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April 21, 2008

Mike Niblock, Director
Stockton Community Development Department
345 N. El Dorado Street
Stockton, CA 95202

**RE: Comments on Tidewater Crossing Draft Environmental Impact Report
SCH # 2005122101**

Dear Mr. Niblock:

The Attorney General submits these comments on the Draft Environmental Impact Report (DEIR) for the Tidewater Crossing development (Tidewater or Project) pursuant to the California Environmental Quality Act (CEQA). The Project proposes a new mixed-use development, located on the southern outskirts of Stockton, on what is now agricultural land. As drafted, the DEIR fails to adequately disclose or mitigate impacts from greenhouse gas (GHG) emissions or conventional air pollutants, and thus fails to meet the requirements of CEQA.

GHG and Climate Change

Greenhouse gases accumulate in the atmosphere and cause the trapping of heat near the Earth's surface. Increased atmospheric concentration of these gases causes average temperatures to increase, with adverse impacts on humans and the environment.¹ According to NASA's James Hansen, continuing the current rate of emissions will result in "disastrous effects, including increasingly rapid sea level rise, increased frequency of droughts and floods, and increased stress on wildlife and plants due to rapidly shifting climate zones."² The impacts of climate change are

¹ Intergovernmental Panel on Climate Change, Fourth Assessment Report (IPCC 4th) (2007), Working Group (WG) I, Frequently Asked Question 2.1, *How do Human Activities Contribute to Climate Change and How do They Compare with Natural Influences?* <http://ipcc-wg1.ucar.edu/wg1/wg1-report.html>

² <http://www.giss.nasa.gov/research/news/20070530/>; see also Hansen et al., *Dangerous Human-Made Interference with Climate* (2007) 7 Atmos. Chem. Phys. 2287-2312 http://pubs.giss.nasa.gov/docs/2007/2007_Hansen_etal_1.pdf.

not limited to remote parts of the world – they are being felt in California today. In California, global warming is causing damage to agriculture, losses to the Sierra snowpack, higher risks of fire, eroding coastlines, and habitat modification and destruction. Global warming affects public health directly, through heat-related illnesses and deaths caused by an increase in the number of hot days and longer heat waves, and indirectly as higher temperatures favor the formation of ozone and particulate matter in areas that already have severe air pollution problems.³

The atmospheric concentration of CO₂ is now approximately 385 parts per million (ppm)⁴, higher than any time in the preceding 650,000 years, and rising.⁵ According to experts, an atmospheric concentration of CO₂ "exceeding 450 ppm is almost surely dangerous" to human life due to the climate changes it will effect, "and the ceiling may be even lower."⁶

The need to make substantial cuts in emissions drives the global targets embodied in the Kyoto Protocol and the State's targets established by Governor Schwarzenegger's Executive Order S-3-05, and AB 32, California's Global Warming Solution Act of 2006. In California, by these authorities, we are committed to reducing emissions to 1990 levels by 2020, and 80% below 1990 levels by 2050. Achieving the first benchmark will require California to reduce emissions by at least 29% below projected levels.⁷

CEQA Obligations

CEQA requires a public agency to accurately identify, analyze, and disclose the adverse impacts of a project. (*Stanislaus Natural Heritage Project v. County of Stanislaus* (1990) 221 Cal.App.3d 692, 712.) In general, an EIR should contain discussions sufficient to advise the decision makers and the public of the nature and importance of the environmental effects being

³A summary of impacts to California, together with citations, is available on the Attorney General's website at <http://ag.ca.gov/globalwarming/impact.php>.

⁴ <http://www.esrl.noaa.gov/gmd/ccgg/trends/>

⁵ IPCC 4th, WG I, Frequently Asked Question 7.1, *Are the Increases in Atmospheric Carbon Dioxide and Other Greenhouse Gases During the Industrial Era Caused by Human Activities?* <http://ipcc-wg1.ucar.edu/wg1/wg1-report.html>

⁶ See http://www.nasa.gov/centers/goddard/news/topstory/2007/danger_point.html

⁷California Energy Commission, 2007 Integrated Energy Policy Report, December 2007, at p. 16. See http://www.energy.ca.gov/2007_energy_policy/index.html

discussed, not merely the ultimate conclusion that an effect is significant. (*Assn. of Irrigated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383, 1390). This includes a discussion of direct and indirect effects, impacts on public health, and effects on the resource base. (CEQA Guidelines, § 15126.2.)

“Once a significant effect has been identified, the EIR must propose and describe mitigation measures that will minimize [that effect].” (*Napa Citizens for Honest Gov’t v. Napa County Bd. of Supervisors* (2001) 91 Cal.App.4th 342, 360.) Public agencies cannot approve projects that will harm the environment unless the agency has adopted *all* feasible mitigation for that harm. (Pub. Resources Code, §§ 21002, 21081, subd. (a).) Mitigation measures must be fully enforceable through permit conditions, agreements, or other legally-binding instruments. (CEQA Guidelines, § 15126.4, subd. (a)(2).)

Global warming is an "effect on the environment" under CEQA. Given the severity of our global warming problem, an individual project's contribution to global warming can be cumulatively considerable and therefore significant.⁸

The DEIR Fails to Disclose or Mitigate Impacts from Greenhouse Gas Emissions

The DEIR briefly discusses climate change and the general implications of climate change for California. The DEIR fails, however, to discuss the GHG emissions the Project will generate, including those from the estimated 45,930 additional daily vehicle trips the project will produce, the energy that a project this size will use (from natural gas consumption, solid waste handling/treatment, electricity generation, and other sources), and from project construction. The DEIR should quantify the GHG emissions that will result from the significant amount of additional Vehicle Miles Traveled (VMT) and these other project sources.

The DEIR discusses potential features of the Project that may affect GHG emissions, such as public transit, energy conservation, water conservation, and school location, but it leaves unanswered basic questions about the timing and design of these elements, making it impossible to analyze what the actual impacts will be. For example, the DEIR does not provide important details about when possible transit facilities will be available to serve the Project and what they would consist of. Likewise, it does not explain what specific energy conservation or water conservation measures will be required.

The DEIR recognizes that the Project has the potential to contribute to an increase in

⁸ See Cal. Pub. Resources Code, section 21083.05, subd. (a); see also Sen. Rules Comm., Off. of Sen. Floor Analyses, Analysis of Sen. Bill No. 97 (2007-2008 Reg. Sess.) Aug. 22, 2007.

GHG emissions. (Impact AIR-5, p. 4-31.) The DEIR goes on to say, however, that the impact will be reduced to less than significance by the implementation of all mitigation measures in the Land Use, Air Quality, Transportation and Public Infrastructure/Services provisions. (DEIR, p. 4-32.) But the measures identified in these sections are insufficient given the scale of the project's GHG emissions.⁹ The Land Use section has no mitigation measures that address or mitigate GHGs. The mitigation in the Air Quality section consists in part of adherence to the San Joaquin Valley Air Pollution Control District local rules, but these rules do not directly address GHG emissions. The section discusses three other minor measures (Appendix E, p. 30), one of which (north/south orientation of buildings) is merely encouraged.. The Transportation (Traffic) section and Public Services Section also have no mitigation measures that would significantly mitigate GHG emissions.

The DEIR then states that a list of recommended mitigation measures from the Attorney General's office *should* be implemented by the project applicant to further reduce GHG emissions, and includes the list of measures as an Appendix. The DEIR does not, however, evaluate whether these measures --or other potential measures-- are feasible. Moreover, it does not specify which measures will actually be required as part of the Project. A DEIR needs to include specific, enforceable mitigation measures.

In addition to onsite mitigation measures, the project proponent could consider funding offsite projects that achieve net reductions of GHG emissions elsewhere in the Central Valley. (The San Joaquin Valley Air Pollution Control District would be an excellent contact to help the applicant identify such projects.)

The DEIR Fails to Disclose or Mitigate Impacts On Air Quality

The DEIR also fails to adequately disclose and mitigate the Project's effects on conventional air pollutants. The air quality in the San Joaquin Valley is among the very worst in the nation; the Valley is classified as in serious nonattainment of the federal standard for ozone (one of only two such areas in the nation), serious nonattainment for PM₁₀, and nonattainment for PM_{2.5}. (DEIR, p. 4-14, <https://epa.gov/air/oaqps/greenbk>.) Such levels of pollution pose a serious threat to public health.

The DEIR presents monitoring data from the closest monitor, Stockton-Hazelton, which shows low levels of ozone and particulate matter. (DEIR, p. 4-17-18.) Unfortunately ozone is a

⁹We recognize that there are certain features built into the design of the Project that will reduce GHG to a small degree, including bike lanes on major streets and the location of some jobs near residences.

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pollutant with *regional* scope and effects, whose impacts are not confined to the immediate area of the project. The EIR fails to present any actual ozone data for the entire air basin. Likewise, the DEIR acknowledges that the emissions expected from the Project far exceed the thresholds of significance set by the San Joaquin Valley Air Pollution Control District (App. E, p. 23, Table I), but it does not discuss what the public health impacts of these emissions will be in this already heavily polluted air basin. The DEIR also acknowledges that the Project is inconsistent with the Air Quality Management Plan (AQMP) (DEIR, p. 4-36) and that this inconsistency would “result in a significant long-term air quality impact,” (*id.*) but again makes no attempt to estimate what that impact would be. Finally, the DEIR has no meaningful discussion of the cumulative impacts of the Project, together with other projects that have been recently approved or are reasonably expected to be approved, on air quality in the Valley. These conclusory statements are insufficient; the DEIR must inform the decision makers and the public of the nature and importance of the air quality effects being discussed, not merely the ultimate conclusion that they are significant. (*Assn. of Irrigated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383, 1390.)

As with the mitigation for GHG emissions, the mitigation measures required in the DEIR for the air quality impacts of the Project are inadequate. The DEIR does not discuss or require any measures to reduce Vehicle Miles Traffic resulting from the project as air quality mitigation, despite acknowledging that the air quality impacts will be significant.

Please feel free to call us if you have any questions.

Sincerely,



LISA TRANKLEY



SUSAN DURBIN
Deputy Attorneys General

For EDMUND G. BROWN JR.
Attorney General