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RE: CEQA Comment Letter on the Draft Environmental Impact Report for the Mariposa Industrial Park (State Clearinghouse Number: 2020120283)

Dear Ms. Moore:

Thank you for this opportunity to provide comments on the City of Stockton's Draft Environmental Impact Report (DEIR) prepared under the California Environmental Quality Act (CEQA) for the Mariposa Industrial Park Project (Project). The Attorney General submits these comments in the spirit of improving the analysis of the Project's environmental impacts to better inform Stockton's policymakers and the public and to ensure that the Project will take the necessary steps to minimize those environmental impacts. By properly disclosing and mitigating the Project's impacts, Stockton will be best situated to continue its economic development while also providing the requisite environmental stewardship and protecting the public health and safety of its residents.

I. THE PROJECT CONTINUES ONGOING WAREHOUSE DEVELOPMENT IN A REGION ALREADY SUFFERING FROM HIGH POLLUTION.

The Project is a proposed seven-building, 3,616,870 square-foot warehouse complex to be constructed in southeast Stockton. Most of the Project buildings will operate as "high-cube" warehouses, buildings each comprising hundreds of thousands of square feet for use 24 hours a day, 7 days a week, typically as fulfillment centers, parcel hubs, and/or cold storage warehouses. Conceptual plans show that the Project will include nearly 3,000 parking stalls, with 1,107 stalls for trucks and trailers. The Project is projected to attract over 12,000 vehicle trips per day, with a large fleet of trucks servicing the warehouses. Height exemptions allow the Project to be constructed up to 100 feet high, or over seven stories tall.

The Project is located on a 203-acre, nine-parcel site just outside the City boundaries in unincorporated San Joaquin County, to be annexed as part of Project approval. Historically, this area of the county has been a mix of agricultural land, limited residential development, and smaller-scale industrial facilities. However, in the past decade, numerous large-scale industrial

warehouses consisting of tens of millions of square feet have been constructed, dramatically changing the landscape and adding tens of thousands of additional truck trips to this area.

South Stockton is an environmental justice community that has long borne a disproportionately high pollution burden compared to both northern Stockton and the rest of California. According to CalEnviroScreen 4.0, CalEPA's screening tool that ranks each census tract in the State for pollution and socioeconomic vulnerability, the Project's census tract is more polluted than 95% of the State's census tracts.¹ Here, multiple sensitive receptors are located near the Project site. Immediately to the west of the Project is a small community of residences on Marfargoa Road and a mobile home park. A substantially larger residential community sits across Highway 99 less than a mile to the west from these new industrial warehouse developments. To the south of the Project and several other recently constructed warehouses are multiple facilities managed by the California Department of Corrections and Rehabilitation, including two youth correctional facilities and a medical care facility serving thousands of California inmates.

The Project is also located approximately one mile from the boundary of Stockton's designated AB 617 environmental justice community. Because of the extremely high levels of air pollution to which this environmental justice community is disproportionately exposed, the California Air Resources Board (CARB) has designated the area of south Stockton to the northwest of the Project as a top priority for reductions in emissions and improvements in air quality. Earlier this year, CARB approved Stockton's Community Emissions Reduction Program (CERP) after an extensive public process.² The CERP includes projected investments of over \$32 million in emission reduction incentives and a variety of other clean air projects in the Stockton AB 617 community area and additional measures to reduce exposure to air pollution for sensitive receptors.

¹ CalEnviroScreen 4.0, available at <https://oehha.ca.gov/calenviroscreen/report/draft-calenviroscreen-40> (as of October 7, 2021). 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. A census tract with a high score is one that experiences a much higher pollution burden than a census tract with a low score. Office of Environmental Health Hazard Assessment, CalEnviroScreen 4.0 Report (February 2021), available at: <https://oehha.ca.gov/media/downloads/calenviroscreen/document/calenviroscreen40reportd12021.pdf>.

² See <http://community.valleyair.org/selected-communities/stockton/>.

II. THE DEIR DOES NOT ACCURATELY DISCLOSE THE PROJECT'S ENVIRONMENTAL IMPACTS.

The purpose of CEQA is to ensure that a lead agency fully evaluates, discloses, and, whenever feasible, mitigates a project's significant environmental effects.³ An EIR 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.⁴ An EIR must clearly set forth all significant effects of the project on the environment.⁵ Here, because of the methodologies used, the DEIR minimizes the Project's true impacts on air quality, greenhouse gas (GHG) emissions, transportation, and aesthetics.

1. The DEIR Underestimates the Project's Already Significant Air Quality and GHG Impacts.

The methodology used in the DEIR to calculate emissions from truck trips travelling to and from the Project likely minimizes the Project's true air quality impacts. Even so, the DEIR concluded that the Project would create significant and unavoidable impacts on air quality, specifically NO_x emissions above the significance threshold. Yet the Project's actual air quality impacts will likely be even greater than those disclosed.

One concern is that the DEIR acknowledges that the Project's "high-cube" warehouses may include cold storage uses, but the air quality analysis does not account for such a use.⁶ The operation of refrigerated warehouses requires use of trucks with transport refrigeration units (TRUs), which emit significantly higher levels of toxic diesel particulate matter (PM), NO_x, and GHGs than trucks without TRUs. Despite the Project's future potential use as a cold storage facility, the DEIR's air quality modeling relies on the assumption that the Project will not use TRUs, minimizing the calculated emissions and associated air quality impacts.⁷ The DEIR's air quality analysis must be adjusted to account for such use of TRUs and the corresponding increase in PM, NO_x, and GHG emissions.

In addition, the DEIR's air emissions model for the Project proposes a fleet mix that likely underestimates the use of medium and heavy-duty trucks emitting the highest levels of pollution. The DEIR assumes that vehicles travelling to the "high-cube" warehouses will only consist of approximately 20% medium and heavy-duty trucks, a significantly lower figure than

³ Pub. Resources Code, §§ 21000-21002.1.

⁴ CEQA Guidelines, § 15121, subd. (a).

⁵ Pub. Resources Code, § 21100, subd. (b)(1); CEQA Guidelines, § 15126.2, subd. (a).

⁶ DEIR, Appendix C, CalEEMod Analysis, p. 32.

⁷ *Ibid.*

the actual numbers that typically visit a logistics center or distribution facility.⁸ Because medium and heavy-duty diesel trucks generate significantly more emissions than passenger automobiles, the use of such a projection for the model likely significantly underestimates the Project's true air quality impacts from truck trips. The DEIR's air quality model should be updated to accurately reflect the mix of heavy and medium duty trucks the Project will generate.

Another problem is that the air modeling in the DEIR assumes that trucks traveling to and from the Project will only drive approximately 10 miles per trip.⁹ While this may be accurate for trucks traveling between the Project and the Port of Stockton, a substantial number of trucks servicing the Project will drive significantly longer distances than 10 miles, including trucks from the Bay Area. By underestimating the miles that trucks will travel to and from the Project, the DEIR also underestimates the Project's air quality impacts.

Critically, the same flaws that infect the DEIR's air quality analysis cause the DEIR to underestimate the Project's GHG emissions. The DEIR's use of artificially low numbers for truck trips, miles travelled, and the quantity of medium and heavy-duty trucks travelling to and from the project underestimates the Project's already significant and unavoidable GHG impacts.

Finally, the DEIR's air quality analysis must discuss the Project's compliance with Stockton's CERP under AB 617. A DEIR must clearly identify any inconsistencies between the Project and applicable plans, yet the Project DEIR makes no mention of AB 617 or Stockton's CERP.¹⁰ Stockton's CERP specifically notes that mobile sources from Highways 5 and 99 crossing through the community are the major contributor to the dangerous levels of air pollution in the AB 617 area. In fact, NOx emissions from mobile sources currently comprise *nearly three-quarters* of the total NOx emissions in the AB 617 community, a percentage that is expected to only increase as Stockton continues developing projects that attract more heavy duty truck traffic.¹¹ While this Project is located just outside the AB 617 boundary, the thousands of daily truck and automobile trips generated by the Project will use those same highways to reach the Project site, significantly adding to the air pollution burden in the designated AB 617 community. Rather than reducing emissions as intended by Stockton's CERP, the Project will likely significantly increase exposure to air pollution in the south Stockton environmental justice community. The DEIR must evaluate the Project's significant air quality impacts on the AB 617 designated area and the Project's compliance with the CERP.

⁸ *Ibid.* 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>

⁹ DEIR, Appendix C, CalEEMod Analysis, p. 32.

¹⁰ CEQA Guidelines, § 15125, subd. (d).

¹¹ See CERP, Figure 3-6, Tables 3-2 and 3-3.

2. The DEIR Must Properly Analyze the Project's Cumulative Air Quality Impacts.

The DEIR also fails to properly analyze cumulative air quality impacts. Despite the DEIR's conclusion that the Project will exceed the significance threshold for NO_x, the DEIR concludes that the Project will have no significant cumulative impacts. The basis for this conclusion is the incorrect assertion that, "CalEEMod estimates of air pollutant emissions... indicate that neither SJVAPCD construction nor operational significance thresholds would be exceeded, with assumed application of SJVAPCD rules."¹² But even the flawed CalEEMod analysis in the DEIR acknowledges that the Project will result in NO_x emissions above the significance threshold. The DEIR's conclusion that the Project will not result in cumulative impacts to air quality is simply inaccurate.

Further, the DEIR's analysis and conclusion completely ignores the large number of other warehouses in the area, which have cumulatively brought thousands of diesel trucks to streets where sensitive receptors are present. CEQA requires discussion of the Project's cumulatively significant impacts in the context of the expansion of nearby warehouses and the related increase in diesel truck emissions.¹³

3. The DEIR Must Properly Analyze the Project's Transportation Impacts.

CEQA requires that the DEIR analyze the Project's transportation impacts, including the "vehicle miles travelled" (VMT), or the amount and distance of travel attributable to the Project.¹⁴ Because the CalEEMod assumptions underestimate the amount of miles travelled by traffic to and from the Project, the DEIR, to the extent it relies on the CalEEMod results, does not adequately analyze the Project's VMT impacts. While the DEIR still concludes the Project will likely result in significant and unavoidable increases in VMT, the Project's anticipated increase in VMT will likely be greater than those disclosed. The DEIR must be corrected to properly account for the Project's additional VMT.

4. The DEIR Must Properly Analyze the Project's Aesthetic Impacts

The DEIR's analysis of the Project's aesthetic impacts on the nearby residential community does not properly analyze the Project's foreseeable height. The Project allows for the construction of 100-ft.-high warehouse buildings, but the DEIR only analyzes the aesthetic impacts of buildings that are 32 to 36 ft. high, finding even in that case that the Project "may

¹² DEIR 18-5.

¹³ CEQA Guidelines, Appendix G, § 15130.

¹⁴ CEQA Guidelines § 15064.3.

partially obstruct scenic vistas.”¹⁵ Yet, based on undisclosed “preliminary drawings,” the DEIR asserts that, if the 100-ft. warehouses were built instead, undisclosed setbacks would result in those warehouses – which would be three times *taller* than the buildings whose aesthetic impacts the DEIR analyzed – creating “substantially *less* vertical view blockage [emphasis added].”¹⁶ The DEIR must publicly release those preliminary drawings and explain its determination that setbacks for the 100-ft. buildings will result in a reduction in aesthetic impact.

III. THE PROJECT MUST INCORPORATE ALL FEASIBLE MEASURES TO MITIGATE SIGNIFICANT IMPACTS.

An EIR must describe and adopt all feasible mitigation measures to minimize the significant environmental impacts of a project.¹⁷ “Where several measures are available to mitigate an impact, each should be discussed and the basis for selecting a particular measure should be identified.”¹⁸ The lead agency is expected to develop mitigation measures in an open process and consider measures proposed by other interested agencies and the public.¹⁹

Because of the substantial emissions that would be generated by vehicular traffic related to the Project, the DEIR found significant and unavoidable air quality, GHG, and transportation impacts. Yet the DEIR does not incorporate several important feasible mitigation measures that would reduce these impacts. In fact, the DEIR appears to include only one project-specific mitigation measure to reduce air quality impacts, one entirely unrelated to the Project’s actual significant and unavoidable NOx impacts.²⁰ Similarly, despite the Project’s significant and unavoidable GHG impacts, the DEIR includes only one project-specific mitigation measure to reduce GHG emissions, requiring only that three percent of the construction vehicle and emission fleet be electric-powered.²¹ These two requirements surely do not represent the universe of feasible mitigation measures required by CEQA.

¹⁵ DEIR 4-6.

¹⁶ *Ibid.*

¹⁷ Pub. Resources Code, § 21002; CEQA Guidelines, § 15126.4, subd. (a)(1).

¹⁸ CEQA Guidelines, § 15126.4, subd. (a)(1)(B).

¹⁹ *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 93.

²⁰ See mitigation measure AIR-1: “The project applicant, to reduce carbon monoxide concentrations to an acceptable level, shall contribute fair-share costs to an improvement on the Mariposa Road and Carpenter Road intersection that would widen the northeast-bound Carpenter Road approach to include an exclusive northeast-bound-to northwestbound left-turn lane, and a combined through/right-turn lane” [DEIR 2-7].

²¹ See mitigation measure GHG-1 [DEIR 2-12].

1. Stockton Must Ensure that All Permit Conditions to Mitigate Environmental Impacts Are Clear and Enforceable.

While apparently not mitigation measures, Appendix B of the DEIR includes a series of “Additional Air Quality Improvement Measures” designed to lessen the Project’s air quality impacts. Of these additional “improvement measures,” the DEIR asserts that Stockton will be “requiring their implementation in the approval” of the Project.²² We suggest that the City clarify how precisely Appendix B will be incorporated into the Project, what precisely is required by each party (e.g., owner, tenant, etc.), and how the City will ensure compliance.

While helpful to reduce air quality impacts, several measures in Appendix B appear to simply require that the project applicant not violate existing laws. For example, Measure 2 requires that heavy-duty trucks used during construction “meet current CARB regulations.” Measure 3 requires that construction contacts “require compliance with all applicable air quality regulations.” Measure 4 requires that site operations “comply with applicable air quality regulations.” But requiring compliance with existing laws is the *minimum* standard, and these measures are not “Additional Air Quality Improvement Measures.” They are merely the baseline.

Other measures in Appendix B appear to be vague and unenforceable. For example, Measure 5 requires that lower-emission off-road construction equipment be used “where available” to “assist” in construction. What those terms mean in practice is left undefined. Measure 11 includes several critically important air quality measures, like requiring electric truck charging stations, but only “proportional to demand.” It is unclear what demand is being referenced here, or how the City will quantify such demand during the construction phase given that no tenant has been identified. Further, other measures in Appendix B are entirely optional. For example, Measure 1 requires that the tenant facilitate non-vehicular travel by employees only “if agreeable by future tenants.” While promoting alternative modes of travel for employees can reduce air quality impacts, Measure 1 as currently drafted is merely a suggestion, not a permit condition. The DEIR must clarify how these measures will be executed in practice.

Adding to the confusion, Measure 10 of Appendix B appears to be related to compliance but lacks any context or explanation. Specifically, Measure 10 requires the preparation of “a detailed plan for implementation of the Air Quality Improvement Measures described in Appendix V of the certified Final EIR for the Sanchez-Hoggan Annexation Project.” But the DEIR does not include an Appendix V, and any requirements for an enforcement plan related to mitigation measures or permit conditions must be clearly explained. To the extent that the DEIR is incorporating an implementation plan required by a different EIR for a different project, in order to properly serve as an informational document, this DEIR should include the plan for the benefit of the City’s decisionmakers and the public.

²² DEIR, 3-9.

2. The Project Should Include Additional Feasible Mitigation Measures.

Regardless of how they are characterized, the measures in Appendix B fall short of the feasible air quality mitigation required here.²³ Earlier this year, the Attorney General’s Office released a document titled, “Warehouse Projects: Best Practices and Mitigation Measures to Comply with the California Environmental Quality Act”²⁴ that includes a myriad of feasible air quality and GHG mitigation measures, all of which have already been required by other warehouse projects in California. We include that guidance by reference to help Stockton comply with CEQA’s statutory requirements. Many of those included mitigation measures are feasible here and should be required to reduce the Project’s significant and unavoidable environmental impacts.

Examples of additional feasible mitigation measures include the following:

- 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;
- Constructing electric truck charging stations proportional to the number of dock doors at the Project;
- Constructing electric plugs for electric 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, such as equal to the building’s projected energy needs;
- Increasing physical, structural, and/or vegetative buffers between the Project and sensitive receptors to the west to reduce pollutant dispersal;
- Locating warehouse dock doors and other onsite areas with significant truck traffic and noise on the north and east, away from sensitive receptors;
- Constructing electric truck charging stations proportional to the number of dock doors at the Project;

²³ The DEIR asserts that the measures in Appendix B are “the Attorney General Office’s suggested measures” and measures “prescribed by the California Department of Justice.” [DEIR 10-11, 18-5]. Despite these claims in the DEIR, Appendix B does not accurately reflect the Attorney General’s recommendations for feasible air quality mitigation measures.

²⁴ The Attorney General’s guidance is available at:
<https://oag.ca.gov/sites/all/files/agweb/pdfs/environment/warehouse-best-practices.pdf>.

- Installing solar photovoltaic systems on the Project site of a specified electrical generation capacity, such as equal to each building's projected energy needs;
- Meeting CalGreen Tier 2 green building standards, including all provisions related to designated parking for clean air vehicles, electric vehicle charging, and bicycle parking;
- Posting signs at every truck exit driveway providing directional information to the truck route;
- Installing and maintaining, at the manufacturer's recommended maintenance intervals, air filtration systems at sensitive receptors within a certain radius of facility for the life of the Project; and
- Restricting the turns trucks can make entering and exiting the facility to route trucks away from sensitive receptors.

These measures appear to be feasible here, and they would reduce the Project's significant impacts on the environment and the surrounding environmental justice community. We urge the City to adopt these common sense measures into the Project.

IV. CONCLUSION

We appreciate the opportunity to submit these comments on the Project and hope that they help Stockton improve the DEIR and applicable mitigation measures. If Stockton has any questions or would like to discuss these comments further, we encourage City staff to reach out to our Office.

Sincerely,



SCOTT LICHTIG
Deputy Attorney General

For ROB BONTA
Attorney General