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February 24, 2022

### **Via Email & Overnight Mail:**

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Re: **Comments on the DEIR for TC NO. CAL. Development  
Warehousing and Distribution Facility Project  
(SCH Number 2021080499)**

Dear Mr. Cashman and Mr. Escobar

We write on behalf of **San Joaquin Residents for Responsible Development** (“San Joaquin Residents”) to provide comments on the Draft environmental Impact Report (“DEIR”) prepared by the Port of Stockton (“Port”) for the Warehousing and Distribution Facility Project (SCH Number 2021080499) (“Project”) proposed by Trammel Crow Company d.b.a. TC NO. CAL. Development (“Applicant”).<sup>1</sup>

## **I. INTRODUCTION**

Under the proposed Project, the Port would issue a lease to the Applicant to construct a 655,200-square foot, 36-foot clear height, concrete tilt-up build-to-suit warehouse structure on 60 acres on Rough and Ready Island, the West Complex of the Port of Stockton, San Joaquin County (Accessor’s Parcel Number 162-030-070-000). The Project would include construction of a 293,951-square foot outdoor storage area, 418 car and truck trailer parking spaces, trailer storage, truck docks,

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<sup>1</sup> TC NO. CAL. Development Warehousing and Distribution Facility Project State Clearinghouse Number: 2021080499, Draft Environmental Impact Report (January 2022) available at <https://ceqanet.opr.ca.gov/2021080499/2>.  
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ABJC-1 | rail service and spurs, detention ponds, and minor ancillary structures on the existing vacant area (collectively, “Distribution Facility”).<sup>2</sup> Once constructed, the Applicant would sublease the Distribution Facility to a commercial operator to use the Project to receive, store, and distribute bulk building products and consumer goods.<sup>3</sup> The proposed Project also includes remediation of contaminated soils from past U.S. Department of the Navy (“Navy”) activities associated with the Project site.<sup>4</sup> The constituents of concern (“COC”)s at the Project site are arsenic, five polycyclic aromatic hydrocarbons (“PAH”)s, and, in limited areas, organochlorine pesticides (“OCP”)s, including DDT. Remediation would occur in areas throughout the 102-acre project site, including the 60 acres on which the Distribution Facility would be developed as well as on approximately 42 acres to the east and west.<sup>5</sup> Approximately 16 acres of the Project site would remain undeveloped after remediation, and 26 acres of the site would undergo remediation and pavement repairs.<sup>6</sup> The DEIR does not describe the disposition of the 26 acre portion of the Project site beyond the planned remediation and pavement repairs.

ABJC-2 | The DEIR fails to comply with the California Environmental Quality Act<sup>7</sup>s (“CEQA”) basic requirement to act as an “informational document.” It is devoid of meaningful details in critical areas, such as air quality, health risk, noise, and biological impacts, without which the public and decisionmakers cannot adequately assess the Project’s significant impacts. Because of the DEIR’s shortcomings, it is deficient as a matter of law because it fails to properly disclose and mitigate the Project’s potentially significant impacts. The DEIR also lacks substantial evidence to support the Port’s conclusions regarding the Project’s impacts and proposed mitigation. These deficiencies render the document inadequate for purposes of compliance with CEQA.

We reviewed the DEIR, technical appendices, and reference documents, with the assistance of our expert consultants, including air quality and hazardous materials expert James J.J. Clark, Ph.D., biological resourced expert Renee Owens, and transportation expert Daniel T. Smith Jr., whose comments and qualifications

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<sup>2</sup> DEIR, p. 28.

<sup>3</sup> DEIR, p. 15.

<sup>4</sup> DEIR, p. 15.

<sup>5</sup> DEIR, p. 15.

<sup>6</sup> DEIR, p. 20.

<sup>7</sup> Pub. Res. Code §§ 21000 et seq.; 14 Cal. Code Regs. (“CCR”) §§ 15000 et seq. 5660-006j

are included as Exhibit A, Exhibit B and Exhibit C respectively.<sup>8</sup> Dr. Clark, Ms. Owens and Mr. Smith provide substantial evidence of potentially significant impacts that have not been adequately disclosed, analyzed, or mitigated. The Port must address and respond to their comments separately and fully.<sup>9</sup>

## II. STATEMENT OF INTEREST

San Joaquin Residents is an unincorporated association of individuals and labor organizations with members who may be adversely affected by the potential public and worker health and safety hazards and environmental and public service impacts of the Project. The association includes individual members and Stockton residents Steven Dickinson, David Gracian, and Tim Knoeb, as well as the International Brotherhood of Electrical Workers Local 595, Plumbers & Steamfitters Local 442, Sheet Metal Workers Local 104, Sprinkler Fitters Local 669, District Council of Ironworkers and their members and their families, and other individuals that live, recreate and/or work in and around San Joaquin County.

San Joaquin Residents supports the development of sustainable commercial and industrial centers where properly analyzed and carefully planned to minimize impacts on public health and the environment. Large warehouse projects like this Project should avoid adverse impacts to air quality, noise levels, transportation, biological resources and public health, and should take all feasible steps to ensure unavoidable impacts are mitigated to the maximum extent feasible. Only by maintaining the highest standards can commercial and industrial development truly be sustainable.

The individual members of San Joaquin Residents and the members of the affiliated labor organizations live, work, recreate and raise their families in and around the County. They would be directly affected by the Project's environmental and health and safety impacts. Individual members may also work constructing the

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<sup>8</sup> **Exhibit A**, Letter from James J.J. Clark, Ph.D., Clark & Associates, Comments on Draft Environmental Impact Report TC NO. CAL. Development Warehousing and Distribution Facility Project State Clearinghouse Number: 2021080499 (February 24, 2022) (hereinafter "Clark Comments"); **Exhibit B**, Letter from Renee Owens, Comments on the Draft Environmental Impact Report for the TC NO. CAL. Development Warehousing and Distribution Facility Project State Clearinghouse Number: 2021080499 (February 24, 2022) (hereinafter "Owens Comments"); **Exhibit C**, Letter from Daniel T. Smith Jr., TC NO. CAL. Development Warehousing and Distribution Facility DEIR (SCH Number: 2021080499) (February 23, 2022) (hereinafter "Smith Comments").

<sup>9</sup> 14 CCR §§ 15088(a), (c).  
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Project itself. They would be the first in line to be exposed to any health and safety hazards which may be present on the Project site. They each have a personal interest in protecting the Project area from unnecessary, adverse environmental and public health impacts.

San Joaquin Residents and its members also have an interest in enforcing environmental laws that encourage sustainable development and ensure a safe working environment for the members they represent. Environmentally detrimental projects can jeopardize future jobs by making it more difficult and more expensive for industry to expand in the County, and by making it less desirable for businesses to locate and people to live and recreate in the County, including the Project vicinity. Continued environmental degradation can, and has, caused construction moratoriums and other restrictions on growth that, in turn, reduces future employment opportunities.

Finally, San Joaquin Residents is concerned with projects that can result in serious environmental harm without providing countervailing economic benefits. CEQA provides a balancing process whereby economic benefits are weighed against significant impacts to the environment.<sup>10</sup> It is in this spirit we offer these comments.

### III. LEGAL BACKGROUND

CEQA requires public agencies to analyze the potential environmental impacts of their proposed actions in an EIR.<sup>11</sup> “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.”<sup>12</sup>

CEQA has two primary purposes. First, CEQA is designed to inform decisionmakers and the public about the potential significant environmental effects of a project.<sup>13</sup> “Its purpose is to inform the public and its responsible officials of the

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<sup>10</sup> Pub. Resources Code § 21081(a)(3); *Citizens for Sensible Development of Bishop Area v. County of Inyo* (1985) 172 Cal.App.3d 151, 171.

<sup>11</sup> PRC § 21100.

<sup>12</sup> *Laurel Heights Improvement Assn. v. Regents of Univ. of Cal* (“*Laurel Heights I*”) (1988) 47 Cal.3d 376, 390 (internal quotations omitted).

<sup>13</sup> Pub. Resources Code § 21061; CEQA Guidelines §§ 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 5660-006j

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environmental consequences of their decisions before they are made. Thus, the EIR ‘protects not only the environment but also informed self-government.’<sup>14</sup> 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.”<sup>15</sup> 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.”<sup>16</sup>

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.<sup>17</sup> 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.”<sup>18</sup> 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” to the greatest extent feasible and that any unavoidable significant effects on the environment are “acceptable due to overriding concerns.”<sup>19</sup>

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.’”<sup>20</sup> As the courts have explained, a prejudicial abuse of discretion occurs “if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby

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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.”)

<sup>14</sup> *Citizens of Goleta Valley*, 52 Cal.3d at p. 564 (quoting *Laurel Heights I*, 47 Cal.3d at 392).

<sup>15</sup> *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).

<sup>16</sup> CEQA Guidelines § 15003(b).

<sup>17</sup> *Id.* § 15002(a)(2), (3); *see also Berkeley Jets*, 91 Cal.App.4th at 1354; *Citizens of Goleta Valley*, 52 Cal.3d at p. 564.

<sup>18</sup> CEQA Guidelines § 15002(a)(2).

<sup>19</sup> PRC § 21081(a)(3), (b); CCR §§ 15090(a), 15091(a), 15092(b)(2)(A), (B); *Covington v. Great Basin Unified Air Pollution Control Dist.* (2019) 43 Cal.App.5th 867, 883.

<sup>20</sup> *Berkeley Jets*, 91 Cal.App.4th at p. 1355 (emphasis added) (quoting *Laurel Heights I*, 47 Cal.3d at 391, 409, fn. 12).

thwarting the statutory goals of the EIR process.”<sup>21</sup> “The ultimate inquiry, as case 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.’”<sup>22</sup>

#### IV. THE DEIR’S BASELINE FOR THE PROJECT’S BIOLOGICAL IMPACTS FAILS TO COMPLY WITH CEQA

ABJC-4 An unsupported baseline renders an EIR deficient under CEQA.<sup>23</sup> 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.”<sup>24</sup> The environmental analysis conducted by the air district in that case improperly used a theoretical level of NO<sub>x</sub> emissions that did not match actual operations.<sup>25</sup> The Court explained that failure to represent actual operational conditions, undermines the purpose of CEQA to fully inform decision makers and the public.<sup>26</sup>

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.<sup>27</sup> In *AIR v. Kern County*, the Court of Appeal reasoned that the

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<sup>21</sup> *Berkeley Jets*, 91 Cal.App.4th at p. 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 decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process); *Galante Vineyards*, 60 Cal.App.4th at p. 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).

<sup>22</sup> *Sierra Club*, 6 Cal.5th at p. 516 (quoting *Laurel Heights I*, 47 Cal.3d at 405).

<sup>23</sup> *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (“*CBE v. SCAQMD*”) (2010) 48 Cal.4th 310, 328.

<sup>24</sup> *CBE v. SCAQMD*, 48 Cal.4th at 322.

<sup>25</sup> *Id.* at 320–322, 328.

<sup>26</sup> *Id.* at 328.

<sup>27</sup> *Association of Irrigated Residents v. Kern County Board of Supervisors* (“*AIR v. Kern County*”) (2017) 17 Cal.App.5th 708, 728–729.

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(cont.) 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 throughout from 2001 to 2008.<sup>28</sup>

As with the CEQA documents in both of the above cases, the DEIR here mischaracterizes information relevant to the baseline conditions present at the site and how the Project will impact the environment. Specifically, the DEIR fails to use appropriate scientific language to establish the existing baseline conditions for biological resources on site.

ABJC-5 First, the DEIR and the Port's website conflicting and inconsistent statements about existing biological conditions at the Project site. The DEIR states that, due to the Project site's "degraded condition" and proximity to industrialized development, it has little likelihood for any wildlife present onsite, including all special status species mentioned.<sup>29</sup> However, the Port's website describes a different reality than the one presented in the DEIR, stating that the Port is "plays host to a wide array of plant and animal life, and, while commerce and trade are the primary objectives of the Port, the need to be good stewards of the environment is taken very seriously."<sup>30</sup> To underscore this, the Port describes how it has erected dozens of bird and bat boxes in the vicinity of the Project site.<sup>31</sup> Ms. Owens states that the Project site has the potential to be utilized by a variety of wildlife, regardless if the Project site lacks high value breeding habitat for a given species.<sup>32</sup> Ms. Owens also explains that the Project site lies adjacent to several high value wetlands to the north, south, and east, and is therefore reasonably likely to be used as a corridor, stopover, and foraging resource by a host of species which the DEIR fails to mention in its description of the Project site.<sup>33</sup>

ABJC-7 The DEIR also contains conflicting and incomplete analyses of wetlands onsite. First, the DEIR describes the presence of wetlands, stating that "emergent wetlands" exist along drainage ditches onsite, and "these features may be considered waters of the state under the RWQCB's jurisdiction and are potentially under CDFW's jurisdiction,"<sup>34</sup> that a "small seasonal wetland and alkaline scald

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<sup>28</sup> *Id.*

<sup>29</sup> DEIR, p. 83.

<sup>30</sup> <https://www.portofstockton.com/wildlife/>

<sup>31</sup> *Ibid.*

<sup>32</sup> Owens Comments, p. 3.

<sup>33</sup> Owens Comments, p. 3.

<sup>34</sup> DEIR Appendix B p. 21  
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(cont.)

mapped in the study area would likely be subject to RWQCB regulation pursuant to the Porter-Cologne Water Quality Control Act,” and “the ultimate determination of jurisdiction is the responsibility of the regulatory agencies.” The DEIR then claims, without support, that it is “unlikely that ...emergent vegetation would be subject to CDFW jurisdiction pursuant to Section 1602 of the California Fish and Game Code.”<sup>35</sup> As Ms. Owens points out, this assumption is based on an inaccurate description of the origin and function of the wetlands onsite.<sup>36</sup> The DEIR’s argument for exclusion of this wetland is not part of CDFW Code 1602. CDFW does not conduct independent analysis for 1602 permit applications, and instead relies on CEQA documentation for its information and analysis. Therefore, the DEIR fails as a necessary informational resource to provide the requisite detail for Section 1602 requirements and cannot conclude that the wetlands onsite are excluded from coverage under Section 1602.

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Second, the DEIR presents a subjective, incomplete description of the Project site’s biological baseline status by using layman’s terms in lieu of quantitative or ecologically standardized terminology commonly used by EIR preparers and biologists. CEQA requires a detailed analysis of environmental and public health impacts, regardless of the guidance relied upon by the lead agency,<sup>37</sup> and prohibits an agency from concluding that an impact is insignificant unless it produces rigorous analysis and concrete substantial evidence, including accurate scientific and factual data, to justify the finding.<sup>38</sup>

Ms. Owens explains that the DEIR uses unscientific phrases such as “highly industrialized,”<sup>39</sup> “largely vacant,”<sup>40</sup> “ruderal”, partly covered with “lawn” and “some native and non-native trees”.<sup>41</sup> Additionally, the DEIR refers to bordering habitat and riparian areas as “more natural”<sup>42</sup>, which, according to Ms. Owens is an undefined and meaningless term from which scientific detail is lacking. The DEIR

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<sup>35</sup> DEIR p. 82.

<sup>36</sup> Owens Comments, p. 22.

<sup>37</sup> *Neighbors for Smart Rail v. Exposition Metro Line Const. Authority* (2013) 57 Cal.4th 439, 453 (lead agency has discretion to select the model or methodology it considers most appropriate provided it supports its decision with substantial evidence)

<sup>38</sup> *Kings Cty. Farm Bur. v. Hanford* (1990) 221 Cal.App.3d 692, 732; 14 C.C.R. § 15064(b)(1); 14 CCR § 15151 (EIR must contain a sufficient degree of analysis to enable the decisionmakers to make an intelligent and informed decision).

<sup>39</sup> DEIR p. ES-9

<sup>40</sup> DEIR p. 49

<sup>41</sup> Owens Comments, p. 4.

<sup>42</sup> DEIR, p. 82.



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(cont.)

states that “emergent wetlands” are present along existing drainage ditches; but downplays their significance, calling them “sparse,” with no further explanation.<sup>43</sup> The vague terminology used to describe the Project’s baseline biological conditions does not meet the CEQA standard that agencies should base significance determinations on scientific and factual data. The DEIR fails to use appropriate language which is required to study biological impacts under CEQA. As a result, the DEIR’s baseline analysis lacks evidentiary support, and lacks the rigorous analysis required by CEQA.

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Third, Ms. Owens observed that the DEIR presents conflicting information regarding the potential for wildlife.<sup>44</sup> The DEIR explains that the Port land adjacent of the Project site provides abundant barn owl nesting habitat, stating that the Port installed barn owl nest boxes throughout the East and West Complexes to provide nesting habitat for barn owls.<sup>45</sup> According to the Port’s website, the Port currently has 15 barn owl nest boxes, which have housed more than 200 new owls. The nest boxes are described as “valuable and safe habitat and natural rodent control”.<sup>46</sup> Additionally, two boxes are outfitted with streaming cameras that allow the public to learn more about Port wildlife.<sup>47</sup> The DEIR also explains that the Port land adjacent of the Project site provides bat habitat, stating: “In addition to the Port’s very successful Owl Nest Box Program, the Port established its Bat Roosting Box Program in 2012. All bats in California are protected. The goal of the program is to provide suitable roosting sites and encourage the bats to raise young and establish themselves in the area.”<sup>48</sup>

According to Ms. Owens, in order for owls, bats, and their prey to exist in and around the Project site, there must be adequate habitat for foraging, safe movement (through corridors), and other biotic and abiotic factors contributing to their reproductive success.<sup>49</sup> As such, the Port’s own website conflicts with the DEIR’s attempt to describe the site as not supportive of wildlife, a proposition which lacks evidentiary support in the DEIR. Ms. Owens states that there is an abundance of data which demonstrates use of urban and so-called industrialized areas like the

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<sup>43</sup> DEIR, p. 81.

<sup>44</sup> Owens Comments, p. 4.

<sup>45</sup> See <https://www.portofstockton.com/wildlife/>

<sup>46</sup> See <https://www.portofstockton.com/wildlife/>

<sup>47</sup> See <https://www.portofstockton.com/wildlife/>

<sup>48</sup> See <https://www.portofstockton.com/wildlife/>

<sup>49</sup> Owens Comments, p. 5.

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(cont.)

Project site by a host of species, including special status species noted near the Project site in the California natural Diversity Database (“CNDDDB”), and on EBird for breeding, foraging, as a stopover, and a migratory corridor.<sup>50</sup>

Fourth, the DEIR provides no illustrative maps of habitats or wetlands on the Project site or its borders, including the standard maps that illustrate scientifically recognized vegetation communities (utilizing geospatial and ecological data standards, i.e., scope, acreage, type, and location) necessary for mitigation and habitat remediation. In particular, there are no maps or descriptions of the vegetation communities present as described by the U.S. National Vegetation Classification System<sup>51</sup> and the California Vegetation Classification and Mapping Standards,<sup>52</sup> created in part by the California Department of Fish and Wildlife (“CDFW”) and California Native Plant Society (“CNPS”).

Ms. Owens explains that scientifically defined ecological vegetation communities are standardized to be indicative of various biological factors, including vegetation where ecological processes primarily determine floral and faunal species and reflect other biotic and abiotic site characteristics, plus related abiotic characteristics including aspects of water cycles, fire patterns, and susceptibility to climate change and drought.<sup>53</sup> Ms. Owens states that using universally adopted, scientifically defined descriptions of vegetation communities not only allows for a thorough analysis of site impacts, but also provides a standard that is used by wildlife regulatory agencies when assisting with creation, review, and assessment of success of mitigation.<sup>54</sup> Ms. Owens states that the standard is of particular importance given that the DEIR’s biological impact mitigation measures rely heavily on deferral of mitigation by way of the assumption that most mitigation responsibilities will be met by applying for coverage San Joaquin County Multi-Species Habitat Conservation and Open Space Plan (“SJMSCP”).<sup>55</sup>

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<sup>50</sup> Owens Comments, p. 5.

<sup>51</sup> See: <https://www.nps.gov/articles/sw-vegetation-mapping-national-classification-system.htm>

<sup>52</sup> See: <https://wildlife.ca.gov/data/vegcamp/publications-and-protocols>

<sup>53</sup> Owens Comments, p. 6.

<sup>54</sup> Owens Comments, p. 6.

<sup>55</sup> See <https://www.sjcog.org/151/Habitat-Technical-Advisory-Committee> 5660-006j

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Finally, the DEIR’s description of methods used to assess the biological baseline and resultant impacts is almost entirely limited to the following:

Biological conditions in the project area were observed during surveys of the project area and a jurisdictional waters and wetlands delineation conducted in 2021 (Anchor QEA 2021b; WRA 2021). A search of the CNDDDB was conducted to identify recorded special status species occurrences within the U.S. Geological Survey Stockton West 7.5-minute quadrangle.<sup>56</sup>

The DEIR claims that potential impacts to biological resources were “qualitatively evaluated” based on “recent” agency “lists” for special status species with the potential to inhabit the project site, the wetland delineation report, and “local observations”<sup>57</sup>. These terms are not defined or described and therefore do not contribute to scientific or statistical evidence to the degree necessary for CEQA review.

For the above reasons, the DEIR fails to establish a proper baseline to determine the biological resources impacts of the Project, rendering the DEIR 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 ADEQUATELY MITIGATE SIGNIFICANT TRANSPORTATION IMPACTS**

CEQA requires agencies to commit to all feasible mitigation measures to reduce significant environmental impacts.<sup>58</sup> 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 extent feasible.<sup>59</sup> 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 the significant transportation impacts of the Project.

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<sup>56</sup> DEIR, pp. 81-82

<sup>57</sup> DEIR, p. 90.

<sup>58</sup> 14 C.C.R. § 15002(a)(2).

<sup>59</sup> 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.

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ABJC-14

**A. The DEIR Fails to Require All Feasible Mitigation Measures to Reduce VMT from Project Operation to the Greatest Extent Feasible**

The DEIR states that the Project will generate an average VMT per employee of 21.96 miles per day, which is 38.98 percent higher than the City's threshold of 15.8 miles per day.<sup>60</sup> While the Port may not be able to reduce the VMT impact below the threshold of significance, CEQA requires that the Port consider additional feasible mitigation to reduce the Project's impacts to the greatest extent possible before declaring the impact significant and unavoidable.

Mr. Smith explains in his comments that the Transportation Demand Management ("TDM") program proposed as MM-TRA-3 is ineffective as written and can feasibly be bolstered to provide additional reductions to VMT. As proposed, MM-TRA-3 requires the following:

- Identification of locations along the project frontage on the Port of Stockton Expressway/McCloy Avenue where bus stops could be constructed with a pedestrian connection from the bus stop to primary building entrances.
- Coordination with the San Joaquin RTD to determine if transit services could be provided to the project site and if service could be coordinated to accommodate future shift changes.
- Implementation of a commute trip reduction program that could include a carpooling/ride-matching program and/or preferential carpool parking.<sup>61</sup>

Mr. Smith concludes that the TDM program can and should be significantly strengthened. First, he states that the locations where bus stops could be placed should not be merely identified. Rather, Bus stops should be required to be built into the Project so that they are in place when and if regular bus or special shift-change shuttle services are implemented.<sup>62</sup> Second, the Applicant should be required to pay San Joaquin RTD to operate a shuttle service to the Port and Project site, at least for the shift change times of the 'day' shift, or, alternatively, provide access to a private shuttle service.<sup>63</sup> Mr. Smith notes that the second provision has limited effectiveness, as employees who begin or end their shifts late

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<sup>60</sup> DEIR, p. 202.

<sup>61</sup> DEIR, pp. 202-203.

<sup>62</sup> Smith Comments, p. 2.

<sup>63</sup> Smith Comments, p. 2.

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at night are not able to use connected transit services as they are largely inoperative late at night, and that additional mitigation would be needed to address night shift VMT.<sup>64</sup>

By bolstering the TDM plan required under MM-TRA-3 with the above feasible measures, Mr. Smith concludes that the Project could achieve additional reductions in VMT over the mitigation measures included in the DEIR. The Port must consider the addition of the proposed measures to further reduce Project VMT.

**B. The DEIR Fails to Require All Feasible Mitigation Measures to Reduce Traffic Impacts on Charter Way**

ABJC-16

The DEIR states that the Project would result in an increase in the length of queues on the left turn lane from Charter Way eastbound to I-5 northbound on-ramp from 375 feet to 425 feet in the AM peak and from 675 feet to 725 feet in the PM peak.<sup>65</sup> Mr. Smith notes in his comments that, in both instances, the traffic queues “exceed the queue storage capacity” of the left turn pocket, where the AM peak queue would cause it to extend into the intersection of Charter Way with the I-5 southbound ramps, while the PM peak queue would extend through and well west of the intersection of Charter Way with the I-5 southbound ramps.<sup>66</sup> The Port proposes to work with the Applicant and the City to retime the traffic signal at the Charter Way/I-5 northbound ramps intersection.<sup>67</sup> However, as Mr. Smith points out, this mitigation measure does not eliminate the problem, since the queue overflows are already blocking flows in the leftmost of the two eastbound through lanes at the subject intersection.<sup>68</sup> Mr. Smith states that the Port should seek to combine revised signal timing with conversion of the left through eastbound lane into a second left turn lane in order to increase queueing capacity at the intersection.<sup>69</sup> The conversion of the left through lane is a feasible mitigation measure that could further reduce the significant impact and the potential hazardous conditions at the Charter Way intersection. The Port must consider this feasible mitigation and provide the decisionmakers and the public the opportunity to evaluate the mitigation measures in a revised EIR.

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<sup>64</sup> Smith Comments, p. 2.

<sup>65</sup> DEIR, p. 203.

<sup>66</sup> Smith Comments, p. 2.

<sup>67</sup> DEIR, p. 199.

<sup>68</sup> Smith Comments, p. 3.

<sup>69</sup> Smith Comments, p. 3.

## **VI. THE DEIR FAILS TO ADEQUATELY DISCLOSE, ANALYZE, AND MITIGATE SIGNIFICANT HAZARDOUS MATERIALS AND 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 levels. The lead agency's significance determination for each impact must be supported by accurate scientific and factual data.<sup>70</sup>

ABJC-17

An agency cannot conclude that an impact is less than significant unless it produces rigorous analysis and concrete substantial evidence justifying the finding.<sup>71</sup> The failure to provide information required by CEQA is a failure to proceed in the manner required by law.<sup>72</sup> 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.'<sup>73</sup>

As explained below, the DEIR fails to adequately support its analysis of construction and operational impacts and underestimates significant construction and operational emissions. The DEIR also understates the degree to which annual operational emissions of NO<sub>x</sub> 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 Fails to Analyze Potentially Significant Hazardous Materials Impacts from Consolidation of Contaminated Soils on Site**

ABJC-18

The DEIR states that 57,000 cubic yards of hazardous soils that are currently present at the Project site will be consolidated on site and covered with a durable cover.<sup>74</sup> Dr. Clark states in his comments that this measure does not remediate the

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<sup>70</sup> 14 C.C.R. § 15064(b).

<sup>71</sup> *Kings Cty. Farm Bur. v. Hanford* (1990) 221 Cal.App.3d 692, 732.

<sup>72</sup> *Sierra Club v. State Bd. Of Forestry* (1994) 7 Cal.4th 1215, 1236.

<sup>73</sup> *Berkeley Jets*, 91 Cal.App.4th at 1355.

<sup>74</sup> DEIR, p. 157.

hazardous waste issues present at the Project site, and instead results in a more concentrated source of pollutants that the DEIR fails to analyze.<sup>75</sup> Dr. Clark states that the remedial step will only delay the inevitable need to remove the contaminants of concern, or isolate them to prevent them from migrating into the environment.<sup>76</sup>

Dr. Clark explains that the DEIR fails to include any plan to construct an engineered containment cell to prevent the infiltration of the hazardous waste into the subsurface or groundwater.<sup>77</sup> The DEIR must analyze the impacts from consolidating the contaminated soils, the potential for contaminated soils to migrate off-site via fugitive dust transfer mechanisms, and determine the potential health impacts on workers at adjacent properties or residents down wind of the remediation efforts.<sup>78</sup>

The Site location is subject to a Pre-Decisional Land Use Covenant (“LUC”) that specifies that the Property may not be used in a manner that causes the covering or disturbing of groundwater monitoring wells, or any use of the Property in a manner that restricts access to groundwater monitoring wells; that there will be no alteration of groundwater conditions within the Property, through activities such as construction of any well, extraction, use or consumption of groundwater from wells within the boundary of the Property, use of any groundwater within the boundary of the property, construction or creation of any groundwater recharge area, unlined surface impoundments or disposal trenches, unless specifically approved by the State; or any use that would restrict investigation activities, remedial actions, or long-term maintenance and operations.<sup>79</sup> Dr. Clark states that without a clear description of the interior lining to prevent the migration of the contaminants into the subsurface and groundwater, the DEIR clearly contradicts the Pre-Decisional LUC regarding the use of unlined surface impoundments or disposal trenches.<sup>80</sup>

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<sup>75</sup> Clark Comments, p. 3.

<sup>76</sup> Clark Comments, p. 3.

<sup>77</sup> Clark Comments, p. 3.

<sup>78</sup> The disturbance of toxic soil contamination at a project site is a potentially significant impact requiring CEQA review and mitigation. *Cal. Build. Indust. Ass’n v. BAAQMD* (2015) 62 Cal.4th 369, 388-90; *Association For A Cleaner Environment v. Yosemite Comm. College Dist.* (2004) 116 Cal.App.4th 629

<sup>79</sup> Geosyntec, Revised Draft Site 47 Remedial Investigation/Focused Feasibility Study For Soil Rough And Ready Island Port Of Stockton (June 21, 2021). p. 3.

<sup>80</sup> Clark Comments, p. 4.

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(cont.)

The Port must fully analyze the potentially significant hazardous materials and health risks resulting from consolidating hazardous soils on the Project site in a revised DEIR, and include additional mitigation measures to reduce the potentially significant impacts to less than significant levels.

**B. 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**

ABJC-19

CEQA requires agencies to commit to all feasible mitigation measures to reduce significant environmental impacts.<sup>81</sup> 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 extent feasible.<sup>82</sup> 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.

Dr. Clark explains that, although a substantial portion of NO<sub>x</sub> emissions come from mobile sources, the DEIR neglects to incorporate effective mitigation measures to address those sources of pollution. Dr. Clark explains that the Port must implement additional mitigation measures to reduce substantial NO<sub>x</sub> emissions from mobile sources.<sup>83</sup>

The DEIR fails to demonstrate that the proposed mitigation measures will be effective in reducing the Project's significant air quality impacts. The DEIR states that the Project would exceed the SJVAPCD threshold for NO<sub>x</sub> during operation and concludes that the Project would potentially conflict with or delay implementation of the SJVAPCD attainment plans and would result in a potentially significant impact.<sup>84</sup> The DEIR states "operational emissions would exceed annual SJVAPCD NO<sub>x</sub> threshold in the SJVAB. NO<sub>x</sub> emission would be generated by truck operation on terminal and travel and rail operation on terminal and travel.

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<sup>81</sup> 14 C.C.R. § 15002(a)(2).

<sup>82</sup> 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.

<sup>83</sup> Clark Comments, p .10.

<sup>84</sup> DEIR, p. 73.



Accordingly, impacts would be considered significant.”<sup>85</sup> CEQA requires that an EIR discuss mitigation measures that can minimize a project’s significant environmental effects.<sup>86</sup> A reviewing court will not defer to an agency’s determination that mitigation measures will work when their efficacy is not apparent and there is no evidence in the record showing that they will be effective in remedying the identified environmental problem.<sup>87</sup> Here, the DEIR offers no evidence in support of the claim that the mitigation measures proposed would reduce the Project’s impacts.

The Port lists 5 mitigation measures to reduce construction and operational emissions. Mitigation measure “MM-AQ-4: Use of Clean Trucks” states that Applicant will encourage its customers to use clean trucks (defined as model year 2017 or newer) to transport cargo.<sup>88</sup> The DEIR admits that the measure is voluntary and has no regulatory teeth, stating “it is unknown at this time how many such trucks would visit the terminal.”<sup>89</sup> Despite the lack of supporting data, the Port assumes that there will be a 3.6 ton decrease in annual NO<sub>x</sub> emissions from the use of clean trucks. As Dr. Clark notes in his comments, the 41% decrease in NO<sub>x</sub> emissions from the voluntary use of newer vehicles ignores the reality of the existing fleet of trucks in use.<sup>90</sup> The Port does not provide evidence that the fleet of trucks servicing the facility will actually be 2017 or newer. The Port must provide evidence to support the significant NO<sub>x</sub> reductions assumed in the DEIR.

Dr. Clark explains that NO<sub>x</sub> emissions can be further mitigated using the Voluntary Emissions Reduction Agreement (“VERA”) program offered by SJVAPCD.<sup>91</sup> 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.<sup>92</sup>

VERAs have been consistently and effectively used since 2005 to reduce NO<sub>x</sub>, VOC, and ROG emissions from development projects within the San Joaquin Air Basin. “Since 2005, the [SJVAPCD] has entered into 42 VERAs with project

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<sup>85</sup> DEIR, p. 73.

<sup>86</sup> PRC §§ 21002, 21002.1(a), 21100(b)(3), 21151, *see also*, CCR § 15126.4

<sup>87</sup> *Sierra Club v. County of San Diego* (2014) 2321 Cal.4th 1152, 1168.

<sup>88</sup> DEIR, p. 139.

<sup>89</sup> DEIR, p. 75.

<sup>90</sup> Clark Comments, p. 9.

<sup>91</sup> Clark Comments, p. 10.

<sup>92</sup> Clark Comments, p. 10.

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.”<sup>93</sup> VERAs have also been implemented for other Port projects to offset operational NO<sub>x</sub> emissions from both on-site and off-site sources.<sup>94</sup>

Dr. Clark proposes that the Port could enter into a VERA to fund grants to businesses to purchase new cleaner emitting trucks.<sup>95</sup> As a condition of the VERA grant, the Port should include contractual language that the trucks purchased would be primarily used at the Port site which would ensure that emissions from the Project Site are offset by the VERA grant, actually mitigating the emissions from the Project.

The Port must consider incorporating the above feasible mitigation measures to address the significant air quality and GHG emissions impacts of the Project and present the revised impact analysis in a recirculated DEIR.

### **C. The DEIR Fails to Consider All Feasible Mitigation Measures to Reduce Project Emissions**

In addition to adopting VERAs, the Port should require additional feasible and effective mitigation strategies to address significant air quality impacts of the Project. In his comments, Dr. Clark lists several feasible mitigation measures that have been previously recommended by the California Air Resources Board (“CARB”) and the Air Quality Management Districts in California to reduce operational NO<sub>x</sub> and GHG emissions. The Port should include each of the following mitigation measures to reduce the Project’s significant air quality and GHG impacts:

1. Include contractual language in tenant lease agreements that requires tenants to use the cleanest technologies available, and to provide the necessary infrastructure to support zero-emission vehicles and equipment that will be operating on site.
2. Include contractual language in tenant lease agreements that requires all TRUs entering the project site be plug-in capable.

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<sup>93</sup> Exhibit D: SJVAPCD Staff Report: Approve VERA with Contanda Terminals LLC (September 19, 2019).

<sup>94</sup> SJVAPCD Staff Report: Approve VERA with Contanda Terminals LLC (September 19, 2019).

<sup>95</sup> Clark Comments, p. 10.  
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3. Include contractual language in tenant lease agreements that requires future tenants to exclusively use zero-emission light and medium-duty delivery trucks and vans.
4. Include contractual language in tenant lease agreements requiring all TRUs, trucks, and cars entering the Project site be zero-emission.
5. Include contractual language in tenant lease agreements that requires all heavy-duty trucks entering or on the project site to be model year 2019 or later, expedite a transition to zero-emission vehicles, and be fully zero-emission beginning in 2030.
6. Include contractual language in tenant lease agreements that requires the tenant be in, and monitor compliance with, all current air quality regulations for on-road trucks including CARB's Heavy-Duty (Tractor-Trailer) Greenhouse Gas Regulation,<sup>96</sup> Periodic Smoke Inspection Program (PSIP),<sup>97</sup> and the Statewide Truck and Bus Regulation.<sup>98</sup>
7. Include contractual language in tenant lease agreements restricting trucks and support equipment from idling longer than five minutes while on site.
8. Include rooftop solar panels for each proposed warehouse to the extent feasible, with a capacity that matches the maximum allowed for distributed solar connections to the grid.
9. Have truck routes clearly marked with trailblazer signs, so that trucks will not enter residential areas.
10. Limit the daily number of trucks allowed at the Proposed Project to levels analyzed in the CEQA document. If higher daily truck volumes are anticipated to visit the site, the Port as the Lead Agency should commit to re-evaluating the Proposed Project through CEQA prior to allowing this land use or higher activity level.

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<sup>96</sup> In December 2008, CARB adopted a regulation to reduce greenhouse gas emissions by improving the fuel efficiency of heavy-duty tractors that pull 53-foot or longer box-type trailers. The regulation applies primarily to owners of 53-foot or longer box-type trailers, including both dry-van and refrigerated-van trailers, and owners of the heavy-duty tractors that pull them on California highways. CARB's Heavy-Duty (Tractor-Trailer) Greenhouse Gas Regulation is available at: <https://www.arb.ca.gov/cc/hdghg/hdghg.htm>.

<sup>97</sup> The PSIP program requires that diesel and bus fleet owners conduct annual smoke opacity inspections of their vehicles and repair those with excessive smoke emissions to ensure compliance. CARB's PSIP program is available at: <https://www.arb.ca.gov/enf/hdvp/hdvp.htm>.

<sup>98</sup> The regulation requires that newer heavier trucks and buses must meet particulate matter filter requirements beginning January 1, 2012. Lighter and older heavier trucks must be replaced starting January 1, 2015. By January 1, 2023, nearly all trucks and buses will need to have 2010 model year engines or equivalent. CARB's Statewide Truck and Bus Regulation is available at:

<https://www.arb.ca.gov/msprog/onrdiesel/onrdiesel.htm>  
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11. Ensure that any check-in point for trucks is well inside the Proposed Project site to ensure that there are no trucks queuing outside of the facility.
  12. Establish overnight parking within the industrial building where trucks can rest overnight.
  13. Establish area(s) within the Proposed Project site for repair needs.

**D. The DEIR Fails to Adopt Mitigation Measures to Reduce the Project's Significant Cumulative Air Quality Impacts**

ABJC-21

The DEIR concludes that the majority of Project emissions and those of other nearby projects would originate from non-road construction equipment and mobile sources.<sup>99</sup> However, as noted above, the Port fails to include mitigation measures that will create a measurable reduction of those emissions.

The DEIR's Cumulative Impact Analysis states that the Project is located in an area that is in an "extreme" nonattainment for 8-hour ozone ("O<sub>3</sub>") under the National Ambient Air Quality Standards ("NAAQS").<sup>100</sup> Additionally, the DEIR states that under the California Ambient Air Quality Standards ("CAAQS"), the Port Of Stockton is in a nonattainment area for O<sub>3</sub>, particulate matter less than 10 microns ("PM<sub>10</sub>") and PM less than 2.5 microns ("PM<sub>2.5</sub>"). The San Joaquin Valley has some of the highest PM concentrations in the State.<sup>101</sup> Projects emitting O<sub>3</sub>, PM<sub>10</sub> and PM<sub>2.5</sub> would contribute to the nonattainment levels and adverse health effects in the region.<sup>102</sup> The DEIR notes that Projects 1 through 3, 10, 23, and 24 in Table 27 would all occur in the same general area as the proposed project and would generate new rail, truck, and on-terminal equipment emissions that may affect the same sensitive receptors.

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<sup>99</sup> DEIR, p. 226.

<sup>100</sup> DEIR, p. 69.

<sup>101</sup> DEIR, p. 225.

<sup>102</sup> DEIR, p. 224.

**Table 27**  
**Related Present and Future Projects Considered in the Cumulative Impact Analysis**

Reference No.	Project Name	Location	Project Description	Project Status
1	Port of Stockton West Complex Development Plan: Marine Terminal Development	Port of Stockton	Marine terminal-related development associated with the Port's West Complex	In progress
2	Port of Stockton West Complex Development Plan: Commercial and Industrial Park Development	Port of Stockton	Upland commercial development associated with the Port's West Complex	In progress
3	Port of Stockton West Complex Development Plan: Infrastructure Improvements	Port of Stockton	Industrial development associated with the Port's West Complex	In progress
10	Nautilus Data Technology Data Storage Facility	Port of Stockton	Construction and operation of a waterborne data center facility at the West Complex	In progress
23	Denmar Natural Soda Ash Terminal	Port of Stockton	A new terminal to receive natural soda ash by rail and transport it out by ship	EIR Addendum certified; permitting in progress
24	Port of Stockton Rail Bridge Replacement and Rail Improvements	Port of Stockton	Replacing functionally obsolete rail bridge with a double-track rail bridge, adding a second Port lead track, constructing new yard track on the East Complex, and constructing a new rail classification yard on the West Complex to increase the overall efficiency of train operations within the Port	IS/MND certified; permitting not yet commenced

Despite this significant cumulative impact, the DEIR fails to meaningfully address the significant emissions resulting from the Project.<sup>103</sup> As Dr. Clark explains, the air quality impacts from the Project will be realized far beyond the confines of the Project site and immediate surroundings. As such, the Port must revise its mitigation measures to reduce the emissions below the SJVAPCD's significance thresholds in a revised EIR.

<sup>103</sup> Clark Comments, p. 5.  
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**E. The DEIR Fails to Analyze the Acute Health Risks of Diesel Particulate Matter in the Construction and Operational Health Risk Analyses**

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.<sup>104</sup> The DEIR fails to comply with this requirement by failing to provide adequate information about the scope of the Project’s acute health risk from exposure to TACs.

The DEIR includes a health risk assessment (“HRA”) of the Project’s construction and operational diesel particulate matter (“DPM”) emissions. However, no acute risk was analyzed for in the DEIR. As Dr. Clark states in his comments, DPM will be emitted from on-road and off-road equipment during Project construction and operation.<sup>105</sup> These acute health impacts occur over a 1-hour exposure time.<sup>106</sup> OEHHA has not established an acute reference exposure level (“REL”) for DPM, but other agencies have.<sup>107</sup> The absence of an OEHHA acute risk exposure level does not excuse the Applicant from evaluating acute health risks when it is feasible to do so, as here. In the absence of an OEHHA significance threshold, it is standard practice to conduct a literature search to determine if other authorities have established a threshold. Since OEHHA last evaluated health impacts of DPM in 1998,<sup>108</sup> substantial additional research has been conducted on acute health impacts of DPM.<sup>109</sup> Dr. Clark states this more current research has

<sup>104</sup> *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 518–522.

<sup>105</sup> Clark Comments, p. 6.

<sup>106</sup> Clark Comments, p. 6.

<sup>107</sup> Clark Comments, p. 6.

<sup>108</sup> Findings of the Scientific Review Panel on the Report on Diesel Exhaust, 1998; <https://www.arb.ca.gov/toxics/dieseltac/de-fnds.pdf>.

<sup>109</sup> See, e.g., A. A. Mehus and others, Comparison of Acute Health Effects from Exposures to Diesel and Biodiesel Fuel Emissions and references cited therein, *Journal of Occupational and Environmental Medicine*, v. 57, no. 7, pp. 705-712, July 2015; <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC4479787/>.

led Canada to recently establish an acute REL for DPM of 10 µg/m<sup>3</sup> to protect against adverse effects on the respiratory system.<sup>110</sup> There is no regulation or guidance requiring that only OEHHA RELs be used in California health risk assessments.<sup>111</sup>

The DEIR must be revised and recirculated to include an acute health risk assessment for both Project construction and operation.

#### **F. The DEIR Fails to Analyze All Potentially Significant Air Quality Impacts**

The DEIR fails to analyze the potentially significant air quality impacts from the gaseous form of diesel exhaust from construction and operational use of diesel-powered vehicles and equipment. As Dr. Clark explains, diesel exhaust is composed of particulate matter *as well as vapor*.<sup>112</sup> The DEIR does not account for the vapor components of diesel emissions in its HRA, and thus fails as an informational document as it does not provide an analysis of the full range of the Project's potential health impacts.

A lead agency's significance determination must be supported by accurate scientific and factual data.<sup>113</sup> An agency cannot conclude that an impact is less than significant unless it produces rigorous analysis and concrete substantial evidence justifying the finding.<sup>114</sup> These standards apply to an EIR's analysis of the air quality 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.<sup>115</sup> 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

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<sup>110</sup> Government of Canada, Human Health Risk Assessment for Diesel Exhaust, March 4, 2016; [http://publications.gc.ca/collections/collection\\_2016/sc-hc/H129-60-2016-eng.pdf](http://publications.gc.ca/collections/collection_2016/sc-hc/H129-60-2016-eng.pdf).

<sup>111</sup> Clark Comments, p. 6.

<sup>112</sup> Clark Comments, p. 18. (emphasis added)

<sup>113</sup> 14 C.C.R. § 15064(b).

<sup>114</sup> *Kings County Farm Bureau*, 221 Cal.App.3d at 732.

<sup>115</sup> *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 518–522.  
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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.<sup>116</sup> 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.”<sup>117</sup> 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. The EIR failed to comply with CEQA because the public, after reading the EIR, “would have no idea of the health consequences that result when more pollutants are added to a nonattainment basin.”<sup>118</sup> CEQA mandates discussion, supported by substantial evidence, of the nature and magnitude of impacts of air pollution on public health.<sup>119</sup>

In *Berkeley Jets*, the Court of Appeal held that an EIR must analyze the impacts from human exposure to toxic substances.<sup>120</sup> In that case, the Port of Oakland approved a development plan for the Oakland International Airport.<sup>121</sup> 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.<sup>122</sup> 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.<sup>123</sup> 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.”<sup>124</sup>

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<sup>116</sup> *Id.* at 507–508, 518–522.

<sup>117</sup> *Id.* at 519, citing *Cleveland National Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497, 514–515.

<sup>118</sup> *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).)

<sup>119</sup> *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 518–522.

<sup>120</sup> *Berkeley Jets*, 91 Cal.App.4th at 1369–1371.

<sup>121</sup> *Id.* at 1349–1350.

<sup>122</sup> *Id.* at 1364–1371.

<sup>123</sup> *Id.*

<sup>124</sup> 14 C.C.R. § 15003(b).



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The failure to provide information required by CEQA makes meaningful assessment of potentially significant impacts impossible and is presumed to be prejudicial.<sup>125</sup> 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.<sup>126</sup> 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."<sup>127</sup>

CARB defines diesel exhaust as a complex mixture of inorganic and organic compounds that exists in gaseous, liquid, and solid phases.<sup>128</sup> CARB and the United States Environmental Protection Agency ("U.S. EPA") identify 40 components of diesel exhaust as suspected human carcinogens, including formaldehyde, 1,3-butadiene, and benzo[a]pyrene.<sup>129</sup> The gas and particle components both contribute to health risks.<sup>130</sup> The inhalation unit risk factor identified by OEHHA for use in risk assessments is for the DPM fraction of diesel exhaust and not the vapor phase components identified by CARB and U.S. EPA.<sup>131</sup> Here, the County only used the DPM fraction of diesel exhaust in its analysis of the construction and operational emissions and failed to analyze the full range of TAC impacts from the Project.<sup>132</sup>

By failing to include an analysis of the additional TAC components of diesel exhaust, the DEIR does not provide a full picture of the Projects potential impacts and fails as an informational document as required by CEQA. The County must update the HRA with the additional TAC impacts included and include the results in a revised and recirculated EIR.

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<sup>125</sup> *Sierra Club v. State Bd. Of Forestry* (1994) 7 Cal.4th 1215, 1236–1237.

<sup>126</sup> *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435.

<sup>127</sup> *Id.* (internal quotations omitted).

<sup>128</sup> Clark Comments, p. 6.

<sup>129</sup> *Id.* p. 18.

<sup>130</sup> *Ibid.*

<sup>131</sup> *Ibid.*

<sup>132</sup> *Ibid.*

**G. The DEIR Fails to Analyze Air Quality Emissions Using the Current Version of CalEEMod**

ABJC-24 The DEIR states that the California Air Resources Board's ("CARB") CalEEMod, Version 2016.3.2 was used to quantify construction-related and operational emissions.<sup>133</sup> On June 1, 2021, CalEEMod and several air districts posted the release of the latest version of CalEEMOD, Version 2020.4.0. The updates to the model include additional analysis and emissions factors which were added to ensure compliance with recent changes in law:

1. Incorporation of the latest EMFAC2017 data from CARB (<https://www.arb.ca.gov/emfac/2017/>).
2. Addition of CARB's EMFAC2017 N2O emissions.
3. Inclusion of the 2019 update to Title 24 (building efficiency % reduction, see <http://www.energy.ca.gov/title24/2019standards/index.html>).
4. Incorporation of the ITE 10<sup>th</sup> edition trip rate data for land uses previously programmed into the model.
5. Utility Intensity Factors for greenhouse gases were updated.

According to Dr. Clark, the updates in version 2020.4.0 provide a higher level of accuracy regarding emission estimates for the project impacts compared to older versions of the CalEEMOD model, as required by existing law. Instead, the Port used outdated modeling that does not correspond to current regulations that are applicable to the Project. As a result, the DEIR's conclusions regarding the Project's air quality impacts are not adequately supported

Given that the DEIR was released for public review in January 2022, there was sufficient time for the Port to run the CalEEMOD analyses of the Project using the current version of the model. The Port must re-run the CalEEMOD analyses and present them in a revised DEIR in order to ensure that all elements of the air quality analyses are accurately presented in the DEIR.

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<sup>133</sup> Port of Stockton. 2022. Draft Environmental Impact Report (DEIR) TC NO. CAL Development Warehousing and Distribution Facility Project State Clearinghouse Number 2021080499. Pg 67 5660-006j

## **H. The DEIR Fails to Analyze Air Quality Impacts from Transportation Refrigeration Units**

ABJC-25 The DEIR's describes the Project as a "distribution warehouse" used for receiving, storing, and distributing bulk building products and consumer goods.<sup>134</sup> The DEIR does not include any measures prohibiting installation of refrigeration and cold-storage by building tenants, and does not otherwise preclude the use of the Distribution Facility as a refrigerated warehouse or preclude the use of transportation refrigeration units ("TRU"s) onsite. Absent such restrictions, it is reasonably foreseeable that the Project could subsequently be used to support refrigeration-dependent uses. These impacts must therefore be analyzed in the DEIR.

Dr. Clark states that the DEIR fails to include a clear and accurate analysis of the potentially significant impacts resulting from deploying refrigeration units on site.<sup>135</sup> Additionally, the DEIR fails to analyze DPM emissions from TRUs installed on insulated cargo vans, rail cars and shipping containers used in transporting fresh produce, meat, dairy products, beverages, film, prescription drugs, and other temperature sensitive consumer goods.<sup>136</sup> In addition to the health impacts from exposure to DPM that must be assessed in the analysis, the impacts on GHG emissions must be included in the DEIR's analysis.

## **VII. THE DEIR FAILS TO ADEQUATELY DISCLOSE, ANALYZE, AND MITIGATE SIGNIFICANT BIOLOGICAL RESOURCES IMPACTS**

ABJC-26 The DEIR fails to survey and analyze how various special status species which include migratory and roosting bird species, bats, reptiles, and invertebrates, are impacted by habitat removal or disturbance, construction noise, dust, lighting, vehicles and other anthropogenic sources of hazards and habitat fragmentation, or other direct, indirect, and cumulative impacts.<sup>137</sup> Ms. Owens states that Such impacts are widely accepted and researched as significant detriment to individual and population measures of success, including resistance to limiting factors (drought, invasive competitors and predators, climate change) health, including

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<sup>134</sup> DEIR, p. ES-2.

<sup>135</sup> Clark Comments, p. 8.

<sup>136</sup> Clark Comments, p. 8.

<sup>137</sup> Owens Comments, p. 9.

fecundity and survival.<sup>138</sup> Additionally, the DEIR's mitigation measures MM-BIO-1, 2, and 3 do not adequately address the Project's potentially significant impacts to the special status species that could be present on site.

ABJC-26  
(cont.)

Ms. Owens explains that the DEIR failed to present standardized or focused protocol surveys for any species or for any taxa (i.e. birds, rare plants, invertebrates, mammals, reptiles).<sup>139</sup> Such surveys are necessary to establish a thorough description of the biological baseline regardless of the project footprint, size, or nature of the habitat onsite. Conducting protocol surveys for protected species, and focused surveys for taxa (e.g. rare plants, birds, bats), is standard practice for impact analysis for construction development projects that will remove habitat and have been determined to require an EIR.<sup>140</sup> The practice of "ground-truthing", scientifically accurate field data is necessary for an accurate CEQA analysis of biological impacts to special status species.<sup>141</sup>

#### **A. The DEIR Fails to Analyze Potentially Significant Impacts to Rare Plant Species**

Ms. Owens states that the Port fails to present standardized vegetation community data in the DEIR and did not conduct any rare plant surveys.<sup>142</sup> The DEIR asserts that CNDDDB records for the region indicate there are 20 rare species in the Project vicinity, and yet concludes in a brief summation that none will be present "due to lack of suitable habitat".<sup>143</sup> However, as Ms. Owens states in her comments, there is insufficient evidence to support this conclusion.

ABJC-27

The California Native Plant Society ("CNPS") coordinated with CDFW to create "Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities"<sup>144</sup> stating that "[t]he purpose of these protocols is to facilitate a consistent and systematic approach to botanical field surveys and assessments of special status plants and sensitive

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<sup>138</sup> Citations impacts special status species

<sup>139</sup> Owens Comments, p. 9.

<sup>140</sup> Owens Comments, p. 9.

<sup>141</sup> Owens Comments, p. 9.

<sup>142</sup> Owens Comments, p. 11.

<sup>143</sup> DEIR Appendix E p. E-5

<sup>144</sup> CDFW, Protocols for Surveying and Evaluating Impacts to Special Status Native Plant Populations and Sensitive Natural Communities (March 20, 2018) available at <https://nrm.dfg.ca.gov/FileHandler.ashx?DocumentID=18959&inline5660-006j>

ABJC-27  
(cont.)

natural communities so that reliable information is produced and the potential for locating special status plants and sensitive natural communities is maximized.”<sup>145</sup> According to CDFW guidance, such field surveys should be floristic in nature, meaning that every plant taxon that occurs in the project area is identified to the taxonomic level necessary to determine rarity and listing status.<sup>146</sup> The guidance goes on to state that “[s]urveys that are limited to habitats known to support special status plants or that are restricted to lists of likely potential special status plants are not considered floristic in nature and are not adequate to identify all plants in a project area to the level necessary to determine if they are special status plants.”<sup>147</sup>

Furthermore, in their Guidelines for Assessing The Effects of Proposed Developments On Rare, Threatened, And Endangered Plants and Plant Communities, the CDFW states that a complete species list of all plants should be included in every botanical survey report used to inform mitigation of impacts under CEQA.<sup>148</sup> The DEIR presents no such surveys, nor does it follow any such guidelines to support their argument as to why special status plants do not, and have no potential, to occur.<sup>149</sup>

Ms. Owens identifies the following rare, threatened and endangered species which have a potential to occur at the Project site:<sup>150</sup>

- Delta tule pea *Lathyrus jepsonii* var. *jepsonii*
  - Protected Status: California CNPS 1B.2 (rare, threatened, or endangered in CA and elsewhere).
- Alkali milkvetch *Astragalus tener* var. *tener*
  - Protected Status: CNPS 1B.2 (rare, threatened, or endangered in CA and elsewhere; fairly threatened in California)
- Heartscale *Atriplex cordulata* var. *cordulata*
  - Protected Status: California CNPS 1B.2 (rare, threatened, or endangered in CA and elsewhere; fairly threatened in California)
- Big tarplant *Blepharizonia plumosa*

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<sup>145</sup> *Id.* p.1.

<sup>146</sup> *Id.* p. 1.

<sup>147</sup> *Id.* p. 2. (emphasis added).

<sup>148</sup> CDFW 1998 p. 9 available at, <https://www.cnps.org/wp-content/uploads/2018/01/policy-mitigation-guidelines.pdf>

<sup>149</sup> Owens Comments, p. 12.

<sup>150</sup> Owens Comments, pp. 14-17.

ABJC-27  
(cont.)

- Protected Status: California CNPS 1B.1 (rare, threatened, or endangered in CA and elsewhere; seriously threatened in California)
- Palmate-bracted (a.k.a. Palmate salty) bird's-beak *Chloropyron palmatum*
  - Protected Status: Federally and State listed as Endangered, California CNPS 1B.1 (rare, threatened, or endangered in CA and elsewhere; seriously threatened in California)
- San Joaquin spearscale *Extriplex joaquinana*
  - Protected Status: California CNPS 1B.2 (rare, threatened, or endangered in CA and elsewhere; fairly threatened in California)

Despite the clear failure to analyze the potential for the above species to occur on site, the DEIR concludes that the above species states there have no potential to occur, and that their habitat is not present which in turn results in a failure to provide any mitigation measures if they do occur on site. The Port must conduct ground-truthed surveys for the above plant species and present its findings in a revised DEIR.

#### **B. The DEIR Fails to Analyze and Mitigate Potentially Significant Impacts to Trees and Related Wildlife**

ABJC-28

Similar to the failure to analyze the potential impacts to rare plant species, the Port fails to include analysis of impacts to the trees on site and the subsequent impacts to wildlife. Ms. Owens states that several status bird species are recorded as occurring within the Project quad in the CNDDDB and on eBird including the Swainson's hawk.<sup>151</sup> These special status species are subject to specific protocol surveys provided by the state and federal agencies to ensure accurate data collection including not only presence but also in regards to nesting, foraging, and as a stopover, movement, or migratory corridor status.<sup>152</sup> These required protocols are not followed by the DEIR's proposed mitigation measure MM-BIO-1, where minimally described pre-construction surveys are presented by the DEIR. Ms. Owens states that the measures that the DEIR erroneously claims the measure will completely mitigate impacts to nesting birds, with no supporting evidence.<sup>153</sup>

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<sup>151</sup> Owens Comments, p. 17.

<sup>152</sup> Owens Comments, p. 17.

<sup>153</sup> Owens Comments, p. 17.

ABJC-28  
(cont.)

MM-BIO-1 states that one method of impact reduction will include a biologist monitoring any onsite active nests to see “if the birds show signs of disruption to nesting activities (e.g., defensive flights/vocalizations directed toward project personnel, standing up from a brooding position, or flying away from the nest)” to determine if buffers utilized to reduce impacts are not effective.<sup>154</sup> MM-BIO-1 does not describe how the biologist’s credentials, including appropriate experience as an ornithologist, or independence from the Applicant’s employment, will be determined. Additionally, according to Ms. Owens, the behaviors iterated above represent overt signs of harassment that are not allowed under the statutes protecting these species, whether it be the federal Endangered Species Act (“ESA”), California Endangered Species Act (“CESA”), MBTA, or CDFW Code.<sup>155</sup>

Ms. Owens states that any avian stress responses to an observer, and during baseline conditions prior to construction when no observer is present, will be different than stress responses to intense construction activities compounded by the presence of an observer. Additionally, avian behavior during breeding may vary on different days given limiting factors due to weather. Therefore, by relying on overt, immediate, visual indicators of nesting harassment, i.e., negative impacts to breeding success and fecundity, MM-BIO-1 is unscientific and limited in utility.<sup>156</sup> As such MM-BIO-1 fails to successfully mitigate impacts to birds and other special status species, whether they are nesting, hibernating, foraging, roosting, or migratory.

ABJC-29

Ms. Owens states that other special status species not surveyed and not analyzed accurately - including migratory, foraging, and roosting birds, as well as bats, reptiles, and invertebrates, none of which were surveyed by the DEIR - may potentially be impacted directly or indirectly by tree and other habitat removal.

The DEIR is misleading by stating that “In the **unlikely** event that nesting birds, western pond turtle, giant garter snake, and valley elderberry longhorn beetle are found on the project site, implementation of MM-BIO-1 and MM-BIO-2 would ensure that significant impacts to special status species are avoided

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<sup>154</sup> DEIR, p. 93.

<sup>155</sup> Owens Comments, p. 18.

<sup>156</sup> Owens Comments, p. 18.

(emphasis added).<sup>157</sup> The DEIR describes a minimum of 50 to 60 trees on site. As Ms. Owens points out, it is more **unlikely** that no birds will use any of the tree (or other) habitats to nest onsite.<sup>158</sup>

This is especially true considering the Port's claim that, on or near the Project site, it currently has 15 barn owl nest boxes which have "housed more than 200 new owls."<sup>159</sup> Nest boxes, no matter the size or construct, are used by more species than owls (or whatever the target species is). As Ms. Owens explains, most, if not all, avian species return to nest in the vicinity, and sometimes in very close proximity (within a few feet) to where they were born.<sup>160</sup> Additionally, special status and other raptor species have been observed on 2020 and 2021 within 0.25 to 0.5 mile of the Project, including the red-tailed hawk, red-shoulder hawk, American kestrel, CESA threatened Swainson's hawk, Northern harrier, Cooper's hawk, state Fully Protected White-tailed kite, and sharp-shinned hawk.<sup>161</sup> Ms. Owens' comments provide further evidence that there is a high likelihood various raptors (as well as other bird species noted in eBird and the CNDDDB) may use the site for roosting, foraging, as a corridor, or nesting.

In response to potential impacts to special status species, the DEIR states that "MM-BIO-3 would ensure that roosting habitat opportunities are maintained on the project site for the long term."<sup>162</sup> This mitigation measure is misleading, as it reduces the biological role of trees to that of a random roosting spots, while ignoring the other roles trees play in their biotic and abiotic niche in its impact analysis.<sup>163</sup> Ms. Owens states that DEIR does not explain how tree planting will "maintain" roosting sites when it appears several dozen trees are slated for removal and will not be immediately replaced in appropriate size, species, or scope.<sup>164</sup> The DEIR therefore fails to demonstrate that MM-BIO-3 will effectively reduce impacts.

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<sup>157</sup> DEIR p. 94

<sup>158</sup> Owens Comments, p. 18.

<sup>159</sup> See <https://www.portofstockton.com/wildlife/>

<sup>160</sup> Owens Comments, p. 18.

<sup>161</sup> Owens Comments, p. 19, *See Also:* <https://ebird.org/hotspot/L1318624>;  
<https://ebird.org/hotspot/L595195>

<sup>162</sup> DEIR, p. 96.

<sup>163</sup> Owens Comments, p 20.

<sup>164</sup> Owens Comments, p. 20.



ABJC-29  
(cont.)

The DEIR fails to analyze and mitigate the potentially significant impacts to special status wildlife species at the Project site. The Port must conduct the proper protocol surveys for species that are likely to occur on the Project site and present their findings in a revised and recirculated DEIR.

ABJC-30

Finally, the DEIR's mitigation measure MM-BIO-1 states that the Applicant will seek to obtain Coverage under the SJMSCP or Implement Protective Measures for Nesting Birds, Western Pond Turtle, Giant Garter Snake, and Valley Elderberry Longhorn Beetle.<sup>165</sup> In order to obtain coverage under the SJMSCP:

[Applicant] will submit an application for coverage to SJCOG within 60 days of project construction. SJCOG will review the proposed project, prepare a staff report, and submit the report to the SJMSCP Habitat Technical Advisory Committee, which determines whether the proposed project will be covered under the SJMSCP.<sup>166</sup>

This leaves mitigation under the assumption of control of outside agency personnel (the SJMSCP's Habitat Technical Advisory Committee ("HTAC")) that make recommendations to script, oversee, and enforce mitigation actions sometime in the future, after public review by way of CEQA has ended, rendering unenforceable.

Mitigation that is outside agency jurisdiction is unenforceable. The courts have held that an agency cannot enforce mitigations over which it has no jurisdiction.<sup>167</sup> In *Tracy First*, the city of Tracy approved an EIR and use permit to construct a 95,900-square-foot grocery store, but failed to incorporate mitigation to reduce traffic impacts outside of city limits. The court held that the city could not have included such mitigations in the grocery store EIR because the city had no plan in place or jurisdiction to enforce them. Similar to *Tracy First*, the Port's reliance on mitigation measures that are outside of the control of the Port violates CEQA's requirements that mitigation measures be "fully enforceable."<sup>168</sup>

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<sup>165</sup> DEIR, p. 92.

<sup>166</sup> DEIR, p. 92.

<sup>167</sup> See *Tracy First v. City of Tracy* (2009) 177 Cal. App. 4th 912, 937.

<sup>168</sup> PRC § 21004; 14 CCR § 15126.4(a)(2); *Tracy First* at 938.

ABJC-30  
(cont.)

The Port must conduct the appropriate protocol surveys on the Project site and develop effective, enforceable mitigation measures to reduce the Project's potentially significant impacts to biological resources.

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

ABJC-31

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.<sup>169</sup> 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.<sup>170</sup> While the DEIR has some measures to reduce GHG emissions, as the DEIR admits, 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 aside from vague handwaving that the Project plans "should" identify which parking spaces could be upgraded to accommodate electric vehicle charging.<sup>171</sup> 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 mobile and stationary sources of air pollution, including through entering into VERAs with SJVAPCD.<sup>172</sup> The DEIR fails to address this entirely. 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

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<sup>169</sup> *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).

<sup>170</sup> DEIR, p. 131.

<sup>171</sup> DEIR, p. 198.

<sup>172</sup> *Envision Stockton: 2040 General Plan* (December 4, 2018), p. 5-24 (Policy SAF-4.1).  
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(cont.)

failure to adopt all feasible and effective mitigation measures to reduce significant environmental impacts. 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.<sup>173</sup> A revised EIR is necessary to commit to all feasible mitigation and remedy inconsistencies with the City of Stockton's clean air goals.

## IX. CONCLUSION

ABJC-32

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,



Kevin T. Carmichael

KTC:ljl

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<sup>173</sup> 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).  
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