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***Via E-mail***

Jason Cashman  
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Port of Stockton  
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Stockton, CA 95203  
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RE: Draft Environmental Impact Report for Lehigh Southwest Stockton Terminal Project  
(SCH # 2019100510)

Dear Mr. Cashman:

Thank you for the opportunity to provide comments on the Port of Stockton's Draft Environmental Impact Report ("DEIR") for the Lehigh Southwest Stockton Terminal Project ("the Project"). The Project proposes to redevelop and increase the capacity of an existing bulk cement receiving and distribution terminal at the Port of Stockton, which is located in one of the most disadvantaged communities in the State, Southwest Stockton. The DEIR concludes that the Project would have significant and unavoidable impacts to air quality and greenhouse gas emissions. However, in analyzing these impacts, the DEIR fails to account for the residential community adjacent to the Project and as a result does not analyze or disclose the potential health impacts to the community from the Project's air emissions. Furthermore, the DEIR relies on unlawful mitigation measures that defer mitigation and are unenforceable. Finally, the DEIR fails to adequately analyze the alternatives chosen and identify an environmentally superior alternative. Thus, we respectfully submit these comments urging the Port to conduct further environmental analysis pursuant to the California Environmental Quality Act ("CEQA") to ensure the Project's environmental impacts are understood, disclosed, and mitigated to the maximum feasible extent.<sup>1</sup>

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<sup>1</sup> The Attorney General submits these comments pursuant to his independent power and duty to protect the environment and natural resources of the State. (*See* Cal. Const., art. V, § 13; Gov. Code, §§ 12511, 12600-12; *D'Amico v. Bd. Of Medical Examiners* (1974) 11 Cal.3d 1, 14-15.)

**I. THE PROJECT SEEKS TO REDEVELOP AN EXISTING BULK CEMENT RECEIVING AND DISTRIBUTION TERMINAL IN A HIGHLY-POLLUTED RESIDENTIAL AREA**

The Project is located in the City of Stockton next to a host of sensitive receptors. Immediately south of the Project site is the Boggs Tract neighborhood, with the closest residence about 500 feet from the Project site. Further south are Little Flock Baptist Church (0.3 mile), Boggs Tract Church (0.4 mile), Washington Elementary School (0.5 mile), and Boggs Tract Community Center (0.6 mile). Washington Elementary School serves predominately Black, Indigenous, and people of color (“BIPOC”), a majority of whom are living in poverty.<sup>2</sup>

The communities living near the Project are already exposed to significant sources of pollution. Immediately south of the Project site is a cluster of industrial and warehouse uses, including three logistics centers, a steel distributor, oil wholesaler, recycling facility, and concrete contractor. As identified by the California Air Resources Board (“CARB”), there are about 20 stationary sources of air pollution directly south of the Project site.<sup>3</sup> The community is also impacted by pollution from major freeways such as Interstate 5 and State Route 4, railyards, and existing emissions from the Port of Stockton.

The Project is within the boundaries of the Southwest Stockton community, which was selected in 2019 by CARB for community air monitoring and the development of an air emissions reduction plan pursuant to Assembly Bill 617 (“AB 617”). AB 617 requires CARB to select disadvantaged communities affected by high exposure burdens for toxic air contaminants and criteria air pollutants for inclusion in the AB 617 program. (Health & Saf. Code, § 44391.2, subd. (b)(1).) The local air quality management district whose jurisdiction encompasses the selected community, in consultation with CARB and a community steering committee, is required to prepare and adopt a Community Emission Reduction Plan (“CERP”) designed to “result in emissions reductions in the community.” (Health & Saf. Code, § 44391.2, subds. (c)(1), (c)(2), (c)(5).) In its second round of community identifications under AB 617, CARB selected Southwest Stockton for both community air monitoring and the development of a CERP given the “high cumulative exposure burden, a significant number of sensitive receptors and the census tracts of the entire community have been designated as disadvantaged communities.”<sup>4</sup> The community air monitoring plan will be developed in July 2020, while the CERP is expected to be finalized by December 2020.

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<sup>2</sup> According to data from the U.S. Department of Education, about 78.1 percent of students enrolled at Washington Elementary school are eligible to participate in the Free Lunch and Reduced-Price Lunch Programs, indicating that about 78.1 percent of the population is living in poverty. Further, 97.4 percent of the population identify as BIPOC.

<sup>3</sup> “2019 Community Recommendations Staff Report,” *California Air Resources Board* (Nov. 2019) at 20, available at [https://ww2.arb.ca.gov/sites/default/files/2019-12/2019\\_community\\_recommendations\\_staff\\_report\\_november\\_8\\_acc\\_3.pdf](https://ww2.arb.ca.gov/sites/default/files/2019-12/2019_community_recommendations_staff_report_november_8_acc_3.pdf).

<sup>4</sup> *Id.* at 19.

According to CalEnviroScreen 3.0, CalEPA's screening tool that ranks each census tract in the state for pollution and vulnerability, the Project's census tract ranks worse than 100 percent of the rest of the state for pollution burden and worse than 98 percent of the state for population vulnerability. This census tract is in the 84th percentile for PM<sub>2.5</sub> pollution, 74th percentile for diesel pollution, 78th percentile for traffic pollution, 98th percentile for groundwater threats, and 84th percentile for hazardous waste. Residents of the community also already experience significant health risks associated with pollution. According to the CalEnviroScreen 3.0, residents in the Project's census tract are in the 98th percentile for asthma rates, 97th percentile for cardiovascular rates, and 81st percentile for the rate of babies born with low birth weight.

The surrounding communities are populated by historically oppressed groups. In the Project's census tract, 57 percent of the community identifies as Hispanic, 21 percent as Asian, and 13 percent as African American. The surrounding communities are also relatively low-income with approximately 86 percent of the population with incomes less than two times the federal poverty level. These communities are undeniably disadvantaged and continue to suffer from environmental racism.

## **II. THE DEIR FAILS TO ADEQUATELY INFORM DECISION MAKERS AND THE PUBLIC OF THE PROJECT'S HEALTH IMPACTS ON HISTORICALLY BURDENED COMMUNITIES**

Approval of the Project raises important environmental justice concerns because emissions produced by the Project will disproportionately affect historically burdened communities that already face high pollution rates and excessive health risks. A lead agency should consider and discuss environmental justice concerns when evaluating a project under CEQA.<sup>5</sup> In the context of the DEIR, this discussion should describe the background pollution levels and existing public health risks experienced by communities near the Project, identify any unique sensitivities of those communities to environmental hazards, and analyze the specific adverse health impacts that emissions from the Project may have on those communities.

Here, the DEIR fails to adequately identify the sensitive receptors in the surrounding communities and the existing public health risks experienced by such communities in the "Environmental Setting" of the DEIR or in the analysis of air quality impacts. Additionally, despite a finding of significant air quality impacts and close proximity to multiple sensitive receptors, the DEIR concludes that a Health Risk Assessment ("HRA") is inapplicable and fails to disclose the health impacts of the Project as required by CEQA. Thus, the DEIR must revise the "Environmental Setting" and air quality impact analysis to take into account the health impacts to the surrounding communities.

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<sup>5</sup> See "Environmental Justice at the Local and Regional Level," *Attorney General of California* (July 2012), [https://oag.ca.gov/sites/all/files/agweb/pdfs/environment/ej\\_fact\\_sheet.pdf](https://oag.ca.gov/sites/all/files/agweb/pdfs/environment/ej_fact_sheet.pdf).

### A. Inadequate “Environmental Setting” Description

For purposes of analyzing a project’s adverse environmental impacts under CEQA, “[t]he significance of an activity depends upon the setting.” (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 718.) Thus, “a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant.” (CEQA Guidelines, § 15300.2, subd. (a).) Studies have shown increased sensitivity to pollution for communities with low income levels, low education levels, and other biological and social factors. This combination of multiple pollutants and increased sensitivity in these communities can result in a higher cumulative pollution impact.<sup>6</sup> A project’s environmental setting should therefore describe both the background environmental burdens faced by impacted communities and any unique sensitivities of those communities to pollution. The San Joaquin Valley Air Pollution Control District (“SJVAPCD”) requires that the location of sensitive receptors be identified and defines “sensitive receptors” to include schools, parks and playgrounds, day care centers, nursing homes, hospitals, and residences.<sup>7</sup>

Here, the DEIR’s two paragraph “Environmental Setting” describing the regional and project setting focuses on the industrial land uses in the area, including storage tanks, maritime terminals, cementitious materials storage structures, grain silos, railroad facilities, and large storage buildings. Other than mentioning that the Project is located in the “City’s urban core, which is characterized by a mix of heavy industrial uses with limited landscape features, older residential neighborhoods, neighborhood commercial shopping centers, and a variety of other commercial and industrial parcels,” the “Environmental Setting” ignores the fact that the Project is located within close proximity to several residential communities in addition to two churches, an elementary school, and a community center. (DEIR at 23.)

The “Environmental Setting” section also fails to acknowledge that many of those communities are already disproportionately affected by environmental pollution and experience elevated levels of negative health effects. As previously discussed, the Project is located within the boundaries of Southwest Stockton, which was selected as an AB 617 community for both community air monitoring and air emissions reductions. The “2019 Community Recommendations Staff Report” published by CARB extensively describes the cumulative

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<sup>6</sup> “Cumulative Impacts: Building a Scientific Foundation,” *Office of Environmental Health Hazard Assessment* (Dec. 2010), Exec. Summary, p. ix, <https://oehha.ca.gov/media/downloads/calenviroscreen/report/cireport123110.pdf>.

<sup>7</sup> “Guidance for Assessing and Mitigating Air Quality Impacts, *San Joaquin Valley Air Pollution Control District* (February 19, 2015) at 10, <https://www.valleyair.org/transportation/GAMAQI-2015/FINAL-DRAFT-GAMAQI.PDF>. The California Air Resources Board defines sensitive land uses as “new residences, schools, day care centers, playgrounds, and medical facilities.” (*Air Quality and Land Use Handbook: A Community Health Perspective* (April 2005) (“CARB Handbook”) at ES-1; *see also* Cal. Health & Safety Code § 42705.5(a)(5) (““Sensitive receptors’ includes hospitals, schools and day care centers, and such other locations as the district or state board may determine.”)).

exposure of the community to air pollutants, including NO<sub>x</sub> and PM<sub>2.5</sub>. The staff report also includes a detailed accounting of the number of stationary sources of air pollution and the surrounding sensitive receptors in the community of Southwest Stockton, including schools and daycare centers. Because the DEIR's "Environmental Setting" section does not include relevant information pertaining to the environmental, health, and safety conditions facing the communities near the Project, it fails to provide decision makers and the public with an accurate characterization of the Project's environmental setting.

### **B. Inadequate Analysis of Health Impacts**

The DEIR also fails to sufficiently explain the nature and magnitude of the Project's health impacts on nearby disadvantaged communities before concluding that the impacts would be less than significant. (*Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 523 (hereafter *Friant Ranch*) [emphasizing that "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"].) An EIR must discuss the health and safety problems that the proposed project may induce. (CEQA Guidelines, § 15126.2, subd. (a) [requiring an EIR to discuss the "health and safety problems caused by the physical changes" that the proposed project will induce].) More specifically, when it comes to significant air quality impacts, an EIR must allow the public to translate bare air pollutant data into adverse health impacts, or to understand why such translation is not possible. (*Friant Ranch*, supra, 6 Cal.5th 502, 525.)

As stated by SJVAPCD, "[d]etermination of whether project emissions would expose sensitive receptors to substantial pollutant concentrations is a function of assessing potential health risks."<sup>8</sup> Thus, "[w]hen evaluating whether a development proposal has the potential to result in localized impacts, Lead Agency staff need to consider the nature of the air pollutant emissions, the proximity between the emitting facility and sensitive receptors, the direction of prevailing winds, and local topography."<sup>9</sup>

Here, the DEIR acknowledges the presence of some residences 500 feet from the Project site, but it does not adequately identify all the sensitive receptors surrounding the Project or analyze the pollution-related health risks already experienced by those sensitive receptors. By failing to adequately identify sensitive receptors in the area and their associated health risks, the DEIR concludes that exposure of sensitive receptors to substantial air pollutant concentrations would be less than significant. (DEIR at 98-100.) In particular, and without conducting an HRA, the DEIR determines that the Project would result in less-than-significant cancer risk, chronic health hazard, and acute health hazard. (DEIR at 100.) The DEIR also concludes that construction and operational odors would not affect a substantial number of people and therefore the impact would be less than significant. (DEIR at 101.)

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<sup>8</sup> ("Guidance for Assessing and Mitigating Air Quality Impacts, *San Joaquin Valley Air Pollution Control District* (February 19, 2015) at 66, <https://www.valleyair.org/transportation/GAMAQI-2015/FINAL-DRAFT-GAMAQI.PDF>).

<sup>9</sup> *Id.*

Yet, the DEIR concludes that the Project would result in significant and unavoidable impacts to air quality, including annual operational emissions of NO<sub>x</sub>. In particular, the DEIR concludes that operational emissions would exceed annual SJVAPCD NO<sub>x</sub> thresholds by analysis year 5.<sup>10</sup> The DEIR also concludes that operational emissions would exceed annual BAAQMD NO<sub>x</sub> thresholds by analysis year 5. (DEIR at 86-97.) Further, the DEIR concludes that air quality impacts from ozone (“O<sub>3</sub>”), PM<sub>2.5</sub>, PM<sub>10</sub> emissions resulting from the Project would be cumulatively significant. (DEIR at 221-222.)

The DEIR estimates concentrations of various air pollutants resulting from the Project and generally discusses the adverse health effects associated with exposure to those pollutants. (DEIR at 98-101.) However, the DEIR does not indicate the concentrations at which the pollutants trigger the identified health symptoms, acknowledge the rates at which nearby communities are already experiencing the identified health symptoms, or analyze the specific health impacts that may result from emissions associated with the Project. As such, the DEIR is inadequate under CEQA. (*See Friant Ranch*, supra, 6 Cal.5th 502, 523 [holding that an EIR’s discussion of air quality impacts was inadequate where it failed to indicate the concentrations at which pollutants emitted by the proposed project would trigger identified health effects, or to explain why such analysis was not possible].)

Rather, the DEIR concludes that a project-specific HRA is not required given that “as an individual project, construction and operation of the proposed project would not expose sensitive receptors to substantial pollutants concentrations.” (DEIR at 222.) However, as discussed above, the basis for determining that sensitive receptors will not be exposed to substantial pollutant concentrations is flawed, given that the DEIR does not adequately identify the sensitive receptors in the area and the health-impacts already experienced by those communities. Thus, considering the Project’s location in a community that is already heavily burdened by pollution and its close proximity to the Boggs Tract neighborhood, the DEIR should include a full HRA that uses age sensitivity factors to measure all particulate matter and other toxic air emissions generated by the Project. An HRA is required by the BAAQMD’s CEQA Guidelines for proposed land uses that will host a high number of non-permitted sources of toxic air

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<sup>10</sup> NO<sub>x</sub> is an air pollutant that mainly impacts respiratory conditions causing inflammation of the airways at high levels. Long-term exposure can decrease lung function, increase the risk of respiratory conditions and increases the response to allergens. NO<sub>x</sub> also contributes to the formation of fine particles (PM) and ground level ozone, both of which are associated with adverse health effects. Further, as the DEIR notes, “[n]umerous scientific studies have linked exposure to airborne PM<sub>2.5</sub> to increased severity of asthma attacks, development of chronic bronchitis, decreased lung function in children, respiratory and cardiovascular hospitalizations, and even premature death in people with existing heart or lung disease.” (DEIR at 98.) Similarly, exposure to PM<sub>10</sub> can lead to increased respiratory disease, lung damage, cancer, and premature death.

contaminants, including facilities like the Project that generate truck and marine vessel trips.<sup>11</sup> The HRA should measure the cancer risks associated with the Project itself, the risks caused by mobile sources related to the Project (such as diesel trucks traveling through Stockton to and from the Project site), and the risks from cumulative projects in the vicinity of the Project. Furthermore, consistent with the BAAQMD's CEQA Guidelines, the Port should evaluate the impacts to sensitive receptors beyond the 1,000-foot Project radius to ensure the DEIR adequately analyzes, discloses, and mitigates the Project's impacts on the people most likely to be harmed by the Project.<sup>12</sup>

In sum, the DEIR fails to analyze the nature and magnitude of the Project's health impacts on nearby communities that already experience the impacts of significant environmental pollution. The inclusion of this information in the DEIR is necessary to enable the public to understand and meaningfully consider the issues raised by the Project, and to enable decision makers to intelligently account for the Project's environmental consequences. (CEQA Guidelines, § 15151; *South of Market Community Action Network v. City and County of San Francisco* (2019) 33 Cal.App.5th 321, 330.)

### **III. THE DEIR'S MITIGATION MEASURES ARE INADEQUATE, UNLAWFULLY DEFERRED, AND UNENFORCEABLE**

CEQA requires a lead agency to adopt all feasible mitigation measures that minimize the significant environmental impacts of a project. (Pub. Resources Code, § 21002; CEQA Guidelines § 15126.4, subd. (a)(1).) It is generally inappropriate to defer formulation of mitigation measures to the future. (CEQA Guidelines, § 15126.4, subd. (a)(1)(B).) A lead agency can defer mitigation only where, among other things, the EIR sets forth criteria governing future actions to implement mitigation, and the agency has assurances that future mitigation will be both "feasible and efficacious." (*Californians for Alternatives to Toxics v. Dept. of Food & Agric.* (2005) 136 Cal.App.4th 1, 17.) Impermissible deferral occurs when an EIR calls for mitigation measures to be created based on future studies but the agency fails to commit itself to specific performance standards. (*Cal. Clean Energy Comm. v. City of Woodland* (2014) 225 Cal.4th 173, 195.)

For many of the Project's impacts that the DEIR claims will be mitigated, the mitigation measures are improperly deferred and are unenforceable because they lack measurable criteria or

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<sup>11</sup> BAAQMD, CEQA Air Quality Guidelines (May 2017) at 5-8, [https://www.baaqmd.gov/~media/files/planning-and-research/ceqa/ceqa\\_guidelines\\_may2017-pdf.pdf?la=en](https://www.baaqmd.gov/~media/files/planning-and-research/ceqa/ceqa_guidelines_may2017-pdf.pdf?la=en)

<sup>12</sup> While the BAAQMD recommends that lead agencies assess impacts to all receptors located within a 1,000-foot radius of a project's fence line, it also recommends that lead agencies "should enlarge the 1,000-foot radius on a case-by-case basis if an unusually large source or sources of risk or hazard emissions that may affect a proposed project is beyond the recommended radius." *Id.* at 5-7.

performance standards. We recommend that the Port revise the Project's mitigation measures that lack enforceable standards—including those discussed below—to ensure that the Project's impacts are mitigated to a less-than-significant level.

First, the DEIR relies on unlawfully deferred and unenforceable mitigation in the analysis of air quality, greenhouse gas, and hazards impacts. As previously discussed, the DEIR concludes that the Project would result in significant and unavoidable impacts to air quality. The DEIR also concludes that the Project will result in significant and unavoidable impacts to greenhouse gas emissions, despite the implementation of mitigation measures. (DEIR at 86-97, 147-150.) However, the mitigation measures relied on by the DEIR are unenforceable. For example, MM-AQ-5 states that Lehigh will replace cargo handling equipment with the cleanest available equipment anytime new or replacement equipment is purchased. If zero emission equipment is available, Lehigh must ensure the proper infrastructure is installed to support that equipment. However, the DEIR does not provide any measurable criteria for determining what infrastructure will be provided to support zero emission equipment, when replacement equipment would be purchased that meets the mitigation measure criteria, and how the cleanest available equipment will be identified. Thus, MM-AQ-5 is undefined and unenforceable.

The DEIR also relies on unenforceable mitigation to conclude that the proposed Project's greenhouse gas emissions will be compliant with the City's 2040 General Plan. (DEIR at 151.) For example, the DEIR relies on MM-GHG-2 and MM-GHG-3 to reduce greenhouse gas emissions to be consistent with the City's General Plan. Both measures, however, defer mitigation into the future. In particular, MM-GHG-2 states: "Lehigh will identify areas for waste reduction, including reductions in single use products in terminal buildings." (DEIR at 151.) Similarly, MM-GHG-3 states: "Lehigh will develop a plan for reducing overall energy use at its terminal." (DEIR at 151.) Both mitigation measures defer identification of areas for waste reduction and a plan for reducing overall energy use into the future. Yet, the DEIR does not commit to specific performance standards or measurement criteria for implementing these measures to ensure enforcement.

Similarly, the DEIR concludes that although the Project would result in significant hazard impacts, including "the potential for impacts to persons and the environment from improper management of potentially hazardous materials during operations," they would be reduced to less than significant level with implementation of MM-HAZ-1 and MM-HAZ-2. (DEIR at 161-163.) However, MM-HAZ-1 and MM-HAZ-2 both defer mitigation into the future. For example, MM-HAZ-2 states that the project applicant "will complete an asbestos and lead paint investigation prior to construction activities" and "ensure compliance with OSHA regulations to address potential hazards associated with the site's designation as a military evaluation site." However, the DEIR does not provide a timeline for when the investigation will happen, indicate which OSHA regulations will be implemented and under what circumstances. The DEIR must therefore develop and impose enforceable measures to mitigate the Project's air quality, greenhouse gas, and hazards impacts to less-than-significant levels.

Second, the DEIR fails to implement all feasible mitigation for air quality impacts and fails to explain why additional mitigation is infeasible. In their scoping comment letter, CARB staff



recommended a series of measures to reduce construction and operation emissions specific to seaport projects. The DEIR implements only two of CARB's recommended mitigation measures, and the two it includes are substantially weakened. For example, CARB recommended the Project eliminate the idling of diesel-powered equipment and provide the necessary infrastructure (e.g., electrical hookups) to support zero and near-zero equipment. The DEIR's version of this mitigation measure merely requires minimizing heavy-duty construction idling time to 2 minutes where feasible, without definition, and does not address the need for infrastructure to support zero-emission equipment.

CARB also recommended a series of measures that were not included in the DEIR. For example, CARB recommended the adoption of contractual language in tenant lease agreements requiring "all heavy-duty trucks entering or on the Project site to be model year 2014 or later, expedite a transition to zero-emission vehicles, and be fully zero-emission beginning in 2030." The Port has additional options for further mitigating the Project's impacts on local community health, regional air quality, and greenhouse gas emissions. For example, possible air quality mitigation measures could include:

- Limiting the Project's operation and construction days and times;
- Establishing and enforcing truck routes that avoid residents and sensitive receptors;
- Establishing overnight parking and repair areas within the Project site to prevent truck encroachment into nearby residential areas;
- Requiring all onsite stockpiles to be enclosed or covered to control dust;
- Requiring the use of electric-powered yard equipment on the Project site;
- Prohibiting off-road diesel-powered equipment from being in the "on" position for more than 10 hours per day;
- Limiting the amount of daily grading disturbance area;
- Prohibiting grading on days with an Air Quality Index forecast of greater than 100 for particulates or ozone for the project area;
- Requiring the Project proponent to install indoor air filtration systems at nearby schools, daycares, and residences;
- Posting both interior- and exterior-facing signs, including signs directed at all dock and delivery areas, identifying idling restrictions and contact information to report violations to CARB, the air district, and the building manager;
- Constructing new or improved transit stops, sidewalks, bicycle lanes, crosswalks, and traffic control or traffic safety measures, such as speed bumps or speed limits, near the Project site;
- Improving vegetation and tree canopy for residents near the Project;
- Keeping onsite and furnishing to the lead agency or other regulators upon request, all equipment maintenance records and data sheets, including design specifications and emission control tier classifications;
- Conducting an on-site inspection to verify compliance with construction mitigation and to identify other opportunities to further reduce construction impacts;
- Requiring all stand-by emergency generators to be powered by a non-diesel fuel;

- Requiring facility operators to train managers and employees on efficient scheduling and load management to eliminate unnecessary queuing and idling of trucks;
- Using paints, architectural coatings, and industrial maintenance coatings that have volatile organic compound levels of less than 10 g/L;
- Requiring methods to reduce vehicle traffic from any employees of the Project, such as van shuttles, transit and carpool alternatives, and bicycle parking and facilities for employees; and
- Providing meal options onsite or shuttles between the facility and nearby meal destinations.

Mitigation measures like these are feasible and have been adopted by similar projects throughout California over the past several years. As previously stated, under CEQA, a lead agency cannot approve projects as proposed if there are feasible mitigation measures available which would substantially lessen the significant environmental impacts of the project. (Pub. Resources Code, § 21001.) Thus, the DEIR should adopt the recommended measures by CARB and those recommended above in order to lessen the air quality impacts of the Project or explain why they are infeasible. The Attorney General's Office would be happy to provide any assistance it can as the Port considers how best to mitigate the Project's environmental impacts.

#### **IV. THE DEIR'S ANALYSIS OF ALTERNATIVES IS INADEQUATE AND FAILS TO IDENTIFY THE "ENVIRONMENTALLY SUPERIOR ALTERNATIVE," THEREBY PRECLUDING MEANINGFUL PUBLIC PARTICIPATION.**

CEQA requires an EIR to identify "alternatives" to the proposed project. (Pub. Resources Code, § 21002.1, subd. (a).) The EIR must "describe a range of reasonable alternatives...which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives." (CEQA Guidelines § 15126.6, subd. (a).) "Evaluation of project alternatives and mitigation measures is the core of an EIR." (*Banning Ranch Conservancy v. City of Newport Beach* (2017), 2 Cal.5th 918, 937 (alterations omitted).) Discussion of alternatives allow governmental agencies to consider alternatives to proposed actions affecting the environment. (*Laural Heights Improvement Ass'n v. Regent of Univ. of California* (1988) 47 Cal.3d 376, 400 (en banc) (citing Pub. Resources Code, section 21001, subd.(g)).) To consider alternatives under CEQA, an EIR measures the chosen alternatives' environmental impacts against the Project's.

As part of that analysis, CEQA requires that an EIR publicly disclose its reasoning for selecting those alternatives. (CEQA Guidelines § 15126.6, subd. (a), (c).) An EIR must also identify an environmentally superior alternative. If the environmentally superior alternative is the "no project" alternative, the EIR must identify an environmentally superior alternative among the other alternatives. (CEQA Guidelines § 15126.6, subd. (e)(2).)

Here, the DEIR does not disclose the reasoning for choosing the No Project Alternative and Reduced Project Alternative to be included in the discussion of alternatives analysis. Neither does the DEIR identify an environmentally superior alternative as required by CEQA.

Rather, DEIR only analyzes the No Project Alternative and Reduced Project Alternative. The DEIR's failure to explain why the No Project Alternative and Reduced Project Alternative were chosen as the alternatives to be analyzed and the failure to identify an environmentally superior alternative deprives both the public and decision makers of information necessary to properly evaluate the impacts of the project and alternatives which may reduce those impacts. The Port should revise its alternatives analysis in order to comply with CEQA's directives.

## V. CONCLUSION

CEQA provides the opportunity for transparent, thoughtful governance by requiring evaluation, public disclosure, and mitigation of a project's significant environmental impacts prior to project approval. While the DEIR provided some information about the Project's significant environmental impacts, multiple facets of the analysis can be improved. In evaluating the Project's impacts, the Port of Stockton should consider the surrounding community's already-high pollution burden and the cumulative impact of increasing the size of the existing Port so close to residences, schools, and places of worship. Further, mitigation is necessary and many additional mitigation measures can feasibly be added to address the Project's significant impacts. The Port should also provide more information regarding the selection of alternatives analyzed and identify an environmentally superior alternative to adequately inform the public.

Please do not hesitate to contact me if you have any questions or would like to discuss these issues further.

Sincerely,



RICA V. GARCIA  
Deputy Attorney General

For XAVIER BECERRA  
Attorney General