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July 1, 2020

Via Email & U.S. Mail

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Via Email Only

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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

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