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May 8, 2020

Mr. Matt Diaz
City of Stockton, Community Development Department
345 N El Dorado Street
Stockton, CA 95202

RE: Draft Environmental Impact Report for the Sanchez-Hoggan Annexation Project
(SCH # 2020020006)

Dear Mr. Diaz:

Thank you for the opportunity to provide comments on the City of Stockton's Draft Environmental Impact Report (DEIR) for the Sanchez-Hoggan Annexation Project ("the Project") that would allow the construction and operation of roughly 3 million square feet of warehouses in a currently unincorporated area of San Joaquin County.

While we recognize the need to foster economic growth and future job creation during these challenging times, we have several concerns about the DEIR's compliance with the California Environmental Quality Act (CEQA). First, the DEIR's air quality impact analysis is flawed because it is based on inaccurate assumptions. Moreover, the DEIR fails to account for the Project's impact on several sensitive populations nearby. Finally, we provide suggestions for feasible mitigation the City of Stockton ("the City") should consider to address the Project's likely significant air quality impacts. We respectfully submit these comments urging the City to conduct further environmental analysis pursuant to CEQA to ensure that the Project's environmental impacts are understood, disclosed, and mitigated to the maximum feasible extent.¹

I. THE PROJECT SEEKS TO CONSTRUCT WAREHOUSES IN A HIGHLY POLLUTED AREA ADJACENT TO RESIDENCES AND CORRECTIONAL FACILITIES.

The Project proposes to annex two properties—the Sanchez property and the Hoggan property—in an unincorporated area of San Joaquin County adjacent to the southeastern Stockton city limits. The Project sites are east of State Route 99 and west of the BNSF railroad,

¹ The Attorney General submits these comments pursuant to his independent power and duty to protect the environment and natural resources of the State. (See Cal. Const., art. V, § 13; Gov. Code, §§ 12511, 12600–12; *D'Amico v. Bd. of Medical Examiners* (1974) 11 Cal.3d 1, 14–15.)

in an area where millions of square feet of industrial warehouses have replaced agricultural land over the past decade.

On the Sanchez property, the Project proposes to construct four industrial buildings totaling 2,796,948 square feet, as well as 2,726 auto parking stalls and 154 truck-trailer parking stalls. On the Hoggan property, the Project would construct 290,440 square feet of industrial space, 237 auto parking stalls, and 41 truck-trailer parking stalls. While the DEIR does not state whether the warehouses will include cold storage, its air quality modeling assumes that the Project will not include visits by trucks with diesel transport refrigeration units (TRUs). In total, the Project is expected to generate over 4,000 vehicle trips per day.

The communities around the Project are exposed to pollution from the recent expansion of industrial development in the area, as well as agricultural uses. According to CalEnviroScreen 3.0, CalEPA's screening tool that ranks each census tract in the state for pollution and vulnerability, the Project's census tract ranks in the 95th to 100th percentile—the highest possible score in the state.² The most significant pollution sources for nearby residents are ultra-fine particulate matter (93rd percentile), pesticides (93rd percentile), drinking water contamination (99th percentile), and hazardous waste (89th percentile). Additionally, these communities deal with high rates of poverty (88th percentile) and cardiovascular disease (76th percentile). The residents in these communities are predominately people of color, the majority of whom are Latinx.

While the Hoggan property is near a rural residential neighborhood and a mobile home park, the Sanchez property has higher density neighbors to the south: facilities owned and managed by the California Department of Corrections and Rehabilitation (CDCR). Immediately south of the Sanchez property is the former Northern California Women's Facility, which is being converted into a 500-bed reentry facility for male inmates. Further south are three more facilities: the California Health Care Facility, which provides medical care and mental health treatment to approximately 2,800 male inmates with severe and long-term health issues; the N.A. Chaderjian Youth Correctional Facility, which houses approximately 196 young men between the ages of 18 and 25; and the O.H. Close Youth Correctional Facility, which houses approximately 174 young men under the age of 18.³ These facilities combined can house

² CalEnviroScreen is a tool created by the Office of Environmental Health Hazard Assessment that uses environmental, health, and socioeconomic information to produce scores and rank every census tract in the state. (*CalEnviroScreen 3.0*, Cal. Off. Environmental Health Hazard Assessment <<https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-30>> [as of Jan. 10, 2020].) A census tract with a high score is one that experiences a much higher pollution burden than a census tract with a low score. (Faust et al., *Update to the California Communities Environmental Health Screening Tool, CalEnviroScreen 3.0* (Jan. 2017) Cal. Off. Environmental Health Hazard Assessment <<https://oehha.ca.gov/media/downloads/calenviroscreen/report/ces3report.pdf>> [as of Jan. 10, 2020].)

³ Washburn & Menart, *Unmet Promises: Continued Violence & Neglect in California's Division of Juvenile Justice*, Center on Juvenile & Criminal Justice at p. 15 (Feb. 2019).

roughly 3,600 youth and adults who are largely people of color: 44.1% Latino and 28.3% African American.⁴

Without mitigation, the Project's emissions will amplify the air quality concerns in this area and threaten the health of the sensitive populations living nearby.

II. THE DEIR AIR QUALITY IMPACT ANALYSIS IS FLAWED.

To comply with CEQA, the lead agency must make “a reasoned and good faith effort to inform decision makers and the public” about a project’s potential impacts.⁵ Using incorrect or outdated data or models runs counter to CEQA’s requirement that agencies make “a good faith effort at full disclosure.”⁶

The DEIR’s Air Quality analysis errs on at least two fronts. First, the modeling does not account for the warehouses’ potential cold storage uses. The operation of refrigerated warehouses requires use of trucks with TRUs, which emit significantly higher levels of toxic diesel particulate matter (PM), nitrogen oxides (NO_x), and greenhouse gas emissions than trucks without TRUs. While the DEIR’s air quality modeling relied on the assumption that the Project will not include cold storage uses, the Project details state that that buildings will be high-cube warehouses, and note that “Cold Storage—warehouse with permanent cold storage in at least part of the building”—is a type of high-cube warehouse.⁷ Accordingly, the calculations fail to account for Project air pollutant emissions that could exceed the San Joaquin Valley Air Pollution Control District (SJVAPCD) significance thresholds. The increased air pollutant emissions from cold storage should be factored into the analysis unless the Project includes enforceable measures to prohibit cold storage at the Project.

Second, the DEIR’s air emissions model uses a default fleet mix for a mixed-use project, rather than an industrial logistics warehouse. The DEIR’s fleet mix estimates the Project will generate the following mix of vehicles: passenger vehicles, 57.26 percent; light-duty trucks, 22.14 percent; medium-duty trucks, 10.71 percent; light-heavy-duty trucks, 1.78 percent; heavy-heavy duty trucks, 5.67 percent.⁸ At this current fleet mix, the proposed Project is estimated to emit 8.86 tons of reactive organic gases per year and 7.74 tons of NO_x per year, close to each pollutant’s 10-ton significance threshold.⁹ However, this calculation relies on an artificially low estimate of the percentage of medium and heavy-duty diesel trucks, which in turn underestimates

⁴ Cal. Dept. of Corrections & Rehabilitation, *Offender Data Points: Offender Demographics For The 24-Month Period Ending December 2018* (Jan. 2020), available at https://www.cdcr.ca.gov/research/wp-content/uploads/sites/174/2020/01/201812_DataPoints.pdf.

⁵ *Berkeley Keep Jets Over the Bay Comm. v. Bd. of Port Comm'rs* (2001) 91 Cal.App.4th 1344, 1367, as modified on denial of reh'g (Sept. 26, 2001).

⁶ CEQA Guidelines, § 15151; see also *Berkeley Keep*, 91 Cal. App. 4th at 1367.

⁷ DEIR at 3-4.

⁸ DEIR, App'x B, Air Quality Monitoring Results, p. 36.

⁹ DEIR at 6-10.

the Project's total emissions. In fact, the Institute of Transportation Engineers estimate that up to 39 percent of vehicle trips from high-cube warehouses will be by medium and heavy-duty diesel trucks,¹⁰ significantly more than the DEIR's estimate of roughly 16 percent for medium and heavy-duty diesel trucks. Medium and heavy-duty diesel trucks generate significantly more emissions than passenger automobiles.¹¹ Thus, the DEIR's air quality model vastly underestimates the Project's operational emissions. Given that the DEIR's current estimates already are near the significance thresholds for NOx and reactive organic gases, it is likely that the emissions will exceed the significance threshold when the fleet mix is fixed. This error must be corrected in order for the City to comply with CEQA's requirement of full disclosure of the Project's impacts.

III. THE DEIR FAILS TO CONSIDER IMPACTS TO ALL SENSITIVE RECEPTORS.

The purpose of CEQA is to ensure that a lead agency fully evaluates, discloses, and, whenever feasible, mitigates a project's significant environmental effects. (Pub. Resources Code, §§ 21000–21002.1.) A DEIR serves as an “informational document” that informs the public and decisionmakers of the significant environmental effects of a project and ways in which those effects can be minimized. (CEQA Guidelines, § 15121, subd. (a).) Here, the Project's DEIR fails to achieve CEQA's aim because it does not evaluate, disclose, or mitigate impacts to the correctional facilities that house sensitive receptors adjacent to part of the Project.

The DEIR's Air Quality section evaluates whether the Project will expose sensitive receptors to criteria pollutants and toxic air contaminants. The California Air Resources Board defines sensitive land uses as “new residences, schools, day care centers, playgrounds, and medical facilities.”¹² While the DEIR correctly identified the rural residences north of the Hoggan property as sensitive receptors, it states that there are no sensitive receptors near the Sanchez property. In doing so, the DEIR overlooks thousands of individuals residing at CDCR facilities who fall squarely within the definition of sensitive receptors.

¹⁰ A 2016 study from the Institute of Transportation Engineers found that high-cube warehouses may expect a fleet mix of up to 39 percent trucks. See Inst. Trans. Eng'rs, *High-Cube Warehouse Vehicle Trip Generation Analysis* (Oct. 2016) at 13, available at <https://www.ite.org/pub/?id=a3e6679a%2De3a8%2Dbf38%2D7f29%2D2961becdd498> (finding the average percent trucks for four varieties of high-cube warehouses: transload and short-term storage (30 percent trucks); cold storage (39 percent trucks); fulfillment center (9 percent trucks); and parcel hub (38 percent trucks)).

¹¹ Dept. of Trans., *Estimated U.S. Average Vehicle Emissions Rates per Vehicle by Vehicle Type Using Gasoline and Diesel* (April 6, 2018), available at <https://www.bts.gov/content/estimated-national-average-vehicle-emissions-rates-vehicle-vehicle-type-using-gasoline-and>.

¹² *Air Quality and Land Use Handbook: A Community Health Perspective* (April 2005) (“CARB Handbook”) at ES-1; see also Cal. Health & Safety Code § 42705.5(a)(5) (“ ‘Sensitive receptors’ includes hospitals, schools and day care centers, and such other locations as the district or state board may determine.”).

The California Health Care Facility houses 2,800 inmates with some of the most severe health problems in the state correctional system. As discussed above, by generating a significant volume of additional truck and vehicle trips, the Project's construction and operation will likely have a negative impact on air quality. Ambient air pollution, especially from particulate matter, is strongly associated with increased cardiovascular disease.¹³ Within CDCR, cardiovascular disease is the second most common cause of death, following cancer.¹⁴ Individuals at the California Health Care Facility already suffer from serious preexisting health conditions, conditions made all the more precarious by the early reports that people of color and individuals in correctional facilities suffer higher infection and fatality rates from COVID-19.¹⁵ In addition, according to the United States Centers for Disease Control and Prevention (CDC), COVID-19 presents a significantly higher risk to people with previous medical conditions, conditions that increased industrial pollution exacerbates.¹⁶ Furthermore, recent evidence indicates that exposure to industrial pollution, such as particulate matter, significantly increases the likelihood of suffering serious health consequences, including death, from the COVID-19 virus.¹⁷ For all these reasons, the inmates at the California Health Care Facility are especially vulnerable to being exposed to an increase in air pollution.

Similarly, the minors at the O.H. Close Youth Correctional Facility are also at an increased health risk. While the N.A. Chaderjian Youth Correctional Facility houses approximately 196 young adults between the ages of 18 and 25, the O.H. Close Youth Correctional Facility is home to approximately 174 youth under the age of 18.¹⁸ Research indicates that juveniles in the custody of a correctional system are at a higher risk of respiratory disease,¹⁹ which may be further aggravated by increased air pollution. Yet the DEIR's statement that there are no sensitive receptors near the Sanchez property ignores these children and adults with serious preexisting health conditions who may be adversely impacted by the Project.

¹³ Du, et al., *Air particulate matter and cardiovascular disease: the epidemiological, biomedical and clinical evidence*, 8 JOURNAL OF THORACIC DISEASE E8 (2016).

¹⁴ Imai, *Analysis of 2018 CCHCS Mortality Reviews* (Nov. 25, 2019), available <https://cchcs.ca.gov/wp-content/uploads/sites/60/MS/2018-Inmate-Death-Reviews.pdf>.

¹⁵ See Laurencin & McClinton, *The COVID-19 Pandemic: a Call to Action to Identify and Address Racial and Ethnic Disparities*, J. RACIAL & ETHNIC HEALTH DISPARITIES 1 (April 18, 2020), available at <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7166096/>; Hawks, et al., *COVID-19 in Prisons and Jails in the United States*, JAMA INTERNAL MEDICINE (April 28, 2020), available at <https://jamanetwork.com/journals/jamainternalmedicine/fullarticle/2765271>.

¹⁶ Centers for Disease Control, *People Who Are at Higher Risk for Severe Illness* (April 15, 2020), available at <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/people-at-higher-risk.html>.

¹⁷ Wu & Nethery, *Exposure to air pollution and COVID-19 mortality in the United States*, Dept. of Biostatistics, Harvard T.H. Chan School of Public Health (April 5, 2020), available at https://projects.iq.harvard.edu/files/covid-pm/files/pm_and_covid_mortality.pdf.

¹⁸ Washburn & Menart, *Unmet Promises: Continued Violence & Neglect in California's Division of Juvenile Justice*, Center on Juvenile & Criminal Justice at p. 15 (Feb. 2019).

¹⁹ Fazel & Baillargeon, *The health of prisoners*, 377 THE LANCET 956, 961 (2011).

Given the constraints of incarceration, inmates may not be able to effectively participate and advocate for their interests in these land use decisions. Thus, it is imperative that the air pollutant emissions—and their attendant respiratory and cardiovascular consequences—are properly disclosed, analyzed, and mitigated to the extent feasible prior to project approval.

IV. THE DEIR FAILS TO MITIGATE POTENTIALLY SIGNIFICANT IMPACTS.

A DEIR must describe and adopt all feasible mitigation measures that minimize the significant environmental impacts of a project. (Pub. Resources Code, § 21002; CEQA Guidelines, § 15126.4, subd. (a)(1).) “Where several measures are available to mitigate an impact, each should be discussed and the basis for selecting a particular measure should be identified.” (CEQA Guidelines, § 15126.4, subd. (a)(1)(B).) Further, mitigation measures must be “fully enforceable through permit conditions, agreements, or other legally binding instruments.” (CEQA Guidelines, § 15126.4, subd. (a)(2).)

Because the air pollutant emissions will increase when the flaws in the air quality analysis are corrected, it is likely that the Project’s emissions will exceed SJVAPCD significance thresholds for reactive organic gases and NO_x. If the Project will have significant environmental impacts, the City should consider all available mitigation conditions to eliminate or diminish those impacts.

Proper siting and design are some of the most effective ways to mitigate the exposure of sensitive receptors to the environmental impacts from warehouse and logistics facilities like the Project. Best practices and potential mitigation for siting and designing warehouse facilities include:

- Siting warehouse facilities at least 1,000 feet from the nearest sensitive receptors, per CARB guidance.²⁰
- Creating physical, structural, and/or vegetative buffers between warehouses and any areas where sensitive receptors are likely to be present.
- Providing adequate areas for on-site parking, on-site queuing, and truck check-in that prevent trucks and other vehicles from parking or idling on public streets.
- Placing facility entry and exit points away from sensitive receptors.
- Locating warehouse dock doors and onsite areas with significant truck traffic away from sensitive receptors.
- Screening dock doors and onsite areas with significant truck traffic with physical, structural, and/or vegetative barriers.
- Posting signs clearly showing the designated entry and exit points for trucks and service vehicles.
- Posting signs indicating that all parking and maintenance of trucks must be conducted within designated on-site areas and not within the surrounding community or public streets.

²⁰ CARB Handbook at ES-1.

Measures to mitigate air quality and greenhouse gas impacts from construction include:

- Requiring off-road construction equipment to be electric, where available, and all diesel-fueled off-road construction equipment, to be equipped with CARB Tier IV-compliant engines or better.
- Prohibiting off-road diesel-powered equipment from being in the “on” position for more than 10 hours per day.
- Requiring on-road haul trucks to be model year 2010 or newer if diesel-fueled.
- Providing electrical hook ups to the power grid for electric construction tools, such as saws, drills and compressors, and using electric tools whenever feasible.
- Limiting the amount of daily grading disturbance area.
- Prohibiting grading on days with an Air Quality Index forecast of greater than 100 for particulates or ozone for the project area.
- Forbidding idling of heavy equipment for more than three minutes.
- Keeping onsite and furnishing to the lead agency or other regulators upon request, all equipment maintenance records and data sheets, including design specifications and emission control tier classifications.
- Conducting an on-site inspection to verify compliance with construction mitigation and to identify other opportunities to further reduce construction impacts.
- Using paints, architectural coatings, and industrial maintenance coatings that have volatile organic compound levels of less than 10 g/L.
- Providing information on transit and ridesharing programs and services to construction employees.
- Providing meal options onsite or shuttles between the facility and nearby meal destinations.

Measures to mitigate air quality and greenhouse gas impacts from operation include:

- Requiring that all facility-owned and operated fleet equipment with a gross vehicle weight rating greater than 14,000 pounds accessing the site meet or exceed 2010 model-year emissions equivalent engine standards as currently defined in California Code of Regulations Title 13, Division 3, Chapter 1, Article 4.5, Section 2025. Facility operators shall maintain records on-site demonstrating compliance with this requirement and shall make records available for inspection by the local jurisdiction, air district, and state upon request.
- Requiring all heavy-duty vehicles entering or operated on the project site to be zero-emission beginning in 2030.
- Requiring on-site equipment, such as forklifts and yard trucks, to be electric with the necessary electrical charging stations provided.
- Requiring tenants to use zero-emission light- and medium-duty vehicles as part of business operations.
- Installing and maintaining air filtration systems at sensitive receptors within a certain radius of facility.
- Forbidding trucks from idling for more than three minutes and requiring operators to turn off engines when not in use.

- Posting both interior- and exterior-facing signs, including signs directed at all dock and delivery areas, identifying idling restrictions and contact information to report violations to CARB, the air district, and the building manager.
- Installing and maintaining an air monitoring station proximate to sensitive receptors and the facility. While air monitoring does not mitigate the air quality or greenhouse gas impacts of a facility, it nonetheless benefits the affected community by providing information that can be used to improve air quality.
- Constructing electric truck charging stations proportional to the number of dock doors at the project.
- Constructing plugs for transport refrigeration units at every dock door, if the warehouse use could include refrigeration.
- Constructing electric light-duty vehicle charging stations proportional to the number of parking spaces at the project.
- Installing solar photovoltaic systems on the project site of a specified electrical generation capacity.
- Requiring all stand-by emergency generators to be powered by a non-diesel fuel.
- Requiring facility operators to train managers and employees on efficient scheduling and load management to eliminate unnecessary queuing and idling of trucks.
- Requiring operators to establish and promote a rideshare program that discourages single-occupancy vehicle trips and provides financial incentives for alternate modes of transportation, including carpooling, public transit, and biking.
- Meeting CalGreen Tier 2 green building standards, including all provisions related to designated parking for clean air vehicles, electric vehicle charging, and bicycle parking.
- Achieving certification of compliance with LEED green building standards.
- Providing meal options onsite or shuttles between the facility and nearby meal destinations.
- Posting signs at every truck exit driveway providing directional information to the truck route.
- Improving and maintaining vegetation and tree canopy for residents in and around the project area.
- Requiring that every tenant train its staff in charge of keeping vehicle records in diesel technologies and compliance with CARB regulations, by attending CARB-approved courses. Facility operators shall maintain records on-site demonstrating compliance with this requirement and shall make records available for inspection by the local jurisdiction, air district, and state upon request.
- Requiring tenants to enroll in the United States Environmental Protection Agency's SmartWay program, and requiring tenants to use carriers that are SmartWay carriers.
- Providing tenants with information on incentive programs, such as the Carl Moyer Program and Voucher Incentive Program, to upgrade their fleets.

These feasible mitigation measures have been adopted by similar projects throughout

May 8, 2020

Page 9

California and must be considered here.²¹ The Attorney General's Office is happy to assist the City when considering the best applicable mitigation measures, including those related to other potential significant impacts such as noise and traffic.

V. CONCLUSION

CEQA provides the opportunity for transparent, thoughtful governance by requiring evaluation, public disclosure, and mitigation of a project's significant environmental impacts prior to project approval. In evaluating the Project's impacts, the City should consider the surrounding community's already-high pollution burden and the cumulative impact of siting another industrial warehouse close to residences, medical facilities, and correctional facilities.

The Attorney General's Office is available to provide assistance to the City as it works on CEQA compliance. Please do not hesitate to contact me if you have any questions or would like to discuss these issues further.

Sincerely,

Jessica Wall

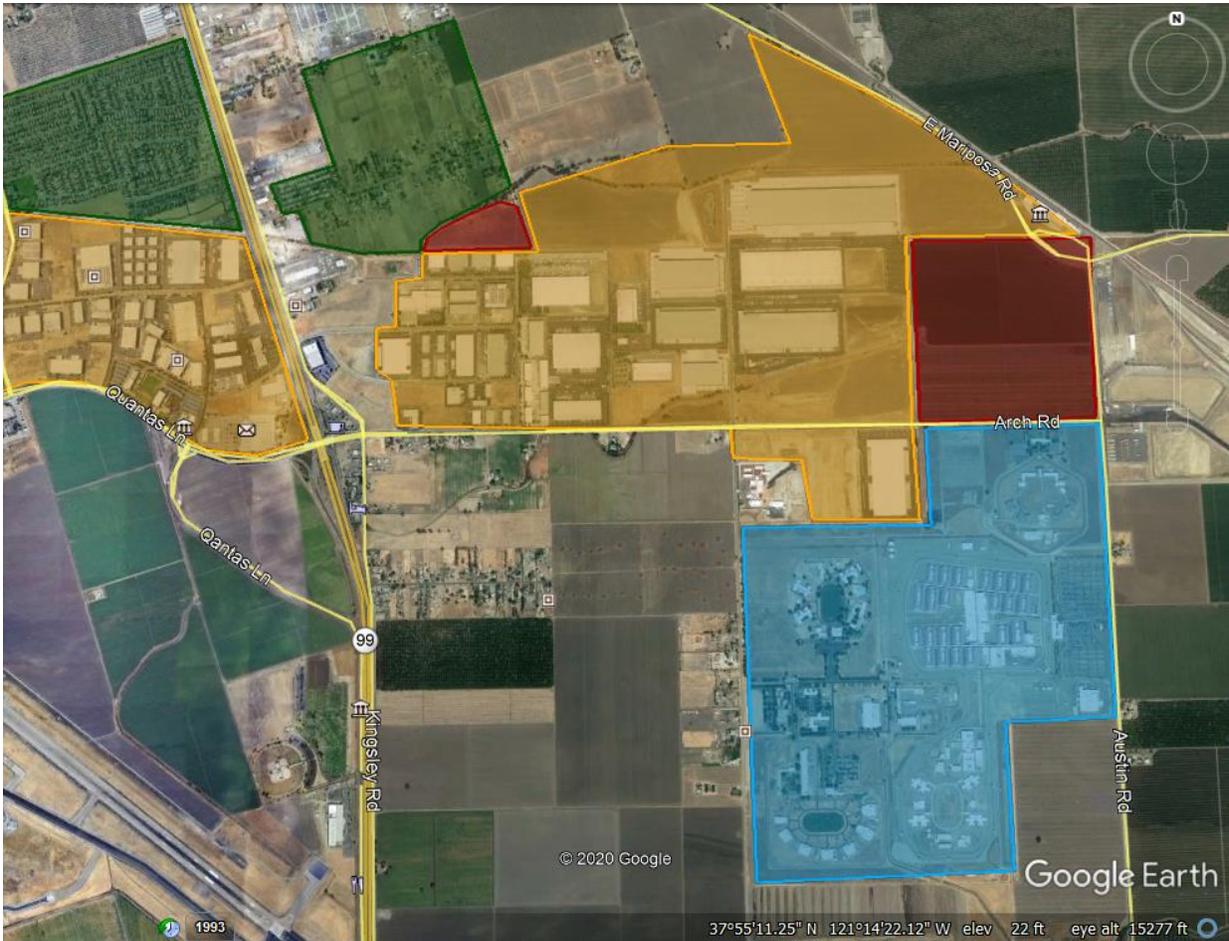
JESSICA WALL

Deputy Attorney General

For XAVIER BECERRA
Attorney General

²¹ For more in-depth information about potential air quality mitigation measures near high volume roadways, see CARB's Technical Advisory on the topic and, more generally, the CARB Handbook, which offers more mitigation ideas. Both are available at <https://www.arb.ca.gov/ch/landuse.htm>. The mitigation measures included here are focused on air quality; however, additional mitigation measures may be necessary for traffic, noise, or other significant impacts.

Appendix: Image of Project Area



Satellite image of the Project sites (red overlays), industrial properties (orange overlay), residential properties (green overlay), and correctional properties (blue overlay) as of August 2019.