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***Via E-mail***

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**RE: Draft Supplemental Environmental Impact Report for the Eagle Rock Aggregates  
Oakland Terminal Project (State Clearinghouse No. 2001082058)**

Dear Ms. Chuop:

Thank you for the opportunity to provide comments on the Draft Supplemental Environmental Impact Report (“DSEIR”) for the Eagle Rock Aggregates Oakland Terminal Project (“Project”).<sup>1</sup> The Project seeks to construct a new bulk marine terminal at the Port of Oakland (“Port”) that would bring additional stationary and mobile pollution sources to West Oakland, one of the most historically polluted and disadvantaged communities in the State. There are numerous deficiencies in the DSEIR that must be addressed before the Project is considered for approval. As discussed in more detail below, the DSEIR fails to: include an adequate description of the environmental setting; describe Eagle Rock Aggregates’ plans for its Richmond Terminal and analyze the environmental impacts associated with this connected action; correctly analyze the Project’s particulate matter (“PM”) 2.5 impacts; sufficiently discuss how the Project’s air quality impacts translate to adverse health impacts for the West Oakland community; include a complete analysis of the Project’s consistency with the West Oakland Community Emissions Reduction Plan; analyze the Project’s cumulative impacts in a meaningful way; include mitigation measures that are enforceable, not deferred, and adequate to reduce the Project’s significant impacts; and provide a complete analysis of reasonable alternatives to the Project. We respectfully submit these comments to urge the Port to conduct further environmental analysis pursuant to CEQA, Public Resources Code section 21000 et seq., so all

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<sup>1</sup> This comment letter expands on the comments made in our October 21, 2019 letter in response to the Notice of Preparation for the DSEIR. The letter is not intended, and should not be construed, to be an exhaustive discussion of the DSEIR’s compliance with the California Environmental Quality Act (“CEQA”) or the Project’s compliance with any other applicable legal standards.

of the Project's impacts are disclosed, understood, and mitigated to the maximum extent feasible.<sup>2</sup>

**I. The Project Seeks to Build a Construction Aggregates Terminal that Will Bring Even More Pollution to a Historically Burdened Environmental Justice Community.**

The proposed Project is an 18-acre bulk marine terminal at the former Oakland Army Base that would receive up to 2.5 million tons of construction aggregates each year.<sup>3</sup> The construction materials would be delivered to the Project by 48 ocean-going marine vessels making new annual visits to the Port.<sup>4</sup> After the construction aggregates are offloaded from the ships, they would be stored onsite in three different stockpiles up to 40 feet high.<sup>5</sup> Each pile would be uncovered and contain up to 390,000 tons of construction materials.<sup>6</sup> The aggregates would be transported from the Project to construction sites by air pollution-generating mobile sources traveling through West Oakland, including an estimated 70,000 trucks and 76 barges every year the Project is in operation.<sup>7</sup>

The Project's DSEIR supplements the environmental impact report for the Oakland Army Base Area Redevelopment Plan, which was certified by the City of Oakland almost two decades ago in July 2002 ("2002 EIR").<sup>8</sup> Since then, there have been four addendums that update the original 2002 EIR and analyze the impacts associated with additional projects not contemplated for the Port in 2002.<sup>9</sup> The DSEIR is the fifth addendum to the 2002 EIR. For this Project, the Port determined that a supplemental environmental impact report was required since the 2002 EIR analyzed the development and use of the Port for container cargo operations only and did not include any bulk marine terminals, as proposed in the DSEIR.<sup>10</sup>

The communities living near the Project site are already exposed to a considerable array of pollution sources. West Oakland is surrounded by several major highways, including Interstate 880 to the south and west, Interstates 80 and 580 to the north, and Interstate 980 to the east.<sup>11</sup> In addition, there are 170 permitted facilities that generate toxic air contaminants in the

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<sup>2</sup> 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, 14-15.

<sup>3</sup> DSEIR at 2-2, 2-12.

<sup>4</sup> *Id.* at 2-12.

<sup>5</sup> *Id.* at 2-27.

<sup>6</sup> *Ibid.*

<sup>7</sup> *Id.* at 2-13, 2-32.

<sup>8</sup> *Id.* at ES-2.

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*

<sup>11</sup> Bay Area Air Quality Management District ("BAAQMD") and West Oakland Environmental Indicators Project, *Owning Our Air: The West Oakland Community Action Plan*

area, such as manufacturing plants, recycling facilities, a cement plant, a wastewater treatment plant, a power plant, paint sprayers, and a large metal shredding facility.<sup>12</sup> West Oakland is also home to the Port of Oakland, one of the busiest and largest ports in the county. The Port is supported by many different businesses and vehicles that are additional pollution sources in the community, including railyards, distribution centers, truck-related companies, trains, diesel trucks, ocean-going vessels, and commercial harbor crafts.<sup>13</sup>

West Oakland's significant pollution burden has translated into serious health challenges for the community. According to the Alameda County Public Health Department, West Oakland residents are 1.75 times more likely than other Alameda County residents to be hospitalized for asthma-related illnesses.<sup>14</sup> The asthma rates in West Oakland are particularly alarming for children. For example, approximately 25 percent of students at the West Oakland Middle School have asthma or breathing problems.<sup>15</sup> In 2016, residents of West Oakland also had a life expectancy rate that was 7.5 years lower than their neighbors in Alameda County.<sup>16</sup> Air pollution related diseases, including cancer, heart disease, stroke, and chronic lower respiratory disease, are some of the leading causes of death in the community, and West Oakland residents are dying from these diseases at higher rates.<sup>17</sup> The West Prescott neighborhood, which is immediately adjacent to the Project site, has a cancer risk of 272 cases for every million people from local emission sources, where the neighborhood located farthest from the Port has a cancer risk of 110 cases for every million people from local sources.<sup>18</sup> Over 90 percent of West Oakland's cancer risk comes from exposure to diesel PM.<sup>19</sup>

Due to West Oakland's alarming pollution burden, West Oakland was selected by the California Air Resources Board ("CARB") to be one of the first communities to develop an air emissions reduction plan pursuant to Assembly Bill 617 ("AB 617"). AB 617 requires CARB to select disadvantaged communities affected by high levels of toxic air contaminants and criteria air pollutants for inclusion in the AB 617 program.<sup>20</sup> The local air quality management district, in consultation with CARB and a community steering committee, is required to prepare and

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("WOCAP") (Oct. 2019), 2-1, available at <http://www.baaqmd.gov/~media/files/ab617-community-health/west-oakland/proposedfinal/proposed-final-plan-vol-1-092619-pdf.pdf>

<sup>12</sup> *Id.* at 2-12, Appendix A: Part I, 18-21.

<sup>13</sup> *Id.* at 2-12, Appendix A: Part I, 7.

<sup>14</sup> Muntu Davis, Air Pollution Risks & Vulnerability to Health Impacts: A Look at West Oakland (Mar. 28, 2018), 4, available at [https://ww2.arb.ca.gov/sites/default/files/2018-03/capp\\_consultation\\_group\\_march\\_2018\\_alameda\\_county\\_health\\_presentation.pdf](https://ww2.arb.ca.gov/sites/default/files/2018-03/capp_consultation_group_march_2018_alameda_county_health_presentation.pdf).

<sup>15</sup> Ananya Roy, Environmental Defense Fund, Traffic Pollution Causes 1 in 5 New Cases of Kids' Asthma (Apr. 29, 2019), available at <http://blogs.edf.org/health/2019/04/29/traffic-pollution-causes-1-in-5-newcases-of-kids-asthma-in-major-cities-how-data-can-help/>.

<sup>16</sup> WOCAP at 2-9.

<sup>17</sup> Davis at 8-9.

<sup>18</sup> WOCAP at 4-4. These numbers do not include the background cancer risk for West Oakland residents, which is 421 cases per million people. *Id.* at Appendix A: Part 1, 89.

<sup>19</sup> *Id.* at 4-5.

<sup>20</sup> Health & Saf. Code, § 44391.2, subd. (b)(1).

adopt a community emissions reduction plan (“CERP”) designed to “result in emissions reductions in the community.”<sup>21</sup> West Oakland was the first AB 617 community to have a CERP approved by CARB in December 2019.<sup>22</sup>

## II. The DSEIR Fails to Adequately Describe the Project’s Environmental Setting.

It is well established that when evaluating the environmental impacts associated with a proposed project under CEQA, “[t]he significance of an activity depends upon the setting.”<sup>23</sup> As a result, CEQA requires an environmental impact report to include a full description of “the physical environmental conditions in the vicinity of a proposed project.”<sup>24</sup> A project that may ordinarily have insignificant impacts on the environment could have significant impacts “in a particularly sensitive environment.”<sup>25</sup> Therefore, the discussion of a project’s environmental setting should describe the sensitive receptors in the vicinity of a project, the background environmental burdens faced by impacted communities, and any unique sensitivities of those communities to pollution.<sup>26</sup>

The DSEIR includes a single sentence about the West Oakland community living next to the Project to describe the Project’s environmental setting. According to the DSEIR’s project description, “[t]he closest residential community is located approximately one-half mile southeast of the Project site in the West Oakland Prescott neighborhood on the opposite (east) side of I-880.”<sup>27</sup> The DSEIR does not provide any additional information about the Prescott neighborhood or any other West Oakland communities in any of the environmental setting descriptions in its environmental impacts analyses, not even its analysis of air quality impacts.<sup>28</sup> This limited discussion ignores the many sensitive receptors in the neighborhoods east and south of the Project site, such as the Raimondi Park Playground, the Prescott School, the Baby Academy Preschool, and other locations where the occupants may be more susceptible to adverse health effects from pollution exposure. The DSEIR is also silent on the unique characteristics of West Oakland, including its population characteristics and the disproportionate, longstanding pollution burdens borne by its residents. The Port must revise the DSEIR’s environmental setting descriptions to comply with CEQA.

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<sup>21</sup> *Id.* § 44391.2, subd. (c)(1)-(2), (5).

<sup>22</sup> BAAQMD, West Oakland Community Action Plan to Improve Air Quality Approved by CARB (Dec. 10, 2019), *available at* [https://www.baaqmd.gov/~media/files/communications-and-outreach/publications/news-releases/2019/wocap\\_191210\\_2019\\_096-pdf](https://www.baaqmd.gov/~media/files/communications-and-outreach/publications/news-releases/2019/wocap_191210_2019_096-pdf).

<sup>23</sup> *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 718.

<sup>24</sup> Cal. Code Regs., tit. 14 (“CEQA Guidelines”), § 15125, subd. (a).

<sup>25</sup> *Id.* § 15300.2, subd. (a).

<sup>26</sup> Office of the California Attorney General, Environmental Justice at the Local and Regional Level (July 10, 2012), 3, *available at* [https://oag.ca.gov/sites/all/files/agweb/pdfs/environment/ej\\_fact\\_sheet.pdf](https://oag.ca.gov/sites/all/files/agweb/pdfs/environment/ej_fact_sheet.pdf).

<sup>27</sup> DSEIR at 2-5.

<sup>28</sup> *See id.* at Chapter 3.

### **III. The DSEIR Fails to Disclose Eagle Rock Aggregates' Planned Changes for its Existing Richmond Terminal and Analyze the Environmental Impacts of this Related Action.**

Environmental impact reports must disclose all related projects and analyze the combined impacts of these activities as a whole. CEQA defines a project as the “whole of an action,” or all linked activities that have the potential to physically change the environment.<sup>29</sup> An environmental impact report must analyze the total effects of the entire proposed action, including all reasonably foreseeable and related future projects.<sup>30</sup> “[W]hen one activity is an integral part of another activity, the combined activities are within the scope of the same CEQA project.”<sup>31</sup> As a result, any “piecemeal” or segmented review of a project’s environmental impacts is prohibited by CEQA.<sup>32</sup>

In this case, the DSEIR improperly segments environmental review because it fails to fully disclose and analyze the environmental impacts associated with Eagle Rock Aggregates’ planned changes to its existing construction aggregates marine terminal in Richmond, California (“Richmond Terminal”). Similar to the proposed Project, the Richmond Terminal is a bulk marine terminal for construction aggregates located in a historically disadvantaged environmental justice community. According to CalEnviroScreen, a screening tool that ranks each census tract in the State for pollution and vulnerability, the census tracts with residential communities just north of the Richmond Terminal have an overall score of 90-95 percent.<sup>33</sup> Due to this disproportionate pollution burden, CARB selected Richmond to be one of the first AB 617 communities to prepare a community air monitoring plan in 2018 and the community is now preparing a CERP using its collected emissions data.<sup>34</sup> The DSEIR reveals that Eagle Rock Aggregates “plans to move its current Richmond Marine Terminal activities to the Proposed Project site at the Port,” and “may repurpose the Richmond Marine Terminal to serve other bulk

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<sup>29</sup> CEQA Guidelines, § 15378, subd. (a).

<sup>30</sup> *Laurel Heights Improvement Assn. v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 396; *Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263, 279, 283-288; *Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonora* (2007) 155 Cal.App.4th 1214, 1231.

<sup>31</sup> *Tuolumne County Citizens for Responsible Growth*, 155 Cal.App.4th at 1229.

<sup>32</sup> *Berkeley Keep Jets Over the Bay Com. v. Bd. of Port Comrs.* (2001) 91 Cal.App.4th 1344, 1358.

<sup>33</sup> CalEnviroScreen 3.0, available at <https://oehha.ca.gov/calenviroscreen>.

CalEnviroScreen 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 3.0 Report (Jan. 2017), available at <https://oehha.ca.gov/media/downloads/calenviroscreen/report/ces3report.pdf>.

<sup>34</sup> See BAAQMD, Richmond Area Community Health Protection Program, available at <https://www.baaqmd.gov/community-health/community-health-protection-program/richmond-area-community-health-protection-program>.

material needs.”<sup>35</sup> Regardless, the DSEIR states that “operations at the Richmond Marine Terminal are assumed to remain unchanged; modification or dismantling of the Richmond Marine Terminal is not part of the Proposed Project.”<sup>36</sup> This delayed disclosure of the reasonably foreseeable changes to the Richmond Terminal and deferred environmental impacts analysis is unlawful under CEQA. The DSEIR must be revised and recirculated to include the two categories of information discussed below prior to approval of the Project.

First, the DSEIR must include a specific and detailed discussion of Eagle Rock Aggregates’ plans for its Richmond Terminal and how these changes will impact the proposed Project’s operations. The DSEIR should disclose all activities that occur at the existing Richmond Terminal and discuss which activities will be transferred to the new proposed Project in Oakland. The DSEIR should also describe which remaining operations, if any, will continue to occur at the Richmond Terminal. If Eagle Rock Aggregates intends to repurpose its Richmond Terminal for other purposes, these new activities must be disclosed in the DSEIR.

Second, the DSEIR must analyze the environmental impacts of any reasonably foreseeable future changes to the Richmond Terminal’s operations that are related to the Project. If Eagle Rock Aggregates transfers all of its operations for construction aggregates to the Project site and repurposes its Richmond Terminal to receive different materials, these new activities at the Richmond Terminal will be directly linked to the Project. As a result, any environmental impacts that occur from the Richmond Terminal’s new operations must be analyzed in conjunction with the Project’s impacts already disclosed in the DSEIR. This is especially important given that the Richmond Terminal’s operations combined with the Project’s operations would result in new pollution sources for two of the State’s most disadvantaged environmental justice communities.

#### **IV. The DSEIR’s Environmental Impacts Analysis for PM 2.5 is Flawed.**

An environmental impact report must include a “detailed statement” that identifies and describes “direct and indirect significant effects of the project on the environment.”<sup>37</sup> Once a lead agency designates an environmental impact as “significant,” the agency must reasonably describe “the nature and magnitude of the adverse effect.”<sup>38</sup> The significance determination is an essential part of the CEQA process since environmental impact reports must include mitigation measures to reduce all significant impacts to the maximum extent feasible.<sup>39</sup> A new and complete analysis of environmental impacts is required in supplemental environmental impact

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<sup>35</sup> DSEIR at 2-12 to 13.

<sup>36</sup> *Id.* at 2-13.

<sup>37</sup> Pub. Resources Code, § 21100, subd. (b)(1); CEQA Guidelines, § 15126.2, subd. (a).

<sup>38</sup> *Cleveland Nat. Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497, 514.

<sup>39</sup> Pub. Resources Code, §§ 21002, 21100, subd. (b)(3); CEQA Guidelines, § 15126.4, subd. (a)(1), (3).

reports if the analysis is “necessary to make the previous EIR adequate for the project as revised.”<sup>40</sup>

The DSEIR’s analysis of environmental impacts related to PM 2.5 does not comply with CEQA since it fails to fully analyze this pollutant and provide concrete significance determinations. The analysis for Impacts Air-2, Air-3, and Air-4 all conclude that the Project’s operations would result in significant impacts to the “maximum exposed individual worker” located approximately 300 feet from the Project due to PM 2.5 above the 2011/2017 BAAQMD significance threshold.<sup>41</sup> These workers would be exposed to elevated levels of PM 2.5 from “fugitive dust emissions associated with the aggregate transfer operations, storage piles, and fugitive dust from on-site vehicle travel.”<sup>42</sup> Despite these new significant impacts, the DSEIR does not include any mitigation measures to reduce fugitive dust emissions.<sup>43</sup> The DSEIR oddly states that the significant increase in PM 2.5 from the Project on nearby workers is provided “for informational purposes only” since this impact was not analyzed in the original 2002 EIR or any of its addendums.<sup>44</sup> The 2002 EIR and its subsequent updates included some analysis of PM 2.5, but did not analyze PM 2.5 impacts from the entire Oakland Army Base Redevelopment Area or PM 2.5 impacts on workers.<sup>45</sup> However, the Port’s rationale for not providing a CEQA compliant analysis of PM 2.5 in this DSEIR is nonsensical and not in accordance with the law – CEQA requires supplemental impact reports to include all additions and changes that are “necessary to make the previous EIR adequately apply to the project in the changed situation.”<sup>46</sup> Since the 2002 EIR did not include a full analysis of PM 2.5 impacts, including PM 2.5 impacts from the entire Oakland Army Base Redevelopment Area and PM 2.5 impacts on nearby workers, these impacts must be fully analyzed now. The Port must correct this faulty analysis in the DSEIR and recirculate the corrected DSEIR for public review.<sup>47</sup>

## **V. The DSEIR Neglects to Inform Decision Makers and the Public of the Health Impacts Associated with the Project.**

Pursuant to CEQA, environmental impact reports must connect pollutant data to specific adverse human health impacts on a community. In *Sierra Club v. County of Fresno*, the California Supreme Court found a project’s air quality impacts analysis to be inadequate because it included only a “general description of symptoms that are associated with exposure” and a discussion of health impacts for each type of pollutant that was “at most a few sentences of general information.”<sup>48</sup> This flawed discussion of health impacts “fail[ed] to indicate the

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<sup>40</sup> CEQA Guidelines, § 15163, subd. (b).

<sup>41</sup> DSEIR at 3.4-28 to 30 (Impact Air-2), 3.4-33 (Impact Air-3), 3.4-35 (Impact Air-4).

<sup>42</sup> *Id.* at 3.4-28.

<sup>43</sup> *Compare id.* at 3.4-20 (Table 3.4-6a) to 3.4-21 (Table 3.4-6b) (showing that the single mitigation measure for the Project’s operations will have no impact on fugitive dust PM 2.5).

<sup>44</sup> *Id.* at 3.4-29.

<sup>45</sup> *Ibid.*

<sup>46</sup> CEQA Guidelines, § 15163, subd. (b).

<sup>47</sup> *See id.*, § 15088.5.

<sup>48</sup> *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 519.

concentrations at which such pollutants would trigger the identified symptoms” and did not provide the public with any “idea of the health consequences that result when more pollutants are added to a nonattainment basin.”<sup>49</sup> As a result, the analysis did not satisfy CEQA’s requirement that an environmental impact report make “a reasonable effort to discuss relevant specifics regarding the connection between . . . the general health effects associated with a particular pollutant and the estimated amount of that pollutant the project will likely produce.”<sup>50</sup>

The DSEIR’s discussion of health impacts does not meet the standards established by *Sierra Club v. County of Fresno*. At the end of the analysis for Impact Air-4, which concludes that the Project’s potential to violate air quality standards for ozone and PM 2.5 is a significant and unavoidable impact, the DSEIR notes some health impacts that can occur from ozone, PM 2.5, and PM 10 exposure.<sup>51</sup> However, this brief discussion of the health impacts associated with these air contaminants is disconnected from the DSEIR’s discussion of the amount of pollutants that will be generated by the Project, which is located in the analysis for Impact Air-1.<sup>52</sup> Even more, the DSEIR does not make any connection between the Project’s nitrogen oxide emissions and ozone (or any other pollutants that can be ozone precursors), leaving the public in the dark about what may trigger the health impacts that can result from ozone exposure. For other pollutants generated by the Project, including “crystalline silica from construction aggregate transfer operations and fugitive dust from the Project site,” the DSEIR is silent on the associated health risks.<sup>53</sup> These disjointed and incomplete health impact discussions do not meet CEQA’s requirements, and are especially troubling given the severe disproportionate health burdens faced by the West Oakland community.

## **VI. The DSEIR’s Analysis of the Project’s Consistency with the West Oakland Community Emissions Reduction Plan is Incomplete.**

An environmental impact report must clearly identify and discuss all significant effects of the Project on the environment, including any inconsistencies between the Project and the applicable general, specific, and regional plans.<sup>54</sup> Here, the DSEIR evaluates the Project’s consistency with the BAAQMD 2017 Clean Air Plan, the Port Seaport Air Quality 2020 and Beyond Plan, and the West Oakland CERP that was recently adopted pursuant to AB 617.<sup>55</sup> The DSEIR uses three criteria to evaluate the Project’s consistency with these plans under Impact Air-3: 1) does the Project support the primary goals of the plan; 2) would the Project comply with applicable air quality measures contained in the plan; and 3) would the Project disrupt or hinder implementation of any control measures in the plan.<sup>56</sup> The DSEIR concludes that the Project would be consistent with all applicable air quality plans, except for the BAAQMD 2017

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<sup>49</sup> *Ibid.*

<sup>50</sup> *Id.* at 521.

<sup>51</sup> DSEIR at 3.4-35 to 36.

<sup>52</sup> *See id.* at 3.4-16 to 26.

<sup>53</sup> *Compare id.* at 3.4-26 to Chapter 3.

<sup>54</sup> Pub. Resources Code, § 21100, subd. (b)(1); CEQA Guidelines, § 15125, subd. (d).

<sup>55</sup> DSEIR at 3.4-30 to 34.

<sup>56</sup> *Id.* at 3.4-30.

Clean Air Plan.<sup>57</sup> However, this conclusion is based on an incomplete analysis of the West Oakland CERP that ignores the Port's first criteria – whether the Project will support the primary goals of an air quality plan. The West Oakland CERP has two overarching and crucial goals that are ignored by the DSEIR: reduce air emissions in all West Oakland neighborhoods so every neighborhood has the same air quality as the average West Oakland neighborhood by 2025; and ensure that all West Oakland neighborhoods have the same air quality as the cleanest local neighborhood by 2030.<sup>58</sup> To achieve these goals for 2025 and 2030, the CERP includes numerical emissions reduction goals for diesel PM and PM 2.5 and specific target levels for cancer risk.<sup>59</sup> The DSEIR must analyze how the Project will support or hinder these goals, as required by CEQA.

## VII. The DSEIR's Analysis of Cumulative Impacts is Deficient.

CEQA requires environmental impact reports to analyze whether a project's impacts, while they may appear to be insignificant on their own, are "cumulatively considerable."<sup>60</sup> The incremental effects of an individual project are cumulatively considerable if the effects are significant when "viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects."<sup>61</sup> To perform this analysis, a lead agency must "use its best efforts to find out and disclose all that it reasonably can."<sup>62</sup> If 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.<sup>63</sup>

Here, the DSEIR's analysis of cumulative impacts is deficient since it fails to include any meaningful analysis of how the Project's impacts will interact with the past, current, and future projects near the Project site. The DSEIR states that it uses a "projection approach" to analyze how the Project's impacts relate to the impact projections made in adopted local, regional, and statewide plans, but this approach does not include any discussion of the actual or even predicted impacts from the relevant projects.<sup>64</sup> Table 4.4-1 claims to list "probable future projects that may cumulatively affect resources of concern for the proposed Project," but it again does not provide any information regarding the projected impacts from the listed plans and projects.<sup>65</sup> Further, there are glaring and unexplained omissions of probable future projects from the cumulative impacts analysis, including the nearby Howard Terminal Project that would build a

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<sup>57</sup> *Id.* at 4.3-34.

<sup>58</sup> WOCAP at 4-4.

<sup>59</sup> *Id.* at 4-5.

<sup>60</sup> CEQA Guidelines, § 15130, subd. (a).

<sup>61</sup> *Id.* §§ 15065, subd. (a)(3), 15355, subd. (b).

<sup>62</sup> *Id.* § 15144; *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 96.

<sup>63</sup> *Kings County Farm Bureau*, 221 Cal.App.3d at 718.

<sup>64</sup> DSEIR at 4-6 to 7.

<sup>65</sup> *Id.* at 4-8 to 10.

large baseball stadium at the Port.<sup>66</sup> For the Project's cumulative air quality impacts analysis, the DSEIR fails to include any discussion of how the Project's cumulative impacts were assessed beyond a vague table that summarizes the Project's cumulative risk.<sup>67</sup> Table 4.5-2 shows a significant increase in cancer risk (200 in one million to 207 in one million) and PM 2.5 concentration (1.7 µg/m<sup>3</sup> to 2.8 µg/m<sup>3</sup>) from the Project, but provides no explanation for these increases.<sup>68</sup> This cursory disclosure of the Project's cumulative air quality impacts does not provide sufficient information to the public. For all of these reasons, the DSEIR's cumulative impacts analysis does not satisfy CEQA's requirements, especially since West Oakland is already burdened by substantial and significant pollution sources throughout its neighborhoods.

### **VIII. The DEIR's Air Quality Mitigation Measures are Unenforceable, Unlawfully Deferred, and Inadequate.**

CEQA requires a lead agency to adopt all feasible mitigation measures to minimize the significant environmental impacts of a project.<sup>69</sup> These measures must be detailed and specific, and "fully enforceable" through permit conditions, agreements, or other legally binding instruments.<sup>70</sup> The public must be able to discern which steps will be taken to mitigate a project's impacts, and mitigation measures should include criteria or performance standards to measure this implementation.<sup>71</sup> In addition, CEQA generally prohibits the deferred formulation of mitigation measures.<sup>72</sup> Deferred mitigation is proper only if the environmental impact report expressly commits the lead agency to the mitigation measures, adopts specific performance standards the mitigation will achieve, and identifies potential actions that can feasibly achieve the performance standards.<sup>73</sup> The DSEIR includes only two mitigation measures to reduce the Project's significant air quality impacts, and both of these measures are unenforceable and unlawfully deferred.

First, Mitigation Measure ERA AQ-1 ("MM AQ-1") requires the Eagle Rock Aggregates to prepare and implement an "Operations Air Quality Plan" that must be reviewed and approved by the Port before the Project begins operating.<sup>74</sup> This Plan "shall describe operational measures that the Project applicant will implement upon commencement of Project operations."<sup>75</sup> At a minimum, these measures must include the use of Tier 4F hybrid-electric front-end loaders, an

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<sup>66</sup> *Id.* at 4-7.

<sup>67</sup> *Id.* at 4-10 to 13.

<sup>68</sup> *See id.* at 4-13.

<sup>69</sup> Pub. Resources Code, § 21002; CEQA Guidelines, § 15126.4, subd. (a)(1).

<sup>70</sup> Pub. Resources Code, § 21081.6, subd. (b); CEQA Guidelines, § 15126.4, subd. (a)(2); *San Franciscans for Reasonable Growth v. City & County of San Francisco* (1984) 151 Cal.App.3d 61, 79.

<sup>71</sup> *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 670.

<sup>72</sup> CEQA Guidelines, § 15126.4, subd. (a)(1)(B).

<sup>73</sup> *Ibid.*

<sup>74</sup> DSEIR at 3.4-23 to 24.

<sup>75</sup> *Id.* at 3.4-23.

electric sweeper, and road sweeping twice a day.<sup>76</sup> Eagle Rock Aggregates must also provide an annual inventory of its equipment and meet with the Port each year to discuss the inventory and evaluate the feasibility of using least-polluting or zero emissions equipment at the Project.<sup>77</sup> These requirements are a good starting point for ways to reduce the Project's operational air quality impacts, but the way MM AQ-1 is drafted renders its requirements unenforceable and untimely. Since MM AQ-1 does not include any performance standards to determine whether and when the Plan's objectives (i.e. reduce air emissions) are achieved, including deadlines for purchasing the new equipment, a monitoring program to ensure that adequate street sweeping occurs, and a system for ensuring the cleanest equipment technologically available is used at the Project, the measure cannot be enforced. Further, MM AQ-1 is deferred since the Plan will not be created until after the Project is approved and there are no requirements that the air emission reduction measures be implemented before the Project starts its operations. Instead, the Plan and its operational measures should be finalized before the Project is considered for approval. The Plan should also include concrete standards to ensure that its measures do in fact minimize the Project's significant air quality impacts, such as emission reduction goals and techniques for measuring emission reductions.

Second, Mitigation Measure ERA AQ-2 ("MM AQ-2") requires Eagle Rock Aggregates to "utilize construction equipment (excluding on-road trucks which must meet CARB on-road emission standards) meeting Tier 4 emission requirements" to minimize the Project's air quality impacts from construction.<sup>78</sup> However, MM AQ-2 also allows for "the possible exception of certain types of equipment (vibratory pile drivers and concrete saws), for which suitable Tier 4 equipment may not be available."<sup>79</sup> Similar to MM AQ-1, MM AQ-2 is unenforceable and deferred because it omits any performance standards for determining when and how exceptions to the Tier 4 construction equipment requirement will be granted. The DSEIR should be revised to provide more specificity regarding its air quality mitigation measures.

Even if MM AQ-1 and MM AQ-2 were sufficient under CEQA, the DSEIR fails to implement all feasible mitigation for air quality impacts and explain why additional mitigation is infeasible. Mitigation is especially needed to minimize PM 2.5 from the Project's operations since the DSEIR concludes that Project operations will have significant and unavoidable PM 2.5 impacts on nearby workers.<sup>80</sup> The DSEIR should be revised to include concrete and enforceable mitigation measures for emissions from the Project's stockpiles, aggregate transfer operations, and on-site vehicle travel, and other sources of fugitive dust since 95 percent of PM 2.5 comes from these sources.<sup>81</sup> In addition, the DSEIR should add mitigation measures that reduce air quality impacts from vehicles other than on-site equipment, such as ocean-going vessels, commercial harbor craft, and off-site trucks used to transport the aggregates.

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<sup>76</sup> *Id.* at 3.4-23 to 24.

<sup>77</sup> *Id.* at 3.4-24.

<sup>78</sup> *Id.* at 3.4-27.

<sup>79</sup> *Ibid.*

<sup>80</sup> *Id.* at 3.4-28 to 30, 3.4-34 to 35.

<sup>81</sup> *Id.* at 3.4-28.

The Port has received a number of comment letters that propose additional mitigation measures to reduce the Project's significant air quality impacts.<sup>82</sup> We strongly urge the Port to publicly evaluate the feasibility of these mitigation measures and adopt all measures that will reduce the Project's impacts with specific, enforceable, and timely actions. This analysis is required to comply with CEQA's mandates regarding mitigation measures.

#### **IX. The Analysis of Project Alternatives in the DSEIR is Insufficient.**

An environmental impact report must identify "a reasonable range of alternatives" that would "feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project."<sup>83</sup> This discussion allows lead agencies to consider alternatives to a proposed action that will lessen impacts to the environment.<sup>84</sup> If an environmental impact report claims that an alternative is economically infeasible, this claim must be supported by substantial evidence demonstrating that the additional costs would make the project impractical.<sup>85</sup> A proper analysis of alternatives is necessary to comply with CEQA's mandate to avoid or substantially lessen a project's environmental impacts whenever feasible.<sup>86</sup>

Here, the DSEIR identifies "Alternative 1: Stockpile Storage in a Building" as the environmentally superior alternative because it would "eliminate" the Project's significant PM 2.5 impacts from fugitive dust.<sup>87</sup> However, the DSEIR dismisses this alternative as economically infeasible since it would be expensive to design and construct a building with the necessary clearances for the Project's stockpiles and the appropriate geotechnical specifications for the site.<sup>88</sup> Given these challenges and the cost of a similar, recently-constructed enclosure, the DSEIR estimates that the building would cost \$72,865,000, which is 2.5 times higher than the capital costs for the Project.<sup>89</sup> This estimate is helpful, but the feasibility analysis for Alternative 1 ignores the best source of comparison – the building that encloses construction aggregate stockpiles at Eagle Rock Aggregates' existing Richmond Terminal.<sup>90</sup> The DSEIR should be revised to describe the costs associated with the stockpile enclosure at its Richmond Terminal and why that enclosure was feasible but an enclosure at the Project is allegedly not, especially given the massive benefits associated with Alternative 1.

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<sup>82</sup> See Letter from CARB to Port (Dec. 21, 2020), at 7; Letter from BAAQMD to Port (Jan. 8, 2021), at 1-2; Letter from West Oakland Environmental Indicators Project to Port (Jan. 8, 2021), at 7; Letter from Shute, Mihaly & Weinberger LLP to Port (Jan. 8, 2021), at 20-21.

<sup>83</sup> Pub. Resources Code, § 21002.1, subd. (a); CEQA Guidelines, § 15126.6, subd. (a).

<sup>84</sup> *Laurel Heights Improvement Assn.*, 47 Cal.3d at 400.

<sup>85</sup> *Center for Biological Diversity v. County of San Bernardino* (2010) 185 Cal.App.4th 866, 884.

<sup>86</sup> Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15002, subd. (a)(3), 15021, subd. (a)(2).

<sup>87</sup> DSEIR at 5-11.

<sup>88</sup> *Ibid.*

<sup>89</sup> *Ibid.*

<sup>90</sup> See *id.* at 2-11 (stating that construction aggregates at the Richmond Terminal are conveyed to stockpiles located in a covered building).

**X. Conclusion**

CEQA provides the opportunity for transparent, thoughtful decision-making by requiring lead agencies to evaluate, disclose, and mitigate a proposed project's significant environmental impacts prior to approval. While the DSEIR provided some information about the Project and its environmental impacts, multiple facets of this discussion and analysis can and should be improved. Further, CEQA requires the DSEIR to include mitigation measures that are enforceable, not deferred, and designed to reduce the Project's significant environmental impacts. The DSEIR's errors and omissions are especially troubling given West Oakland's significant and longstanding pollution burden that has been ignored for far too long. We respectfully urge the Port to revise the DSEIR to address the concerns raised in this letter and recirculate the DSEIR for public review and comment.

Please do not hesitate to contact me if you have any questions or would like to discuss these issues further.

Sincerely,

A handwritten signature in black ink, appearing to read "Abigail Blodgett", with a long horizontal flourish extending to the right.

ABIGAIL BLODGETT  
Deputy Attorney General

For XAVIER BECERRA  
Attorney General

## Exhibit B



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January 8, 2021

### *Via Electronic Mail Only*

Khamly Chuop  
Port of Oakland  
530 Water Street  
Oakland, CA 94607  
E-Mail: kchuop@portoakland.com

Re: Draft SEIR Comment - Eagle Rock Aggregates Oakland Terminal Project

Dear Ms. Chuop:

This firm represents the West Oakland Environmental Indicators Project (“WOEIP”) in connection with the proposed Eagle Rock Aggregates Oakland Terminal Project (“Project”). The Port has requested comments on the Project’s Draft Supplemental Environmental Impact Report (“DSEIR”). As demonstrated herein, the DSEIR and the Project utterly fail to comply with the California Environmental Quality Act (“CEQA”), Public Resources Code section 21000 et seq., and other state law.

WOEIP is a resident-led, community-based environmental justice organization located in West Oakland, California. WOEIP is dedicated to achieving healthy homes, healthy jobs, and healthy neighborhoods for all who live, work, learn, and play in West Oakland. Through engaging in research projects and participating in agency advisory committees as well as stakeholder groups, WOEIP focuses on leveraging community power to support residents in developing and achieving their own vision for healthy neighborhoods, which includes – but is not limited to – clean soil and vibrant surroundings, clean air and clean water, and a resident-led comprehensive vision for redevelopment and economic revitalization in and around West Oakland.

The Project here would directly and significantly impact people in West Oakland, who already experience environmental burdens far beyond most communities in the Bay Area, the State, and the nation. Increased air pollution is a particular concern. Applicant Eagle Rock Aggregates (“Applicant”) proposes an approximately 18-acre

marine terminal at the Port of Oakland to import, store, and distribute bulk construction aggregate (sand and gravel), displacing existing truck parking and container storage on the site.<sup>1</sup> The Project would import up to 2,500,000 tons of aggregate per year,<sup>2</sup> which would be stored in three 40-foot-tall uncovered stockpiles that could hold up to 329,000 tons of aggregate each.<sup>3</sup> This activity would require up to 48 new ocean-going vessel (“OGV”) calls per year to the Port.<sup>4</sup> The initial lease for the Project is for 12 years and could be extended to up to 27 years,<sup>5</sup> exposing a whole new generation of West Oaklanders to increased air pollution from birth until adulthood.

The DSEIR is a supplement to the environmental impact report (“EIR”) for the Oakland Army Base Redevelopment Plan, which was certified by the City of Oakland nearly two decades ago in July 2002 (“2002 EIR”).<sup>6</sup> There have been multiple addendums to the 2002 EIR since then, and the DSEIR refers to these collective documents as the “2002 EIR as Addended.”<sup>7</sup> The Port has determined that a supplemental EIR is required here because the 2002 EIR as Addended analyzed development and use of the Port only for containerized cargo operations, and not for a bulk terminal like is proposed here.<sup>8</sup>

On behalf of WOEIP, we respectfully submit these comments to help ensure that the Port’s decisionmakers fully comply with CEQA. The environmental impact report is “the heart of CEQA.”<sup>9</sup> It “is an environmental ‘alarm bell’ whose purpose is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return. The EIR is also intended ‘to demonstrate to an apprehensive citizenry that the agency has, in fact, analyzed and considered the ecological implications of its action.’ Because the EIR must be certified or rejected by public officials, it is a document of accountability.”<sup>10</sup>

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<sup>1</sup> Eagle Rock Aggregates Terminal Project, Draft Supplemental Environmental Impact Report (Nov. 2020) (“DSEIR”) at ES-1, 2-2.

<sup>2</sup> *Id.* at 2-12.

<sup>3</sup> *Id.* at 2-27.

<sup>4</sup> *Id.* at 2-12.

<sup>5</sup> *Id.* at 2-14.

<sup>6</sup> *Id.* at ES-2.

<sup>7</sup> *Id.* at 1-2 – 3.

<sup>8</sup> *Id.* at 1-4.

<sup>9</sup> *Laurel Heights Improvement Ass’n v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 392 (“*Laurel Heights I*”) (citations omitted).

<sup>10</sup> *Id.* (citations omitted).

After carefully reviewing DSEIR, we have concluded that it fails in numerous respects to comply with the requirements of CEQA. As explained below, the DSEIR violates CEQA because it fails to: (1) analyze and make significance determinations on whole categories of impacts, including greenhouse gases; (2) analyze the impact of altering the Applicant's operations at the Port of Richmond; (3) provide an adequate analysis of and mitigation for the Project's impacts to air quality and health, hazards and hazardous materials, hydrology and water quality, land use, noise, and transportation; (4) adequately analyze the Project's cumulative impacts; and (5) examine a reasonable range of alternatives.

Where, as here, the environmental review document fails to fully and accurately inform decisionmakers and the public of the environmental consequences of proposed actions, it does not satisfy the basic goals of CEQA. Specifically, "[t]he purpose of an environmental impact report is to provide public agencies and the public in general with detailed information about the effect that a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project."<sup>11</sup> Here, the DSEIR contains such fundamental errors – especially its failure to determine the significance of whole categories of impacts – as to undermine the integrity of the document and prevent meaningful public review on the Project. The Port must revise and recirculate the DSEIR in order to permit an adequate understanding of the environmental issues at stake.<sup>12</sup>

In particular, WOEIP asks the Port to ensure that its environmental analysis is complete, including full analysis of environmental impacts and significance determinations regarding those impacts, regardless of whether the impacts were ignored in the 2002 EIR as Addended. Further, WOEIP urges the Port to adopt a full suite of effective and enforceable mitigation measures for the Project's impacts, especially its impacts on air quality and health. As explained in detail below, West Oakland already experiences disproportionate air pollution that harms its residents' health and increases their risk of respiratory and cardiovascular disease, cancer, and premature death. Any contribution to this burden from the Project must be adequately mitigated. WOEIP provides feasible and effective mitigation measures below and strongly urges the Port to evaluate and adopt them, as required by CEQA. Moreover, WOEIP describes a feasible alternative – relocation of the Peralta Street cement plant to the Project site – that must be fully evaluated in a revised and recirculated EIR. WOEIP likewise urges the Port to work with the Applicant and other stakeholders to evaluate and implement this alternative.

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<sup>11</sup> See Pub. Resources Code § 21061.

<sup>12</sup> Cal. Code Regs., tit. 14 ("CEQA Guidelines"), § 15088.5.

## I. THE DSEIR IMPROPERLY EXCUSES ITSELF FROM ANALYSIS OF WHOLE CATEGORIES OF ENVIRONMENTAL IMPACTS.

Perhaps the DSEIR's most glaring and significant flaw is its failure to analyze whole categories of environmental impacts, based on an incorrect interpretation of the law regarding supplemental EIRs. An agency may prepare a supplemental EIR (instead of a full subsequent EIR) where only minor additions or changes to the original EIR are required to account for (1) substantial changes to the proposed project; (2) substantial changes to the circumstances under which the project is undertaken; or (3) new information of substantial importance (that was not known and could not have been known at the time of preparation of the original EIR).<sup>13</sup> The supplemental EIR must contain "the information necessary to make the previous EIR adequate for the project as revised."<sup>14</sup>

Here, the Port concludes that a supplemental EIR is required because the proposed project has changed. The 2002 EIR as Addended analyzed use of the Port for containerized cargo only.<sup>15</sup> The Proposed Project would change use of a terminal from containerized cargo to bulk construction aggregates, which is a substantial change to the use contemplated under the original EIR.<sup>16</sup>

In addressing the changed environmental impacts of the Project, however, the DSEIR fails to fully analyze and provide significance determinations on whole categories of environmental impacts. For example, the DSEIR provides some information on the Project's PM<sub>2.5</sub> impacts "for informational purposes,"<sup>17</sup> but absolves itself of a CEQA-compliant analysis of PM<sub>2.5</sub> impacts or legally mandated significance determination<sup>18</sup> because the 2002 EIR as Addended failed to make such an analysis. The DSEIR takes a similar approach to greenhouse gas emissions, providing some information but avoiding a significance determination.<sup>19</sup> And the DSEIR provides absolutely no information about or mitigation for the Project's energy impacts, as

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<sup>13</sup> *Id.* §§ 15162(a), 15163(a).

<sup>14</sup> *Id.* § 15163(b).

<sup>15</sup> DSEIR at 1-4.

<sup>16</sup> *Id.*

<sup>17</sup> *See, e.g., id.* at 3.4-29.

<sup>18</sup> Pub. Resources Code § 21100(b)(1).

<sup>19</sup> *See generally* DSEIR, Chapter 3.6.

required by Public Resources Code section 21100(b)(3) and CEQA Guidelines Appendix F, rendering the EIR “fatally defective.”<sup>20</sup>

The DSEIR’s justification for these glaring omissions seems to be – based on discussion in Chapter 3.6, “Greenhouse Gas Emissions,” and Chapter 4, “Cumulative Impacts” – that because information about these categories of impacts “was known, or could have been known in 2002” at the time of the original EIR, this is not “legally ‘new information’” required to be analyzed in the DSEIR.<sup>21</sup> However, this approach conflates the standards for *triggering* the need to prepare a supplemental EIR with the standards for the *contents* of a supplemental EIR and is not supported by CEQA and its case law.

As explained above, a supplemental EIR must be prepared when “[s]ubstantial changes are proposed in the project” that would involve “new significant environmental effects or a substantial increase in the severity of previously identified significant effects,” *or* when certain “[n]ew information of substantial importance, which was not known and could not have been known with the exercise of reasonable diligence at the time the previous EIR was certified” is discovered.<sup>22</sup> These two situations defined in the Guidelines *trigger* when a supplemental EIR is required. And, crucially, the trigger for a supplemental EIR when there is a revision to the project is not limited to “new significant environmental effects” in categories that either were studied in or could not have been known at the time of the original EIR.<sup>23</sup>

No case law supports the Port’s novel position that the supplemental EIR need only contain information necessary to make the previous EIR adequate *to 2002 standards*. The Port appears to rely on holdings in cases considering whether the requirement to prepare a supplemental EIR was *triggered* due to *new information*. In those cases, no supplemental EIR was required in light of new information or adoption of new guidelines regarding greenhouse gases because at the time of the original EIRs, information about the potential effects of greenhouse gases was generally known and could have been addressed in the original EIR.<sup>24</sup> Here, the trigger is not the presence of

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<sup>20</sup> *Cal. Clean Energy Com. v. City of Woodland* (2014) 225 Cal.App.4th 173, 209 (quoting *People v. County of Kern* (1976) 62 Cal.App.3d 761, 774).

<sup>21</sup> See DSEIR at 3.6-1, 4-13, 4-17.

<sup>22</sup> CEQA Guidelines §§ 15162(a), 15163(a).

<sup>23</sup> Compare CEQA Guidelines § 15162(a)(1) with § 15162(a)(3).

<sup>24</sup> See, e.g., *Concerned Dublin Citizens v. City of Dublin* (2013) 214 Cal.App.4th 1301, 1320; *Citizens for Responsible Equitable Env’t Development v. City of San Diego* (2011) 196 Cal.App.4th 515, 532.

new information, but the fact that the Port now proposes a substantial change to Port operations considered under the 2002 EIR as Addended.

To be clear, the Port need not provide a new analysis of PM<sub>2.5</sub>, greenhouse gas emissions, and energy impacts for the *entire* Oakland Army Base redevelopment project considered in the 2002 EIR as Addended; the new impacts analysis is required only for the changed aspect of the original project: the proposed bulk aggregates terminal. And when preparing a supplemental EIR in response to a Project change like the case here, the agency may – as the Port has done here for other impacts – limit its review to the environmental changes between what would have or has occurred under the original project and what would occur with the change to the project. However, the Port cannot use the narrowed scope of a supplemental EIR to simply ignore broad categories of impacts this new project would have because they were not previously considered. Instead, CEQA requires a robust environmental review of *all* of the changed aspect of the original project’s environmental impacts, including categories of impacts that may have been missed by the original EIR, as they can be known today. Indeed, to do anything here other than a full environmental analysis of the Proposed Project as it differs from the project considered in the 2002 EIR as Addended would undermine CEQA’s fundamental purpose to ensure the public and decisionmakers are fully informed of a project’s impacts.<sup>25</sup>

Further, avoiding this analysis and CEQA’s mandate to make significance determinations and mitigate a project’s significant impacts would allow the Port to approve a project that will have undeniably significant impacts on the environment and public health of an overburdened community while ignoring its obligation to mitigate those impacts to the extent feasible.<sup>26</sup> Indeed, the DSEIR admits that the Project would result in impacts related to increased PM<sub>2.5</sub> pollution,<sup>27</sup> cancer risk,<sup>28</sup> and greenhouse gas emissions<sup>29</sup> that would be significant under applicable thresholds. Yet, because of its attempted shortcut, the Port absolves itself completely of any attempt to identify mitigation.

Indeed, the evidence in the DSEIR about the Project’s air quality impacts indicates that a subsequent EIR would be the more appropriate level of analysis here. A supplemental EIR is appropriate where only minor revisions to an existing EIR are

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<sup>25</sup> See CEQA Guidelines § 15002(a)(1).

<sup>26</sup> See Pub. Resources Code §§ 21002, 21000(a)(3).

<sup>27</sup> See DSEIR at 3.4-29.

<sup>28</sup> *Id.*

<sup>29</sup> See *id.* at 3.6-7, 4-17.

required.<sup>30</sup> But where “[s]ubstantial changes” to a project require “major revisions of the previous EIR” to account for “new significant environmental effects or a substantial increase in the severity of previously identified significant effects,” a subsequent EIR is necessary.<sup>31</sup> Because of the substantial increase in air quality impacts that would result from a bulk aggregate operation, which is a wholly different kind of operation than the containerized cargo operation studied in the 2002 EIR as Addended, the Port should prepare a subsequent EIR here.

The omission of adequate impacts analyses and, most importantly, a significance determination and associated mitigation for PM<sub>2.5</sub> pollution, cancer risk, greenhouse gas emissions, energy impacts, and any other ignored impacts, renders the DSEIR fatally flawed. The omission severely undermines the EIR’s purpose to act as “an environmental ‘alarm bell’ whose purpose is to alert the public and its responsible officials to environmental changes before they have reached . . . points of no return.”<sup>32</sup> And it denies the public – especially the residents of West Oakland most impacted by these ignored impacts – the opportunity to meaningfully participate in evaluating the Project’s impacts. The Port therefore must revise the DSEIR to include this legally required information and then recirculate the DSEIR for further comment.<sup>33</sup>

## II. THE DSEIR IMPROPERLY SEGMENTS A LINKED PROJECT.

The DSEIR states that once the Project becomes operational, the Applicant would relocate its existing operations at the Richmond Marine Terminal to the Project site but is unclear how the Applicant will continue to use the Richmond Marine Terminal for related operations.<sup>34</sup> Longstanding CEQA law holds that where two projects are linked, they must be analyzed together.<sup>35</sup> An EIR may not segment a project into discrete components in order to limit environmental disclosure by ignoring development or other activity that will ultimately result from approval of a project.<sup>36</sup> Rather, “when one

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<sup>30</sup> CEQA Guidelines § 15163(a)(2).

<sup>31</sup> *Id.* § 15162(a)(1).

<sup>32</sup> *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.

<sup>33</sup> CEQA Guidelines § 15088.5.

<sup>34</sup> DSEIR at 2-12, 2-13.

<sup>35</sup> *See Bozung v. Local Agency Formation Comm.* (1975) 13 Cal.3d 263, 279, 282; *Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonora* (2007) 155 Cal.App.4th 1214, 1231.

<sup>36</sup> *See City of Antioch v. City Council* (1986) 187 Cal.App.3d 1325, 1333-34.

activity is an integral part of another activity, the combined activities are within the scope of the same CEQA project.”<sup>37</sup>

Here, the DSEIR recognizes that the Applicant “plans to move its current Richmond Marine Terminal activities to the Proposed Project site at the Port,” but asserts that “for the purposes of this SEIR, operations at the Richmond Marine Terminal are assumed to remain unchanged.”<sup>38</sup> The document provides no evidence or explanation in support of this assumption and does not make clear what remaining operations, if any, will continue at the Richmond Marine Terminal. Indeed, the assumption that the Applicant’s operations at the Richmond Marine Terminal would remain unchanged is nonsensical in light of the fact that a key purpose of the Project is to facilitate the Applicant relocating a bulk aggregate operation from the Richmond Marine Terminal to the Project site.<sup>39</sup> In particular, the DSEIR clearly indicates that the Applicant’s OGVs will completely stop visiting the Port of Richmond if this Project is approved, indicating some change of the Richmond operations *will* happen with this Project’s approval.<sup>40</sup> Nonetheless, the DSEIR claims that “modification or dismantling of the Richmond Marine Terminal is not part of the Proposed Project” and that “[i]n the future, ERA may repurpose the Richmond Marine Terminal to serve other bulk material needs, subject to the review and approval by municipal and regulatory agencies as required.”<sup>41</sup> The DSEIR fails to provide any further information about the anticipated future repurposing of the Richmond Marine Terminal for “other bulk material needs.”

Where a future action is a reasonably foreseeable consequence of a project, an EIR must include an analysis of the environmental effects of that future action.<sup>42</sup> Here, in addition to providing a detailed description of any current operations that will continue at the Richmond Marine Terminal after approval of the Project, the DSEIR must analyze the potential impacts of any reasonably foreseeable future changes in operations at the Richmond site that may occur as a result of the Project’s relocation of operations from the site. For example, if the Applicant starts to use the Richmond terminal for a different kind of aggregate or leases the Richmond site to another importer, the impact of those changes must be analyzed in this EIR. The DSEIR must analyze the environmental impacts of foreseeable changes to the Applicant’s Richmond operations, including all

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<sup>37</sup> *Tuolumne County Citizens for Responsible Growth*, 155 Cal.App.4th at 1229.

<sup>38</sup> DSEIR at 2-12, 2-13.

<sup>39</sup> *Id.* at 2-12, 2-13.

<sup>40</sup> *See id.* at 2-9.

<sup>41</sup> *Id.* at 2-13.

<sup>42</sup> *Laurel Heights I*, 47 Cal.3d at 396.

reasonably foreseeable current and future impacts of alteration of uses at the Richmond site, because those changes are integrally linked to the proposed Project.<sup>43</sup> The Port must revise the DSEIR to disclose and analyze the foreseeable environmental impacts of relocating the Richmond operations and then recirculate the document.

### **III. THE DSEIR'S ANALYSIS OF AND MITIGATION FOR THE IMPACTS OF THE PROPOSED PROJECT ARE INADEQUATE.**

The discussion of a proposed project's environmental impacts is at the core of an EIR.<sup>44</sup> As explained below, the DSEIR's environmental impacts analysis is deficient under CEQA because – in addition to leaving out analysis of broad swathes of the Project's environmental impacts – it also fails to provide the necessary facts and analysis to allow the Port and the public to make informed decisions about the Project.

An EIR must effectuate the fundamental purposes of CEQA: to “inform the public and responsible officials of the environmental consequences of their decisions before they are made.”<sup>45</sup> To do so, an EIR must contain facts *and* analysis, not just an agency's bare conclusions.<sup>46</sup> Thus, a conclusion regarding the significance of an environmental impact that is not based on an analysis of the relevant facts fails to fulfill CEQA's informational mandate. Because this is a supplemental EIR, the document must contain “the information necessary to make the previous EIR adequate for the project as revised.”<sup>47, 48</sup>

Additionally, an EIR must identify feasible mitigation measures to mitigate significant environmental impacts.<sup>49</sup> An agency must have specific evidentiary support for a conclusion that mitigation will be effective and enforceable.<sup>50</sup> Under CEQA, “public agencies should not approve projects as proposed if there are . . . feasible

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<sup>43</sup> See *Bozung*, 13 Cal.3d at 279, 282; *Tuolumne County Citizens*, 155 Cal.App.4th at 1231.

<sup>44</sup> See CEQA Guidelines § 15126.2(a) (“An EIR *shall* identify and focus on the significant effects of the proposed project on the environment.”) (emphasis added).

<sup>45</sup> *Laurel Heights Improvement Ass'n v. Regents of Univ. of Cal.* (1993) 6 Cal.4th 1112, 1123 (“*Laurel Heights II*”).

<sup>46</sup> *Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 568.

<sup>47</sup> CEQA Guidelines § 15163(b).

<sup>48</sup> Nonetheless, WOEIP maintains that a subsequent EIR is called for here. See Section I, *supra*.

<sup>49</sup> CEQA Guidelines § 15126.4.

<sup>50</sup> See, e.g., *Sierra Club v. County of San Diego* (2014) 231 Cal.App.4th 1152, 1168.

mitigation measures available which would substantially lessen the significant environmental effects of such projects.”<sup>51</sup> In the context of a supplemental EIR, the agency must identify all feasible mitigation to address the significant environmental impacts of the changed aspects of a project.<sup>52</sup> CEQA provides no excuse from this analysis for supplemental EIRs for changed projects.

**A. The DSEIR fails to adequately analyze and mitigate the Project’s impacts on air quality.**

As explained above, air quality is perhaps the most important issue to the residents of West Oakland, who experience disproportionate burdens from polluted air compared to the rest of the Bay Area, the State, and the country. As such, it is exceedingly important that the DSEIR carefully analyze and disclose the Project’s impacts on air quality and adequately mitigate for those impacts, as CEQA requires. Unfortunately, the DSEIR has failed in this regard for the reasons described below.

**1. The DSEIR inadequately describes the Project’s existing air quality setting, which is directly adjacent to a historically burdened community.**

When analyzing a project’s adverse environmental impacts under CEQA, “[t]he significance of an activity depends on the setting.”<sup>53</sup> Thus, it is essential that an EIR accurately and fully describe a project’s environmental setting because this description forms the baseline for evaluating the project’s environmental impacts.<sup>54</sup> This requirement is crucial to a valid EIR: “[k]nowledge of the regional setting is critical to the assessment of environmental impacts . . . . The EIR must demonstrate that the significant environmental impacts of the proposed project were adequately investigated and discussed and it must permit the significant effects of the project to be considered *in the full environmental context*.”<sup>55</sup> In other words, it is impossible for an EIR to fulfill its informational purpose when it does not adequately describe the existing environment that may be impacted by a project. Additionally, the CEQA Guidelines make clear that “a

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<sup>51</sup> Pub. Resources Code § 21002.

<sup>52</sup> *Id.* (“[I]t is the policy of the state that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects . . . .”).

<sup>53</sup> *Kings County Farm Bureau*, 221 Cal.App.3d at 718; *see also* CEQA Guidelines § 15125.

<sup>54</sup> *See* CEQA Guidelines § 15125(a).

<sup>55</sup> *Id.* § 15125(c) (emphasis added).

project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant.”<sup>56</sup> This highlights the heightened importance of carefully considering impacts from a project adjacent to West Oakland, where even impacts that elsewhere might be insignificant can have a significant impact.

In its description of the project location, the DSEIR provides a mere sentence about the Port’s nearest neighbor: “The closest residential community is located approximately one-half mile southeast of the Project site in the West Oakland Prescott neighborhood on the opposite (east) side of I-880.”<sup>57</sup> This perfunctory statement does little to adequately describe the adjacent historic and diverse community of West Oakland, which has suffered the impacts of environmental pollution, especially air pollution, for decades. Nor do the environmental setting discussions in the impact-specific sections, including and especially the Air Quality section, provide any description of the extraordinary environmental burden shouldered by the residents of West Oakland, despite this information being readily available in a document widely cited in the DSEIR, the West Oakland Community Action Plan. CEQA mandates this omission be remedied.

The West Oakland community is overburdened by both mobile and stationary pollution sources, including four major highways, the Port and marine vessels, railyards, warehouse and distribution facilities, truck-related businesses, and industrial facilities like cement plants. According to CalEnviroScreen 3.0<sup>58</sup> (which ranks each census tract in the state for pollution and vulnerability), the Project’s census tract and directly adjacent census tracts in West Oakland have a higher exposure to Diesel Particulate Matter (“DPM”) than 99 percent of the state. The area also ranks in the 99th to 100th percentile for hazardous materials cleanup sites, 95th to 100th percentile for groundwater threats, and 73rd to 97th percentile for hazardous waste generators.

CalEnviroScreen 3.0 data indicate that a resident of these areas of West Oakland is 98 to 99 percent more likely to have asthma than other California residents and 81 to 98 percent more likely to be born with low birth weight. In 2016, the life expectancy at birth for a member of the West Oakland community was 7.5 years shorter

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<sup>56</sup> *Id.* § 15300.2(a).

<sup>57</sup> DSEIR at 2-5.

<sup>58</sup> The California Office of Environmental Health Hazard Assessment’s CalEnviroScreen 3.0 is available at <https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-30>.

than the average person in Alameda County.<sup>59</sup> People who live in West Oakland are more likely than other Alameda County residents to visit the emergency room and be hospitalized for asthma and to die from cancer, heart disease, and stroke.<sup>60</sup> Notably, the West Prescott neighborhood, which is the nearest West Oakland neighborhood to the Project, has an alarming toxic air contaminant cancer risk of 272 per 1 million people<sup>61</sup> – more than *nine times* the United States average of 30 in 1 million<sup>62</sup> and more than two and a half times the United States Environmental Protection Agency’s 100 in 1 million threshold for elevated cancer risk mandating action.<sup>63</sup> DPM is responsible for over 90 percent of the total cancer risk in West Oakland.<sup>64</sup>

West Oakland is home to historically oppressed groups. While only 6 percent of Bay Area residents are Black, 42 percent of the residents of West Oakland identify as such.<sup>65</sup> Eighteen percent of the West Oakland community is Hispanic, 11 percent is Asian, and 24 percent is white.<sup>66</sup> The community is relatively low income, with 52 percent of the population living below the Bay Area poverty level (two times the federal poverty level), compared to the Bay Area-wide poverty rate of 23 percent.<sup>67</sup> The community has long suffered from and continues to experience the effects of environmental racism.

It is little surprise, then, that West Oakland was one of the first communities identified under Assembly Bill 617 (“AB 617”) as an environmentally overburdened community and the first to go through the AB 617 emissions reduction planning process. AB 617 mandates that the California Air Resources Board (“CARB”) identify disadvantaged communities affected by high exposure burdens for toxic air

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<sup>59</sup> *Owning Our Air: The West Oakland Community Action Plan (“WOCAP”)* at 2-9 (Oct. 2019), available at <https://www.baaqmd.gov/~/media/files/ab617-community-health/west-oakland/100219-files/final-plan-vol-1-100219-pdf.pdf?la=en>.

<sup>60</sup> *Id.* at 2-10.

<sup>61</sup> *Id.* at 4-4.

<sup>62</sup> U.S. Environmental Protection Agency, 2014 National Air Toxics Assessment: Fact Sheet, at 1, available at [https://www.epa.gov/sites/production/files/2018-08/documents/2014\\_nata\\_overview\\_fact\\_sheet.pdf](https://www.epa.gov/sites/production/files/2018-08/documents/2014_nata_overview_fact_sheet.pdf).

<sup>63</sup> *Id.* at 2.

<sup>64</sup> WOCAP at 4-4.

<sup>65</sup> *Id.* at 2-6.

<sup>66</sup> *Id.*

<sup>67</sup> *Id.*

contaminants and criteria air pollutants for development of a Community Emission Reduction Plan, which is intended to “result in emissions reductions in the community.”<sup>68</sup>

When it came time to prepare the Community Emission Reduction Plan for West Oakland under AB 617, the Bay Area Air Quality Management District (“BAAQMD”) recognized the long and successful track record of WOEIP in advocating to control air pollution and improve community health in West Oakland and chose to partner with WOEIP to develop the plan, titled the West Oakland Community Action Plan (“WOCAP” or “Owning Our Air”). WOCAP targets include achieving the same air quality throughout West Oakland as in the average West Oakland neighborhood by 2025, and achieving the same air quality as the “cleanest” West Oakland neighborhoods across West Oakland by 2030.<sup>69</sup>

Without this critical information about the Project’s sensitive environmental context, the DSEIR deprives the reader of essential information necessary to evaluate the Project’s impacts. In particular, the lack of information about West Oakland and its environmental burden prevents adequate analysis of the Project’s impacts on West Oakland’s residents, who are already disproportionately impacted by environmental degradation, especially air pollution. The DSEIR thus must be revised to provide this necessary description of the Project’s setting adjacent to a historically overburdened community.

**2. The DSEIR improperly obscures the Project’s impacts by failing to discuss the Project’s impacts independent of proposed mitigation.**

Another flaw running through the DSEIR’s air quality analysis is its failure to analyze the Project’s impacts separate from proposed mitigation. CEQA requires that an EIR analyze impacts in two steps: first, an EIR must set forth, in detail, all of a project’s significant environmental effects.<sup>70</sup> Next, the EIR must identify all feasible mitigation measures for each significant impact.<sup>71</sup> This sequence – analyze impacts first, then identify mitigation – is crucial, as “[o]nly by [the agency] making this disclosure can

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<sup>68</sup> Health & Saf. Code § 44391.2.

<sup>69</sup> WOCAP at ES-1.

<sup>70</sup> *Lotus v. Dept. of Transportation* (2014) 223 Cal.App.4th 645, 653 (citing Pub. Resources Code § 21100(b)).

<sup>71</sup> *Id.*

others, be they courts or constituents, intelligently analyze the logic of the [agency's] decision."<sup>72</sup>

For example, in *Lotus v. Department of Transportation*, the Court of Appeal held that an agency could not characterize what were effectively mitigation measures as part of the project in order to reduce the appearance of the project's impacts.<sup>73</sup> But this is essentially what the DSEIR does here by assuming that a lease requirement that 25 percent of OGV calls be by OGVs meeting Tier 2 or better emissions standards is part of the Project.<sup>74</sup>

By failing to consider the Project's impacts apart from the "proposed 'avoidance, minimization and/or mitigation measures,'" the DSEIR avoids disclosing the full scope of the Project's impacts and "fails to consider whether other possible mitigation measures would be more effective."<sup>75</sup> Such "shortcutting of CEQA requirements subverts the purposes of CEQA by omitting material necessary to informed decisionmaking and informed public participation. It precludes both identification of potential environmental consequences arising from the project and also thoughtful analysis of the sufficiency of measures to mitigate those consequences."<sup>76</sup>

Here, presuming the lease requirement as part of the Project means the public and decisionmakers have no idea of what the impact of the Project would be if, for some reason, it became impossible to ensure that 25 percent of the vessels serving the Project were Tier 2 or better or if the Applicant failed to comply with the lease terms. For example, what if the CSL Tecumseh (the only available Tier 2 ship identified in the DSEIR's appendices) goes out of service? As the DSEIR stands today, in such a case, the increased emissions would go undisclosed and unmitigated. Further, the lease requirement that 25 percent of vessels be Tier 2 or better – which is effectively mitigation for the Project's impacts – is not included in any enforceable mitigation program, in violation of CEQA.<sup>77</sup> And finally, relying on the lease requirement as de facto mitigation means the DSEIR fails to analyze whether other mitigation would be more effective at reducing the Project's OGV emissions.

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<sup>72</sup> *Id.* at 654 (citation omitted).

<sup>73</sup> *Id.* at 655-56.

<sup>74</sup> *See* DSEIR at 3.4-19.

<sup>75</sup> *See Lotus*, 223 Cal.App.4th at 657.

<sup>76</sup> *Id.* at 658.

<sup>77</sup> *See* CEQA Guidelines § 15126.4(a)(2) (requiring enforceable mitigation).

**3. The DSEIR fails to adequately disclose health impacts resulting from Project's air quality impacts.**

CEQA requires that an EIR make “a reasonable effort to discuss relevant specifics regarding the connection between . . . the general health effects associated with a particular pollutant and the estimated amount of that pollutant the project will likely produce.”<sup>78</sup> Only then can the public “make an informed decision [about the project], as CEQA requires.”<sup>79</sup> Here, the DSEIR’s air quality analysis fails to provide this information.

First, the DSEIR fails to disclose the impacts of exposure to airborne crystalline silica. The DSEIR’s hazardous waste analysis notes that the “handling and storage of . . . construction aggregates could expose employees, workers, and residents to respirable crystalline silica, *which can cause severe health effects.*”<sup>80</sup> The DSEIR then refers the reader to the Air Quality chapter, where it claims the issue of health impacts from crystalline silica is addressed. But the Air Quality chapter does no such thing. Instead, that section mentions once that the Project would generate respirable crystalline silica, but provides no discussion of the “severe health effects” that exposure to crystalline silica would cause, or what levels of crystalline silica exposure nearby residents or workers would experience, or what health effects could be expected from exposure to the Project’s levels of crystalline silica.<sup>81</sup>

Second, the DSEIR lacks specific information about the health effects that can be expected from the Project’s emissions of other pollutants, like ozone, PM<sub>10</sub>, PM<sub>2.5</sub>, and DPM. Instead, the DSEIR leaves the readers with bits and pieces of information that are impossible to put together to understand the actual health impacts the Project would have. For example, the DSEIR provides tables describing the Project’s “Hazard Index for Chronic Effects” and “Hazard Index for Acute Effects,” without explaining what these indices mean.<sup>82</sup> Then, pages later, the DSEIR notes that exposure to ozone, PM<sub>10</sub>, and PM<sub>2.5</sub> can cause a variety of health effects, including “aggravated asthma, acute bronchitis, respiratory symptoms, decreased lung function, heart attacks, and premature mortality” and “damage [to] the respiratory tract” and “increased blood pressure, heart disease, . . . [and] stroke.”<sup>83</sup> The omission is compounded by the fact that for ozone –

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<sup>78</sup> *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 521.

<sup>79</sup> *Id.*

<sup>80</sup> DSEIR at 3.7-7 (emphasis added).

<sup>81</sup> *See id.* at 3.4-26.

<sup>82</sup> *Id.* at 3.4-27 – 30 (Tables 3.4-9a, 3.4-9b, 3.4-10a, 3.4-10b).

<sup>83</sup> *Id.* at 3.4-35 – 36.

which is created by other emissions from the project like NO<sub>x</sub> – the DSEIR gives no insight regarding how much ozone the Project would cause, making it completely impossible to understand what sort of ozone-related health effects might be likely. Nowhere does the DSEIR explain what the real impacts of the Project would be on those living and working in the vicinity, including in West Oakland.

These omissions leave the reader in exactly the situation that the California Supreme Court found to violate CEQA in *Sierra Club v. County of Fresno*.<sup>84</sup> Like in that case, the DSEIR deprives its audience of the essential information necessary to link emissions and health impacts and to understand what the Project’s real, on-the-ground impacts to human health will actually be.

**4. The DSEIR fails to adequately analyze whether the Project conflicts with or obstructs applicable air quality plans.**

The DSEIR also fails to provide a complete analysis of the Project’s consistency with applicable air quality plans. As explained in the DSEIR, this analysis was intended to evaluate each applicable air quality plan with respect to the following criteria: “1) does the Project support the primary goals of the plan, 2) would the Project comply with applicable air quality measures contained in the plan, and 3) would the Project disrupt or hinder implementation of any control measures in the plan?”<sup>85</sup> The DSEIR leaves significant gaps in its analysis, and thus its conclusion that the Project would be consistent with all plans except the BAAQMD 2017 Clean Air Plan (“CAP”) lacks support.

First, the DSEIR describes the Project’s “compliance approach” that would make it consistent with the BAAQMD 2017 CAP, but it does not explain where these compliance measures come from or how they would be enforced.<sup>86</sup> Indeed, some of listed measures are mentioned nowhere else in the DSEIR.

Second, the discussion fails to analyze the Project’s consistency with the Port’s Seaport Air Quality 2020 and Beyond Plan’s Intermediate-Term Equipment and Infrastructure Goals, such as how the Project will contribute to Goal I-2 regarding deploying zero-emission drayage trucks.<sup>87</sup>

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<sup>84</sup> (2018) 6 Cal.5th 502.

<sup>85</sup> DSEIR at 3.4-30.

<sup>86</sup> *Id.* at 3.4-30 – 31.

<sup>87</sup> *See id.* at 3.4-32.

Third, the DSEIR's analysis fails to explain whether and how the Project would support the West Oakland Community Action Plan's primary goal to "protect and improve community health by eliminating disparities in exposure to local air pollution," including ensuring that all West Oakland neighborhoods will have the same air quality as the average West Oakland neighborhood by 2025, and the same air quality as the "cleanest" West Oakland neighborhoods by 2030.<sup>88</sup> This analysis is important especially in light of the Project's proximity to the overburdened West Prescott neighborhood of West Oakland.

Fourth, the DSEIR fails to explain how the Project would comply with applicable air quality measures contained in the WOCAP, including those for DPM, PM<sub>2.5</sub>, and cancer risk.<sup>89</sup> The DSEIR's failure to provide any discussion of this consistency is especially concerning in light of the fact that the DSEIR admits that the Project would worsen PM<sub>2.5</sub> and cancer risk in West Oakland.<sup>90</sup>

Fifth, and finally, the discussion does not explain how displacement of current truck parking operations at the Project site would be consistent with WOCAP implementing strategy number 26, under which the Port is supposed to "work to establish permanent locations for parking and staging of Port related trucks and cargo equipment."<sup>91</sup>

The DSEIR must correct these deficiencies in its analysis of the Project's consistency with applicable air quality plans to ensure the public and decisionmakers are fully informed regarding the Project's potential impacts.

**5. The DSEIR fails to adequately mitigate the Project's significant impacts and should adopt further mitigation.**

Finally, the DSEIR's air quality analysis fails to comply with CEQA because it does not adequately mitigate for the Project's significant impacts. CEQA requires that a lead agency adopt all feasible mitigation measures that can substantially lessen a project's significant impacts.<sup>92</sup> The agency must ensure that these measures are "fully enforceable" through permit conditions, agreements, or other legally binding

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<sup>88</sup> See WOCAP at 4-1.

<sup>89</sup> See *id.* at 4-5.

<sup>90</sup> See DSEIR at 4-13 (Table 4.5-2).

<sup>91</sup> WOCAP at 6-23.

<sup>92</sup> Pub. Resources Code § 21002.

instruments.<sup>93</sup> The requirement for enforceability ensures “that feasible mitigation measures will actually be implemented as a condition of development, and not merely adopted and then neglected or disregarded.”<sup>94</sup>

To be enforceable, a mitigation measure must be detailed and specific. California courts have clarified that an EIR is inadequate where its proposed mitigation measures are so undefined that it is impossible to evaluate their effectiveness.<sup>95</sup> In particular, a mitigation measure must include criteria or performance standards against which the mitigation’s actual implementation can be measured.<sup>96</sup> The reader must be able to discern what steps will be taken to mitigate the project’s impacts.<sup>97</sup> Without such detail, there is no way for decisionmakers and the public to weigh whether the proposed measures would sufficiently mitigate a project’s impacts, causing the EIR to fail its core, informational purpose.

Here, the DSEIR’s proposed mitigation fails to mitigate any of the Project’s significant air quality impacts to a less-than-significant level – when it attempts to mitigate them at all. The DSEIR’s approach to mitigation for the Project’s air quality impacts is insufficient because the proposed mitigation measures are vague and unenforceable deferred mitigation, and the DSEIR fails to consider any feasible mitigation measures beyond changes to Port vehicles. These problems are compounded by the fact that, as explained above, the DSEIR avoids making significance determinations regarding the Project’s PM<sub>2.5</sub> and cancer risk impacts.

The sole mitigation measure provided to mitigate the Project’s significant operational air quality impacts improperly defers defining the mitigation. Generally, an EIR must describe feasible mitigation, and “may not defer formulation of mitigation measures to a future time.”<sup>98</sup> However, where the agency has identified practical

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<sup>93</sup> *Id.* §§ 21002, 21081.6(b); CEQA Guidelines §§ 15002(a)(3), 15126.4(a)(2); *City of Marina v. Bd. of Trustees of the Cal. State Univ.* (2006) 39 Cal.4th 341, 359, 368-69.

<sup>94</sup> *Federation of Hillside & Canyon Ass’ns v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1261 (italics omitted); *see also* CEQA Guidelines § 15126.4(a)(2).

<sup>95</sup> *San Franciscans for Reasonable Growth v. City & County of San Francisco* (1984) 151 Cal.App.3d 61, 79.

<sup>96</sup> *See San Joaquin Raptor Rescue Ctr. v. County of Merced* (2007) 149 Cal.App.4th 645, 670.

<sup>97</sup> *Id.*

<sup>98</sup> *Preserve Wild Santee v. City of Santee* (2012) 210 Cal.App.4th 260, 280; *see also Golden Door Properties, LLC v. County of San Diego* (2020) 50 Cal.App.5th 467, 519-20.

considerations that prevent formulation of specific mitigation at the time of the EIR's preparation,<sup>99</sup> identification of detailed mitigation measures can be deferred *only* if the EIR:

(1) commits [the agency] to the mitigation, (2) adopts specific performance standards the mitigation will achieve, and (3) identifies the type(s) of potential action(s) that can feasibly achieve that performance standard and that will be considered, analyzed, and potentially incorporated into the mitigation measure.<sup>100</sup>

Here, MM ERA AQ-1 requires the Applicant to “prepare an implement an Operations Air Quality Plan” that “shall describe operational measures that the Project applicant will implement upon commencement of Project operations.”<sup>101</sup> The measure requires, at a minimum, use of Tier 4F hybrid-electric front-end loaders, use of an electric sweeper, and twice-daily road sweeping.<sup>102</sup> The measures also requires the Applicant to annually inventory equipment used and “meet with the Port annually to discuss the inventory and evaluate the feasibility of using least-polluting or [zero emissions] equipment.”<sup>103</sup>

As a preliminary matter, the DSEIR fails to explain why development of this mitigation plan must be delayed until after approval of the Project. Moreover, MM ERA AQ-1 fails to include *any* performance standards to make the mitigation measure actually enforceable. It does not even identify a goal for emissions reduction. The measure does not define whether all, or only some, equipment must meet the standards in the measure. The measure does not establish standards – for example, specific annual emissions reduction requirements – that must be met to comply with the mitigation obligation. Without specific, defined performance standards and clarity on specific requirements, the measure is vague, unenforceable, and deferred mitigation that fails to meet CEQA's requirements.

Further, the DSEIR's proposed mitigation falls far short of CEQA's requirements because MM ERA AQ-1 focuses narrowly on emissions from vehicles used on-site at the Port and dust control via on-site street sweeping. It completely ignores any mitigation that would reduce the Project's most substantial air quality and health impacts, which result from OGV transit, maneuvering, and hotelling; tugs; off-site trucks; and

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<sup>99</sup> *Preserve Wild Santee*, 210 Cal.App.4th at 280.

<sup>100</sup> CEQA Guidelines § 15126.4(a)(1)(B).

<sup>101</sup> DSEIR at 3.4-23 – 24.

<sup>102</sup> *Id.*

<sup>103</sup> *Id.* at 3.4-24.

aggregate stockpiles and transfer.<sup>104</sup> Such a glaring omission is particularly concerning here, in light of the Project's substantial air quality and health impacts on the already overburdened residents of West Oakland.

MM ERA AQ-2, which is intended to mitigate the Project's construction impacts, is similarly ineffective. It is vague regarding when non-Tier 4 equipment can be used, and does not provide for oversight of the Applicant's decision to use non-Tier 4 equipment. Also, the measure does not identify when the "possible exception" can be invoked – does it mean that non-Tier 4 equipment may be used only when it truly does not exist? When it is too expensive? Who decides whether it is truly unavailable or uneconomical? What reduction in emissions must be achieved by use of Tier 4 equipment, overall? The measure must be revised to provide performance standards and oversight.

This is not a situation where alternate mitigation measures are unavailable. WOEIP has worked for years to help develop strategies to reduce the pollution burden in West Oakland, and urges their consideration here. Under CEQA, the Port has an obligation to consider all feasible mitigation measures that can substantially lessen a project's significant impacts.<sup>105</sup> Thus, the Port must at a minimum evaluate, and adopt when feasible, the following mitigation measures to reduce the Project's air quality and health impacts:

1. Require installation of shore power facilities at Berth 22.<sup>106</sup>
2. Require development and implementation of a program to adapt vessels serving the Project to use shore power, or require use of an EPA verified exhaust capture and control system.<sup>107</sup>
3. Require all tugs and OGVs serving the Project to be equipped with Tier 4 or cleaner engines.
4. Relocate the Central Concrete Supply Co. ready-mix plant at 2400 Peralta Street in West Oakland to the Project site, which would reduce truck trips

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<sup>104</sup> *See id.* at 3.4-22 (Table 3.4-7a).

<sup>105</sup> Pub. Resources Code § 21002.

<sup>106</sup> Carl Moyer grant funding may be available for this measure. *See* <https://ww2.arb.ca.gov/our-work/programs/carl-moyer-program-marine-vessels/about>.

<sup>107</sup> Carl Moyer grant funding may be available for this measure. *See* <https://ww2.arb.ca.gov/our-work/programs/carl-moyer-program-marine-vessels/about>.

- through West Oakland and reduce exposure of residents of West Oakland to emissions from the concrete plant.<sup>108</sup>
5. Require all trucks transporting aggregate to be sprayed down (including tires and undercarriage) and covered prior to exiting the Project site.
  6. Set emissions standards for control of dust from aggregate storage and transfer that must be met through watering or covering.
  7. Require real-time perimeter air quality monitoring and identify response actions when exceedances are detected.
  8. Require all service equipment used at the Project site to be completely zero emission.
  9. Require development and implementation of a program to ensure that all heavy-duty trucks entering the Project site are zero emissions by 2030.
  10. Work with the City of Oakland to modify weight and axle limits on Maritime Street, Seventh Street west of Maritime Street, and Middle Harbor Boulevard, which will accelerate adoption of electric tractors at the Port.
  11. Set a goal to be using at least 100 electric tractors in the Port area by 2023.
  12. Require tugs and other harbor craft be upgraded to use alternative power systems and renewable/low-emissions fuels.
  13. Identify a community liaison who can be contacted if members of the community experience or are concerned about the Project's air quality impacts during its operation.

**B. The DSEIR fails to adequately analyze the Project's hazards and hazardous materials impacts.**

The DSEIR's analysis of the Project's hazards and hazardous materials impacts contains deficiencies that must be remedied. First, the analysis of whether the Project would create a substantial hazard to the public or environment related to hazardous materials fails to analyze impacts related to respirable crystalline silica. This

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<sup>108</sup> This measure should also be considered as an alternative to the proposed Project. *See* Section V, *infra*.

section notes that the Project could expose employees, off-site workers, and residents to respirable crystalline silica, which can cause severe health effects.<sup>109</sup> The DSEIR goes on to perform no analysis, referring the reader to the Air Quality chapter, which, as explained above, does not perform the analysis either. Lacking this analysis, the DSEIR both fails its informational purpose and lacks support for its conclusion that the Project “would not create a substantial hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials.”<sup>110</sup>

Second, the DSEIR fails to provide a meaningful analysis of potential risks from release of hazardous materials into the environment. The DSEIR mentions that construction and operation of the Project could potentially result in harmful releases of hazardous materials into the environment, but does not describe the impact those releases could have.<sup>111</sup> Instead, the DSEIR vaguely refers to “potential” significant hazards were there to be a release, then focuses on the fact that the Applicant would have to comply with certain regulatory standards.<sup>112</sup> Finally, the DSEIR concludes any impact would be less than significant based in part on the fact that the Applicant would have to comply with certain regulatory requirements when it applies for a Port Development Permit and for its general operations.<sup>113</sup>

But merely requiring compliance with agency regulations does not conclusively indicate that the Project would not have a significant and adverse impact. Those legal requirements may not be strong enough to protect against environmental impacts. In *Kings County Farm Bureau v. City of Hanford*, for example, the court found that the fact that the EPA and the local air pollution control district had issued the necessary air emission permits for the construction of a coal fired cogeneration plan did not nullify the CEQA requirement that the lead agency analyze the significant air quality impacts of the entire project.<sup>114</sup> Similarly, here, the DSEIR cannot rely on permitting requirements to conclude that impacts would not be significant based on those requirements, without at least describing what those requirements are and how they would reduce the Project’s impacts to less than significance. In taking the approach it does, the DSEIR fails as an informational document, in violation of CEQA.

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<sup>109</sup> DSEIR at 3.7-7.

<sup>110</sup> *See id.*

<sup>111</sup> *Id.* at 3.7-7 – 8.

<sup>112</sup> *Id.* at 3.7-8.

<sup>113</sup> *Id.*

<sup>114</sup> (1990) 221 Cal.App.3d 692, 716.

**C. The DSEIR fails to adequately analyze the Project’s hydrology and water quality impacts.**

The DSEIR concludes that the “[t]he Proposed Project would not violate any water quality standards or waste discharge requirements” and that its water quality impacts (Impact HYD-1) would therefore be less than significant.<sup>115</sup> However, the DSEIR lacks adequate evidence or analysis in support of this conclusion, and therefore provides no basis for its conclusion that the Project would not increase the severity of, or result in a change in, the less-than-significant water quality impacts previously identified in the 2002 EIR as Addended.

First, the DSEIR fails to adequately analyze the water quality impacts of Project construction. The DSEIR states that Project construction would require excavation activities that “could potentially encounter shallow groundwater and provide a pathway for sediment-laden and/or hazardous materials to enter groundwater.”<sup>116</sup> It also acknowledges that Project construction would involve “transport, use, and disposal of hazardous materials” such as fuels, oils, and solvents which could pose a risk to groundwater.<sup>117</sup> However, instead of quantifying or describing the potential water quality impacts from excavation or from the use of hazardous materials during construction, the DSEIR simply asserts that “[c]ompliance with applicable regulations and permit requirements would prevent substantial impacts to surface or groundwater quality from occurring.”<sup>118</sup> The EIR does not provide any basis for this conclusion. As explained in the previous section, the Project’s asserted compliance with applicable regulations or permit requirements does not automatically mean that water quality impacts would be less than significant.<sup>119</sup> Instead, the DSEIR must explain the specific impacts to water

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<sup>115</sup> DSEIR at 3.8-6 (Impact HYD-1).

<sup>116</sup> *Id.* at 3.8-5.

<sup>117</sup> *Id.*

<sup>118</sup> *Id.*

<sup>119</sup> *See Communities for a Better Environment v. Cal. Resources Agency* (2002) 103 Cal.App.4th 98, 111-14 (compliance with regulations cannot displace an agency’s *separate* obligation to consider whether a project’s environmental impacts are significant) (overruled on other grounds by *Berkeley Hillside Preservation v. City of Berkeley* (2015) 60 Cal.4th 1086); *Californians for Alternatives to Toxics v. Dept. of Food & Agriculture* (2005) 136 Cal.App.4th 1, 15-17 (same); *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1108–09 (environmental effect may be significant despite compliance with regulatory requirements).

quality the Project could cause, and then explain how the specific regulatory requirements would lessen or prevent those impacts.

The DSEIR's analysis of the Project's operational water quality impacts is similarly inadequate. The Project site is entirely paved, is located immediately adjacent to San Francisco Bay, and includes "five storm drain outfalls on the site's northern perimeter, which empty directly into the Harbor."<sup>120</sup> The DSEIR notes that the Project differs from the original OAB Area Redevelopment Plan because it would replace the container cargo terminal analyzed in the 2002 EIR as Addended with a facility that would process bulk construction aggregates.<sup>121</sup> Aggregates would be stored in three uncovered, outdoor stockpiles on the site, which would have a combined capacity of 325,000 tons.<sup>122</sup> The DSEIR acknowledges that "[d]uring operation, higher sediment loads from aggregate piles, in addition to polluted runoff originating from elsewhere on the site, could enter receiving waters and potentially violate water quality standards."<sup>123</sup> However, the DSEIR makes no attempt to actually quantify or describe the sediments and contaminants that could impact water quality during Project operations. It does not include any information on how the sediment or pollutant loads from the Project's uncovered aggregate piles would compare to the sediment and pollutant loads from the previous container cargo uses analyzed in the 2002 EIR as Addended. The DSEIR must be revised to include this information and analysis and to mitigate for any significant impacts identified.

Next, the DSEIR states that the Project would employ Best Management Practices (BMPs) to reduce operational water quality impacts, including a bioretention system, retention pond, and hydrodynamic separator systems ("HDS").<sup>124</sup> It asserts that "runoff originating from aggregate piles would flow through subsurface HDS, which would filter out sediment and other pollutants prior to being conveyed to the storm drain outfalls."<sup>125</sup> The DSEIR concludes that "[g]iven these post-construction measures, it is not anticipated that water quality violations or waste discharge violations would occur," but provides no basis for this conclusion.<sup>126</sup> The document includes no evidence or analysis regarding the effectiveness of the HDS, bioretention system, or retention pond in reducing water quality impacts. The DSEIR makes no attempt to quantify the amount of

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<sup>120</sup> DSEIR at 3.8-2.

<sup>121</sup> *Id.* at 3.8-4.

<sup>122</sup> *Id.* at 2-28.

<sup>123</sup> *Id.* at 3.8-5.

<sup>124</sup> *Id.* at 2-30.

<sup>125</sup> *Id.* at 3.8-5.

<sup>126</sup> *Id.* at 3.8-6.

pollution or sediment that would ultimately enter the harbor despite implementation of the stormwater BMPs. Without this analysis, the DSEIR fails its informational purpose.

The DSEIR's analysis of water quality impacts from erosion or siltation (Impact HYD-2) is also inadequate. It concludes that "[t]he Proposed Project would not result in substantial erosion or siltation on or off site that would affect the quality of receiving waters," but fails to provide any basis for this conclusion.<sup>127</sup> The document acknowledges that during Project construction, "there is potential for sediment, debris, and other contaminants to enter receiving waters, which could adversely impact fish and other aquatic species," and that "[d]uring operation, siltation could potentially occur from runoff originating from aggregate piles."<sup>128</sup> However, the DSEIR again fails to include any analysis of these potential impacts, and does not quantify or describe the sediment or contaminants that could impact water quality. Instead, it asserts that compliance with regulatory requirements including a Stormwater Pollution Prevention Plan ("SWPPP") required as part of the Project's Port Development Permit application and a City grading permit "would serve to avoid or minimize substantial erosion or siltation" during construction and that impacts would be less than significant.<sup>129</sup> As explained above, the DSEIR cannot rely on asserted compliance with applicable regulations or permit requirements to avoid a thorough analysis and to conclude that Project impacts would be less than significant.<sup>130</sup> The DSEIR again asserts that BMPs including the subsurface HDS would filter out sediment and prevent significant operational water quality impacts, but provides no evidence or analysis regarding the effectiveness of these measures.<sup>131</sup>

The DSEIR's analysis of the Project's impacts on stormwater runoff (Impact HYD-4) suffers from the same deficiencies. The DSEIR concludes that "[t]he Proposed Project would not create or contribute runoff that would be an additional source of polluted runoff."<sup>132</sup> Again, the document fails to provide adequate evidence or analysis in support of this conclusion. The DSEIR acknowledges that "once in operation, potentially higher sediment loads from aggregate piles could create another source of polluted runoff during rain events, and from daily moistening of aggregate" using water

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<sup>127</sup> *Id.* at 3.8-6 (Impact HYD-2).

<sup>128</sup> *Id.*

<sup>129</sup> *Id.*

<sup>130</sup> *See Communities for a Better Environment*, 103 Cal.App.4th at 111-14 (overruled on other grounds); *Californians for Alternatives to Toxics*, 136 Cal.App.4th at 15-17; *Protect the Historic Amador Waterways*, 116 Cal.App.4th at 1108-09.

<sup>131</sup> DSEIR at 3.8-6.

<sup>132</sup> *Id.* at 3.8-8 (Impact HYD-4).

pumped from the holds of oceangoing ships, which “would have the potential to be a source of stormwater pollution.”<sup>133</sup> However, the document again improperly relies on asserted compliance with regulatory requirements to conclude that the Project’s impacts would be less than significant. The DSEIR asserts that the discharge of ship hold water “would not pose a threat to the Bay” because “recent water quality tests indicate that . . . ship hold water did not pose any exceedances” for certain listed contaminants.<sup>134</sup> The DSEIR claims that implementation of a SWPPP, as part of the Project’s Port Development Permit application, “would eliminate or reduce discharge of materials to stormwater” and that “[c]ompliance with these measures would prevent substantial impacts to surface or groundwater quality from occurring.”<sup>135</sup>

As explained above, asserted compliance with applicable regulations or permit requirements does not mean that Project impacts would be less than significant and cannot be used as an excuse to avoid a full analysis of those impacts.<sup>136</sup> The DSEIR again asserts that the subsurface HDS and other post-construction BMPs would ensure that the Project’s stormwater runoff impacts would be less than significant, but does not provide any evidence that these measures would be effective.<sup>137</sup> The DSEIR must be revised to include this analysis.

**D. The DSEIR does not provide an adequate analysis of the Project’s consistency with applicable land use plans.**

The DSEIR’s analysis of the Project’s consistency with the West Oakland Specific Plan is conclusory and often strains credulity. For example, the DSEIR concludes that the Project would be consistent with the Specific Plan’s Environmental and Sustainable Development Objective #3, to “promote the environmental health of the community,” and Objective #8, to “continue[] to enhance the well-being of the residents of West Oakland.”<sup>138</sup> The DSEIR claims this consistency would be achieved by “incorporating on-site green stormwater infrastructure . . . and low-emission

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<sup>133</sup> *Id.* at 3.8-7.

<sup>134</sup> *Id.*

<sup>135</sup> *Id.*

<sup>136</sup> *See Communities for a Better Environment*, 103 Cal.App.4th at 111-14 (overruled on other grounds); *Californians for Alternatives to Toxics*, 136 Cal.App.4th at 15-17; *Protect the Historic Amador Waterways*, 116 Cal.App.4th at 1108-09.

<sup>137</sup> DSEIR at 3.8-8.

<sup>138</sup> *Id.* at 3.9-3; *see also* West Oakland Specific Plan at 2-12 (June 2014), *available at* [http://www2.oaklandnet.com/Government/o/PBN/OurOrganization/PlanningZoning/OA\\_K028334](http://www2.oaklandnet.com/Government/o/PBN/OurOrganization/PlanningZoning/OA_K028334).

equipment.”<sup>139</sup> This conclusion blithely ignores the fact – disclosed in the DSEIR itself – that the Project would expose West Oakland residents to significantly higher PM<sub>2.5</sub> concentrations and cancer risk than the already-high levels they currently experience. The DSEIR must explain in this consistency analysis how exposing the residents of West Oakland to significantly more pollutants and increasing their risk of cancer “promote[s] the environmental health of the community” and “enhance[s]” their “well-being.”

The DSEIR also lacks a basis to conclude the Project is consistent with the Specific Plan’s Environmental and Sustainable Development Objective #6 to “[p]romote energy efficiency throughout all aspects of new development and redevelopment,”<sup>140</sup> when the DSEIR has failed to provide the energy impacts analysis required by CEQA<sup>141</sup>

Finally, the DSEIR fails to provide information on whether the Project would be consistent with Transportation and Infrastructure Objective #4 to “[r]educe truck traffic impacts on residential neighborhoods.”<sup>142</sup> The Project would result in significant truck traffic in the area, including truck traffic to a cement plant located in West Oakland. The DSEIR must explain whether such impacts are consistent with the West Oakland Specific Plan.

#### **E. The DSEIR’s noise analysis is inadequate.**

The DSEIR does not explain why it fails to provide updated information for the environmental setting for noise, like it does for other impacts analyzed in the document. The DSEIR generally uses existing conditions on the ground today as the baseline for its environmental impact analysis, as required by CEQA.<sup>143</sup> But in its update to the environmental setting for noise, the DSEIR does not provide updated information about current noise levels in the Project area, instead relying on outdated information from the 2002 EIR as Addended.<sup>144</sup> To provide an accurate analysis of the Project’s noise impacts, the DSEIR must measure and disclose current baseline noise conditions, like it did with other impacts.

The analysis itself also falls short. Specifically, the DSEIR’s discussion regarding vibration impacts is conclusory. The DSEIR states that “vibration generated by

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<sup>139</sup> DSEIR at 3.9-3.

<sup>140</sup> *Id.*; see also West Oakland Specific Plan at 2-12.

<sup>141</sup> See Section I, *supra*.

<sup>142</sup> West Oakland Specific Plan at 2-11.

<sup>143</sup> DSEIR at 3.1-1.

<sup>144</sup> *Id.* at 3.10-1.

operational activities would not be perceptible and the nearest residential receptors,”<sup>145</sup> but it does not disclose how much vibration would actually be generated by operations, including truck loading and aggregate conveyors. Without quantifying the vibration the Project would generate, there is no basis for the DSEIR to conclude it would be “imperceptible.” West Oakland residents already suffer from significant noise and vibration impacts; adding even a small increase would be a significant impact.

**F. The DSEIR inadequately describes and mitigates for the Project’s transportation impacts.**

**1. The DSEIR’s proposed mitigation of the Project’s traffic congestion impacts is inadequate.**

The DSEIR fails to adequately mitigate the impacts of Project traffic on congestion at nearby intersections. The DSEIR acknowledges that Project-generated traffic would cause the Level of Service (“LOS”) at the intersection of Maritime Street and 17th Street to degrade from LOS D to LOS E during the afternoon peak hour, a new significant impact not previously identified in the 2002 EIR as Addended.<sup>146</sup> To address this impact, the DSEIR proposes a new mitigation measure (Mitigation Measure ERA TRANS-1), which calls for the Applicant to submit a plan for the optimization of signal timing at this intersection during the afternoon peak hour and coordination of signal timing changes at this intersection with adjacent intersections.<sup>147</sup> The DSEIR asserts that “[w]ith implementation of Mitigation Measure ERA TRANS-1, the Maritime Street/17th Street intersection would operate at LOS C during the p.m. peak hour,” which would assertedly reduce the LOS impact at this intersection to a less than significant level.<sup>148</sup> However, the DSEIR provides no evidence that Mitigation Measure ERA TRANS-1 would be effective in achieving LOS C at the intersection, and therefore fails to support its conclusion that impacts would be less than significant after mitigation. Moreover, the DSEIR improperly defers implementation of Mitigation Measure ERA TRANS-1 until after Project approval without appropriate performance standards.

CEQA allows a lead agency to defer formulation of specific mitigation only when: (1) an EIR contains criteria, or performance standards, to govern future actions implementing the mitigation; (2) practical considerations preclude development of the measures at the time of initial project approval; and (3) the agency has assurances that the

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<sup>145</sup> *Id.* at 3.10-10.

<sup>146</sup> *Id.* at 3.11-16.

<sup>147</sup> *Id.*

<sup>148</sup> *Id.*

future mitigation will be both “feasible and efficacious.”<sup>149</sup> Here, the DSEIR has met none of these requirements. Mitigation Measure ERA TRANS-1 calls for the Applicant to submit signal optimization plans for the intersection to the City’s Transportation Engineering Division and to Caltrans for review and approval, but defers the signal upgrade until after Project approval and does not impose performance standards to guide implementation of the measure.<sup>150</sup> While the DSEIR asserts that the mitigation measure would achieve LOS C at the intersection, the actual text of Mitigation Measure ERA TRANS-1 does not require that this LOS be achieved and contains no other performance standards. The DSEIR does not explain why practical considerations require the deferral of the mitigation measure and contains no assurances that the measure will be effective. Because the DSEIR fails to ensure the mitigation measure’s effectiveness, the signal optimization may fail to achieve the intended LOS, resulting in an unmitigated significant impact.

**2. The DSEIR’s analysis of impacts from Project-displaced parking and AMS uses is inadequate.**

The DSEIR’s transportation discussion also fails to adequately analyze the Project’s impacts on parking in surrounding neighborhoods. The DSEIR concludes that the Project “would not result in inadequate parking capacity or increase the number and incidence of large vehicles parking within surrounding communities or on streets not designated for such uses” and that mitigation is unnecessary because the Project “would not substantially increase the severity of, or result in a change in, the previously identified less-than-significant impact of the OAB Area Redevelopment Plan disclosed in the 2002 EIR as Addended.”<sup>151</sup> However, the DSEIR fails to provide adequate evidence or analysis in support of this conclusion.

The DSEIR acknowledges that its analysis of the Project’s transportation impacts must consider not only “project-generated” parking impacts, but also “project-displaced” parking impacts, which are expressly included among the document’s thresholds for significant impacts.<sup>152</sup> The DSEIR states that “[p]roject-displaced parking results from the project’s removal of standard on-street parking and legally required off-

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<sup>149</sup> *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 94-95; *San Joaquin Raptor Rescue Center*, 149 Cal.App.4th at 669-71; CEQA Guidelines § 15126.4(a)(1)(B).

<sup>150</sup> DSEIR at 3.11-16.

<sup>151</sup> *Id.* at 3.11-19.

<sup>152</sup> *Id.* at 3.11-12, 3.11-18.

street parking (non-public parking which is legally required).”<sup>153</sup> Here, the DSEIR’s analysis fails to adequately consider Project-displaced parking impacts, despite acknowledging that these impacts must be evaluated.

The DSEIR recognizes that the Project site is currently used for ancillary marine services (“AMS”), which include “overnight truck parking and shipping container/chassis storage and staging to support Port maritime activities.”<sup>154</sup> The DSEIR notes that the Project would eliminate approximately 18 acres of existing AMS uses.<sup>155</sup> However, the DSEIR fails to adequately disclose or analyze the environmental impacts of displacing the AMS operation. The DSEIR concludes that the Project’s displacement of existing AMS operations “would not result in inadequate parking capacity or increase the number and incidence of large vehicles parking within surrounding communities.”<sup>156</sup> However, the DSEIR fails to provide adequate evidence or analysis in support of this conclusion. Moreover, the DSEIR fails to analyze any of the other environmental impacts of displacing existing AMS operations from the Project site.

An EIR must identify and analyze the environmental impacts of a project, including reasonably foreseeable indirect impacts that will occur as a result of the project.<sup>157</sup> Here, construction of the Project will require the permanent displacement of 18 acres of AMS uses, including truck parking, container storage, and staging.<sup>158</sup> The relocation of this large AMS operation to other sites is a necessary consequence of the Project. In addition to transportation, traffic, and parking impacts, the Project’s relocation of these existing AMS uses to other sites will have additional indirect impacts not analyzed in the DSEIR, including but not limited to impacts on air quality and noise. Once relocated, truck parking, staging, and container storage would generate air pollutant emissions and noise from truck operations in their new locations, which may not have been considered in the 2002 EIR as Addended. The DSEIR must be revised to disclose all reasonably foreseeable environmental effects of these displaced AMS operations, including impacts on surrounding communities where truck parking, container storage, and staging may be relocated.

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<sup>153</sup> *Id.*

<sup>154</sup> *Id.* at ES-1; 2-2; 3.1-1; 3.9-1.

<sup>155</sup> *Id.* at 3.11-18, 3.11-19.

<sup>156</sup> *Id.* at 3.11-19 (Impact TRANS-4).

<sup>157</sup> *El Dorado Union High Sch. Dist. v. City of Placerville* (1983) 144 Cal.App.3d 123; *City of Hayward v. Board of Trustees of Cal. State Univ.* (2015) 242 Cal.App.4th 833, 859; CEQA Guidelines §§ 15126.2(a), 15064(d).

<sup>158</sup> DSEIR at 3.11-18, 3.11-19.

This analysis is particularly important due to the Port's known need for extensive truck parking. The DSEIR cites a recent study that concluded that the Port will require 30 acres of overnight truck parking and container storage to meet anticipated growth through 2050, and acknowledges that "the 2001 amendment to the BCDC Seaport Plan required that 30 acres of truck-related ancillary services, including overnight truck tractor parking and container/chassis staging, be provided collectively by the Port and the City."<sup>159</sup> The 18 acres of AMS uses that would be removed from the Project site help to satisfy this 30-acre requirement.

The DSEIR states that "[t]he Port currently has 40 acres for public truck parking including 15 acres at Roundhouse (an area formerly occupied by Union Pacific located south of Adeline Street, east of the Matson Terminal, and west of Schnitzer Steel) and 25 acres at Howard Terminal."<sup>160</sup> The DSEIR appears to assume, without explicitly stating, that the Roundhouse and Howard Terminal sites could accommodate all of the displaced parking and staging from the Project, and that the displaced AMS uses from the Project site would in fact be relocated to those sites, but provides no evidence in support of either assumption.

As an initial matter, some or all of the parking at the Howard Terminal site will be lost when the planned new Oakland Athletics stadium is constructed at the site. Elsewhere, the DSEIR notes that "the Howard Terminal facility is not currently available" as an alternative location for the proposed Project "because the Board of Port Commissioners approved an Exclusive Negotiation Agreement with the Oakland Athletics on May 13, 2019."<sup>161</sup> The DSEIR must address the likelihood that the 25-acre Howard Terminal site will not be available for truck parking in the future, and therefore will not be able to accommodate displaced AMS uses from the Project site. Moreover, the planned stadium aside, the DSEIR does not indicate how much of the truck parking capacity at the Roundhouse and Howard Terminal sites is currently utilized, and how much remains available. It is therefore impossible to evaluate whether those sites have enough excess parking capacity to absorb the 18 acres of AMS uses that would be displaced from the Project site. The DSEIR must be revised to analyze whether the Roundhouse and Howard sites have sufficient space for the displaced AMS uses, and whether those uses would in fact be relocated there.

Given the impending redevelopment of the Howard Terminal site and the increased utilization of truck parking capacity at the Roundhouse site that is likely to

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<sup>159</sup> *Id.* at 3.11-19.

<sup>160</sup> *Id.*

<sup>161</sup> *Id.* at 5-8.

result, the DSEIR must consider the likelihood that AMS uses displaced from the Project site may end up relocating to other sites. The DSEIR must therefore be revised to identify the other possible locations where those where truck parking, container storage, and staging may be relocated, and to analyze all reasonably foreseeable environmental effects of displaced AMS operations.

WOEIP is concerned that displaced truck parking, container storage, and staging is likely to spill over to surrounding communities, as had already occurred. Until the DSEIR is revised to include this analysis, the Port has no basis to conclude that the Project “would not result in inadequate parking capacity or increase the number and incidence of large vehicles parking within surrounding communities or on streets not designated for such uses,” or that mitigation is unnecessary.<sup>162</sup>

#### **IV. THE DSEIR’S CUMULATIVE IMPACTS ANALYSIS IS INADEQUATE.**

Under CEQA, an EIR must discuss significant “cumulative impacts.”<sup>163</sup> A legally adequate cumulative impacts analysis views a particular project over time and in conjunction with other related past, present, and reasonably foreseeable future projects with impacts that might compound or interrelate with those of the project at hand.<sup>164</sup> Such analysis is necessary because “environmental damage often occurs incrementally from a variety of small sources [that] appear insignificant when considered individually, but assume threatening dimensions when considered collectively with other sources with which they interact.”<sup>165</sup> Given the existing pollution burden experienced by residents of West Oakland, this analysis is particularly important.

The DSEIR, however, utterly fails to provide useful or legally sufficient cumulative impact information, especially with respect to air quality. The DSEIR professes to take a “projection approach,” whereby the Project’s emissions are to be analyzed in conjunction with “a summary of projections contained in an adopted local, regional, or statewide plan, or related planning document.”<sup>166</sup> This approach can be useful where an agency has access to analysis that already anticipates how past, present, and future projects will contribute to environmental impacts.

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<sup>162</sup> *Id.* at 3.11-19.

<sup>163</sup> CEQA Guidelines § 15130(a).

<sup>164</sup> *Id.* § 15355(b).

<sup>165</sup> *Communities for a Better Environment*, 103 Cal.App.4th at 114 (overruled on other grounds).

<sup>166</sup> DSEIR at 4-2, 4-6.

The DSEIR, however, does not include that information. It claims that Table 4.4-1 “lists relevant projections,” but that table indicates only the topic areas included in various plans; it provides no information, for instance, of projected air quality in the City of Oakland or the affected communities.<sup>167</sup> Instead, Tables 4.5-1 and 4.5-2 include information about *current* air quality at the Port and in West Oakland.<sup>168</sup> This information does not give the public or decisionmakers any information about how the Project’s admitted pollution will interact with other pollution from regional growth and future projects. This omission is particularly egregious given the potential impacts from the Howard Terminal project, which the DSEIR ignores.<sup>169</sup> The EIR must be revised to comply with CEQA’s direction to analyze how the project interacts with past, present, and future projects.

The cumulative air quality analysis also suffers from the same flaws identified elsewhere in the DSEIR. While the DSEIR admits that cumulative air quality impacts will be significant and the Project’s contribution will be cumulatively considerable, the DSEIR provides no information to inform the public or decisionmakers of the actual, on-the-ground health impacts. Knowing that the Project is likely to result in a 65 percent increase in PM<sub>2.5</sub>, when the community already suffers from PM levels that are twice the BAAQMD threshold is clearly troubling.<sup>170</sup> But the DSEIR offers no actual information for community members on what health impacts they might expect from any approval.<sup>171</sup>

Other impact analyses are also flawed. The DSEIR fails to provide any information on greenhouse gas emissions, even though courts have routinely recognized that “we cannot afford to ignore even modest contributions to global warming.”<sup>172</sup> And for other impact areas, such as hydrology, water quality, and transportation, the DSEIR takes the impermissible shortcut of assuming that a cumulative impact is insignificant

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<sup>167</sup> *Id.* at 4-8.

<sup>168</sup> *Id.* at 4-12, 4-13.

<sup>169</sup> *Citizens to Preserve the Ojai v. County of Ventura* (1985) 176 Cal.App.3d 421, 430. (projection approach improper where the plan or prior environmental document does not include all possible sources).

<sup>170</sup> DSEIR at 4-13.

<sup>171</sup> *See Sierra Club v. County of Fresno*, 6 Cal.5th at 521.

<sup>172</sup> *Center for Biological Diversity v. National Highway Traffic Safety Admin.* (9th Cir. 2007) 508 F.3d 508, 550.

solely because the Project's contribution to an unacceptable existing environmental condition is relatively small.<sup>173</sup> The DSEIR must be revised to address these flaws.

## V. THE DSEIR'S ANALYSIS OF ALTERNATIVES IS INADEQUATE.

The DSEIR's analysis of alternatives falls short. Under CEQA, a proper analysis of alternatives is essential to comply with the Act's mandate that significant environmental impacts be avoided or substantially lessened where feasible.<sup>174</sup> Indeed, the analysis of alternatives lies at the "core of an EIR."<sup>175</sup> As the Supreme Court has stated, "[w]ithout meaningful analysis of alternatives in the DEIR, neither the courts nor the public can fulfill their proper roles in the CEQA process . . . . [Courts will not] countenance a result that would require blind trust by the public, especially in light of CEQA's fundamental goal that the public be fully informed as to the consequences of action by their public officials."<sup>176</sup> Properly developing, evaluating, and comparing project alternatives is key to a meaningful environmental review process. The DSEIR's efforts in this regard are wholly inadequate.

First, the DSEIR dismisses a number of potentially viable alternatives from consideration as "uneconomical" without fully exploring available funding mechanisms. Specifically, the DSEIR rejects from further analysis an alternative to require installation of shore power at the Project site<sup>177</sup> and an alternative requiring installation of an emissions capture-and-control system to reduce OGV emissions.<sup>178</sup> Both alternatives would contribute significantly to reducing the Project's massive air pollutant emissions. However, the DSEIR fails to recognize that installation of shore power, retrofitting ships for shore power use, and purchase of exhaust capture-and-control systems are all eligible for funding through CARB's Carl Moyer Memorial Air Quality Standards Attainment Program.<sup>179</sup> Before dismissing these alternatives – which would greatly reduce the Project's severe air quality impacts – as uneconomical, the EIR must evaluate the availability of funding assistance. CEQA requires any claim of economic infeasibility to

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<sup>173</sup> *Kings County Farm Bureau*, 221 Cal.App.3d at 718.

<sup>174</sup> Pub. Resources Code § 21002; CEQA Guidelines §§ 15002(a)(3), 15021(a)(2), 15126(d); *Citizens for Quality Growth v. City of Mount Shasta* (1988) 198 Cal.App.3d 433, 443-45.

<sup>175</sup> *Citizens of Goleta Valley*, 52 Cal.3d at 564.

<sup>176</sup> *Laurel Heights I*, 47 Cal.3d at 404.

<sup>177</sup> DSEIR at 5-6.

<sup>178</sup> *Id.* at 5-7.

<sup>179</sup> See Cal. Air Resources Board, Carl Moyer Program: Marine Vessels, [available at https://ww2.arb.ca.gov/our-work/programs/carl-moyer-program-marine-vessels/about](https://ww2.arb.ca.gov/our-work/programs/carl-moyer-program-marine-vessels/about).

be supported by substantial evidence that demonstrates that additional costs would make the project impractical.<sup>180</sup> Without evaluating the availability of funding assistance, such an analysis is necessarily incomplete.

Second, the DSEIR fails to provide an adequate analysis comparing the alternatives' respective environmental impacts. Under CEQA, the alternatives analysis "must contain sufficient detail to help ensure the integrity of the process of decision-making by precluding stubborn problems or serious criticism from being swept under the rug."<sup>181</sup> An EIR that does not produce adequate information regarding alternatives cannot achieve the EIR's dual purposes of enabling the reviewing agency to make an informed decision and ensuring that the decisionmaker's reasoning is accessible to the public.<sup>182</sup> Readers must be able to "evaluate [alternatives'] comparative merits."<sup>183</sup> A thorough comparison of the Project alternatives' impacts is therefore crucial to a successful environmental document.

Unfortunately, the DSEIR fails to provide this information, instead opting for the most perfunctory of analyses. In its scant comparison of the environmental impacts of "Alternative 1 – Stockpile Storage in a Building" to the Proposed Project, the DSEIR acknowledges that housing the stockpiles in an enclosed building "would capture and eliminate nearly all the localized migration of PM<sub>2.5</sub> resulting from dust."<sup>184</sup> This is no small difference from the Project, which would produce substantial PM<sub>2.5</sub> and impact the health of workers and residents of West Oakland. The alternatives analysis must be revised to provide a robust discussion of the differences between the air quality *and* related health impacts, and all other impacts, of Alternative 1 and the Project.

Pursuant to CEQA Guidelines section 15204(a), WOEIP also urges the Port to evaluate another alternative aimed at reducing pollution, traffic, and other significant impacts experienced by the communities in West Oakland: the relocation of the Peralta Street cement plant to the Project site. The Central Concrete Supply Company plant, located at 2400 Peralta Street, is a significant source of air pollution, traffic, and noise for the surrounding community. The cement plant is owned by U.S. Concrete, which owns Polaris Materials, of which the Applicant is a subsidiary. The Project's aggregate imports are intended to serve the plant on Peralta Street, with 16 percent of truck trips

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<sup>180</sup> *Kings County Farm Bureau*, 221 Cal.App.3d at 737; *Center for Biological Diversity v. County of San Bernardino* (2010) 185 Cal.App.4th 866, 884.

<sup>181</sup> *Kings County Farm Bureau*, 221 Cal.App.3d at 733 (citing cases).

<sup>182</sup> *Id.*

<sup>183</sup> *Id.*

<sup>184</sup> DSEIR at 5-9.

leaving the Project going to the plant.<sup>185</sup> Co-locating a relocated cement plant with the Project would likely bring significant economic and environmental efficiencies, while also directly offsetting a significant source of local air pollution. WOEIP urges the Port to seriously consider this alternative, which would positively impact air quality and other environmental conditions in West Oakland, in a revised and recirculated EIR.

## **VI. THE DSEIR MUST BE RECIRCULATED.**

Under California law, the present DSEIR cannot properly form the basis of a final supplemental EIR, for the reasons explained above. CEQA and its Guidelines describe the circumstances that require recirculation of a draft EIR. Such circumstances include: (1) the addition of significant new information to the EIR after public notice is given of the availability of the draft EIR but before certification, or (2) the draft EIR is so “fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.”<sup>186</sup>

Here, both circumstances apply. Decisionmakers and the public cannot possibly assess the Project’s impacts, or even its feasibility, through the present DSEIR, which is fundamentally flawed, as explained above. In particular, the DSEIR’s failure to adequately describe the Project’s setting in an environmentally overburdened, historically disadvantaged community and its failure to provide significance determinations regarding and full analysis of whole categories of impacts render it fundamentally inadequate. Further, the DSEIR’s reliance on vague and unenforceable mitigation will require substantial revision of the mitigation measures of associated discussion. In order to resolve these issues, the Port must prepare a revised EIR that would necessarily include substantial new information demanding recirculation.

## **VII. CONCLUSION**

As set forth above, the Eagle Rock Aggregates Oakland Terminal Project DSEIR suffers from numerous deficiencies, many of which would independently render it inadequate under CEQA. Taken as a whole, the deficiencies of the DSEIR necessitate extensive revision of the document and recirculation for public comment. WOEIP respectfully requests that the Port reevaluate the Project and make changes – especially considering design alternatives and adopting mitigation, as discussed above – that would

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<sup>185</sup> *Id.* at 3.11-13.

<sup>186</sup> CEQA Guidelines § 15088.5.

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reduce the Project's impacts on the already environmentally overburdened community of West Oakland.

Best Regards,

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# **West Oakland Environmental Indicators Project**

## **Public Comments**

### **Draft Supplemental Environmental Impact Report EAGLE ROCK AGGREGATES OAKLAND TERMINAL PROJECT**

**Prepared by West Oakland Environmental Indicators Project  
January 8, 2021**

The West Oakland Environmental Indicators Project, the premier environmental justice organization in West Oakland, along with the undersigned residents and organizations is pleased to submit these public comments for inclusion in the record.

#### **CONTEXT**

West Oakland is an area of approximately six square miles, surrounded on all sides by three urban freeways: I-980, I-580, and I-880. The latter, Interstate 880, is one of the most congested freeways in the region and carries the bulk of freight related traffic. I-880 lies upwind of many residential areas in West Oakland. The Port of Oakland also wraps around the south and west sides of the community, creating a consistent upwind source of toxic air contaminants. In 2002, West Oakland Children under five years of age experienced asthma hospitalizations at a rate five to seven times the state average. Fifteen years later, according to the Alameda County Public Health Department (ACPHD), rates for emergency department visits in children under five are 70% higher in West Oakland than Alameda County as a whole. Based on CalEnviroScreen version 3.0, West Oakland ranks above the 90th percentile for the state in asthma emergency room visit rates, with several West Oakland census tracts exceeding the 99th percentile (i.e. among the highest rates in the state). These data are for people of all ages from 2011-2013, after significant state incentives had been provided to reduce truck emissions. According to ACPHD, West Oakland residents die from health conditions associated with air pollution, including cancer, stroke, heart disease, and chronic lower respiratory disease, at higher rates than residents of Oakland and Alameda County. These people enjoy seven fewer years of life than their counterparts in the Oakland Hills. Clearly, not enough has been done.

West Oakland, a traditionally Black community since the 1930's, has suffered from the brutal use of eminent domain by multiple government agencies. In the mid-1950's, CalTrans, the state transportation agency, removed nearly a thousand homes to build the Cypress Freeway connector to the Bay Bridge. The Cypress Structure effectively cutoff the most western, and poorest section, of the community from the view of City Hall. West Oakland's Prescott neighborhood, with its eponymous public school and historic Black business district were suddenly "out of sight and out of mind" for policy makers. The Cypress Structure, a 70 foot tall,

elevated double-decker freeway, would carry 100% of diesel-fueled trucks serving the region straight through the heart of West Oakland's Black neighborhoods. In 1959, hundreds of homes and small businesses, including the famous blues and jazz clubs, Esther's Orbit Room and Slim Jenkins Club, were destroyed to make way for the United Postal Service's regional distribution center. Add the "redlining" of much of the region to keep people of color from moving away from the pollution, and Black residents were effectively chained to the most polluted areas of the city. But at least, they still had their own economic base of small businesses while isolated from housing, jobs and opportunity in White society.

Through the 1960's, community service groups like the Black Panthers worked to develop programs to provide clothing, shoes, and breakfasts for local school children. While many of these model programs were later appropriated by the Johnson administration's Great Society Plan, the Black Panther leaders were ruthlessly targeted by the federal Department of Justice. In the true spirit of Jim Crow, white America was terrified at the sight of Black power and self-sufficiency.

In 1964, the Bay Area Rapid Transit Agency began construction of the Transbay Tube. BART chose Seventh Street as the route from San Francisco to the outlying white commuter neighborhoods. West Oakland's Seventh Street, the historic Black business district, is perhaps the only section of the BART system where an elevated track runs down the middle of a local commercial retail district. The resultant disruption of local business by several years of construction, and the continuous noise of the trains themselves beginning in 1973, was the last nail in the coffin of what had been called, the Harlem of the West.

Through it all, the people of West Oakland persevered. They struggled to make ends meet by any means necessary. Yet continued corporate disinvestment led to blight and poverty. Poverty and federal foreign policy led to the drug epidemic and subsequent drug wars. Mass incarceration made entire generations unable to get decent jobs because of criminal records. Urban renewal and blight reduction systematically raised old Black-owned commercial buildings and reduced available public housing.

Billions and billions of dollars in public investment, designed for the "greater good", brought no significant jobs and destroyed the fragile economy of segregation that was the only financial anchor for the people of West Oakland. Today, unbridled land speculation and gentrification, driven by regional planners and a cash-strapped city government, have reduced the local population from 75% African American to less than one-third.

If one asks, "why does West Oakland want to stand in the way of economic development?", the answer is that such development has invariably been achieved on their backs and to their detriment. The history of West Oakland, and thousands of communities like it, is that the "greater good" goes to White businesses and White consumers, while the "great bad" of pollution, sickness and death goes to local communities of color with few options.

## PROJECT OVERVIEW

Eagle Rock Aggregates (ERA), a subsidiary of Polaris Materials, proposes to build a 22 acre gravel import terminal at Berths 20, 21 and 22 at the Port of Oakland. These properties are located in the Outer Harbor area of the Port, approximately at the western end of 14th Street. The site is approximately one mile due west and upwind from traditional residential areas of West Oakland.

According to their website, Polaris Materials Corporation oversees the development, production and distribution of high-performance construction aggregates to the United States and Canada. The company holds an 88% interest in the Orca Quarry, a sand and gravel deposit which covers an area of approximately 350 hectares located to the north east coast of Vancouver Island west of Port McNeill, British Columbia. The 'Namgis First Nation owns a 12% interest in Orca Quarry, shares in profits from the sale of their traditional resources, and receives skills training and jobs as part of the partnership<sup>1</sup>. Through a long-term marine shipping agreement with CSL Americas, Polaris facilitates the sale and distribution of construction grade sand, gravel, and crushed rock to the West Coast of the United States and Hawaii.

Polaris Materials' parent company, U.S. Concrete, Inc., serves major construction markets in the United States in two segments; ready-mixed concrete and aggregate products. The Company provides its products and services from its operating companies in Texas, Northern California, Oklahoma, New Jersey, New York, Washington, D.C, Philadelphia and British Columbia.<sup>2</sup>

*U.S. Concrete operates numerous ready-mix concrete plants across the Bay Area, including Central Concrete Supply facilities located at:*

- 2400 Peralta St, Oakland, CA 94607
- 401 Kennedy St. Oakland, CA 94606
- 1844 W. Winton Ave. Hayward, CA. 94545
- And, CEMEX ready mix at 333 23rd Ave. Oakland, CA 94606

### General Summary of the Proposed Project

Eagle Rock desires to “lighten” ocean-going ships in the deepwater harbor at Oakland and to service gravel operations at one or more other shallow-water Bay Area import terminals and potentially consolidate those operations at the Oakland terminal. This consolidation will increase ship visits to the Port of Oakland.

ERA intends to take advantage of the deep-water harbor at Port of Oakland to eliminate the need for one shallow draft rock barge normally used to service the shallow water port at Redwood City Marine Terminal.

The ships used by Eagle Rock to transport gravel from the Canadian quarry to Oakland do not have the on-board equipment to plug into electric power at the Oakland port. The gravel

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1

<https://www.nrcan.gc.ca/science-data/science-research/earth-sciences/earth-sciences-resources/earth-sciences-federal-programs/orca-sand-and-gravel-project-british-columbia/8820>

<sup>2</sup> <http://www.polarismaterials.com/>

operations will require several hundred truck trips each day to pick up and deliver aggregate to U.S. Cement ready-mix plants around the region. Cement trucks, part of the construction vehicle fleet in California, are not required to meet the same diesel emission standards as port drayage trucks and other cargo handling equipment. Eagle Rock, which operates a similar gravel import facility inside a containment structure at the Port of Richmond, will operate using open gravel piles at the Port of Oakland. This difference is likely to increase the amount of fugitive dust from the Oakland operation.

Eagle Rock's Orca Sand and Gravel quarry near Port McNeil, British Columbia is about halfway through its 25 year anticipated lifespan, and one might presume that ERA desires to keep facilities costs in Oakland at a minimum. Thus their unwillingness to carry out materials handling operations inside a more expensive closed structure.

The Oakland proposal anticipates "significant and unavoidable" negative impacts from particulate matter, noise, light and traffic.

Port of Oakland staff consider this a temporary use, perhaps a decade long, until a more attractive container terminal tenant comes along. In the event that a "better offer" does not present itself, it is reasonable to assume that Eagle Rock, or another bulk products operator, may wish to extend this port terminal lease. It is unknowable what other bulk products might be introduced by Eagle Rock or a subsequent tenant. **It concerns us that other unnamed bulk products might be introduced here in the future.** Any such change in commodity or operation must receive public review and technical analysis of potential impacts.

## Specific Concerns

The DEIR lists over 60 tables and seven appendices that were used as references for analysis. It mentions numerous federal, state and regional regulations. But it fails to mention or reference the West Oakland Community Emissions Reduction Plan (CERP) that was certified by the California Air Resources Board and the Bay Area Air Quality Management District in December of 2019. There appears to have been adequate time to review the 89 mandated strategies contained in the "Owning Our Air" plan and to have reflected on these community exposure reduction goals in this DEIR. We believe it is a requirement under Assembly Bill 617 and CARB regulations that the West Oakland CERP be addressed in local development plans. The City and Port of Oakland have publicly recognized this requirement in their own policy making.

Sec 2.1 Project Need and Objectives states that the proposed aggregate terminal will "*strengthen the economic base in West Oakland.*" How this would be achieved is not said. Like many development projects at the Port, the project assumes a trickle down effect of investment. Early discussions between ERA and West Oakland Environmental Indicators Project revealed that the project would only employ around 19 workers and those jobs would be committed to existing members of the International Longshore Workers Union (ILWU). It begs the question: how many of West Oakland's chronically under-employed African American residents are members of ILWU?

History proves that creating economic value for the Port of Oakland, or for the Bay Area region, or for the nation, does not equate to *“strengthening the economic base in West Oakland.”* For that to happen, local small businesses would need contracts and local unemployed workers would need jobs.

Section 2.1 states that the project will *“allow for sustainable job creation.”* See our above comment.

Section 2.1 also states that the project will *“increase Port productivity and efficiency.”* Increasing lease revenues might be considered an increase in production of capital flow, however, displacing on-site Ancillary Maritime Services (AMS), trucking and container logistics, from the port area is more likely to *reduce* port efficiency by forcing these same trucks to travel longer distances each day and spending more time waiting in freeway traffic rather than retrieving or returning containers to Oakland terminals.

Continuing this speculative theme, Section 2.1 claims the project will “strengthen the economic base of the Bay Area by establishing a construction aggregate storage and distribution terminal at the Port...” The Draft EIR later states that ERA will move existing operations from Redwood City, near the fast-growing Silicon Valley and greater San Jose areas, and consolidate operations at the Oakland terminal. Rather than strengthening the regional economic base, these actions simply move existing facilities from one place to another. The more likely impact will be longer truck trips for deliveries of aggregate to regional ready-mix plants.

In short, the Project Need statement is flawed in its assessment of local need and provides little or no support for its assumptions.

Section 2.2 Project Location and Existing Site Conditions offers a description of present uses at the Outer Harbor Terminal (OHT). *“...the project site has been used on an interim basis for AMS such as overnight truck parking and shipping container/chassis storage and staging to support Port maritime activities.”*

Without “on-dock rail” facilities, trucking is a fundamental requirement for any operations at the Port of Oakland. Without trucks the Port has zero through-put and zero revenues. And yet, the Maritime Division continues, decade after decade, to give short shrift to critical trucking operations. The outcome of this business strategy is to force the drayage fleets to fend for themselves in finding parking and container staging areas outside the Port’s operating area.. Often as not, these locations are adjacent to, or inside, residential areas.

*This is a knowingly negligent action on the part of the Port of Oakland, a public land trust agency.*

### **Off-Site Truck Emissions not Analyzed**

The Draft EIR neglects to assess the additional diesel emission from displaced trucking activities. It is highly likely that these additional AMS activities will migrate to further municipalities, such as Richmond, East Oakland, San Leandro, Fremont or even Vallejo. With no defined options to the OHT, many trucks will simply park on local streets.

These “commuter” trips add to the pollution burden in communities all along the freeway corridor and, without related jobs, provide no “return on investment” for the disadvantaged residents breathing the pollution. Essentially, these diesel emissions are created with little or no productivity in result. And the truckers waste fuel dollars. No one wins, everyone loses.

Recommendation: The Port and the Applicant should create a specific plan to relocate the trucks now using the Project area for parking and container staging operations, prior to evicting these logistics operations. These logistics facilities should be within the Port’s underutilized operations area.

### **Barge Trips and Vessel Operations**

The change in vessel operations and the elimination of the shallow draft vessel serving Redwood City Marine Terminal will allow for an approximate 24% increase in total annual tonnage, and an increase in total miles traveled in San Francisco Bay equal to approximately 24 hours of ship maneuvering emissions.

#### *Concern: additional regional emissions*

According to the California Air Resources Board, marine vessel maneuvering accounts for approximately 30% of total diesel particulate in the Bay region. This barge traffic plan will increase regional ship emissions.

#### *Concern: additional at-berth emissions*

The Project proposes to bring 48 additional ship visits to the Port of Oakland. The Port already falls short of state mandates for the use of shore power for marine vessel visits. To paraphrase the Project EIR, this Project will move the Port in the opposite direction of those state mandates.

Section 5.4.3 states that using shore power as a means of reducing NOx and diesel emissions and potential *corresponding health impacts*, “would require installation of shore power infrastructure at Berth 22 as well as modification of OVG’s...”

The Port has received significant public funding to support its investments in shore power infrastructure, and more public funds are available. And yet, the excuse for 48 days per year of unfettered ship emissions is that there is no plug available.

The section goes on to state that, “the Applicant does not have its own ships...” and vessels cannot be designated for Oakland service. And yet, Table 2.4-1 calls out operating vessels by name, eg. Peter Lind, CalMat Shamrock Barges, and Westar Rock Barge #2. It is also worth noting that all other California ports operate under the same state mandates for shore power and electrification. Seemingly, modifying these aggregate vessels for shore power would align with demands of other ports, and benefit communities all along the West Coast.

The Applicant’s EIR describes vessel movements that begin when specialized ships are loaded with aggregate in British Columbia, then travel directly to San Francisco Bay, off load materials at terminals in Petaluma, Richmond, San Francisco, Redwood City and potentially Oakland. The ships then return to British Columbia. It is difficult to see that this cycle is so unpredictable that ships cannot be designated for service in our region. Those ships could be appropriately modified to reduce toxic emissions in our already overburdened communities.

The Applicant defaults to the argument that state mandates do not require bulk vessels to implement shore power. This is cold comfort to local children wheezing and implementing their asthma inhalers.

Section 5.4.4 states that vessel at-berth emission capture systems are out of the question. This is stated in the most nuanced of language. “No known equipment is available that has been certified by CARB or identified as being compatible and effective on the vessels like those under contract with the Applicant.”

Despite the fact that barge-based or shore base “bonnet” emission capture systems have been in use in Southern California for many years, the Applicant would have us believe that their vessels are so unique that no solution to deadly “hotelling” emission can be found. And again, the argument is that the problem is somehow the responsibility of the State of California for not finding and certifying, or indeed, mandating a solution.

Perhaps the children of West Oakland should hold a bake sale and fund the adaptation of existing technology to protect themselves from the Port and its Applicants.

### **Rock Hauling Truck Emissions Assessment**

According to the Bay Area Air Quality Management District, since they are entering a shipping terminal, Eagle Rock's contract haulers would be subject to the current drayage rule until 12/31/22 (2007yr engine or newer) and then would be subject to the truck and bus requirements beginning 1/1/23 (2010 MY engines or newer). Trucks that typically haul sand and gravel are not Drayage trucks under CARB's regulation, but are subject to the Truck and Bus regulation. The compliance requirements under both regulations are now aligned: DPM filters required, upgrades to 2010 or newer engines by 2023.

Consequently, the best the community can expect under state law is that the Applicant will contract with rock hauling companies using twelve-year-old trucks. This is a far cry from the numerous contemporary emission-free options, including electric or hydrogen fueled heavy-duty vehicles. The daily round trip for the rock haulers is stated in the DEIR to be 27 miles. This is well within the range of many market-available Class 7 or 8 electric tractors.

The DEIR fails to calculate the emission that will be created by the rock haulers as they distribute aggregate to ready-mix plants around the Bay Area. The California Air Resources Board calculates average emissions from a Drayage Truck, using a 2008 model year engine, as 6.843 g/mi for NO<sub>x</sub> and 0.071 g/mi for PM<sub>2.5</sub>. Applying this to the anticipated 70,000 truck trips per year visiting the Eagle Rock Oakland terminal, the Bay Area Air Quality Management District estimates annual total vehicle miles traveled for aggregate deliveries with an average 27 mile expected round trip for rock deliveries at 1,866,493 miles. Applying that to the above emissions estimate for average drayage trucks produces an annual emissions load of:  
PM 2.4: 0.071 g/mi = 292.16 pounds distributed across near-freeway communities, and  
NO<sub>x</sub>: 1,866,493 mi x 6.843 g/mi = 28,158.3 pounds of this ozone and particulate precursor added to the regional burden each year.

Sec. 5.3.2 lists “Significant Environmental Impacts of the Proposed Project.” These significant impacts are simply too numerous to reiterate here. The document lists problems with the Project including: toxic chemicals on the proposed site, diesel emissions increases, noise in violation of Oakland City ordinance, increased traffic and degraded level of service on Maritime Street, insufficient solid waste and landfill capacity, excessive construction emissions, conflict with implementation of the Port's air quality plan, and the increased cumulative exposure of sensitive people to project generated pollutants.

## CONCLUSION

The Project assessment relies on a Project Wide EIR that assessed anticipated Port development from the perspective of conditions in 2001 or before. That CEQA assessment is now 18 years old and does not reflect modern research on the health impacts of freight emissions or contemporary demands for racial equity. Advances in our understanding of the impacts of climate change and the urgency of accelerating reductions of carbon emission to slow disastrous global warming are also absent in the 2002 EIR. This Supplement to that document does little to reflect on the accumulated knowledge of the past two decades.

In order for this Project to be even marginally acceptable in today's context we strongly recommend a suite of actions to offset the stated "significant and unavoidable" direct emissions from the proposed Project.

- Designate specific permanent truck parking and container staging areas adequate to serve the displaced fleet *prior* to approving the Project
- Begin pursuit of funding for installation of shore power facilities at Berth 22 immediately. Implement construction of those facilities as soon as financially possible.
- Requirement in the land lease implementation of a pilot program to adapt the proposed vessels to shore power or other vessel emission capture system.
- Eliminate truck trips through West Oakland by relocating the Central Cement ready mix plant from Peralta St. to the Project site.
- Accelerate the implementation of electric tractors within the Port area by changing weight and axle limits on Maritime St, Seventh St (west of Maritime St) and Middle Harbor Blvd.
- Set a goal of 100 electric tractors operating within the Port area by 2023.
- Upgrading of all tugs and harbor craft working in the Port area, including commuter ferries to new or alternative power systems and renewable fuels.
- The Port, in partnership with its business partners, uses its bonding power to underwrite Black-owned mixed use development in West Oakland.

Signed:

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January 8, 2021

File Ref: SCH #2001082058

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*SENT VIA ELECTRONIC MAIL ONLY ([kchuop@portoakland.com](mailto:kchuop@portoakland.com))*

**Subject: Draft Supplemental Environmental Impact Report (SEIR) for the Eagle Rock Aggregates Oakland Terminal Project, Alameda County**

Dear Khamly Chuop:

The California State Lands Commission (Commission) staff has reviewed the Draft SEIR for the Eagle Rock Aggregates Oakland Terminal Project (Project) prepared by the Port of Oakland (Port). The Port, as the public agency proposing to carry out the Project, is the lead agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.). Staff submits these comments and suggestions in its capacity as a trustee agency, pursuant to State CEQA Guidelines section 15386, for projects that could directly or indirectly affect sovereign land and their accompanying Public Trust resources or uses. Staff also provides these comments in keeping with its responsibility to provide oversight of the State's granted tidelands and submerged lands pursuant to Public Resources Code section 6009.1, subdivision (b).

**Commission Jurisdiction and Public Trust Lands**

The Commission has jurisdiction and management authority over all ungranted tidelands, submerged lands, and the beds of navigable lakes and waterways. The Commission also has certain residual and review authority for tidelands and submerged lands legislatively granted in trust to local jurisdictions (Pub. Resources Code, §§ 6009, subd. (c); 6009.1; 6301; 6306). All tidelands and submerged lands, granted or ungranted, as well as navigable lakes and waterways, are subject to the protections of the common law Public Trust Doctrine.

As general background, the State of California acquired sovereign ownership of all tidelands and submerged lands and beds of navigable lakes and waterways upon its admission to the United States in 1850. The state holds these lands for the benefit of all people of the state for statewide Public Trust purposes, which include but are not limited to waterborne commerce, navigation, fisheries, water-related recreation, habitat preservation, and open space. On tidal waterways, the State's sovereign fee ownership extends landward to the mean high tide line, except for areas of fill or artificial accretion or where the boundary has been fixed by agreement or a court. Such boundaries may not be readily apparent from present day site inspections.

The California Legislature is vested with the authority to enact laws involving the State's sovereign Public Trust lands. Since 1851, the Legislature has periodically transferred portions of the State's Public Trust lands to over 80 local governmental entities for management purposes, including California's five major ports. These granted lands are held in trust for the people of California and must be used for Public Trust purposes, including water-related commerce, navigation, and fishing. The granting language conveys the State's legal title to the sovereign lands subject to certain terms and conditions and subject to the common law Public Trust Doctrine.

The proposed project is located within lands that have been legislatively granted in trust to the City of Oakland pursuant to Chapter 657, Statutes of 1911, as amended. Through the City's Charter, portions of these public trust lands, including the project area, are within the Port of Oakland (Port) and are managed by the City acting by and through its Board of Port Commissioners. Any proposed uses involving these granted tidelands must be consistent with the common law Public Trust Doctrine, the City's applicable granting statutes, the California Constitution, and relevant case law.

In 2016, the Commission adopted a five-year Strategic Plan,<sup>1</sup> identifying ports and harbor districts as essential partners for driving economic growth and managing coastal resources. The Strategic Plan identified key actions that relate to ports and harbor districts, including working with various partners to ensure port policies and programs are consistent with Executive Order B-32-15, including the Freight Mobility Plan, the Sustainable Freight Pathways to Zero and Near-Zero-Emissions, and the California Energy Commission's Integrated Energy Policy Report, and working with grantees to ensure that Public Trust land and revenue uses are consistent with the Public Trust.

### **Project Description**

The Port prepared a Draft SEIR to revise and update the Oakland Army Base Area Redevelopment Plan (OAB Plan) Environmental Impact Report (EIR), certified by the City of Oakland in July 2002, and addended by the City of Oakland and the Port on different occasions with the 2006 Maritime Street Addendum, the 2012 Oakland Army Base Addendum, the 2015 Cool Port Addendum, and the 2019 7th Street Grade Separation Addendum. These combined documents are considered the "2002 EIR as

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<sup>1</sup> California State Lands Commission. Strategic Plan: 2016-2020. December 18, 2015. Available at: <http://www.slc.ca.gov/wp-content/uploads/2018/07/StrategicPlan.pdf>.

Addended.” The 2002 EIR as Addended evaluated the environmental impacts of the development and use of the Project area for increased cargo operations, assuming only container cargo. Subsequent to the approval of the 2002 EIR as Addended, the Port proposed to modify the OAB Plan for construction aggregates stockpiling and distribution. In proposing these changes, the Port seeks to assist in meeting current and projected needs for sand and gravel supply in the greater San Francisco Bay Area.

From the Project Description, Commission staff understands that:

- Aggregate Maritime Transport and Loading/Unloading: Berth 22 would be utilized for vessel and barge operations to unload aggregate material for stockpiling as well as to load the aggregate on to barges for local and regional distribution.
- Aggregate Stockpiling and Land-Based Transport: Construction aggregates would be offloaded from ocean-going vessels and stockpiled on pavement at the Berths 20, 21, and 22 backlands using a radial stacking conveyor system to create three stockpiles over 40 feet high. The material would then be distributed locally and regionally via truck or barge.

### **Environmental Review**

Commission staff requests that the Port consider the following comments on the Project’s SEIR.

#### **Air Quality and Greenhouse Gas Emissions**

1. Deferred Mitigation: In order to avoid the improper deferral of mitigation, mitigation measures (MMs) must be specific, feasible, and fully enforceable to minimize significant adverse impacts from a project, and “shall not be deferred until some future time.” (State CEQA Guidelines, § 15126.4, subd. (a)(1)(B).) MM ERA AQ-1 requires Eagle Rock Aggregates (ERA) to prepare and implement an Operations Air Quality Plan. As written, this Plan must include measures that could reduce the Project’s on-site operational emissions, but the MM does not include an enforceable timeline for plan preparation and lacks adequate detail about how such measures could reduce the Project’s significant impact on air quality. Staff recommends that MM ERA AQ-1 be updated to include more specific performance measures and targets that the Port must ensure are met. These performance measures and targets should be consistent with the near-term emissions reduction actions identified in the Seaport Air Quality 2020 and Beyond Plan (2020 and Beyond Plan) that was adopted by the Port in 2019.

MM ERA AQ-1 states that the Operations Air Quality Plan shall be reviewed and approved by the Port prior to start of Project operations. Commission staff recommends including stakeholder engagement in this review process in accordance with a key strategy of the 2020 and Beyond Plan. Specifically, including stakeholder engagement and public review in the preparation and implementation of the Operations Air Quality Plan would provide ongoing opportunities for meaningful input and authentic involvement in decision-making.

Staff also recommends that ERA work closely with the Port to evaluate equipment and infrastructure needs in order to identify opportunities for zero-emissions equipment. This measure would accord with near-term actions identified in the Port's 2020 and Beyond Plan.

2. Fugitive Dust: Chapter 2 of the Draft SEIR, *Project Description*, notes that water sprayers would be used for dust suppression while the aggregate materials are unloaded and loaded onto vessels or transported along stackers to and from the material stockpiles. In addition, water would be sprayed daily from radial sprayers while the aggregate is stockpiled to retain a moisture content of 1 to 8 percent. Finally, the Project would have a screened barrier and/or stacked containers around the perimeter of the stockpile area to create a visual barrier, which is also referred to as a "wind screen." (Chapter 3.4, *Air Quality*, page 3.4-31.)

The 2002 EIR as Addended identified two Standard Conditions of Approval related to fugitive dust and particles with a diameter of less than 10 or 2.5 micrometers (PM<sub>10</sub> and PM<sub>2.5</sub>, respectively), but these measures address dust generated during the OAB Redevelopment Plan construction and remediation activities and do not appear to apply to the proposed Project's operational phase. The Draft SEIR does not explain why no further dust suppression measures would be needed during the Project's operations. Commission staff notes that although the 2002 EIR as Addended determined that the impacts to air quality were significant and unavoidable, pursuant to section 15092 of the State CEQA Guidelines, lead agencies must reduce or avoid significant effects to the extent feasible prior to approving a project, even if unavoidable significant effects remain after application of all feasible mitigation. The PM<sub>10</sub> and PM<sub>2.5</sub> impacts are of particular concern because the Draft SEIR concedes that the Project's uncovered aggregate stockpiles will result in "...a change in the severity of the previously identified cumulatively considerable significant and unavoidable emissions impact of the OAB Area Redevelopment Plan disclosed in the 2002 EIR as Addended." (Chapter 4, *Cumulative Impacts*, page 4-16.) Commission staff suggests that feasible mitigation to reduce cumulative air quality impacts exists beyond what the Port proposes in the Draft SEIR and therefore recommends that the Final SEIR evaluate all feasible mitigation measures, including placing covers over the stockpiles and the trucks transporting material from the Project site. This could further reduce cumulative human health impacts to the surrounding community.

### Environmental Justice

3. Environmental Justice Analysis: Environmental justice is defined by California law as "the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies." (Gov. Code, § 65040.12.) This definition is consistent with the Public Trust Doctrine's principle that management of trust lands is for the benefit of all people.

The Commission adopted an updated Environmental Justice Policy and Implementation Plan in December 2018, found at <https://www.slc.ca.gov/envirojustice/>, to ensure that environmental justice is an essential consideration in the agency's processes, decisions, and programs. Through its policy, the Commission reaffirms its commitment to an informed and open process in which all people are treated equitably and with dignity, and in which its decisions are tempered by environmental justice considerations. Among other goals, the policy commits the Commission to strive to minimize additional burdens on and increase benefits to marginalized and disadvantaged communities resulting from a proposed project or lease. Furthermore, the Commission's Environmental Justice Policy aligns with that of its sister agency the San Francisco Bay Conservation and Development Commission (BCDC). Being one of the agencies responsible for the Project, BCDC will rely on the SEIR when considering any approval related to this Project.

Industrial facilities and transportation projects have historically been built among traditionally marginalized communities who do not have access to resources to address the environmental and public health impacts that come with these developments, causing an environmental justice issue. Based on the information from CalEnviroScreen 3.0, (found at: <https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-30>) the Project is located within a high pollution area relative to the rest of the State, with a pollution burden percentile of 89 percent. In addition, the Census Tracts closest to the Project (Census Tracts 6001425101, 6001425102, 6001425104, and 6001401500) have pollution burden percentiles ranging from 78 percent to 86 percent relative to the rest of the State, depending on the Census Tract. In other words, communities near the Project are disproportionately impacted by various sources of pollution, health hazards, and socioeconomic burdens including diesel emissions, toxic releases, presence of hazardous waste, and groundwater threats. In addition, children, the elderly, and minority populations are affected by health hazards, which include asthma, cardiovascular irregularities, and low birth weights.

Adverse health disparities overwhelmingly affect the marginalized communities adjacent to the Port, and this Project may augment such disparities by increasing dust and air pollution. According to the West Oakland Community Action Plan, "neighborhoods near the Port of Oakland experience nearly three times the cancer risk from local pollution sources, compared to neighborhoods farther away" (<https://www.baaqmd.gov/~media/files/ab617-community-health/west-oakland/100219-files/owning-our-air-plan-summary-pdf.pdf?la=en>). For decades, disadvantaged communities near the Port have endured poor health and poor air. As stated in the SEIR, this Project would increase levels of fugitive dust and other pollutants and would contribute to existing air quality standard violations in the area. Short-term exposure to particulate matters above the Federal or State standards can result in aggravated asthma, acute bronchitis, respiratory symptoms, decreased lung functions, heart attacks, and premature mortality.

The Project's potential public health impacts and lack of full analysis of mitigation measures related to air pollution and fugitive dust, as well as the Draft SEIR's lack of an environmental justice analysis and record of meaningful and authentic community outreach and engagement is of concern to the Commission. Although not legally required in a CEQA document, staff suggests including a section describing any community outreach and engagement the Port undertook in developing the draft SEIR. In this manner, the CEQA public comment process would provide the greatest opportunity for concerned public groups to provide input relating to environmental justice. Commission staff is available to work with the Port and stakeholders to address these concerns.

Thank you for the opportunity to comment on the Draft SEIR for the Project. Staff requests that you consider these trustee agency comments prior to certifying the Final SEIR. Please send copies of future Project-related documents, including electronic copies of the Final SEIR, Mitigation Monitoring and Reporting Program, Notice of Determination, CEQA Findings and, if applicable, Statement of Overriding Considerations when they become available, and refer questions concerning environmental review to Alexandra Borack, Senior Environmental Scientist, at [alexandra.borack@slc.ca.gov](mailto:alexandra.borack@slc.ca.gov). For questions about Commission jurisdiction, please contact Reid Boggiano, Public Land Management Specialist, at [reid.boggiano@slc.ca.gov](mailto:reid.boggiano@slc.ca.gov). For questions relating to the Commission's Environmental Justice Policy and outreach, please contact Yessica Ramirez, Environmental Justice Liaison, at [yessica.ramirez@slc.ca.gov](mailto:yessica.ramirez@slc.ca.gov).

Sincerely,



Nicole Dobroski, Chief  
Division of Environmental Planning  
and Management

cc: Office of Planning and Research  
R. Boggiano, Commission  
A. Kershen, Commission  
Y. Ramirez, Commission

# San Francisco Bay Conservation and Development Commission

375 Beale Street, Suite 510, San Francisco, California 94105 tel 415 352 3600 fax 888 348 5190

State of California | Gavin Newsom – Governor | [info@bcdc.ca.gov](mailto:info@bcdc.ca.gov) | [www.bcdc.ca.gov](http://www.bcdc.ca.gov)

January 8, 2021

Khamly Chuop  
Port of Oakland  
Environmental Programs and Planning Division  
530 Water Street  
Oakland, CA 94607

**SUBJECT: Eagle Rock Aggregates – Oakland Terminal Project proposal at the Port of Oakland, California; SCH #2001082058; BCDC Inquiry File No. MC.MC.7415**

Dear Khamly Chuop:

Thank you for your letter dated August 22, 2020, and your recent extension for comments dated December 15, 2020, regarding the Draft Supplemental Environmental Impact Report (Draft SEIR), for the Eagle Rock Aggregates - Oakland Terminal Project (Proposed Project or Project), to be located in the Port of Oakland, in Oakland California.

The San Francisco Bay Conservation and Development Commission (BCDC or the Commission) is a responsible agency for this project and will rely on the SEIR when considering approvals related to the Proposed Project. While the description of the Project as described in the Draft SEIR may not be specific enough for BCDC staff to comment on every potential issue that could be raised with respect to BCDC's laws and policies, staff has prepared the following comments outlining issues under BCDC's jurisdiction that should be addressed as part of the Final SEIR and/or through the BCDC permitting process. The Commission itself has not reviewed the Draft SEIR; the following comments are based on BCDC staff review of the project documents available and the McAteer-Petris Act, the *San Francisco Bay Plan* (Bay Plan), and the *San Francisco Bay Area Seaport Plan* (Seaport Plan). The project proponents are expected to obtain a BCDC permit to proceed with the Proposed Project, which includes a ship unloading hopper, overhead conveyer system to three piles of aggregates, barge reclaim system, scale house building, and utility infrastructure across the project site.

This letter iterates and expands upon BCDC staff's comment letter, dated 27 September 2019, on the Notice of Preparation (NOP) for the Proposed Project. It appears that some of our comments were addressed, but not all of our comments. Please see below for areas that should be further expanded upon in the final SEIR.



## **JURISDICTION**

The Project site indicated in the Draft SEIR is within BCDC permitting jurisdiction. Per the McAteer-Petris Act, BCDC is responsible for considering permit applications for any proposed fill; extraction of materials; or substantial changes in use of any water, land, or structure within the Commission's jurisdiction (California Government Code [CGC] Section 66632(a)). Based on the Draft SEIR project description, relevant areas of BCDC jurisdiction for the Project may include the following:

- San Francisco Bay, being all areas subject to tidal action, including tidelands (land lying between mean high tide and mean low tide) and submerged lands (CGC Section 66610(a)).
- A shoreline band consisting of all territory located between the shoreline of the Bay and 100 feet landward of and parallel with the shoreline (CGC Section 66610(b)).

The Commission also has land use authority over shoreline locations designated for priority use areas (PUAs) in the Bay Plan. In Oakland, the Commission has designated certain areas of the Bay shoreline for port priority use, as noted in Bay Plan Map No. 5. The final SEIR should discuss the consistency of land uses proposed for these areas within the Project footprint with respect to the Commission's Bay Plan Map No. 5 port priority use designation, and the corresponding applicable Bay Plan policies. The Port Policies in the Bay Plan and the Seaport Plan guide Commission decisions in port PUA.

As the Proposed Project includes a change in use of portions of the Project site both within the Bay and the 100-foot shoreline band, the Project is expected to require a permit from the Commission. Approval of a BCDC permit will require the Commission to find consistency of the Proposed Project with the McAteer-Petris Act, the Bay Plan, and the Seaport Plan.

The final SEIR should map and describe the elements of the Project that would occur within BCDC permitting jurisdiction, distinguishing between the Bay and shoreline band jurisdictions, and note the presence of the port priority use designation. Note that per Title 14 of California Code of Regulations Section 10710, any "areas once subject to Commission jurisdiction remain subject to that same jurisdiction," including areas that may have been "filled or otherwise artificially altered." Thus, the final SEIR should identify whether any portion of the Proposed Project would be located on Bay fill that was placed since 1965.

## **LAND USE AND PLANNING**

The Land Use section is one of two sections in the Draft SEIR that specifically calls out Bay Plan and Seaport Plan policies in detail. The Draft SEIR states that the Project site is consistent with Bay Plan Port Policy 3, as it is currently located within a Bay Plan-designated port PUA and would continue to support marine terminal activity as a construction aggregates import, storage, and distribution marine terminal and would not impair the efficient utilization of the Port area. The Proposed Project also would not involve the use of fill or require dredging activities in the Outer, Middle, or Inner Harbors, consistent with Bay Plan Port Policy 2.

The Draft SIER details further Seaport Plan Policies (Marine Terminals Policy 2, Container Terminals Policy 4, and Bulk Terminals Policy 2), and states the Proposed Project would not prevent Bay Area ports from achieving adequate cargo throughput capability (Marine Terminals Policy 2) based on the Project's changing of a portion of a terminal designated for container cargo to bulk construction aggregates. Rather, it would increase resources for construction aggregates needed to meet demand in the state over the next 50 years (Tioga Group, 2019 – 2050 Bay Area Seaport Forecast). Additionally, use of the Project site, which is not currently used for container shipping, for construction aggregates would not impair the future use of the site for container shipping following the completion of the lease term (Container Terminals Policy 4). Further, as described in the Project Objectives, use of the site for construction aggregate materials storage and transport provides a beneficial cargo use of the Proposed Project site until such time the Port requires additional capacity for container cargo.

The Draft SEIR states the Proposed Project would not result in substantial conflicts with an adopted plan or policy under BCDC's authority, and that the Proposed Project would not increase the severity of, or result in a change in, the previously identified less-than-significant impact of the Oakland Army Base Area Redevelopment Plan disclosed in the 2002 EIR as Addendum, the primary document upon which the Draft SEIR is based. Therefore, it states that no mitigation measures are required.

The initial term of Eagle Rock Aggregates' (ERA) lease from the Port for the Project site is proposed to be approximately twelve (12) years with three five-year options to extend, for a total maximum of twenty-seven (27) years, resulting in a potential total lease term until 2047. This fits within the timeline of the Tioga cargo forecast report, which the Project proponents used to determine the need for aggregates in the Bay Area. BCDC staff finds that using this site for interim bulk cargo handling appears consistent with BCDC policies for this PUA, as it would be available for container use once the lease has expired.

#### **HYDROLOGY AND WATER QUALITY**

BCDC's 2019 comment letter on the NOP requested that the SEIR's hydrology and water quality analysis refer to the Bay Plan's policies when considering the potential significance of any impacts to the Bay. The analysis included in the Draft SEIR does not draw on specific BCDC policies, but there are several aspects of the analysis to note:

The Draft SEIR differs from the NOP in that it states the Project is to be designed with open storage for the stacks, whereas the NOP was unclear on this design element. Open storage stacks could result in dust impacts to Bay surface water quality and within the water column, and conceivably to benthic organisms depending on the volume of material. While enclosed storage for aggregates would be preferable to reduce adverse impacts to water quality, as well as air quality impacts to neighboring communities, according to the Draft SEIR the costs associated with an enclosed design are prohibitive. Bay Plan policies require the Commission consider all project impacts to affected communities. (Also see Environmental Justice discussion beginning page 10.)

The Proposed Project proposes to change the use of a portion of a terminal designated for container cargo to bulk construction aggregates. The installation of new stormwater infrastructure associated with the change would benefit water quality; however, construction activities would have the potential to degrade surface and groundwater quality during construction.

The stormwater infrastructure and Project-associated features that could impact Bay water quality include the stormwater retention pond, bioretention treatment basin, and placement of underground utilities including Hydrodynamic Separator System vault filters. Installation of these ground-disturbing activities could potentially encounter shallow groundwater and provide a pathway for sediment and/or debris-laden and/or hazardous materials to enter groundwater or receiving waters that lead to the Bay which could adversely impact fish and other aquatic species. Improper disposal of dewatering effluent could also adversely affect water quality if polluted dewatered groundwater were to enter surface water or groundwater.

Therefore, the Draft SEIR describes best management practices to be utilized in a Stormwater Pollution Prevention Plan and describes mitigation measures which would be designed to address these issues and result in less than significant impacts.

Still, for greater clarification, BCDC staff requests that the final SEIR address BCDC water quality policies and outline how the Project design elements will address the policies. This type of analysis will be required when the Project comes to BCDC for any permitting needs.

#### **CLIMATE CHANGE, FLOOD HAZARDS, AND SEA LEVEL RISE**

In 2019, the Port of Oakland approved its Sea Level Rise Assessment to comply with AB 691, which requires that a sea level rise assessment be completed for areas under the jurisdiction of the State Lands Commission. The Port's study includes an impact assessment; maps showing affected areas for years 2030, 2050, and 2100; financial costs of the impacts; and a description of protection measures. BCDC staff notes that this assessment is for the Port as a whole and is not specific to this Project.

The report also begins with a disclaimer which states in part: "This AB 691 Sea-level rise analysis, and the associated maps, are intended to prepare for impacts from sea level rise. This analysis, and the associated maps, are not detailed to the parcel-scale and do not account for flooding from other sources, erosion, subsidence, future construction or shoreline protection upgrades, or other changes to the region that may occur in response to sea level rise. The maps also may not fully take into account the Port of Oakland's existing pumps and drainage system that may reduce impacts from sea level rise. Flooding due to sea level rise and storm surges is possible in areas outside of those predicted in these maps, and the maps do not guarantee the safety of an individual or structure."

With this consideration, the Draft SEIR does not include an analysis of sea level rise specific for this Project. Therefore, as previously stated in BCDC's 2019 comment letter on the NOP, BCDC staff requests that the final SEIR include a discussion of flood hazards and the potential for flooding to result in the release of pollutants with a description of the Project site's existing and future vulnerability to inundation and storm surge. To this end, the SEIR should identify the Mean Higher

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High Water line, the 100-year flood elevation, mid-and end-of-century sea level projections using the 2018 State of California Sea Level Rise Guidance, anticipated site-specific storm surge effects, and a preliminary assessment of the Proposed Project's vulnerability to future flooding and sea level rise. In determining the significance of potential hydrological and water quality impacts to the Bay, the final SEIR should describe how the Project has been designed to tolerate, adapt to, and/or manage shoreline flooding at the site to ensure the Proposed Project is resilient to mid-century sea level rise projections, and, if it is likely to remain in place longer than mid-century, how it can adapt to conditions at the end of the century. If shoreline protection is a part of this Project or proposed mitigation for hydrological impacts, the final SEIR should explain how the proposed protection is consistent with the Bay Plan's Shoreline Protection policies.

The 2002 EIR as Addended concluded that impacts could occur related to localized flooding (Impact 4.15-6). The Proposed Project site is located in a Federal Emergency Management Agency (FEMA)-designated 100-year flood zone (City of Oakland 2016). While there is a low annual probability of significant flooding, the risk of Project inundation is still possible during extremely wet winters. The Proposed Project would include new storm drainage pipes and catch basins, which would facilitate site drainage and reduce the likelihood of flooding on site. Additionally, an 8-inch asphalt curb would also be installed around the site's periphery in addition to asphalt speed bump ramps at site access points in order to prevent stormwater from draining off the site. With these and other water retention and filtration features described in the Draft SEIR, the project proponents have determined that the Proposed Project would not increase the severity of, or result in a change in, the previously identified less-than-significant impact of the Oakland Army Base Area Redevelopment Plan disclosed in the 2002 EIR as Addended.

The Draft SEIR describes how the Project will identify and implement a number of structural and non-structural BMPs (e.g., Good Housekeeping, Spill and Leak Prevention and Response, Employee Training Program) to reduce and prevent pollutants as part of stormwater discharge. Monitoring data would be used to determine the effectiveness of stormwater treatment practices and whether additional treatment measures would be necessary to comply with the California Industrial General Permit for water quality. With these post-construction measures, the Draft SEIR states that impervious surfaces would not contribute additional sources of polluted runoff.

The Draft SEIR states that the Project ensures all measures related to flood protection are in compliance with applicable policies of the Safety Element of the City's General Plan, therefore, there would not be a significant flooding impact. However, the document the City is relying on, the Safety Element of the City's General Plan, references BCDC's "Sea Level Rise: Predictions and Implications for San Francisco Bay," which dates from 1988, and other similarly dated documents. Older documents such as these may not adequately inform the impacts or issues for the Project, nor do they speak to potential Project consistency with current Bay Plan Policies relating to sea level rise applicable as part of the BCDC permitting process. Since 1988 the California Sea Level Rise Guidance has been developed and updated many times, and additional new tools have been developed that may result in a more rigorous analysis, such as the Bay Area Shoreline Flood Explorer. BCDC staff requests that the project proponent employ the best available, and up-to-date, science and technology in the final SEIR when evaluating sea level rise impacts as required by and

consistent with Bay Plan Policies, and that the final SEIR graphically illustrate the expected sea level rise projections at the Project site. The final SEIR should show how the design of the Project and the proposed mitigation measures reduce the potential Projects impacts as a result of flooding risk from sea level rise to a less-than-significant level.

### **HAZARDS AND HAZARDOUS MATERIALS**

The Draft SEIR describes hazards best management practices, and a Hazardous Materials Business Plan to address possible impacts from hazardous materials and impacts. The 2002 EIR as Addended concluded that the site preparation, remediation, and redevelopment could expose workers or others to contaminated soil and groundwater and hazardous materials in and around possible Aboveground Storage Tanks and Underground Storage Tanks (USTs).

Currently, the Project site is not located on a hazardous materials site compiled pursuant to Government Code Section 65962.5. However, due to past industrial uses and the potential presence of municipal garbage in fill underlying the Project site, there is a potential for contaminated soil and groundwater to be present, as there is a history of USTs in the surrounding area, some of which have released fuels and other chemical contaminants in soils and groundwater. Thus, ground disturbing activities associated with construction could potentially encounter contaminated soil, groundwater, or disturb or damage an unknown UST and release these hazardous materials and waste into the environment, which would cause a significant impact. Proper planning and mitigation measures, as described in the Draft SEIR, would reduce these potential impacts to less than significant levels.

While specific BCDC policies are not discussed in the Draft SEIR, the Bay Plan’s Water Quality policies have relevance to the SEIR’s hazards and hazardous materials discussion. Given potential changes to truck and vessel transportation patterns in response to the Project, the final SEIR should address the potential for hazardous substances such as fuels to be released into the Bay due to routine use or transportation, or potential upset or accident conditions.

In addition, as stated in the BCDC 2019 comment letter on the NOP, the Bay Plan provides Navigational Safety and Oil Spill Prevention policies that state, in part, that “physical obstructions to safe navigation... should be removed to the maximum extent feasible” (Policy 1), and that marine facility projects should be “in compliance with oil spill contingency plan requirements” (Policy 2). The final SEIR should include a discussion of whether the Project would have any impacts on navigational safety, and would meet oil spill contingency requirements of the Lempert-Keene-Seastrand Oil Spill Prevention and Response Act. The Draft SEIR does not discuss the possibility of oil spills, or address Port oil spill contingency planning, a possible oversight.

### **GEOLOGY AND SOILS**

The Draft SEIR states the Proposed Project does not anticipate any additional filling of the Bay. It also states that portions of the Project may be on areas of previous fill, but does not date the fill, or when the berths or terminals were constructed. The final SEIR should map and describe any areas of the Project site that were subject to tidal action at any point since September 17, 1965 that have been subsequently filled, and describe in detail the proposed development, activity, and uses on these filled areas and consistency with the Commission’s laws and policies.

While the BCDC Safety of Fills policies are mentioned briefly in the Draft SEIR it is unclear how they are applied to this Project. There are details of the Erosion and Sedimentation Control Plan, the Soils Report, the Geotechnical Report, and the Stormwater Pollution Prevention Plan. Still, greater specificity would be desirable to see how these policies and plans are applied to this Project, and how they relate to BCDC policies.

## **TRANSPORTATION**

Other than the Land Use section discussed above, this is the only other section in the Draft SEIR that details Seaport Plan policies. The Project site has been used on an interim basis for ancillary maritime services (AMS) such as overnight truck parking, shipping container/chassis storage, and staging to support Port maritime activities.

With the Proposed Project, the site would no longer be available or used for AMS services; however, the Draft SEIR states that the Proposed Project would not result in inadequate parking capacity at the Port or increase the number and incidence of large vehicles parking within surrounding communities or on streets not designated for such uses. Therefore, the Draft SEIR states the Proposed Project would not substantially increase the severity of, or result in a change in, the previously identified less-than-significant impact of the Oakland Army Base Area Redevelopment Plan described in the 2002 EIR as Addended, and subsequently, no mitigation measures are necessary.

The 2002 EIR as Addended also concluded that redevelopment construction activities would use a significant number of trucks and could cause significant circulation impacts on the street system (Impact 4.3-11). BCDC staff asks for clarification if these impacts are temporary during construction, as opposed to the impacts of longer-term operation listed above.

The Proposed Project would eliminate approximately 18 acres of existing AMS that currently occupy the site. The Draft SEIR states that the Port currently has 40 acres for public truck parking including 15 acres at the Roundhouse (an area formerly occupied by Union Pacific located south of Adeline Street, east of the Matson Terminal, and west of Schnitzer Steel) and 25 acres at Howard Terminal.

The Draft SEIR does not take into consideration the potential loss of Howard Terminal to support parking needs. As Howard Terminal is subject to its own development proposals, which includes an application to amend the Bay and Seaport Plans (BCDC Bay Plan amendment No. 2-19) to remove the Port PUA and terminal designations from the site, BCDC staff believes the final SEIR should not rely on Howard Terminal as an alternative parking site. Current parking at Howard Terminal is an interim use and even if the terminal is developed into something other than the proposed ballpark project, such as an active marine terminal, another site will need to be found and utilized for truck parking. Even though the proposed ballpark project has not been approved and is under environmental review, it is important to consider that the location and features of Howard Terminal would not make it desirable for long term parking needs. The final SEIR should identify alternative possible AMS locations, including alternative truck parking locations, so to adequately support Port terminal operations as a whole.

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Despite the assurances of the Draft SEIR, concerns remain that there be room for adequate truck parking and AMS at the Port. Public comments from interested parties and trucking partners continue to express greater needs than are currently met. If the Port loses 18 acres from the Proposed Project site and 25 acres from the Howard Terminal site, will the 15 acres at the Roundhouse site be sufficient to accommodate future growth and needs at the Port? And, more generally, are the 15 acres of truck parking required of the Port by the 2001 Bay Plan amendment, as described in the Draft SEIR, adequate for current and future needs? Are there any recent congestion or truck parking studies available to inform a more current and comprehensive analysis? Also important, please show how community concerns related to trucking and truck parking have been addressed in this analysis (see Environmental Justice discussion beginning page 10).

### **AESTHETICS**

There are currently views of the site for pedestrians and cyclists along Burma Road looking south across the Oakland Outer Harbor, and possibly from along Maritime Street looking west, on the east of the Project site. Please describe how these views and others around the area may be impacted by the Proposed Project. As noted in the BCDC 2019 comment letter on the NOP, the SEIR should discuss whether the proposed development would have an adverse effect on a scenic vista, and whether it would conflict with Bay Plan policies governing scenic quality. The final SEIR should discuss the Project's consistency with Bay Plan Appearance, Design, and Scenic Views policies, including how the Proposed Project's design could affect views of and to the shoreline.

With this in mind, BCDC staff notes the Draft SEIR briefly describes a visual barrier around or along the Project. Greater specificity is requested to determine what that will look like and what materials it will be made of. Where will this barrier be located? Will it be visible from across the Harbor at Burma Road? Will it be visible from Maritime Street to the east of the Project? Are there any other public access opportunities or barriers that may be considered in designing or implementing the Proposed Project? The Bay Plan has policies regarding Public Access requirements that also will need to be addressed in obtaining a BCDC permit.

### **ENVIRONMENTAL JUSTICE**

Our Commission recently approved several new Bay Plan policies on Environmental Justice and Social Equity. Policy No. 2 of the new Bay Plan Environmental Justice and Social Equity chapter states "...the Commission should support, encourage, and request local governments to include environmental justice and social equity in their...discretionary approval processes...[t]he Commission should provide leadership in collaborating transparently with other agencies on issues related to environmental justice and social equity that may affect the Commission's authority or jurisdiction." Policy No. 3 says "[e]quitable, culturally-relevant community outreach and engagement should be conducted by local governments and project applicants to meaningfully involve potentially impacted communities for major projects and appropriate minor projects in underrepresented and/or identified vulnerable and/or disadvantaged communities... Evidence of how community concerns were addressed should be provided." Policy No. 4 states "[i]f a project is proposed within an underrepresented and/or identified vulnerable and/or disadvantaged community, potential disproportionate impacts should be identified in collaboration with the potentially impacted communities."

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According to the CalEnviroScreen screening tool, across a wide array of environmental and health indicators that include air, water, and soil pollution, West Oakland is one of the most impacted areas in the state. All of West Oakland census tracts are in the top 50% of pollution-burdened census tracts, with the highest census tract scored at 89%. Likewise, BCDC's Community Vulnerability Mapping tool<sup>1</sup> shows West Oakland containing concentrations of highest and high social vulnerability.

The Final SEIR should specify the culturally-relevant community outreach and engagement efforts that has or will be conducted for the Project, identify whether the Project is in a vulnerable community, and if so, should identify potential disproportionate impacts, consistent with the above-identified Bay Plan Policies.

Additionally, BCDC collaborates with partner agencies to improve social equity and environmental justice outcomes in affected communities. BCDC staff has reached out to the Bay Area Air Quality Management District (Air District) and jointly identified several overlapping areas that could advance community-based concerns raised in the recently adopted *Owning Our Air: The West Oakland Community Action Plan*:

- Operational or physical measures that control stockpile aggregates impacts on air and water resources, and community health;
- Reduced emissions through use of zero or low-emission vehicles, equipment ocean-going vessels; shore power; and no-idling requirements;
- Meaningful community consultation in the development of all operational plans and amendments to such plans

The Final SEIR should address these and other concerns identified through the meaningful community outreach and engagement process consistent with BCDC's Bay Plan Environmental Justice Policies.

### **CLOSING THOUGHTS**

Overall BCDC is concerned that some of the plans and documents that the project proponent has used for this analysis, while designed for the 2002 Oakland Army Base Redevelopment, are not specific to this Proposed Project, and may be outdated. BCDC encourages, and the Bay Plan requires as applicable, analysis based on the best available current science and technology. BCDC has a number of more recent studies and tools which may help further relevant environmental

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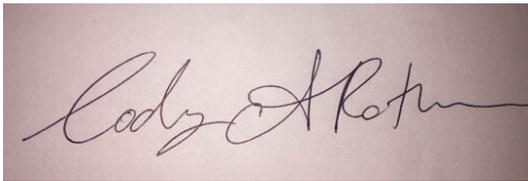
<sup>1</sup> <https://bcdc.maps.arcgis.com/apps/webappviewer/index.html?id=526ca82e85eb403489de768498f605f3>



resource impact analyses, such as the Adapting to Rising Tides Bay Area Sea Level Rise and Shoreline Analysis Maps (<http://www.adaptingtorisingtides.org/project/regional-sea-level-rise-mapping-and-shoreline-analysis/>), which include community vulnerability data, and other information relevant to Bay Plan and Seaport Plan policies not addressed in the Draft SEIR. As noted above, other considerations listed in this letter may be considered when applying for a BCDC permit, such as Public Access. The Project Proponents can find information about applying for BCDC permits on our website at <https://www.bcdc.ca.gov/permits/>. Once matched with a BCDC permit analyst, that staff person will be equipped to assist with the permitting process.

Thank you for the opportunity to comment on the Draft SEIR for the Eagle Rock Aggregates – Oakland Terminal Project. We appreciate your attention to the topics discussed above. If you have any questions or concerns regarding this matter, please do not hesitate to contact me at (415)-352-3641 or by email at [cody.achele@bcdc.ca.gov](mailto:cody.achele@bcdc.ca.gov).

Sincerely,

A photograph of a handwritten signature in black ink on a light-colored background. The signature is cursive and reads "Cody Aichele-Rothman".

CODY AICHELE-ROTHMAN  
Coastal Planner

San Francisco Bay Conservation and Development Commission  
375 Beale Street, Suite 510  
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**BAY AREA  
AIR QUALITY  
MANAGEMENT**

**DISTRICT**

**ALAMEDA COUNTY**

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(Secretary)  
Pauline Russo Cutter  
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**SOLANO COUNTY**

Erin Hannigan  
Lori Wilson

**SONOMA COUNTY**

Teresa Barrett  
Lynda Hopkins

Jack P. Broadbent  
EXECUTIVE OFFICER/APCO

Connect with the  
Bay Area Air District:



January 8, 2021

Khamly Chuop  
Associate Environmental Planner/Scientist  
Environmental Programs and Planning Division  
Port of Oakland  
530 Water Street  
Oakland, CA 94607

RE: Eagle Rock Aggregates – Oakland Terminal Project DRAFT Supplemental Environmental Impact Report (DSEIR)

Dear Ms. Chuop,

Bay Area Air Quality Management District (Air District) staff have reviewed the DRAFT Supplemental Environmental Impact Report (DSEIR) for the Eagle Rock Aggregates – Oakland Terminal Project (Project). The proposed project includes the construction and operation of an aggregates import, storage, and distribution terminal estimated to process 2,500,000 tons per year (tpy) of construction aggregates. The Project would occupy Berth 22 for vessel and barge operations and approximately 18 acres for construction aggregates stockpiling and distribution on the backlands of Berths 20, 21, and 22, all within the Outer Harbor Terminal in the Port's Oakland Army Base (OAB) Redevelopment Plan Area in Oakland.

Staff acknowledges the Project's efforts to be consistent with the Air District's West Oakland Community Action Plan (WOCAP) and 2017 Clean Air Plan, which includes a commitment to use all electric trucks for its operations between the Project site and Central Concrete in West Oakland and restricting all idling of trucks on-site. However, staff is concerned that the Project's particulate matter (PM) emissions from stockpiles, trucks, and ocean-going vessels (OGV) hinder progress in meeting the WOCAP's goals and targets of reducing residential neighborhood exposure to fine particulate matter (PM<sub>2.5</sub>) concentrations to 1.7 micrograms per cubic meter (ug/m<sup>3</sup>) by 2025. The Air District has worked for many years to improve air quality and health in West Oakland, a community identified as disproportionately impacted by poor environmental and socioeconomic conditions. Because additional exposure to fine particulate can cause serious health impacts, staff firmly recommends that the Port require the maximum feasible controls of the stockpiles. This should go beyond watering as currently proposed.

Staff also recommends the Port to incorporate additional PM<sub>2.5</sub> reduction measures such as:

- Require additional vegetative and/or physical barriers to reduce wind speeds within the facility;

- Require all stationary equipment to be completely zero-emission, to the maximum extent feasible.
- Ensure that the project applicant purchases the lowest emitting mobile equipment available, such as hybrid front loaders and electric sweepers, prior to issuance of occupancy;
- Include shorepower as feasible in the Project plans to ensure PM emissions from ship hoteling exhaust are reduced;
- Require all ocean-going vessels (OGV) calls to meet a minimum of Tier 3 emission engine standard or better by 2025 and/or use the contracted Tier 4 OGV to the maximum extent possible.
- Require in the lease agreement that the Port have dedicated barges and tugs that meet Tier 3 engine emission standards prior to start of Project operations;
- Show compliance with District PM Regulation 6, Rule 1: General Requirements and Regulation 6, Rule 6: Prohibition of Trackout; and
- Require all trucks be covered and the use of other fugitive dust controls such as watering down trucks or a trackout device before leaving the facility to reduce fugitive dust from operations.

#### **Health Risk Assessment Methodology**

Air District staff appreciate the Project's efforts to address air quality and health impacts, however staff is concerned that the Health Risk Assessment (HRA) does not disclose quantified cumulative impacts from existing sources, in addition to that of the Project, that could potentially result in a cumulatively considerable impact to nearby residents or workers on-site. Staff recommends the cumulative impacts be quantitatively evaluated to determine significance and to maintain transparency between the Project and community members.

#### **Truck Related Emissions**

The Project's transportation analysis states that 16 percent of Project trips would travel through local right-of-ways via W. Grand Avenue through West Oakland. Staff is concerned that the Project's analysis does not properly evaluate the possible increase of truck emission impacts within West Oakland and the potential increase of trucks on local roads. Staff recommends that the air quality and traffic analysis state the strategies to mitigate the truck trips and traffic impacts from the Central Concrete facility within West Oakland. The analysis should also demonstrate how it will be consistent with the City of Oakland and Port of Oakland's Truck Management Plan 2019.

The Project Description also states that impacts from inadequate parking capacity or the increase in incidences of large vehicles parking within surrounding communities are less-than-significant due to the existing 40 acres of parking within the Port. Staff is concerned this analysis is in conflict with plans to eliminate approximately 25 acres of parking at Howard Terminal within the project life, reducing parking to only 15 acres at the Roundhouse parking area. Staff is concerned that this leaves inadequate levels of truck parking which may impact the surrounding community.

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Staff recommends the Project evaluate a scenario that involves removing 25 acres of parking at Howard Terminal.

In addition, on September 23, 2020, Governor Gavin Newsom signed Executive Order N-79-20 calling for all medium-and heavy-duty vehicles in the State to be zero-emission by 2045 for all operations, where feasible, and by 2035 for drayage trucks. The Executive Order intends to protect public health from adverse air quality and greenhouse gas impacts in the transportation sector. Staff recommends that prior to the start of Project operations, all heavy-duty trucks entering or on the Project site to be model year 2014 or later with the goal to be fully zero-emission beginning in 2030.

**Greenhouse Gas (GHG) Analysis**

The Project's GHG analysis used the Air District's current thresholds to determine the Project's GHG emissions would be less than significant. The GHG thresholds in the Air District's 2017 CEQA Guidelines are based on the State's 2020 GHG targets however, those targets are now superseded by the 2030 GHG targets established in SB 32. Staff recommends the DSEIR demonstrate how the Project will be consistent with SB 32 and the California Air Resources Board's most recent draft of the AB 32 Scoping Plan.

We encourage the Port to contact Air District staff with any questions and/or to request assistance during the environmental review process. If you have any questions regarding these comments, please contact Matthew Hanson, Environmental Planner at 415-749-8733 [mhanson@baaqmd.gov](mailto:mhanson@baaqmd.gov), or Areana Flores, Environmental Planner, 415-749-4616 [aflores@baaqmd.gov](mailto:aflores@baaqmd.gov).

Sincerely,



Greg Nudd  
Deputy Air Pollution Control Officer

cc: BAAQMD Secretary John J. Bauters  
BAAQMD Director Pauline Russo Cutter  
BAAQMD Director Nate Miley  
CARB Executive Officer Richard Corey

cc: (via email)  
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Air Pollution Specialist  
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Brian Beveridge  
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West Oakland Environmental Indicators Project

December 21, 2020

Khamly Chuop  
Associate Environmental Planner/Scientist  
Port of Oakland  
Environmental Programs and Planning Division  
350 Water Street  
Oakland, California 94607  
Submitted via email: [kchuop@portoakland.com](mailto:kchuop@portoakland.com)

Dear Khamly Chuop:

Thank you for providing the California Air Resources Board (CARB) with the opportunity to comment on the Eagle Rock Aggregates Oakland Terminal Project (Project) Draft Supplemental Environmental Impact Report (DSEIR), State Clearinghouse No. 2001082058. The applicant, Eagle Rock Aggregates (ERA), plans to move its current Richmond Marine Terminal activities to the Port of Oakland (Port), which is the lead agency for California Environmental Quality Act (CEQA) purposes. The Project would allow for the importation, storage, and distribution of 2,500,000 tons per year of bulk construction aggregates at Berths 20, 21, and 22 of the Port. Once in operation, the Project would result in up to 48 ocean-going calls per year and up to 375 daily haul truck trips along local roadways. Although the Project would result in a decrease of nine barge trips per year (from 85 to 76 trips) as compared to existing conditions, the total annual travel distance for these barges would increase by approximately 146 miles.

Freight facilities, like the one proposed in the Project, can result in high volumes of heavy-duty diesel trucks, ocean-going vessels, tug boats, and operation of on-site equipment (e.g., forklifts and yard tractors) that emit toxic diesel emissions, and contribute to regional air pollution and global climate change.<sup>1</sup>

Governor Gavin Newsom signed Executive Order N-79-20 on September 23, 2020. The executive order states: "It shall be a goal of the State that 100 percent of in-state sales of new passenger cars and trucks will be zero-emission by 2035. It shall be a further goal of the State that 100 percent of medium- and heavy-duty vehicles in the State be zero-emission by 2045 for all operations where feasible and by 2035 for drayage trucks. It shall be further a goal of the State to transition to 100 percent zero-emission off-road vehicles and equipment by 2035 where feasible." The executive order further directs the development of regulations to help meet these goals. To

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<sup>1</sup> With regard to greenhouse gas emissions from this project, CARB has been clear that local governments and project proponents have a responsibility to properly mitigate these impacts. CARB's guidance, set out in detail in the Scoping Plan issued in 2017, makes clear that in CARB's expert view, local mitigation is critical to achieving climate goals and reducing greenhouse gases below levels of significance.

ensure that lead agencies, like the Port, stay in step with evolving scientific knowledge to protect public health from adverse air quality and greenhouse gas impacts from the transportation sector, which serves as the basis of the Governor's Executive Order N-79-20, CARB urges the Port to require all marine vessels, trucks, locomotives, and off-road vehicles and cargo handling equipment servicing the Project to transition to zero-emission prior to or by 2035.

## **I. The Project Would Increase Exposure to Air Pollution in Disadvantaged Communities**

The Project, if approved, will increase freight haul truck traffic along existing roadways over baseline conditions. This increase in traffic will expose nearby disadvantaged communities to further elevated levels of air pollution. Addressing the disproportionate impacts that air pollution has on disadvantaged communities is a pressing concern across the State, as evidenced by statutory requirements compelling California's public agencies to target these communities for clean air investment, pollution mitigation, and environmental regulation. The following three pieces of legislation need to be considered and included in the Final Supplemental Environmental Impact Report (FSEIR) when developing a project like this in disadvantaged communities:

### **a. Senate Bill 535 (De León, 2012)**

Senate Bill 535 (De León, Chapter 830, 2012)<sup>2</sup> recognizes the potential vulnerability of low-income and disadvantaged communities to poor air quality and requires funds to be spent to benefit disadvantaged communities. The California Environmental Protection Agency (CalEPA) is charged with the duty to identify disadvantaged communities. CalEPA bases its identification of these communities on geographic, socioeconomic, public health, and environmental hazard criteria (Health and Safety Code, section 39711, subsection (a)). In this capacity, CalEPA currently defines a disadvantaged community, from an environmental hazard and socioeconomic standpoint, as a community that scores within the top 25 percent of the census tracts, as analyzed by the California Communities Environmental Health Screening Tool Version 3.0 (CalEnviroScreen).<sup>3</sup> The census tracts containing the residences closest to the Project site score well within the top 25 percent for Pollution Burden,<sup>4</sup> and are considered disadvantaged communities; therefore, CARB urges the Port to ensure that the Project does not further adversely impact neighboring disadvantaged communities.

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<sup>2</sup> Senate Bill 535, De León, K., Chapter 800, Statutes of 2012, modified the California Health and Safety Code, adding § 39711, § 39713, § 39715, § 39721 and § 39723.

<sup>3</sup> "CalEnviroScreen 3.0." Oehha.ca.gov, California Office of Environmental Health Hazard Assessment, June 2018, <https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-30>.

<sup>4</sup> Pollution Burden represents the potential exposures to pollutants and the adverse environmental conditions caused by pollution.

**b. Senate Bill 1000 (Leyva, 2016)**

Senate Bill 1000 (SB 1000) (Leyva, Chapter 587, Statutes of 2016)<sup>5</sup> amended California's Planning and Zoning Law. SB 1000 requires local governments that have identified disadvantaged communities to incorporate the addition of an environmental justice element into their general plans upon the adoption or next revision of two or more elements concurrently on or after January 1, 2018. SB 1000 requires environmental justice elements to identify objectives and policies to reduce unique or compounded health risks in disadvantaged communities. Generally, environmental justice elements will include policies to reduce the community's exposure to pollution through air quality improvement. SB 1000 affirms the need to integrate environmental justice principles into the planning process to prioritize improvements and programs that address the needs of disadvantaged communities.

**c. Assembly Bill 617 (Garcia, 2017)**

The state of California has emphasized protecting local communities from the harmful effects of air pollution through the passage of Assembly Bill 617 (AB 617) (Garcia, Chapter 136, Statutes of 2017).<sup>6</sup> AB 617 requires new community-focused and community-driven action to reduce air pollution and improve public health in communities that experience disproportionate burdens from exposure to air pollutants. In response to AB 617, CARB established the Community Air Protection Program with the goal of reducing exposure in communities heavily impacted by air pollution.

ERA plans to move its current Richmond Marine Terminal activities to the Port of Oakland. However, ERA may repurpose the Richmond Marine Terminal to serve other bulk material needs in the future. If this were to occur, the Project would increase air pollutant emissions within the West Oakland Community and activities at ERA's repurposed Richmond Marine Terminal would then increase air pollutant emissions within the Richmond-San Pablo Community. These communities are 2 of 13 communities statewide chosen by CARB thus far for inclusion in the Community Air Protection Program.<sup>7</sup> These two communities were selected for both community air monitoring and the development of an emissions reduction program due to their high cumulative exposure burden, the presence of a significant number of sensitive populations (children, elderly, and individuals with pre-existing conditions), and the socioeconomic challenges experienced by the residents. While the Richmond-San Pablo Community is just beginning its process under AB 617, CARB approved the West Oakland Community's emissions reduction program in December 2019, which included several measures associated with reducing emissions from Port operations. By moving

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<sup>5</sup> Senate Bill 1000, Leyva, S., Chapter 587, Statutes of 2016, amended the California Health and Safety Code, § 65302.

<sup>6</sup> Assembly Bill 617, Garcia, C., Chapter 136, Statutes of 2017, modified the California Health and Safety Code, amending § 40920.6, § 42400, and § 42402, and adding § 39607.1, § 40920.8, § 42411, § 42705.5, and § 44391.2.

<sup>7</sup> CARB, Community Air Protection Program Selection Process, <https://ww2.arb.ca.gov/capp-selection>.

ERA's operations from the Richmond-San Pablo Community to the West Oakland Community, CARB is concerned the Project would contribute to air quality and public health impacts within the two disadvantaged communities.

The CalEnviroScreen scores for both the Richmond-San Pablo Community and the West Oakland Community are in the top 15 percent, indicating that the area is home to some of the most vulnerable neighborhoods in the State. The air pollution levels in both of these communities routinely exceed State and federal air quality standards. Health-harming emissions, including particulate matter (PM), toxic air contaminants, and diesel particulate matter (diesel PM) generated during the construction and operation of the Project may further negatively impact nearby disadvantaged communities, which are already disproportionately impacted by air pollution from existing rail and other freight operations, as well as stationary sources of air pollution. CARB urges the Port to coordinate and discuss the Project with steering committees representing the Richmond-San Pablo Community and the West Oakland Community prior to the approval of the FSEIR to ensure that the Project will be consistent with the West Oakland community emissions reduction program and the development of the Richmond-San Pablo Community emission reduction program.

AB 617 required CARB and the Bay Area Air Quality Management District (BAAQMD) to create a highly-resolved inventory of air pollution sources within the Richmond-San Pablo Community to the West Oakland Community. CARB can share these community emissions inventories with the Port to aid in the FSEIR cumulative impact analysis.

## **II. If the Richmond Marine Terminal is later used to Support the Project Operations Those Air Pollutants Should be Accounted for in the DSEIR and associated HRA**

According to Chapter 2 (Project Description) of the DSEIR, ERA plans to move its current operations from the Richmond Marine Terminal to the proposed Project site; However, ERA conducts other operations at the Richmond Marine Terminal, and those operations, and their associated air pollution emissions, will remain unchanged. The DSEIR further states that ERA may repurpose Richmond Marine Terminal to serve other bulk material needs. It is unclear in the DSEIR what remaining operations will continue at the Richmond Marine Terminal or how ERA's operations in Richmond will change in the future or be related to the Project. The DSEIR did not specify which air pollutant emission sources (e.g., haul trucks, marine vessels, onsite equipment, etc.) will remain in the Richmond Marine Terminal or account for these sources in the Project's air quality impact analysis or Health Risk Assessment (HRA).

CEQA requires a lead agency to evaluate the environmental impacts from the project, as a whole. To the extent that a future project is a reasonably foreseeable consequence of the initial project and the future project or action is of such significance that it will likely change the scope or nature of the initial project or its adverse impacts

on the environment, then the DSEIR must include an analysis of the environmental effects of such a future project or action. (*Laurel Heights Improvement Association v. Regents of University of California* (1988) 47 Cal.3d 376, 396.) As previously discussed under Section I of this letter, the Richmond Marine Terminal is located within the Richmond-San Pablo Community, which has been designated as a disadvantaged community under AB 617. The Project proposes to move a large construction aggregate terminal from one disadvantaged community to another while maintaining all other on-going operations in Richmond. If the Richmond Marine Terminal will later be used to support Project-related activities, CARB is concerned that the Project will result in air quality and public health impacts in two disadvantaged communities rather than the one already evaluated in the DSEIR. As required by CEQA, CARB urges the Port to include a detailed project description of ERA's operations that will continue at the Richmond Marine Terminal in the FSEIR if they can be construed as a reasonably foreseeable consequence of the Project, and include any indirect air pollutant emission sources that may result from those operations in the FSEIR's air quality impact analysis and HRA.

### **III. The Port and Applicant Should do More to Reduce the Emissions of Fugitive Dust from Aggregates Stored Within the Project Site and Transported Along Local Roadways**

According to Chapter 2 (Project Description) of the DSEIR, the construction aggregate will be washed prior to being delivered to the Project site, and the stored construction aggregate piles would be sprayed with up to 10,000 gallons of water per day to maintain a moisture content ranging from 1 to 8 percent. To further reduce the emissions of on-site and off-site fugitive dust, CARB urges the Port to include a design measure in the FSEIR requiring all construction aggregate piles to be completely covered and all trucks transporting construction aggregate to be sprayed and covered prior to exiting the Project site.

### **IV. The Project's Air Quality Mitigation Measures Improperly Defer Mitigation**

The DSEIR includes Mitigation Measures ERA AQ-1 and AQ-2 to reduce the Project's significant impact on air quality. Mitigation Measure ERA AQ-1 would require the ERA to prepare and implement an Operations Air Quality Plan (Plan) and Mitigation Measure ERA AQ-2 would require all off-road construction equipment used during Project construction to be equipped with Tier 4 or equivalent engines. Once prepared, ERA will submit the Plan to the Port prior to the start of the Project's operations. According to Mitigation Measure ERA AQ-1, the Plan would include, at minimum, the purchase and use of hybrid-electric front end loaders and electric sweepers, and require the ERA to provide the Port with an annual written inventory of all equipment used within the Project site.

Mitigation Measures ERA AQ-1 and AQ-2, as written, improperly defer mitigation in violation of CEQA. Although the Plan required under Mitigation Measure ERA AQ-1 would include measures that could reduce the Project's on-site operational emissions, these measures are not enforceable and do not provide adequate detail to reduce the Project's significant impact on air quality. CEQA prohibits the deferral of mitigation measures to some future time. (Title 14 California Code of Regulations (CCR) § 15126.4(a)(1)(B).) "The specific details of a mitigation measure; however, may be developed after a project's approval, when it is impractical or infeasible to include those details during the project's environmental review, provided that the agency (1) commits itself to the mitigation, (2) adopts specific performance standards the mitigation will achieve, and (3) identifies the types of potential action(s) that can feasibly achieve that performance standard that will be considered, analyzed, and potentially incorporated in the mitigation measure." (Ibid.)

Mitigation Measure ERA AQ-1 asks the applicant to prepare an "Operations Air Quality Plan" (Plan), yet the mitigation measure does not provide a performance standard that the Plan will achieve. For instance, Mitigation Measure ERA AQ-1 does not provide the level of detail to ascertain how many "hybrid-electric front-end loaders with engines conforming to U.S. EPA's Tier 4 Final (Tier 4F) emissions standards" will be purchased and when they have to be purchased to achieve the desired mitigation of air quality impacts. Rather, this requirement is open-ended and could entail the applicant simply purchasing the front-end loaders several years after Project approval, resulting in unmitigated adverse environmental effects on nearby disadvantaged communities' air quality. Finally, Mitigation Measure ERA AQ-1 is unenforceable because it lacks specific targets that the applicant must meet on an annual basis to comply with the requirements of the mitigation measure. Similarly, Mitigation Measure ERA AQ-2 defers the mitigation to a future time in violation of CEQA because it does not provide a performance standard for determining when the "possible exception" to the Tier 4 emission requirement applies to certain equipment. Furthermore, Mitigation Measure ERA AQ-2 leaves it up to the applicant to decide when certain types of equipment are unavailable, which makes the mitigation measure virtually unenforceable since there is no objective standard for determining what constitutes unavailability.

CARB urges the Port to not defer mitigation that can be done in the DSEIR. Where several measures are available to mitigate an impact, CEQA requires each measure to be discussed in the EIR (see title 14 CCR § 15126.4(a)(1)(B)). Furthermore, CEQA requires that all feasible mitigation measures be incorporated into the EIR before a lead agency can determine if an impact is still significant and unavoidable (see California Public Resources Code § 21081; title 14 CCR § § 15092, 15126.2(b)). To meet these requirements, CARB urges the Port and ERA to include the following mitigation measures in the FSEIR.

- Prior to the start of Project operations, require all service equipment used within the Project site to be completely zero emission. This equipment is widely available. ERA shall provide the Port with a detailed list of on-site equipment that has been replaced with zero-emission equipment.
- Prior to the start of Project operations, include contractual language with truck operators serving the Project site that requires the following: all heavy-duty trucks entering or on the Project site to be model year 2014 or later; require an enforceable schedule, with annual reporting requirements, that expedites the transition of all heavy-duty trucks entering or on the Project site to zero-emission vehicles, with the goal to be fully zero-emission beginning in 2030.
- Prior to the start of Project operations, require all tug and ocean-going vessels supporting Project operations to be equipped with Tier 4 or cleaner engines. ERA shall provide the Port with a detailed list of tug and ocean-going vessels that have been replaced or retrofitted to meet Tier 4 or cleaner emission standards.

## **V. Conclusion**

CARB is concerned about the: Project's potential public health impacts, lack of mitigation measures presented in the DSEIR, omission of statutory considerations that address the disproportionate impacts of air pollution on disadvantaged communities, and absence of information related to public outreach. The Project would result in the development of a large construction aggregate terminal near the West Oakland Community while maintaining their existing operations at the Richmond Marine Terminal located near the Richmond-San Pablo Community. Both of these communities have been designated as disadvantaged communities under AB 617. The Port should include in the FSEIR a detailed project description of ERA's operations that would continue at the Richmond Marine Terminal and include any Project-related air pollutant emission sources resulting from those operations in the FSEIR. The Port should also include a design measure in the FSEIR that requires all on-site aggregate piles to be covered, and all trucks transporting construction aggregate to be sprayed and covered prior to exiting the Project site. Lastly, the FEIR should include all feasible mitigation measures listed under Section IV, above, to reduce the Project's significant and unavoidable impact on air quality.

Given the breadth and scope of projects subject to CEQA review throughout California that have air quality and greenhouse gas impacts coupled with CARB's limited staff resources to substantively respond to all issues associated with a project, CARB must prioritize its substantive comments here based on staff time, resources, and its assessment of impacts. CARB's deliberate decision to substantively comment on some issues does not constitute an admission or concession that it substantively agrees with the lead agency's findings and conclusions on any issues on which CARB does not substantively submit comments.

Khamly Chuop  
December 21, 2020  
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CARB appreciates the opportunity to comment on the DSEIR for the Project and can provide assistance on zero-emission technologies and emission reduction strategies, as needed. If you have questions, please contact Stanley Armstrong, Air Pollution Specialist, at [stanley.armstrong@arb.ca.gov](mailto:stanley.armstrong@arb.ca.gov).

Sincerely,

A handwritten signature in blue ink, appearing to read "Heather Arias". The signature is fluid and cursive, with the first name being more prominent.

Heather Arias, Chief  
Transportation and Toxics Division

cc: See next page.

cc: (via email)

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Continued next page.

Khamly Chuop  
December 21, 2020  
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cc: (continued)

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December 17, 2020

Khamly Chuop, Associate Environmental Planner/Scientist  
Port of Oakland, Environmental Programs and Planning  
530 Water Street  
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Re: Notice of Availability of a Draft Supplemental Environmental Impact Report-  
Eagle Rock Aggregates Oakland Terminal Project (State Clearinghouse No.  
2001082058), Oakland

Dear Ms. Chuop:

East Bay Municipal Utility District (EBMUD) appreciates the opportunity to comment on the Draft Supplemental Environmental Impact Report (DSEIR) for the submerged land and 18 acres of backland located in the water area immediately adjacent to Berth 22 and behind Berths 20, 21, 22 in the City of Oakland (City). EBMUD has the following comments.

### **WATER SERVICE**

EBMUD's Central Pressure Zone, with a service elevation between 0 and 100 feet, will serve the proposed development. The property currently has water service. Separate structures on a single parcel require separate water services. If additional water service is needed, the project sponsor should contact EBMUD's New Business Office and request a water service estimate to determine costs and conditions for providing additional water service to the existing parcel. Engineering and installation of water services require substantial lead time, which should be provided for in the project sponsor's development schedule.

### **WASTEWATER SERVICE**

EBMUD's Main Wastewater Treatment Plant (MWWTP) and interceptor system are anticipated to have adequate dry weather capacity to accommodate the proposed wastewater flows from this project and to treat such flows provided that the wastewater generated by the project meets the requirements of the EBMUD Wastewater Control Ordinance. However, wet weather flows are a concern. The East Bay regional wastewater collection system experiences exceptionally high peak flows during storms due to excessive infiltration and inflow (I/I) that enters the system through cracks and misconnections in both public and private sewer lines. EBMUD has historically operated three Wet Weather Facilities (WWFs) to provide primary treatment and disinfection for peak wet weather flows that exceed the treatment capacity of the MWWTP. Due to reinterpretation of applicable law, EBMUD's National Pollutant Discharge Elimination

System (NPDES) permit now prohibits discharges from EBMUD's WWFs. Additionally, the seven wastewater collection system agencies that discharge to the EBMUD wastewater interceptor system ("Satellite Agencies") hold NPDES permits that prohibit them from causing or contributing to WWF discharges. These NPDES permits have removed the regulatory coverage the East Bay wastewater agencies once relied upon to manage peak wet weather flows.

A federal consent decree, negotiated among EBMUD, the Satellite Agencies, the Environmental Protection Agency (EPA), the State Water Resources Control Board (SWRCB), and the Regional Water Quality Control Board (RWQCB), requires EBMUD and the Satellite Agencies to eliminate WWF discharges by 2036. To meet this requirement, actions will need to be taken over time to reduce I/I in the system. The consent decree requires EBMUD to continue implementation of its Regional Private Sewer Lateral Ordinance ([www.eastbaypsl.com](http://www.eastbaypsl.com)), construct various improvements to its interceptor system, and identify key areas of inflow and rapid infiltration over a 22-year period. Over the same time period, the consent decree requires the Satellite Agencies to perform I/I reduction work including sewer main rehabilitation and elimination of inflow sources. EBMUD and the Satellite Agencies must jointly demonstrate at specified intervals that this work has resulted in a sufficient, pre-determined level of reduction in WWF discharges. If sufficient I/I reductions are not achieved, additional investment into the region's wastewater infrastructure would be required, which may result in significant financial implications for East Bay residents.

To ensure that the project contributes to these legally required I/I reductions, the lead agency should require the project sponsor to comply with EBMUD's Regional Private Sewer Lateral Ordinance. Additionally, it would be prudent for the lead agency to require the following mitigation measures for the project: (1) replace or rehabilitate any existing sanitary sewer collection systems, including sewer lateral lines to ensure that such systems and lines are free from defects or, alternatively, disconnected from the sanitary sewer system, and (2) ensure any new wastewater collection systems, including sewer lateral lines, for the project are constructed to prevent I/I to the maximum extent feasible while meeting all requirements contained in the Regional Private Sewer Lateral Ordinance and applicable municipal codes or Satellite Agency ordinances.

## **WATER RECYCLING**

EBMUD's Policy 9.05 requires that customers use non-potable water, including recycled water, for non-domestic purposes when it is of adequate quality and quantity, available at reasonable cost, not detrimental to public health and not injurious to plant, fish and wildlife to offset demand on EBMUD's limited potable water supply. Appropriate recycled water uses include landscape irrigation, commercial and industrial process uses, toilet and urinal flushing in non-residential buildings, and other applications.

The proposed project location lies in the vicinity of EBMUD's East Bayshore Recycled Water Project. EBMUD recommends that the lead agency and the project sponsor coordinate closely with EBMUD during the planning of the project to further explore the options and requirements relating to recycled water use.

### **WATER CONSERVATION**

The project presents an opportunity to incorporate water conservation measures. EBMUD requests that the lead agency include in its conditions of approval a requirement that the project sponsor comply with Assembly Bill 325, "Model Water Efficient Landscape Ordinance," (Division 2, Title 23, California Code of Regulations, Chapter 2.7, Sections 490 through 495). The project sponsor should be aware that Section 31 of EBMUD's Water Service Regulations requires that water service shall not be furnished for new or expanded service unless all the applicable water-efficiency measures described in the regulation are installed at the project sponsor's expense.

If you have any questions concerning this response, please contact Timothy R. McGowan, Senior Civil Engineer, Major Facilities Planning Section at (510) 287-1981.

Sincerely,



David J. Rehnstrom  
Manager of Water Distribution Planning

DJR:VDC:djr  
sb20\_262

## Khamly Chuop

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**From:** Chung-Huynh, Elizabeth@DTSC <Elizabeth.Chung-Huynh@dtsc.ca.gov>  
**Sent:** Thursday, December 17, 2020 12:54 PM  
**To:** Khamly Chuop  
**Cc:** Karachewski, John@DTSC  
**Subject:** [EXTERNAL] Eagle Rock Aggregates Oakland, California

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Hello Khamly,

I am representing the Department of Toxic Substances Control to review the CEQA document for the Eagle Rock Aggregates in Oakland, California.

The documents that I have reviewed are very limited and I had some questions and suggestions.

I google searched Eagle Rock Aggregates Inc, and the pictures shows that they have enclosed building where the operations happen.

It is not clear if their future operations will be indoors or outdoors.

DTSC suggests that Community Air Monitoring Program (CAMP) should be considered while in construction and in operations, the CAMP should not be limited to monitoring wind direction, setting an exposure limit to dust for the community, and have a plan in case there is odor exposure while excavating the area.

I don't think this next issue is related to this CEQA review; however, all the imported construction materials, specially sand, should be analyzed for any Chemicals of Potential Contamination according to the historical use of the site where the materials are being imported.

Thank you,

Elizabeth Chung, M.S.

Project Manager

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