



AGENDA REPORT

PROPOSED ACTION: Ordinance: Approve and Authorize the Executive Director to Execute a Second Amended and Restated Non-Exclusive Preferential Assignment Agreement with Eagle Rock Aggregates, Inc., for a Bulk Marine Terminal of Approximately 18 Acres of Land and 3 Acres of Water at Berths 20-22, which (a) Extends Each of the Initial and Maximum Terms by Two Years to a Maximum of 29 Years; (b) Results in Present Value Fixed Revenue of Approximately \$37.2 Million and Total Revenue of Approximately \$54.6 Million During the Initial Term; and (c) Compared to the Current Agreement, Results in (i) Present Value Revenue Loss of \$7.7 Million During the Initial Term Compared to the Current Agreement, and (ii) Additional Capital Expenditure of \$2.6 Million to Implement Certain Improvements During the Initial Term; and Find That the Proposed Action Complies with the California Environmental Quality Act as Analyzed in the Final Supplemental Environmental Impact Report to the 2002 Oakland Army Base Area Redevelopment Plan Environmental Impact Report. **(Maritime)**

Submitted By: Bryan Brandes, Maritime Director; Kristi McKenney, Executive Director

Parties Involved:

Eagle Rock Aggregates, Inc.; Vancouver, BC Canada.
Herbert Burton, Vice President & General Manager.

Amount: Operating revenue through FY 2037 (initial term) – Present value fixed rent: \$37,200,000, total rent: \$54,600,000, total rent loss: \$7,700,000
Port expenditure through FY 2037 (initial term) – Present Value \$3.8 million; increase of \$1.2 million of which \$0 is related to proposed action (operating expense), \$13.8 million; increase of \$6.6 million of which \$2.6 million is related to proposed action (capital expense)

EXECUTIVE SUMMARY: In July 2022, the Port of Oakland (Port) and Eagle Rock Aggregates, Inc. (ERA) executed a Non-Exclusive Preferential Assignment Agreement (Original NEPAA) for the development and operation of a new 18-acre bulk marine terminal at Berths 20-22. Following settlement of California Environmental Quality (CEQA) litigation, in July 2023, the Port and ERA executed an Amended and Fully Restated NEPAA (First AR NEPAA). Since 2022, ERA has been working to obtain the regulatory permits it needs to take possession of the NEPAA premises and start construction; one permit from the Bay Area Air district (BAAD) remains pending. Given the lengthy delay in securing this permit, ERA has requested an amendment to the First AR NEPAA to extend the Initial Term and rent abatements by two years, among other related changes. Port Staff and ERA have negotiated key terms for an amendment, in the form of a Second Amended and Restated NEPAA (Second AR NEPAA). Compared to the First AR NEPAA, the Second AR NEPAA would result in lower revenue to the Port and additional expenditure to deliver certain improvements during the Initial Term. However, the revenue from the bulk terminal remains significant.

BACKGROUND & ANALYSIS

Eagle Rock Aggregates, Inc. (ERA)

ERA is a subsidiary of Polaris Materials ULC (BC), which is a subsidiary of U.S. Concrete, Inc., which is subsidiary of Vulcan Materials Company. ERA currently imports sand and aggregates (material or materials) from British Columbia, Canada, to its 5-acre marine terminal at the Port of Richmond, California. ERA's material is used primarily in ready-mix concrete plants for construction projects in the San Francisco Bay Area, including the City of Oakland. ERA's source material is also procured and imported in bulk by its competitors through various other bulk marine terminals throughout the San Francisco Bay Area. In 2018, ERA approached the Port indicating it was seeking to develop a new bulk sand and aggregate marine terminal to grow throughput and be better positioned to serve the local East Bay market, by minimizing the distance traveled by truck and the number of vessel (i.e., ship) moves within San Francisco Bay. Such a new terminal provides the Port with substantial incremental revenue and revenue stability through diversification, while helping the Bay Area meet demand for construction materials.

Original and First AR NEPAA

In July 2022, the Port and ERA executed the Original NEPAA, which provided for ERA's development and operation of a new 18-acre bulk marine terminal at Berths 20-22 (Project and/or Premises). Following litigation and a resulting settlement agreement, the Port and ERA executed a First AR NEPAA dated July 1, 2023, principally to reflect the terms of the settlement agreement, extend the Initial Term by one year, and extend the rent abatements by one year to account for the litigation-related delay to the Project. Pursuant to the First AR NEPAA, ERA has been paying partially abated rent since July 1, 2024, and as of June 30, 2026, will have paid the Port approximately \$4.6 million of fixed rent even though it has not yet been able to take possession of the Premises (see below). The First AR NEPAA expires June 30, 2035, with two options to extend through June 30, 2045, and June 30, 2050.

In 2022, ERA started working to obtain the regulatory permits it needs to take possession of the Premises. ERA has been unable to take possession of the NEPAA premises because it is still waiting for one regulatory permit – the permit from BAAD. Considering the lengthy delay in obtaining the BAAD permit, in late 2025 ERA requested an amendment to the First AR NEPAA to extend the Initial and Extended Terms, extend the rent abatements, and increase the Port's reimbursement for certain electrical infrastructure, including shore power. Port Staff and ERA have negotiated key terms to address ERA's request, as discussed below.

Proposed Second AR NEPAA

The terms negotiated by the parties are summarized below. Port Staff has opted to draft a Second AR NEPAA, in lieu of an amendment to the First AR NEPAA, for administrative ease because (1) the proposed changes have a "trickle down" effect throughout the First AR NEPAA, and (2) other minor modifications are needed throughout the First AR NEPAA.

Key Terms of the Proposed Second AR NEPAA:

- Extend the Initial Term by two years; with a commensurate shift of each Option to maintain the same extended term(s). The Initial Term would expire June 30, 2037, and the extended terms would expire June 30, 2047, and June 30, 2052.
- Shift rent abatements, minimum annual guarantee, and fixed rent payments by two years, effectively “resetting” the compensation terms.
- Apply the rent ERA paid in Fiscal Years (FY) 2025 and 2026 (approximately \$4.6 million in total) to the fixed rent owed to the Port in FY 2027 and FY 2028 inclusive of the shifted abatements. This would result in de minimis fixed revenue in FY 2027 and FY 2028; however, variable revenue is anticipated in FY 2028 if the current development schedule holds.
- In FY 2027 and FY 2028, the security deposit would stay flat to FY 2026; then would increase to be equal to three months’ rent consistent with the current NEPAA.
- Extend the Port’s deadline (by two years) to complete a Relocation Analysis to evaluate the potential relocation of ERA’s berth (to Berths 20-21 from Berth 22), but no modification to the relocation provisions. Shift the Port’s earliest right to relocate the berth by two years, to July 1, 2037.
- Increase the Port’s reimbursement to ERA for its shore power improvements, which the Port will own upon installation, from \$7.2 million to \$9.75 million (an additional \$2.6 million).

Other Changes in the Proposed Second AR NEPAA:

- Revise the scope of work for ERA’s non-shore power electrical improvements, reflecting design changes (distance, conduit, connection points, etc.) since the First AR NEPAA was executed.
- Clarify which permits are required for ERA to take possession, as distinct from those required to start operations.
- Clarify and/or reconcile exhibit references and content.
- Revise and clarify the rights of access granted to ERA for construction and operations, for those areas outside the NEPAA premises.
- Add new items from the Port’s updated NEPAA template, in the areas of:
 - Damage related to vessel line tension and barge freeboard.
 - Maintenance and availability of maintenance records.
 - Reporting of accidents and property damage.
 - Damage recovery.
 - Fee for processing of assignment or transfer of NEPAA.
 - Dispute resolution process.

Other Changes not Directly Related to Second AR NEPAA:

- Since execution of the First AR NEPAA, the Port's capital expenditure in support of the Project has increased from an estimated present value of \$7.0 million to approximately \$13.8 million due to various factors, notably the refinement of scope and cost estimates as design advanced, generally rising costs, and the recommendation to maintain full reimbursement of ERA's shore power installation cost. The Port anticipates approximately \$5.0 million of grant funding will offset the \$13.8 million expenditure (for a net of \$8.9 million).¹ Of the additional expenditure, \$2.6 million is exclusive to the proposed Second AR NEPAA.
- The Port's operating expense to deliver the Project has increased from a present value of approximately \$2.6 million to \$3.8 million. None of this increase is due to the proposed Second AR NEPAA.

Financial Impact to Port of Second AR NEPAA:

Like the Original and First AR NEPAAs, the proposed Second AR NEPAA generates substantial revenue to the Port during the Initial Term. On a present value basis the Port estimates it will collect \$54.6 million of revenue, of which \$37.2 million is fixed. Net of Port expenditures and grant funding, the estimated present value net cash flow during the Initial Term is \$41.1 million (average of about \$276,000 per acre-year), of which \$23.7 million is fixed (average of about \$165,000 per acre-year).

As discussed earlier, compared to the First AR NEPAA, the proposed Second AR NEPAA results in additional capital expenditure of \$2.6 million because of the higher reimbursement to ERA for its shore power installation.

¹ The Port was awarded a grant; project schedule in the grant agreement needs to be revised and approved by the granting agency. Funds are awarded on a reimbursement basis at project completion.

OTHER FINDINGS AND PROVISIONS

ENVIRONMENTAL REVIEW

The proposed action was analyzed under the California Environmental Quality Act (CEQA) and was found to be:

Categorically exempt under the following CEQA Guidelines Section:

Choose an item.

"Common Sense" exemption under CEQA Guidelines Section 15061(b)(3).

Other/Notes: The proposed action complies with CEQA through the Supplemental Environmental Impact Report (SEIR) to the 2002 Oakland Army Base Area Redevelopment Plan Environmental Impact Report (SCH No. 2001082058). On December 16, 2021, the Board of Port Commissioners certified the SEIR and adopted: CEQA findings, Mitigation Monitoring and Reporting Program, and Statement of Overriding Considerations for the proposed action (Resolution 21-87).

BUDGET

Administrative (No Impact to Operating, Non-Operating, or Capital Budgets); OR

Operating

Non-Operating

Capital

Analysis: There are no impacts to FY 2026. In FY 2027 only, compared to the First AR NEPAA, the proposed Second AR NEPAA reduces revenue by approximately \$4.5 million and increases capital expenditure by approximately \$1.3 million. The financial impact of the Second AR NEPAA post-FY 2027 is discussed earlier in this report. The terms of the proposed Second AR NEPAA have been incorporated into the FY 2027 and 5-year Maritime Division operating revenue, operating expense, and capital improvement budgets adopted by the Board on June 25, 2026.

STAFFING

No Anticipated Staffing Impact.

Anticipated Change to Budgeted Headcount.

Reason:

Other Anticipated Staffing Impact (e.g., Temp Help).

Reason:

<p><u>MARITIME AND AVIATION PROJECT LABOR AGREEMENT (MAPLA):</u></p> <p><u>Applies?</u> Yes (Tenant Project) – proposed action entails covered work in Aviation or Maritime areas above threshold cost requiring Port Building Permit.</p> <p><input type="checkbox"/> <u>Additional Notes:</u></p>	<p><u>LIVING WAGE</u> (City Charter § 728):</p> <p><u>Applies?</u></p> <p>Yes (Tenant) – proposed action entails at least \$50,000 in payments from a Maritime or Aviation tenant, licensee, and/or its subtenant/sublicensee employing at least 21 employees who spend at least 25% of their time on Port-related work.</p> <p><input type="checkbox"/> <u>Additional Notes:</u></p>
<p><u>SUSTAINABLE OPPORTUNITIES:</u></p> <p><u>Applies?</u> Yes.</p> <p><u>Reason:</u></p> <p>The proposed action includes installation of shore power improvements which will reduce carbon emissions at the Port.</p>	<p><u>GENERAL PLAN</u> (City Charter § 727):</p> <p><u>Conformity Determination:</u></p> <p>Maritime/Aviation – proposed action conforms to policies for transportation designation of the General Plan.</p>
<p><u>STRATEGIC PLAN.</u> The proposed action would help the Port achieve the following goal(s) in the Port’s Strategic Plan:</p> <ul style="list-style-type: none"> <input checked="" type="checkbox"/> Capture Our Market and Grow the Economic Base <input checked="" type="checkbox"/> Modernize and Upgrade Infrastructure <input checked="" type="checkbox"/> Transition to Zero-Emissions and Build Climate Resilience <input checked="" type="checkbox"/> Maximize Land Use Value and Revenues <input type="checkbox"/> Workforce Training and Jobs Development <input type="checkbox"/> Create Opportunities for Local Businesses and Community Economic Development 	