

## ADAMS BROADWELL JOSEPH &amp; CARDOZO

A PROFESSIONAL CORPORATION

## ATTORNEYS AT LAW

520 CAPITOL MALL, SUITE 350  
SACRAMENTO, CA 95814-4721

TEL: (916) 444-6201

FAX: (916) 444-6209

kcarmichael@adamsbroadwell.com

SO. SAN FRANCISCO OFFICE

601 GATEWAY BLVD., SUITE 1000  
SO. SAN FRANCISCO, CA 94080

TEL: (650) 589-1660

FAX: (650) 589-5062

KEVIN T. CARMICHAEL  
CHRISTINA M. CARO  
THOMAS A. ENSLOW  
KELILAH D. FEDERMAN  
RICHARD M. FRANCO  
ANDREW J. GRAF  
TANYA A. GULESSERIAN  
DARION N. JOHNSTON  
RACHAEL E. KOSS  
AIDAN P. MARSHALL  
ALAURO R. MCGUIRE  
TARA C. RENGIFO*Of Counsel*MARC D. JOSEPH  
DANIEL L. CARDOZO

September 26, 2024

**Via Email and Overnight Mail**Stephanie Ocasio, Director  
Community Development Department  
City of Stockton  
425 N. El Dorado St.  
Stockton, CA 95202  
**Email:** [planning@stocktonca.gov](mailto:planning@stocktonca.gov)**Via Email Only**Nicole Moore, Contract Planner  
**Email:** [Nicole.Moore.CTR@stocktonca.gov](mailto:Nicole.Moore.CTR@stocktonca.gov)**Re: Request to Extend MND Public Comment Period / Untimely Response to CEQA Reference Request - South McKinley East Industrial Project IS/MND (SCH No. 2024081317)**

Dear Ms. Moore and Ms. Ocasio:

On behalf of **San Joaquin Residents for Responsible Development** (“San Joaquin Residents”) we respectfully request that the City of Stockton (“City”) extend the public review and comment period on the Mitigated Negative Declaration (“MND”) for the South McKinley East Industrial Project (SCH Number 2024081317) (“Project”) proposed by GO Industrial (“Applicant”)<sup>1</sup> **by at least 30 days** due to the City’s failure to provide timely access to the supporting documents for the MND. This request is made pursuant to the California Environmental Quality Act (“CEQA”) 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.<sup>2</sup>

<sup>1</sup> City of Stockton, Initial Study/Mitigated Negative Declaration for the South McKinley Avenue East Industrial Project (hereinafter “MND”) (August 29, 2024) available at <https://ceqanet.opr.ca.gov/2024081317>

<sup>2</sup> PRC §§ 21092(b)(1) (emphasis added); 14 Cal. Code Regs. (“CCR”) § 15072(g)(4).

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The Project proposes annexation of the Project site located at 6505 South McKinley Avenue East in San Joaquin County within the sphere of influence of the City of Stockton, and construction of a 184,166 square-foot industrial building for warehouse and office use.

The MND was released for public review on August 30, 2024. The public review and comment period currently ends on September 30, 2024.<sup>3</sup>

On September 17, 2024, San Joaquin Residents submitted a letter to the City pursuant to CEQA Section 21092(b)(1) requesting “*immediate access to any and all documents referenced or relied upon*” in the MND (“MND Request”).<sup>4</sup> Additionally, on September 17, 2024, San Joaquin Residents submitted a separate letter to the City pursuant to California Public Records Act (“CPRA”), Government Code §§ 6250, et seq. and Article I, section 3(b) of the California Constitution, requesting access to “*any and all public records referring or related*” to the Project (“PRA Request”).<sup>5</sup> The MND Request and the PRA Request were sent separately to avoid confusion as to what documents and records were sought.

To date, the City has not acknowledged, nor provided documents in response to, the MND Request nor the PRA Request.

#### A. CEQA Violations

CEQA requires that “all documents referenced” – and the CEQA Guidelines require that “all documents incorporated by reference” – in a mitigated negative declaration shall be “readily accessible to the public during the lead agency’s normal working hours” during the entire public comment period.<sup>6</sup> Further, a CEQA document may not rely on hidden studies or documents that are not provided to the

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<sup>3</sup> City of Stockton, Initial Study/Mitigated Negative Declaration for the South McKinley Avenue East Industrial Project (hereinafter “MND”) (August 29, 2024) available at <https://ceqanet.opr.ca.gov/2024081317>

<sup>4</sup> **Exhibit A:** Letter from ABJC re Request for Immediate Access to Documents Referenced in the Mitigated Negative Declaration – South McKinley Avenue East Industrial Project (SCH No. 2024081317) (September 17, 2024).

<sup>5</sup> **Exhibit B:** Letter from ABJC re Public Records Act Request – South McKinley Avenue East Industrial Project (SCH No. 2024081317) (September 17, 2024).

<sup>6</sup> Pub. Resources Code § 21092(b)(1); 14 C.C.R. § 15072(g)(4); see *Ultramar v. South Coast Air Quality Man. Dist.* (1993) 17 Cal.App.4th 689, 699.  
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public.<sup>7</sup> **The City is in violation of these requirements because the City has failed to provide San Joaquin Residents with access to the MND reference documents despite a timely request for access that was made over one week ago.**

Without access to these critical MND reference documents during the public comment period on the MND, San Joaquin Residents and other members of the public are precluded from having the meaningful opportunity to comment on the MND that is required by CEQA. The City's failure to make the underlying MND documents available during the entire comment period makes public review particularly burdensome in this case because of the MND's reliance on missing documents for significance determinations and mitigation measures to address the Project's air quality, health risk, and biological resources impacts, for example. 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 impact analysis, or the efficacy of the City's proposed mitigation measures. Additionally, the size of the MND and the Project's complexity make it difficult to effectively comment on the MND without the referenced documents by the current comment deadline of September 30, 2024.

During review of the MND, San Joaquin Residents have identified a number of documents and files that are referenced and relied upon in the MND which are not accompanied by weblinks and to which San Joaquin Residents' has not been provided access in response to the MND Request. These reference documents are critical to understanding and commenting on the MND's analysis of the Project's impacts to several critical resource areas, including, in particular, the analysis of the Project's air quality, health risk, wildfire, and biological impacts. The missing reference documents include, but are not limited to, the following:

- All unlocked, native format, CalEEMOD input files used for Project construction and operational emissions analysis, and any other unlocked emissions modeling input files relied on in Appendix A.
- All unlocked, native format, AERMOD and HARP2 input files used for Project construction and operational health risk analysis, and any other unlocked health risk modeling input files relied on in Appendix A.

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<sup>7</sup> *Santiago City Water District v. City 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.").  
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- City of Stockton and County of San Joaquin. 2020. Stormwater Quality Control Criteria Plan. August.
- San Joaquin County Department of Public Works. 2004. Eastern San Joaquin Groundwater Basin Groundwater Management Plan. September.
- San Joaquin County. 2018. San Joaquin County's Aviation System Stockton Metropolitan Airport, Airport Land Use Compatibility Plan. February.
- City of Stockton. June 2012. Emergency Operations Plan.
- San Joaquin Council of Governments (SJCOG). May 2016. Amended February 2018. Airport Land Use Compatibility Plan Update for Stockton Metropolitan Airport.
- California Air Pollution Control Officers Association (CAPCOA). 2009. Health Risk Assessments for Proposed Land Use Projects.
- San Joaquin Valley Air Pollution Control District (SJVAPCD). 2015. Guidance for Assessing and Mitigating Air Quality Impacts.
- San Joaquin Valley Air Pollution Control District (SJVAPCD). 2009. Final Draft Staff Report -Climate Change Action Plan: Addressing GHG Emissions Impacts under CEQA. November.
- California Native Plant Society (CNPS). 2020. Considerations for Including CRPR 4 Plant Taxa in CEQA Biological. Resource Impact Analysis. Sacramento, CA. 21 January 2020.
- California State Water Resources Control Board (State Water Board). 2019. State Wetland Definition and Procedures for Discharges of Dredged or Fill Material to Waters of the State. April 2, 2019.
- Baldwin, B. et al. 2012. The Jepson Manual: Vascular Plants of California. Berkeley: University of California Press. County of San Bernardino (Bernardino). 2007 (amended 2015).
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- Reid, F. 2006. A Field Guide to Mammals of North America, 4th Edition..
- Stebbins, R.C. 2003. A Field Guide to Western Reptiles and Amphibians. Third Edition.
- World Health Organization (WHO). 1999. Guidelines for Community Noise.
- United States Environmental Protection Agency (EPA). 1974. Information on Levels of Environmental Noise Requisite to Protect Public Health and Welfare with an Adequate Margin of Safety.
- California Department of Transportation (Caltrans). 2013. Technical Noise Supplement to the Traffic Noise Analysis Protocol.
- Appendix G, Footnote 4: City email, July 12, 2022.
- Appendix G, Footnote 6: City of Stockton staff email, July 12, 2022.
- Appendix G, Footnote 9: Email from County staff, February 3, 2023.
- The Highway Design Manual, July 1, 2020, Chapter 200 - Geometric Design & Structure Standards, Table 201.1.
- Highway Traffic Data for Urbanized Area Project Planning, NCHRP 255.
- Rodier, Caroline. (2008). A Review of the International Modeling Literature: Transit, Land Use, and Auto Pricing Strategies to Reduce Vehicle Miles Traveled and Greenhouse Gas Emissions. Institute of Transportation Studies, UC Davis, Institute of Transportation Studies, Working Paper Series.
- Litman, Todd. (2009). Transportation elasticities: how prices and other factors affect travel behavior. Victoria Transport Policy Institute.

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 comment.<sup>8</sup> It is also well settled that an MND may not rely on hidden studies or

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<sup>8</sup> *Ultramar v. South Coast Air Quality Man. Dist.* (1993) 17 Cal.App.4th 689, 699.  
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documents that are not provided to the public.<sup>9</sup> By failing to make all documents referenced in the MND “readily available” during the current comment period, the City 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 MND.

The City must extend the public comment and review period for the MND to allow for meaningful participation by the public and the detailed consideration of the Project’s environmental impacts that CEQA requires.

Accordingly, we request that:

- 1) The City immediately provide San Joaquin Residents with access to all MND reference documents relied upon in the MND, including any construction air quality analysis used to determine the Project’s air quality and health risk impacts.
- 2) The City extend the public review and comment period on the MND for at least 30 days from the date on which the City releases these documents for public review.<sup>10</sup> If the missing documents are provided today, we request an extension to October 28, 2024.
- 3) The City refrain from scheduling any hearings related to the Project until the entire set of reference documents relied on in the MND have been released for public review and comment in compliance with CEQA.

Given the short time before the current comment deadline, please contact me as soon as possible with your response to this request, but **no later than Friday, September 27, 2024**.

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<sup>9</sup> *Santiago City Water District v. City 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.”).

<sup>10</sup> This Project has a 30-day public comment period, pursuant to 14 CCR § 15105(b).

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

Sincerely,

A handwritten signature in blue ink that reads "Kevin Carmichael". The signature is written in a cursive, flowing style.

Kevin Carmichael

KTC:ljl