP “at the applicant’s request” is inappropriate, and we request that it be removed.

Also, in Chapter 5 of the 2017 Draft North County Plan, Figure 5-11 shows the Newland project site as a “Private Hardline Area.” We submit that this designation is not correct, as explained above, and request that figure 5-11 be corrected to show the Newland project site in its current condition. There may be other references to the Newland project site as a Hardline Area in the 2017 Draft North County Plan. If so, we request that they be corrected or eliminated.

c. Mitigation for Project Impacts to Environmental Resources Should Be On-Site.

The conservation objective for MSCP lands has always been that 75% of the lands be conserved, with up to 25% developed. In their March 12, 2015, comment letter on the

Newland project Notice of Preparation (NOP), the California Department of Fish and Wildlife (DFW) stated:

Based on past meetings with the County, the Department has provided the following tenets that will guide any hardlined agreement negotiations for the Project:

d) The project should achieve a 25 percent development and 75 percent preservation ratio on-site to the maximum extent practicable; initial proposals only showed an approximate 60:40 ratio. For any portion of the 75 percent conservation that cannot be achieved on-site, the balance should be met by contributing land that adds value to the Merriam Mountains connection, preferably in the same NC-MSCP planning unit.

(DFW Comment Letter, page E-4.)

The project proposes off-site mitigation of 211.8 acres east of Ramona. Although the proposed mitigation site appears to be in the NC-MSCP Planning Area and contains Diegan coastal sage scrub, it does not contribute value to the Merriam Mountains connection. Please confirm whether or not the proposed mitigation site is in the NC-MSCP Planning Area.

The conservation should be on-site, not at a distant location. And the conservation achieved should be 75%. The project should be redesigned to achieve a 75% conservation level on-site.

d. The Newland Project Will Fragment a Core Area of Habitat for Wildlife Contrary to the 2017 Draft MSCP Plan.

i. The Project Is Inconsistent with the Goal of the 2017 Draft MSCP Plan to Preserve Large Blocks of Habitat.

One goal identified in the 2017 Draft MSCP Plan is to “[p]reserve with large blocks of contiguous natural vegetation communities to support populations of covered species, which are linked to each other and areas of protected habitat adjacent to the Plan area.” (2017 Draft MSCP Plan, Chapter 5, p. 3.)

The Newland development is proposed for the southern half to two-thirds of the project site. It will cover most of that portion of the site, with the exception of two blocks of open space (DEIR, p. 747, Map of Wildlife Connectivity [identifying Blocks 2 and 3]) and several corridors linking the blocks internally and to the open space on the exterior of the project site. By significantly reducing the existing habitat, the Newland project violates the above-stated Goal for the 2017 Draft MSCP Plan.

Instead, the Project should implement the list of “Conservation Actions” identified in the 2017 Draft MSCP Plan, which would help to protect this core area of valuable habitat as a NC-MSCP Preserve.

ii. The Project’s Wildlife Corridors Are Inadequate.

The Draft EIR’s Wildlife Connectivity map (DEIR, p. 747) shows Corridors A through D, which are proposed to link the remaining open space areas throughout the project and to open spaces areas outside the project. However, there are problems with these corridors, as some of them cross roadways, which is hazardous for wildlife and vehicles. The DEIR should incorporate the guidelines for wildlife crossing structures and wildlife fencing, natural vegetation, and natural lighting identified in the 2017 Draft MSCP Plan. (See 2017 Draft MSCP Plan, p. 5-85, “Wildlife Crossings and Covered Transportation Projects”; see also 5-86 and 5-87 [Table 5-10 lists “Impact Minimization Measures to Facilitate Movement Across Roadways”].) All the information is available for the planning of wildlife crossings that would help wildlife move safely under and over roadways. These guidelines and measures should be applied to Camino Mayor, which crosses extensively through “Block 1,” the large remaining block of open space at the north end of the Newland project site. Special attention should be given to providing adequate undercrossing(s) of Mesa Rock Road, which crosses the link between open space Blocks 2 and 3.

In addition to the roadways that cross wildlife corridors, the proposed project would significantly increase the volume of traffic on nearby roads. Deer Springs Road would be reconstructed to accommodate the increased traffic. Wildlife crossings should be designed and built as part of the Deer Springs Road project that would help wildlife move safely across the busy road. No wildlife undercrossings are proposed for Sarver Lane, which would no doubt carry significant traffic through open space areas.

Other existing roads that would be impacted by the traffic from the Newland project include Twin Oaks Valley Road and Buena Creek Road. The Draft EIR should consider how wildlife undercrossings can be developed on these roads to allow animals to safely cross the roads.

I-15 is a major barrier to wildlife movement and habitat connectivity. There is currently an undercrossing of I-15 at Deer Springs Road that some animals may use. The Newland project proposes that there would be future improvements to the I-15/Deer Springs Road interchange. However, it is not clear when those improvements would occur or who would be responsible for them. Is Caltrans the agency responsible for planning, financing and constructing the interchange? How can viable wildlife undercrossings be included as part of the interchange improvement project?

Another problem with the proposed wildlife corridors is that many of them are adjacent to the housing developments. Edge effects can reduce the effectiveness of the corridor for wildlife use. Also, it appears there may be extensive grading that would impact the corridors. In fact, Corridor D appears to be completely graded. Corridor D is also very long and narrow, which reduces the effectiveness of the corridor for wildlife movement. The graded areas would require re-planting, presumably with fire-resistant vegetation. Also, there would be fuel modification areas around the development that require thinning and/or replacement of natural vegetation. For many species of animals, in order to function effectively, a corridor needs to have a good vegetation cover.

The Draft EIR should explain to what extent the “Conservation Actions” specified in the 2017 Draft MSCP Plan (2017 Draft, p. 5-84), which were developed to insure effective wildlife corridors, have been incorporated into the Newland project plan.

The Newland Project does not follow the goals, guidelines, and recommended actions of the 2017 Draft MSCP Plan. Since the project site is such an important core and linkage area in the NC-MSCP, any project approvals should be deferred until the NC-MSCP is released to the public, so that the public can review the project vis-à-vis the NC-MSCP.

iii. The Project’s Trails Should Not Cross Preserve Areas.

It is a tenet of Wildlife Preserve design that human activities should be sited outside the Preserve areas to avoid disturbance of wildlife activities and damage to habitat. The California Department of Fish and Wildlife letter stated, “Based on our past meetings with the County, the Department has provided the following tenets that will guide any hardlined agreement negotiations for the Project: h) Proposed trails need to be compatible with habitat preservation for wildlife.” (DFW March 12, 2015 Comment Letter, p. 4.)

The 2017 Draft MSCP Plan, “Conservation Actions,” states:

- 6) Ensure any public passive recreational access within conserved lands is compatible with and will not adversely affect, conservation goals and objectives.
- 7) Minimize threats and stressors to covered species and natural vegetation communities.

(2017 Draft MSCP Plan, Section 5, p. 3.)

The Newland project proposes trails in Block 1 of the Preserve. (See DEIR, Project Description, p. 761). These trails include a 3-mile loop trail and an equestrian

trail. These trails should not be located in the Preserve as they would impact wildlife activity patterns and habitat. In addition, they are sited in a particularly important part of the Preserve – where it links to Pre-Approved Mitigation Area lands to the west and north.

Siting trails in this Preserve area would greatly increase human activities (including horses and dogs) and should be avoided. We request the EIR identify non-Preserve areas where trails and equestrian activities would be appropriate.

e. The DEIR Should Analyze Why the Project Does Not Conform to the Resource Protection Ordinance.

The Project does not appear conform to the Resource Protection Ordinance (RPO). The DEIR states the Project plan proposes to amend the RPO to allow an exemption for this project. (DEIR, Appendix H-2, p. 7.) However, the DEIR fails to explain why the project does not conform to the RPO. Please provide an explanation.

III. The Draft EIR Fails to Adequately Analyze the Project's Fire Safety Impacts.

The Sierra Club closely identifies the risks to the NC-MSCP and associated Pre-Approved Mitigation Area wildlands with the presence of human activities and associated increased risks of wildfires. The Newland project is extraordinary in that the proposed Merriam Mountains site would increase from a present population of zero to a population of more than 6,000. With that population expansion comes enormous increases in activities in the Wildlands urban interface fire zone.

The primary concern of wildfires is heightened by Newland's location in the highest risk fire zone category in the entire County of San Diego - the "Very High Fire Hazard Severity Zone." The Draft EIR provides the following explanation of this fire risk:

The proposed project is situated in an area that, due to its steep terrain, heavy fuels, adjacent ignition sources, and fire history, is subject to periodic wildfire. The project Site and the nearby communities of Castle Creek, Hidden Meadows, and Lawrence Welk Resort are all located in a Very High Fire Hazard Severity Zone, as designated by CAL FIRE (EIR, Appendix N). Wildland fires are a common natural hazard in most of San Diego County and southern California.

(DEIR, Section 2.8, p. 17.)

The Sierra Club believes the risks to human life and natural resources from steep slopes, Santa Ana winds, and old growth chaparral as far too severe to consider for development.

a. Questions Regarding Newland's Wildland Fire Evacuation Plan.

Newland's Fire Evacuation plan's first sentences begin with disturbing and dangerous assumptions for future residents.

NOTE: Pages 1 through 6 are to be the focus of the homeowner evacuation educational outreach efforts. These pages will be available on the community's HOA Website.

The Wildfire Evacuation Plan's assumption of residents having access to their electronics while evacuating is not realistic for residents.

Please describe in detail the following:

- What considerations of Santa Ana wind conditions and the accompanying high probability of disabled electrical supplies and telephone service have been given by the County with this online evacuation plan?
- Has the County staffs' considered evaluations of the 2003 and 2007 wildfires in relation to functional, non-overloaded cell towers or landline phone service lines been applied to these Newland Sierra evacuation circumstances in the Fire Protection Plan?
- How does County Staff explain to concerned taxpayers as to why the experiences of the 2003 Cedar Fire and 2007 Witch Fire as far as cell phone and land line service failures are being ignored in the DEIR in relation to instructions to residents?
- What motivated the County Planning and Development Service to select Dudek to construct the Wildland Fire Evacuation Plan for the Deer Springs Fire Protection District, while simultaneously having Dudek acting as Newland Sierra's DEIR consultant? Is such an arrangement not a conflict of interest for the County of San Diego?
- Did the Deer Springs Fire District Board of Directors evaluate, vote or in any manner verify and approve the Wildland Fire Evacuation Plan by Dudek, Newland's preparer of the Draft EIR? The following quote from the Wildland Fire Evacuation Plan suggests there has been no actual verification or approval of

this Wildland Fire Evacuation Plan by the Deer Springs Fire Protection District Board.

- “The only published evacuation information specific to the project vicinity, and including the Newland Sierra project site, was prepared by the Deer Springs Fire Safe Council in cooperation with the Deer Springs Fire Protection District.”

(Wildland Fire Evacuation Plan, p. page 7.)

- What safeguards are in place for citizens to be assured the most comprehensive, conservative and safety minded fire protection plans are achieved?
- Did the County of San Diego Planning and Development Services utilize the extensive expertise of the San Diego County Office of Emergency Services in evaluating the Newland Project and evacuation plan?
- Were there reports, meeting commentary, exchanges of information or professional critiques regarding the Newland Wildland Fire Evacuation Plan by the San Diego County Office of Emergency Services?
- Was there any professional approval of the Dudek Wildland Fire Evacuation Plan by the San Diego County Office of Emergency Services?
- What, if any, was the date of any public agenda, public comment, discussion and vote on the Fire Protection Plan?

b. Questions Regarding the Project’s Consistency with San Diego County’s Office of Emergency Services.

The Office of Emergency Services (OES) coordinates the overall county response to disasters. OES is responsible for alerting and notifying appropriate agencies when disaster strikes; coordinating all agencies that respond; ensuring resources are available and mobilized in times of disaster; developing plans and procedures for response to and recovery from disasters; and developing and providing preparedness materials for the public.

The Draft EIR lauds the OES expertise in developing a comprehensive emergency management system. The Draft EIR states:

The Operational Area Emergency Plan describes a comprehensive emergency management system, which provides for a planned response to

disaster situations associated with natural disasters, technological incidents, terrorism, and nuclear-related incidents. It delineates concepts relating to various emergency situations, identifies components of a comprehensive emergency management system, and describes the overall responsibilities for protecting life and property and assuming the overall well-being of the population.

(Draft EIR, Section 2.8, p. 12.)

Despite these statements, the following questions appear to be unanswered in the Draft EIR:

- Where and how does the Fire Protection Plan demonstrate consistency with the San Diego County OES, the ultimate authority on County emergencies?
- Where is the demonstrated coordination, and or approval, of the Fire Protection Plan with OES or to the United Disaster Council, the joint powers authority comprised of the 18 cities and San Diego County?
- Has the City of Escondido fire department been appraised of, and involved with the Newland fire protection plan?
- How is it appropriate for the Planning and Development Services to rely upon proponent-employed consultants instead of seeking counsel from the trained professionals at OES who administer the CERT training for emergencies?

c. Questions Regarding the Community Emergency Response Team Program.

During the first few hours and days after a disaster strikes, emergency services could be overwhelmed, leaving families, neighborhoods and businesses on their own for hours or days. After the devastating Cedar fire of October 2003, the City of San Diego sought new solutions to meet this vital need. A new community based program called Community Emergency Response Team (CERT) was developed by the San Diego Fire-Rescue Department.

San Diego Fire-Rescue personnel train and empower citizens in safe, effective neighborhood CERT teams. CERT San Diego instructors teach citizens to take life-saving action to help families, neighbors, businesses and communities get through the first few hours or days when emergency services are overwhelmed. More information regarding the CERT program can be found on the City of San Diego's webpage on CERT San Diego: <https://www.sandiego.gov/fire/services/cert>.

We have the following concerns regarding the project's emergency response program:

- Why has the San Diego County CERT training not been included as part of the “evacuation educational outreach efforts” In the Wildland Fire Evacuation plan?
- Why was the emergency safety training of the County's CERT program specific to Deer Springs not mentioned in the Wildland Fire Evacuation Plan?
- On August 11, 2017, one of the Co-Chairs of the Sierra Club Conservation Committee spoke with the local representative for CERT training specific to the Deer Springs area, Mr. Marc Weissman. Mr. Weissman's contact information was located on the following link:
http://www.sandiegocounty.gov/oes/community/oes_jl_CERT.html, which also provides additional information regarding the CERT program. Mr. Weissman validated the Sierra Club's concerns regarding resident safety. Mr. Weissman also stated that he had not been coordinated with, or even contacted, regarding the Project's Wildland Fire Evacuation Plan or the Fire Protection Plan. Has there been any coordination with the CERT program?

Coordination between the applicant, the applicant's consultants, the San Diego County Office of Emergency Services, and the acclaimed CERT safety program is imperative to ensure that the evaluations and recommendations of the regional and local fire emergency experts are incorporated into the Project analysis.

Wildland fire may be a common natural hazard in San Diego County. But, construction in a Very High Fire Hazard Severity Zone is a senseless gamble with over 6,000 potential residents. Due to that fatal flaw, the project fails the test of common sense safety and must be rejected.

IV. Questions Regarding Consultation with Native American Tribes.

The Governor's Office of Planning and Research published a May 2015 planning guide entitled, “Fire Hazard Planning: General Plan Technical Advice Series.”

The Planning Guide explains:

State planning law requires consultation with California Native American Tribes during the local planning process for the purpose of protecting Traditional Tribal Cultural Places. Tribes may have unique knowledge that

allows for the protection of cultural places while also allowing for fire mitigation and suppression.

For purposes of consultation with tribes, as required by Government Code Sections 65352.3 and 65562.5, the Native American Heritage Commission (NAHC) maintains a list of California Native American Tribes with whom local governments must consult. The NAHC's "California Tribal Consultation List" provides the name, address, and contact name for each of these tribes; and telephone, fax and email information if available. The tribal contact list is developed and maintained by the NAHC, under authority granted in Government Code Sections 65092, 65352 and 65352.3. Prior to initiating consultation with a Tribe, the city/county must contact the NAHC for a list of Tribes to consult with. For questions about the list, please contact the NAHC at www.nahc.ca.gov. OPR developed Tribal Consultation Guidelines to provide information on how and when to conduct consultation with California Native American Tribes.

(Fire Hazard Planning: General Plan Technical Advice Series, p. 14, accessed via https://www.opr.ca.gov/docs/Final_6.26.15.pdf.)

In light of the important resource that tribal consultations serve, the Sierra Club has the following questions:

- How many Tribal members, and from what Tribal Bands, were consulted regarding Government Code Sections 65352.3 and 65562.5?
- What was the duration of total hours and number of days of the Tribal consultations?
- Were there physical evaluations of the entire project areas?
- Were the results of the project consultation identical to those of the Merriam Mountains predecessor project?
- Was the same consultation report information from the Merriam Mountains project utilized for the Newland Sierra project?
- Were there any alterations of the Newland Sierra plans made to allow for further fire protection of cultural places?

The Planning Guide also explains:

Local governments must adhere to Government Code Section 65352.3 and the provisions of Senate Bill 18 (2004), requiring local governments to consult with Tribal Governments prior to amending the General Plan and to provide notice to tribes at certain key points in the planning process. These consultation and notice requirements apply to adoption and amendment of both general plans (defined in Government Code §65300 et seq.) and specific plans (defined in Government Code §65450 et seq.). Many activities related to fire hazard mitigation can impact tribal cultural sites and close coordination with Tribal Governments is imperative to protect such sites from permanent damage. In addition, Tribal Governments may have insight into fire mitigation practices that can be shared with local governments and fire professionals.

(Fire Hazard Planning: General Plan Technical Advice Series, p. 12.)

In light of these requirements, the Sierra Club has the following questions:

- What date were tribal members contacted regarding amendments to the General Plan for Newland Sierra?
- How were tribal members made aware of the intense land use changes proposed by the project's General Plan amendments?
- How many Tribal members participated in the consultations concerning the general plan amendment's impacts to their culture, history and spiritual sites?
- At what key points in the planning process were Tribal Members again consulted?
- Were Tribal Members alerted that developer plans are entirely discretionary actions subject to review by the Planning Commission and County Board of Supervisors?
- Were the Tribal members allowed to survey the entire Newland Sierra site?
- Were sites subject to fire mitigation inspected and approved by tribal members to insure protection of cultural items and sacred shrines?
- How many sites were inspected and by how many Tribal Members?

California Native American Cultural Places SB 18 refers to Public Resources Code §5097.9 and 5097.995 to define cultural places. Public Resources Code §5097.9 refers to Native American sanctified cemeteries, places of worship, religious or

ceremonial sites, or sacred shrines. Public Resources Code §5097.995 refers to Native American historic, cultural, or sacred site, that is listed or may be eligible for listing in the California Register of Historic Resources pursuant to Section 5024.1, including any historic or prehistoric ruins, any burial ground, and any archaeological or historic site.

- Were the applicable provisions and safeguards of Senate Bill 18 an integral part of the discussion with tribal members as it applies to cemeteries, places of worship, ceremonial and sacred sites?
- Were specific, previously identified sites brought to the attention of the Tribal members selected to help preserve them?
- Were all streams, pools and ponding sites identified, described and physically inspected by Tribal Members?

V. The County’s Refusal To Disclose Underlying Data Violates the Public Records Act and is Not Permissible Under CEQA.

On July 27, 2017, the County of San Diego improperly refused to disclose the Excel spreadsheets supporting the emission calculations in Appendices G and K of the Project’s Draft EIR. In relevant part, the County claims:

[T]hese documents are not public records as defined in the California Public Records Act because they do not contain information prepared, owned, used, or retained by the County pursuant to Government Code section 6252(e). Instead, these documents are prepared, owned, used, or retained exclusively by Dudek, the County's environmental consultant for the Newland Sierra draft EIR. Furthermore, ... [t]he County does not possess the unlocked Excel spreadsheets ... and the County may not require Dudek to disclose these files.

a. The County’s Refusal to Disclose Consultant’s Files Violates the Public Records Act.

First, the County’s claim that the Excel spreadsheets with the data supporting the Draft EIR’s emission calculations are not “used ... by the County” is false. The County’s Draft EIR uses these spreadsheets to arrive at its conclusions regarding the project’s air quality and greenhouse gas emissions impacts.

The California Supreme Court has previously rejected attempts by agencies to argue that an agency does not possess records if they are not in the agency’s physical possession.

Obviously, an agency engaged in the conduct of public business will use and retain a variety of writings related to that business, including those prepared by people outside the agency Appellate courts have generally concluded records related to public business are subject to disclosure if they are in an agency's actual or constructive possession. (*See, e.g., Board of Pilot Comrs. for the Bays of San Francisco, San Pablo and Suisun v. Superior Court* (2013) 218 Cal.App.4th 577, 598; *Consolidated Irrigation Dist. v. Superior Court* (2012) 205 Cal.App.4th 697, 710.) “[A]n agency has constructive possession of records if it has the right to control the records, either directly or through another person.” (*Consolidated Irrigation*, at p. 710.)

(*City of San Jose v. Superior Court* (2017) 2 Cal. 5th 608, 622-623.)

The Supreme Court also noted that federal courts have remarked that an agency's public records “do not lose their agency character just because the official who possesses them takes them out the door.” (*Id.* at 623, citing *Competitive Enter. Inst. v. Office of Sci. & Tech. Policy* (D.C. Cir. 2016) 827 F.3d 145, 149.) Furthermore, a state or local agency may not allow another party to control the disclosure of information that is otherwise subject to disclosure pursuant to this chapter. (Cal. Gov't Code § 6253.3.)

The Supreme Court rejected the argument now advanced by the County:

[T]he City argues that public records are only those an agency is able to access “directly.” But this strained interpretation sets legislative intent on its head. The statute's clear purpose is to prevent an agency from evading its disclosure duty by transferring custody of a record to a private holder and then arguing the record falls outside CPRA because it is no longer in the agency’s possession. Furthermore, section 6270 does not purport to excuse agencies from obtaining public records in the possession of their own employees. It simply prohibits agencies from attempting to evade CPRA by transferring public records to an intermediary not bound by the Act's disclosure requirements.

(*City of San Jose, supra*, 2 Cal. 5th at 623–24.)

Courts have found that agencies violate the California Public Records Act when they fail to disclose consultant’s records, including the underlying material on which consultant relied. (*See, e.g., Cmty. Youth Athletic Ctr. v. City of Nat'l City* (2013) 220 Cal. App. 4th 1385 [court concluded the records were public records, and city had an ownership interest in the field survey material and it had the right to possess and control it].)

b. The County's Refusal to Disclose Consultant's Files Violates CEQA.

“A draft environmental impact report, environmental impact report, negative declaration, or mitigated negative declaration prepared pursuant to the requirements of this division shall be prepared directly by, or under contract to, a public agency.” (Cal. Pub. Res. Code § 21082.1.) An agency may comply with CEQA by adopting EIR materials drafted by the applicant's consultant, but only if the agency independently reviews, evaluates, and exercises judgment over that documentation and issues it raises and addresses. (*Friends of La Vina v. Cty. of Los Angeles* (1991) 232 Cal. App. 3d 1446.)

“Before using a draft prepared by another person, the lead agency shall subject the draft to the agency's own review and analysis. The draft EIR which is sent out for public review must reflect the independent judgment of the lead agency. The lead agency is responsible for the adequacy and objectivity of the draft EIR.” (14 Cal. Code Reg. § 15084, subd. (e).)

Here, the County argues that it need not disclose the excel spreadsheets supporting the emission calculations because “these specific documents were not reviewed by the County as part of the California Environmental Quality Act (CEQA) review for this project.” This argument runs directly counter to the requirement under CEQA that the Draft EIR must reflect the lead agency's independent judgment. Since the County is responsible for verifying this data is accurate, the County must disclose the data that purportedly supports the consultant's conclusions.

CONCLUSION

The Draft EIR must be revised with this new information and then recirculated for public comment. (CEQA Guidelines section 15088.5.) Pursuant to Public Resources Code section 21092.2, we request all notifications regarding this Project.

Thank you for your consideration.

Sincerely,



Josh Chatten-Brown

EXHIBIT I

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LATHAM & WATKINS^{LLP}

September 12, 2017

VIA EMAIL AND U.S. MAIL

Sharon Ippolito
Public Records Act Request Coordinator
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Los Angeles Tokyo
Madrid Washington, D.C.
Milan

Re: Notice of Violation of Public Records Act; Opportunity to Cure

Dear Ms. Ippolito:

I am writing regarding your July 27, 2017 letter response to my colleague, Andrew Yancey, regarding our recent request for public records under the California Public Records Act or “CPRA”. You may recall that we requested “unlocked Excel spreadsheets supporting all emission calculations in Appendices G and K and electronic input and output files for all CalEEMod, AERMOD, and HARP runs” for the Newland Sierra development project’s draft environmental impact report (“EIR”), in order for us to undertake a full “analysis of the Project’s GHG and air quality emissions impacts” as we are entitled to do under the California Environmental Quality Act. Other members of the public have also noted the importance of these files in facilitating adequate public review under CEQA. *See, e.g.*, Letter from Dan Silver, Endangered Habitats League, to County of San Diego, *Re: Public Records Act request regarding Newland Sierra DEIR* (Aug. 11, 2017); Letter from Chatten-Brown & Carstens LLP on behalf of the Sierra Club, to Planning and Development Services, County of San Diego, *Re: Comments on Newland Sierra Draft Environmental Impact Report* (Aug. 14, 2017).

Your July 27 response denied the disclosure of public records on the grounds that “these documents are not public records as defined in the California Public Records Act because they do not contain information prepared, owned, used, or retained by the County pursuant to Government Code section 6252(e). Instead, these documents are prepared, owned, used or retained exclusively by Dudek, the County’s environmental consultant for the Newland Sierra draft EIR.” The fact that these records may presently be in the possession of Dudek, which the County concedes is the “County’s environmental consultant,” does not absolve the County from its constitutional responsibility to comply with the CPRA.

The case law regarding the CPRA is decidedly against the County on this point. For example, in *Community Youth Athletic Center v. City of National City* (2013) 220 Cal.App.4th

1385, the Court held that “the City had the obligation ... to make reasonable efforts to facilitate the location and release of the information.” The Court also specifically noted Government Code section 6253.3, which provides that “a public agency ‘may not allow another party to control the disclosure of information that is otherwise subject to disclosure pursuant to this chapter[.]’” Finally, *Community Youth Athletic Center* demonstrated that records could be “public records” subject to disclosure under the CPRA even if such documents are in the possession of a private consultant. Notably, the County’s CEQA Guidelines¹ for technical consultants provide that typically consultants owe the County the following contractual duties and obligations, among others:

- “The CONSULTANT shall have an ongoing obligation and commitment to the COUNTY to disclose all information within its Subject Area that is relevant to the environmental consequences of the PROJECT and the preparation of the TECHNICAL STUDIES / EIR.”
- “The CONSULTANT shall not omit or withhold any relevant information from the COUNTY at the request of the APPLICANT or for any other reason.”
- “Upon request from the COUNTY, the CONSULTANT shall submit all field notes, resource documents and supplemental technical studies used in the preparation of the TECHNICAL STUDY / EIR to the COUNTY.”

Here, the County’s May 7, 2015 Scoping Letter requires Newland to retain technical consultants, including an air quality consultant, pursuant to the County’s standard Memorandum of Understanding and the County’s CEQA Guidelines. See Letter from County of San Diego Planning and Development Services, to Newland Sierra, LLC, *Newland Sierra Scoping Letter*, at Attachment A, Item 17-1 & Attachment C (May 7, 2015), available at <http://www.sandiegocounty.gov/content/dam/sdc/pds/regulatory/docs/newlandsierra/NewlandSierraScopingLetter.pdf>.

More recently, in *City of San Jose v. Superior Court* (2016) 2 Cal.5th 608, the California Supreme Court confirmed this general rule, explaining that “we have previously stressed that a document’s status as public or confidential does not turn on the arbitrary circumstance of where the document is located.” The Supreme Court specifically affirmed the principle that “actual” possession is irrelevant. “[R]ecords related to public business are subject to disclosure if they are in an agency’s actual or constructive possession.” As noted, the County’s CEQA Guidelines’ model consultant contract or memorandum of agreement provides that the County typically has a contractual right to the consultant’s files, including “all field notes” and “resource documents,” which include the native Excel spreadsheets Mr. Yancey requested. The County’s refusal to disclose these records on the grounds that such records are in the possession of the “County’s environmental consultant” is not justified in the law and violates the CPRA.

¹ See <http://www.sandiegocounty.gov/pds/docs/CEQAGDLN.pdf>.

LATHAM & WATKINS^{LLP}

Though this matter is ripe for judicial intervention, as a professional courtesy we are willing to offer the County an opportunity to cure its violation of the CPRA by disclosing the records requested by Mr. Yancey, on or before September 19, 2017. Please accept my courtesy notice to you that if the County continues to refuse to provide such a disclosure by that date, we will consider exercising all available appropriate remedies, including a petition for a writ mandate and/or other appropriate relief in the Superior Court.

If you have any questions, please feel free to contact me at (858) 523-5400 or taiga.takahashi@lw.com.

Very truly yours,

Taiga Takahashi

Taiga Takahashi
of LATHAM & WATKINS LLP

cc (via email):
Ashley Smith
Mark Slovick
Mark Wardlaw
Claudia Silva, Esq.
William W. Witt, Esq.
Josh Chatten-Brown, Esq.
Jan Chatten-Brown, Esq.
Dan Silver
Andrew Yancey, Esq.
Christopher Garrett, Esq.
Kathy Van Ness

EXHIBIT J

Yancey, Andrew (SD)

From: Brian Grover <bgrover@dudek.com>
Sent: Tuesday, October 03, 2017 4:56 PM
To: Yancey, Andrew (SD)
Subject: RE: GHG and AQ Files for Newland EIR
Attachments: 2017-10-3 PRA Request Memo.pdf

Andrew,

Attached please find a memorandum which addresses your request to the County on July 14, 2017 (below). While Dudek and the County maintain that these materials are not “public records,” we understand that Latham and Watkins has threatened to initiate litigation against the County under the Public Records Act, and Dudek has elected to provide these files to avoid costly and time-consuming litigation. Please note that in doing so, we do not waive our rights concerning the proprietary nature of the files. We also caution Latham and Watkins – and any third-party user – to adhere to the explanation of the proper use of these files, which is outlined in the memorandum. The misuse of this information could result in inaccurate or misleading findings.

Here is the Sharefile link to download the associated modeling files that are mentioned in the memorandum:

<https://dudek.sharefile.com/> [REDACTED]

Please let me know if you have any trouble accessing the files.

Thanks,

Brian

Brian P. Grover, AICP, LEED GA
Senior Project Manager

DUDEK
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 *please consider the environment before printing this email*

From: Andrew.Yancey@lw.com [<mailto:Andrew.Yancey@lw.com>]
Sent: Friday, July 14, 2017 12:00 PM
To: Smith, Ashley
Cc: Slovick, Mark; CHRISTOPHER.GARRETT@LW.com
Subject: GHG and AQ Files for Newland EIR

Ashley – For the Newland Draft EIR, could you provide the unlocked Excel spreadsheets supporting all emission calculations in Appendices G and K and electronic input and output files for all CalEEMod, AERMOD, and HARP runs? These do not appear to be available from the documents posted online, and they are necessary for an analysis of

the Project's GHG and air quality emissions impacts. Thank you very much. Please let me know if you have any questions.

Andrew D. Yancey

LATHAM & WATKINS LLP

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Latham & Watkins LLP

MEMORANDUM

To: Andrew Yancey, Latham & Watkins
From: Jennifer Reed, Air Quality Services Manager, Dudek
Subject: Public Records Act Request for the Newland Sierra Project – Air Quality and Greenhouse Gas Modeling Materials
Date: October 3, 2017
cc: Brian Grover, Project Manager, Dudek; David Deckman, Senior Air Quality Specialist, Dudek; Jennifer Sucha, Air Quality Specialist, Dudek
Attachments: List of Electronic Modeling Files (refer to Sharefile transmittal for actual files)

1 INTRODUCTION

Dudek understands that a Public Records Act request from Latham & Watkins asks for “unlocked Excel spreadsheets supporting all emission calculations in Appendices G and K and electronic input and output files for all CalEEMod, AERMOD, and HARP runs.” “Appendices G and K” refer to two Technical Appendices included in the Draft Environmental Impact Report (DEIR) for the Newland Sierra Project; and, specifically, Appendix G, the Air Quality Technical Report, and Appendix K, the Greenhouse Gas Emissions Technical Report.

The requested electronic input and output files are not “field notes, resource documents, or supplemental technical studies used in the preparation of the technical study/EIR,” which are the materials Dudek traditionally provides to the County of San Diego (County) pursuant to the County’s standard Memorandum of Understanding form. An example of “field notes” is found in Appendix A to our Noise Technical Report, which contains our field measurement data and associated notes. An example of “resource documents” is found in the documents used as resources in the preparation of our technical reports, and those resources have been cited in the References section of each technical report. Examples of “supplemental technical studies” are the silica dust analysis or the health risk assessment — both of which are included as appendices to our Air Quality Technical Report. Instead, Latham & Watkins has requested our internal electronic input and output files, which do not fall under any of the aforementioned categories.

We do not consider such files to be “public records.” Nonetheless, we understand that Latham & Watkins has threatened to initiate litigation against the County under the Public Records Act in

Memorandum

Subject: Public Records Act Request for the Newland Sierra Project – Air Quality and Greenhouse Gas Modeling Materials

an effort to obtain our internal files. We have decided to provide Latham & Watkins with our internal electronic files to avoid costly and time-consuming litigation. In doing so, however, we do not waive our rights concerning the proprietary nature of our electronic files, nor our position that our internal files do not constitute “public records” as defined in the Public Records Act. We also caution Latham & Watkins (and any third-party end user) to adhere to Dudek’s explanation of the proper use of these files, which is set forth below. (The misuse of the information could result in inaccurate or misleading findings.)

The following items, which comprise the electronic modeling files requested by Latham & Watkins, are included as part of the October 3, 2017 transmittal to Latham & Watkins via Sharefile and listed in Attachment 1 to this memorandum. Also provided below, beginning in Section 2, is a description and detailed list of the specific electronic files and how they were used:

California Emissions Estimator Model (CalEEMod) Version 2016.3.1 Files:

- CalEEMod – Construction: Input file, output files
- CalEEMod – Operation: Input files, output files

American Meteorological Society/Environmental Protection Agency Regulatory Model (AERMOD) and Hotspots Analysis and Reporting Program Version 2 (HARP 2) Files:

- AERMOD – Construction: Input files, output files, plotfiles (input to HARP 2)
- AERMOD – Operation: Input files, output files, plotfiles (input to HARP 2)
- HARP 2 – Construction: Input files, output files
- HARP 2 – Operation: Input files, output files

Excel Workbooks:

- Construction Schedule and Assumptions
- Combined Construction Emission Calculations
- Construction Diesel Particulate Matter (DPM)
- Interstate 15 and Deer Springs Road (estimated motor vehicle Toxic Air Contaminant (TAC) emissions)
- Gas Station (estimated gasoline TAC emissions)
- Blasting Emissions
- Rock Crushing Emissions
- Energy Intensity Factor Adjustment 2020

Memorandum

Subject: Public Records Act Request for the Newland Sierra Project – Air Quality and Greenhouse Gas Modeling Materials

Due to the complexity and intricate nature of the modeling required for this Project, this memorandum serves as a “road map” to assist the reviewer in understanding what models and software were used, the general approach to each modeling exercise, and how to appropriately use the files provided.

Notably, if the following explanations, instructions and processes are not followed precisely, the emissions estimates calculated by any third-party reviewer could be different than the results disclosed in the DEIR. To adequately replicate the process undertaken when the analysis was originally prepared and presented in the Project’s Air Quality Technical Report (DEIR, Appendix G) and Greenhouse Gas Emissions Technical Report (DEIR, Appendix K), Latham & Watkins and any third-party reviewer must follow Dudek’s explanations and instructions, and adhere to the methodologies used for each analysis. Failure to do so will result in emissions estimates and other results that differ from those disclosed in the DEIR and relevant appendices.

CalEEMod, in particular, has functionality issues. For example, when a native (original) input file is re-loaded into the model, the original inputs will sometimes be over-ride with default values without notification to the user. When this happens, and the model is then run without the original inputs, the emission estimates are calculated incorrectly and do not reflect the original model run. As a result, a third party reviewer may not achieve the same results by simply uploading the input file and hitting “go.” Instead, each input must be checked in the model to ensure that no custom inputs were over-ridden following the input file upload process. If the model is run without carefully checking that each and every input matches the analysis that was originally conducted, the results may come out differently.

Similarly, in the event of a third party review, extreme care should be taken to ensure that all pathways to auxiliary files are correct. For example, the AERMOD input file will look for the meteorological data in a specific location. Also, several of the HARP 2 files direct the program to specific locations to find the relevant files. If those locations are not correctly identified, errors could occur. Electronic file names, as they are provided as part of this transmittal, should also not be altered because altering file names could result in errors when loading the files.

Finally, the methodology and approach for each type of analysis for which these models and files were used are described in extensive detail in the Project’s Air Quality Technical Report (DEIR, Appendix G) and GHG Emissions Technical Report (DEIR, Appendix K). Because these methodological descriptions are provided in such detail, and additional inputs/support is provided in the technical appendices of Appendix G and Appendix K of the DEIR, additional explanation is not provided in this memorandum. Therefore, reference should be made to the

Memorandum

Subject: Public Records Act Request for the Newland Sierra Project – Air Quality and Greenhouse Gas Modeling Materials

appropriate DEIR appendices for information relevant to the analyses completed with the files provided with this memorandum.

2 CRITERIA AIR POLLUTANT EMISSIONS

Construction Emissions

The construction schedule and construction parameters, prepared by Fuscoe Engineering, are provided in a stand-alone Excel workbook. Pertinent construction assumptions from this workbook were inputted into CalEEMod to assist in estimating construction emissions. This file is included as Appendix A to Appendix G of the Project’s DEIR:

- Construction Schedule and Assumptions_Fuscoe.xlsx

As stated in Sections 3.1.1 and 3.2.1 of Appendix G (Air Quality Technical Report) of the Project’s DEIR, the CalEEMod, Version 2016.3.1, was used to estimate construction-related criteria air pollutant emissions for the Project. The following CalEEMod input and output files were used in estimating and reporting criteria air pollutant emissions associated with construction of the Project, which are disclosed in Section 4.2.1.2 of Appendix G of the Project’s DEIR:

- Construction_INPUT¹
- Construction_Annual_OUTPUT
- Construction_Summer_OUTPUT
- Construction_Winter_OUTPUT

A single CalEEMod input file, as listed above, was used to run the model to estimate construction emissions. This input and associated model run generated annual, summer and winter output files, which are also listed above. The annual output file was used to identify the Project’s diesel particulate matter (DPM) by construction year, which was used to inform the construction health risk assessment (HRA), as described below in Section 4 of this memorandum.

Since CalEEMod does not account for emissions associated with blasting and rock crushing activities, and because the Project would require this particular type of construction activity,

¹ “Construction_INPUT” is the same file used for both the criteria air pollutant and GHG emissions analysis.

Memorandum

Subject: Public Records Act Request for the Newland Sierra Project – Air Quality and Greenhouse Gas Modeling Materials

these emissions were estimated primarily using Excel spreadsheets and emission factors from the U.S. Environmental Protection Agency’s (EPA) *Compilation of Air Pollutant Emission Factors* (AP-42) as described in detail in Section 3.1.3 of DEIR Appendix G. The emissions from diesel engine-generators that would be used to power the rock crushing equipment were estimated using “generator” emission factors for the appropriate horsepower rating from CalEEMod, as also described in Section 3.1.3 of DEIR Appendix G. These files were provided in Appendix D of DEIR Appendix G, and were used in estimating criteria air pollutant emissions associated with blasting and rock crushing activities:

- Blasting Emissions.xlsx
- Rock Crushing Emissions.xlsx

These two Excel workbook files are stand-alone calculation worksheets and were not used as inputs into another model.

Operational Emissions

As stated in Section 3.2.1 of DEIR Appendix G, CalEEMod was used to estimate operational-related criteria air pollutant emissions for the Project. The following files were used to estimate the maximum Project-generated operational emissions in 2027:

Input file:

- 2027 Op_INPUT

Output files:

- 2027 Op_Smr_OUTPUT
- 2027 Op_Wtr_OUTPUT

Combined Construction and Operational Emissions

In addition to estimating year-by-year construction emissions and operational emissions in 2027, Section 4.2.2 of Appendix G includes an analysis of the combined construction and operational emissions associated with on-site residential units that would become operational while subsequent construction of future phases of the Project are on-going. These combined construction and operational emissions were estimated by year (i.e., 2021 through 2027). In addition to the construction and 2027 operational input and output files (listed previously), the following files were used to estimate combined construction and operational emissions by year:

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Input files:

- 2021 Op_INPUT
- 2022 Op_INPUT
- 2023 Op_INPUT
- 2024 Op_INPUT
- 2025 Op_INPUT
- 2026 Op_INPUT

Output files:

- 2021 Op_Smr_OUTPUT
- 2021 Op_Wtr_OUTPUT
- 2022 Op_Smr_OUTPUT
- 2022 Op_Wtr_OUTPUT
- 2023 Op_Smr_OUTPUT
- 2023 Op_Wtr_OUTPUT
- 2024 Op_Smr_OUTPUT
- 2024 Op_Wtr_OUTPUT
- 2025 Op_Smr_OUTPUT
- 2025 Op_Wtr_OUTPUT
- 2026 Op_Smr_OUTPUT
- 2026 Op_Wtr_OUTPUT

During each calendar year (2021-2027), it was determined how many residential units and other land uses would be operational. That calendar year's operational emissions were added to the emissions from construction activity that would simultaneously be occurring in that same year.

3 GREENHOUSE GAS EMISSIONS

Construction GHG Emissions

As discussed above, the construction schedule and construction parameters, prepared by Fuscoe Engineering, are provided in a stand-alone Excel workbook. Pertinent construction assumptions from this workbook were inputted into CalEEMod to assist in estimating construction emissions. This file is included as Appendix B to Appendix K of the Project’s DEIR:

- Construction Schedule and Assumptions_Fuscoe.xlsx

As stated in Section 5.1.1 of Appendix K (Greenhouse Gas Emissions Technical Report) of the Project’s DEIR, CalEEMod was used to estimate construction-related GHG emissions for the Project. However, in addition to modeling the construction conditions provided by Fuscoe Engineering, one-time sequestration loss (i.e., vegetation removal) on the Project site was calculated as described in Section 6.1 of Appendix K. This vegetation change was calculated in a separate model run and only the vegetation change GHG emissions were taken from this output file; therefore, model defaults for all settings *except* vegetation were retained. As such, the construction schedule and all other construction and operational inputs that are shown in this CalEEMod output file (Vegetation Change Annual_OUTPUT) are not relevant and should not be taken into consideration during review, as these parameters and emissions were not used. A separate model run (Construction_Annual_OUTPUT) was conducted to analyze the specific construction parameters of the Project.

The following input and output files were used in estimating GHG emissions associated with construction of the Project, which are disclosed in Section 6.1 of Appendix K of the Project’s DEIR:

Input files:

- Construction_INPUT²
- Vegetation Change_INPUT

Output files:

- Construction_Annual_OUTPUT
- Vegetation Change Annual_OUTPUT

² “Construction_INPUT” is the same file used for both the criteria air pollutant and GHG emissions analysis.

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The total GHG emissions by year were inserted into an Excel workbook and the GHG emissions from the rock crushing engine-generators were added to the years when the generators would be in operation. The combined construction emissions are provided in the following Excel workbook:

- Combined Construction GHG Calculations.xlsx

Operational GHG Emissions

As stated in Section 5.2 of Appendix K (Greenhouse Gas Emissions Technical Report) of the Project’s DEIR, CalEEMod was used to estimate operational-related GHG emissions for the Project. Operational GHG emissions were evaluated by land use. Each land use proposed under the Project was modeled individually, and the additive emissions were presented in Section 6.2 of DEIR Appendix K. All modeled land uses include the project design features described in Table 15 of Appendix K and these inputs are described in Section 5.2 of Appendix K. Modeled land uses include single-family residential, multifamily residential, age-qualified units, commercial, parks and asphalt, and school. In addition to individual modeled land uses, the Project as a whole was modeled without inclusion of the project design features, to allow the reader to see the comparison between Project GHG emissions with *and* without project design features.

The following input and output files were used in estimating GHG emissions associated with operation of the Project, which are disclosed in Section 6.2 of Appendix K of the Project’s DEIR:

Input files:

- 2021 Buildout Op Without PF_INPUT
- 2021 Age Qualified Units Op WITH PF_INPUT
- 2021 Commercial Op WITH PF_INPUT
- 2021 Multifamily Op WITH PF_INPUT
- 2021 Parks_Aspphalt Op WITH PF_INPUT
- 2021 School Op WITH PF_INPUT
- 2021 Single Fam Op WITH PF_INPUT

Memorandum

Subject: Public Records Act Request for the Newland Sierra Project – Air Quality and Greenhouse Gas Modeling Materials

Output files:

- 2021 Buildout Op Without PF Anl_OUTPUT
- 2021 Age Qualified Units Op WITH PF Anl_OUTPUT
- 2021 Commercial Op WITH PF Anl_OUTPUT
- 2021 Multifamily Op WITH PF Anl_OUTPUT
- 2021 Parks_Asphalt Op WITH PF Anl_OUTPUT
- 2021 School Op WITH PF Anl_OUTPUT
- 2021 Single Fam Op WITH PF Anl_OUTPUT

Additionally, the energy intensity factor in CalEEMod was adjusted to determine the appropriate energy intensity factor for the year 2020 considering existing and projected SDG&E energy portfolio mix, which was conservatively applied to the year 2021 operations, as shown in the following worksheet:

- Energy Intensity Factor Adjustment 2020.xlsx

The complete operational GHG inventory is tabulated in the following Excel workbook, which includes all modeled land uses described above:

- Final GHG Calcs Combined.xlsx

4 HEALTH RISK ASSESSMENTS

Construction Health Risk Assessment

As stated in Section 3.1.4 of Appendix G (Air Quality Technical Report) of the Project's DEIR, the EPA-approved dispersion model, AERMOD, and HARP 2 were used to estimate construction-related health risk for the Project. More specifically, using plotfiles generated by AERMOD, the HARP 2 Risk Assessment Standalone Tool (RAST) was used to estimate cancer risk at two locations: the maximally-exposed on-site and off-site residential receptors.

The following input and output files were used in estimating health risk associated with construction of the Project, which are disclosed in Section 4.4.1.2.2 of Appendix G of the Project's DEIR:

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AERMOD Files

- MM10.ADI: AERMOD input file
- MM10.ROU: AERMOD receptor file
- MM10.ADO: AERMOD output file
- Escondido_10-12.SFC and Escondido_2010thru2012_v14134.PFL: AERMOD meteorological data files
- 01H1GALL.PLT and AN00GALL.PLT: AERMOD output plotfiles for hourly and annual averaging periods (input to HARP 2)

HARP 2/RAST Files

- On-SiteHRAInput.hra: RAST input file for on-site residential receptor
- On-SitePolDB.csv: RAST input file for on-site residential receptor
- On-SiteGLCList.csv³: RAST ground-level concentration of DPM for on-site residential receptor
- On-SiteOutput.txt: Informational summary of RAST parameters
- On-SiteCancerRisk.csv: RAST output file for on-site residential receptor cancer risk
- On-SiteNCChronicRisk.csv: RAST output file for on-site residential receptor noncancer chronic risk
- Off-SiteHRAInput.hra: RAST input file for off-site residential receptor
- Off-SitePolDB.csv: RAST input file for on-site residential receptor
- Off-SiteGLCList.csv: RAST ground-level concentration of DPM for off-site residential receptor
- Off-SiteOutput.txt: Informational summary of RAST parameters
- Off-SiteCancerRisk.csv: RAST output file for off-site residential receptor
- Off-SiteNCChronicRisk.csv: RAST output file for on-site residential receptor noncancer chronic risk

³ Files denoted as *.csv are comma-delimited files but are readable by Excel. Thus, they may appear with an Excel icon in the file listing.

Memorandum

Subject: Public Records Act Request for the Newland Sierra Project – Air Quality and Greenhouse Gas Modeling Materials

Operational Health Risk Assessment

As stated in Sections 3 and 4 of Appendix C (Health Risk Assessment) to DEIR Appendix G (Air Quality Technical Report), AERMOD and HARP 2 were used to estimate health risk for future residents of the Project due to motor vehicle emissions from Interstate 15 and Deer Springs Road and gasoline emissions from a nearby gas station.

The following Appendix C input and output files from September 2015 are available in their native format:

AERMOD Files

- Escondido_201X_v14134.SFC⁴ and Escondido_201X_v14134.PFL: One set of meteorological data files for each year for AERMOD
- 01H1G001.PLT to 01H1G006.PLT and 01H1GALL.PLT: One set per meteorological year of hourly plotfiles for six sources and all sources generated by AERMOD to be used as input to HARP 2
- PE00G001.PLT to PE00G006.PLT and PE00GALL.PLT: One set per meteorological year of period (annual) plotfiles for six sources and all sources generated by AERMOD to be used as input to HARP 2

HARP 2 Files

- NS_SCHOOLS_201X_GLCLIST.csv, NS_SCHOOLS_201X_GLCPathway_LIST.csv, NS_SCHOOLS_201X_IMPORTEMS.csv, NS_SCHOOLS_201X_IMPORTPLOT.csv, and NS_SCHOOLS_201X_Pathway1.csv: HARP 2 input files for school receptors – one set per meteorological year⁴ of emission rates for each source, exposure pathways, and other information to run HARP 2
- NEWLAND_SIERRA_201X_GLCLIST.csv, NEWLAND_SIERRA_201X_GLCPathway_LIST.csv, NEWLAND_SIERRA_201X_IMPORTEMS.csv, NEWLAND_SIERRA_201X_IMPORTPLOT.csv, and NEWLAND_SIERRA_201X_Pathway1.csv: HARP 2 input files for residential receptors – one set per meteorological year⁴ of emission rates for each source, exposure pathways, and other information to run HARP 2 for unmitigated conditions; one set for 2010 mitigated condition

⁴ “201X” indicates 2010, 2011, or 2012.

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- 9yrSchoolCancer.csv, 9yrSchoolChronic.csv, 9yrSchoolAcute.csv: HARP 2 output files for cancer risks, chronic hazard indices, and acute hazard indices for unmitigated conditions
- 30yr-Cancer.csv, 30yr-Chronic.csv, 30yr-Acute.csv: HARP 2 output files for cancer risks, chronic hazard indices, and acute hazard indices for the unmitigated condition and corresponding files for 9-year and 70-year periods
- 30yrCancer-Mit.csv, 30yr-ChronicMit.csv, 30-yrAcuteMit.csv: HARP 2 output files for cancer risks, chronic hazard indices, and acute hazard indices for the mitigated condition and corresponding files for 9-year and 70-year periods

In the process of locating files for this transmittal, it was discovered that the following Appendix C input and output files from September 2015 were no longer available in their native format, because those files were inadvertently not saved by the air quality analyst who conducted the modeling; and that person has since left Dudek's employment to work for a public agency.

AERMOD Files

- *.ADI: AERMOD input files (a single input file was available in PDF format)
- *.ROU: Receptor file of XY (geographic) coordinates and elevations for residential and school receptors
- *.ADO: AERMOD output files for residential and school receptors

To provide the *.ADI, *.ROU and *.ADO electronic files requested, the single available PDF-formatted AERMOD input file (*.ADI) was converted into six text files (three each for the residential and school receptors corresponding to three years of meteorological data) and properly formatted for use with AERMOD corresponding to each meteorological data year (2010, 2011, and 2012). The receptor files (*.ROU) were replicated using the receptor data included in the AERMOD-generated plotfiles and the receptor locations contained therein were incorporated into the AERMOD input files. The AERMOD output files, while generated by AERMOD and provided herein, are not needed to run HARP 2, which relies on AERMOD-generated plotfiles.

The following AERMOD and HARP input files reflect the modeling parameters, inputs, and receptor locations used in the DEIR's September 2015 HRA. The files highlighted in bold text are those that were replicated with AERMOD or HARP 2 for the reasons discussed above.

Memorandum

Subject: Public Records Act Request for the Newland Sierra Project – Air Quality and Greenhouse Gas Modeling Materials

School Receptors

AERMOD Files

- **NS_School.ADI**: AERMOD input, including receptor locations from the *.ROU file
- Escondido_201X_v14134.SFC⁵ and Escondido_201X_v14134.PFL: One set of meteorological data files for each year for AERMOD

HARP 2 Files

- **NS SCHOOL_GLCLIST.CSV**, **NS SCHOOL_GLCPathwayLIST.CSV**, **NS SCHOOL_IMPORTEMS.CSV**, **NS SCHOOL_IMPORTPLOT.CSV**, **NS SCHOOL_Pathway1.CSV**, and **NS SCHOOL_INPUT.adm**: HARP 2 input files for school receptors – one set per meteorological year of hourly and annual emission rates, exposure pathways, and other information to run HARP 2
- Additional miscellaneous HARP 2 files too numerous to enumerate

Residential Receptors

AERMOD Files

- **NS_Ops.ADI**: AERMOD input file, including receptor locations from the *.ROU file
- Escondido_201X_v14134.SFC and Escondido_201X_v14134.PFL: One set of meteorological data files for each year for AERMOD

HARP 2 Files

- **NS OPS_GLCLIST.CSV**, **NS OPS_GLCPathwayLIST.CSV**, **NS OPS_IMPORTEMS.CSV**, **NS OPS_IMPORTPLOT.CSV**, **NS OPS_Pathway1.CSV**, and **NS OPS_INPUT.adm**: HARP 2 input files for residential receptors – one set per meteorological year of hourly and annual emission rates, exposure pathways, and other information to run HARP 2 for unmitigated condition; one set for 2010 mitigated condition
- Additional miscellaneous HARP 2 files too numerous to enumerate

When running the replicated files shown in bold text above, Dudek used AERMOD Version 14134, the same version of the model that used for the September 2015 HRA. The resultant

⁵ “201X” indicates 2010, 2011, or 2012.

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AERMOD plotfiles were input into HARP 2 and the cancer risks, chronic hazard indices, and acute hazard indices were generated using the same approach that the DEIR reported in order to replicate the full set of electronic files. The following files, which are again highlighted in bold text, are the replicated output files from AERMOD and HARP 2:

School Receptors

AERMOD Files

- **NS_School.ADO**: AERMOD output file – one set per meteorological year
- **01H1G001.PLT to 01H1G006.PLT and 01H1GALL.PLT**: Hourly plotfiles for six sources and all sources generated by AERMOD to be used as input to HARP 2
- **PE00G001.PLT to PE00G006.PLT and PE00GALL.PLT**: Period plotfiles for six sources and all sources generated by AERMOD to be used as input to HARP 2

HARP 2 Files

- **9yr-School-Output.txt**: Informational summary of HARP 2 parameters
- **9-yrSchoolCancer.xlsx, 9-yrSchoolChronic, 9-yrSchoolAcute**: HARP 2 output files for cancer risk, chronic hazard index, and acute hazard index
- Additional miscellaneous HARP 2 files too numerous to enumerate

Residential Receptors

AERMOD Files

- **NS_Ops.ADO**: AERMOD output file – one set per meteorological year
- **01H1G001.PLT to 01H1G006.PLT and 01H1GALL.PLT**: Hourly plotfiles for six sources and all sources generated by AERMOD to be used as input to HARP 2
- **PE00G001.PLT to PE00G006.PLT and PE00GALL.PLT**: Period plotfiles for six sources and all sources generated by AERMOD to be used as input to HARP 2

Memorandum

Subject: Public Records Act Request for the Newland Sierra Project – Air Quality and Greenhouse Gas Modeling Materials

HARP 2 Files

- **30yr-Output.txt:** Informational summary of HARP 2 parameters
- **30yrCancer.xlsx, 30yrChronic, 30yrAcute:** HARP 2 output files for cancer risk, chronic hazard index, and acute hazard index for unmitigated and mitigated conditions and corresponding files for 9-year and 70-year periods
- Additional miscellaneous HARP 2 files too numerous to enumerate

The combination of original and replicated, native files produced HRA results for the chronic and acute hazard indices that are the same as those reported in Section 4.2 of Appendix C to DEIR Appendix G. The 30-year cancer risk results decreased slightly from those reported in Section 4.1 for residential uses. These results demonstrate that the combination of original and replicated, native files provide a reasonably accurate representation of the modeling summarized in Appendix C to DEIR Appendix G, with the DEIR reporting slightly more impactful results than now calculated.

MEMORANDUM

ATTACHMENT 1: LIST OF ELECTRONIC MODELING FILES

Subject: Public Records Act Request for the Newland Sierra Project – Air Quality and Greenhouse Gas Modeling

Date: October 3, 2017

1 CalEEMod CRITERIA AIR POLLUTANTS

Construction

Input

- Construction_INPUT.xls

Outputs

- Construction_Summer_OUTPUT.xls
- Construction_Winter_OUTPUT.xls
- Construction_Annual_OUTPUT.xls

Operation

Inputs

- 2021 Op_INPUT.xls
- 2022 Op_INPUT.xls
- 2023 Op_INPUT.xls
- 2024 Op_INPUT.xls
- 2025 Op_INPUT.xls
- 2026 Op_INPUT.xls
- 2027 Op_INPUT.xls

Outputs

- 2021 Op_Smr_OUTPUT.xls
- 2021 Op_Wtr_OUTPUT.xls
- 2022 Op_Smr_OUTPUT.xls
- 2022 Op_Wtr_OUTPUT.xls
- 2023 Op_Smr_OUTPUT.xls
- 2023 Op_Wtr_OUTPUT.xls
- 2024 Op_Smr_OUTPUT.xls
- 2024 Op_Wtr_OUTPUT.xls
- 2025 Op_Smr_OUTPUT.xls

- 2025 Op_Wtr_OUTPUT.xls
- 2026 Op_Smr_OUTPUT.xls
- 2026 Op_Wtr_OUTPUT.xls
- 2027 Op_Smr_OUTPUT.xls
- 2027 Op_Wtr_OUTPUT.xls

2 CalEEMod GREENHOUSE GAS EMISSIONS

Construction

Inputs

- Construction_INPUT.xls
- Vegetation Change_INPUT.xls

Outputs

- Construction_Annual_OUTPUT.xls
- Vegetation Change Annual_OUTPUT.xls

Operation

Inputs

- 2021 Age Qualified Units Op WITH PF_INPUT.xls
- 2021 Buildout Op Without PF_INPUT.xls
- 2021 Commercial Op WITH PF_INPUT.xls
- 2021 Multifamily Op WITH PF_INPUT.xls
- 2021 Parks_Aspphalt Op WITH PF_INPUT.xls
- 2021 School Op WITH PF_INPUT.xls
- 2021 Single Fam Op WITH PF_INPUT.xls

Outputs

- 2021 Age Qualified Units Op WITH PF Anl_OUTPUT.xls
- 2021 Buildout Op Without PF Anl_OUTPUT.xls
- 2021 Commercial Op WITH PF Anl_OUTPUT.xls
- 2021 Multifamily Op WITH PF Anl_OUTPUT.xls
- 2021 Parks_Aspphalt Op WITH PF Anl_OUTPUT.xls
- 2021 School Op WITH PF Anl_OUTPUT.xls
- 2021 Single Fam Op WITH PF Anl_OUTPUT.xls

3 EXCEL WORKBOOKS

- Blasting Emissions.xlsx
- Combined Construction GHG Calculations.xlsx
- Construction Schedule and Assumptions_Fusco.xlsx

- Construction DPM.xlsx
- Energy Intensity Factor Adjustment 2020.xlsx
- Final GHG Calcs Combined.xlsx
- Rock Crushing Emissions.xlsx

4 HRA CONSTRUCTION

AERMOD

Main Folder

- MM10.ADI
- MM10.ADO
- MM10.ROU

MET Data

- Escondido_10-12.SFC
- Escondido_2010thru2012_v14134.PFL

PLT Files

- 01H1GALL.PLT
- AN00GALL.PLT

HARP 2

Main Folder

- Off-SiteCancerRisk.csv
- Off-SiteGLCList.csv
- Off-SiteHRAInput.hra
- Off-SiteNCChronicRisk.csv
- Off-SiteOutput.txt
- Off-SitePolDB.csv
- On-SiteCancerRisk.csv
- On-SiteGLCList.csv
- On-SiteHRAInput.hra
- On-SiteNCChronicRisk.csv
- On-SiteOutput.txt
- On-SitePolDB.csv

5 HRA OPERATION

AERMOD

NS_Ops 2010 – 14134

Main Folder

- NS_Ops.ADI
- NS_Ops.ADO

MET Data

- Escondido_2010_v14134.PFL
- Escondido_2010_v14134.SFC

PLT Files

- 01H1G001.PLT to 01H1G006.PLT (multiple)
- 01H1GALL.PLT
- PE00G001.PLT to PE00G006.PLT (multiple)
- PE00GALL.PLT

NS_Ops 2011 – 14134

Main Folder

- NS_Ops.ADI
- NS_Ops.ADO

MET Data

- Escondido_2011_v14134.PFL
- Escondido_2011_v14134.SFC

PLT Files

- 01H1G001.PLT to 01H1G006.PLT (multiple)
- 01H1GALL.PLT
- PE00G001.PLT to PE00G006.PLT (multiple)
- PE00GALL.PLT

NS_Ops 2012 – 14134

Main Folder

- NS_Ops.ADI
- NS_Ops.ADO

MET Data

- Escondido_2012_v14134.PFL
- Escondido_2022_v14134.SFC

PLT Files

- 01H1G001.PLT to 01H1G006.PLT (multiple)
- 01H1GALL.PLT
- PE00G001.PLT to PE00G006.PLT (multiple)
- PE00GALL.PLT

NS_School 2010 – 14134

Main Folder

- NS_School.ADI
- NS_School.ADO

MET Data

- Escondido_2010_v14134.PFL
- Escondido_2010_v14134.SFC

PLT Files

- 01H1G001.PLT to 01H1G006.PLT (multiple)
- 01H1GALL.PLT
- PE00G001.PLT to PE00G006.PLT (multiple)
- PE00GALL.PLT

NS_School 2011 – 14134

Main Folder

- NS_School.ADI
- NS_School.ADO

MET Data

- Escondido_2011_v14134.PFL
- Escondido_2011_v14134.SFC

PLT Files

- 01H1G001.PLT to 01H1G006.PLT (multiple)
- 01H1GALL.PLT
- PE00G001.PLT to PE00G006.PLT (multiple)
- PE00GALL.PLT

NS_School 2012 – 14134

Main Folder

- NS_School.ADI
- NS_School.ADO

MET Data

- Escondido_2012_v14134.PFL
- Escondido_2012_v14134.SFC

PLT Files

- 01H1G001.PLT to 01H1G006.PLT (multiple)
- 01H1GALL.PLT
- PE00G001.PLT to PE00G006.PLT (multiple)
- PE00GALL.PLT

HARP 2

NS Ops - 2010

Main Folder

- 9yrAcute.csv
- 9yrCancer.csv
- 9yrChronic.csv
- 30yrAcute.csv
- 30yrCancer.csv
- 30yrChronic.csv
- 70yrAcute.csv
- 70yrCancer.csv
- 70yrChronic.csv
- NS OPS_Input.adm

Data

- NS OPS_GLCLIST.csv
- NS OPS_GLCPathwayLIST.csv
- NS OPS_IMPORTEMS.csv
- NS OPS_IMPORTPLOT.csv
- NS OPS_Pathway1.csv

GLC

- Miscellaneous files

HRA

- Miscellaneous files

PLT

- Same plot files provided under “AERMOD”

NS Ops - 2011

Main Folder

- 9yrAcute.csv

- 9yrCancer.csv
- 9yrChronic.csv
- 30yrAcute.csv
- 30yrCancer.csv
- 30yrChronic.csv
- 70yrAcute.csv
- 70yrCancer.csv
- 70yrChronic.csv
- NS OPS_Input.adm

Data

- NS OPS_GLCLIST.csv
- NS OPS_GLCPathwayLIST.csv
- NS OPS_IMPORTEMS.csv
- NS OPS_IMPORTPLOT.csv
- NS OPS_Pathway1.csv

GLC

- Miscellaneous files

HRA

- Miscellaneous files

PLT

- Same plot files provided under “AERMOD”

NS Ops - 2012

Main Folder

- 9yrAcute.csv
- 9yrCancer.csv
- 9yrChronic.csv
- 30yrAcute.csv
- 30yrCancer.csv
- 30yrChronic.csv
- 70yrAcute.csv
- 70yrCancer.csv
- 70yrChronic.csv
- NS OPS_Input.adm

Data

- NS OPS_GLCLIST.csv
- NS OPS_GLCPathwayLIST.csv
- NS OPS_IMPORTEMS.csv
- NS OPS_IMPORTPLOT.csv
- NS OPS_Pathway1.csv

GLC

- Miscellaneous files

HRA

- Miscellaneous files

PLT

- Same plot files provided under “AERMOD”

NS Ops Mit - 2010

Main Folder

- 9yrAcute.csv
- 9yrCancer.csv
- 9yrChronic.csv
- 30yrAcute.csv
- 30yrCancer.csv
- 30yrChronic.csv
- 70yrAcute.csv
- 70yrCancer.csv
- 70yrChronic.csv
- NS OPS_Input.adm

Data

- NS OPS_GLCLIST.csv
- NS OPS_GLCPathwayLIST.csv
- NS OPS_IMPORTEMS.csv
- NS OPS_IMPORTPLOT.csv
- NS OPS_Pathway1.csv

GLC

- Miscellaneous files

HRA

- Miscellaneous files

PLT

- Same plot files provided under “AERMOD”

NS School - 2010

Main Folder

- 9-yrSchoolAcute.csv
- 9-yrSchoolCancer.csv
- 9-yrSchoolChronic.csv
- NS School_Input.adm

Data

- NS School_GLCLIST.csv
- NS School_GLCPathwayLIST.csv
- NS School_IMPORTEMS.csv
- NS School_IMPORTPLOT.csv
- NS School_Pathway1.csv

GLC

- Miscellaneous files

HRA

- Miscellaneous files

PLT

- Same plot files provided under “AERMOD”

NS School - 2011

Main Folder

- 9-yrSchoolAcute.csv
- 9-yrSchoolCancer.csv
- 9-yrSchoolChronic.csv
- NS School_Input.adm

Data

- NS School_GLCLIST.csv
- NS School_GLCPathwayLIST.csv
- NS School_IMPORTEMS.csv
- NS School_IMPORTPLOT.csv
- NS School_Pathway1.csv

GLC

- Miscellaneous files

HRA

- Miscellaneous files

PLT

- Same plot files provided under “AERMOD”

NS School - 2012

Main Folder

- 9-yrSchoolAcute.csv
- 9-yrSchoolCancer.csv
- 9-yrSchoolChronic.csv
- NS School_Input.adm

Data

- NS School_GLCLIST.csv
- NS School_GLCPathwayLIST.csv
- NS School_IMPORTEMS.csv
- NS School_IMPORTPLOT.csv
- NS School_Pathway1.csv

GLC

- Miscellaneous files

HRA

- Miscellaneous files

PLT

- Same plot files provided under “AERMOD”

EXHIBIT K

Yancey, Andrew (SD)

From: Brian Grover <bgrover@dudek.com>
Sent: Thursday, October 12, 2017 12:47 PM
To: Dan Silver; Menvielle, Joshua; Slovick, Mark; Smith, Ashley; Mark Wardlaw
Cc: Scott Molloy; Yancey, Andrew (SD); jrcb@cbcearthlaw.com
Subject: RE: GHG and AQ files for the Newland Sierra EIR

Follow Up Flag: Follow up
Flag Status: Flagged

Dan,

Thank you for your email. I am responding on behalf of Dudek. We disagree with your position because: (a) we produced the output and input electronic files, (b) the files are responsive to Public Records Act requests, (c) you have those files for review and use, and (d) we understand you may share the files with consultants and others, and by sharing, the files and information necessarily will be disclosed and made part of the public realm.

The only restriction is the obvious one – you, your consultants, and all others are being asked not to use Dudek-prepared spreadsheets for private benefit or profit with regard to other projects for other clientele (in effect, copying Dudek’s work product and using it to privately benefit or profit from Dudek’s work by calling it their own work).

Said differently, there is no potential liability associated with use of the files. We only ask that this one obvious restriction be followed as a fair accommodation to Dudek’s work product.

Additionally, there is no potential for liability to you, consultants, or any other person or entity for: (a) using the files in the public realm on the project; (b) sharing the files with consultants and others; (c) using the files in the CEQA process for the project; (d) using the files as any other document that is part of the Newland Sierra project; and (e) disclosing the files as public information.

We only ask – without risk of any potential liability to you, consultants, or any others – that you respect our work efforts by passing along our request to others that they not use the files to privately gain or profit from our work efforts to advance their own private business interests.

Also, we believe there is a misunderstanding concerning our statement about “misuse” of our files. The “misuse” we were referring to is explained in our memorandum. It centers around the potential to misuse the files by incorrectly inputting data that could result in inaccurate or misleading findings. We were not using the term “misuse” in the context you appear to have used it in your email (i.e., misuse of our propriety data resulting in potential liability). Above, we explain our propriety concern, and ask you and others to respect our work effort and counsel others not to privately profit or gain from our work by calling it “their own.”

To repeat, we provided the memorandum so third-party reviewers would not input the data incorrectly – leading to inaccurate or misleading results. We meant nothing more when we used the term “misuse.”

Our desire is to respond to your concerns, and we believe we have done so. You may disclose the information, as it is in the public realm.

Thanks,

Brian

Brian P. Grover, AICP, LEED GA

Senior Project Manager

DUDEK

605 Third Street
Encinitas, CA 92024
T: 760.479.4248
C: 858.336.9337

www.dudek.com

 *please consider the environment before printing this email*

From: Dan Silver [mailto:dsilverla@me.com]

Sent: Wednesday, October 11, 2017 5:38 PM

To: Menvielle, Joshua <Joshua.Menvielle@sdcounty.ca.gov>; Slovick, Mark <Mark.Slovick@sdcounty.ca.gov>; Smith, Ashley <Ashley.Smith2@sdcounty.ca.gov>; Mark Wardlaw <mark.wardlaw@sdcounty.ca.gov>

Cc: Brian Grover <bgrover@dudek.com>; Scott Molloy <SMolloy@newlandco.com>

Subject: Re: GHG and AQ files for the Newland Sierra EIR

Dear Joshua:

Upon review of the memo I received from Dudek (see below), EHL regretfully cannot accept this information as responsive to our Public Records Act request. The information is still described as “proprietary” and also as subject to “misuse.” EHL cannot accept the potential liability created by such conditions of use, and furthermore maintains that this information – used in the CEQA process – should be disclosed as unrestricted public information.

EHL has not downloaded any files and will not be reviewing them under these circumstances.

I have copied Dudek and the applicant so that they also aware of our concerns.

Yours truly,
Dan

On Oct 9, 2017, at 12:26 PM, Brian Grover <bgrover@dudek.com> wrote:

Dan,

In your “Public Records Act request regarding Newland Sierra DEIR” letter dated August 11, 2017, you request unlocked excel spreadsheets for emissions calculations in Appendices G and K, as well as electronic input files for CalEEMod, AERMOD, and HARP runs for DEIR calculations. We received a similar request from Latham and Watkins (representing the Golden Door Resort and Spa), and provided them with this information on October 3, 2017. While Dudek and the County maintain that these materials are not “public records,” we understand that Latham and Watkins has threatened to initiate litigation against the County under the Public Records Act, and Dudek has elected to provide these files to avoid costly and time-consuming litigation. Please note that in doing so, we do not waive our rights concerning the proprietary nature of the files. We also caution Latham and Watkins, EHL, Chatten-Brown and Carstens LLP, and any third-party user to adhere to the explanation of the proper use of these files, which is outlined in the memorandum. The misuse of this information could result in inaccurate or misleading findings.

Attached please find a memorandum which addresses your request to the County. This is the original memorandum that was sent to Andrew Yancey at Latham and Watkins several days ago. Here is the Sharefile link to download the associated modeling files that are mentioned in the memorandum: [https://\[REDACTED\]](https://[REDACTED])

Please let me know if you have any trouble accessing the files.

Thanks,

Brian

Brian P. Grover, AICP, LEED GA

Senior Project Manager

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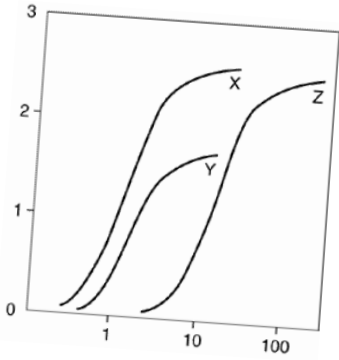
 *please consider the environment before printing this email*

<2017-10-3 PRA Request Memo.pdf>

Dan Silver, Executive Director
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ATTACHMENT B



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July 5, 2020

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

Attn: Mr. William C. Mumby

Subject: Comment Letter on Draft Environmental Impact Report (DEIR) for Lehigh Southwest Stockton Terminal Project, Stockton, California, State Clearing House Number 2019100510

Dear Mr. Mumby:

At the request of Adams Broadwell Joseph & Cardozo (ABJC), Clark and Associates (Clark) has reviewed materials related to the May, 2020 Port of Stockton Draft Environmental Impact Report (DEIR) of the above referenced project.

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

General Comments:

The Port's analysis of the air quality impacts of emissions from the construction and operational phases of the project are unsupported and flawed. The analysis in the DEIR fails to quantify the total emissions in a meaningful manner in which yearly and daily emissions may be compared to relevant and appropriate standards, fails to address necessary mitigation measures to reduce significant impacts, and makes assertions about the impacts to the surrounding communities without a clear and reproducible methodology. Several mitigation measures outlined in the DEIR are merely aspirational and may not effectively reduce emissions from the project. These flaws are detailed below, making the conclusions in the DEIR unsupported.

. Specific Comments:

1. The DEIR Substantially Underestimates Operational NO_x Emissions.

The daily emissions of NO_x for the project provided in Table 13 of the DEIR are erroneously calculated. The Port's analysis of operational emissions underestimates NO_x emissions, contains provides contradictory information, parses out emissions to make the daily emissions appear less significant than they actually are, and underestimates the degree to which admittedly significant NO_x emissions exceed significance thresholds. As a result, the DEIR underestimates both baseline and project emissions, resulting in unsupported and inaccurate conclusions that the Project's operational NO_x emissions are either less than significant, when, in fact, NO_x emissions would exceed the SJVAPCD's annual NO_x emission threshold of 10 tons/year and daily NO_x emission threshold of 100 lbs/day, or that exceedences are less severe than they actually are.

The DEIR first underestimates baseline emissions. Using the annual average emissions of 9.72 tons/year for the project calculated in Table 12 of the DEIR¹, and multiplying the tons per year by 2,000 lbs/ton, a total emission of 19,440 lbs of NO_x are associated with the baseline condition of the project. Dividing that 19,440 lbs of NO_x by 365 days per year, a value of 53.26 lbs of NO_x per day are associated with the project as a baseline condition. In the Port's analysis, they attribute only 17.1 lbs per day to the project.

Table 1: Excerpt From Table 12: Annual Operational Emissions in SJVAPCD - Baseline For Project In Tons/Year

Baseline	PM ₁₀	PM _{2.5}	NO _x	SO _x	CO	VOC
Trucks	0.22	0.06	3.99	0.01	0.62	0.19
Ships at Berth	0.06	0.05	2.68	0.15	0.24	0.12
Ships Maneuvering and Transit	0.03	0.03	1.49	0.04	0.18	0.12
Tugboats	0.04	0.04	0.84	0.00	0.46	0.05
Rail	0.02	0.02	0.67	0.00	0.18	0.03

¹ DEIR, p. 88.

Baseline	PM ₁₀	PM _{2.5}	NO _x	SO _x	CO	VOC
Employee Vehicles	0.01	0.00	0.02	0.00	0.17	0.00
Conveying/Loading	0.84	0.84				
Mobile Onsite	0.00	0.00	0.03	0.00	0.30	0.01
Baseline Total	1.21	1.04	9.72	0.21	2.15	0.51

Table 2: Recalculated Daily Operational Emissions Baseline Using Excerpt From Table 12: Annual Operational Emissions in SJVAPCD - Baseline For Project In Pounds Per Day

Baseline	PM ₁₀	PM _{2.5}	NO _x	SO _x	CO	VOC
Trucks	1.21	0.33	21.86	0.05	3.40	1.04
Ships at Berth	0.33	0.27	14.68	0.82	1.32	0.66
Ships Maneuvering and Transit	0.16	0.16	8.16	0.22	0.99	0.66
Tugboats	0.22	0.22	4.60	0.00	2.52	0.27
Rail	0.11	0.11	3.67	0.00	0.99	0.16
Employee Vehicles	0.05	0.00	0.11	0.00	0.93	0.00
Conveying/Loading	4.60	4.60	0.00	0.00	0.00	0.00
Mobile Onsite	0.00	0.00	0.16	0.00	1.64	0.05
Baseline Total	6.68	5.70	53.26	1.10	11.78	2.85

Table 3: Excerpt From Table 13: Annual Operational Emissions in SJVAPCD – Baseline For Project In Pounds Per Day²

Baseline	PM ₁₀	PM _{2.5}	NO _x	SO _x	CO	VOC
Trucks On Site	0.3	0.1	0.9	0	0.2	0.1
Ships At Berth	0.3	0.3	14.7	0.8	1.3	0.6
Ships Maneuvering and Transit	--	--	--	--	--	--
Tugboats at Berth	0	0	0.5	0	0.3	0
Rail On Site	0	0	0.9	0	0.2	0.1
Employee Vehicles	--	--	--	--	--	--
Conveying/Loading	4.6	4.6	--	--	--	--
Mobile Onsite	0	0	0.2	0	1.6	0

² DEIR, p. 89.

Baseline	PM ₁₀	PM _{2.5}	NO _x	SO _x	CO	VOC
Baseline Total	5.3	5	17.1	0.9	3.7	0.8

In its analysis of project emissions, the DEIR next eliminates a number of emissions sources from its calculations that were included in the annual summary (Table 12 of the DEIR), without explanation. Omitted emissions sources include the transiting of OGVs and harbor crafts through the SJVAPCD (approximately 12.4 lbs/day), rail car movement into the Port (approximately 2.8 lbs/day), employee vehicles emissions (approximately 0.1 lbs/day), and truck emission transiting to and from the site (approximately 21 lbs/day). Table 4 below summarizes the differences between Table 2 above and Table 3 and shows what factors the DEIR fails to account for on a daily basis for the project. The DEIR fails to explain why emissions sources that are identified as sources of annual operational emissions were not included in the DEIR’s subsequent emissions calculations.

Table 4: Pounds Of Pollution Not Accounted For In Baseline Daily Emissions Calculations in DEIR’s Analysis

Baseline	PM ₁₀	PM _{2.5}	NO _x	SO _x	CO	VOC
Trucks	0.91	0.23	20.96	0.05	3.20	0.94
Ships at Berth	0.03	-0.03	-0.02	0.02	0.02	0.06
Ships Maneuvering and Transit	0.16	0.16	8.16	0.22	0.99	0.66
Tugboats	0.22	0.22	4.10	0.00	2.22	0.27
Rail	0.11	0.11	2.77	0.00	0.79	0.06
Employee Vehicles	0.05	0.00	0.11	0.00	0.93	0.00
Conveying/Loading	0.00	0.00	0.00	0.00	0.00	0.00
Mobile Onsite	0.00	0.00	-0.04	0.00	0.04	0.05
Baseline Total	1.48	0.70	36.06	0.30	8.18	2.05

By omitting the emissions generated by these sources from the DEIR’s calculations, the DEIR’s estimates of daily emissions of pollutants appear to be smaller than they actually will be once the project is initiated. The difference between what is reported annually in tons (Table 12 of the DEIR) versus what is reported in pounds per day (Table 13 of the DEIR) results in an unexplained 67.7% reduction of baseline emissions (17.2 lbs/day divided by 53.26

lbs/day equals 32.3%).

The DEIR similarly underestimates the Project's operational emissions beginning in Year 1 of the Project. In Year 1 of the project, the DEIR reports daily emissions of NO_x of 22.5 lbs/day. Using the annual emissions of NO_x reported in Table 12, the actual daily emissions of NO_x for Year 1 of the project is 107.5 lbs/day, a difference of 85 lbs/day (107.5 lbs/day - 22.5 lbs/day). This is a significant discrepancy which demonstrates that the DEIR substantially underestimates daily NO_x emissions. In Year 1 of the project, not only is the annual emission threshold of 10 tons/year of NO_x exceeded but the daily emission threshold of 100 lbs/day of NO_x is also exceeded, resulting in a significant impact not disclosed in the DEIR.

As the project progresses to Year 5 and Year 15 the discrepancies in annual and daily emissions get even larger. In Year 5 of the project, the DEIR reports daily emissions of NO_x of 37.6 lbs/day. Using the annual emissions of NO_x reported in Table 12, the actual daily emissions of NO_x for Year 5 of the project is 133.2 lbs/day, a difference of 95.6 lbs/day (133.2 lbs/day - 37.6 lbs/day). In Year 5 of the project, not only is the annual emission threshold of 10 tons/year of NO_x exceeded but the daily emission threshold of 100 lbs/day of NO_x is also exceeded, resulting in a significant impact not disclosed in the DEIR.

In Year 15 of the project, the DEIR reports daily emissions of NO_x of 44.4 lbs/day. Using the annual emissions of NO_x reported in Table 12, the actual daily emissions of NO_x for Year 15 of the project is 141.75 lbs/day, a difference of 97.35 lbs/day (141.75 lbs/day - 44.4 lbs/day). In Year 15 of the project, not only is the annual emission threshold of 10 tons/year of NO_x exceeded but the daily emission threshold of 100 lbs/day of NO_x is also exceeded, resulting in a significant impact not disclosed in the DEIR.

This accounting trickery is disingenuous and not supported by any evidence in the DEIR. The Port must provide an accurate accounting of emissions in a revised DEIR.

2. The DEIR Underestimates the Mitigation Required to Reduce NO_x Emissions to the Greatest Extent Feasible.

The DEIR further underestimates the severity of the Project's operational NO_x emissions in its discussion of NO_x mitigation. As a result, the DEIR dismisses potentially

feasible NO_x mitigation as infeasible, and erroneously concludes that the mitigation measures proposed in the DEIR would mitigate operational NO_x emissions to the greatest extent feasible.

As discussed above, the analysis of the project operational emissions in the San Joaquin Valley Air Basin (SJVAB) outlined in Table 12 of the DEIR shows a significant net increase of baseline NO_x emissions from 9.72 tons per year (equal to 19,440 lbs) to 19.62 tons (39,240 lbs) in Year 1 of the proposed project (a 102 percent increase in emissions).³ By Year 5 of the project, the DEIR concludes that emissions increase to 24.3 tons (48,600 lbs) of NO_x per year (a 150 percent increase in emissions).⁴ In Year 15 of the project, the DEIR concludes that emissions increase to 25.87 tons (51,740 lbs) per year of NO_x (an increase of 166 percent in emissions over the baseline year).⁵ The DEIR therefore concludes that annual operational NO_x emissions exceed the San Joaquin Valley Air Pollution Control District (SJVAPCD) threshold, are therefore significant⁶ and unavoidable.⁷

The DEIR's subsequent discussion of potential NO_x mitigation misstates the severity of NO_x emissions described in its own preceding calculations. In its discussion of Voluntary Emissions Reduction Agreements (VERAs), the DEIR states that "as shown in Table 12, if operating at maximum capacity, the proposed project would exceed the [annual] NO_x threshold [of 10 tons per year] by 4.1 tons per year by year 5 and 6.1 tons per year by year 15."⁸ The DEIR then concludes that VERAs are infeasible mitigation because they can only be purchased for 10 years.⁹ However, the discussion of NO_x exceedances is incorrect by the DEIR's own calculations. The emissions listed in Table 12 of the DEIR show values of 19.62 tons of NO_x in Year 1, 24.3 tons of NO_x in Year 5, and 25.87 tons of NO_x in Year 15. Based on its own calculations, the annual exceedances over the 10 ton limit would therefore be 9.62 tons in year

³ DEIR, p. 88.

⁴ DEIR, p. 88.

⁵ DEIR, pp. 88–89.

⁶ DEIR, p. 89.

⁷ DEIR, p. 97.

⁸ DEIR, p. 97.

⁹ DEIR, p. 97.

1 (19.62 tons emitted – 10 tons threshold), 14.3 tons in year 5 (24.3 tons emitted – 10 tons threshold), and 15.87 tons of NO_x in year 15 (25.87 tons emitted – 10 tons threshold). These NO_x exceedances are substantially higher than the exceedances discussed in the mitigation section.

The DEIR concludes that Project operation will result in significant and unavoidable NO_x emissions. Before the Port can declare this impact significant and unavoidable, CEQA requires that all feasible mitigation be adopted to reduce this impact to the greatest extent feasible. The DEIR's conclusions regarding the feasibility of NO_x mitigation contains basic mathematical errors which underestimate the extent to which operational emissions exceed significance thresholds, by the DEIR's own calculations. As a result, the DEIR underestimates the nature and extent of mitigation required to reduce operational NO_x impacts. There is therefore no substantial evidence supporting the DEIR's conclusion that its proposed NO_x mitigation measures will reduce the Project's actual NO_x impacts to the greatest extent feasible.

The DEIR also dismisses potentially feasible mitigation for NO_x emissions from vessels. The primary sources of NO_x not mitigated in the Port's analysis include emissions from ocean going ships (OGVs) and harbor crafts at berth, ships maneuvering through the SJVAPCD, and tugboats account for 51.5% as a baseline NO_x emissions and thereafter they account for 60% to 65% of operational NO_x emissions (See Specific Comment 3 below for details). The DEIR explains that technology is available to achieve significant mitigation of emissions (shore power or alternative control technology, e.g., exhaust gas scrubber systems) but erroneously concludes that cost and or/physical constraints prevent their use, placing the community surrounding the project and others in the SJVAB at risk from the increasing unmitigated emissions of the project.¹⁰

The Port must correct these factual errors in a revised DEIR, and must evaluate all available, feasible mitigation to reduce the project's significant operational NO_x emissions to the greatest extent feasible, including VERAs, as recommended by the SJVAPCD in its comments on the DEIR' Notice of Preparation (NOP) for the project, and vessel mitigation measures.

¹⁰ DEIR, p. 97.

3. The Port Offers Ineffective Mitigation Measures That Will Create No Significant Reductions in Operational Emissions.

Rather than focusing on mitigation measures that affect the largest sources of the NO_x (ships at berth, ships maneuvering through the SJVAPCD, and harbor crafts/tugboats), the Port proposes two mitigation measures directly targeting truck traffic, MM-AQ-3 (truck idling reductions) and MM-AQ-4 (use of clean trucks), which do not make the proposed emission-reduction measures mandatory. As a result, it is unclear whether either of these mitigation measures would effectively reduce total emissions.

Truck traffic to and from the Port accounts for 41% of the NO_x emissions in the baseline year and thereafter account for approximately 28% to 30% of total operational phase NO_x emissions (Table E2-2 of the DEIR). In its analysis of the residual impacts, the Port concedes that MM-AQ-3 would not reduce emissions below levels of significance. MM-AQ-4 merely “encourages” the use of clean trucks (defined as model year 2017 or newer) to transport cementitious materials, without actually requiring it. The DEIR also fails to include an analysis of the feasibility of obtaining clean trucks, which are not readily available for purchase or may cost in excess of \$200,000 per unit. Even if clean trucks were required for the Project, NO_x emissions would continue to exceed the operational level of significance. These mitigation measures are therefore ineffective to reduce NO_x and other truck emissions from the project. The DEIR also fails to evaluate whether other feasible mitigation exists to reduce NO_x impacts to the greatest extent feasible, leaving NO_x impacts substantially unmitigated.

The DEIR estimates that emissions from ships at berth, ships maneuvering through the SJVAPCD, and tugboats account for 51.5% as baseline NO_x emissions and thereafter they account for 60% to 65% of operational NO_x emissions (Table E2-2 of the DEIR). By Year 15 of the project, the emissions from three sources (ships transiting to and from the pier, ships berthing at the pier and the harbor craft needed to move the OGVs in the channel) are 172% of the baseline emissions for the project site. In Year 15 of the project, truck emissions account for approximately 30% of the NO_x emissions for the project. The DEIR concludes that operational NO_x emissions are significant and unavoidable. The Port must therefore implement additional mitigation measures to address these substantial sources of NO_x emissions, and include them in a revised DEIR.

4. The DEIR Fails to Include a Health Risk Analysis and Fails To Address Comments From The California Air Resources Board And The San Joaquin Valley Air Pollution Control District Regarding The Need To Prepare A Site-Specific Baseline Health Risk Assessment Analyzing Diesel Particulate Matter Emissions

The Port has failed in its obligation to perform a site-specific health risk assessment for the project, as required by CEQA. The Port's emissions estimates for criteria pollutants do not substitute for a health risk analysis of the cancer risk posed by exposure to toxic air contaminants (TACs), in particular diesel particulate matter (DPM), released during Project construction and operation. Diesel exhaust contains nearly 40 toxic substances, including TACs and may pose a serious public health risk for residents in the vicinity of the facility. TACs are airborne substances that are capable of causing short-term (acute) and/or long-term (chronic or carcinogenic, i.e., cancer causing) adverse human health effects (i.e., injury or illness). TACs include both organic and inorganic chemical substances. The current California list of TACs includes approximately 200 compounds, including particulate emissions from diesel-fueled engines.

Evidence exists that clouds of soot emitted by heavy-duty construction equipment can travel downwind for miles, then drift into heavily populated areas. For example, health impact studies from the South Coast Air Quality Management District¹¹ (SCAQMD) has documented that diesel emissions travel miles from the sources impacting residents.

Diesel exhaust has been linked to a range of serious health problems including an increase in respiratory disease, lung damage, cancer, and premature death.^{12,13,14} Fine DPM is deposited deep in the lungs in the smallest airways and can result in increased respiratory symptoms and disease;

¹¹ SCAQMD MATES I, II, and III have documented the impacts for DPM in the SCAB.

¹² California Air Resources Board, Initial Statement of Reasons for Rulemaking, Proposed Identification of Diesel Exhaust as a Toxic Air Contaminant, Staff Report, June 1998; see also California Air Resources Board, Overview: Diesel Exhaust & Health, <https://ww2.arb.ca.gov/resources/overview-diesel-exhaust-and-health#:~:text=Diesel%20Particulate%20Matter%20and%20Health&text=In%201998%2C%20CARB%20identified%20DPM,and%20other%20adverse%20health%20effects.>

¹³ U.S. EPA, Health Assessment Document for Diesel Engine Exhaust, Report EPA/600/8-90/057F, May 2002.

¹⁴ Environmental Defense Fund, Cleaner Diesel Handbook, Bring Cleaner Fuel and Diesel Retrofits into Your Neighborhood, April 2005; http://www.edf.org/documents/4941_cleanerdieselhandbook.pdf, accessed July 5, 2020.

decreased lung function, particularly in children and individuals with asthma; alterations in lung tissue and respiratory tract defense mechanisms; and premature death.¹⁵ Exposure to DPM increases the risk of lung cancer. It also causes non-cancer effects including chronic bronchitis, inflammation of lung tissue, thickening of the alveolar walls, immunological allergic reactions, and airway constriction.¹⁶ DPM is a TAC that is recognized by state and federal agencies as causing severe health risk because it contains toxic materials, unlike PM_{2.5} and PM₁₀.¹⁷

The DEIR fails to include a site-specific analysis of the Project's construction or operational health risk posed by DPM emissions. The need for a site-specific health risk analysis of the Project's construction and operational emissions was explained by both CARB and SJVAPCD before the DEIR was released for public comment. In comments from CARB provided in a January 10, 2020 on the NOP for the project, the agencies noted that the Project would result in more than doubling of the number of bulk marine vessels, heavy-duty trucks, and trains visiting the Project over existing conditions.¹⁸ CARB concluded that the net increase in the activity could negatively impact local and regional air quality.¹⁹ A health risk assessment (HRA), prepared in accordance with OEHHA guidance for the baseline, construction, and future years of the project, was requested.²⁰ In particular, due to the nature of the operations and the length of the construction on site, CARB requested that the Port produce a site-specific HRA that would include both short-term emissions from the use of on-road and off-road diesel equipment.

¹⁵ California Air Resources Board, Initial Statement of Reasons for Rulemaking, Proposed Identification of Diesel Exhaust as a Toxic Air Contaminant, Staff Report, June 1998.

¹⁶ Findings of the Scientific Review Panel on The Report on Diesel Exhaust as adopted at the Panel's April 22, 1998 Meeting.

¹⁷ Health & Safety Code § 39655(a) (defining "toxic air contaminant" as air pollutants "which may cause or contribute to an increase in mortality or in serious illness, or which may pose a present or potential hazard to human health. A substance that is listed as a hazardous air pollutant pursuant to subsection (b) of Section 112 of the federal act (42 U.S.C. Sec. 7412 (b)) is a toxic air contaminant.")

¹⁸ Letter from Karen Magliano, California Air Resources Board, to Jason Cashman, Port of Stockton re Comment on Notice of Preparation for Lehigh Southwest Stockton Terminal Project DEIR (January 10, 2020), available at PDF p. 321 of DEIR.

¹⁹ Ibid.

²⁰ Ibid.

SJVAPCD’s 2019 comment letter on the NOP²¹ requested that the Port conduct a screening analysis that included all sources of emissions in order to determine if a site-specific HRA was necessary.²² According to SJVAPCD, a screening analysis is used to identify projects which may have a significant health impact.^{23,24} “A prioritization score of 10 or greater is considered to be significant and a refined Health Risk Assessment (HRA) should be performed.”²⁵ The comment letter further states that the District recommended that projects that result in a significant health risk should not be approved.

Using the District’s Prioritization Calculator spreadsheet and the baseline diesel particulate matter (DPM) values for the project, a priority score of 7.67 was calculated for the closest receptors with DPM emissions from OGVs at berth (72.8 lbs per year), harbor crafts servicing the OGVs (9.02 lbs per year), and trucks idling on site (1.21 lbs per year).

Receptor Proximity and Proximity Factors		Cancer	Chronic	Acute	Max Score
		Score	Score	Score	
0 < R < 100	1.000	1.92E+02	2.84E-01	0.00E+00	1.92E+02
100 ≤ R < 250	0.250	4.79E+01	7.11E-02	0.00E+00	4.79E+01
250 ≤ R < 500	0.040	7.67E+00	1.14E-02	0.00E+00	7.67E+00

When the emissions from trucks transiting to the project site are added in, the DPM values increase by 43.35 lbs per year. This changes the prioritization score from 7.67 to 11.7.

Receptor Proximity and Proximity Factors		Cancer	Chronic	Acute	Max Score
		Score	Score	Score	
0 < R < 100	1.000	2.92E+02	4.33E-01	0.00E+00	2.92E+02
100 ≤ R < 250	0.250	7.30E+01	1.08E-01	0.00E+00	7.30E+01
250 ≤ R < 500	0.040	1.17E+01	1.73E-02	0.00E+00	1.17E+01

²¹ SJVAPCD. 2019. Comment Letter Project: Notice of Preparation/Initial Study for Lehigh Southwest Stockton Terminal Project District CEQA Reference No: 20191267.

²² Ibid.

²³ Villalvazo, L., et al. 2006. Guidance For Air Dispersion Modeling. San Joaquin Valley Air Pollution Control District. Pg 73.

²⁴ CAPCOA. 2009. Health Risk Assessments For Proposed Land Use Projects: A CAPCOA Guidance Document. Pg 10.

²⁵ SJVAPCD. 2019. Comment Letter Project: Notice of Preparation/Initial Study for Lehigh Southwest Stockton Terminal Project District CEQA Reference No: 20191267.

By Year 5 of the project, when the DPM emissions from OGVs at berth (72.8 lbs per year), harbor crafts servicing the OGVs (9.02 lbs per year), and trucks idling on site (1.21 lbs per year) total the priority score increases to 18.3 for the closest receptors for emission from OGVs, harbor crafts, and trucks idling. Based on this analysis, it is clear that the Port did not meet its obligations under CEQA and should have performed a site-specific health risk analysis and cannot rely on another site's HRA (See Exhibit A).

The Port claims in the DEIR that operation of the proposed project would result in incremental DPM emissions from trucks, OGVs, rail, and other diesel-fueled equipment of less than 0.2 tons (400 pounds) per year and produce no significant health risk (less than 6.7 in 1 million).²⁶ This claim is anecdotal at best and not backed by modeling to support it. The Port claims that there is no mandate to perform a quantitative health risk analysis and cites the HRA completed for the Contanda project, which showed an increased risk of 6.7 in 1 million at 1 ton of PM per year (ignoring the issue of DPM), under the threshold of 10 in 1 million commonly used in CEQA analyses. However, the Port did not perform a quantitative health risk analysis for the instant Project, and acknowledges that the two projects are not identical.

The DEIR admits that the "receptors are not identical" between the Lehigh and Contanda Projects, and their air dispersion patterns, while "similar," are not the same.²⁷ Other significant differences I have identified in the projects are a failure of the Port to consider the distance of the Contanda project from the ship channel relative to the Lehigh project, the sources of the DPM emissions, the age and condition of the homes affected by the project's emissions, the distance of the homes from the roadways where dusts will be re-entrained by truck traffic, and the proximity of the sensitive receptors in each of the projects. The two projects are clearly different. These differences demonstrate that an HRA performed for a different project cannot substitute for the required analysis of health risks posed by this project. The DEIR contains no analysis of the health risk posed by the Lehigh project's unique conditions, in violation of CEQA.

The Port goes on to state that, based on an ARB study in 2005, exposure from toxic air contaminants (TACs) decline approximately 70% at 500 feet from the emission source. What the Port

²⁶ DEIR. Pg 99.

²⁷ DEIR. Pg 100.

fails to point out is that this was a study of roadway emissions, not of stacked sources such as OGV smokestacks.²⁸ Moreover, the DEIR contains inconsistent information about the location of the closest sensitive receptors. While the DEIR's air quality analysis on page 100 claims that the nearest sensitive receptors are 1,300 feet away, the DEIR on page 71 states that the "closest sensitive receptor to the terminal is a residential area located approximately 500 feet to the south."²⁹ In addition, PDF page 66 of the Authority to Construct Application to SJVAPCD for the Project shows a residence within 690 feet of a truck/railcar loading spout.³⁰ These inconsistencies undermine the DEIR's claim that health risk from air pollution is negligible, and further demonstrate that a quantitative health risk analysis is required for the project.

Finally, it is clear that the DEIR did not meet its obligation to provide clear evidence of the health impacts of the project. In particular, the DEIR made no attempt to quantify the potentially significant health risks that would occur to nearby sensitive receptors, including workers, school children at Washington Elementary, and residents within the Seaport Neighborhood³¹, which covers areas along I-5 from emissions of DPM released by all sources associated with the project. Because substantial quantities of DPM will be emitted during project construction and operations, I recommend that the Port conduct a site specific dispersion modeling of emissions from all sources associated with the Project to assess the Project's direct and cumulative health impacts to construction workers and the community, and recirculate the DEIR for public comment with this additional analysis.

5. Mitigation Measure AQ-2 Fails to Specify Whether Tier 4 Engines Used During Construction are Tier 4 Interim or Tier 4 Final

While MM AQ-2 requires the use of "Tier 4" or equivalent engines for construction, MM AQ-2 fails to specify whether this is for Tier 4 Interim or Tier 4 Final construction equipment. The United

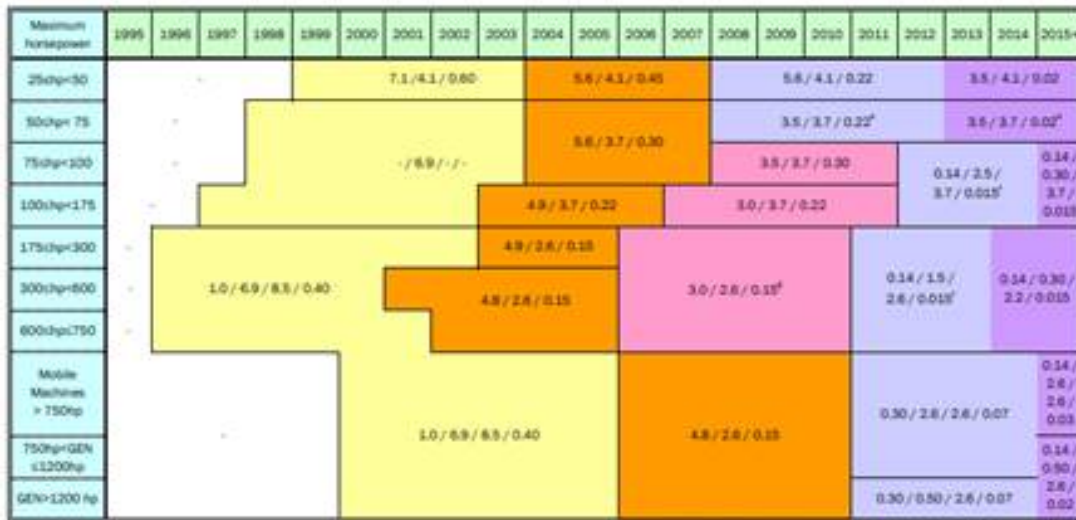
²⁸ CARB. 2005. Air Quality and Land Use Handbook: A Community Health Perspective. Prepared by the California Air Resources Board (CARB). Table 1-2 Summary of Basis for Advisory Recommendations, Page 6

²⁹ DEIR, pp. 71, 100.

³⁰ Authority to Construct Application: Lehigh Southwest Cement Co., Stockton, CA, Facility No. N-153, San Joaquin Valley Air Pollution Control District (December 2019).

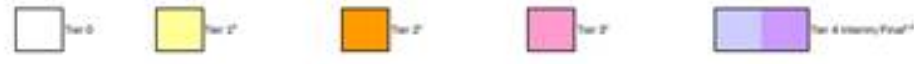
³¹ Seaport District Neighborhood in Stockton, California; available at: <http://www.city-data.com/neighborhood/Seaport-District-Stockton-CA.html>.

States Environmental Protection Agency (U.S. EPA) has slowly adopted more stringent standards to lower the emissions from off-road construction equipment since 1994. Since that time, Tier 1, Tier 2, Tier 3, Tier 4 Interim, and Tier 4 Final construction equipment has been phased in over time. Tier 4 Final represents the cleanest burning equipment and therefore has the lowest emissions compared to other tiers, including Tier 4 Interim equipment.³²



Source: derived from California Air Resources Board, http://www.arb.ca.gov/msprog/ordiesel/documents/Off-Road_Diesel_Standards.

- a) When ARB and USEPA standards differ, the standards shown here represent the more stringent of the two.
- b) Standards given for all sizes of Tier 1 engines are hydrocarbons/oxides of nitrogen (NOx)/carbon monoxide (CO)/particulate matter (PM) in grams per brakehorsepower per hour (g/bhp-hr).
- c) Standards given for all sizes of Tier 2 and Tier 3 engines, and Tier 4 engines below 75 horsepower are non-methane hydrocarbons (NMHC)+NOx/CO/PM in g/bhp-hr.
- d) Standards given for Tier 4 engines above 75 horsepower are NMHC/NOx/CO/PM in g/bhp-hr.
- e) Engine families in this power category may alternately meet Tier 3 PM standards (0.30 g/bhp-hr) from 2006-2011 in exchange for introducing final PM standards in 2012.
- f) The implementation schedule shown is the three-year alternate NOx approach. Other schedules are available.
- g) Certain manufacturers have agreed to comply with these standards by 2005.



As demonstrated in the figure above, Tier 4 Interim equipment has greater emission levels than Tier 4 Final equipment.³³ The difference in the use of T4 interim technology over T4 final technology will have a significant impact on the emissions on site. While T4 final technology can remove more than 90% of PM_{2.5} emissions, T4 interim technology only removes between 80% to 90% of PM_{2.5} exhaust. Due to the substantial disparities between the emissions reductions achieved from the use of

³² “San Francisco Clean Construction Ordinance Implementation Guide for San Francisco Public Projects.” August 2015, available at: https://www.sfdph.org/dph/files/EHSdocs/AirQuality/San_Francisco_Clean_Construction_Ordinance_2015.pdf, p. 6.


³³ “San Francisco Clean Construction Ordinance Implementation Guide for San Francisco Public Projects.” August 2015, available at: https://www.sfdph.org/dph/files/EHSdocs/AirQuality/San_Francisco_Clean_Construction_Ordinance_2015.pdf, p. 6.

T4 interim versus T4 final equipment, MM AQ-2 fails to ensure that the emissions assumed in the DEIR's air quality analysis will actually be achieved. MM-AQ-2 should be revised to commit to using Tier 4 Final equipment to maximize potential construction emissions reductions.

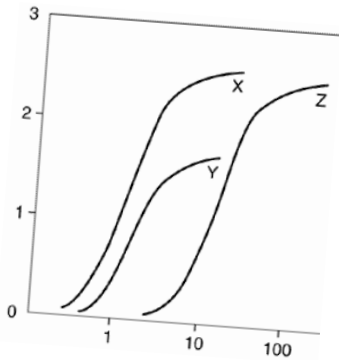
Conclusion

The facts identified and referenced in this comment letter lead me to conclude that the Project could result in significant unmitigated impacts if the air quality analysis is not corrected and the conditions of approval are not binding.

Sincerely,



JAMES J. J. CLARK, Ph.D.



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Principal Toxicologist

Toxicology/Exposure Assessment Modeling

Risk Assessment/Analysis/Dispersion Modeling

Education:

Ph.D., Environmental Health Science, University of California, 1995

M.S., Environmental Health Science, University of California, 1993

B.S., Biophysical and Biochemical Sciences, University of Houston, 1987

Professional Experience:

Dr. Clark is a well-recognized toxicologist, air modeler, and health scientist. He has 30 years of experience in researching the effects of environmental contaminants on human health including environmental fate and transport modeling (SCREEN3, AEROMOD, ISCST3, Johnson-Ettinger Vapor Intrusion Modeling, RESRAD, GENII); exposure assessment modeling (partitioning of contaminants in the environment as well as PBPK modeling); conducting and managing human health risk assessments for regulatory compliance and risk-based clean-up levels; and toxicological and medical literature research.

Significant projects performed by Dr. Clark include the following:

LITIGATION SUPPORT

Case: Pamela Butler Vs. Mallinckrodt, Inc. & Cotter Corporation. Case No.: 4:2018cv01701 United States District Court Eastern District of Missouri Eastern Division

Case: Kenneth Edward Koterba Vs. Mallinckrodt, Inc. & Cotter Corporation. Case No.: 4:2018cv01702 United States District Court Eastern District of Missouri Eastern Division

Case: Anthony Hines Vs. Mallinckrodt, Inc. & Cotter Corporation. Case No.: 4:2018cv01703 United States District Court Eastern District of Missouri Eastern Division

Case: Emery David Walick, III Vs. Mallinckrodt, Inc. & Cotter Corporation. Case No.: 4:2018cv01704 United States District Court Eastern District of Missouri Eastern Division

Client: Humphrey, Farrington & McClain, P.C., Independence, Missouri

Dr. Clark performed a historical dose reconstruction for community members exposed to radioactive waste released into the environment from the St. Louis Air Port Site (SLAPS) and the Hazelwood Interim Storage Site (HISS). The releases resulted in impacts to soils, sediments, surface waters, and groundwater in the vicinity of the SLAPS and HISS sites. The analysis was performed in general accordance with the methods outlined by the Agency for Toxic Substances Control (ATSDR) for assessing radiation doses from historical source areas in North St. Louis County, Missouri.

Case Result: Trial Pending

Case: Don Strong, et al. vs. Republic Services, Inc., Bridgeton Landfill, LLC, vs. Cotter Corporation, N.S.L., Case No.: 17SL-CC01632-01 Circuit Court of St. Louis County, State of Missouri, Division 17

Client: Humphrey, Farrington & McClain, P.C., Independence, Missouri

Dr. Clark performed a historical dose reconstruction for community members from radiologically impacted material (RIM) releases from the adjacent West Lake Landfill. The analysis was performed in general accordance with the methods outlined by the Agency for Toxic Substances Control (ATSDR) for assessing radiation doses from historical source areas in North St. Louis County, Missouri.

Case Result: Settlement in favor of plaintiff.

Case: Arnold Goldstein, Hohn Covas, Gisela Janette La Bella, et al. vs. Exxon Mobil Corporation, PBF Energy Inc., Torrance Refining Company LLC, et al., Case No.: 2:17-cv-02477DSF United States District Court for the Central District of California

Client: Sher Edlging, LLP, San Francisco, California and Matern Law Group , PC., El Segundo, California

Dr. Clark performed a historical dose reconstruction for community members from an active 700 acre petroleum refinery in Los Angeles. The analysis included a multi-year dispersion model was performed in general accordance with the methods outlined by the U.S. EPA and the SCAQMD for assessing the health impacts in Torrance, California. The results of the analysis are being used as the basis for injunctive relief for the communities surrounding the refinery.

Case Result: Trial Pending

**Case: Scott D. McClurg, et al. v. Mallinckrodt Inc. and Cotter Corporation.
Lead Case No.: 4:12CV00361 AGF United States District Court Eastern District
of Missouri Eastern Division**

Client: Environmental Law Group, Birmingham, AL.

Dr. Clark performed a historical dose reconstruction for community members and workers exposed to radioactive waste released into the environment from the St. Louis Air Port Site (SLAPS) and the Hazelwood Interim Storage Site (HISS). The releases resulted in impacts to soils, sediments, surface waters, and groundwater in the vicinity of the SLAPS and HISS sites. The analysis included the incorporation of air dispersion modeling across the community to determine ground-level air concentrations and deposition of thorium and uranium isotopes and their respective daughter products. The dose reconstruction considered all relevant pathways to determine total doses of radiation received across the community from 1946 through 2017.

Case Result: Settlement in favor of plaintiff.

**Case: Mary Ann Piccolo V. Headwaters Incorporated, et al. Seventh Judicial
Court In and For Carbon County, State of Utah. Case No. 130700053**

Client: Law Offices of Roy L. Mason. Annapolis, MD

Dr. Clark performed a dose assessment of an individual occupationally exposed to metals and silica from fly ash who later developed cancer. A review of the individual's medical and occupational history was performed to prepare opinions regarding his exposure and later development of cancer.

Case Result: Settlement in favor of plaintiff.

Case: Tracey Coleman V. Headwaters Incorporated, et al. Seventh Judicial Court In and For Carbon County, State of Utah. Case No. 140902847

Client: Law Offices of Roy L. Mason. Annapolis, MD

Dr. Clark performed a dose assessment of an individual occupationally exposed to metals and silica from fly ash who later developed cancer. A review of the individual's medical and occupational history was performed to prepare opinions regarding his exposure and later development of cancer.

Case Result: Settlement in favor of plaintiff.

Case: David Dominguez and Amanda Dominguez V. Cytec Industries, Inc et al. Superior Court of the State Of California for the County Of Los Angeles – Central Civil West. Civil Action. BC533123

Client: Rose, Klein, Marias, LLP, Long Beach, California

Dr. Clark performed a toxicological assessment of an individual occupationally exposed to hexavalent chromium who later developed cancer. A review of the individual's medical and occupational history was performed to prepare opinions regarding her exposure and later development of cancer.

Case Result: Settlement in favor of plaintiff.

SELECTED AIR MODELING RESEARCH/PROJECTS

Client(s) – Multiple

Indoor Air Evaluations, California: Performed multiple indoor air screening evaluations and risk characterizations consistent with California Environmental Protection Agency's (Cal/EPA) Department of Toxic Substances Control (DTSC) and Regional Water Quality Control Board (RWQCB) methodologies. Characterizations included the use of DTSC's modified Johnson & Ettinger Model and USEPA models, as well as the attenuation factor model currently advocated by Cal/EPA's Office of Environmental Health and Hazard Assessment (OEHHA).

Client – Confidential

Dr. Clark performed a comprehensive evaluation of criteria pollutants, air toxins, and particulate matter emissions from a carbon black production facility to determine the impacts on the surrounding communities. The results of the dispersion model were used to estimate acute and chronic exposure concentrations to multiple contaminants and were incorporated into a comprehensive risk evaluation.

Client – Confidential

Dr. Clark performed a comprehensive evaluation of air toxins and particulate matter emissions from a railroad tie manufacturing facility to determine the impacts on the surrounding communities. The results of the dispersion model have been used to estimate acute and chronic exposure concentrations to multiple contaminants and have been incorporated into a comprehensive risk evaluation.

EMERGING/PERSISTENT CONTAMINANT RESEARCH/PROJECTS

Client: City of Santa Clarita, Santa Clarita, California

Dr. Clark managed the oversight of the characterization, remediation and development activities of a former 1,000 acre munitions manufacturing facility for the City of Santa Clarita. The site is impacted with a number of contaminants including perchlorate, unexploded ordinance, and volatile organic compounds (VOCs). The site is currently under a number of regulatory consent orders, including an Imminent and Substantial Endangerment Order. Dr. Clark assisted the impacted municipality with the development of remediation strategies, interaction with the responsible parties and stakeholders, as well as interfacing with the regulatory agency responsible for oversight of the site cleanup.

Client – Confidential, Los Angeles, California

Dr. Clark is performing a comprehensive review of the potential for pharmaceuticals and their by-products to impact groundwater and surface water supplies. This evaluation will include a review if available data on the history of pharmaceutical production in the United States; the chemical characteristics of various pharmaceuticals; environmental fate and transport; uptake by xenobiotics; the potential effects of pharmaceuticals on water treatment systems; and the potential threat to public health. The results of the evaluation may be used as a briefing tool for non-public health professionals.

PUBLIC HEALTH/TOXICOLOGY

Client: Brayton Purcell, Novato, California

Dr. Clark performed a toxicological assessment of residents exposed to methyl-tertiary butyl ether (MTBE) from leaking underground storage tanks (LUSTs) adjacent to the subject property. The symptomology of residents and guests of the subject property were evaluated against the known outcomes in published literature to exposure to MTBE. The study found that residents had been exposed to MTBE in their drinking water; that concentrations of MTBE detected at the site were above regulatory guidelines; and, that the symptoms and outcomes expressed by residents and guests were consistent with symptoms and outcomes documented in published literature.

Client: Covanta Energy, Westwood, California

Evaluated health risk from metals in biosolids applied as soil amendment on agricultural lands. The biosolids were created at a forest waste cogeneration facility using 96% whole tree wood chips and 4 percent green waste. Mass loading calculations were used to estimate Cr(VI) concentrations in agricultural soils based on a maximum loading rate of 40 tons of biomass per acre of agricultural soil. The results of the study were used by the Regulatory agency to determine that the application of biosolids did not constitute a health risk to workers applying the biosolids or to residences near the agricultural lands.

Client: Kaiser Venture Incorporated, Fontana, California

Prepared PBPK assessment of lead risk of receptors at a 1,100-acre former steel mill. This evaluation was used as the basis for granting closure of the site by lead regulatory agency.

RISK ASSESSMENTS/REMEDIAL INVESTIGATIONS

Kaiser Ventures Incorporated, Fontana, California

Prepared health risk assessment of semi-volatile organic chemicals and metals for a fifty-year old wastewater treatment facility used at a 1,100-acre former steel mill. This evaluation was used as the basis for granting closure of the site by lead regulatory agency.

ANR Freight - Los Angeles, California

Prepared a comprehensive Preliminary Endangerment Assessment (PEA) of petroleum hydrocarbon and metal contamination of a former freight depot. This evaluation was as the basis for reaching closure of the site with lead regulatory agency.

Kaiser Ventures Incorporated, Fontana, California

Prepared comprehensive health risk assessment of semi-volatile organic chemicals and metals for 23-acre parcel of a 1,100-acre former steel mill. The health risk assessment was used to determine clean up goals and as the basis for granting closure of the site by lead regulatory agency. Air dispersion modeling using ISCST3 was performed to determine downwind exposure point concentrations at sensitive receptors within a 1 kilometer radius of the site. The results of the health risk assessment were presented at a public meeting sponsored by the Department of Toxic Substances Control (DTSC) in the community potentially affected by the site.

Unocal Corporation - Los Angeles, California

Prepared comprehensive assessment of petroleum hydrocarbons and metals for a former petroleum service station located next to sensitive population center (elementary school). The assessment used a probabilistic approach to estimate risks to the community and was used as the basis for granting closure of the site by lead regulatory agency.

Client: Confidential, Los Angeles, California

Managed oversight of remedial investigation most contaminated heavy metal site in California. Lead concentrations in soil excess of 68,000,000 parts per billion (ppb) have been measured at the site. This State Superfund Site was a former hard chrome plating operation that operated for approximately 40-years.

Client: Confidential, San Francisco, California

Coordinator of regional monitoring program to determine background concentrations of metals in air. Acted as liaison with SCAQMD and CARB to perform co-location sampling and comparison of accepted regulatory method with ASTM methodology.

Client: Confidential, San Francisco, California

Analyzed historical air monitoring data for South Coast Air Basin in Southern California and potential health risks related to ambient concentrations of carcinogenic metals and volatile organic compounds. Identified and reviewed the available literature and calculated risks from toxins in South Coast Air Basin.

IT Corporation, North Carolina

Prepared comprehensive evaluation of potential exposure of workers to air-borne VOCs at hazardous waste storage facility under SUPERFUND cleanup decree. Assessment used in developing health based clean-up levels.

Professional Associations

American Public Health Association (APHA)

Association for Environmental Health and Sciences (AEHS)

American Chemical Society (ACS)

International Society of Environmental Forensics (ISEF)

Society of Environmental Toxicology and Chemistry (SETAC)

Publications and Presentations:

Books and Book Chapters

Sullivan, P., **J.J. J. Clark**, F.J. Agardy, and P.E. Rosenfeld. (2007). *Synthetic Toxins In The Food, Water and Air of American Cities*. Elsevier, Inc. Burlington, MA.

Sullivan, P. and **J.J. J. Clark**. 2006. *Choosing Safer Foods, A Guide To Minimizing Synthetic Chemicals In Your Diet*. Elsevier, Inc. Burlington, MA.

Sullivan, P., Agardy, F.J., and **J.J.J. Clark**. 2005. *The Environmental Science of Drinking Water*. Elsevier, Inc. Burlington, MA.

Sullivan, P.J., Agardy, F.J., **Clark, J.J.J.** 2002. *America's Threatened Drinking Water: Hazards and Solutions*. Trafford Publishing, Victoria B.C.

Clark, J.J.J. 2001. "TBA: Chemical Properties, Production & Use, Fate and Transport, Toxicology, Detection in Groundwater, and Regulatory Standards" in *Oxygenates in the Environment*. Art Diaz, Ed.. Oxford University Press: New York.

Clark, J.J.J. 2000. "Toxicology of Perchlorate" in *Perchlorate in the Environment*. Edward Urbansky, Ed. Kluwer/Plenum: New York.

Clark, J.J.J. 1995. Probabilistic Forecasting of Volatile Organic Compound Concentrations At The Soil Surface From Contaminated Groundwater. UMI.

Baker, J.; **Clark, J.J.J.**; Stanford, J.T. 1994. Ex Situ Remediation of Diesel Contaminated Railroad Sand by Soil Washing. Principles and Practices for Diesel Contaminated Soils, Volume III. P.T. Kostecki, E.J. Calabrese, and C.P.L. Barkan, eds. Amherst Scientific Publishers, Amherst, MA. pp 89-96.

Journal and Proceeding Articles

- Tam L. K., Wu C. D., Clark J. J. and **Rosenfeld, P.E.** (2008) A Statistical Analysis Of Attic Dust And Blood Lipid Concentrations Of Tetrachloro-p-Dibenzodioxin (TCDD) Toxicity Equivalency Quotients (TEQ) In Two Populations Near Wood Treatment Facilities. *Organohalogen Compounds*, Volume 70 (2008) page 002254.
- Tam L. K., Wu C. D., Clark J. J. and **Rosenfeld, P.E.** (2008) Methods For Collect Samples For Assessing Dioxins And Other Environmental Contaminants In Attic Dust: A Review. *Organohalogen Compounds*, Volume 70 (2008) page 000527
- Hensley A.R., Scott, A., Rosenfeld P.E., **Clark, J.J.J.** (2007). "Attic Dust And Human Blood Samples Collected Near A Former Wood Treatment Facility." *Environmental Research*. 105:194-199.
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- Hensley A.R., Scott, A., Rosenfeld P.E., **Clark, J.J.J.** 2006. "Dioxin Containing Attic Dust And Human Blood Samples Collected Near A Former Wood Treatment Facility." The 26th International Symposium on Halogenated Persistent Organic Pollutants – DIOXIN2006, August 21 – 25, 2006. Radisson SAS Scandinavia Hotel in Oslo Norway.
- Rosenfeld, P.E., **Clark, J. J.** and Suffet, I.H. 2005. "The Value Of An Odor Quality Classification Scheme For Compost Facility Evaluations" The U.S. Composting Council's 13th Annual Conference January 23 - 26, 2005, Crowne Plaza Riverwalk, San Antonio, TX.
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Tierney, D.F. and **J.J.J. Clark**. (1990). Lung Polyamine Content Can Be Increased By Spermidine Infusions Into Hyperoxic Rats. American Review of Respiratory Disease. 139(4):A41.

ATTACHMENT C

ADAMS BROADWELL JOSEPH & CARDOZO

A PROFESSIONAL CORPORATION

ATTORNEYS AT LAW

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KYLE C. JONES
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NIRIT LOTAN
AARON M. MESSING
WILLIAM C. MUMBY

MARC D. JOSEPH
Of Counsel

*Admitted in Colorado

July 1, 2020

Via Email & U.S. Mail

Richard Aschieris, Port Director
Port of Stockton
P.O. Box 2089
Stockton, CA 95201
Email: raschieris@stocktonport.com

Katie Miller, Director of Human
Resources and Administrative Services
Port of Stockton
P.O. Box 2089
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Melissa Whitener, Administrative Analyst
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P.O. Box 2089
Stockton, CA 95201
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Steven A. Herum, Port Counsel
Herum\Crabtree\Suntag
5757 Pacific Avenue Suite 222
Stockton, CA 95207
Email: sherum@herumcrabtree.com

Via Email Only

Jason Cashman, Environmental Manager
Email: jcashman@stocktonport.com

Re: Second Request to Extend the Public Review and Comment Period for the Draft Environmental Impact Report for Lehigh Southwest Stockton Terminal (SCH: 2019100510)

Dear Mr. Aschieris, Ms. Miller, Ms. Whitener, Mr. Herum, and Mr. Cashman:

We are writing on behalf of the San Joaquin Building and Construction Trades Council ("SJBCTC") in response to the Port of Stockton's ("Port") June 26, 2020 letter responding to our June 22, 2020 request for an extension of the public review and comment period for the Draft Environmental Impact Report ("DEIR") for the Lehigh Southwest Stockton Terminal ("Project"). The Port's June 26, 2020 letter refused to grant our extension request based on the factually and legally unsupported assertion that we "have not appeared at the Port office asking to

4863-007acp

review these documents.”¹ The Port’s response demonstrates a basic misreading of our June 3, 2020 request for access to DEIR reference documents, a misunderstanding or disregard for the State’s COVID-19 social distancing and Shelter-in-Place mandates, a factual misrepresentation of the Port’s delayed search for DEIR reference documents in response to our request, and a misstatement of CEQA’s public disclosure requirements. The Port’s response to our DEIR reference document request also remains incomplete. We request that the Port immediately (1) rescind its June 26 response, (2) provide access to the outstanding DEIR reference documents that still have not been disclosed to SJBCTC almost a month after our document request was submitted, and (3) extend the public comment period on the DEIR by at least 45 days from the date on which the Port releases the remaining documents for public review.

First, the Port’s letter is factually inaccurate. Contrary to the Port’s assertion, our original June 3, 2020 request for DEIR reference documents requested “immediate access” to the DEIR reference documents, as required by CEQA.² In the alternative, the request asked that “*If* the requested documents are in electronic format, please make them available via a file transfer program such as Dropbox.”³ This is consistent with laws requiring the Port to produce public records, including any electronic documents, in their original form, as maintained by the Port.⁴ SJBCTC’s request did not demand electronic files from the Port, nor were records requested in a manner that is inconsistent with CEQA.

Second, the Port did not respond until June 12, 2020. The Port’s response was both late and incomplete. The June 12 letter advised SJBCTC that responsive records “have been found,” indicating that the records were not available before

¹ Exhibit 1: Letter from M. Whitener, Port of Stockton, to W. Mumby re *Request to Extend the Public Review and Comment Period for the Draft Environmental Impact Report for Lehigh Southwest Stockton Terminal* (SCH: 2019100510) (June 26, 2020), p. 1.

² See Letter from W. Mumby to J. Cashman re *Request for Immediate Access to Documents Referenced in the Draft Environmental Impact Report – Lehigh Southwest Stockton Terminal* (SCH: 2019100510) (June 3, 2020); Public Resources Code § 21092(b)(1); 14 C.C.R. § 15087(c)(5); *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 442, as modified (Apr. 18, 2007).

³ Letter from W. Mumby to J. Cashman re *Request for Immediate Access to Documents Referenced in the Draft Environmental Impact Report – Lehigh Southwest Stockton Terminal* (SCH: 2019100510) (June 3, 2020) (emphasis added).

⁴ Gov. Code § 6253.9(a)(1); see *Sierra Club v. Super. Ct.* (2013) 57 Cal.4th 157, 161 (holding that electronic database files are subject to disclosure); *Citizens for Open Government v. City of Lodi* (2012) 205 Cal.App.4th 296, 309–311 (electronic correspondence is part of CEQA administrative record).

June 12. The letter agreed to voluntarily provide records electronically: “We would like to commence with the document transfer immediately and so are sending the records in a file transfer program.”⁵ The letter also explained that the Port’s response was incomplete, and stated that records “responsive to the remainder of your request” would be provided by July 17, 2020—almost two weeks after the close of the DEIR’s public comment period.⁶

Our office made multiple attempts between June 12 and June 22, 2020 to obtain access to the remaining DEIR reference documents, with no meaningful response from the Port.⁷ On June 22, 2020, we submitted our extension request letter to the Port, identifying approximately 40 outstanding DEIR reference documents that were missing from the Port’s June 12 response. Despite multiple phone calls and emails to Jason Cashman, the Port’s Environmental Manager, the Port did not indicate that it had located the outstanding responsive documents until June 25, 2020.⁸ Even then, Port emails state that it had to wait on “final review by counsel” before being able to provide access to the documents, which happened on June 26, 2020.⁹ The Port therefore acknowledged that it did not have all of the DEIR reference documents available for public review in any format (in person or electronic) until at least June 25, 2020. Thus, even if SJBCTC had sent a person to physically review the DEIR reference documents at the Port’s office, as the Port claims SJBCTC was required to do, the reference documents would not have been available until at least June 25, 2020.

Third, the Port’s June 26 response is inconsistent with current public health orders mandating physical distancing during the COVID-19 pandemic, and the Port’s own social distancing protocols. On March 4, 2020, the Governor’s office issued a Proclamation of a State of Emergency related to COVID-19.¹⁰ To minimize public health risks posed by potential exposure to COVID-19, California counties, including San Joaquin County, have issued stay-at-home orders requiring people to stay at home, work from home, attend school from home, and otherwise attend to all

⁵ See Letter from M. Whitener to P. Encinas re *Request for Immediate Access to Documents Referenced in the Draft Environmental Impact Report – Lehigh Southwest Stockton Terminal (SCH: 2019100510)* (June 12, 2020), p. 1.

⁶ *Id.*

⁷ Exhibit 2: Email correspondence between ABJC & Port (June 12, 15, 18, & 19, 2020).

⁸ Exhibit 3: J. Cashman email to Adams Broadwell Joseph & Cardozo (“ABJC”) Part I (June 25, 2020).

⁹ Exhibit 4: J. Cashman email to ABJC Part II (June 25, 2020).

¹⁰ See <https://www.gov.ca.gov/wp-content/uploads/2020/03/3.4.20-Coronavirus-SOE-Proclamation.pdf> (last visited July 1, 2020).

feasible business operations without physical contact with others, and without leaving their residences.¹¹ The Port is also following social distancing protocols in response to the COVID-19 crisis, including requiring members of the public to attend Port hearings by electronic means via Zoom online meetings and telephonic access, and prohibiting physical access to Port meetings.¹² Contrary to these policies, the Port's response to our extension request appears to demand that members of the public physically appear at the Port to obtain hard copy records. This is contrary to State and County health orders, and inconsistent with the Port's own COVID-19 protocols. Moreover, CEQA does not require the public to risk their life or serious viral infection to participate in a public comment process.

Finally, the Port's response to our June 3 DEIR reference document request remains incomplete. To date, the Port has not provided:

- Air quality modeling files relied upon for DEIR Appendix E in unlocked Excel/Word files as requested.¹³
- Caltrans (California Department of Transportation), 2015. Compendium of Pile Driving Sound Data. October 2015.
- NMFS (National Marine Fisheries Service), 2014. Biological Opinion for the Downtown San Francisco Ferry Terminal Expansion project, San Francisco, California. June 30, 2014.

Without access to these records, the Port's response to our DEIR reference request remains incomplete.

We urge the Port to reconsider its position regarding our extension request. We request an extension of the comment deadline for 45 days from the date on which the Port releases the remaining documents for public review. That would make the new comment deadline **August 17, 2020**.

¹¹ See e.g., Order Of The San Joaquin County Public Health Officer And Director Of Emergency Services Of The County Of San Joaquin Directing All Individuals Living In The County To Stay At Home Or At Their Place Of Residence And Restricting Activities In Response To The Covid-19 Outbreak (June 2, 2020), available at <https://www.sjgov.org/covid19/docs/San%20Joaquin%20County%20Stay%20at%20Home%20060220.pdf>.

¹² See e.g., Port of Stockton Commission Meeting Agenda, June 15, 2020, available at <https://www.portofstockton.com/wp-content/uploads/2020/06/2020-Jun-15-Agenda-Public.pdf> (last visited July 1, 2020).

¹³ We left the Port a voicemail and an email clarifying the importance of these unlocked files. (See Exhibit 5: ABJC email to J. Cashman (June 23, 2020)).

July 1, 2020
Page 5

Please contact me at wmumby@adamsbroadwell.com **today** with your response to our request. Thank you for your prompt attention and response.

Sincerely,

A handwritten signature in blue ink that reads "Wil Mumby". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

William C. Mumby
Christina M. Caro

Attachments

WCM:acp

4863-007acp

EXHIBIT 1

PORT OF STOCKTON



Phone: (209) 946-0246

Fax: (209) 466-5984

June 26, 2020

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

SENT VIA EMAIL

Re: Request to Extend the Public Review and Comment Period for the Draft Environmental Impact Report for Lehigh Southwest Stockton Terminal (SCH: 2019100510)

Dear William C. Mumby:

The Port of Stockton received your request on behalf of SJBTC from June 22, 2020 for specified documents as well as an extension of the public review and comment period for the DEIR for the Lehigh Southwest Stockton Terminal Project.

Records responsive to the specified documents have been found. Those records have been and are available for physical review at the Port of Stockton. A file transfer program link to those records will appear in the email that this letter accompanies. CEQA encourages public agencies to indicate the physical location where documents referenced in CEQA documents may be reviewed. To the best of our knowledge you have not appeared at the Port office asking to review these documents. Furthermore, the Port is unable to locate any authority within CEQA obligating a public agency to assemble and deliver electronically or otherwise all documents referenced in a CEQA document to individuals or entities that indicate an interest in commenting on the document.

Without a good cause being presented no extension of time to review the CEQA document can be granted.

No further records exist which are responsive to the remainder of the June 03, 2020 request.

If you have questions or comments, contact the Port of Stockton counsel, Mr. Steven A. Herum, with whom your office has already been in communication.

Very truly yours,

Melissa Whitener - Administrative Analyst

On Behalf of Katie Miller, Director of Human Resources and Administrative Services

cc: Richard Aschieris, Port Director
Steve Herum, Port Counsel
Jason Cashman, Environmental and Regulatory Affairs Manager

EXHIBIT 2

RE: Lehigh Southwest Stockton Terminal - Imm Access PRA DEIR to POS

Whitener, Melissa <mwhitener@stocktonport.com>

Fri 6/19/2020 2:15 PM

To: Paul A. Encinas <pencinas@adamsbroadwell.com>**Cc:** Miller, Katie <kmiller@stocktonport.com>; Cashman, Jason <jcashman@stocktonport.com>

Paul,

This was only in response you your email stating you could not open those specific documents. As a reminder, in the response letter dated June 12, 2020 it was stated "If records already exist that are responsive to the remainder of your request, the Port staff will provide electronic copies of the requested documents that are not otherwise protected or privileged, by July 17, 2020."

V/R,

=Melissa Whitener=

From: Paul A. Encinas [mailto:pencinas@adamsbroadwell.com]**Sent:** Thursday, June 18, 2020 4:55 PM**To:** Whitener, Melissa <mwhitener@stocktonport.com>**Cc:** Miller, Katie <kmiller@stocktonport.com>; Cashman, Jason <jcashman@stocktonport.com>**Subject:** Re: Lehigh Southwest Stockton Terminal - Imm Access PRA DEIR to POS

[EXTERNAL MESSAGE]

Hello Melissa,

I'm just following up. Can you please advise:

- Are these documents only in response to our CEQA request for documents referenced in the DEIR or is this a combined response with documents responsive to our general PRA request?
- Should we expect additional documents from the Port?
- If so, when should we expect the next production of documents?

Thanks.

From: Paul A. Encinas**Sent:** Monday, June 15, 2020 4:03 PM**To:** Whitener, Melissa**Cc:** Miller, Katie ; Cashman, Jason**Subject:** RE: Lehigh Southwest Stockton Terminal - Imm Access PRA DEIR to POS

Hello Melissa,

I'm just following up. Can you please advise:

- Are these documents only in response to our CEQA request for documents referenced in the DEIR or is this a combined response with documents responsive to our general PRA request?
- Should we expect additional documents from the Port?
- If so, when should we expect the next production of documents?

Thanks.

Paul Encinas

Adams Broadwell Joseph & Cardozo

601 Gateway Boulevard, Suite 1000

South San Francisco, CA 94080

(650) 589-1660 ex 23

pencinas@adamsbroadwell.com

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From: Whitener, Melissa

Sent: Monday, June 15, 2020 2:53 PM

To: Paul A. Encinas

Cc: Miller, Katie ; Cashman, Jason

Subject: RE: Lehigh Southwest Stockton Terminal - Imm Access PRA DEIR to POS

Dear Paul,

The following information will allow you to access the additional documents that you were having trouble with:

Here is FTP site access info:

To access the FTP site automatically using Windows Explorer please follow the steps below for your version of Windows:

- **Windows 7:** Click Start -> and click in the search box; **Windows 8.1/10:** Right-Click Start -> Run
- Copy/Paste the following line into the "Open" box for XP/8.1/10 or the "Search" box for Windows 7 and hit "enter"

[%systemroot%/explorer ftp://160377-01.11%40160377-01.11:LEHIGH1!@ftp.anchorqea.com](ftp://160377-01.11%40160377-01.11:LEHIGH1!@ftp.anchorqea.com)

- You should now be logged into the site using Windows Explorer. You can use copy/paste to move files to or from the site

To access the FTP site manually using a FTP browser like [CoreFTP](#) or Windows Explorer please use the info below.

- Site URL: <ftp://ftp.anchorqea.com>
- Username: 160377-01.11@160377-01.11
- Password: **LEHIGH1!**

To access the FTP site via web browser please follow the steps below.

- Click on the following link: <https://ftp.anchorqea.com/aq>
- Input the username and password that are listed in the above section
- Use the tools available directly to the site to download or upload

Very truly yours,

=Melissa Whitener=

From: Whitener, Melissa

Sent: Monday, June 15, 2020 8:42 AM

To: 'Paul A. Encinas' <pencinas@adamsbroadwell.com>

Cc: Miller, Katie <kmiller@stocktonport.com>

Subject: RE: Lehigh Southwest Stockton Terminal - Imm Access PRA DEIR to POS

Good Morning, Paul.

We will look into the issue.

Best,

=Melissa Whitener=

From: Paul A. Encinas [<mailto:pencinas@adamsbroadwell.com>]

Sent: Monday, June 15, 2020 8:39 AM

To: Whitener, Melissa

Subject: RE: Lehigh Southwest Stockton Terminal - Imm Access PRA DEIR to POS

[EXTERNAL MESSAGE]

Good Morning Melissa,

We can't seem to open these attached files.

Paul Encinas

Adams Broadwell Joseph & Cardozo

601 Gateway Boulevard, Suite 1000

South San Francisco, CA 94080

(650) 589-1660 ex 23

pencinas@adamsbroadwell.com

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From: Whitener, Melissa <mwhitener@stocktonport.com>

Sent: Friday, June 12, 2020 4:07 PM

To: Paul A. Encinas <pencinas@adamsbroadwell.com>

Cc: Aschieris, Richard <raschieris@stocktonport.com>; Steve Herum (sherum@herumcrabtree.com) <sherum@herumcrabtree.com>; Escobar, Steve <sescobar@stocktonport.com>; Katindoy, Jason <jkatindoy@stocktonport.com>; Cashman, Jason <jcashman@stocktonport.com>

Subject: RE: Lehigh Southwest Stockton Terminal - Imm Access PRA DEIR to POS

Dear Paul Encinas,

Please see the attached regarding your *Request for Immediate Access to Documents Referenced in the Draft Environmental Impact Report – Lehigh Southwest Stockton Terminal (SCH: 2019100510)*.

File transfer link:

<https://filetransfer.portofstockton.com/public/folder/DEV0WfvvNkyVSXJtk2DFFQ/2020%2005%2027%20Lehigh%20DEIR%20Admin%20Record%20Submittal>

Very truly yours,

Melissa Whitener

Administrative Analyst

Port of Stockton

P.O. Box 2089

Stockton CA, 95203

P: (209) 946 - 0246 x8262

C: (209) 351 - 4318

EXHIBIT 3

William Mumby

From: Cashman, Jason <jcashman@stocktonport.com>
Sent: Thursday, June 25, 2020 12:19 PM
To: William Mumby
Cc: Alisha C. Pember; Aschieris, Richard; Miller, Katie; Whitener, Melissa; Christina Caro
Subject: Re: Request to Extend the Public Review and Comment Period for the Draft Environmental Impact Report for Lehigh Southwest Stockton Terminal (SCH: 2019100510)

Hi William,

The Port has located all remaining requested documents. We are in the process of uploading them to our FTP site. The Port should have the remaining documents available for download by close of business today. The Port will provide you with a formal letter today providing the directions for downloading the remaining requested documents and the length of time for the extension of the comment period.

Kind Regards,

Jason

Jason Cashman
Port of Stockton
Environmental and Regulatory Affairs Manager

From: William Mumby <wmumby@adamsbroadwell.com>
Date: Thursday, June 25, 2020 at 10:47 AM
To: Jason Cashman <jcashman@stocktonport.com>
Cc: Alisha Pember <apember@adamsbroadwell.com>, Richard Aschieris <raschieris@stocktonport.com>, "Miller, Katie" <kmiller@stocktonport.com>, "Whitener, Melissa" <mwhitener@stocktonport.com>, Christina Caro <ccaro@adamsbroadwell.com>
Subject: RE: Request to Extend the Public Review and Comment Period for the Draft Environmental Impact Report for Lehigh Southwest Stockton Terminal (SCH: 2019100510)

[EXTERNAL MESSAGE]

Hi Jason:

Hope you are well. I left you another voicemail this morning following up on our requests for missing Lehigh terminal DEIR reference documents and to extend the public review and comment deadline for the DEIR. We requested a response from the Port by yesterday and have not heard anything about the outstanding documents or our extension request.

Please let me know as soon as possible whether the Port will be extending the comment deadline for the DEIR beyond the current deadline of July 6. Please also update me on when we should expect to receive the documents we requested in our letter.

Thank you,
Wil

William C. Mumby
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080
(650) 589-1660
wmumby@adamsbroadwell.com<mailto:wmumby@adamsbroadwell.com>

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From: William Mumby
Sent: Tuesday, June 23, 2020 4:50 PM
To: jcashman@stocktonport.com
Cc: Alisha C. Pember <apember@adamsbroadwell.com>; raschieris@stocktonport.com; kmiller@stocktonport.com; mwhitener@stocktonport.com; Christina Caro <ccaro@adamsbroadwell.com>
Subject: RE: Request to Extend the Public Review and Comment Period for the Draft Environmental Impact Report for Lehigh Southwest Stockton Terminal (SCH: 2019100510)

Hi Jason:

I left you a voicemail and just wanted to follow up via email as well. I wanted to clarify that the air quality modeling references in Appendix E we request on page 4 of our letter should include the unlocked emissions modeling files. Our experts need the unlocked files to conduct their analysis. Can you please confirm that these files will be made available to us?

In addition, any updates you can provide on the status of our extension request and request for missing reference documents would be greatly appreciated.

Thank you very much,
Wil

William C. Mumby
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From: Alisha C. Pember <apember@adamsbroadwell.com<mailto:apember@adamsbroadwell.com>>
Sent: Monday, June 22, 2020 12:13 PM
To: raschieris@stocktonport.com<mailto:raschieris@stocktonport.com>;
kmiller@stocktonport.com<mailto:kmiller@stocktonport.com>;
mwhitener@stocktonport.com<mailto:mwhitener@stocktonport.com>;
jcashman@stocktonport.com<mailto:jcashman@stocktonport.com>
Cc: William Mumby <wmumby@adamsbroadwell.com<mailto:wmumby@adamsbroadwell.com>>
Subject: Request to Extend the Public Review and Comment Period for the Draft Environmental Impact Report for Lehigh Southwest Stockton Terminal (SCH: 2019100510)

Good afternoon,

Please see the attached Request to Extend the Public Review and Comment Period for the Draft Environmental Impact Report for Lehigh Southwest Stockton Terminal (SCH: 2019100510) and Exhibits A-F.

A hard copy will go out in today's mail.

If you have any questions, please contact William Mumby.

Thank you.

Alisha Pember

Alisha C. Pember
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080
(650) 589-1660 voice, Ext. 24
apember@adamsbroadwell.com<mailto:apember@adamsbroadwell.com>

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EXHIBIT 4

William Mumby

From: Cashman, Jason <jcashman@stocktonport.com>
Sent: Thursday, June 25, 2020 4:45 PM
To: William Mumby
Cc: Alisha C. Pember; Aschieris, Richard; Miller, Katie; Whitener, Melissa; Christina Caro
Subject: Re: Request to Extend the Public Review and Comment Period for the Draft Environmental Impact Report for Lehigh Southwest Stockton Terminal (SCH: 2019100510)

William,

The Port is waiting on final review by counsel before providing additional documents and determining if additional time will be granted. I am hoping to have additional documents to you tomorrow.

Kind Regards,

Jason

Jason Cashman, Esq.
Environmental & Regulatory Affairs Manager

> On Jun 25, 2020, at 1:03 PM, William Mumby <wmumby@adamsbroadwell.com> wrote:

>

> [EXTERNAL MESSAGE]

>

> Thank you, Jason. I will look out for the Port's letter later today.

>

> William C. Mumby

> Adams Broadwell Joseph & Cardozo

> 601 Gateway Boulevard, Suite 1000

> South San Francisco, CA 94080

> (650) 589-1660

> wmumby@adamsbroadwell.com

>

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>

> -----Original Message-----

> From: Cashman, Jason <jcashman@stocktonport.com>

> Sent: Thursday, June 25, 2020 12:19 PM

> To: William Mumby <wmumby@adamsbroadwell.com>

> Cc: Alisha C. Pember <apember@adamsbroadwell.com>; Aschieris, Richard <raschieris@stocktonport.com>; Miller, Katie <kmiller@stocktonport.com>; Whitener, Melissa <mwhitener@stocktonport.com>; Christina Caro <ccaro@adamsbroadwell.com>

> Subject: Re: Request to Extend the Public Review and Comment Period for the Draft Environmental Impact Report for Lehigh Southwest Stockton Terminal (SCH: 2019100510)

>

> Hi William,

>

> The Port has located all remaining requested documents. We are in the process of uploading them to our FTP site. The Port should have the remaining documents available for download by close of business today. The Port will provide you with a formal letter today providing the directions for downloading the remaining requested documents and the length of time for the extension of the comment period.

>
> Kind Regards,

>
> Jason

>
> -----

> Jason Cashman
> Port of Stockton
> Environmental and Regulatory Affairs Manager

>
>
> From: William Mumby <wmumby@adamsbroadwell.com>

> Date: Thursday, June 25, 2020 at 10:47 AM

> To: Jason Cashman <jcashman@stocktonport.com>

> Cc: Alisha Pember <apember@adamsbroadwell.com>, Richard Aschieris <raschieris@stocktonport.com>, "Miller, Katie" <kmiller@stocktonport.com>, "Whitener, Melissa" <mwhitener@stocktonport.com>, Christina Caro <c Caro@adamsbroadwell.com>

> Subject: RE: Request to Extend the Public Review and Comment Period for the Draft Environmental Impact Report for Lehigh Southwest Stockton Terminal (SCH: 2019100510)

>
> [EXTERNAL MESSAGE]

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> Thank you,
> Wil

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> William C. Mumby
> Adams Broadwell Joseph & Cardozo
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>
> From: William Mumby
> Sent: Tuesday, June 23, 2020 4:50 PM

> To: jcashman@stocktonport.com
> Cc: Alisha C. Pember <apember@adamsbroadwell.com>; raschieris@stocktonport.com; kmiller@stocktonport.com; mwhitener@stocktonport.com; Christina Caro <ccaro@adamsbroadwell.com>
> Subject: RE: Request to Extend the Public Review and Comment Period for the Draft Environmental Impact Report for Lehigh Southwest Stockton Terminal (SCH: 2019100510)
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> Hi Jason:
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> I left you a voicemail and just wanted to follow up via email as well. I wanted to clarify that the air quality modeling references in Appendix E we request on page 4 of our letter should include the unlocked emissions modeling files. Our experts need the unlocked files to conduct their analysis. Can you please confirm that these files will be made available to us?
>
> In addition, any updates you can provide on the status of our extension request and request for missing reference documents would be greatly appreciated.
>
> Thank you very much,
> Wil
>
> William C. Mumby
> Adams Broadwell Joseph & Cardozo
> 601 Gateway Boulevard, Suite 1000
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> wmumby@adamsbroadwell.com<mailto:wmumby@adamsbroadwell.com>
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> From: Alisha C. Pember <apember@adamsbroadwell.com<mailto:apember@adamsbroadwell.com>>
> Sent: Monday, June 22, 2020 12:13 PM
> To: raschieris@stocktonport.com<mailto:raschieris@stocktonport.com>;
kmiller@stocktonport.com<mailto:kmiller@stocktonport.com>;
mwhitener@stocktonport.com<mailto:mwhitener@stocktonport.com>;
jcashman@stocktonport.com<mailto:jcashman@stocktonport.com>
> Cc: William Mumby <wmumby@adamsbroadwell.com<mailto:wmumby@adamsbroadwell.com>>
> Subject: Request to Extend the Public Review and Comment Period for the Draft Environmental Impact Report for Lehigh Southwest Stockton Terminal (SCH: 2019100510)
>
> Good afternoon,
>
> Please see the attached Request to Extend the Public Review and Comment Period for the Draft Environmental Impact Report for Lehigh Southwest Stockton Terminal (SCH: 2019100510) and Exhibits A-F.
>
> A hard copy will go out in today's mail.
>
> If you have any questions, please contact William Mumby.
>
> Thank you.
>
> Alisha Pember

>
>
> Alisha C. Pember
> Adams Broadwell Joseph & Cardozo
> 601 Gateway Boulevard, Suite 1000
> South San Francisco, CA 94080
> (650) 589-1660 voice, Ext. 24
> apember@adamsbroadwell.com<mailto:apember@adamsbroadwell.com>

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>

EXHIBIT 5

William Mumby

From: William Mumby
Sent: Tuesday, June 23, 2020 4:50 PM
To: jcashman@stocktonport.com
Cc: Alisha C. Pember; raschieris@stocktonport.com; kmiller@stocktonport.com; mwhitener@stocktonport.com; Christina Caro
Subject: RE: Request to Extend the Public Review and Comment Period for the Draft Environmental Impact Report for Lehigh Southwest Stockton Terminal (SCH: 2019100510)

Hi Jason:

I left you a voicemail and just wanted to follow up via email as well. I wanted to clarify that the air quality modeling references in Appendix E we request on page 4 of our letter should include the *unlocked* emissions modeling files. Our experts need the unlocked files to conduct their analysis. Can you please confirm that these files will be made available to us?

In addition, any updates you can provide on the status of our extension request and request for missing reference documents would be greatly appreciated.

Thank you very much,
Wil

William C. Mumby
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080
(650) 589-1660
wmumby@adamsbroadwell.com

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From: Alisha C. Pember <apember@adamsbroadwell.com>
Sent: Monday, June 22, 2020 12:13 PM
To: raschieris@stocktonport.com; kmiller@stocktonport.com; mwhitener@stocktonport.com; jcashman@stocktonport.com
Cc: William Mumby <wmumby@adamsbroadwell.com>
Subject: Request to Extend the Public Review and Comment Period for the Draft Environmental Impact Report for Lehigh Southwest Stockton Terminal (SCH: 2019100510)

Good afternoon,

Please see the attached **Request to Extend the Public Review and Comment Period for the Draft Environmental Impact Report for Lehigh Southwest Stockton Terminal (SCH: 2019100510)** and **Exhibits A-F**.

A hard copy will go out in today's mail.

If you have any questions, please contact William Mumby.

Thank you.

Alisha Pember

Alisha C. Pember
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601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080
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ATTACHMENT D

William Mumby

From: Steve Herum <sherum@herumcrabtree.com>
Sent: Thursday, July 2, 2020 2:42 PM
To: William Mumby; jcashman@stocktonport.com
Cc: raschieris@stocktonport.com; kmiller@stocktonport.com; mwhitener@stocktonport.com
Subject: RE: Second Request to Extend the Public Review and Comment Period for the Draft Environmental Impact Report for Lehigh Southwest Stockton Terminal (SCH: 2019100510)

Dear Mr. Mumby:

I have been asked to respond to your request to extend the period of time to comment on the Lehigh CEQA document.

As has been previously noted, these documents are available for public inspection. Notwithstanding your unsound response to this true and correct fact I find no language in the multiple covidcentric executive orders concerning CEQA compliance that alters public comment period or changes the method by which the public can inspect documents. The documents are and have been available to the public at all times during the public comment period; however, your law firm made an affirmative decision to refrain from inspecting them and now bases a demand to extend the time due to your inaction.

It is true there are documents that are not due to be disclosed under your firm's PRA request until after the public comment period for this project lapses. However, the requested documents do not relate to the draft EIR currently subject to a present public comment review period.

Finally, your firm has on repeated occasions asked for the Port to unlock a link to proprietary work by a consultant. As we have repeatedly notified and explained to your law firm the information is regarded as proprietary and therefore not within the universe of documents that can be disclosed. I will not repeat the legal authorities we have previously relied upon in reaching this conclusion. I will note, however, that your law firm has never disagreed or contradicted the authorities as the basis to deny your law firm's request to unlock the link.

Therefore, the Port will not be extending the public comment period timeframe.

Steve Herum

209.472.7700

www.herumcrabtree.com

Connect to Us: 

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From: William Mumby [<mailto:wmumby@adamsbroadwell.com>]
Sent: Thursday, July 2, 2020 10:42 AM

To: Steve Herum <sherum@herumcrabtree.com>; jcashman@stocktonport.com
Cc: Christina Caro <ccaro@adamsbroadwell.com>; Alisha C. Pember <apember@adamsbroadwell.com>;
raschieris@stocktonport.com; kmiller@stocktonport.com; mwhitener@stocktonport.com
Subject: RE: Second Request to Extend the Public Review and Comment Period for the Draft Environmental Impact Report for Lehigh Southwest Stockton Terminal (SCH: 2019100510)

Good morning,

I left a voicemail for Jason Cashman and wanted to follow up by email as well. I am reaching out regarding the letter we sent yesterday morning urging the Port to reconsider its decision to not grant our request to extend the comment deadline for the Lehigh DEIR. We have yet to receive a response from the Port regarding our second extension request. Given the imminent comment deadline on Monday, July 6, and the intervening holiday weekend, please respond to our extension request as soon as possible, but no later than close of business today.

Thank you,

William C. Mumby
Adams Broadwell Joseph & Cardozo
601 Gateway Boulevard, Suite 1000
South San Francisco, CA 94080
(650) 589-1660
wmumby@adamsbroadwell.com

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From: Alisha C. Pember <apember@adamsbroadwell.com>
Sent: Wednesday, July 1, 2020 11:12 AM
To: raschieris@stocktonport.com; kmiller@stocktonport.com; mwhitener@stocktonport.com;
sherum@herumcrabtree.com; jcashman@stocktonport.com
Cc: Christina Caro <ccaro@adamsbroadwell.com>; William Mumby <wmumby@adamsbroadwell.com>
Subject: Second Request to Extend the Public Review and Comment Period for the Draft Environmental Impact Report for Lehigh Southwest Stockton Terminal (SCH: 2019100510)

Good morning,

Please see the attached **Second Request to Extend the Public Review and Comment Period for the Draft Environmental Impact Report for Lehigh Southwest Stockton Terminal (SCH: 2019100510)** and **Exhibits 1-5**.

If you have any questions, please contact William Mumby.

Thank you.

Alisha Pember

Alisha C. Pember
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