

CLOSED SESSION AGENDA REPORT

Potential Litigation Under *California Government Code* Section 54956.9 [Two (2) Matters].

<u>MEETING DATE:</u>	12/2/2021
<u>SUBMITTED BY:</u>	Michele Heffes, Port Attorney
<u>APPROVED BY:</u>	Michele Heffes, Port Attorney
<u>ACTION TYPE:</u>	None

In light of the California Court of Appeals' recent decision in *Lori Fowler, et al. v. City of Lafayette*, filed February 10, 2020, the Port Attorney's Office is attaching to this Closed Session Agenda Report ("Agenda Report") as Exhibit "A" nine letters the Port of Oakland ("Port") has received regarding The Oakland Athletics' proposed development project at Howard Terminal. These letters, together with prior public testimony before both the Board of Port Commissioners (the "Board") and the Oakland City Council, provide the basis for going into closed session for the first matter under the Agenda Report, pursuant to *California Government Code* Section 54956.9(d)(2).

Additionally, for the second matter under the Agenda Report, and in light of the *Lori Fowler, et al. v. City of Lafayette* decision, the Port Attorney's Office is attaching to this Agenda Report as Exhibit "B" nine letters, emails, and documents (collectively, "comment letters") the Port has received regarding the Draft Supplemental Environmental Impact Report ("DSEIR") prepared for the proposed Eagle Rock bulk terminal at the Outer Harbor Terminal of the Seaport. Included among these comment letters, is a letter submitted by the California Department of Justice ("DOJ") on January 15, 2021, one week after the close of the public comment period, which is similar to the letter submitted by the DOJ on the Notice of Preparation for the DSEIR, which was also submitted after the deadline. These comment letters, as well as public comment received during the public meeting on the DSEIR, provide the basis for going into closed session for this matter, pursuant to *California Government Code* Section 54956.9(d)(2).