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May 7, 2021

Via Email and U.S. Mail

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David Kwong, Director
County of San Joaquin
Community Development Department
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Stockton, California 95205
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Rachel DeBord
Clerk of the Board
County of San Joaquin
Clerk of the Board Office
44 North San Joaquin Street
Sixth Floor, Suite 627
Stockton, CA 95202
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Re: Request to Extend the Public Review and Comment Period for the Draft Environmental Impact Report – 14800 W. Schulte Road Logistics Center Project, PA-1900208 (SA) & PA-2000162 (ER) SCH: 2020110406

Dear Ms. Goulart, Mr. Kwong, and Ms. DeBord:

On behalf of **San Joaquin Residents for Responsible Development** (“San Joaquin Residents”), we respectfully request that the County of San Joaquin (“County”) extend the public review and comment period for the Draft Environmental Impact Report (“DEIR”) for the 14800 W. Schulte Road Logistics Center Project, PA-1900208 (SA) & PA-2000162 (ER) (“Project”) proposed by LBA RVI-Company XXXII, LLC (“Applicant”), **by at least 45 days due to the County’s failure to provide timely access to the supporting documents for the DEIR.** This request is made pursuant to the California Environmental Quality Act, Pub. Resources Code (“PRC”) §§ 21000 et seq. (“CEQA”) Section 21092(b)(1), which requires that “all documents referenced in the draft environmental impact report or negative declaration” be available for review and “readily accessible” during the entire comment period.¹

¹ PRC §§ 21092(b)(1) (emphasis added); 14 Cal. Code Regs. (“CCR”) § 15087(c)(5). 5199-004j

May 7, 2021

Page 2

On April 19, 2021, we submitted a letter to the County pursuant to CEQA Section 21092(b)(1) requesting “**immediate access to any and all documents referenced or incorporated by reference**” in the DEIR (“DEIR Reference Request”) (emphasis added).² On April 19, 2021, we submitted a letter to the County pursuant to California Public Records Act, Government Code §§ 6250, et seq. and Article I, section 3(b) of the California Constitution, requesting “**immediate access to any and all public records referring or related**” to the Project (“PRA Request”) (emphasis added).³ The DEIR Request and the PRA Request were sent separately to avoid confusion as to what documents and records were sought.

On April 19, 2021, the County provided an initial response to our DEIR Reference Request through email indicating that the request was received.⁴ Similarly, on April 19, 2021, the County acknowledged receipt of the PRA Request by email.⁵ On April 26, 2021 we received two emails from the County with the same subject, the first at 2:59 p.m. and the second at 3:04 p.m.⁶ Both emails had an attached letter from Zayante (Zoey) P. Merrill, San Joaquin County Deputy County Counsel.⁷ Both email subject lines referenced the DEIR Request, however both

² See Exhibit A, Letter from Adams, Broadwell, Joseph & Cardozo (“ABJC”) re Request for Immediate Access to Documents Referenced in the Draft EIR – 14800 W. Schulte Road Logistics Center Project, PA-1900208 (SA) & PA-2000162 (ER) SCH: 2020110406 (April 19, 2021).

³ See Exhibit C, Letter from Adams, Broadwell, Joseph & Cardozo (“ABJC”) re Request for Immediate Access to Public Records – 14800 W. Schulte Road Logistics Center Project, PA-1900208 (SA) & PA-2000162 (ER) SCH: 2020110406 (April 19, 2021).

⁴ See Exhibit B, Email from M. Southmayd, Office Assistant, to L, LeLe, ABJC, re Request for Immediate Access to Documents Referenced in the Draft EIR – 14800 W. Schulte Road Logistics Center Project (5199) (April 19, 2021).

⁵ See Exhibit D, Email from M. Southmayd, Office Assistant, to L, LeLe, ABJC, re Request for Immediate Access to Public Records – 14800 W. Schulte Road Logistics Center Project (5199) (April 19, 2021).

⁶ See Exhibit E, Email from D. Rosal, Senior Office Assistant, to K. Carmichael, ABJC, re April 19, 2021 Request for Immediate Access to Documents Referenced in the Draft EIR – 14800 W. Schulte Road Logistics Center Project, PA-1900208 (SA) & PA-2000162 (ER) (April 26, 2021). *See also*, Exhibit F, Email from D. Rosal, Senior Office Assistant, to K. Carmichael, ABJC, re April 19, 2021 Request for Immediate Access to Documents Referenced in the Draft EIR – 14800 W. Schulte Road Logistics Center Project, PA-1900208 (SA) & PA-2000162 (ER) (April 26, 2021).

⁷ See Exhibit G, Letter from County of San Joaquin re April 19, 2021 Request for Immediate Access to “Public Records” – 14800 W. Schulte Road Logistics Center Project, PA-1900208 (SA) & PA-2000162 (ER).

May 7, 2021

Page 3

emails had an attached letter that responded to our PRA Request, specifically citing that they were in response to the April 19, 2021 letter requesting immediate access to public records pursuant to the California Public Records Act, Government Code §6250.⁸

On April 29, 2021, the County sent an email with a link to documents, including the Project application received by the County by Applicant and 395 emails regarding the Project.⁹ The County deemed the PRA Request completed at that point.¹⁰

On May 5, 2021, we sent an email to the County requesting access to two specific documents referenced in the DEIR that had not been provided to us, specifically the Phase I and Phase II environmental studies of the Project site, and requesting the release of all other documents referenced in the DEIR pursuant to our April 19, 2021 DEIR Reference Request.¹¹

On May 6, 2021 we received a response to the May 5, 2021 email with the two documents requested, however, the remaining DEIR reference documents were not provided.¹² To date, we have not received any further communications from the County related our DEIR Reference Request, and no further responsive documents have been provided.

During our subsequent review of the DEIR, we have identified *dozens* of documents and files that are referenced in the DEIR which have not been provided in response to our DEIR Reference Request, including the entire set of reference documents identified in DEIR Chapter 4, *Environmental Analysis*, that are not accompanied by weblinks, among other documents. These missing documents are critical to understanding and commenting on the DEIR's analysis of the Project's

⁸ *Id.*

⁹ See Exhibit H, Email from Z. Merrill, Deputy County Counsel, to K. Carmichael, ABJC, re April 19, 2021 Request for Immediate Access to "Public Records" – 14800 W. Schulte Road Logistics Center Project, PA-1900208 (SA) & PA-2000162 (ER). (April 29, 2021).

¹⁰ *Id.*

¹¹ See Exhibit I, Email from K. Carmichael, ABJC to J. Jolley, County Planner, re Request for Documents Referenced in the Draft EIR for 14800 W. Schulte Road Logistics Center Project, PA-1900208 (SA) & PA-2000162 (ER) (May 5, 2021).

¹² See Exhibit J, Email from A. Goulart, County Planner to K. Carmichael, ABJC, re Drop Box link for Tracy Biomass ESA documents. (May 6, 2021).

May 7, 2021

Page 4

impacts to several critical resource areas, including, in particular, the DEIR's air quality, transportation, greenhouse gas, and hazardous materials analyses. We are unable to meaningfully review and comment on the DEIR without these documents.

The missing documents include, but are not limited to, the following:

- All references cited in DEIR, Chapter 4.1.7, References Cited, that are not accompanied by a web link. This includes 6 documents without web links.
- All references cited in DEIR, Chapter 4.2.7, References Cited, that are not accompanied by a web link. This includes 1 document without a web link.
- All references cited in DEIR, Chapter 4.5.7, References Cited, that are not accompanied by a web link. This includes 6 documents without web links.
- All references cited in DEIR, Chapter 4.6.7, References Cited, that are not accompanied by a web link. This includes 6 documents without web links.
- All references cited in DEIR, Chapter 4.7.7, References Cited, that are not accompanied by a web link. This includes 3 documents without web links.
- All references cited in DEIR, Chapter 5.14, References Cited, that are not accompanied by a web link. This includes 1 document without a web link.
- All references cited in DEIR, Chapter 6.4, References Cited, that are not accompanied by a web link. This includes 1 document without a web link.

Without access to these critical DEIR reference documents during the public comment period on the DEIR, San Joaquin Residents and other members of the public are precluded from having the meaningful opportunity to comment on the DEIR that is required by CEQA. The County's failure to make the underlying DEIR documents available during the entire comment period makes public review particularly burdensome in this case because of the DEIR's reliance on missing documents for significance determinations and mitigation measures to address the Project's air quality, health risk, and hazardous materials impacts. Without having access to these documents, San Joaquin Residents and other members of the public are unable to evaluate the accuracy of the City's air quality, health risk, and hazardous materials impact analysis, or the efficacy of the County's proposed mitigation measures. Additionally, the size of the DEIR and the Project's complexity make it difficult to effectively comment on the DEIR without the referenced documents by the current comment deadline of May 17, 2021.

The courts have held that the failure to provide even a few pages of a CEQA documents for a portion of the CEQA review period invalidates the entire CEQA process, and that such a failure must be remedied by permitting additional public

May 7, 2021

Page 5

comment.¹³ It is also well settled that an EIR may not rely on hidden studies or documents that are not provided to the public.¹⁴ By failing to make all documents referenced in the DEIR “readily available” during the current comment period, the County is violating the clear procedural mandates of CEQA, to the detriment of San Joaquin Residents and other members of the public who wish to meaningfully review and comment on the DEIR.

Accordingly, we request that:

- 1) the County immediately provide us with access to the missing documents requested in our April 19, 2021 DEIR Reference Request.
- 2) the County extend the public review and comment period on the DEIR for at least 45 days from the date on which the County releases these documents for public review.¹⁵ If the missing documents are provided today, we request an extension to June 21, 2021.

Given the shortness of time before the current comment deadline, please contact me as soon as possible with your response to this request, but **no later than Monday, May 10, 2021.**

Please feel free to call or email with any questions: Tel: (650) 589-1660, Email: kcarmichael@adamsbroadwell.com. Thank you for your prompt attention and response to this matter.

Sincerely,



Kevin T. Carmichael
Associate Attorney

KTC:ljl

¹³ *Ultramar v. South Coast Air Quality Man. Dist.* (1993) 17 Cal.App.4th 689, 699.

¹⁴ *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.”).

¹⁵ This Project has a 45-day public comment period, pursuant to 14 CCR § 15105 (projects submitted to the State Clearinghouse).