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VIA E-MAIL

September 30, 2024

Nicole Moore, Contract Planner
City of Stockton Permit Center
345 N El Dorado St.
City of Stockton, CA 95202
Em: Nicole.Moore.CTR@stocktonca.gov
Em: Matt.Diaz@stockton.gov

RE: City of Stockton South McKinley Avenue East Industrial Project IS/MND (SCH# 2024081317)

Dear Nicole Moore,

On behalf of the Carpenters Local Union #152 ("**Local 152**"), our Office is submitting these comments on the Initial Study and Mitigated Negative Declaration ("**IS/MND**") for the City of Stockton's ("**City**") South McKinley Avenue East Industrial Project ("**Project**"). 1

The City's IS/MND describes the project as follows:

> The proposed project would result in the annexation of the site into the City of Stockton and the development of a 184,166-square-foot building containing 179,166 square feet of warehouse space and 5,000 square feet of office space . . .The building would include 27 dock doors and a loading area along the west side of the building. Parking spaces would be provided on the east, south, and west sides of the building. There would be a 30-foot setback at the front of the building along South McKinley Avenue. Landscaping would be provided around the perimeter of the parking lot, with trees and shrubs to provide canopy. All landscaping would be low-maintenance with water-efficient native species. All landscaping equipment used at the facility would be electric or battery powered. The design of the building would provide for outlets on the outside of buildings or in other accessible areas to facilitate the use of electrically powered landscape equipment. 2

> In addition, the project would require a 4-foot-deep trench for a new sewer line in South McKinley Avenue, extending approximately 2,400 feet north of the site, near the intersection of Sperry Road . . . A sewer lift station would be constructed within the project site. (IS/MND, p. 2–3.)

2 CONT

Local 152 is a labor union that represents thousands of union carpenters who live and work in San Joaquin County, and has a strong interest in well-ordered land use planning and in addressing the environmental impacts of development projects.

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Individual members of Local 152 live, work, and recreate in the City and surrounding communities and would be directly affected by the Project's environmental impacts.

Local 152 expressly reserves the right to supplement these comments at or prior to hearings on the Project, and at any later hearing and proceeding related to this Project. Gov. Code, § 65009, subd. (b); Pub. Res. Code, § 21177, subd. (a); see *Bakersfield Citizens for Local Control v. Bakersfield* (2004) 124 Cal.App.4th 1184, 1199-1203; see also *Galante Vineyards v. Monterey Water Dist.* (1997) 60 Cal.App.4th 1109, 1121.

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Local 152 incorporates by reference all comments related to the Project or its CEQA review, including the Initial Study/Mitigated Negative Declaration. See *Citizens for Clean Energy v City of Woodland* (2014) 225 Cal.App.4th 173, 191 (finding that any party who has objected to the project's environmental documentation may assert any issue timely raised by other parties).

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Moreover, Local 152 requests that the City provide **advance notice** of any upcoming hearings, as well as for any and all notices referring or related to the Project, as required by the Municipal Code, as well as under the California Environmental Quality Act (**CEQA**) (Pub. Res. Code, § 21000 *et seq.*), and the California Planning and Zoning Law ("**Planning and Zoning Law**") (Gov. Code, §§ 65000–65010). California Public Resources Code Sections 21092.2, and 21167(f) and California Government Code Section 65092 require agencies to mail such notices to any person who has filed a written request for them with the clerk of the agency's governing body. We request that such notice be *both* mailed and e-mailed to us.

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I. THE CITY SHOULD REQUIRE THE USE OF A LOCAL WORKFORCE TO BENEFIT THE COMMUNITY'S ECONOMIC DEVELOPMENT AND ENVIRONMENT.

The City should require the Project to be built by contractors who participate in a Joint Labor-Management Apprenticeship Program approved by the State of California and make a commitment to hiring a local workforce.

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Community benefits such as local hire can also be helpful to reduce environmental impacts and improve the positive economic impact of the Project. Local hire provisions requiring that a certain percentage of workers reside within 10 miles or less of the Project site can reduce the length of vendor trips, reduce greenhouse gas emissions, and provide localized economic benefits. As environmental consultants Matt Hagemann and Paul E. Rosenfeld note:

> [A]ny local hire requirement that results in a decreased worker trip length from the default value has the potential to result in a reduction of construction-related GHG emissions, though the significance of the reduction would vary based on the location and urbanization level of the project site.

March 8, 2021, SWAPE Letter to Mitchell M. Tsai re Local Hire Requirements and Considerations for Greenhouse Gas Modeling.

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Workforce requirements promote the development of skilled trades that yield sustainable economic development. As the California Workforce Development Board and the University of California, Berkeley Center for Labor Research and Education concluded:

> [L]abor should be considered an investment rather than a cost—and investments in growing, diversifying, and upskilling California's workforce can positively affect returns on climate mitigation efforts. In other words, well-trained workers are key to delivering emissions reductions and moving California closer to its climate targets.[1]

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Furthermore, workforce policies have significant environmental benefits given that they improve an area's jobs-housing balance, decreasing the amount and length of job commutes and the associated greenhouse gas (GHG) emissions. In fact, on May 7, 2021, the South Coast Air Quality Management District found that that the "[u]se of a local state-certified apprenticeship program" can result in air pollutant reductions.[2]

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[1] California Workforce Development Board (2020) Putting California on the High Road: A Jobs and Climate Action Plan for 2030 at p. ii, *available at* https://laborcenter.berkeley.edu/wp-content/uploads/2020/09/Putting-California-on-the-High-Road.pdf.

[2] South Coast Air Quality Management District (May 7, 2021) Certify Final Environmental Assessment and Adopt Proposed Rule 2305 – Warehouse Indirect Source Rule – Warehouse Actions and Investments to Reduce Emissions Program, and Proposed Rule 316 – Fees for Rule 2305, Submit Rule 2305 for Inclusion Into the SIP, and Approve

Locating jobs closer to residential areas can have significant environmental benefits. As the California Planning Roundtable noted in 2008:

> People who live and work in the same jurisdiction would be more likely to take transit, walk, or bicycle to work than residents of less balanced communities and their vehicle trips would be shorter. Benefits would include potential reductions in both vehicle miles traveled and vehicle hours traveled.[3]

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Moreover, local hire mandates and skill-training are critical facets of a strategy to reduce vehicle miles traveled (VMT). As planning experts Robert Cervero and Michael Duncan have noted, simply placing jobs near housing stock is insufficient to achieve VMT reductions given that the skill requirements of available local jobs must match those held by local residents.[4] Some municipalities have even tied local hire and other workforce policies to local development permits to address transportation issues. Cervero and Duncan note that:

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> In nearly built-out Berkeley, CA, the approach to balancing jobs and housing is to create local jobs rather than to develop new housing. The city's First Source program encourages businesses to hire local residents, especially for entry- and intermediate-level jobs, and sponsors vocational training to ensure residents are employment-ready. While the program is voluntary, some 300 businesses have used it to date, placing more than 3,000 city residents in local jobs since it was launched in 1986. When needed, these carrots are matched by sticks, since the city is not shy about negotiating corporate participation in First Source as a condition of approval for development permits.

Recently, the State of California verified its commitment towards workforce development through the Affordable Housing and High Road Jobs Act of 2022,

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Supporting Budget Actions, *available at* http://www.aqmd.gov/docs/default-source/Agendas/Governing-Board/2021/2021-May7-027.pdf?sfvrsn=10.

[3] California Planning Roundtable (2008) Deconstructing Jobs-Housing Balance at p. 6, *available at* https://cproundtable.org/static/media/uploads/publications/cpr-jobs-housing.pdf

[4] Cervero, Robert and Duncan, Michael (2006) Which Reduces Vehicle Travel More: Jobs-Housing Balance or Retail-Housing Mixing? Journal of the American Planning Association 72 (4), 475-490, 482, *available at* http://reconnectingamerica.org/assets/Uploads/UTCT-825.pdf.

otherwise known as Assembly Bill No. 2011 ("**AB2011**"). AB2011 amended the Planning and Zoning Law to allow ministerial, by-right approval for projects being built alongside commercial corridors that meet affordability and labor requirements. 13 CONT

The City should consider utilizing local workforce policies and requirements to benefit the local area economically and to mitigate greenhouse gas, improve air quality, and reduce transportation impacts.

II. THE PROJECT WOULD BE APPROVED IN VIOLATION OF THE CALIFORNIA ENVIRONMENTAL QUALITY ACT

A. Background Concerning the California Environmental Quality Act

The California Environmental Quality Act is a California statute designed to inform decision-makers and the public about the potential significant environmental effects of a project. 14 California Code of Regulations ("**CEQA Guidelines**"), § 15002, subd. (a)(1).[5] At its core, its purpose is to "inform the public and its responsible officials of the environmental consequences of their decisions *before* they are made." *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564. 14

B. Background Concerning Environmental Impact Reports

CEQA directs public agencies to avoid or reduce environmental damage, when possible, by requiring alternatives or mitigation measures. CEQA Guidelines, § 15002, subds. (a)(2)-(3); see also *Berkeley Keep Jets Over the Bay Committee v. Board of Port Comes* (2001) 91 Cal.App.4th 1344, 1354; *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553; *Laurel Heights Improvement Assn.*, 47 Cal.3d at p. 400. The EIR serves to provide public agencies and the public in general with information about the effect that a proposed project is likely to have on the environment and to "identify ways that environmental damage can be avoided or significantly reduced." CEQA Guidelines, § 15002, subd. (a)(2). If the project has a significant effect on the environment, the agency may approve the project only upon finding that it has "eliminated or substantially lessened all significant effects on the environment where feasible" and that any unavoidable significant effects on the environment are

[5] The CEQA Guidelines, codified in Title 14 of the California Code of Regulations, section 15000 et seq., are regulatory guidelines promulgated by the state Natural Resources Agency for the implementation of CEQA. Cal. Pub. Res. Code, § 21083. The CEQA Guidelines are given "great weight in interpreting CEQA except when . . . clearly unauthorized or erroneous." *Center for Biological Diversity v. Dept. of Fish & Wildlife* (2015) 62 Cal.4th 204, 217.

"acceptable due to overriding concerns" specified in Public Resources Code section 21081. See CEQA Guidelines, § 15092, subds. (b)(2)(A)-(B).

14 CONT

While the 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. *Berkeley Jets*, 91 Cal.App.4th at p. 1355 (quoting *Laurel Heights Improvement Assn.*, 47 Cal.3d at pp. 391, 409 fn. 12) (internal quotations omitted). A clearly inadequate or unsupported study is entitled to no judicial deference. *Id.* Drawing this line and determining whether the EIR complies with CEQA's information disclosure requirements presents a question of law subject to independent review by the courts. *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 515; *Madera Oversight Coalition, Inc. v. County of Madera* (2011) 199 Cal.App.4th 48, 102, 131. As the court stated in *Berkeley Jets*, prejudicial abuse of discretion occurs if the failure to include relevant information precludes informed decision-making and informed public participation, thereby thwarting the statutory goals of the EIR process. 91 Cal.App.4th at p. 1355 (internal quotations omitted).

The preparation and circulation of an EIR is more than a set of technical hurdles for agencies and developers to overcome. *Communities for a Better Environment v. Richmond* (2010) 184 Cal.App.4th 70, 80 (quoting *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 449-450). The EIR's function is to ensure that government officials who decide to build or approve a project do so with a full understanding of the environmental consequences and, equally important, that the public is assured those consequences have been considered. *Id.* For the EIR to serve these goals it must present information so that the foreseeable impacts of pursuing the project can be understood and weighed, and the public must be given an adequate opportunity to comment on that presentation before the decision to go forward is made. *Id.*

A strong presumption in favor of requiring preparation of an EIR is built into CEQA. This presumption is reflected in what is known as the "fair argument" standard under which an EIR must be prepared whenever substantial evidence in the record supports a fair argument that a project may have a significant effect on the environment. *Quail Botanical Gardens Found., Inc. v. City of Encinitas* (1994) 29 Cal.App.4th 1597, 1602; *Friends of "B" St.* v. *City of Hayward* (1980) 106 Cal.3d 988, 1002.

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The fair argument test stems from the statutory mandate that an EIR be prepared for any project that "may have a significant effect on the environment." PRC, § 21151;

see *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.App.3d 68, 75; accord *Jensen v. City of Santa Rosa* (2018) 23 Cal.App.5th 877, 884. Under this test, if a proposed project is not exempt and may cause a significant effect on the environment, the lead agency must prepare an EIR. PRC, §§ 21100 (a), 21151; CEQA Guidelines, § 15064 (a)(1), (f)(1). An EIR may be dispensed with only if the lead agency finds no substantial evidence in the initial study or elsewhere in the record that the project may have a significant effect on the environment. *Parker Shattuck Neighbors v. Berkeley City Council* (2013) 222 Cal.App.4th 768, 785. In such a situation, the agency must adopt a negative declaration. PRC, § 21080, subd. (c)(1); CEQA Guidelines, §§ 15063 (b)(2), 15064(f)(3). 15 CONT

"Significant effect upon the environment" is defined as "a substantial or potentially substantial adverse change in the environment." PRC, § 21068; CEQA Guidelines, § 15382. A project may have a significant effect on the environment if there is a reasonable probability that it will result in a significant impact. *No Oil, Inc.*, 13 Cal.3d at p. 83 fn. 16; see *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 309. If any aspect of the project may result in a significant impact on the environment, an EIR must be prepared even if the overall effect of the project is beneficial. CEQA Guidelines, § 15063(b)(1); see *County Sanitation Dist. No. 2 v. County of Kern* (2005) 127 Cal.App.4th 1544, 1580. 16

This standard sets a "low threshold" for preparation of an EIR. *Consolidated Irrigation Dist. v. City of Selma* (2012) 204 Cal.App.4th 187, 207; *Nelson v. County of Kern* (2010) 190 Cal.App.4th 252; *Pocket Protectors v. City of Sacramento* (2004) 124 Cal.App.4th 903, 928; *Bowman v. City of Berkeley* (2004) 122 Cal.App.4th 572, 580; *Citizen Action to Serve All Students v. Thornley* (1990) 222 Cal.App.3d 748, 754; *Sundstrom*, 202 Cal.App.3d at p. 310. If substantial evidence in the record supports a fair argument that the project may have a significant environmental effect, the lead agency must prepare an EIR even if other substantial evidence before it indicates the project will have no significant effect. See *Jensen,* 23 Cal.App.5th at p. 886; *Clews Land & Livestock v. City of San Diego* (2017) 19 Cal.App.5th 161, 183; *Stanislaus Audubon Society, Inc. v. County of Stanislaus* (1995) 33 Cal.App.4th 144, 150; *Brentwood Assn. for No Drilling, Inc. v. City of Los Angeles* (1982) 134 Cal.App.3d 491; *Friends of "B" St.*, 106 Cal.App.3d 988; CEQA Guidelines, § 15064(f)(1). 17

C. Background Concerning Initial Studies, Negative Declarations and Mitigated Negative Declarations

CEQA and CEQA Guidelines are strict and unambiguous about when an MND may be used. A public agency must prepare an EIR whenever substantial evidence supports a "fair argument" that a proposed project "may have a significant effect on the environment." Pub. Res. Code, §§ 21100, 21151; CEQA Guidelines, §§ 15002, subds. (f)(1)-(2), 15063; *No Oil, Inc.*, 13 Cal.3d at p. 75; *Communities for a Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 111-112. 18

Essentially, should a lead agency be presented with a fair argument that a project may have a significant effect on the environment, the lead agency shall prepare an EIR even though it may also be presented with other substantial evidence that the project will not have a significant effect. CEQA Guidelines, §§ 15064, subds. (f)(1)-(2); see *No Oil Inc., supra*, 13 Cal.3d at p. 75 (internal citations and quotations omitted). Substantial evidence includes "enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion, even though other conclusions might also be reached." CEQA Guidelines, § 15384(a).

The fair argument standard is a "low threshold" test for requiring the preparation of an EIR. *No Oil Inc.*, *supra*, 13 Cal.3d at p. 84; *County Sanitation Dist. No. 2 of Los Angeles County v. County of Kern* (2005) 127 Cal.App.4th 1544, 1579. It "requires the preparation of an EIR where there is substantial evidence that any aspect of the project, either individually or cumulatively, may cause a significant effect on the environment, regardless of whether the overall effect of the project is adverse or beneficial[.]" *County Sanitation*, *supra*, 127 Cal.App.4th at p. 1580 (quoting CEQA Guidelines, § 15063(b)(1)). A lead agency may adopt an MND only if "there is no substantial evidence that the project will have a significant effect on the environment." CEQA Guidelines, § 15074(b). 19

Evidence supporting a fair argument of a significant environmental impact triggers preparation of an EIR regardless of whether the record contains contrary evidence. *League for Protection of Oakland's Architectural and Historical Resources v. City of Oakland* (1997) 52 Cal.App.4th 896, 904-905. "Where the question is the sufficiency of the evidence to support a fair argument, deference to the agency's determination is not appropriate[.]" *County Sanitation*, 127 Cal.App.4th at 1579 (quoting *Sierra Club v. County of Sonoma* (1992) 6 Cal.App.4th 1307, 1317-1318).

Further, it is the duty of the lead agency, not the public, to conduct the proper environmental studies. "The agency should not be allowed to hide behind its own failure to gather relevant data." *Sundstrom*, 202 Cal.App.3d at p. 311. "Deficiencies in the record may actually enlarge the scope of fair argument by lending a logical plausibility to a wider range of inferences." *Id*; see also *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1382 (lack of study enlarges the scope of the fair argument which may be made based on the limited facts in the record). **20**

Thus, refusal to complete recommended studies lowers the already low threshold to establish a fair argument. The court may not exercise its independent judgment on the omitted material by determining whether the ultimate decision of the lead agency would have been affected had the law been followed. *Environmental Protection Information Center v. Cal. Dept. of Forestry* (2008) 44 Cal.4th 459, 486 (internal citations and quotations omitted). The remedy for this deficiency would be for the trial court to issue a writ of mandate. *Id.* **21**

Both the review for failure to follow CEQA's procedures and the fair argument test are questions of law, thus, the de novo standard of review applies. *Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435. "Whether the agency's record contains substantial evidence that would support a fair argument that the project may have a significant effect on the environment is treated as a question of law. *Consolidated Irrigation Dist.*, 204 Cal.App.4th at p. 207; Kostka and Zischke, Practice Under the Environmental Quality Act (2017, 2d ed.) at § 6.76. **22**

In an MND context, courts give no deference to the agency. Additionally, the agency or the court should not weigh expert testimony or decide on the credibility of such evidence—this is one of the EIR's functions. As stated in *Pocket Protectors v. City of Sacramento*:

> Unlike the situation where an EIR has been prepared, neither the lead agency nor a court may "weigh" conflicting substantial evidence to determine whether an EIR must be prepared in the first instance. Guidelines section 15064, subdivision (f)(1) provides in pertinent part: if a lead agency is presented with a fair argument that a project may have a significant effect on the environment, the lead agency shall prepare an EIR even though it may also be presented with other substantial evidence that the project will not have a significant effect. Thus, as *Claremont* itself recognized, [c]onsideration is not to be given contrary evidence supporting the preparation of a negative declaration.

(2004) 124 Cal.App.4th 903, 935 (internal citations and quotations omitted).

In cases where it is not clear whether there is substantial evidence of significant environmental impacts, CEQA requires erring on the side of a "preference for resolving doubts in favor of environmental review." *Mejia v. City of Los Angeles* (2005) 130 Cal.App.4th 322, 332. "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. *Friends of Mammoth v. Board of Supervisors* (1972) 8 Cal.3d 247, 259. **22 CONT**

1. There Is a Fair Argument that the Project May Have a Significant Air Quality Impact By Increasing Exposure To Air Pollution In Disadvantaged Communities

The Project, individually and taken together with the operation of other industrial development within the City, will expose the nearby City community to increased air pollution and requires respective studies and mitigation.

According to the California Air Resources Board ("**CARB**"), industrial development, including warehouse projects, can lead to the increase in daily volumes of heavy-duty truck traffic and the operation of on-site equipment that emits toxic diesel, thus contributing to both regional air pollution and climate change.[6] This is especially detrimental to disadvantaged communities located within the vicinity of these warehouse projects. **23**

Accordingly, to address the disproportionate impacts of air pollution and particularly such impacts on disadvantaged communities, the State has passed some key pieces of legislation that focus on clean air investment, pollution, mitigation, and environmental regulation. **24**

a) Senate Bill 535

Senate Bill 535, passed in 2012, authorized the California Environmental Protection Agency ("**CalEPA**") to identify disadvantaged communities in order to target a share of the investment of Greenhouse Gas Reduction Funds to these communities.[7] The

[6] CARB Comment Letter ("**CARB Letter**") (Apr. 28, 2023) (p. 1), *available at* https://ww2.arb.ca.gov/sites/default/files/2023-05/CARB%20Comments%20-%20NOP%20for%20the%20Mariposa%20Industrial%20Park%20%232%20DEIR%20-%204.28.2023.pdf (accessed on May 19, 2023.)

[7] Sen. Bill No. 535, approved by Governor, Sept. 30, 2012, *available at* https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201120120SB535

bill requires that funds be allocated for the benefit of disadvantaged communities while recognizing the potential vulnerability of these communities to poor air quality.[8] CalEPA defines a "disadvantaged communities" as "the top 25% highest scoring census tracts in what was then the most current version of CalEnviroScreen, Version 3.0, along with the census tracts that scored in the highest 5% of CalEnviroSceen's Pollution Burden indicator but did not have an overall CalEnviroScreen score."[9]

24 CONT

In its May 2022 final designation, CalEPA has decided to formally designate as disadvantaged communities ("DACs") the four categories of tracts proposed for designation in the Preliminary Designation; i.e.: (1) census tracts with the highest 25 percent of CalEnviroScreen overall scores; (2) census tracts lacking overall scores due to data gaps, but with the highest 5 percent of CalEnviroScreen Pollution Burden scores; (3) census tracts recognized as disadvantaged in CalEPA's most recent SB 535 designation, made in 2017; and (4) areas under the control of federally recognized Tribes.[10]

Based on these four criteria, CalEPA provided an interactive map of DACs,[11] which shows that the Project is near disadvantaged communities.

Accordingly, the City should ensure that the Project will not have an adverse impact on nearby disadvantaged communities.

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b) Senate Bill 1000

Senate Bill 1000, passed in 2016, requires local governments to include environmental justice elements into their general plans where local governments have identified disadvantaged communities when the government will next adopt or revise two (2) or more elements concurrently on or after January 1, 2018.[12] SB 1000 requires that these

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[8] *Id.* at Section 1(b).

[9] CalEPA, *Preliminary Designation of Disadvantaged Communities Pursuant to Senate Bill 535* (Oct. 2021), p. 1, *available at* https://calepa.ca.gov/wp-content/uploads/sites/6/2021/10/2021_CalEPA_Prelim_DAC_1018_English_a.pdf (accessed on May 19, 2023.)

[10] CalEPA's *Final Designation of Disadvantaged Communities Pursuant to Senate Bill* 535, May 2022 - https://calepa.ca.gov/wp-content/uploads/sites/6/2022/05/Updated-Disadvantaged-Communities-Designation-DAC-May-2022-Eng.a.hp_-1.pdf ;

[11] See, CalEPA's Final Designation interactive map: https://calepa.ca.gov/envjustice/ghginvest/

[12] Sen. Bill No. 1000, approved by Governor Sept. 24, 2016, *available at* https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201520160SB1000 (accessed on May 19, 2023.)

environmental justice elements set forth objectives and policies intended to reduce health risks in disadvantaged communities and include policies aimed at reducing community pollution exposure by improving air quality.[13] The purpose is to ensure environmental justice principles are incorporated into the planning process so that disadvantaged community needs are addressed and improvements and programs are prioritized. **26 CONT**

c) Assembly Bill 617

Assembly Bill 617 is aimed at developing "a new community focused program to more effectively reduce to [sic] air pollution and preserve public health" and "directs [CARB] and all local air districts, . . . to take measures to protect communities disproportionately impacted by air pollution."[14] As a result, CARB, in conjunction with local air districts, created the Community Air Protection Program.[15]

The foregoing three (3) bills should be evaluated and included in the Project's environmental analysis in order to address and mitigate any potential negative impacts that the Project may have on air quality and the communities nearby.

2. The City Should Quantify and Discuss the Potential Cancer Risks from Project Operation.

Since the Project Site is located near a community already burdened by various sources of air pollution, the City should revise the health risk assessment ("**HRA**") for the Project to account for all potential health risks from the Project. According to CARB, an "HRA should account for all potential operational health risks from Project-related diesel particulate matter (diesel PM) emission sources, including, but not limited to, **27**

[13] *Id.* at Section 65302(h)(A).

[14] Sacramento Metropolitan Air Quality Management District, *AB 617 Background*, *available at* https://www.airquality.org/air-quality-health/community-air-protection/ab-617-background (accessed on May 19, 2023); *see also* Assem. Bill No. 617, approved by Governor July 26, 2017, *available at* https://leginfo.legislature.ca.gov/faces/billNavClient.xhtml?bill_id=201720180AB617 (accessed on May 19, 2023.)

[15] California Air Resources Board, *AB 617 Community Air Protection Incentives Status Report* (accessed on May 19, 2023), *available at* https://ww2.arb.ca.gov/our-work/programs/community-air-protection-incentives/ab-617-community-air-protection-incentives#:~:text=Specifically%2C%20AB%20617%20directed%20CARB,variety%20of%20strategies%20including%20incentives.

back-up generators, on-site diesel-powered equipment, locomotives, and heavy-duty trucks."[16] 27 CONT

In addition, the HRA should evaluate whether the Project's operation, considered together with past, present, and reasonably foreseeable future projects, would cause a cumulative cancer risk impact on neighboring communities.[17] Therefore, the City should include all air pollution reduction measures listed in Attachment A of the CARB Letter.[18] 28

Assuming that the proposed industrial land uses here would be used for cold storage, it is possible that the trucks and trailers visiting the Project Site could be equipped with Transport Refrigeration Units ("**TRU**").[19] According to CARB, TRUs can emit a significant amount of diesel exhaust while operating near the Project Site, which would expose nearby residences and other sensitive receptors to diesel exhaust emissions, thereby posing a significant cancer risk to the nearby community.[20] Thus, if the Project will be used for cold storage, the City should model air pollutant emissions from on-site TRUs in the environmental study and account for the potential cancer risks that the on-site TRUs may pose in the Project's HRA. 29

If, however, the Project's use of TRUs is unclear or if the Project at this time is proposed with no TRUs and the Project site will not be used for cold storage or TRU trucks, then the City should ensure that any future use of TRUs will be duly accounted for and its impacts mitigation. To do so, the City should include at least one of the following design measures and approval conditions: 30

> A Project design measure requiring contractual language in tenant lease agreements that prohibits tenants from operating TRUs within the Project-site; or

[16] CARB Letter, *supra*, at p. 2.
[17] *Id.*
[18] *Id.* at p. 8, Attachment A.
[19] *See,* https://ww2.arb.ca.gov/sites/default/files/classic//cc/cold-storage/cold-storage1.htm#:~:text=TRUs%20are%20currently%20defined%20as,trailers%2C%20railcars%20and%20shipping%20containers (Dec. 18, 2018) (TRUs are defined as "refrigeration systems that are powered by internal combustion engines (inside the unit housing). They control the environment of temperature-sensitive products that are transported in refrigerated trucks, trailers, railcars and shipping containers.") (accessed on May 19, 2023.)
[20] CARB Letter, *supra*, at p. 2.

A condition requiring a restrictive covenant over the parcel that prohibits the applicant's use of TRUs on the property unless the applicant seeks and receives an amendment to its conditional use permit allowing such use.[21]

30 CONT

3. The City Should Quantify and Discuss the Potential Cancer Risks from Project Construction.

In addition to the potential health risks discussed above, the Project's air quality studies or findings and the Project's HRA should also include health risks associated with construction diesel particulate matter emissions. The Project's construction activities would cause short-term diesel particulate matter emissions both from on-road and off-road diesel equipment.[22] Since the Project's construction activities will likely take place for more than two (2) months, the Project's HRA should discuss the health risks posed for existing residences located near the Project Site while the Project's construction takes place.[23]

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In addition, the HRA should analyze all diesel particulate matter emission sources pertaining to Project construction and evaluate the cancer risks based on the most recent Office of Environmental Health Hazard Assessment's guidance and CARB's HARP2 model.[24]

In sum, City must address, study, and mitigate the Project's reasonably foreseeable air quality impacts, including the localized air pollutant exposure at the neighborhood level, as well as the Project's regional air quality impacts, through a revised HRA.[25]

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4. CEQA Bars the Deferred Development of Environmental Mitigation Measures

CEQA mitigation measures proposed and adopted into an environmental impact report are required to describe what actions that will be taken to reduce or avoid an environmental impact. (CEQA Guidelines § 15126.4(a)(1)(B) [providing

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[21] *Id.* at p. 2.
[22] *Id.* at p. 3.
[23] *Id.*
[24] *Id.*
[25] As stated in the CARB letter, "With regard to greenhouse gas emissions from this project, CARB has been clear that local governments and project proponents have a responsibility to properly mitigate these impacts. CARB's guidance, set out in detail in the Scoping Plan issued in 2017, makes clear that in CARB's expert view, local mitigation is critical to achieving climate goals and reducing greenhouse gases below levels of significance." *Id.* at p. 1. As noted in the CARB Letter (*id.*), the noted concerns are for both the localized air pollutant exposure at the neighborhood level, as well as the Project's regional air quality impacts.

"[f]ormulation of mitigation measures should not be deferred until some future time."].) While the same Guidelines section 15126.5(a)(1)(B) acknowledges an exception to the rule against deferrals, but such exception is narrowly proscribed to situations where "measures may specify performance standards which would mitigate the significant effect of the project and which may be accomplished in more than one specified way." (*Id.*) Courts have also recognized a similar exception to the general rule against deferral of mitigation measures where the performance criteria for each mitigation measure is identified and described in the EIR. (*Sacramento Old City Ass'n v. City Council* (1991) 229 Cal.App.3d 1011.)

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Impermissible deferral can occur when an EIR calls for mitigation measures to be created based on future studies or describes mitigation measures in general terms but the agency fails to commit itself to specific performance standards. (*Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260, 281 [city improperly deferred mitigation to butterfly habitat by failing to provide standards or guidelines for its management]; *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 671 [EIR failed to provide and commit to specific criteria or standard of performance for mitigating impacts to biological habitats]; *see also Cleveland Nat'l Forest Found. v San Diego Ass'n of Gov'ts* (2017) 17 Cal.App.5th 413, 442 [generalized air quality measures in the EIR failed to set performance standards]; *California Clean Energy Comm. v City of Woodland* (2014) 225 Cal.App.4th 173, 195 [agency could not rely on a future report on urban decay with no standards for determining whether mitigation required]; *POET, LLC v. State Air Resources Bd.* (2013) 218 Cal.App.4th 681, 740 [agency could not rely on future rulemaking to establish specifications to ensure emissions of nitrogen oxide would not increase because it did not establish objective performance criteria for measuring whether that goal would be achieved]; *Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1119 [rejecting mitigation measure requiring replacement water to be provided to neighboring landowners because it identified a general goal for mitigation rather than specific performance standard]; *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 794 [requiring report without established standards is impermissible delay].)

The Air Quality Mitigation Measures for the Project results in deferred mitigation by not adequately analyzing the applicability of San Joaquin Valley Air Pollution Control District's ("**SJVAPCD**") Rule 9510. While the IS/MND states that the air quality

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assessment included in Appendix A fulfills the requirements of the majority of the mitigation measures, measure MM AQ-4b is left to be assessed by the applicant prior to the Project's discretionary approval. (IS/MND, p. 51.) This requirement, however, lacks necessary enforcements mechanisms to ensure the assessment is performed and available to the public ***prior*** to any approvals. Further, the mitigation measure itself requires the creation of future, unknown mitigation measures to reduce impacts as necessary. These mitigations must also be made available for public comment to ensure compliance with CEQA. **34 CONT**

As the currently air quality mitigations are speculative in nature, there is a fair argument that there will be a significant air quality impact requiring the preparation of an EIR. **35**

5. There Is a Fair Argument that the Project May Have a Significant Biological Impacts Mandatory Findings of Signficance and an EIR.

The IS/MND fails to outline all mitigation measures necessary to support a finding of no significant impact. As the Project site is located within the San Joaquin County Multi-Species Habitat Conservation and Open Space Plan ("**SJMSCP**") area, the applicant will be required to obtain an incidental take permit and implement further mitigation requirements as defined by the San Joquin Council of Governments ("**SJCOG**"). The City of Stockton, as a Plan Participant, agreed to the terms of the plan. Further mitigations required by the Regional Water Quality Control Board are also expected due to the Project's impacts on the nearby French Camp Slough. However, the potential mitigations have not been included in the IS/MND and no clear description of the performance standards was included in the existing mitigation measures. As such, the biological impact mitigations also engage in impermissible deferred mitigation. **36**

As written, the IS/MND relies on compliance alone to support its findings of no significant impacts on biological resources. However, as explained above, this compliance is completely speculative as the measures required for actual compliance have not been created. Further, the process currently described by the IS/MND is ***not compliant*** with the requirements of the SJMSCP. The Plan states that "Plan Participants shall forward Advisory Agency Notices to the Joint Powers Authority (JPA), as required by Section 8.1.3.2, ***at the beginning of a discretionary project's application review process***." (SJMSCP, p. 5-16)(Emphasis added.) If the JPA determines that the project will require mitigation measures, the JPA' "shall list the applicable Incidental Take Minimization Measures in the written response." (*Id.*) **37**

Further, any mitigation measures required by the JPA are to be ***included as conditions of project approval***. (*Id.*) The IS/MND has failed to clarify whether or not the incidental take permit process has even been initiated. 38

As the requirements of the SJMSCP have not been met, the City's conclusion that there will be no significant impacts on biological resources is entirely unsupported by evidence, and there is a fair argument that the Project may have significant biological resources impacts, necessitating the preparation of an EIR. 39

III. CONCLUSION

Based on the foregoing, the City should deny the Project's proposed entitlements and require that an Environmental Impact Report be prepared pursuant to CEQA, consistent with the comments and issues identified in this comment letter. 40

Sincerely,

Grace "o" rook
Attorneys for Carpenters
Local Union #152

Attached:

March 8, 2021 SWAPE Letter to Mitchell M. Tsai re Local Hire Requirements and Considerations for Greenhouse Gas Modeling (Exhibit A);

Air Quality and GHG Expert Paul Rosenfeld CV (Exhibit B); and

Air Quality and GHG Expert Matt Hagemann CV (Exhibit C).