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Ms. Afshan Hamid
Acting Planning and Development Services Coordinator
City of Vallejo
555 Santa Clara Street
Vallejo, CA 94590
Via U.S. Mail and E-mail: Afshan.Hamid@cityofvallejo.net

RE: Vallejo Marine Terminal and Orcem Cement Plant Project, State Clearinghouse #
2014052057

Dear Ms. Hamid:

The California Attorney General's Office has reviewed the draft final Environmental Impact Report ("DFEIR"¹), Environmental Justice Analysis ("EJA"), and the Air Quality Evaluation and Health Risk Assessment for the Revised Operations Alternative of the Project ("Revised Air Analysis") for the Vallejo Marine Terminal and Orcem Cement Plant Project ("Project") and respectfully submits the following comments.

The Attorney General has an interest in safeguarding the state's environment and public health, and in ensuring that all citizens of the state—including low-income communities and communities of color—are treated fairly in the implementation of environmental laws that impact them.² The environmental documents for the Project fail to provide adequate legal support for the City of Vallejo ("the City") to approve the Project because: 1) the DFEIR fails to

¹ Ordinarily, under the California Environmental Quality Act ("CEQA"), the lead agency first prepares a draft environmental impact report, and then, after public comments are received, the DEIR is revised and presented, with responses to the public comments, as a final environmental impact report. It is not clear from the environmental review documents for the Project why the revised DEIR for the Project is called a "draft final" environmental impact report, or what legal or procedural significance that title has. But because the City has chosen to call the current environmental review document the draft final environmental impact report, we use that naming convention in this letter.

² 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, 12600-12612; *D'Amico v. Bd. of Medical Examiners* (1974) 11 Cal.3d 1,1415.)

adequately disclose, analyze, and mitigate the significant environmental impacts of the Project; and 2) the EJA improperly concludes that the Project would not disproportionately impact low-income communities of color, and thus misleads decision makers and the public by minimizing the Project's significant environmental justice concerns. We urge the City conduct further environmental analysis prior to project approval to ensure that the DFEIR and EJA's inadequacies are corrected and the Project's environmental impacts are understood, disclosed, and mitigated to the maximum feasible extent.

I. Background

A. The Project

The Project consist of two components: (1) the Vallejo Marine Terminal ("Terminal") and (2) the Orcem cement plant ("Cement Plant"). The Terminal would receive ships carrying bulk cargo, marine construction materials, and cement-production materials. Up to four large vessels and an average of 3.5 smaller vessels would be unloaded each month, with unloading taking five to seven days for the large vessels and one day for smaller vessels. The Terminal will operate 24 hours a day when vessels are being unloaded. Thus, in the months when the Terminal is operating at its maximum capacity, it will operate 24 hours a day, seven days a week.

The Cement Plant will produce "green" cement from ground granulated blast furnace slag, produce traditional portland cement using imported clinker, or produce green cement and import finished portland cement for distribution. For cement production, raw materials will be unloaded from the Terminal, rail cars, and trucks, and transported by a conveyor to the Cement Plant. The Project will generate up to 552 truck trips per day and 200 rail car trips per week. Of these truck trips, up to 509 would travel directly through the neighboring residential community, 24 hours a day.

B. The Project Area

The Project is adjacent to residential communities to the north, east, and southeast. Approximately 1500 residences, eight churches, an elementary school, a community center, and two parks are situated within a half-mile of the Project; much of this area is downwind of the site. To the west and south of the Project is the Mare Island Strait, where the Napa River enters the San Pablo Bay.

The neighboring communities are low-income communities and communities of color that are both heavily burdened by pollution and are especially vulnerable to that pollution's effects. The nearby Interstates 80 and 780 and Highway 29 contribute air pollution to the surrounding area, and the area is in non-attainment for ozone, particulate matter ("PM")_{2.5}, and PM₁₀. The Project and its neighboring residents are located in the "Bay Area Refinery Corridor," which includes the Chevron refinery in Richmond, the Tesoro and Shell refineries in Martinez, and the Valero refinery in Benicia. Petroleum refineries emit air pollutants such as toxic air pollutants, PM, and nitrogen oxides ("NO_x"), and contribute to groundwater, surface water, and soil contamination. In addition, Mare Island Naval Shipyard, across the strait, is a superfund site and an historic source of toxic contamination. Shipping traffic through the Carquinez Strait is another source of air contaminants.

The California Environmental Protection Agency (“CalEPA”) has designated the area as a “disadvantaged community,” using a tool called CalEnviroScreen that considers 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.³ CalEnviroScreen places the communities adjacent to the Project in the 83rd percentile for overall pollution burden and vulnerability. The area ranks high for the number of sites contaminated with harmful chemicals (96th percentile), leaking underground storage tanks that contain hazardous chemicals (99th percentile), impaired water bodies (91st percentile), and hazardous waste facilities (89th percentile). The communities have an extraordinarily high rate of asthma (99th percentile) and cardiovascular disease (96th percentile), both conditions that are caused and exacerbated by air pollution. Babies born from this area are more likely than 83 percent of babies in the state to be born with a low birth weight (less than five and a half pounds). Mothers who are exposed to pollution are more likely to bear low birth weight babies, and low weight babies are more likely to die as infants or develop asthma and other chronic diseases than babies who weigh more.

II. Comments

A. The DFEIR Violates CEQA

The purpose of CEQA is to ensure that, where a public entity has discretionary authority over a project, the agency considers the project’s foreseeable environmental impacts when exercising that authority. (Pub. Resources Code §§ 21000, 21001, subd. (d).) To that end, a lead agency must publicly disclose a project’s potentially significant direct and indirect environmental impacts, and—where feasible—impose mitigation measures to eliminate or reduce those impacts. (*Id.* at §§ 21002, 21002.1.) The DFEIR for the Project suffers from several flaws, as follows.

a. The DFEIR Fails to Adequately Consider the Project’s Environmental Setting and Cumulative Impacts

While CEQA does not specifically mention the words environmental justice, CEQA furthers environmental justice by requiring lead agencies to take into account the existing setting where a project will be located and any cumulative impacts of the project together with past, present, and probable future projects.⁴ Together these mandates require a lead agency to

³ See CalEnviroScreen 3.0 Report, Office of Environmental Health Hazard Assessment, January 2017, available at <https://oehha.ca.gov/media/downloads/calenviroscreen/report/ces3report.pdf>. CalEPA uses CalEnviroScreen to designate disadvantaged communities pursuant to Health and Safety Code section 39711. (California Environmental Protection Agency, Designation of Disadvantaged Communities Pursuant to Senate Bill 535 (De Leon), April 2017, available at <https://calepa.ca.gov/wp-content/uploads/sites/62/2017/04/SB-535-Designation-Final.pdf> [designating the top 25% of communities under CalEnviroScreen 3.0 as “disadvantaged communities”].)

⁴ For more detail about the role CEQA plays in evaluating impacts on environmental justice communities, see Attorney General of California, Environmental Justice at the Local and

(continued...)

determine whether pollution from a project will have a significant impact on nearby communities, taking into account the existing pollution burdens those communities already bear and the project's contribution to those existing pollution burdens. But the DFEIR fails to adequately describe the Project's environmental setting and fails to analyze and disclose the Project's cumulative environmental impact on the neighboring environmental justice communities.

i. Inadequate "Environmental Setting" Description

It is well established that "[t]he significance of an activity depends upon the setting." (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 718.) Thus, "a project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant." (CEQA Guidelines, § 15300.2, subd. (a).) The description of a project's environmental setting should therefore describe both the background environmental burdens faced by impacted communities and the presence of nearby sensitive receptors. The DFEIR's environmental setting description fails to describe the background environmental burdens borne by the residential community that is in close proximity to the Project.

As described above, the Project will be sited adjacent to a community that is disproportionately affected by environmental pollution that leads to negative health effects and has concentrations of people that are sensitive to that pollution. Yet, the DFEIR fails to disclose the surrounding area's background environmental condition, including the high number of contaminated sites, leaking underground storage tanks, and contributors to air pollutants such as nearby refineries and freeways.

The DFEIR acknowledges the presence of some sensitive receptors by disclosing schools, daycare facilities, convalescent homes, and medical facilities within 2.5 miles of Project site, though it does not identify or analyze the pollution-related health risks already experienced by those sensitive receptors. The DFEIR also includes a health risk assessment ("HRA") which evaluated the health risks of Project-related toxic air contaminants and PM_{2.5} emissions and found those risks to be less than significant. But the HRA fails to take into account the Project's environmental setting; it does not analyze *background* air toxics or PM_{2.5} levels—or any other background air contaminant level—which could render the Project's impacts significant when viewed in combination with the background levels, or the community's uniquely high susceptibility to harm from such pollutants.⁵ Indeed, as discussed in the attached report by Camille Sears ("Sears Report"), the HRA only considers sources within a half-mile of the site,⁶

(...continued)

Regional Level: Legal Background, 10 July, 2012, available at https://oag.ca.gov/sites/all/files/agweb/pdfs/environment/ej_fact_sheet.pdf.

⁵ The Revised Air Analysis revisits the HRA, but does not mention sensitive receptors or cure the prior HRA's deficiencies.

⁶ It is puzzling that the DFEIR identifies sensitive receptors within 2.5 miles of the Project site, but the HRA only considers sources of pollution within a half-mile of the site.

and thus does not account for marine vessel, on-road vehicles (for example, I-80 and I-70, which are within a mile of the proposed facility), or other currently-existing non-point source toxic air contaminant emissions such as the local refineries (Sears Report at p.11), all of which contribute to the local communities' existing pollution load and related health risks.

The DFEIR's failure to disclose these background levels of pollution minimizes the significance of the Project's impacts and therefore infects the DFEIR's environmental impacts analyses. The DFEIR's discussion of the environmental setting must be revised so that the public and decision makers are made aware of and understand the Project's true impacts.

ii. Inadequate Cumulative Impacts Analysis

CEQA requires a lead agency to consider whether a project's effects, while they might appear limited on their own, are "cumulatively considerable" and therefore significant. (Pub. Resources Code, § 21083, subd. (b)(3).) Where a community already bears a high pollution burden, the relevant question is "whether any additional amount" of pollution caused by the project "should be considered significant in light of the serious nature" of the existing problem. (*City of Hanford, supra*, 221 Cal.App.3d at p. 718.)

Indeed, as explained by the California Office of Environmental Health Hazard Assessment, "[n]umerous studies have shown that multiple pollution sources are disproportionately concentrated in low-income communities with high-minority populations. Also, a number of studies have reported increased sensitivity to pollution, for communities with low income levels, low education levels, and other biological and social factors. This combination of multiple pollutants and increased sensitivity in these communities can result in a higher cumulative pollution impact."⁷ This is why it is important to consider a project's impacts together with past, present, and probable future projects to determine whether the impacts are cumulatively considerable.

Yet the DFEIR's cumulative impacts analysis ignores past and present projects, considering only three nearby projects that are in the approval process or have recently been completed: a proposed restaurant, a storage facility, and the remediation of a former manufactured gas plant. The analysis concludes that cumulative impacts would only be significant for NO_x pollution and greenhouse gas emissions because the Project itself will have significant and unavoidable impacts in these areas. Thus, the DFEIR's cumulative impacts analysis inappropriately ignores major sources of pollution—such as marine vessels, freeways, and local refineries—the impacts of which could combine with the Project's to be cumulatively considerable. (*See* Sears Report at p.11.)

The failure of the DFEIR's cumulative impacts analysis to acknowledge, let alone analyze, existing pollution sources renders it impossible for the public or decision makers to know whether the Project's impacts are cumulatively significant, in violation of CEQA. The

⁷ Office of Environmental Health Hazard Assessment, Cumulative Impacts: Building a Scientific Foundation (Dec. 2010), Exec. Summary, p. ix, available at <https://oehha.ca.gov/media/downloads/calenviroscreen/report/cireport123110.pdf>.

DFEIR's cumulative impacts analysis must be revised to account for existing, significant sources of pollution in combination with the Project's impacts.

b. The Revised Air Quality Analysis is Flawed and Underestimates the Project's Air Quality Impacts

As stated above, a lead agency must publicly disclose a project's potentially significant direct and indirect environmental impacts. However, the air quality analyses for the Project underestimate the Project's potential air quality impacts, and must be revised in order to provide the public and decisionmakers with a clear picture of the Project's true air emissions and resultant health impacts.

The Project's air quality impacts were analyzed in the DFEIR and the Revised Air Analysis, which updated the DFEIR's air quality analysis. According to these documents, the Project would have a significant and unavoidable impact on air quality due to its emissions of NO_x⁸ and greenhouse gases. Specifically, the Project's emissions would exceed the Bay Area Air Quality Management District ("BAAQMD") threshold for NO_x emissions, which would conflict with the Clean Air Plan's goal to bring the air basin into attainment for ozone. The Project's emissions will also exceed the BAAQMD CEQA level of significance of 10,000 metric tons of carbon dioxide equivalent per year.⁹

However, it is very likely that the Project's NO_x and greenhouse gas emissions will be greater than disclosed, and that the amount of other air emissions, such as toxic air contaminants and particulate matter, will be also be significant and unavoidable. (*See* Sears Report.) This is because the Revised Air Analysis—and the previous analyses discussed in the DFEIR that the Revised Air Analysis draws upon—suffers from numerous, significant analytical flaws that substantially underestimate the Project's air emissions.

For example, the Revised Air Analysis underestimates diesel particulate matter pollution—and resulting increased cancer risk—from docked ships' diesel engines. (Sears Report at pp.5-8.) It does so by relying on faulty assumptions for ships' exit stack velocity, diameter, and positioning, and fails to include building downwash for the auxiliary generator and

⁸ NO_x is an air pollutant that mainly impacts respiratory conditions causing inflammation of the airways at high levels. Long-term exposure can decrease lung function, increase the risk of respiratory conditions and increases the response to allergens. NO_x also contributes to the formation of fine particles (PM) and ground level ozone, both of which are associated with adverse health effects. Given that the adjacent communities already rank in the 99th percentile for asthma, this impact is particularly troubling.

⁹ While the Revised Air Analysis does not alter the DFEIR's conclusion that the Project will have significant and unavoidable greenhouse gas impacts, it appears to indicate that the Project applicant will purchase offsets through the BAAQMD's Emissions Banking Program for the Project's NO_x impacts, and on that basis concludes that the NO_x impacts are less than significant. However, while offsets may provide important benefits to the air basin generally, the Revised Air Analysis did not disclose or analyze whether or how the purchase of mitigation offsets would prevent direct air quality and health impacts to the local community.

boiler emissions. (*Id.*) Based on these faulty assumptions, the Revised Air Analysis estimates an excess lifetime cancer risk of 18 per million (unmitigated) or 9 per million (with mitigations). But using the appropriate assumptions, the excess lifetime cancer risk from the Project would be 627 per million, nearly *35 times* the unmitigated risk and 70 times the mitigated risk disclosed in the revised analysis. (*Id.* at p.8.)

Second, the Revised Air Analysis underestimates the Project's toxic air contaminant emissions, relying again on faulty assumptions to determine that the Project will not result in any arsenic, cadmium, or chromium emissions, and will result in only minimal lead emissions. In fact, relying on appropriate assumptions reveals that the Project will emit toxic air contaminants, including approximately 18 times the amount of lead disclosed in the revised analysis. (Sears Report at p.9.)

Third, the revised analysis employs other inappropriate modeling techniques and assumptions that undercut the reliability of its air-quality impact conclusions generally. For example, it inappropriately models ship and tug maneuvering emissions, fails to include building downwash effects for all point sources, and uses unrepresentative meteorological data. (Sears Report at pp.9-10.) Each of these analytical flaws calls into question the DFEIR and Revised Air Analysis's conclusions regarding air quality impacts.

We recommend that the air quality analysis be revised along the lines discussed in the Sears Report, including: using appropriate assumptions in calculating diesel particulate matter emissions from docked ships; incorporating building downwash into the analysis for all point sources; using appropriate metrics for calculating toxic air contaminant emissions from ship boilers; using appropriate methods to model emissions from ship and tug maneuvering emissions; collecting at least one year of on-site meteorological data; and revising and expanding the cumulative impacts analysis to include local refineries, freeways, marine vessels, and area sources. We also recommend that the City require, as a condition on the Project, continuous particulate matter monitoring. (*See* Sears Report at p.12.)

The likelihood that the Project's air impacts will be far greater than disclosed in the environmental review documents is troubling on its own, and is more so given the surrounding communities' already-heavy pollution burden and high rates of pollution-related illness. These analytical flaws must be cured, and the data and analysis be made publicly available, before the Project is considered for approval. It is essential that the public and decisionmakers be made aware of the Project's true impacts, and that those impacts be mitigated to less-than-significant levels, if the Project is to move forward.

c. The DFEIR's Mitigation Measures for Other Project Impacts are Inadequate, Unlawfully Deferred, and Unenforceable

CEQA requires the lead agency to consider and adopt feasible mitigation measures that reduce a project's adverse impacts to less-than-significant levels. (Pub. Resources Code, § 21100, subd. (b)(3).) It is generally inappropriate to defer formulation of mitigation measures to the future. (CEQA Guidelines, § 15126.4(a)(1)(B).) A lead agency can defer mitigation only where, among other things, the EIR sets forth criteria governing future actions to implement mitigation, and the agency has assurances that future mitigation will be both "feasible and efficacious." (*Californians for Alternatives to Toxics v. Dept. of Food & Agric.* (2005) 136

Cal.App.4th 1, 17.) Impermissible deferral occurs when an EIR calls for mitigation measures to be created based on future studies but the agency fails to commit itself to specific performance standards. (*Cal. Clean Energy Comm. v. City of Woodland* (2014) 225 Cal. 4th 173, 195.)

For many of the Project's impacts that the DFEIR claims will be mitigated, the mitigation measures are improperly deferred and are unenforceable because they lack measurable criteria or performance standards. We recommend that the City revise the Project's mitigation measures that lack enforceable standards—including those discussed below—to ensure that the Project's impacts are mitigated to a less-than-significant level.

i. Transportation and Traffic

The DFEIR concludes that the Project's dramatic increase in truck traffic through nearby residential areas—up to 509 truck trips per day, on a 24-hour basis—is a significant impact that would be reduced to a less-than-significant level through the imposition of mitigation measures.¹⁰ The DFEIR concludes that the impacts from daily truck trips will be significant, based on the significance criteria of whether added trucks will “would result in unsafe vehicle, pedestrian, and bicycle movements without physical improvements to improve safety” and whether the Project “would make local vehicle, pedestrian, and bicycle movements less safe and convenient.” But to mitigate these impacts, the DFEIR imposes impermissibly deferred, vague, and unenforceable mitigation measures. The DFEIR requires that the applicants work with the City to make unspecified road improvements and to develop traffic management plans at some point in the future. The mitigation for the traffic impacts to the nearby residential neighborhoods is particularly vague, including unspecified “traffic control measures,” “notification procedures,” and “a process” for responding to safety problems and complaints. No performance standards or enforceable criteria for these improvements are identified in the DFEIR.

These mitigation measures are impermissibly deferred and lacking in enforceable standards, in violation of CEQA. The City must develop and impose enforceable measures to mitigate the Project's traffic impacts to less-than-significant levels, or if it finds that mitigating these impacts to less-than-significant levels is infeasible, the City must disclose that these impacts are significant and unavoidable.

ii. Light and Glare

The Project will operate 24-hours per day and will require extensive lighting for safety and security, resulting in significant light and glare impacts. The DFEIR concludes that this impact will be mitigated to less-than-significant, however, by later developing a lighting plan

¹⁰ The Revised Air Analysis indicates that the Revised Operations Alternative for the Project may require less truck trips per day, possibly down to 122 per day. However, it is not clear whether any enforceable conditions limiting truck trips in this way would be imposed, nor whether such a limitation would be realistic given the nature of the Project. Thus, it remains unclear how many trucks will access the Project. Nevertheless, even if the number of daily truck trips could be reduced to 122, this number in combination with the anticipated increase in automobile traffic could still be significant, given that the traffic will necessarily travel through the adjacent residential neighborhoods to access the Project.

that will “minimize” light spillover. This mitigation measure lacks specific performance criteria for how and to what degree the light and glare impacts must be mitigated, and thus is inappropriately deferred, and cannot support the DFEIR’s conclusion that light and glare impacts will be reduced to less-than-significant levels.

iii. Loss of Bay-Delta Habitat

Similarly, the DFEIR proposes to mitigate loss of important Bay-Delta subtidal and intertidal habitat by later identifying, executing, and/or funding “sufficient mitigation activities[.]” This mitigation measure is vague and makes no enforceable commitments, and thus cannot guarantee that mitigation will result in less-than-significant impacts.

iv. Hazardous Materials

Construction of the Project will require use of hazardous materials, such as diesel fuels and solvents, and may disrupt contaminated soils or groundwater. The DFEIR inappropriately concludes that the impacts from hazardous materials will be less than significant after mitigation. This conclusion is based on a mitigation measure requiring the future development of a hazardous materials management plan, though the DFEIR establishes no performance standards or measures for this plan. Relying on this deferred and unenforceable mitigation measure to conclude that a project’s impacts will be less than significant violates CEQA.

Because these mitigation measures are deferred and unenforceable, these allegedly less-than-significant impacts may, in fact, be significant. Thus, the DFEIR must be revised to ensure that mitigation measures are effective and enforceable, or, where the effectiveness of mitigation measures is uncertain, the City must disclose to the public that the Project’s impacts will be significant.

d. The DFEIR Fails to Analyze the Potentially Significant Impacts of Coal Transport

The DFEIR fails to consider the potentially significant impacts that would occur if coal or petcoke were transported through the Terminal. The DFEIR states that the Terminal would not handle coal or any other petroleum-based products. But, the DFEIR does not point to any enforceable condition that would prevent the handling or transport of coal through the Terminal or guarantee that no coal could be transported through the Terminal. Transportation of coal can have serious and far-reaching environmental and human health impacts. For example, coal is a major source of greenhouse gases, and transportation of coal releases fugitive coal dust, which contains toxic components that harm human health and aquatic ecosystems. Thus, in order to approve the Project, the City must either: 1) impose enforceable conditions on the Project prohibiting transport of coal and petcoke, or 2) analyze, disclose, and mitigate the risks associated with the potential transport of coal or petcoke through the Terminal.

B. The Environmental Justice Analysis is Flawed and Misleading

Recognizing that a separate environmental justice analysis is not specifically required by CEQA, we commend the City for having prepared one in an effort to analyze environmental justice impacts of the Project. Nevertheless, as a part of the City’s overall environmental analysis and public disclosure for the Project, it is important that the EJA not mislead the public and decision makers as to the Project’s disproportionate impacts on low-income or minority

communities. But the EJA is misleading because: (1) its demographic analysis obscures the Project's impacts on nearby low-income, minority communities; and (2) it fails to consider the existing pollution burden on nearby communities.

a. The EJA's Demographic Analysis is Misleading

The EJA's analysis of whether there are low-income or minority communities present, such that the Project may disproportionately impact those communities, is misleading.

As explained in the EJA, the Interagency Federal Working Group on Environmental Justice guidelines ("EJ guidelines") state that a minority or low-income community is present in an area if the minority or low-income population is meaningfully greater than that of the "general population," or if the minority or low-income population exceeds 50 percent of the total population. Here, the minority population of the adjacent neighborhoods is well over the 50 percent threshold. But instead of using that metric, the EJA uses the "general population" comparison metric to determine the presence of a low-income or minority population. Doing so, the EJA compares the minority and low-income percentage in the identified Project impact areas A and B ("impact areas") to the "general population" of the City of Vallejo. The EJA does not explain why the City was chosen as the "general population" for the basis of comparison, as opposed to the county, state, or some other comparable area. Using Vallejo as the point of comparison skews the significance of the proportion of low-income and minority households in the impact areas because Vallejo itself has significantly greater minority and low-income populations than Solano County, the State of California, and the United States, as Table 1 demonstrates.

Table 1: Minority and Low-Income Populations for Reference Geographies and Impact Areas¹¹

Geographic Area	% Minority Population	% of People Living in Poverty
U.S.	37.2%	15.6%
CA	60.8%	16.4%
Solano County	59.9%	13.1%
City of Vallejo	75.4%	18.3%
Impact Area A	76.8%	22.1%
Impact Area B	75.7%	25.4%

Comparing the impact areas to the City's population, the EJA concludes that the impact areas do not have a significantly greater minority population than Vallejo, and thus there is not a minority population present that could suffer a disproportionate impact from the Project. Where a project's impact area plainly has a high proportion of minority residents—in this case roughly 76% minority—it strains logic to state that there is not a minority community that will be disproportionately impacted.

The EJA concludes that there is a statistically significant difference between the percentage of people living in poverty in Area B and the City of Vallejo, but not Area A, and

¹¹ The data for Table 1 is taken from Tables 1 and 2 in the EJA.

thus there is a low-income community in Area A that could suffer a disproportionate impact. But the low-income analysis and determination is at best unclear.

First, it is hard to follow why Area A is *not* considered low-income because it has only 4% higher poverty rates than the rest of Vallejo, where Area B *is* considered low-income, with a 7% higher poverty rate than Vallejo. This conclusion is particularly illogical given that Vallejo itself has nearly two times as many people living in poverty than Solano County does. While the appropriate basis for comparison will depend on the circumstances, had the EJA compared the impact area populations to Solano County, California, or the United States, it would have concluded that the Project would disproportionately impact a low income community for *both* Areas A and B.

Second, the EJA defines low-income people as those who are living below the federal poverty line, which the EJA identifies as \$24,230 for a family of four. While this may technically comport with federal guidance, the guidance recognizes that this metric may fail to account for important factors such as regional differences in economic wellbeing and housing prices. (See EPA’s *Technical Guidance for Assessing Environmental Justice in Regulatory Analysis* [“EPA’s Technical Guidance”] at Section 2.2.2.¹²) The guidance also notes that the Census Bureau does not define “low-income,” as opposed to “poverty,” and thus defining low-income populations more broadly than just those individuals that fall below the poverty line might be warranted. (See *id.*)

Furthermore, state law provides parameters for defining low-income communities for purposes of identifying environmental justice communities in California. SB 1000—the California law that requires municipalities to add an environmental justice element to their general plans—defines “low-income area” as “an area with household incomes at or below 80 percent of the statewide median income or with household incomes at or below the threshold designated as low income by the Department of Housing and Community Development’s list of state income limits[.]” (Gov. Code, § 65302, subd. (h)(4)(C).) The California Department of Housing and Community Development defines low-income in Solano County as a family of four earning up to \$66,950 per year.¹³ Eighty percent of the statewide median income for a family of four is \$50,466.¹⁴ These figures are more than double the figure used by the EJA for a family of four (\$24,230). Thus, it is likely that the EJA greatly underestimates the proportion of low-income households in all areas identified. We therefore recommend that the EJA be revised to provide an accurate analysis of whether the Project may impact low-income and minority communities.

¹² Available at https://www.epa.gov/sites/production/files/2016-06/documents/ejtg_5_6_16_v5.1.pdf

¹³ See <http://www.hcd.ca.gov/grants-funding/income-limits/state-and-federal-income-limits/docs/inc2k18.pdf>

¹⁴ The statewide median income is \$63,083. See <https://www.cde.ca.gov/sp/cd/ci/mb1803.asp>

b. The EJA Fails to Acknowledge the Already-Existing Pollution Burden

An essential element in determining whether a project may have negative impacts on an environmental justice community is the presence of other sources of hazards and contaminants already affecting that community. “[E]mission sources for environmental pollutants have been found to often be concentrated in locations dominated by minority populations, low-income populations, or indigenous peoples..., making the consideration of multiple sources important to consideration of health risk to these populations.” (EPA’s Technical Guidance at Section 4.2.4.) In California, the law uses the term “disadvantaged community” to refer to environmental justice communities,¹⁵ and defines that phrase to mean both areas with concentrations of people that are low income or have other population characteristics that make them sensitive to pollution *and* areas that are disproportionately exposed to environmental pollution that can lead to negative health effects. But the EJA fails to mention—let alone disclose and analyze—the existing pollution already concentrated in the community, and the community’s vulnerability to that pollution. By ignoring the community’s existing burdens, the EJA artificially minimizes the potential impacts of the Project in light of those conditions, misleading the public and decision makers.

C. The DFEIR Fails to Consider the Potential Risks Due the Project Site Being Situated in a Sea-Level Rise Inundation Zone

At a five-foot sea-level rise scenario, the Project site would be completely inundated. And at lower levels, the site would be subject to periodic flooding and storm surges. The DFEIR does not indicate any consideration of the possibility of flooding or inundation of the Site, or risks from such a scenario, such as contaminant releases, fires, etc. Rather, it only indicates that the VMT’s wharf and other components will be designed to resist extreme tidal events and saltwater submergence. We urge the City to examine sea-level rise scenarios and account for them in their planning process, and impose enforceable conditions on the Project protecting against the risks that would be associated with flooding or inundation of the Project site.

III. Conclusion

In conclusion, the DFEIR should be revised and, if necessary, recirculated, to remedy the CEQA inadequacies identified above, and to ensure the Project’s environmental and community impacts are fully understood, disclosed, and mitigated to the maximum feasible extent. We appreciate your consideration of our comments and hope that you will require a full consideration of the Project’s true impacts prior to certifying the environmental document and reviewing the Project for approval.

¹⁵ Health and Safety Code 39711. This legal definition of “disadvantaged community” is used for various environmental justice purposes in the state, including for the allocation of funding.

Sincerely,

/s/ Erin Ganahl

ERIN GANAHL
Deputy Attorney General

For XAVIER BECERRA
Attorney General

CC: Shannon Eckmeyer, Assistant City Attorney (Shannon.Eckmeyer@cityofvallejo.net)

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