Port of Oakland

Eagle Rock Aggregates Oakland Terminal Project



Final Supplemental Environmental Impact Report

Volume 3 of 3 – Comments and Responses to Comments on the

Draft Supplemental Environmental Impact Report

SCH #2001082058

PORT OF OAKLAND

November 2021

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Cover: CSL Tacoma, a self-discharging ocean-going vessel entering the San Francisco Bay (having passed the Golden Gate Bridge). *Cover image courtesy of CSL Americas.*

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Acronyms and Abbreviations

µg/m^3	micrograms per cubic meter
2020 and Beyond Plan	*Seaport Air Quality 2020 and Beyond Plan: the Pathway to Zero Emissions*
A	
AB	Assembly Bill
ACDEH	Alameda County Department of Environmental Health
AMS	ancillary maritime services
AP	Air Pollutant
ATCM	Airborne Toxic Control Measure
B	
BAAQMD	Bay Area Air Quality Management District
BACT	best available control technology
Bay	San Francisco Bay
Bay Area	San Francisco Bay Area
Bay Plan	San Francisco Bay Plan
BCDC	San Francisco Bay Conservation and Development Commission
BMP	best management practices
C	
CalEEMod	California Emission Estimator Model
CalEPA	California Environmental Protection Agency
Cal/OSHA	California Occupational Safety and Health Administration
CAMP	Community Air Monitoring Program
CAP	Clean Air Plan
CARB	California Air Resources Board
CASQA	California Stormwater Quality Association
CCR	California Code of Regulations
CEQA	California Environmental Quality Act
CERP	Community Emissions Reduction Program
CH_4	methane
City	City of Oakland
CLS	Creative Logistic Solutions
CO	carbon monoxide
CO_2	carbon dioxide
D	
Depot	Truck Parking and Container Depot located at the Former Union Pacific Roundhouse

DoCCS	Dockside Catalytic Control System
DPM	diesel particulate matter
DSEIR	Draft Supplemental Environmental Impact Report
DTSC	California Department of Toxic Substance Control
E	
EBMUD	East Bay Municipal Utility District
EIR	environmental impact report
EMFAC2017	CARB emission estimation tools
ERA or Applicant	Eagle Rock Aggregates
ERC	Emission Reduction Credit
F	
FSEIR	Final Supplemental Environmental Impact Report
G	
g	grams
GHG	greenhouse gas
H	
HDS	Hydrodynamic Separator System
HHDT	heavy-heavy duty truck
HI	hazard index
HMBP	Hazardous Materials Business Plan
HRA	Health Risk Assessment
HVIP	California Hybrid and Zero-Emission Truck and Bus Voucher Incentive Project
I	
IGP	Industrial General Permit
I-880	Interstate 880
L	
lb	pounds
IGP	Industrial General Permit
LOS	Level of Service
M	
MAPLA	Maritime and Aviation Project Labor Agreement
MAQIP	Maritime Air Quality Improvement Plan
MEI	maximum exposed individual
MEIR	maximum exposed individual resident
MEIW	maximum exposed individual worker
mg/kg	milligrams per kilogram

MHHW	Mean Higher High Water
MMRP	Mitigation Monitoring and Reporting Program
MT	metric tons
MT CO_2e	metric tons of carbon monoxide equivalent
MWWTP	Main Wastewater Treatment Plant

N

NTAP	Near-Term Action Plan
N_2O	nitrous oxide
NOA	Notice of Availability
NOD	Notice of Determination
NOP	Notice of Preparation
NOx	nitrogen oxide

O

OAB	Oakland Army Base
OEHHA	Office of Environmental Health Hazard Assessment
OGV	ocean-going vessel
OPC	California Ocean Protection Council Science Advisory Team Working Group
OSHA	Occupational Safety and Health Administration

P

PM	particulate matter
PM10	particulate matter with a diameter less than 10 microns
PM2.5	particulate matter with a diameter less than 2.5 microns
Port	Port of Oakland
Proposed Project	Eagle Rock Aggregates Oakland Terminal Project
PS&E	Plans, Specifications, and Estimates

R

REL	Reference Exposure Level
ROG	reactive organic gas

S

SB	Senate Bill
SCA	Standard Condition of Approval
SCR	selective catalytic reduction
SEIR	Supplemental Environmental Impact Report
SFBAAB	San Francisco Bay Area Air Basin
SIL	significant impact level
SMAQMD	Sacramento Metropolitan Air Quality Management District
SOx	sulfur oxide

SRD	Social Responsibility Division
SSG	Seaport Stakeholder Group
SSMP	Sewer System Management Plan
SWPPP	Stormwater Pollution Prevention Plan
SWRCB	(California) State Water Resources Control Board
T	
TAC	toxic air contaminant
TAPE	Washington Department of Ecology Technology Assessment Protocol – Ecology
TBACT	toxics best available control technology
TEU	twenty-foot equivalent unit
TMP	West Oakland Truck Management Plan
tpy	tons per year
U	
USEPA	United States Environmental Protection Agency
W	
WOEIP	West Oakland Environmental Indicators Project
WOCAP	West Oakland Community Action Plan
WOJRC	West Oakland Job Resource Center
WRAP	Western Regional Air Partnership

Chapter 1
INTRODUCTION

The Port of Oakland (Port) has prepared this document to respond to comments provided on the Draft Supplemental Environmental Impact Report (DSEIR) for the Eagle Rock Aggregates (ERA; Applicant) Oakland Terminal Project (Proposed Project), and to identify changes to the text of the DSEIR.

This document has been prepared in compliance with the California Environmental Quality Act (CEQA) of 1970 (as amended) and the CEQA Guidelines (14 California Code of Regulations [CCR] 15000 et seq.). This document, together with Volumes 1: SEIR and 2: SEIR Appendices, constitute the Final Supplemental Environmental Impact Report (FSEIR) for the Proposed Project.

1.1 Format and Organization of this Document

This "Comments and Responses to Comments" (Volume 3 of the FSEIR) document contains the following components:

Chapter 1, *Introduction*. This chapter describes the organization of the document and its preparation. This chapter also contains information on the public review period for the DSEIR and the FSEIR certification process.

Chapter 2, *Master Responses*. This chapter contains the master responses prepared in response to comments received on the DSEIR. As described in Section 1.4, eight comment letters were received during the public review period and one comment letter was received after the close of the public review period, for a total of nine comment letters received on the DSEIR. Many of the letters received included similar comments. As such, master responses were prepared to address similar comments made by multiple commenters and provide a more holistic response to comments. As a practical matter, master responses also provide a single location for a response and assists in avoiding repetitive responses.

Chapter 3, *Individual Responses to Comments.* This chapter contains a list of the persons, agencies, and organizations that provided unique comment letters on the DSEIR and responses to the individual comments contained in these letters. Chapter 3 also contains comments received during public meetings on the DSEIR. In many cases, where appropriate, responses to individual comments within comment letters refer the reader to the applicable master response(s), which are contained in Chapter 2.

Chapter 4, *Revisions to the DSEIR.* This chapter describes revisions to the DSEIR. Revisions to the DSEIR were made in response to comments received during and after the public review period or were initiated by the Port.

Chapter 5, *Report Preparation.* This chapter lists the individuals who assisted in the preparation of Volume 3, *Comments and Responses to Comments*, of the FSEIR.

Chapter 6, *References*. This chapter lists the references cited to in Volume 3, *Comments and Responses to Comments*, of the FSEIR.

Note that the Mitigation Monitoring and Reporting Program (MMRP) for the Proposed Project has been added as Appendix H in Volume 2 of the FSEIR.

1.2 Public Review of the DSEIR

The initial 45-day public review period for the DSEIR began on November 6, 2020, with the Port's posting of the Notice of Availability (NOA) on its website (shown below Table 1-1) along with the electronic DSEIR files. In addition, the Port distributed the NOA and the link to electronic files to entities that provided comments on the Project's Notice of Preparation (NOP); this distribution included responsible agencies and other stakeholders. The Port filed the Notice of Completion (NOC) and the DSEIR files with the State Clearinghouse on November 12, 2020, which initiated the agency review and comment period. The public review period for the DSEIR was extended twice, officially concluding on January 8, 2021, for a total of 63 days. The revised NOA is posted on Port's website.

1.3 Public Meetings on the DSEIR

During the public review period for the DSEIR, the Port held two public meetings, as indicated in Table 1-1 below. Due to the COVID-19 pandemic, the meetings were conducted virtually.

Table 1-1. Public Meetings Information

Date	Location	Time
December 9, 2020 Wednesday	Virtual Meeting #1 (via Zoom)	10:00 a.m. – 11:00 a.m.
December 9, 2020 Wednesday	Virtual Meeting #2 (via Zoom)	6:00 p.m. – 7:00 p.m.

The public meetings each featured the same content, including a brief presentation followed by a question-and-answer session, followed by receiving comments on the DSEIR. A copy of the meeting presentation is available on the Port's website and a link to the public meeting recordings are also available from the Port's website:

https://www.portofoakland.com/community/environmental-stewardship/publications/

1.4 Comments Received During the Public Review Period

The Port received eight (8) comment letters during the public review period for the DSEIR and one (1) comment letter after the public review period for a total of nine (9) comment letters received.

Letters were submitted by state and local agencies, and individual members of the public. Refer to Chapter 3, *Individual Responses to Comments*, for copies of the letters received and the lists of persons, agencies, and organizations that submitted comment letters.

To provide a full and transparent accounting of the comments received during and after the public review period and the Port's responses to those comments, all comments are included and responded to in this FSEIR, regardless of whether or not they pertain specifically to the DSEIR analysis and whether or not the comment was received within the specific public comment period.

1.5 Additional Stakeholder Engagement during the Public Comment Period

In addition to the two public meetings on the DSEIR during the public comment period, the Port met with the West Oakland Environmental Indicators Project (WOEIP) on December 21, 2020, to provide an update on the Port lease negotiations with the Applicant and to hear feedback about the Project on topics that may be outside the scope of the CEQA process. The Port also met with the Bay Area Air Quality Management District (BAAQMD) on December 7, 2020 and January 13, 2021, to answer BAAQMD's questions on the Proposed Project, DSEIR analysis, and the Proposed Project BAAQMD permit application submitted.

1.6 Preparation of the FSEIR

Preparation of the FSEIR involved preparing responses to comments received during and after the public review period for the DSEIR and revising the DSEIR text in response to comments. Comments were responded to through master responses (for common recurring topics), through individual responses to comments, or through a combination of the two. Unique comment letters were assigned a letter code (e.g., A, B, etc.) and individual comments within the unique comment letters were bracketed and numbered (e.g., A-1, A-2, etc.). Copies of the unique comment letters and associated responses to comments are provided in Chapter 3 of this document. Responses to comments received during the public meetings are addressed in Section 3.3 of Chapter 3.

The revisions to the DSEIR text are shown in Volume 1 of the FSEIR, with substantive changes from the DSEIR shown in underline/strikeout, and described in Chapter 4, *Revisions to the DSEIR*.

1.7 FSEIR Review and Certification

The FSEIR will be posted on the Port's website and all parties that submitted comments on the DSEIR (including public agencies) will be notified of the FSEIR's availability at least 10 days before its certification. Following the close of the 10-day public agency review period, the Board of Port Commissioners will consider the SEIR, staff recommendations, and public testimony, and decide whether to certify the SEIR and approve or deny the Proposed Project. If the Board of Port Commissioners chooses to certify the SEIR and approve the Proposed Project, the Port will file a Notice of Determination (NOD) with the Alameda County Clerk. Because the Proposed Project would result in significant and unavoidable impacts, a statement of overriding considerations would be needed as part of the record of project approval (14 CCR 15093[c]).

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Chapter 2
MASTER RESPONSES

This chapter contains the master responses prepared in response to comments submitted on the Draft Supplemental Environmental Impact Report (DSEIR). As described in Chapter 1, *Introduction,* several comments and concerns were raised repeatedly in comment letters, and it was determined that preparing master responses would be the most appropriate and efficient means of responding to these repeated comments and concerns. Each master response first summarizes the issues raised in comments and then provides a comprehensive response.

Master Response 1: Use of Supplemental EIR

This master response addresses comments regarding the appropriateness of a supplemental environmental impact report (SEIR) for the environmental review of the Eagle Rock Aggregates (ERA; Applicant) Oakland Terminal Project (Proposed Project).

An SEIR for the Proposed Project is appropriate because the 2002 Oakland Army Base (OAB) Environmental Impact Report (EIR) as Addended is relevant to the environmental effects of the Proposed Project. The 2002 EIR as Addended analyzes the development and use of the entire Port of Oakland (Port) maritime area (Seaport), including the Proposed Project site, for increased cargo operations. The Proposed Project would, for the term of the proposed lease, change the previously approved cargo throughput on 18 acres of Port marine terminal from container cargo to bulk cargo; the Port has prepared the SEIR to analyze the potential effects of this change.

As explained in Section 3.2 of the DSEIR, the 2002 EIR as Addended remains current and fully applicable as to the Proposed Project's potential effects for numerous resource topics, including: agriculture, biological resources, cultural resources, mineral resources, population/housing, public services, and recreation. Equally important, because the 2002 EIR as Addended provides mitigation measures for significant impacts of development and use of the entire Port maritime area, mitigation measures developed in that EIR remain applicable, and will be applied, to the Proposed Project. See SEIR Table ES-1 and Appendix H: Eagle Rock Aggregates Oakland Terminal Project Mitigation and Monitoring Reporting Program (MMRP) in Volume 2, *Appendices*.

The function of the SEIR is to make the 2002 EIR as Addended adequate for the changes proposed in the Proposed Project. Unlike an addendum and like a subsequent EIR, a supplemental EIR undergoes full public comment and responses to comments. The Port selected a supplemental rather than a subsequent EIR for the Proposed Project in keeping with the California Environmental Quality Act's (CEQA's) mandate to focus on quality of analysis rather than to "generate paper." Whereas a subsequent EIR is a full revision of a previous EIR, a supplemental EIR provides supplemental analysis only for the changes proposed by the project. Because of the continued applicability of much of the 2002 EIR as Addended, a supplemental, rather than subsequent, EIR is appropriate and provides the necessary information for the public and decisionmakers to be fully informed of the environmental impacts of the Proposed Project.

Master Response 2: Operations at Richmond Terminal

This master response addresses comments regarding relocation of the Applicant's operations from the Port of Richmond (Richmond Marine Terminal) to the Port of Oakland. A number of comments suggest that repurposing of the Richmond Marine Terminal needs to be considered in the SEIR as a connected action to avoid improper piecemealing under CEQA, and that the Proposed Project would contribute to environmental impacts, such as air quality and public health impacts, in two disadvantaged communities.

The SEIR includes a discussion of the Applicant's Port of Richmond operations as contextual information so that reviewers can better understand the Applicant's aggregate operations at the Port of Richmond (see FSEIR Volume 1, Chapter 2). The Proposed Project has independent utility because it can be undertaken regardless of the ultimate future use of the Richmond Marine Terminal, and it would not necessitate a specific future use of the Richmond Marine Terminal. Therefore, this SEIR has not improperly segmented or piecemealed the analysis of the Proposed Project with respect to any potential future use of the Richmond Marine Terminal.

Further, future changes to operations at the Richmond Marine Terminal are not required to be described or analyzed in this SEIR because they are not a reasonably foreseeable consequence of the Proposed Project. The Port is not aware of any proposed plans, permit applications, or other information regarding future use of the Richmond Marine Terminal. While it is possible that the Applicant may repurpose its facility at the Richmond Marine Terminal to serve other bulk materials or may cease all operations at the Richmond Marine Terminal, any assumptions about future use of the Richmond Marine Terminal would be based on speculation and conjecture. An environmental impact report is not required to describe potential future projects that are not reasonably foreseeable.

Despite the uncertainty regarding future changes to operations at the Richmond Marine Terminal, the SEIR conservatively assumed, for analyzing the Proposed Project's environmental effects, that the Applicant's operations at the Richmond Marine Terminal would remain unchanged. This is a conservative assumption because if the Applicant ceases operations at the Richmond Marine Terminal, the actual cumulative environmental effects would be less than described in the SEIR.

Master Response 3: Truck Parking and Container Staging

This master response addresses comments regarding the adequacy of truck parking within the Seaport and the potential impact the Proposed Project would have on available truck parking, such as any increased pressure to use residential streets to meet truck parking demand.

Portions of the Proposed Project Site have been used in recent years for drayage truck parking and container/chassis staging. Truck parking and container/chassis staging serve two different purposes as described below:

> **Drayage truck parking**: Drivers need a place to park their tractors (truck engine/cab without chassis or container) when not in use to pick up or drop off a container or chassis. For example, drivers may need a place to park the tractor overnight between shifts, while waiting for an appointment time, or over the weekend. Trucking companies typically have yards where drivers park their trucks. Independent owner operators and very small trucking companies may not

have dedicated yards to park or stage their trucks and may rely on facilities made available to them by the licensed motor carrier with whom they contract or at "public" facilities operated by third parties; some of these facilities have been located at the Seaport. The area required to park a tractor is relatively small. Approximately 80 tractors can be parked on a single acre, depending on how parking stalls and circulation lanes are laid out.

Container/chassis staging: At the Seaport, truck drivers make appointments with the marine terminals to pick up or drop off containers. The appointment schedule depends primarily on the schedule of ship arrivals and departures. When a truck picks up a container, the driver takes it to its destination (e.g., a company truck yard in San Leandro or a warehouse in Tracy). In some cases, the driver may want to temporarily store the container, on its chassis, within the Seaport before delivering the container to its destination. For example, if the pickup appointment is during rush hour, the driver may want to store the container and pick it up on the driver's next shift when there is less traffic; this is called a "pre-pull." The "journey" of the container is generally the same – from the ship to its destination. Approximately 55 forty-foot containers (without the truck cab) can be stored on one acre.

The Tioga Group recently completed an update to the Bay Conservation and Development Commission (BCDC) Seaport Forecast (*2019-2050 Bay Area Seaport Forecast*, May 22, 2020). Under the highest growth scenario analyzed (approximately 7 million twenty-foot equivalent units (TEUs) at the Port of Oakland, or three times the current throughput, by 2050), the Tioga Group determined that approximately 13 acres of overnight parking for drayage tractors (truck engine/cab without chassis or container) and 17 acres of overnight staging for container and chassis would be required by 2050, for a total of approximately 30 acres.

As part of the Oakland Army Base (OAB) redevelopment entitlement documents, the Port and the City of Oakland (City) are each required to provide 15 acres of "truck-related port ancillary activities." This requirement was informed by a study the Tioga Group performed in 2001, pertaining to overnight facilities. The City has located its 15 acres north of the intersection of Burma Road and Maritime Street in the former OAB, and the Port has located its 15 acres at the Roundhouse, known as the Port's Truck Parking and Container Depot (Depot)[1]. These 30 acres are expected to be sufficient to meet the requirement for overnight truck and container/chassis staging through 2050, based on the work performed in 2020 by Tioga. Accordingly, neither the Proposed Project site nor the location of the proposed Waterfront Ballpark District at Howard Terminal Project ("Howard Terminal Project") would be necessary to meeting the parking demand identified in the Tioga Group forecast.

In recent years, because of various tenancy changes including marine terminal consolidations in 2013 and 2016, the Port made the additional marine terminal land available for truck and container/chassis parking and staging while it pursued new long-term tenants. This allowed the Port to generate revenue and helped address short-term congestion directly associated with the marine terminal consolidations.

[1] In addition to its Depot, the Port currently provides (and expects to continue providing) about 200 acres for other ancillary maritime services (AMS) such as truck services, heavy cargo facilities, and short-term staging. The City in addition to its 15 acres of parking also provides 13 acres of AMS, consisting of primarily container depot operations, in its former OAB lands. This area meets the need for most growth scenarios evaluated in the Tioga Group revised forecast.

Although it is convenient for drivers and trucking companies to have such facilities available within the Seaport, it is not required for operations and it is not offered at Port of Los Angeles, Port of Long Beach, or the Ports of Seattle and Tacoma. Further, the Seaport property is finite and the Port will need to increasingly prioritize land uses in the future. For economic and environmental purposes, prioritized land uses are likely to fall into three core categories: marine terminals, transloading/warehousing, and rail.

It is important to note that container/chassis staging within the Seaport is an interim stop in a container's journey from the ship to its destination (or origin to ship), and as discussed above, the container is driven approximately the same distance whether or not it is temporarily parked within the Seaport. Therefore, a reduction in areas currently available for container/chassis staging is not expected to increase the travel distance for most containers. The trucks will continue to use the same three entry points – 7th Street, Maritime Street/Grand Avenue, and Adeline Street – to move between the Seaport and their origins/destinations.

Regarding the concern that any reduction in parking currently available at the Seaport could result in additional truck and container/chassis parking on West Oakland streets, the Port and the City are currently implementing the West Oakland Truck Management Plan (TMP), approved by the City and the Port in April 2019. The TMP proposes eliminating truck parking on non-Seaport public streets in nearly all of West Oakland and the parking of unattached chassis (with or without a container) throughout the entire City. These changes to the Oakland Municipal Code are expected to be brought to the City Council for consideration in Summer 2021 and, if approved, would be implemented immediately thereafter. The new parking restrictions, along with additional enforcement as included in the TMP, would prevent drayage trucks and chassis from parking on public streets in residential areas.

Master Response 4: Fugitive Dust

This master response addresses fugitive dust impacts on the West Oakland community. Several comments state that the analysis of fugitive dust emissions resulting from the Proposed Project is inadequate.

Fugitive particulate matter (PM) emissions (fugitive dust) would be emitted by a variety of sources during construction and operation of the Proposed Project. Fugitive dust emissions refer to those air pollutants that enter the atmosphere without first passing through a stack or duct designed to direct or control their flow. By definition, fugitive dust emissions are difficult to estimate, and therefore it is difficult to determine the effectiveness of mitigation measures. During construction of the Proposed Project, fugitive dust would occur from the construction equipment acting on exposed soils or fill materials. This includes moving concrete, asphalt, and earthen material, demolition of such material or other facilities and structures (e.g., decommissioned utility lines, fencing, etc.), and resuspension of accumulated dust on roads and surfaces.

During operation of the Proposed Project, fugitive dust would be generated by the movement of construction aggregates from ships to aggregate storage piles, transfer of aggregate from storage piles to hauling trucks or barges, resuspension of accumulated dust on roads and surfaces, and from windblown erosion of the aggregate storage piles.

BAAQMD CEQA significance thresholds indicate that implementation of standard fugitive dust control measures for construction are adequate to reduce construction emissions of fugitive PM 10 (particulate

matter with a diameter less than 10 microns) and PM2.5 (particulate matter with a diameter less than 2.5 microns) to a less-than-significant impact. Standard Condition of Approval (SCA) AIR-2 requires the implementation of BAAQMD's construction fugitive dust rules. Thus, the DSEIR concluded that fugitive PM dust from construction was not significant, as described in DSEIR Section 3.4.

For operational emissions, PM emissions would be below BAAQMD thresholds of significance based on the total annual PM emitted (see FSEIR Volume 1, Table 3.4-6a and Table 3.4-6b). The mass emission significance threshold is often used as a surrogate to determine if a criteria pollutant would likely contribute to an exceedance of an ambient air quality standard. Another means of determining the likelihood of contributing to an exceedance of an ambient air quality standard is to model ambient air concentrations off-site and determine how this modeled concentration compares to the ambient air quality standard and/or an acceptable incremental contribution to the existing ambient air quality. In the 2017 CEQA Guidelines, BAAQMD suggested that an ambient air concentration of 0.3 micrograms per cubic meter (µg/m3) of PM2.5 was a reasonable significance threshold to measure and assess local community health risk from PM2.5. This threshold is similar to proposed significant impact levels (SILs) being considered by the United States Environmental Protection Agency (USEPA) in permitting under the Clean Air Act.

The Port modeled ambient air concentrations of PM2.5 along with conducting a Health Risk Assessment (HRA) for the Project (see FSEIR Volume 2, Appendix C, *Air Quality and Greenhouse Gas Analysis* and Appendix, D *Health Risk Assessment for the Draft SEIR*). Modeling of PM2.5 for concentrations beyond the Proposed Project boundary indicated that ambient air concentrations of PM2.5 from the Proposed Project sources during operation could exceed 0.3 µg/m3 within only a limited area on Port property just around the Proposed Project site that includes the location of the maximum exposed individual worker (MEIW) (see FSEIR Volume 1, Table 3.4-10a, Table 3.4-10b, and Figure 13 of FSEIR Volume 2, Appendix D, *Health Risk Assessment for the Draft SEIR*).

No residential or other off-Seaport areas showed elevated ambient air concentration levels of PM2.5 from Proposed Project operations above the BAAQMD threshold. The maximum exposed individual resident (MEIR) had a PM2.5 ambient air concentration less than 0.3 µg/m3 from Proposed Project sources during operation (see FSEIR Volume 1, Table 3.4-10a and Table 3.4-10b).

Due to the ambient air concentration at the MEIW, the DSEIR concluded that the Proposed Project would result in a significant impact from PM2.5 causing or contributing to an ambient air quality violation even though the mass emissions total was below the emission significance threshold. This approach is highly conservative because the BAAQMD CEQA Guidelines do not consider workplaces (where individuals are not exposed 24 hours a day and where OSHA health and safety regulations apply) to constitute "receptors"; only places "where people live, play, or convalesce" are considered "receptors" (BAAQMD 2017 CEQA Guidelines, section 5.2.5.). Model results show that 95% of the PM2.5 concentration at the MEIW is calculated to be from fugitive dust emissions associated with the aggregate transfer operations, storage piles, and fugitive dust from on-site vehicle travel, rather than from diesel particulate matter (DPM) (see Table 13 of FSEIR Volume 2, Appendix D, *Health Risk Assessment for the Draft SEIR*).

As noted above, emissions of fugitive dust are by their nature difficult to accurately quantify. The analysis in the DSEIR used conservative values to estimate the fugitive dust emissions (as described as follows for the three general sources of fugitive dust) and the effect of mitigation measures. The primary

methodology used in the DSEIR's analysis was based on consistent methods outlined in BAAQMD's Permit Handbook:

> **Aggregate handling:** Fugitive dust emitted from aggregate handling and movement was estimated using USEPA Air Pollutant (AP) 42 Chapter 11.19 Construction Aggregate Processing for aggregate transfer operations from ship to shore, shore to barge, and truck loading.
>
> **Aggregate dropping:** Fugitive dust emitted from drop operations (such as when material is "dropped" from conveyors to stockpiles or from one conveyor to another conveyor/radial stacker) was estimated using USEPA AP-42 Chapter 13.2.4 Aggregate Handling and Storage Piles, which uses the average wind speed (from an East Bay Municipal Utility District meteorological station used in air dispersion modeling) and moisture content of the material. The moisture content of the sand was assumed to be 6% and larger aggregate was 2% due to the use of water sprays at "drop" locations or transfer points. The material was assumed to be split equally between sand and larger aggregate.
>
> **Stockpile erosion:** Once construction aggregates are placed in storage piles, they are subject to wind erosion. The BAAQMD Permit Handbook recommends using a factor of 1.7 pounds (lbs) of PM10 per acre per day, which is based on USEPA AP-42 Fourth Edition Chapter 8.19.1 Sand and Gravel Processing.

Similarly, it is difficult to accurately determine the effectiveness of mitigation measures for fugitive dust. Thus, the air quality analysis either does not quantify, or uses conservative assumptions to estimate, the effectiveness of some mitigation measures for fugitive dust. For example, BAAQMD's Permit Handbook allows for mitigation by watering, providing a maximum effectiveness of 70% reduction in emissions. The Port's analysis conservatively limited the effectiveness of watering construction aggregates to a 70% reduction in emissions. It should be noted that many other agencies and reputable sources of fugitive dust mitigation measure effectiveness allow for higher values of emission reductions from watering. For instance, the South Coast Air Quality Management District allows for 90% control efficiency for watering storage piles. This is consistent with the Western Regional Air Partnership's (WRAP) Fugitive Dust Handbook (WRAP 2006), which in Chapter 9 uses 1.7 lbs of PM per acre per day as an alternate method and notes in Section 9.4 that watering the storage pile by hand has a 90% control efficiency, as was confirmed by a field study conducted by Fitz and Bumiller in the Journal of Air & Waste Management Association, Volume 50, April 2000. Thus, the emissions reduction estimate used by BAAQMD and by the SEIR for watering is conservative.

The WRAP Fugitive Dust Handbook notes the control efficiency of several other potential options to control wind erosion, including planting trees and shrubs as a windbreak with a 25% control efficiency, erecting artificial wind barriers having 4 to 88% control efficiency, use of chemical dust suppressants with 84% control efficiency, and use of 3-sided enclosures with 50% porosity with a 75% control efficiency. It is unclear what the overall control efficiency would be if multiple measures were employed as these have not been studied. For instance, it is unknown how effective adding a wind or vegetation barrier in addition to the watering would be as the strategies are not necessarily linearly additive. Still, due to the comments received and the Port's ongoing lease negotiation with the Applicant since publication of the DSEIR, the lease will include a requirement that the Applicant provide landscaping improvements on the west side of Maritime Street between Vukasin Way south to 14th Street and on the north side of Vukasin Way, which would include trees and shrubs to provide additional windbreak. In addition, the Applicant will be required

to maintain such landscaping improvements during the term of its lease. The Port has agreed to reimburse the Applicant up to $300,000 for the installation of landscape improvements.

As described in the DSEIR, it is not economically feasible to construct a building to enclose the storage piles due to structural and geotechnical issues substantially increasing the technical difficulty (i.e., the structural and foundation design to support the additional structural weight and maintain building interior clearances for operations) and the resulting poor cost effectiveness of enclosing the stockpiles in a building (see DSEIR Section 5.6). As described in section 5.4.2 of the DSEIR, due to safety challenges to site workers and daily operations (i.e., material transfers to barges and trucks), the use of tarps on the stockpiles is not feasible; the large area that would need to be covered would require cables and anchoring that could create a hazard condition during high wind periods. Further, damaged or torn tarps could interfere with operations, resulting in failure of equipment and safety issues.

As part of the approval process for the Proposed Project, the Applicant must obtain a permit to construct and permit to operate from BAAQMD. Regulation 2 Rule 2 New Source Review requires that BAAQMD goes through a process to determine the best available control technology (BACT) to reduce fugitive dust emissions from the project sources. This BACT process has not been completed and it is uncertain at this time if BAAQMD will allow for additional reduction calculations from watering or if any other fugitive dust control technology will be deemed feasible according to the BACT feasibility criteria, which include both technical and cost effectiveness feasibility criteria.

The Proposed Project would be required to implement the mitigation measures resulting from the BACT analysis as outlined in revised Mitigation Measure ERA AQ-1 (see Response to Comment A-11). Additionally, as discussed in Appendix C, *Air Quality and Greenhouse Gas Analysis*, all loaded trucks would maintain a minimum of two feet of freeboard in compliance with California Vehicle Code Section 23114, and moisture content of materials would be controlled during loading to minimize fugitive dust emissions from the loaded truck bed. Covered, electric haul trucks would be used between the Seaport and Central Concrete on Peralta Street in West Oakland. Four trucks would be deployed within 24 months of the effective date of the Port's lease with the Applicant and any future trucks serving the Central Concrete plant from the Proposed Project would also be electric, or another technology approved by the Port, and covered.

Finally, as a result of comments received and the Port's ongoing lease negotiation with the Applicant since publication of the DSEIR, the Proposed Project now includes a tire wash station for trucks to utilize prior to leaving the Proposed Project site. These modifications have been incorporated into the FSEIR Project Description as follows:

Truck Tire Wash

At least one and up to two truck tire wash system(s) would be located immediately after the outbound truck scale to ensure that haul trucks do not track materials off the Project site and to further reduce dust generation on adjacent streets. Each truck wash system would be a self-contained system with side spray blasters and wash troughs with galvanized grates to capture and reuse wash water. Each tire wash water collection tank would hold a maximum of 9,000 gallons (for a total of 18,000 gallons) and would discharge to the sanitary sewer for wash water.

Although the BAAQMD permitting process is not yet complete, the SEIR conservatively assumes that BACT requirements will involve watering aggregate to achieve a 70% reduction in fugitive dust

emissions, and the SEIR conservatively maintains the significance conclusion for PM emissions as significant and unavoidable.

Master Response 5: Community Health Risks from Air Quality Impacts

This master response addresses the concern raised in multiple comments regarding the translation of air quality impacts to specific adverse human health impacts for the West Oakland community.

The decision in *Sierra Club v. County of Fresno*, 6 Cal. 5th 502 (2018), regarding the Friant Ranch project, requires projects with significant air quality impacts to either relate those impacts to likely health consequences or explain why it is not feasible to provide such analysis. The purpose is to inform the public and decisionmakers so that they can make informed decisions regarding the costs and benefits of the project.

A key difference between the Proposed Project and the Friant Ranch project is that the Friant Ranch EIR only provided quantification of pollutant emissions with no health risk assessment. Here, both the DSEIR and the 2002 EIR as Addended not only provide extensive evaluation of emissions quantification, but also provide quantified health risks for cancer, chronic non-cancer health impacts, and acute health impacts for all toxic air contaminants (TACs) that have toxicity factors available from the California Environmental Protection Agency (CalEPA) Office of Environmental Health Hazard Assessment (OEHHA) (see Appendix D, *Health Risk Assessment for the Draft SEIR*).

The Proposed Project's health impacts with Project mitigation were projected to be below the BAAQMD significance thresholds for cancer, chronic health impacts, and acute health impacts (see FSEIR Volume 1, Table 3.4-10b); however, the entire OAB Area Redevelopment Plan remained cumulatively significant for cancer risks. In addition, the PM2.5 concentrations (consisting primarily of fugitive dust) that would be generated by the Proposed Project in the ambient air have been quantified and, with the exception of some work areas within the Port property, the Proposed Project's contribution to PM2.5 concentrations was found to be below the BAAQMD significance threshold (see Figure 13 of FSEIR Volume 2, Appendix D, *Health Risk Assessment for the Draft SEIR*). In addition, as noted above, the BAAQMD significance thresholds for Local Community Risk and Hazard Impacts do not include workplaces, so the Proposed Project analysis went beyond BAAQMD standards. Previous analyses of PM2.5 concentrations for the entire OAB Area Redevelopment Plan did not model concentrations within the Port as it is accepted practice to only include sensitive receptors such as residents, schools, daycares, medical facilities, senior centers, and recreation areas, and not to report worker exposures. The previous analyses only reported concentrations in residential areas, which indicated concentrations similar to the Proposed Project that were below the BAAQMD PM2.5 concentration threshold in the residential areas.

As shown in the DSEIR, emissions of reactive organic gas (ROG), PM10, and PM2.5 fall below the BAAQMD significance thresholds, including the 2011/2017 thresholds (see Tables 3.6a and 3.6b). As explained by BAAQMD in its 2010 CEQA Air Quality Guidelines report justifying its CEQA significance thresholds, these thresholds are set at levels such that projects with emissions below the thresholds would not be expected to result in nonattainment of ambient air quality standards or to create significant contributions to existing nonattainment conditions. Since the federal and state ambient air quality standards are designed to protect against health impacts, including impacts to the most

vulnerable segments of the population, exposures to direct emissions from the Proposed Project would not result in significant health impacts within the population intended to be protected by compliance with the ambient standards. Emissions of ROG and nitrogen oxides (NOx) from the Proposed Project can result in production of ozone and PM2.5 (so-called secondary PM2.5) over the course of a few hours via chemical reactions in the atmosphere between ROG, NOx, and ammonia in the presence of sunlight. The BAAQMD significance thresholds for ROG and NOx emissions are based on BAAQMD's offset requirements for ozone precursors. These offset requirements are based on the San Francisco Bay Area's non-attainment status of the federal ozone standard and therefore, these significance thresholds are appropriate "to prevent further deterioration of ambient air quality and thus [have] nexus and proportionality to prevention of a regionally cumulative significant impact (e.g., worsened status of non-attainment)" (BAAQMD 2010). As explained above, attainment of the ambient standards can be considered protective of public health, including the health of sensitive subgroups, thus providing a strong link between a mass emission threshold and avoidance of health effects. For PM10 and PM2.5, BAAQMD established CEQA significance thresholds based on the federal New Source Review program for new stationary sources of pollution, which contains stricter thresholds than does BAAQMD's offset program for these pollutants. "These thresholds represent the emission levels above which a project's individual emissions would result in a considerable adverse contribution to the [San Francisco Bay Area Air Basin]'s existing air quality conditions" (*ibid*). As with ROG and NOx discussed above, these thresholds likewise provide a connection between a mass emission threshold and avoidance of health effects.

As disclosed in the DSEIR, NOx emissions from the Proposed Project are calculated to exceed the BAAQMD NOx emissions threshold, thus significant impacts from ozone or secondary PM2.5 production cannot be ruled out based solely on the level of NOx emissions from the Proposed Project. However, operation of the Proposed Project would require a permit from BAAQMD and under the District's regulations, the Applicant must purchase BAAQMD-eligible Emission Reduction Credits (ERCs) sufficient to offset the Project's NOx emissions from OGVs and tugs by at least a factor of 1.15 to 1 to obtain a permit to operate. Because OGVs and tugs are responsible for more than 80 percent of the Proposed Project's NOx emissions, the required ERCs would substantially reduce the Proposed Project's contribution to ozone and secondary PM2.5 formation.

The above considerations notwithstanding, the possibility of some localized ozone and secondary PM2.5 formation and resulting health impacts from Project NOx emissions cannot be entirely ruled out. However, inclusion of quantitative calculations in the DSEIR of local and regional health impacts due to any incremental ozone and secondary PM2.5 formation from Project NOx emissions was determined not to be warranted.

Computer models (CMAQ, CAMX, and BenMap) used to generate such health impact estimates are based on rough approximations of the complex atmospheric processes involved in ozone and secondary PM2.5 formation, transport, and dispersion. Furthermore, as noted by the BAAQMD in the 2017 Clean Air Plan (BAAQMD 2017) , factors relating health impacts to concentration increases are also uncertain, particularly when applied to very small concentration increments. As a result, results derived from application of these models are subject to large uncertainties, thus limiting their value in communicating any likely health impacts. For a description of potential health impacts associated with localized ozone and PM2.5, see FSEIR Volume 1, Section 3.4.4 (Impact AIR-4).

These limitations are confirmed in the City of Oakland's February 2021 Draft EIR for the Waterfront Ballpark District at Howard Terminal Project. That Draft EIR includes a detailed health impact analysis, in

addition to a localized health risk analysis, for a project that, like the Proposed Project, would cause significant NOx emissions during project operations. Located at a minimum approximate distance of 1.7 miles from the Proposed Project site, the Howard Terminal Project site is in a similar location with similar prevailing winds. Even making the most conservative assumptions, the Howard Terminal Project analysis found minimal potential health effects from ozone increases (Waterfront Ballpark District at Howard Terminal Draft EIR, pp. 4.2-72, 4.2-86 – 4.2-92). Even at this level, the analysis explains: "Health effects presented are conservatively estimated, and may be zero." (Ibid., p. 4.2-89). In sections headed "Uncertainty of Results," "Context of Results," and "Conclusion," the Draft EIR explains in detail why the modeling results are so uncertain and, even at the very low levels suggested by the analysis, why the impacts may be overstated (Ibid., pp. 4.2-92 – 4.2-94).

Master Response 6: Waterside Emissions Controls

This master response addresses comments regarding vessel emissions. Several comments suggest that the Port and the Proposed Project should do more to reduce vessel emissions, particularly PM, by installing shore power infrastructure at Berth 22 and requiring the shipping line serving the Applicant to equip its vessels for shore power, or to use an USEPA-verified exhaust capture and control system such as a bonnet barge or a shore-based bonnet system. The comments suggest that the fact that California Air Resources Board (CARB) does not mandate shore power for bulk carriers is not a sufficient reason to claim it is infeasible to implement shore power for the Proposed Project. Comments also state that the Port falls short of State mandates for the use of shore power for marine vessel visits. One commenter asserts that modifying these aggregate vessels for shore power would align with demands of other ports, and benefit communities all along the West Coast.

The current State requirement to plug in regulated vessels (i.e., those that can plug in and are not exempt, such as steamships and infrequent callers) was 70% for 2017 through 2019, increasing to 80% in 2020. The Port achieved a 75% plug-in rate in 2018 and a 76% plug-in rate in 2019, both of which exceeded the 70% mandate for those years even without considering allowable safety exemptions. For the regulated fleet only (no steamships or infrequent callers), the Port was at an 83% plug-in rate in 2018 and 84% in 2019. The Port plans to calculate its plug-in rate for 2020 after CARB has fully evaluated and provided to the Port the COVID-19 exemptions claimed by carriers (the data are anticipated to be available in June 2021). The Port anticipates being very near or above its 80% requirement for 2020.

Retrofitting bulk carrier ships for shore power for the Proposed Project would not address the broad issues identified by CARB for bulk carrier shore power at other ports. It would only address shore power for this unique set of circumstances. CARB declined to include bulk carriers in its most recent regulation for a few reasons. Two among them are that: 1) bulk carriers often discharge by line-hauling, or shifting the vessels along the wharf during discharge, which makes plugging them in or capturing exhaust with a bonnet infeasible; and 2) bulk carriers are often charter ships that are for hire. That means bulk carriers do not sail a consistent route or schedule and they may call any given port a single time and never return. Thus, any changes made to a vessel for use at a particular port may be useless or require additional maintenance or repair at other ports. Therefore, shore power retrofits for bulk carriers in Oakland would not align with demands at other Ports.

Regarding the feasibility of shore power, while it may be technically possible to provide sufficient electrical power to the type of vessel required for the Proposed Project (self-unloading bulk cargo vessels), it may be cost-prohibitive. The Port is not aware of any shore power system currently in use or planned for bulk carriers. The Mitsubishi Cement terminal in Long Beach has a small shore power system

that it can use when the DoCCS system is not running. This small shore power system works by going through the ships' existing dry dock breaker; however, the system is only sufficient to meet basic crew needs (lights, radios, air conditioning, refrigerator, etc.) and cannot power the ships' offloaders (the self-unloading equipment). This is an important distinction because the offloader produces the majority of at-berth emissions for bulk vessels. A large shore power system capable of powering the offloaders requires the ships' electrical system to be retrofitted. The Applicant does not own the shipping line (Canada Steamship Lines [CSL]) whose vessels are currently used to bring construction aggregates to the Bay Area. CSL would need to retrofit its vessels, probably one at a time, and dedicate them to this service. Currently, no shipping line has vessels with the capacity to plug in to shore power for the offloaders.

An additional problem for implementing a capture and control system is that such a system for bulk carriers does not exist and is not available for purchase. To date, neither USEPA nor CARB has verified a capture and control system for use with bulk carrier ships. There currently are two barge-based emissions capture systems in San Pedro Bay in southern California, but one of them recently received a Cease and Desist Order from CARB and had its Executive Order revoked on March 26, 2021[2] (CARB 2021) because the company could not demonstrate whether the system actually achieved the expected emission reductions. This leaves only one working example of a barge-based capture and control system, and that system has only been used on container vessels. Regarding land-based systems, the Port is aware of only one system for controlling bulk carrier ship emissions. It is located at Mitsubishi Cement terminal at the Port of Long Beach. It is called a Dockside Catalytic Control System, or DoCCS, which reduces NOx emissions using a selective catalytic reduction (SCR) system. DoCCs does not reduce emissions of PM or other pollutants.

Some comments suggest requiring certain Tier level engines for OGVs and tugs. Tier levels are discussed in the following bullets:

- For ships, the current highest engine standard is Tier 3. There is no Tier 4 standard and therefore, no Tier 4 engine. Further, it is important to note that ship tier levels are based on NOx emission rates. There are no PM reductions associated with higher tiered ships; therefore, there would be no PM benefit from requiring Tier 2 or Tier 3 ships for the Proposed Project.

- For tugs, Tier 3 and Tier 4 engines do exist, and they do help reduce PM emissions. The number of tugs required to assist ships with berthing is dictated by the San Francisco Bar Pilots; it is neither regulated nor monitored by the Port. Shipping lines enter into contracts with tug companies independently from the Port. For context, based on San Francisco Marine Exchange data provided by BAAQMD, almost 45% of the tug assist work at the Port of Oakland in 2019 was performed by Tier 3 or Tier 4 tugs. Taking into account known repowers completed in 2020 and retrofit grants already awarded, that figure will rise to around 77% by the end of 2021 (assuming tug usage remains similar to 2019). Further, CARB is currently updating its Commercial Harbor Craft Regulation, which will likely require Tier 2 or Tier 3 tugs to meet Tier 4 standards by 2024, and possibly also require diesel particulate filters be used on the tugs. In the

[2]The letter can be found on the CARB website at: https://ww2.arb.ca.gov/resources/documents/aeg-cease-and-desist-order-eo-ab-15-02-revoked-03-26-21

event those regulations are enacted, they would apply to the tugs used for the Proposed Project.

In response to community concerns, the Port continues to hold discussions with the Applicant to determine the best approach towards reducing emissions from ships at berth. Since the DSEIR was published and considering the comments received, and the Applicant has revised proposed lease terms to further focus on potentially feasible reductions in emissions from ships at berth. These lease terms provide the Applicant the flexibility to determine the system that works best for its operations and acknowledges potential changes in technology while at the same time ensuring that the Project's emissions from berthed ships will be reduced over time. The updated lease terms are described below and reflected in the FSEIR.

NOx Reductions

- In lease years 1 and 2, 25% of Project vessel calls would meet Tier 2 or better emission standards (included in the Draft SEIR for entire lease term; basis for SEIR's annual emissions calculations).
- In years 3 through 12, 30% of Project vessel calls would meet Tier 2 or better emission standards (new).
- Starting in year 13, 40% of Project vessels would meet Tier 2 or better emission standards (new).

NOx + PM Reductions

- From year 0 to year 6, Applicant would be required to pursue a pilot study for an emissions recovery system (land or barge-based) if determined to be feasible (new).
- From year 7 to year 12, PM10 emissions at-berth would be required to be reduced by 40% from the PM10 emissions calculated for this category in the SEIR (new).
- If the lease is extended by both parties, starting in year 13, PM10 exhaust emissions would be required to be reduced by 65% from the emissions calculated for this category in the SEIR (new).

The possible, but not yet determined to be feasible, PM emissions reduction options known at this time include:

- Shore power;
- Emissions Recovery/Capture and Control; and,

- Alternative fuels[3],

The Project Description in Chapter 2 of the DSEIR has been revised to include these updated lease terms.

Master Response 7: Cumulative Impacts

This master response addresses comments regarding the adequacy of the cumulative impact analysis. In particular, comments suggest that the analyses of cumulative air quality, greenhouse gas, hydrology, water quality, and transportation impacts are inadequate, and that the SEIR should evaluate the cumulative impacts of the Proposed Project and the proposed Waterfront Ballpark District at Howard Terminal Project.

Cumulative Air Quality

It has been asserted in comments that the DSEIR improperly uses a "summary of projections" approach, rather than a "list of projects" approach, to analyze the Proposed Project's contributions to the cumulative air quality impacts of past, present, and future development projects. With respect to emissions of criteria air pollutants, this assertion does not recognize that BAAQMD, in recommending the same emissions thresholds for both project and cumulative impacts, has already taken into account future projected development activity for the San Francisco Bay Area Air Basin; accordingly, use of the "summary of projections" approach for cumulative criteria air pollutant emissions is appropriate. These projections have long included redevelopment at the Port, including maritime projects as described in the 2002 EIR as Addended. Accordingly, the determination in the DSEIR that all operational criteria air pollutant emissions from the Proposed Project would be less than significant except for NOx emissions, being based on the BAAQMD thresholds, meets CEQA's requirements for cumulative analysis. The DSEIR correctly treats NOx emissions as significant at both the project level and the cumulative level per the BAAQMD guidance. Similarly, the DSEIR treats PM2.5 as significant at both the project and the cumulative level because of a localized increase in PM2.5 emissions due to the fugitive dust emissions from the aggregate stockpiles (Cumulative Impact AIR-1).

The DSEIR's health risk analysis also complies with BAAQMD guidance at both the project and the cumulative level. Because health risk analyses are localized, a "list of projects" approach is often more appropriate than the "summary of projections" approach to cumulative impacts because it identifies other sources within proximity to the project under consideration. For the Proposed Project, no cumulative projects have been identified that would alter the cumulative impacts analysis since the cumulative projects identified have no sources in close proximity that would have a meaningful contribution to the sensitive receptors and neighborhoods (i.e., maximum exposed locations). This includes the proposed Waterfront Ballpark District at Howard Terminal Project (discussed further below), whose nearest boundary is approximately 1.7 miles from the Proposed Project. Accordingly, the

[3] One such alternative fuel is liquefied natural gas (LNG). LNG is in the very early stages of being used as a ship fuel. A small number of container ships have been built to be compatible with future use of LNG, and a smaller number are being built to run on LNG now. Early testing results from the use of LNG on a ferry show that LNG fueled marine engines can achieve large reductions in NOx and PM over diesel fuel, over 90% (CARB 2020). However, it is too soon to know whether LNG would be a viable option for bulk carriers. There are also a host of operational issues that would need to be resolved such as where to purchase the LNG and how much it would cost.

SEIR uses the conservative WOCAP estimates of existing health risk in West Oakland and adds the highest numbers identified for the Proposed Project's cancer risk (at the MEIR) and PM2.5 concentrations (at the MEIW). Based on this comparison, the SEIR concludes that the Proposed Project would make a cumulatively considerable contribution to significant health risk impacts, but would not result in a change in severity for cancer risk and non-cancer health impacts except for PM2.5 (Cumulative Impact AIR-2).

Cumulative Greenhouse Gas Emissions

Please see FSEIR Volume 1, Section 3.6 for a discussion of greenhouse gas emissions, including calculation of the Proposed Project's greenhouse gas (GHG) emissions before and after mitigation. Greenhouse gas impacts are inherently cumulative; therefore, the analysis presented in the 2002 EIR as Addended and the SEIR adequately analyzes the cumulative effect of GHG emissions.

The scope of this SEIR is limited to the incremental difference in the environmental impacts between the OAB Area Redevelopment with the Proposed Project and the redevelopment plan analyzed in the 2002 EIR as Addended. Information about the effects of GHG emissions was known at the time the 2002 EIR was certified (and subsequently addended). Thus, it is appropriate for the SEIR to use the same methodology and thresholds as those contained in the 2002 EIR as Addended. As described in Sections 3.4.4 and 3.6.3 of the DSEIR, equipment and truck emissions, including GHG emissions, from the Proposed Project are comparable to the GHG emissions that would be expected if the site were used as a container terminal as assumed in the 2002 EIR as Addended. Nevertheless, for informational purposes, the DSEIR provides analysis of GHG emissions and a comparison of air pollutant emissions using BAAQMD's 2011/2017 thresholds in Sections 3.4.4 and 3.6.3 of the DSEIR. At the time of publication of this FSEIR, BAAQMD has not released any updated thresholds for GHG emissions that takes into account the goals of Senate Bill (SB) 32 for GHG emissions beyond 2020.

The 2002 EIR as addended included SCA GCC-1: Greenhouse Gas Reduction Plan to address GHG reductions. However, this would not apply to the Proposed Project; the Port's completion of the 2020 and Beyond Plan, as the Seaport's GHG reduction plan, satisfies the intent of this SCA. SCA AIR-2 and Mitigation Measure ERA AQ-1 would also reduce GHG emissions by using newer and more fuel efficient off-road and on-road sources including hybrid and electric equipment and vehicles.

Cumulative Hydrology and Water Quality

An EIR may determine, based on substantial evidence, that a project's contribution to significant cumulative impacts is not cumulatively considerable. Please see Section 4.6.4 of the DSEIR, which identifies the permit requirements and best management practices that would prevent the Proposed Project from making a cumulatively considerable contribution to San Francisco Bay water quality impairments and turbidity.

Cumulative Transportation

Please see Section 4.6.6 of the DSEIR, which does not assume that the Proposed Project's contribution to cumulative transportation impacts would be less than significant. Instead, the DSEIR states that the Proposed Project would contribute to the significant unavoidable cumulative traffic congestion impact identified in the 2002 EIR as Addended, but would not substantially increase the severity of that impact.

Consideration of Waterfront Ballpark District at Howard Terminal Project

The DSEIR does not analyze the cumulative impacts of the proposed Waterfront Ballpark District at Howard Terminal Project ("Howard Terminal Project") because the DSEIR was issued in November 2020, whereas the Howard Terminal Project Draft EIR and its data on potential impacts did not become available until February 26, 2021. At the request of BAAQMD, the Howard Terminal Project Draft EIR analyzed the cumulative health impacts of the Howard Terminal Project together with the Proposed Project based on the DSEIR (see Waterfront Ballpark District at Howard Terminal Draft EIR, p. 4.2-14). The analysis included cancer risk and $PM_{2.5}$ concentrations at the MEIR for the proposed Howard Terminal Project and found that even using the most conservative assumptions, the contribution of the Proposed Project would be minor and would not affect the Howard Terminal Project's contribution to these impacts or change the conclusion that the proposed Howard Terminal Project's contribution to these cumulative impacts would be significant and unavoidable.

Just as the Proposed Project would not contribute considerably to significant health effects from the proposed Howard Terminal Project, the latter project would not contribute considerably to significant health effects from the Proposed Project. The Proposed Project site is located approximately 1.7 miles northwest of the nearest boundary of the proposed Howard Terminal Project. As shown by the wind rose in Figure 2 of Appendix D of the DSEIR, prevailing winds in the area are out of the west-northwest, thus placing the Howard Terminal downwind of the Proposed Project. Therefore, any contribution of the proposed Howard Terminal Project to cancer risk and $PM_{2.5}$ concentrations at the MEIR and the MEIW for the upwind Proposed Project would be minor. Construction and operation of the proposed Howard Terminal Project during operation of the Proposed Project would not affect the Proposed Project's contributions to these impacts or the conclusion that the Proposed Project's contribution to cumulative health impacts from increased $PM_{2.5}$ concentrations would be significant and unavoidable.

Master Response 8: Consistency with the West Oakland Community Action Plan

This master response addresses comments concerning the Proposed Project's consistency with the West Oakland Community Action Plan (WOCAP). BAAQMD identified West Oakland as a community with a high cumulative pollution exposure burden under the emissions reduction planning process created in response to Assembly Bill (AB) 617. WOEIP, BAAQMD, and the West Oakland Community Action Plan Steering Committee (which included the Port of Oakland as a member) prepared the WOCAP for the West Oakland Community Emissions Reduction Program (CERP). CARB approved the WOCAP on December 5, 2019, at a public hearing at DeFremery Park in West Oakland. Port Staff, including Port Executive Director Danny Wan, gave public testimony in support of WOCAP approval. The WOCAP provides goals and strategies for emissions reductions in the West Oakland Community.

A discussion of WOCAP is included in Section 3.4.3 of the DSEIR and analyzed under Impact AIR-3. As stated in the DSEIR, the overarching goal of the WOCAP is "[t]o protect and improve community health by eliminating disparities in exposure to local air pollution." As outlined in the DSEIR, the Port examined the WOCAP recommended strategies and distinct actions suggested for Port-related hazardous air pollutant emissions. The Port evaluated the feasibility of the distinct actions using the feasibility criteria outlined in the 2020 and Beyond and results were presented to the public and the Board of Port Commissioners in the Port's 2020 and Beyond Annual Progress Report (Port 2020). Two of these actions were determined to be feasible for the Seaport as a whole: 1) WOCAP Strategy #50 (also identified as

2020 and Beyond Strategy #198) regarding using BAAQMD funding to upgrade tugs and barges, and 2) WOCAP Strategy #26 (also identified as 2020 and Beyond Strategy #188) regarding establishing dedicated truck parking and container staging in logistic areas. To supplement Table 3.4-11 of the DSEIR and the 2020 and Beyond Annual Progress Report regarding Port-related WOCAP strategies, the below table outlines the Proposed Project mitigation and features that align with WOCAP strategies as indicated and described in Table 2-1.

Table 2-1. Proposed Project-related West Oakland Community Action Plan Strategies

WOCAP Strategy #	Description	Proposed Project Implementation
19	The Port of Oakland adopts an Electrical Infrastructure Plan for the maritime waterfront areas of Oakland. This Plan seeks to **remove barriers to adoption of zero-emission trucks**, such as cost, land, and ownership of charging equipment.	The Proposed Project would use electric trucks, or alternative technology approved by the Port, and covered loads for travel between the Proposed Project site and the Central Concrete plant, which would eliminate the Applicant's current use of diesel trucks serving the Central Concrete Plant on West Grand Avenue and Peralta Street. Future trucks that would serve the Proposed Project to and from the Central Concrete Plant would also be required to be electric or alternative technology approved by the Port.
27	The City of Oakland and other appropriate local agencies **limit fugitive dust** from construction activity through better enforcement of existing regulations and permit requirements.	The Proposed Project would implement SCA AIR-2, Construction-Related Air Pollution Controls for Dust and Equipment Emissions during construction. See Appendix H, Eagle Rock Aggregates Oakland Terminal Mitigation Monitoring and Reporting Program.
36	**The City of Oakland requires industrial and warehouse facilities to provide electrical connections for electric trucks and transport refrigeration units in support of CARB regulations.**	See Proposed Project Implementation description for WOCAP Strategy #19 above regarding electric trucks.

WOCAP Strategy #	Description	Proposed Project Implementation
37	The Port of Oakland, as part of the 2020 and Beyond Seaport Air Quality Plan, **supports the transition to zero-emission drayage truck operations**, including setting interim year targets out to 2035, coordinating an extensive **zero-emission truck commercialization effort**, working with the City of Oakland to amend local ordinances to increase the allowable weight limits for single-axle, zero-emission trucks on local streets located within the Port and the Oakland Army Base/Gateway areas, and developing an investment plan for needed upgrades to the Port's electrical infrastructure. The Port of Oakland also works with the California Public Utilities Commission and the California Energy Commission to study the development of time-of-day electric rate structures favorable to truck operators.	See Proposed Project Implementation description for WOCAP Strategy #19 above regarding electric trucks.
39	The City of Oakland, consistent with the West Oakland Truck Management Plan: 1) improves signage regarding existing truck routes; 2) **works with businesses on preferred routes** to use when destinations are not located on truck routes; and 3) adds to, or changes, truck routes and prohibited streets.	Designated truck routes for haul trucks have been outlined to avoid Interstate-880 between W. Grand Avenue and 7th Street. See the updated Chapter 2 of the DSEIR (Volume I of the FSEIR), Figure 1 of the Response to Comments (Volume 3 of FSEIR), and the Response to Comment A-2. This requirement is included in the Applicant's lease agreement with the Port.
59	The City of Oakland **increases the frequency of street sweeping to decrease road dust**, particularly on streets adjacent to schools, on designated truck routes, and on streets near freeways. The California Department of Transportation increases the frequency of street sweeping along the I-880, I-980, and I-580 freeways. Consideration is given to technology and techniques that avoid resuspending road dust.	The Applicant shall sweep on-site roads a minimum of twice daily during all days of operation. All haul truck tires shall be washed at the Project site exit. See revised Mitigation Measure ERA AQ-1.

WOCAP Strategy #	Description	Proposed Project Implementation
63	The Port of Oakland implements a Clean Ship Program to **increase the frequency of visits by ships with International Maritime Organization Tier 2** and Tier 3 engines.	Tier 2 ships are required for an escalating percentage of the vessels calls. See revised Mitigation Measure ERA AQ-1.

The WOCAP established 2025 and 2030 target concentration levels for West Oakland neighborhoods with respect to DPM, PM2.5, and cancer risk. As indicated in the WOCAP's analysis of projected implementation of existing measures and growth sources, the Zone 1 neighborhood (Prescott), which is the primary area that would be affected by the Proposed Project activities, would meet the 2025 target for DPM and cancer risk but would exceed the PM2.5 target levels for this neighborhood. With the plan measures referenced in the WOCAP, the Zone 1 neighborhood would be further below DPM and cancer risk, but would still remain above the PM2.5 target levels.

Reaching 2030 goals will depend on implementing new technology and availability of funding to accelerate fleet turnover and use of electric vehicles and other technology deemed not feasible based on cost effectiveness. As part of AB 617, communities will be given funding to implement and accelerate implementation of technology to overcome the cost effectiveness barrier. This is a key component of the legislation to ensure that the community and sources operating in those areas have access over time to such funding mechanisms. The Port anticipates that future grant funding may be available under AB 617 to convert a number of trucks operating in and around the West Oakland area, including some trucks serving the Seaport area, to zero emissions vehicles. Additionally, California Hybrid and Zero-Emission Truck and Bus Voucher Incentive Project (HVIP) funding is also currently available to aid in the purchase of zero emissions drayage trucks. As part of revised Mitigation Measure ERA-AQ-1, both the Port and the Applicant would be committed to seeking these and other funding opportunities throughout the term of the Proposed Project lease. Given this, the DSEIR correctly concluded that it would not be in conflict with the goals of the WOCAP and would also be consistent with all measures identified that are applicable to the Proposed Project.

Master Response 9: Stakeholder Engagement and Environmental Justice

This master response addresses comments raising concerns regarding stakeholder engagement, community outreach, the equity and cultural relevancy in the Proposed Project's outreach and engagement, environmental justice, and economic benefits of the Proposed Project.

The Port met with WOEIP, an advocate for environmental justice for the West Oakland community, to review and discuss the Proposed Project and listen to community input. The Applicant also attended tings with community stakeholders as outlined below. Five meetings were hosted by the Port from November 2019 through April 2021; the meeting topics discussed and follow-up identified are summarized below.

November 13, 2019 – this meeting included an overview of the Proposed Project, a discussion of potential project impacts and benefits, and a discussion of the CEQA review process. Stakeholders gave feedback on concerns and ideas for impact reduction and jobs benefits. Attendees included the Port, Applicant, and WOEIP.

February 6, 2020 – this meeting included a discussion of the details and assumptions to be used in the air quality modeling, the use of a supplemental EIR to comply with CEQA, and potential air emissions reduction measures. Attendees included the Port, Applicant, and WOEIP.

August 27, 2020 – this meeting provided a review of the DSEIR schedule and feedback on permanent truck parking and how to stay abreast of a feasibility analysis for relocating Central Concrete. Attendees included the Port and WOEIP.

December 21, 2020 – this meeting included a more detailed discussion of jobs, the possibility of covering aggregate trucks driving through West Oakland, and the Applicant's existing operations at Richmond. Attendees included the Port and WOEIP.

April 13, 2021 – this meeting included updates regarding Proposed Project changes including revised mitigation measures in response to comments received on the DSEIR and based on further negotiations with the Applicant, an updated schedule for the lease approval, SEIR certification, and construction of the Project. Attendees included the Port and WOEIP.

The Port also held two meetings with the BAAQMD on December 7, 2020, to discuss air quality impacts, emissions reduction measures, and potential permit requirements and on January 13, 2021, to respond to follow-up questions from BAAQMD regarding the Applicant's permit application.

On April 22, 2021, the Port met with BCDC to discuss the BCDC permit application process for the Proposed Project.

To support public review and comment of the DSEIR and to encourage broad and various forms of outreach, the Port posted the Notice of Availability (NOA) of the Draft SEIR on the Port website; published the NOA in local papers; distributed the NOA via email to the Port's Maritime stakeholder list, community groups, local government officials, and all parties who specifically commented on the Notice of Preparation (NOP); and posted the NOA near the Project Site. To address potential inequity with engagement, the NOA also stated that information could be made available in different languages upon request. The Port held two public meetings to solicit community feedback during the public comment period and offered that other accessible accommodations could be made during the public meetings upon request. The meetings were both held on December 9, 2020, one in the morning and one in the evening to accommodate community stakeholders' varied schedules. Between the two meetings, approximately six community members attended the meetings.

The Port completed this Project-focused engagement in the context of the Port's broader stakeholder engagement activities. For years, the Port has engaged with the local community to understand and address the effects of Port operations. The Port created the Social Responsibility Division (SRD) to provide multiple public forums to update residents on Port projects, listen carefully to citizen feedback, and follow up on suggestions and complaints. These forums range from monthly office hours in the community to an online chat feature and provide numerous opportunities for the community to provide feedback on Port operations, including any air quality concerns during Proposed Project operation.

To specifically address air quality concerns, the Board approved the Maritime Air Quality Improvement Plan (MAQIP) in 2009 to reduce diesel particulate emissions from Seaport-related equipment sources by 85% by 2020. The MAQIP was developed through an extensive public stakeholder participation process. The Port convened the MAQIP Task Force in 2007 to develop goals and actions to guide air quality improvement efforts at the Seaport. Four Co-Chairs consisting of representatives of community (WOEIP), regulatory agency (BAAQMD), industry, and the Port led the 35-member Task Force in developing guiding principles, goals and implementation measures for the MAQIP. The MAQIP Task Force transitioned to the 2020 and Beyond Task Force in May 2018. The Port again conducted an extensive public stakeholder participation process, through a Steering Committee of Co-Chairs (WOEIP, BAAQMD, industry, and Port representatives) and a Task Force. The Task Force itself included public agencies, community members, industry representatives, and representatives of elected officials. The Board approved the 2020 and Beyond Plan in 2019; the Steering Committee and the Task Force continue their involvement in implementing the plan to continue emissions reductions.

In order to bring together individual engagement activities for more comprehensive engagement, the Port is establishing the Seaport Stakeholder Group (SSG). The Seaport Stakeholder Group will be an advisory group that provides input, guidance, collaboration, and direction on the Port's Maritime business strategies and priorities. For the short-term, the SSG will advise on the Seaport Land Use Plan and for the long-term, the SSG will provide on-going counsel on Maritime-related policy, business, and community topics. In addition to the SSG, ad-hoc and technical advisory committees will be created as needed. The Port considers the SSG to be an appropriate forum to discuss and address concerns with new development such as the Proposed Project, including details such as the implementation of the Proposed Project Operations Air Quality Plan as part of Mitigation Measure ERA AQ-1.

As noted in several comments and in the WOCAP, the Seaport is adjacent to the West Oakland community, an identified disadvantaged community that experiences higher rates of health issues than surrounding communities. The Port recognizes that the West Oakland community has borne a disproportionate burden of pollution and associated health risks and recognizes the importance of integrating environmental justice principles. To help correct this inequity, the Port has implemented numerous emissions reductions strategies through the MAQIP and 2020 and Beyond as described above; the Port's efforts have reduced diesel particulate emissions by 80% between 2005 and 2017, reducing the pollution experienced by this community (Port of Oakland 2018). In addition, the Port is soliciting and considering community input in making decisions that affect the community through the engagement activities discussed above. The Port was an active participant in the development of the community's WOCAP to protect and improve community health by eliminating disparities in exposure to local air pollution. See Sections 3.4.1 and 3.4.4 of the DSEIR, which include a discussion on the Proposed Project's consistency with the WOCAP, as well as the WOCAP strategies that the Port has included in its 2020 and Beyond Plan to reduce and exposures to PM2.5, diesel particulate matter (DPM), and TACs in neighboring communities.

Because SB 1000 applies to the preparation of general plans and the Port does not have a general plan, SB 1000 is not the appropriate vehicle for the Port to address environmental justice principles. The City of Oakland prepares and adopts the general plan for the City of Oakland, including the Port, and the City has not yet adopted an environmental justice element of its general plan pursuant to SB 1000.

The Port would require a number of measures, resulting in large part from the stakeholder engagement described above and based on comments received on the DSEIR, to address air emissions and exposure as part of the Proposed Project. Specific measures include:

- Equipment used during construction would be Tier 4 except when certain equipment may not be available (see Mitigation Measure ERA AQ-2)
- Electric trucks with covered loads to serve the concrete facility in West Oakland (see Mitigation Measure ERA AQ-1)
- Truck routing that avoids I-880 between 7th Street and West Grand
- Washing all haul truck tires before leaving the Project site (see Mitigation Measure ERA AQ-1)
- Frequent road cleaning (see Mitigation Measure ERA AQ-1)
- Low or no emissions from on-site equipment (see Mitigation Measure ERA AQ-1)
- Emissions capture and control system pilot project (see Mitigation Measure ERA AQ-1)
- Vegetation planting on the west side of Maritime Street (see Mitigation Measure ERA AQ-1)

Several comments question the economic benefits of the Proposed Project for the West Oakland community. Although CEQA does not require discussion of economic benefits, the information is provided here to respond to stakeholder comments. The Proposed Project would provide both direct and indirect economic benefits:

- The Proposed Project would sponsor one full-time paid internship at the facility, in coordination with West Oakland Job Resource Center (WOJRC). Each internship trainee would be trained in office and field operations for a 3-6-month period. The WOJRC was established in 2012, as an outgrowth of the City of Oakland's Local Hire Ordinance, to assist OAB employers in fulfilling their 50% local and 25% economically disadvantaged hiring goals.
- The Proposed Project would offer employment placement opportunities for the International Longshore Workers Union (ILWU).
- The Proposed Project would offer a total of up to six direct job opportunities for specific positions at the terminal that include one weigh master, one laborer, one street sweeper, and two or three equipment operators. These positions would be Teamster positions with preference from the WOJC for initial hiring and vacancies.
- The Port and the Applicant would each donate $50,000 to the WOJRC for a combined total donation of $100,000.
- The Proposed Project would import high-strength construction aggregates that are used in structural concrete for projects such as high-rise buildings and transportation infrastructure, including projects in the West Oakland community. Thus, the Proposed Project would support indirect jobs through the various construction projects and jobs related to trucking and the trades.

- The Proposed Project would assist in meeting regional demand for materials. As shown in Exhibit 169 of BCDC's 2019-2050 Bay Area Seaport Forecast, over half of the aggregate sources in the state of California have only an 11 to 30 year remaining supply, suggesting the need to import aggregates will increase in this timeframe.

- The Proposed Project would contribute to the Port's revenue stream and support ongoing Seaport operations and activities. As documented in *The Economic Impact of the Port of Oakland* (October 9, 2018), the Seaport generates 11,393 direct jobs; 10,507 induced jobs (purchases such as food, housing, and medical care by those employed in direct jobs); and 5,831 indirect jobs (purchases such as maintenance and repair by firms providing the direct cargo and vessel services). Approximately 23% of the direct jobs are filled by residents of Oakland and 30% by residents of Alameda County other than Oakland.

The Port currently engages in efforts to provide contracts to local businesses and jobs for workers left out of traditional employment processes. For example, the Port's Maritime and Aviation Project Labor Agreement (MAPLA) serves as the Port's and building Trades' agreement for construction projects. The MAPLA provides economic opportunities to local small businesses, contributes workforce training dollars to community training programs, and supports local hire career in construction.

Chapter 3
INDIVIDUAL RESPONSES TO COMMENTS

This chapter contains copies of the unique comment letters received on the Draft Supplemental Environmental Impact Report (DSEIR) and provides individual responses to the comments contained in each of the comment letters. Each individual letter within this chapter has been assigned a letter code (e.g., A, B, etc.) and individual comments within each letter have been numbered consecutively in the left margin. Brackets are placed adjacent to individual comments to indicate the extent of the comment. Each comment letter is followed by the Port of Oakland's (Port's) responses to that letter, with the responses numbered to correspond with the comments marked on the letter. Responses to comments received at the public meetings on the DSEIR are provided at the end of this chapter in Section 3.3. Where appropriate, responses to individual comments in this chapter refer the reader to the applicable master response(s), which are provided in Chapter 2.

3.1 List of Unique Comment Letters

Table 3-1 presents the list of comment letters received on the DSEIR. The comment letters are organized by type: (1) state agencies; (2) local agencies; and (3) additional stakeholder groups. No federal agencies or individuals commented on the DSEIR.

Table 3-1. List of Unique Comment Letters

Letter Code	Commenter Name	Commenter Agency / Organization	Letter Date
State Agencies			
A	Heather Arias	California Air Resources Board	December 21, 2020
B[1]	Abigail Blodgett	California Department of Justice	January 15, 2021
C[2]	Elizabeth Chung	California Department of Toxic Substances Control	December 17, 2020
D	Nicole Dobroski	California State Lands Commission	January 8, 2021
Local Agencies			
E	David J. Rehnstrom	East Bay Municipal Utility District	December 17, 2020

[1] Letter B from the California Department of Justice was received on January 15, 2021 after the end of the public comment period which ended on January 8, 2021.

[2] Letter C from the California Department of Toxic Substances Control was received as an email correspondence, but is referred to as a letter.

Letter Code	Commenter Name	Commenter Agency / Organization	Letter Date
F	Greg Nudd	Bay Area Air Quality Management District	January 8, 2021
G	Cody Aichele-Rothman	San Francisco Bay Conservation and Development Commission	January 8, 2021
Additional Stakeholder Groups			
H	Laura D. Beaton	Shute, Mihaly & Weinberger, LLP	January 8, 2021
I	Margaret Gordon, Brian Beveridge, David Peters, Karin MacDonald, Iyassu Essayas, Ray Kidd, Igor Tregrub, Marcus Johnson, David Gassman, Melinda Howard-Herrarte, Virginia Reinhart, Jimmy O'Dea	West Oakland Environmental Indicators Project	January 8, 2021

3.2 Comment Letters and Responses to Comments

This section presents copies of the unique comment letters received on the DSEIR. Each letter includes labels indicating a separate comment in which a response has been provided specific to that comment. Labeled letters are presented first, followed by responses specific to the letter. Unlabeled comment letters are available online at the Port's website at:

https://www.portofoakland.com/community/environmental-stewardship/maritime-air-quality-improvement-plan/

3.2.1 State Agencies

Letter A: California Air Resources Board (December 21, 2020)

Gavin Newsom, Governor
Jared Blumenfeld, CalEPA Secretary
Mary D. Nichols, Chair

Letter A

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

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.

A-1

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.[1]

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

[1] 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.

A-1 cont.

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

A-2

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)

A-3

Senate Bill 535 (De León, Chapter 830, 2012)[2] 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).[3] The census tracts containing the residences closest to the Project site score well within the top 25 percent for Pollution Burden,[4] and are considered disadvantaged communities; therefore, CARB urges the Port to ensure that the Project does not further adversely impact neighboring disadvantaged communities.

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

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

[4] Pollution Burden represents the potential exposures to pollutants and the adverse environmental conditions caused by pollution.

b. Senate Bill 1000 (Leyva, 2016)

A-4 Senate Bill 1000 (SB 1000) (Leyva, Chapter 587, Statutes of 2016)[5] 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).[6] 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.

A-5 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.[7] 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

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

6. 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.

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

A-5 cont. 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.

A-6 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

A-7 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.

A-8 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

A-9 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

A-9 cont.

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

A-10

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

A-11

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.)

A-11 cont.

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.

A-12

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.

A-12 cont.

- 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

A-13 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.

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A-18 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.

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.

Sincerely,



Heather Arias, Chief
Transportation and Toxics Division

cc: See next page.

cc: (via email)

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Response to Comment A-1

This comment suggests that the Port require all vessels, vehicles, and equipment servicing the Eagle Rock Aggregates (ERA; Applicant) Oakland Terminal Project (Proposed Project) to transition to zero-emission by 2035, consistent with Executive Order N-79-20.

The Port continues to plan for reducing air pollutants and GHG emissions from Seaport activities holistically via the *Seaport Air Quality 2020 and Beyond Plan: The Pathway to Zero Emissions* (2020 and Beyond Plan), which is the Port's master plan for achieving zero-emission Seaport operations through changes in equipment, operations, fuels, and infrastructure. The 2020 and Beyond Plan builds on the Port's Maritime Air Quality Improvement Plan (MAQIP), approved in 2009, which established a vision, goals, strategies, and targets to reduce emissions from Seaport-related equipment sources. As a result of actions under the MAQIP, diesel particulate matter (DPM) emissions at the Port have decreased 80% since 2005, according to the Port's 2017 Seaport Emissions Inventory. Furthermore, Port truck diesel emissions have been reduced by 98% since 2005. Additional information and a copy of the 2020 and Beyond Plan is available on the Port of Oakland webpage at:

> https://www.portofoakland.com/community/environmental-stewardship/maritime-air-quality-improvement-plan/

The Proposed Project would comply with all future regulations enacted to meet the goals of Executive Order N-79-20. See revised Mitigation Measure ERA AQ-1 in Response to Comment A-11.

Regarding zero emissions vessels, no feasible mitigation is currently available for in-transit OGV emissions from the Proposed Project (CARB 2018). Also see Master Response 6: Waterside Emissions Controls, regarding reduction in vessel emissions at berth.

Response to Comment A-2

This comment suggests that the Proposed Project would increase freight haul traffic along existing roadways over baseline conditions.

As discussed in Section 3.11.3 of the DSEIR, during operation, the Proposed Project would only add between 2 and 13 trips per hour per direction to the associated freeway segments (Table 3.11-3 of the DSEIR), which would be less than the threshold for a significant impact on freeway segments. Additionally, as discussed in Section 3.4.4 of the DSEIR, the Proposed Project would be consistent with Alameda County's congestion management program and would not increase traffic volumes at affected intersections beyond Bay Area Air Quality Management District's (BAAQMD's) 2011/2017 CEQA Guidelines. Traffic to and from the Central Concrete plant (i.e., Central Concrete Supply Company) in West Oakland (located at 2400 Peralta Street) would not change from baseline conditions, which are tied to concrete demand at the facility, and routes of truck traffic would remain the same in West Oakland (Interstate 880 [I-880] to West Grand Ave to Mandela Parkway to Peralta Street [24th Street would be used on return trip from Peralta Street Mandela Parkway]) with the Proposed Project.

The Proposed Project has modified its truck routes to avoid the section of I-880 between West Grand Avenue and 7th Street. The following text has been added to the Project Description in Chapter 2 and Section 3.11 of the FSEIR to clarify truck routes between the Proposed Project site and freeway entry points based on general destination:

> Trucks traveling to or from the north would utilize West Grand Avenue to access Maritime Street, and trucks traveling to or from the south would utilize 7th Street to access I-880 (see

Figure 2-11 [shown below]). This pattern would divert trucks away from the stretch of I-880 between 7th Street and West Grand Avenue and the associated Frontage Road. The Port would place signage at appropriate locations along the truck routes to indicate the required routes for aggregate trucks, and the Applicant would impose a three strikes rule to ban truck drivers from the Oakland Terminal if they do not adhere to the route restrictions.



Prepared by:
Horizon WATER and ENVIRONMENT

Prepared for:
Port of Oakland

N

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Feet

- Facility Boundary
- Inbound Truck Route
- Outbound Truck Route
- Electric Truck Route
- No Trucks This Section of I-880

Figure 2-11
Truck Routes in Project Vicinity

Eagle Rock Aggregates Oakland Terminal Project
Final Supplemental Environmental Impact Report

T:_PROJECTS\20008_PortOaklandEagleRock\mxd\Figure_X_TruckRoutes_EagleRock_061020.mxd PG 4/13/2021

This comment also suggests that an increase in traffic will expose nearby disadvantaged communities to further elevated levels of air pollution. For a discussion of air pollution impacts in West Oakland, see Section 3.4 of the DSEIR and Master Response 4: Fugitive Dust and Master Response 5: Community Health Risks from Air Quality Impacts. Truck travel on local roads to the freeway was incorporated into the emission inventory and Health Risk Assessment (HRA) as described in Appendix C, *Air Quality and Greenhouse Gas Analysis*, and Appendix D, *Health Risk Assessment for the Draft SEIR*. Furthermore, consistent with the West Oakland Community Action Plan (WOCAP), the Proposed Project would use electric trucks and covered loads for travel between the Proposed Project site and the Central Concrete plant, which would eliminate the current use of diesel trucks on West Grand Avenue and Peralta Street coming from the Applicant's Richmond facility. Zero emission trucks are part of the Port's 2020 and Beyond Plan. See Response to Comments A-1, A-11, and H-62.

As discussed in section 3.4.5 of the DSEIR, the Proposed Project would not increase the severity of the emissions when compared to a container terminal as analyzed in the 2002 Environmental Impact Report (EIR) as Addended, except for a potential increase in PM2.5 (particulate matter with a diameter less than 2.5 microns) concentrations from fugitive dust at a non-residential area located within Port property.

Finally, the comment suggests that Senate Bill (SB) 535, SB 1000, and Assembly Bill (AB) 617 be considered in the Final Supplemental Environmental Impact Report (FSEIR). See Responses to Comments A-3 through A-8 below.

Response to Comment A-3

The comment recommends that the Port ensure that the Proposed Project does not further adversely impact neighboring disadvantaged communities.

See Master Response 8: Consistency with the West Oakland Community Action Plan. The scope of this SEIR is limited to the incremental difference in the environmental impacts between the Oakland Army Base (OAB) Area Redevelopment with the Proposed Project and the redevelopment plan analyzed in the 2002 EIR as Addended. As described in Sections 3.4.5 and 3.6.3 of the DSEIR, cancer risks and greenhouse gas emissions from operation of the Proposed Project would result in no change in severity of the previously disclosed significant and unavoidable impacts. See also Master Response 4: Fugitive Dust, Master Response 5: Community Health Risks from Air Quality Impacts, and Master Response 9: Stakeholder Engagement and Environmental Justice.

Also, as described in Section 3.4.5 and 3.6.3 of the DSEIR, equipment and truck emissions, including greenhouse gas (GHG) emissions, from the Proposed Project are comparable to the air pollutant and GHG emissions that would be expected if the site were used as a container terminal as analyzed in the 2002 EIR as Addended.

Response to Comment A-4

The comment describes SB 1000 and recommends that environmental justice principles be integrated into the planning process to address the needs of disadvantaged communities. See Master Response 9: Stakeholder Engagement and Environmental Justice.

Response to Comment A-5

The comment suggests that the Proposed Project would contribute to air quality and public health impacts within two disadvantaged communities, Richmond-San Pablo and West Oakland.

The Proposed Project is a separate project from any existing or proposed use of the Richmond Marine Terminal; see Master Response 2: Operations at Richmond Terminal.

With regard to potential air quality and public health impacts within the West Oakland Community associated with the Proposed Project, see DSEIR Section 3.4, Air Quality. Also see Master Response 5: Community Health Risks from Air Quality Impacts. For a discussion of AB 617 and the WOCAP strategies, see Master Response 8: Consistency with the West Oakland Community Action Plan. Regarding environmental justice, see Master Response 9: Stakeholder Engagement and Environmental Justice.

Response to Comment A-6

The comment suggests that health-harming emissions generated during construction and operation of the Proposed Project may further negatively impact nearby disadvantaged communities.

For a discussion on the Proposed Project emissions and potential health impacts, see DSEIR Section 3.4, Appendix C, *Air Quality and Greenhouse Gas Analysis*, and Appendix D, *Health Risk Assessment for the Draft SEIR*. Tables 3.4-9a, 3.4-9b, 3.4-10a, and 3.4-10b in Section 3.4 of the DSEIR provide the results of the HRA for the Proposed Project. These tables show that when analyzed on its own (not as part of the OAB Area Redevelopment Plan), the Proposed Project would be below BAAQMD significance thresholds except for fugitive dust emissions contributing to a PM2.5 concentration within a non-residential area located within Port property that would exceed the PM2.5 concentration threshold. No residential areas would exceed the thresholds (see Figure 13 of FSEIR Volume 2, Appendix D, *Health Risk Assessment for the Draft SEIR*). Also see Table 4.5-2 in Section 4.5 of the DSEIR for an assessment of existing conditions in West Oakland and cumulative health risks from the Proposed Project.

Also see Master Response 5: Community Health Risks from Air Quality Impacts and Master Response 9: Stakeholder Engagement and Environmental Justice. The latter includes a description of how community feedback was incorporated into the Proposed Project's air quality mitigation measures.

Response to Comment A-7

The comment recommends that the Port coordinate with steering committees representing the Richmond-San Pablo Community and the West Oakland Community prior to the approval of the FSEIR.

The Proposed Project is a separate project from use of the Richmond Marine Terminal; see Master Response 2: Operations at Richmond Terminal. Regarding the Proposed Project and the West Oakland community, see Master Response 8: Consistency with the West Oakland Community Action Plan. Regarding coordination with the West Oakland Community, see Master Response 9: Stakeholder Engagement and Environmental Justice.

Response to Comment A-8

The comment offers sharing of AB 617 emissions inventories for use in the cumulative analysis.

The DSEIR uses the conservative WOCAP estimates (developed for the West Oakland Community Emissions Reduction Program (CERP) under AB 617 to provide goals and strategies for emissions reductions in the West Oakland Community) for existing health risk in West Oakland and adds the highest numbers identified for the Proposed Project's cancer risk (at the maximum exposed individual resident or MEIR) and PM2.5 concentrations (at the maximum exposed individual worker or MEIW). Based on this comparison, the DSEIR concludes that the Proposed Project would make a cumulatively considerable contribution to significant health risk impacts. Also see Master Response 7: Cumulative Impacts.

Response to Comment A-9

The comment recommends that the FSEIR include a detailed project description of the Applicant's operations that will continue at the Richmond Marine Terminal if they can be construed as a reasonably foreseeable consequence of the Proposed 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. See Master Response 2: Operations at Richmond Terminal regarding consideration of the Richmond Marine Terminal.

Response to Comment A-10

The comment recommends that all construction aggregate piles be covered and all trucks transporting construction aggregate be sprayed and covered prior to exiting the Proposed Project site. See Master Response 4: Fugitive Dust regarding emissions from aggregate piles and truck transport. For additional information on alternatives considered for the Proposed Project to reduce fugitive dust, see Sections 5.4 and 5.5 of the DSEIR.

Additionally, based on comments received on the DSEIR, the following have been added as part Mitigation Measure ERA AQ-1 to reduce fugitive dust: covered, electric haul trucks would be used between the Proposed Project site and the Central Concrete plant in West Oakland, a tire wash system would be installed for all trucks exiting the Proposed Project site, and landscaping would be added between the Proposed Project site and West Oakland (see Response to Comment A-11).

Response to Comment A-11

The comment suggests that Mitigation Measures ERA AQ-1 and AQ-2 improperly defer mitigation in violation of California Environmental Quality Act (CEQA). The Port disagrees but has revised Mitigation Measure ERA AQ-1 for improved clarity and to incorporate additional mitigation elements identified as feasible after release of the DSEIR.

The revised mitigation measure reads as follows:

> **Mitigation Measure ERA AQ-1:** For Project operations, the applicant shall reduce NOx [nitrogen oxide], PM [particulate matter] (exhaust and fugitive dust), and GHG impacts as follows:
>
> a) NOx emissions from ocean-going vessels (OGVs) and tugs associated with loading and unloading of aggregate to and from the facility shall be offset with Bay Area Air Quality Management District (BAAQMD)-eligible Emission Reduction Credits (ERCs) at a ratio of 1.15:1.0 for NOx emissions, which ensures that these emissions are reduced to a net zero for their regional NOx contribution. These ERCs will need to be surrendered to BAAQMD as

part of the permit process (BAAQMD Regulation 2 Rule 2 2-2-302) prior to the start of operations. [It is unknown if other pollutants which are part of the eligible ERCs that would be secured for the Project would be similarly offset. The quantities of additional pollutants tied to the ERCs is unknown since other pollutant reductions may differ.]

b) As part of the annual Operations Air Quality Plan process described in section h below, the Applicant shall document that for the first two years of the lease term, a minimum of 25% of OGV calls are made by ships with engines meeting United States Environmental Protection Agency (USEPA) Tier 2 or higher tier emissions standards. Beginning in Year 3 of the lease term, the Applicant shall document that the minimum percentage of OGV calls made by USEPA Tier 2 or higher tier vessels is 30%. After Year 12 of the lease term, the minimum percentage of OGV calls made by USEPA Tier 2 or higher tier vessels shall increase to 40%.

c) On-site equipment: The Project's three front-end loaders shall be hybrid-electric and meet USEPA Tier 4 Final standards. The Project's sweeper, skid steer loader, and personnel lift shall be electric powered.

d) Within 24 months of the lease commencement date, all four (4) haul trucks to be used to transport material between the Project site and the Central Concrete plant in West Oakland and all future trucks for this route shall be electric-powered or other alternative technology approved by the Port, and loads shall be covered.

e) All haul truck tires shall be washed at the Project site exit.

f) The Applicant shall plant trees and other landscaping between the Project site and the West Oakland neighborhood to reduce transport of particulate matter with a diameter less than 2.5 microns (PM2.5) and maintain the added landscaping for the duration of the lease.

g) The Applicant shall sweep on-site roads a minimum of twice daily during all days of operation and shall comply with any additional measures to limit PM in the atmosphere through control of trackout of solid materials onto paved public roads pursuant to BAAQMD Regulation 6 Rule 6, 6-6-301.

h) Because additional NOx and PM mitigation measures may become feasible over the term of the proposed lease, the Applicant shall prepare and implement an Operations Air Quality Plan as specified below. The feasibility of potential additional mitigation elements to be added by the Operations Air Quality Plan shall be evaluated using the same feasibility standards the Port applies under its Seaport Air Quality 2020 and Beyond Plan, which outlines steps to determining feasibility that include assessing exposure reduction, affordability, cost effectiveness, commercial availability, operational feasibility, acceptability, and need.

   The Applicant shall submit its initial Operations Air Quality Plan to the Port, which shall review, comment upon, and approve the Plan prior to the start of Project operations.

   The Applicant shall conduct the following on an annual basis over the term of the lease:

- Reevaluate and update the Operations Air Quality Plan and submit it to the Port for review and approval.

- Provide to the Port a written equipment inventory in spreadsheet format of all equipment used the previous year; the inventory shall include the estimated hours of use, truck gate counts, and equipment fuel consumption by type and usage associated with the equipment.

- Meet with the Port to discuss the equipment inventory and evaluate the feasibility of: using least -polluting or zero -emissions equipment (for example, electric front-end loaders should they become commercially available); and exceeding BAAQMD best available control technology (BACT) and toxics best available control technology (TBACT) requirements (as defined by BAAQMD Regulation 2 Rule 2 New Source Review 2-2-301 and Regulation 2 Rule 5 New Source Review of Toxic Air Contaminants 2-5-301) for aggregate transfer operations and storage piles.

In addition, the Operations Air Quality Plan shall provide that in Years 1 through 6 of the lease, the Applicant shall, if determined to be feasible, implement a pilot project to test a capture and control system for OGV emissions. Regardless of whether such a pilot program is determined to be feasible, and whether, if the pilot program is implemented, the capture and control system is determined to be feasible for continued use, the Operations Air Quality Plan shall also outline an at-berth emission reduction plan as follows: Applicant shall demonstrate that in Years 7 through 12 of the lease, PM10 emissions from OGVs are reduced by 40% compared to those projected in the SEIR, and that after Year 12, PM10 emissions from OGVs are reduced by 65% compared to those projected in the SEIR. The Applicant will continue to meet the terms of the at-berth emissions reduction plan during the term of its lease even if even if such terms are more stringent than regulatory requirements.

The 2020 and Beyond Plan framework for determining feasibility combines both qualitative and quantitative evaluations to determine whether a potential air emissions reduction strategy is feasible for implementation. This framework would be applied to Item h in Mitigation Measure ERA AQ-1 to continue to evaluate opportunities in future Proposed Project operations. For more description on NOx offsets, see Response to Comment B-26.

No revisions are necessary to Mitigation Measure ERA AQ-2, which identifies a performance standard requiring all Tier 4 off-road construction equipment, with the possible exception of limited categories of equipment (potentially including vibratory jackhammers and concrete saws) for which suitable Tier 4 equipment may not be available.

Response to Comment A-12

The comment recommends mitigation measures to be in place prior to the start of operations that include: all service equipment be completely zero emission; all heavy-duty trucks entering or on the Proposed Project site to be model year 2014 or later and be fully zero-emission by 2030; and all tugs and OGVs be equipped with Tier 4 or cleaner engines.

See revised Mitigation Measure ERA AQ-1 presented in Response to Comment A-11 regarding OGVs and tugs, off-road equipment, and trucks traveling to and from the Project site and the Central Concrete

plant in West Oakland. Mitigation Measure ERA AQ-1 addresses all current Proposed Project off-road equipment including three front end loaders, one sweeper, one skidsteer, and one personnel lift. Per the California Air Resources Board's (CARB's) Drayage Truck Rule, starting January 1, 2023, Class 7 and 8 trucks are required to have 2010 model year engines or newer. The Port is requiring compliance with this rule and notes that there is not a difference in USEPA and California emission standards between 2010 and 2014 model year trucks. Zero emission trucks are part of the Port's 2020 and Beyond Plan. See Response to Comments A-1, A-11, and H-62.

For further discussion regarding OGV and tug Tier 4 engines, see Master Response 6: Waterside Emissions Controls.

Response to Comment A-13

The comment raises concerns regarding the Proposed Project's potential health impacts, asserting that the DSEIR lacks mitigation measures, omits statutory considerations addressing impacts to disadvantaged communities, and lacks information about public outreach. See Responses to Comments A-3 and A-11 and Master Response 9: Stakeholder Engagement and Environmental Justice.

Response to Comment A-14

The comment suggests that existing operations would be maintained at the Richmond Marine Terminal and that both communities are designated as disadvantaged communities under AB 617. See Response to Comment A-5.

Response to Comment A-15

The comment suggests that the FSEIR include a detailed project description of the Applicant's operations that would continue at the Richmond Marine Terminal and include any related air pollutant emission sources resulting from those operations in the FSEIR. See Master Response 2: Operations at Richmond Terminal regarding consideration of the Richmond Marine Terminal.

Response to Comment A-16

The comment recommends including a design measure requiring on-site aggregate piles and trucks be covered. See Response to Comment A-10.

Response to Comment A-17

The comment recommends all feasible mitigation measures referenced under Section IV of the comment letter be included in the FSEIR. See Response to Comment A-12.

Response to Comment A-18

The comment states that 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. Comment is noted.

Letter B: California Department of Justice (January 15, 2021)

XAVIER BECERRA
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January 15, 2021

Via E-mail

Letter B

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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").[1] 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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[1] 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.

B-10 cont. of the Project's impacts are disclosed, understood, and mitigated to the maximum extent feasible.[2]

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

B-11 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.[3] The construction materials would be delivered to the Project by 48 ocean-going marine vessels making new annual visits to the Port.[4] After the construction aggregates are offloaded from the ships, they would be stored onsite in three different stockpiles up to 40 feet high.[5] Each pile would be uncovered and contain up to 390,000 tons of construction materials.[6] 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.[7]

B-12 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").[8] 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.[9] 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.[10]

B-13 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.[11] In addition, there are 170 permitted facilities that generate toxic air contaminants in the

[2] The Attorney General submits these comments pursuant to his independent power and duty to protect the environment and natural resources of the State. *See* Cal. Const., art. V, § 13; Gov. Code, §§ 12511, 12600-12612; *D'Amico v. Bd. of Medical Examiners* (1974) 11 Cal.3d 1, 14-15.

[3] DSEIR at 2-2, 2-12.

[4] *Id.* at 2-12.

[5] *Id.* at 2-27.

[6] *Ibid.*

[7] *Id.* at 2-13, 2-32.

[8] *Id.* at ES-2.

[9] *Ibid.*

[10] *Ibid.*

[11] Bay Area Air Quality Management District ("BAAQMD") and West Oakland Environmental Indicators Project, Owning Our Air: The West Oakland Community Action Plan

B-13 cont.

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.[12] 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.[13]

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.[14] 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.[15] In 2016, residents of West Oakland also had a life expectancy rate that was 7.5 years lower than their neighbors in Alameda County.[16] 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.[17] 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.[18] Over 90 percent of West Oakland's cancer risk comes from exposure to diesel PM.[19]

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.[20] 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

[12] *Id.* at 2-12, Appendix A: Part I, 18-21.

[13] *Id.* at 2-12, Appendix A: Part I, 7.

[14] 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.

[15] 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/.

[16] WOCAP at 2-9.

[17] Davis at 8-9.

[18] 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.

[19] *Id.* at 4-5.

[20] Health & Saf. Code, § 44391.2, subd. (b)(1).

B-13 cont.

adopt a community emissions reduction plan ("CERP") designed to "result in emissions reductions in the community."[21] West Oakland was the first AB 617 community to have a CERP approved by CARB in December 2019.[22]

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

B-14

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."[23] 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."[24] A project that may ordinarily have insignificant impacts on the environment could have significant impacts "in a particularly sensitive environment."[25] 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.[26]

B-15

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."[27] 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.[28] 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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[21] *Id.* § 44391.2, subd. (c)(1)-(2), (5).

[22] 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.

[23] *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 718.

[24] Cal. Code Regs., tit. 14 ("CEQA Guidelines"), § 15125, subd. (a).

[25] *Id.* § 15300.2, subd. (a).

[26] 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.

[27] DSEIR at 2-5.

[28] *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.[29] An environmental impact report must analyze the total effects of the entire proposed action, including all reasonably foreseeable and related future projects.[30] "[W]hen one activity is an integral part of another activity, the combined activities are within the scope of the same CEQA project."[31] As a result, any "piecemeal" or segmented review of a project's environmental impacts is prohibited by CEQA.[32]

B-16 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.[33] 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.[34] 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

[29] CEQA Guidelines, § 15378, subd. (a).

[30] *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.

[31] *Tuolumne County Citizens for Responsible Growth*, 155 Cal.App.4th at 1229.

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

[33] 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.

[34] *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."[35] 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."[36] 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.

B-16 cont.

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."[37] Once a lead agency designates an environmental impact as "significant," the agency must reasonably describe "the nature and magnitude of the adverse effect."[38] 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.[39] A new and complete analysis of environmental impacts is required in supplemental environmental impact

B-17

[35] DSEIR at 2-12 to 13.

[36] *Id.* at 2-13.

[37] Pub. Resources Code, § 21100, subd. (b)(1); CEQA Guidelines, § 15126.2, subd. (a).

[38] *Cleveland Nat. Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th 497, 514.

[39] 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."[40]

B-17 cont.

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.[41] 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."[42] Despite these new significant impacts, the DSEIR does not include any mitigation measures to reduce fugitive dust emissions.[43] 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.[44] 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.[45] 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."[46] 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.[47]

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

B-18

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."[48] This flawed discussion of health impacts "fail[ed] to indicate the

[40] CEQA Guidelines, § 15163, subd. (b).
[41] DSEIR at 3.4-28 to 30 (Impact Air-2), 3.4-33 (Impact Air-3), 3.4-35 (Impact Air-4).
[42] *Id.* at 3.4-28.
[43] *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).
[44] *Id.* at 3.4-29.
[45] *Ibid.*
[46] CEQA Guidelines, § 15163, subd. (b).
[47] *See id.*, § 15088.5.
[48] *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 519.

B-18 cont.

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."[49] 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."[50]

B-19

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.[51] 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.[52] 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.[53] 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.

B-20

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.[54] 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.[55] 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.[56] The DSEIR concludes that the Project would be consistent with all applicable air quality plans, except for the BAAQMD 2017

[49] *Ibid.*
[50] *Id.* at 521.
[51] DSEIR at 3.4-35 to 36.
[52] *See id.* at 3.4-16 to 26.
[53] *Compare id.* at 3.4-26 *to* Chapter 3.
[54] Pub. Resources Code, § 21100, subd. (b)(1); CEQA Guidelines, § 15125, subd. (d).
[55] DSEIR at 3.4-30 to 34.
[56] *Id.* at 3.4-30.

B-20 cont.

Clean Air Plan.[57] 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.[58] 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.[59] 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.

B-21

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."[60] 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."[61] To perform this analysis, a lead agency must "use its best efforts to find out and disclose all that it reasonably can."[62] 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.[63]

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.[64] 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.[65] 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

[57] *Id.* at 4.3-34.
[58] WOCAP at 4-4.
[59] *Id.* at 4-5.
[60] CEQA Guidelines, § 15130, subd. (a).
[61] *Id.* §§ 15065, subd. (a)(3), 15355, subd. (b).
[62] *Id.* § 15144; *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 96.
[63] *Kings County Farm Bureau*, 221 Cal.App.3d at 718.
[64] DSEIR at 4-6 to 7.
[65] *Id.* at 4-8 to 10.

B-21 cont.

large baseball stadium at the Port.[66] 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.[67] 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 $\mu g/m^3$ to 2.8 $\mu g/m^3$) from the Project, but provides no explanation for these increases.[68] 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.

B-22

CEQA requires a lead agency to adopt all feasible mitigation measures to minimize the significant environmental impacts of a project.[69] These measures must be detailed and specific, and "fully enforceable" through permit conditions, agreements, or other legally binding instruments.[70] 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.[71] In addition, CEQA generally prohibits the deferred formulation of mitigation measures.[72] 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.[73] 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.

B-23

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.[74] This Plan "shall describe operational measures that the Project applicant will implement upon commencement of Project operations."[75] At a minimum, these measures must include the use of Tier 4F hybrid-electric front-end loaders, an

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[66] *Id.* at 4-7.
[67] *Id.* at 4-10 to 13.
[68] *See id.* at 4-13.
[69] Pub. Resources Code, § 21002; CEQA Guidelines, § 15126.4, subd. (a)(1).
[70] 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.
[71] *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 670.
[72] CEQA Guidelines, § 15126.4, subd. (a)(1)(B).
[73] *Ibid.*
[74] DSEIR at 3.4-23 to 24.
[75] *Id.* at 3.4-23.

B-23 cont.

electric sweeper, and road sweeping twice a day.[76] 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.[77] 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.

B-24

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.[78] 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."[79] 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.

B-25

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.[80] 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.[81] 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.

B-26

[76] *Id.* at 3.4-23 to 24.
[77] *Id.* at 3.4-24.
[78] *Id.* at 3.4-27.
[79] *Ibid.*
[80] *Id.* at 3.4-28 to 30, 3.4-34 to 35.
[81] *Id.* at 3.4-28.

B-27 The Port has received a number of comment letters that propose additional mitigation measures to reduce the Project's significant air quality impacts.[82] 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.

B-28 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."[83] This discussion allows lead agencies to consider alternatives to a proposed action that will lessen impacts to the environment.[84] 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.[85] 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.[86]

B-29 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.[87] 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.[88] 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.[89] 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.[90] 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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[82] *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.

[83] Pub. Resources Code, § 21002.1, subd. (a); CEQA Guidelines, § 15126.6, subd. (a).

[84] *Laurel Heights Improvement Assn.*, 47 Cal.3d at 400.

[85] *Center for Biological Diversity v. County of San Bernardino* (2010) 185 Cal.App.4th 866, 884.

[86] Pub. Resources Code, § 21002; CEQA Guidelines, §§ 15002, subd. (a)(3), 15021, subd. (a)(2).

[87] DSEIR at 5-11.

[88] *Ibid.*

[89] *Ibid.*

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

X. Conclusion

B-30 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,



ABIGAIL BLODGETT
Deputy Attorney General

For XAVIER BECERRA
Attorney General

Response to Comment B-1

The comment states that a new bulk marine terminal at the Port of Oakland would bring additional stationary and mobile pollution sources to West Oakland, one of the most historically polluted and disadvantaged communities in the State. See Master Response 5: Community Health Risks from Air Quality Impacts for a discussion of pollution sources, Master Response 9: Stakeholder Engagement and Environmental Justice, and Response to Comment A-6.

Response to Comment B-2

The comment states that the DSEIR does not provide an adequate environmental setting. See Response to Comment B-14.

Response to Comment B-3

The comment states that the DSEIR does not describe the Applicant's plans for the Richmond Terminal and analyze the associated environmental impacts. See Master Response 2: Operations at Richmond terminal.

Response to Comment B-4

The comment suggests that the DSEIR fails to correctly analyze the Proposed Project's PM2.5 impacts. See Responses to Comments B-17. Also see Master Response 4: Fugitive Dust and Master Response 8: Consistency with the West Oakland Community Action Plan regarding the contribution of the Proposed Project to PM2.5 concentrations.

Response to Comment B-5

The comment suggests that the DSEIR fails to sufficiently discuss how the Proposed Project's air quality impacts translate to adverse health impacts for the West Oakland community. See Master Response 5: Community Health Risks from Air Quality Impacts as well as Responses to Comments A-3 and A-6.

Response to Comment B-6

The comment requests a complete analysis of the Proposed Project's consistency with the West Oakland Community Emissions Reduction Plan in the DSEIR.

See Master Response 8: Consistency with the West Oakland Community Action Plan. Also see Response to Comment A-6.

Response to Comment B-7

The comment requests that the DSEIR analyze the cumulative impacts in a meaningful way. See Master Response 7: Cumulative Impacts.

Response to Comment B-8

The comment suggests that the DSEIR fails to include mitigation measures that are enforceable, not deferred, and adequate to reduce the Proposed Project's significant impacts. See Response to Comment A-11.

Response to Comment B-9

The comment states that the DSEIR fails to provide a complete analysis of reasonable alternatives to the Proposed Project.

An EIR is required to assess a reasonable range of alternatives to a project as outlined in CEQA Guidelines Section 15126.6. The alternatives must meet most of the project objectives and avoid or substantially lessen potentially significant environmental impacts associated with the project. CEQA also requires that an EIR assess the No Project Alternative, providing an assessment of what would reasonably be expected to occur if the project were not implemented. In compliance with these requirements, the 2002 EIR as Addended analyzed a reasonable range of alternatives, including the No Project Alternative.

In contrast to the requirements described above for alternatives in a project- or program-level EIR, CEQA does not require the identification or analysis of alternatives in a Supplemental EIR. As provided in CEQA Guidelines Section 15163(b), "The supplement to the EIR need contain only the information necessary to make the previous EIR adequate for the project as revised." Because the 2002 EIR as Addended analyzed the development and use of the Port for increased cargo operations assuming only container cargo, and the Proposed Project changes a portion of a terminal designated for container cargo to bulk construction aggregates, the Port considered six potential alternatives (described in Section 5.4 of the DSEIR), all of which were ultimately dismissed from further evaluation for one or more of the following reasons: (1) they were not substantively different from one of the considered alternatives; (2) they would not sufficiently meet most of the Proposed Project objectives; (3) they were determined to be infeasible; or (4) they would not avoid or substantially reduce one or more potentially significant impacts under the Proposed Project. Sections 5.5 and 5.6 of the DSEIR provided more detailed evaluation of the No Project Alternative and Alternative 1–Stockpile Storage in a Building. The Port did not identify any other feasible alternatives that would meet most of the Proposed Project objectives and avoid or substantially lessen potentially significant environmental impacts. The commenter does not suggest any other alternatives that should have been evaluated. For all these reasons, no further discussion of alternatives is necessary in this Supplemental EIR. Also see Response to Comment B-29.

Response to Comment B-10

The comment requests that the Port conduct further environmental analysis pursuant to CEQA.

The Port has reviewed and responded to all comments on the DSEIR. Where needed, responses provide additional information and clarification of the analysis provided in the DSEIR. This FSEIR, composed of Volumes 1, 2, and 3, constitutes a complete record of the CEQA environmental analysis for the Proposed Project.

Response to Comment B-11

The comment summarizes the maximum amount of construction aggregates associated with the Proposed Project and identifies the air pollution sources associated with the Proposed Project.

The comment contains two errors. First, the actual total aggregates tonnage that could be stored onsite is identified in the DSEIR as approximately 329,000 tons and not 390,000 tons as stated in the comment. Since the publication of the DSEIR, the total aggregates tonnage that could be stored onsite has been increased from 329,000 to 350,000 tons; this change was due to minor site design changes in the

stacking system and does not change the overall annual throughput presented in the DSEIR. Second, the comment is incorrect when it identifies an estimated 70,000 trucks and 76 barges as mobile sources traveling through West Oakland. Barges would not travel through West Oakland. Most of the annual truck trips would travel directly from the Proposed Project site to the nearby freeways and would not drive through West Oakland. A more detailed assessment of truck traffic can be found in Section 3.11.3 of the DSEIR. Also see Responses to Comments A-2, A-3, and A-6.

Response to Comment B-12

The comment explains that the DSEIR supplements the environmental impact report for the OAB Area Redevelopment Plan and notes the previous addendums that preceded the DSEIR. Comment is noted.

Response to Comment B-13

The comment describes existing pollution and health issues in West Oakland and explains that West Oakland was selected by the CARB to be one of the first communities to develop an air emissions reduction plan pursuant to AB 617. For a discussion of the Proposed Project's consistency with AB 617, see Master Response 8: Consistency with the West Oakland Community Action Plan, Master Response 9: Stakeholder Engagement and Environmental Justice, and Responses to Comments A-3 and A-6.

Response to Comment B-14

The comment notes that 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. See Master Response 5: Community Health Risks from Air Quality Impacts and Master Response 9: Stakeholder Engagement and Environmental Justice.

The Port acknowledges the sensitivities of nearby communities to pollution. The Port has incorporated a number of WOCAP strategies in its 2020 and Beyond Plan to reduce exposures to PM 2.5, DPM, and toxic air contaminants (TACs), as described in DSEIR Sections 3.4.1 and 3.4.4. For a discussion of sensitive receptors within the Proposed Project vicinity including risk factors, see Appendix D, *Health Risk Assessment for the DSEIR*.

With regard to background environmental burdens, see the Updated Environmental Setting in Section 3.4.1 of the DSEIR, which provides 3-year averages of the PM2.5 concentrations at City of Oakland (City) air quality monitoring stations within the vicinity of the Proposed Project as well as a summary of 24-hour exceedance events. Section 3.4.1 also includes a summary of recent data from monitoring sites in the general vicinity of the Port operated by BAAQMD, including the West Oakland site. Also see Table 4.5-2 in Section 4.5.1 of the DSEIR for an assessment of cumulative health risks from the Proposed Project and existing conditions in West Oakland.

Response to Comment B-15

The comment states that the DSEIR's environmental setting description does not provide adequate information about the West Oakland residential communities.

The DSEIR HRA used a grid pattern to represent residential receptors. Specific sensitive receptors (e.g., daycare centers, schools, medical facilities, and parks) were not explicitly represented by a receptor to uniquely represent their specific locations. A description of the residential grid pattern is provided in Section 2.2.4 of Appendix D, *Health Risk Assessment for the Draft SEIR*. This was a conservative approach

because it applied residential exposure assumptions to these sensitive receptors, which results in higher cancer risks and/or non-cancer health effects, as indicated in Appendix D, Section 2.2.4.

Other sensitive receptors were evaluated with worker exposure assumptions. While the DSEIR did not explicitly identify the neighborhoods referenced in the comment, parks, schools and daycare centers are all incorporated within the receptor grid and identified as residential receptors. Thus, the maximum exposed residential receptor that was reported and compared to the applicable thresholds of significance ensures that these individual locations have health impacts at levels equal to or less than the identified MEIR impact.

Also see Response to Comment B-14.

Response to Comment B-16

The comment suggests that the DSEIR must include a detailed discussion of the Applicant's plans for its Richmond Terminal and explain how these changes would impact the proposed Project's operations. The comment also suggests that the DSEIR analyze the environmental impacts of any reasonably foreseeable future changes to the Richmond Terminal's operations that are related to the Proposed Project. See Master Response 2: Operations at Richmond Terminal.

Response to Comment B-17

The comment states that the DSEIR does not include any mitigation measures to reduce fugitive dust emissions, and an analysis of PM 2.5 impacts from the entire OAB Redevelopment Area and PM 2.5 impacts on nearby workers is required since the 2002 EIR as Addended did not include a full analysis of PM 2.5 impacts.

The Proposed Project's PM2.5 emissions are described in Section 3.4.4 of the DSEIR. The scope of the DSEIR is limited to the incremental difference in the environmental impacts between the Proposed Project and the redevelopment plan analyzed in the 2002 EIR as Addended. As such, the DSEIR only considers potential impacts from the Proposed Project in relation to changes from the previous analyses, not from the entire OAB Area Redevelopment. See the Response to Comment H-16.

Furthermore, the analysis by BAAQMD of the WOCAP included all PM2.5 sources in the West Oakland community, including the OAB Area Redevelopment, that have been built to date. The addition of the Proposed Project's emissions to the WOCAP analysis is shown in Table 4.5-2 of the DSEIR, which is an assessment of cumulative health risks from the Proposed Project and existing conditions in West Oakland.

The revised Mitigation Measure ERA AQ-1 (see Response to Comment A-11) would require the Proposed Project to implement measures to reduce PM2.5 (including fugitive dust) emissions. As described in Master Response 4: Fugitive Dust, the DSEIR took a conservative approach to potential fugitive dust mitigation emission reductions. The DSEIR also took a conservative approach in identifying the remaining potential for elevated concentration above recommended thresholds of significance of PM2.5 offsite from the Proposed Project as well as within the Port's property. This PM2.5 concentration threshold is well below Occupational Safety and Health Administration (OSHA) established criteria for worker exposure concentrations and silica dust.

Also see Master Response 4: Fugitive Dust.

Response to Comment B-18

This comment suggests that the DSEIR did not 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.

See Master Response 5: Community Health Risks from Air Quality Impacts, and Response to Comment A-6.

Response to Comment B-19

The comment suggests that the analysis under Impact AIR-4 is disconnected from the DSEIR discussion regarding the amount of pollutants that would be generated by the Proposed Project, and that the DSEIR does not make any connection between the Proposed Project's NOx and ozone (or precursors), and does not disclose to the public what may trigger health impacts resulting from ozone. The comment also states that the DSEIR is silent on the associated health risks for other pollutants such as crystalline silica.

As discussed under Impact AIR-2 in Section 3.4.4 of the DSEIR, the Proposed Project would generate emissions of TACs, including DPM contained in diesel engine exhaust, other TACs from combustion sources, and respirable crystalline silica from construction aggregate as well as fugitive dust. The HRA conducted for the Proposed Project evaluated the level of risk from the potential exposures to these TACs generated by the construction and operation of the Proposed Project, as detailed further in Appendix D, *Health Risk Assessment for the Draft SEIR* of the DSEIR. The HRA detailed cancer risks, chronic non-cancer health effects, acute health effect, and PM 2.5 concentrations, which represent the types of analyses recommended by the California Office of Environmental Health Hazard Assessment (OEHAA) (OEHHA 2015) and BAAQMD (BAAQMD 2017) in their guidance for conducting health risk assessments to characterize health effects for exposed sensitive receptors. Thus, all TACs identified for the Proposed Project with toxicity values established by OEHAA were evaluated quantitatively in the DSEIR.

Specifically, silica dust is represented as an individual line item both in emissions calculations (see Table 41 of FSEIR Volume 2, Appendix C, *Air Quality and Greenhouse Gas Analysis*) and the quantification of chronic non-cancer health effects (see Table 9 of FSEIR Volume 2, Appendix D, *Health Risk Assessment for the Draft SEIR*), which is the only toxicity value listed by OEHHA for silica. The hazard index (HI) for silica alone at the maximum exposed individual receptor was 0.119 after mitigation, as identified in Table 10 of Appendix D, *Health Risk Assessment for the Draft SEIR*. Along with the other chemicals associated with chronic non-cancer health impacts, the total HI at the maximally exposed individual (MEI) was 0.129 after mitigation (see Table 10 of FSEIR Volume 2, Appendix D, *Health Risk Assessment for the Draft SEIR*). This is well below threshold levels of significance of HI of 1.

An HI is calculated as the sum of all hazard quotients. Hazard quotients are ratios of pollutant concentrations to their Reference Exposure Level (REL; defined as the concentration level at or below which no adverse health effects are anticipated for a specified exposure duration). Non-cancer acute hazard quotients are based on acute RELs and the acute HI is the sum of all acute hazard quotients for the same impacted target organ system. The chronic HI is the sum of all hazard quotients based on chronic RELs. The chronic REL is a concentration level (expressed in units of micrograms per cubic meter, or µg/m3, for inhalation exposure and in a dose expressed in units of milligrams per kilogram-day, or

mg/kg-day, for oral exposures) at or below which no adverse health effects are anticipated following long-term exposure.

The equations used to calculate the chemical-specific chronic hazard quotients and the overall HI are:

$$Chronic\ HQ_i = C_i/REL_i$$

$$Chronic\ HI = \sum HQ_i$$

Where:

Chronic HQ_i = Chronic Hazard Quotient for $Chemical_i$ (unitless)

Chronic HI = Hazard Index (unitless)

C_i = Annual average air concentration for $Chemical_i$ ($\mu g/m^3$)

REL_i = Chronic Non-cancer Reference Exposure Level for $Chemical_i$ ($\mu g/m^3$)

As noted by OEHHA on page 6-2 of its HRA guidelines:

> *It should be emphasized that exceeding the acute or chronic REL does not necessarily indicate that an adverse health impact will occur. The REL is not the threshold where population health effects would first be seen. However, levels of exposure above the REL have an increasing but undefined probability of resulting in an adverse health impact, particularly in sensitive individuals (e.g., depending on the toxicant, the very young, the elderly, pregnant women, and those with acute or chronic illnesses). The significance of exceeding the REL is dependent on the seriousness of the health endpoint, the strength and interpretation of the health studies, the magnitude of combined safety factors, and other considerations. In addition, there is a possibility that a REL may not be protective of certain small, unusually sensitive human subpopulations. Such subpopulations can be difficult to identify and study because of their small numbers, lack of knowledge about toxic mechanisms, and other factors.*

Therefore, to the extent that agencies have clearly developed methods for quantifying health effects from air pollutants with the information available to them at this time, the Proposed Project has identified these impacts.

Specific health effects of silica, which is the only new TAC identified in this document, are described in in Section 3.4 of the DSEIR and Appendix C, *Air Quality and Greenhouse Gas Analysis*. Appendix B, *Safety Data Sheet for Eagle Rock Aggregates* material indicates that prolonged exposure to respirable dusts containing crystalline silica in excess of allowable exposure limits may cause a chronic form of silicosis, an incurable lung disease. For further information on the health effects of silica, the reader is referred to OEHHA documents used in developing the noncancer REL for silica, which includes a more detailed account of health effects (https://oehha.ca.gov/chemicals/silica-crystalline-respirable). Furthermore, as discussed in Section 3.7 of the DSEIR, the Proposed Project would comply with OSHA standards to control employee exposures to respirable crystalline silica, which would be required to remain below the 25 $\mu g/m^3$ action level by maintaining the stockpiles with a moisture content of 1% to 8% depending on the aggregate size in compliance with industry standards to control dust.

Also see Master Response 4: Fugitive Dust and Master Response 5: Community Health Risks from Air Quality Impacts.

Response to Comment B-20

The comment states that the DSEIR determination of consistency with all applicable air quality plans is based on an incomplete analysis of the West Oakland Community CERP, and that the DSEIR should analyze how the Proposed Project would support or hinder CERP goals. See Master Response 8: Consistency with the West Oakland Community Action Plan.

Response to Comment B-21

The comment suggests that the DSEIR's cumulative impacts analysis does not satisfy CEQA's requirements, stating that West Oakland is already burdened by substantial and significant pollution sources throughout its neighborhoods. See Master Response 7: Cumulative Impacts.

Response to Comment B-22

The comment states that the DSEIR air quality mitigation measures are unenforceable and unlawfully deferred. See Response to Comment A-11.

Response to Comment B-23

The comment states that Mitigation Measure ERA AQ-1 is unenforceable and deferred, but should be implemented before Proposed Project operations begin, and should include concrete standards to ensure that air quality impacts are minimized. See Responses to Comments A-11 and A-12.

Response to Comment B-24

The comment states that Mitigation Measure ERA 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 would be granted. See Response to Comment A-11.

Response to Comment B-25

The comment states that the DSEIR should be revised to include concrete and enforceable mitigation measures for emissions from the Proposed Project's stockpiles, aggregate transfer operations, and on-site vehicle travel, and other sources of fugitive dust since 95% of PM 2.5 comes from these sources. See Responses to Comments A-11 and B-17 and Master Response 4: Fugitive Dust.

Response to Comment B-26

The comment suggests that the DSEIR add mitigation measures that reduce air quality impacts from vehicles other than on-site equipment, such as OGVs, commercial harbor craft, and off-site trucks used to transport the aggregates. See revised MM ERA AQ-1 in Response to Comment A-11 and Master Response 4: Fugitive Dust.

Response to Comment B-27

The comment recommends that the Port evaluate the feasibility of additional mitigation measures and adopt all measures that will reduce the Proposed Project's impacts with specific, enforceable, and timely

actions. See revised Mitigation Measure ERA AQ-1 in Response to Comment A-11, which clarifies performance measures and other enforceable requirements. Also see Response to Comment A-12.

Response to Comment B-28

The comments states that 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. See Response to Comment B-9.

Response to Comment B-29

The comment requests that the DSEIR be revised to describe the costs associated with the stockpile enclosure at its Richmond Terminal and explain why that enclosure was feasible but an enclosure at the Proposed Project site is not.

The Richmond Marine Terminal operation is substantially smaller, with the enclosed building totaling approximately 94,000 square feet (2.2 acres), compared to the 617,500 square foot (14-acre) building that would be necessary to enclose the operations at the Proposed Project site. The constraints in constructing a building of this size, resulting in a much higher cost as well as other considerations, are discussed in Section 5.6 of the DSEIR. Also see Response to Comment B-9.

Response to Comment B-30

This comment requests that the Port revise and recirculate the DSEIR.

A lead agency is required to recirculate an EIR when significant new information is added to the EIR after the draft EIR is circulated for public review but before the final EIR is certified. New information added to an EIR is not "significant" unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project's proponents have declined to implement. Recirculation is not required where the new information added to the EIR merely clarifies or amplifies or makes insignificant modifications in an adequate EIR.

The clarifying revisions made to the DSEIR in response to comments received do not constitute significant new information meeting the criteria for recirculation of the DSEIR. No information disclosing a new or substantially more severe significant environment impact was added to the DSEIR. No additional feasible alternatives have been identified since the DSEIR was published. The Port evaluated additional mitigation measures proposed by commenters and did not identify any feasible measures considerably different from measures analyzed in the DSEIR.

Letter C: California Department of Toxic Substances Control (December 7, 2020)

Letter C

Khamly Chuop

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

The sender of this message is external to the **Port of Oakland**. Do not open links or attachments from untrusted sources.

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.

C-1 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.

C-2 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.

C-3 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
Site Mitigation and Restoration Program -Berkeley
Elizabeth.Chung-Huynh@Dtsc.ca.gov

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Response to Comment C-1

The comment asks for clarification on whether the Proposed Project operations would be indoors or outdoors. The Proposed Project operations (import, storage, and distribution of bulk construction aggregates) would occur outdoors.

Response to Comment C-2

The comment suggests that a Community Air Monitoring Program (CAMP) be considered during Proposed Project construction and operations.

The Proposed Project currently does not include an identified remediation activity and is currently not a site under the California Department of Toxic Substance Control (DTSC) oversight that would require the preparation and implementation of a CAMP. Although soil removal activities would occur for the construction of the bioretention basin, utilities removal and installation, and foundation work, applicable mitigation measures and standard conditions of approval would be followed during construction. This includes Standard Condition of Approval (SCA) AIR-2 that would require the watering of exposed surfaces twice a day; the posting of a visible sign for dust complaints that would include a phone number for the Port, BAAQMD, and the Contractor; the taking of corrective action within 48 hours; and other measures to minimize fugitive dust.

During operations, the stockpiles would be kept at a moisture content between 1 and 8% depending on the aggregate size and the Proposed Project would operate under a Permit to Operate by the BAAQMD. The permit would include measures to reduce the amount of fugitive dust (see Master Response 4: Fugitive Dust). In addition, see revised Mitigation Measure ERA AQ-1 in Response to Comment A-1 for Proposed Project features have been added to reduce fugitive dust. It is noted that there are ambient air quality monitoring stations within the vicinity of the Proposed Project including BAAQMD's West Oakland monitor and a temporary network of three monitoring sites operated by Northgate Environmental on behalf of the City.

Response to Comment C-3

The comment recommends that all imported construction materials be analyzed for any chemical of potential contamination according to the historical use of the site where the materials are being imported.

Proposed Project construction materials would include steel and concrete, which would not require testing. Depending on the type and source of import soil, analytical testing for any chemical of potential contamination would be performed as a condition of approval for the Proposed Project.

Letter D: California State Lands Commission (January 8, 2021)

Letter D

CALIFORNIA STATE LANDS COMMISSION
100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202

JENNIFER LUCCHESI, *Executive Officer*
(916) 574-1800 *Fax* **(916) 574-1810**
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from Voice Phone **1-800-735-2922**

Contact Phone: **(916) 574-1890**

Established in 1938

January 8, 2021

File Ref: SCH #2001082058

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

SENT VIA ELECTRONIC MAIL ONLY (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

D-1 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.

D-1 cont.

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,[1] 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

D-2

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

[1] 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:

D-2 cont.

- 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

D-3

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.

D-4

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.

D-5 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.

D-6 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_{10} and $PM_{2.5}$, 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_{10} and $PM_{2.5}$ 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

D-7 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.

D-7 cont.

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.

D-7 cont. 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.

D-8 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. For questions about Commission jurisdiction, please contact Reid Boggiano, Public Land Management Specialist, at 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.

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

Response to Comment D-1

The comment states that the California State Lands Commission has adopted a five-year Strategic Plan that identifies 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. Comment is noted.

Response to Comment D-2

This comment restates general Project Description information related to the aggregate offloading process and stockpiling at Berths 20, 21, and 22 backlands using a radial conveyor system.

As a point of clarification, the three stockpiles would reach heights of up to 40 feet high, not over 40 feet high. Initially, during the first few years of operations, the stockpiles would be between 20 and 25 feet in height, reaching up to 40 feet thereafter (see Section 2.2.2 of the DSEIR).

Response to Comment D-3

The comment states that Mitigation Measure ERA AQ-1 does not include an enforceable timeline for preparation of the Operations Air Quality Plan and lacks adequate detail about how such measures could reduce the Proposed Project's significant impact on air quality. The comment also states that performance measures and targets should be consistent with the near-term emissions reduction actions identified in the 2020 and Beyond Plan. See Response to Comment A-11, which includes clarifying revisions to Mitigation Measure ERA AQ-1.

Response to Comment D-4

The comment recommends including stakeholder engagement in the review process for the Operations Air Quality Plan under Mitigation Measure ERA AQ-1 to ensure ongoing opportunities for meaningful input and authentic involvement in decision-making. See Master Response 9: Stakeholder Engagement and Environmental Justice.

Response to Comment D-5

The comment recommends that the Applicant work closely with the Port to evaluate equipment and infrastructure needs to identify opportunities for zero-emission equipment. See Responses to Comments A-1, A-11, and A-12.

Response to Comment D-6

The comment states that the 2002 EIR as Addended identified two Standard Conditions of Approval related to fugitive dust and particles, but that 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 comment suggests covering the stockpiles at the Proposed Project site and the trucks transporting materials from the Proposed Project site as additional mitigation for PM emissions.

During Proposed Project operation, fugitive dust would be generated from the movement of construction aggregates from ships to aggregate stockpiles, the transfer of aggregate from stockpiles to hauling trucks or barges, resuspension of accumulated dust on roads and surfaces, and from windblown

erosion of the aggregate stockpiles. See Master Response 4: Fugitive Dust and Response to Comment A-10.

Response to Comment D-7

The comment states that the Proposed Project's potential public health impacts and lack of full analysis of mitigation measures related to air pollution and fugitive dust, and the DSEIR's lack of an environmental justice analysis and record of meaningful and authentic community outreach and engagement, are of concern to the Commission. The comment suggests describing community outreach and engagement that the Port took in developing the DSEIR. See Responses to Comments A-6, A-11, and B-17, Master Response 4: Fugitive Dust, Master Response 5: Community Health Risks from Air Quality Impacts, and Master Response 9: Stakeholder Engagement and Environmental Justice.

Response to Comment D-8

The comment requests that that the Port consider trustee agency comments prior to certifying the FSEIR and to provide copies of future Proposed Project-related documents. Comment is noted.

3.2.2 Local Agencies

Letter E: East Bay Municipal Utility District (December 17, 2020)

Letter E

EAST BAY MUNICIPAL UTILITY DISTRICT

December 17, 2020

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

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.

E-1

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.

E-2

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

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E-2 cont.

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), 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

E-3

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.

E-3 cont.

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

E-4

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

Response to Comment E-1

The comment states that East Bay Municipal Utility District's (EBMUD's) Central Pressure Zone would serve the Proposed Project and although the property has water service, separate structures on a single parcel would require separate water service. The comment recommends that if additional service is required, the Applicant should contact EBMUD's New Business Office.

Since the Proposed Project includes the construction of a new structure (maintenance/office building), additional water service would likely be needed. Therefore, the Applicant would coordinate with EBMUD to determine costs and conditions for providing additional water service to the existing parcel and comply with EBMUD regulations governing water service (EBMUD 1959-2020).

Response to Comment E-2

The comment states that EBMUD's Main Wastewater Treatment Plant (MWWTP) has adequate dry weather capacity to accommodate proposed wastewater flows from the Proposed Project, but that wet weather flows are a concern. The comment recommends that the Proposed Project 1) comply with EBMUD's Regional Private Sewer Lateral Ordinance, 2) 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 3) ensure any new wastewater collection systems, including sewer lateral lines, for the project are constructed to prohibit infiltration and inflow.

As described in Section 3.12 of the DSEIR, wastewater generated from operation of the restroom facility and kitchen in the maintenance/office house would be conveyed to a new sanitary sewer line that would connect to the existing City sanitary sewer line at Maritime Street and 17th Street, and then conveyed to EBMUD's MWWTP. In addition, wash water from the tire wash system(s) would also be discharged to the sanitary sewer. The Port's lease agreement with the Applicant includes a requirement for compliance with the Port's Private Sewer Lateral Ordinance 4474 and Sewer Use Ordinance 4113 which conforms with EBMUD's Regional Private Sewer Lateral Ordinance and the Port's Sewer System Management Plan (SSMP) (Port of Oakland 2020). Compliance with the referenced Port ordinances would ensure that the Proposed Project's wastewater collection systems would be constructed to prevent infiltration and inflow. The existing sanitary lines at the Proposed Project site would be abandoned; therefore, no rehabilitation or replacement would be required.

Response to Comment E-3

The comment recommends that the Proposed Project explore options and requirements relating to recycled water use for the Proposed Project, consistent with EBMUD Policy 9.05.

The Proposed Project would utilize OGV ship hold water for a majority of its non-potable water needs. Since release of the DSEIR, additional on-site capacity has been added for the use and storage of ship hold water. Rather than including the 20 on-site water storage tanks on the north side of the ship unloading hopper (each with a 10,000-gallon capacity) as described in the DSEIR, the Proposed Project now includes a single open storage tank at the same location with approximately 1 million gallons of onsite capacity. In addition, based on comments received on the DSEIR, the Applicant has also agreed to add a recycled water line connection to support Proposed Project site operations as needed to supplement OGV ship hold water. Stormwater would no longer be captured for Project operational use.

As described in Chapter 4, Revisions to the Draft Supplemental Environmental Impact Report, of this volume, these modifications have been incorporated into the FSEIR Project Description as follows:

> Stored water from the OGV aggregate holds would be used for material stockpile wetting and on-site dust control, thereby minimizing the need for supplemental recycled ~~potable~~ water. OGV ship hold water as well as EBMUD recycled water ~~pumped water from the on-site stormwater retention pond~~ would be kept in the ~~twenty~~one-million~~10,000~~-gallon on-site water storage tank~~s~~ ~~(total combined capacity of 200,000 gallons)~~.

Response to Comment E-4

This comment notes that applicable water-efficiency measures must be installed before new or expanded water services can be provided per Section 31 of EBMUD's Water Service Regulations.

Compliance with water efficiency requirements will be a condition of approval for the Proposed Project. The Proposed Project would use potable water only in the scale house restrooms, kitchen, and laboratory. Water-efficient toilets and faucets would be installed consistent with the City of Oakland's building standards and consistent with EBMUD's Water Service Regulations.

Letter F: Bay Area Air Quality Management District (January 8, 2021)

Letter F

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

ALAMEDA COUNTY
John J. Bauters (Secretary)
Pauline Russo Cutter
Nate Miley
VACANT

CONTRA COSTA COUNTY
John Gioia
David Hudson
Karen Mitchoff (Vice Chair)
Mark Ross

MARIN COUNTY
Katie Rice

NAPA COUNTY
Brad Wagenknecht

SAN FRANCISCO COUNTY
VACANT
Shamann Walton
Tyrone Jue (SF Mayor's Appointee)

SAN MATEO COUNTY
David J. Canepa
Carole Groom
Davina Hurt

SANTA CLARA COUNTY
Margaret Abe-Koga
Cindy Chavez (Chair)
Rich Constantine
Rod G. Sinks

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 ($PM_{2.5}$) concentrations to 1.7 micrograms per cubic meter (ug/m^3) 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. F-1

Staff also recommends the Port to incorporate additional $PM_{2.5}$ reduction measures such as: F-2

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

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F-3 F-4 F-5 F-6 F-7 F-8 F-9

- 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

F-10 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

F-11 F-12 F-13 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.

F-14 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.

F-14 cont. Staff recommends the Project evaluate a scenario that involves removing 25 acres of parking at Howard Terminal.

F-15 In addition, on September 23, 2020, Governor Gavin Newson 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

F-16 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, or Areana Flores, Environmental Planner, 415-749-4616 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)
Stanley Armstrong
Air Pollution Specialist
California Air Resources Board

Matthew O'Donnell
Manager
California Air Resources Board

Abigail Blodgett
Deputy Attorney General
Bureau of Environmental Justice
California Attorney General's Office

Linda Scourtis
Manager
San Francisco Bay Conservation and Development Commission

Ms. Margaret Gordon
Co-Director
West Oakland Environmental Indicators Project

Brian Beveridge
Co-Director
West Oakland Environmental Indicators Project

Response to Comment F-1

The comment acknowledges the Proposed Project's efforts to be consistent with the Air District's WOCAP and 2017 Clean Air Plan (CAP), including a commitment to use all electric trucks for its operations between the Proposed Project site and Central Concrete plant in West Oakland and restricting all idling of trucks on-site. The comment raises concerns about hindering progress in meeting the WOCAP's goals and targets of reducing residential neighborhood exposure to fine particulate matter and recommends that the Port require the maximum feasible controls of stockpiles, which should go beyond watering.

As a point of clarification, the DSEIR states in Section 3.10.3 that no unnecessary idling of trucks would occur during construction. As described in Section 2.4 of the DSEIR, operations would be structured to minimize the queuing and truck idling times. Additionally, the electric haul trucks that would be used between the Proposed Project and the Central Concrete plant on Peralta Street in West Oakland would be covered.

Also see Response to Comment A-11, Master Response 4: Fugitive Dust, and Master Response 8: Consistency with the West Oakland Community Action Plan.

Response to Comment F-2

The comment recommends additional barriers to reduce wind speeds within the facility.

As discussed in Section 2.4.2 of the DSEIR, screened fencing or stacked freight containers to create a perimeter container wall, or a combination thereof, would be installed around the north, south, and east perimeter of the Proposed Project site to provide a visual barrier to site operations; the west side would be open to the Outer Harbor to allow for ships to berth. In addition, landscaping would be added along Maritime Street and Vukasin Way (see Response to Comment A-11). The emissions reduction from vegetative and/or physical barriers in combination with watering and other measures cannot be quantified with reasonable certainty, and therefore the SEIR has conservatively assumed no emissions reduction from the barriers around the Proposed Project site (see Master Response 4: Fugitive Dust).

Response to Comment F-3

The comment recommends requiring stationary equipment be completely zero-emission.

The only stationary equipment would be the ship unloading hopper, the conveyor system including the radial stacking conveyor system, and the barge reclaim conveyor system, which are all electric. Fugitive dust emissions would be generated by operation of this equipment.

Response to Comment F-4

The comment recommends ensuring that the Applicant purchase the lowest emitting mobile equipment available prior to issuance of occupancy.

As described in the revised Mitigation Measure ERA AQ-1 presented in Response to Comment A-11, the Proposed Project's three front-end loaders shall be hybrid-electric and meet USEPA Tier 4 Final standards; the Proposed Project's sweeper, skid steer loader, and personnel lift shall be electric powered; and the four trucks delivering aggregate to the Central Concrete plant on Peralta would be electric, or alternative technology approved by the Port, as would future trucks for this route between

the Central Concrete plant and the Proposed Project site. In addition, the Applicant's Operations Air Quality Plan would include performance standards by source category type and would be reviewed and approved by the Port prior to start of Proposed Project operations and annually thereafter. Also see Response to Comment A-12.

Response to Comment F-5

The comment recommends the use of shore power, as feasible, to ensure PM emissions from ship hoteling exhaust are reduced.

For discussion on ship emission controls at berth, including shore power, see Master Response 6: Waterside Emissions Controls. Also see revised Mitigation Measure ERA AQ-1 in Response to Comment A-11.

Response to Comment F-6

The comment recommends requiring OGV calls to meet Tier 3 emission engine standards or better by 2025 and/or use the contracted Tier 4 standard to the maximum extent possible.

See Master Response 6: Waterside Emissions Controls regarding ship emission controls at berth. Also see revised Mitigation Measure ERA AQ-1 in Response to Comment A-11 .

Response to Comment F-7

The comment recommends requiring that barges and tugs meet Tier 3 engine emission standards prior to the start of Proposed Project operations.

See Response to Comment A-11 and Master Response 6: Waterside Emissions Controls. Additionally, as described in Section 3.4.4 of the DSEIR, as part of the Near-Term Action Plan (NTAP) of the 2020 and Beyond Plan (Action #38), the Port is working to facilitate tug engine retrofits via application of BAAQMD incentive funding aimed at early compliance with the current CARB harbor craft Airborne Toxic Control Measure (ATCM). This action is being implemented separately from the Proposed Project. The Port plans to provide a Year 2 Progress Report of the NTAP to the public and the Board of Commissioners in Summer 2021.

Response to Comment F-8

The comment requests that the DSEIR show compliance with District PM Regulation 6, Rule 1: General Requirements and Regulation 6, Rule 6: Prohibition of Trackout.

The Proposed Project, per BAAQMD permitting, would be required to monitor sources that could generate visible fugitive dust emissions. With regard to Regulation 6, Rule 1, bulk material sites are prohibited from having visible fugitive dust emissions above Ringleman 1 for a period of more than three minutes in any 60-minute period. With regard to Regulation 6, Rule 6, see Section 3.4.4, which lists 2017 CAP control measures for stationary sources, including the Proposed Project's compliance approach related to PM wind-blown dust and trackout. Based on comments received, a tire wash station has been added to the Proposed Project as part of Mitigation Measure ERA AQ-1 as noted in Master Response 4: Fugitive Dust and described in Response to Comment A-11. The Proposed Project would also operate an electric sweeper that would clean any trackout observed along with routine sweeping (see Response to Comment A-11).

Under its lease agreement with the Port, the Applicant would be responsible for compliance with all applicable local, state, and federal rules, regulations, and laws in relation to the Proposed Project. Conditions of approval for the Proposed Project would reflect standard conditions that are imposed on discretionary projects, including requiring that the Proposed Project be in compliance with existing laws and regulations.

Response to Comment F-9

The comment recommends requiring fugitive dust controls (e.g., watering down trucks or trackout device) and that all trucks be covered before leaving the facility. See Response to Comment F-8, Master Response 4: Fugitive Dust, and revised Mitigation Measure ERA AQ-1 in Response to Comment A-11.

Response to Comment F-10

The comment recommends that cumulative air quality and health impacts be quantitatively evaluated to determine significance and maintain transparency.

Cumulative impacts from existing sources are evaluated in Section 4.5.1 of the DSEIR. See Response to Comment A-8, Master Response 5: Community Health Risks from Air Quality Impacts, and Master Response 7: Cumulative Impacts.

Response to Comment F-11

The comment raises concern that the Proposed Project's analysis does not properly evaluate the possible impact from increased truck emissions in West Oakland and from the potential increase of trucks on local roads. See Response to Comment A-2, Master Response 3: Truck Parking and Container Staging, and Master Response 4: Fugitive Dust.

Response to Comment F-12

The comment recommends that air quality and traffic analyses include strategies to mitigate truck trips and traffic impacts from the Central Concrete plant in West Oakland. See Response to Comment A-2.

Response to Comment F-13

The comment states that the analysis should show consistency with the West Oakland TMP. See Master Response 3: Truck Parking and Container Staging.

Response to Comment F-14

The comment recommends that the DSEIR evaluate a scenario that involves removing 25 acres of parking at Howard Terminal. See Master Response 3: Truck Parking and Container Staging.

Response to Comment F-15

The comment recommends that prior to the start of Proposed Project operations, all heavy-duty trucks entering or on the Proposed Project site be model year 2014 or later with the goal to be fully zero-emission beginning in 2030. See Responses to Comments A-1 and A-12.

Response to Comment F-16

The comment recommends that the DSEIR demonstrate how the Proposed Project will be consistent with GHG targets established in SB 32 and CARB's most recent draft of the AB 32 Scoping Plan.

The Proposed Project would meet the 2030 GHG targets established under SB 32 and would be consistent with the 2017 AB 32 Scoping Plan. For a discussion of the Proposed Project's consistency with SB 32 and AB 32, see Section 3.6.3 of the DSEIR. As described in DSEIR Sections 3.4.4 and 3.6.3, GHG emissions from the Proposed Project are comparable to the GHG emissions that would be expected if the site were used as a container terminal as analyzed in the 2002 EIR as Addended. The scope of this SEIR is limited to the incremental difference in the environmental impacts between the OAB Area Redevelopment with the Proposed Project and the redevelopment plan analyzed in the 2002 EIR as Addended. Information about the effects of GHG emissions was known at the time the 2002 EIR was certified (and subsequently addended). Thus, it is appropriate for the SEIR to use the same methodology and thresholds as those contained in the 2002 EIR as Addended. Nevertheless, for informational purposes, the DSEIR provides analysis of GHG emissions and a comparison of air pollutant emissions using BAAQMD's 2011/2017 thresholds in Sections 3.4.4 and 3.6.3. At this time, BAAQMD has not released any updated thresholds for GHG emissions that take into account the goals of SB 32 for GHG emissions beyond 2020. The Port determined that BAAQMD's 2011/2017 thresholds remain valid and appropriate for considering whether the Proposed Project would be consistent with these goals.

BAAQMD's 2011/2017 threshold of 10,000 metric tons of carbon dioxide equivalent (MT CO_2e) per year for stationary sources was established based on the threshold established by CARB's Mandatory Reporting Rule and Cap -and -Trade Rule. Since this threshold has not been revised by CARB as part of its strategy for achieving the goals of SB 32, it is still a valid threshold to use for stationary sources.

BAAQMD's 2011/2017 threshold of 1,100 MT CO_2e per year for land use development projects was established for the 2020 goal in AB 32. This threshold was established by BAAQMD by conducting a "gap" analysis of the emissions reductions required from projects undergoing CEQA that are not addressed by existing regulations or strategies identified in the AB 32 Scoping Plan. BAAQMD determined that with a bright-line (or not to exceed) threshold of 1,100 MT CO_2e, the majority of CEQA projects would be required to implement all feasible mitigation measures since they would be above this threshold and, most importantly, that 92% of GHG emissions would be captured above this threshold (BAAQMD 2017, Appendix D). BAAQMD has not yet provided an updated analysis regarding the applicability of this threshold to the 2030 and 2050 goals of SB 32. The Sacramento Metropolitan Air Quality Management District (SMAQMD) conducted a similar analysis of CEQA projects that would be captured by establishing a bright-line threshold initially for the 2020 goals. Recently, SMAQMD updated its analysis and determined that its bright-line threshold still would capture over 98% of their GHG emissions (SMAQMD 2020). Thus, it would be reasonable to assume that an updated analysis by BAAQMD would find that continued use of the 1,100 MT CO_2e threshold still achieves a high capture rate of total GHG emissions and would maintain continued progress towards the 2030 and 2050 goals.

SCA GCC-1: *Greenhouse Gas Reduction Plan* was included in the 2002 EIR as Addended but would not apply to the Proposed Project; the Port's completion of the 2020 and Beyond Plan, as the Seaport's GHG reduction plan, satisfies the intent of this SCA. SCA AIR-2 and Mitigation Measure ERA AQ-1 would reduce GHG emissions by using newer and more fuel efficient off-road and on-road sources including hybrid and electric equipment and vehicles.

Letter G: San Francisco Bay Conservation and Development Commission (January 8, 2021)

San Francisco Bay Conservation and Development Commission
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State of California | Gavin Newsom – Governor | info@bcdc.ca.gov | www.bcdc.ca.gov

Letter G

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.

G-1 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.

G-2 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

G-3

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.

G-4

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.

G-5

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

G-6

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.

G-6 cont.

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 Addended, 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

G-7

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:

G-8

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.

G-9

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.

G-10 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."

G-11

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

G-11 cont.

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.

G-12

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.

G-13

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

G-13 cont. 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).

G-14 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.

G-15 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.

G-16 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

G-17 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.

G-18 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.

G-19 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.

G-20 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.

G-21 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?

G-22 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

G-23 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.

G-24 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

G-25 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

G-26 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."

G-26 cont.

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[1] 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.

G-27

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

G-28

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

G-29

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

[1] https://bcdc.maps.arcgis.com/apps/webappviewer/index.html?id=526ca82e85eb403489de768498f605f3

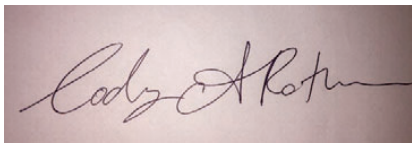
G-29 cont.

G-30

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.aichele@bcdc.ca.gov.

Sincerely,



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CAR/gg

Response to Comment G-1

The comment describes the San Francisco Bay Conservation and Development Commission (BCDC) role as a responsible agency for the Proposed Project.

The Port understands that the comments provided by BCDC may be addressed in the FSEIR and/or through the BCDC permitting process. A BCDC permit application is forthcoming. On April 22, 2021, the Port met with BCDC to begin discussion of the BCDC permit application process.

Response to Comment G-2

The comment notes that BCDC's comments expand upon previous comments in BCDC's September 30, 2019, scoping comment letter in response to the Notice of Preparation (NOP) for the Proposed Project.

The Port reviewed all scoping comment letters during development of the DSEIR and key issues were addressed in the DSEIR (see Section 1.5 of the DSEIR). Further responses to BCDC's January 8, 2021, comments are included below.

Response to Comment G-3

The comment identifies areas of BCDC jurisdiction within the Proposed Project area and states that the FSEIR should discuss the Proposed Project's land use consistency with BCDC policies and San Francisco Bay Plan (Bay Plan) Map No. 5.

A discussion regarding the Proposed Project's consistency with BCDC's port priority use designation and applicable Bay Plan and Seaport Plan policies is included under Impact LU-2 in Section 3.9 of the DSEIR. The Proposed Project would not result in conflicts with applicable policies of the Bay Plan. The Proposed Project would maintain the site for water-related industry as shown on Bay Plan Map No. 5.

Response to Comment G-4

This comment notes that the Proposed Project is expected to require a BCDC permit.

A BCDC permit application for the Proposed Project is forthcoming. On April 22, 2021, the Port met with BCDC to begin discussion of the BCDC permit application process.

Response to Comment G-5

The comment requests that the FSEIR map and describe the Proposed Project elements within BCDC jurisdiction, including areas on San Francisco Bay (Bay) fill that was placed since 1965.

The forthcoming BCDC permit application will detail those elements of the Proposed Project that occur within Bay and shoreline band jurisdictional areas. The existing berths have been in place for approximately 100 years. Thus, the Proposed Project would not be located on Bay fill placed since 1965. As described in Section 3.9.3 of the DSEIR, the Proposed Project would be consistent with BCDC's Ports Policy #2, as it would not involve the use of fill or require dredging activities in the Outer, Middle, or Inner Harbors. Project-specific maps would be prepared during the BCDC permit application process.

Response to Comment G-6

The comment summarizes the findings of Section 3.9 of the DSEIR, and states that BCDC finds that the Proposed Project would be consistent with BCDC policies for this priority use area.

Comment is noted.

Response to Comment G-7

The comment requests that the DSEIR hydrology and water quality analysis reference the Bay Plan policies when considering potential water quality impacts to the Bay.

Section 3.8 of the DSEIR discusses potential water quality impacts. A Small Project Stormwater Pollution Prevention Plan (SWPPP) would be prepared for construction that requires implementation of best management practices (BMPs) such as erosion and sediment controls and good housekeeping BMPs to avoid and/or minimize water quality impacts associated with construction activities. Any use, transport, or disposal of hazardous materials would be conducted in compliance with local, state, and federal regulations to avoid impacts to the public and environment, including water quality.

To address operational water quality, the Proposed Project includes the installation of new stormwater treatment infrastructure (e.g., bioretention treatment basin, and Hydrodynamic Separator System [HDS] or other approved stormwater vault treatment system[3]) that would benefit water quality by filtering out pollutants in runoff associated with Proposed Project operations prior to being conveyed to the storm drain outfalls and then the Outer Harbor. In addition, the Proposed Project includes use of a sweeper or other pre-treatment prior to runoff entering the bioretention treatment basin.

The Proposed Project would be consistent with Bay Plan policies regarding water quality as follows:

- Policy 1 requires that water quality be protected to the greatest extent feasible. The Proposed Project would include stormwater treatment infrastructure as described above to filter pollutants from site stormwater runoff prior to discharge to the storm drain system to protect Bay water quality (see Section 3.8.3, Impact HYD-1, of the DSEIR). Construction and operational measures are also described above and in Section 3.8.3, Impacts HYD-1, HYD-2 and HYD-4, of the DSEIR. Also see Response to Comment H-69.

- Policy 2 requires that water quality be maintained at a level that will support the beneficial uses of the Bay. With the stormwater infrastructure described above, the Proposed Project is not expected to affect beneficial uses of the Bay, as described in Section 3.8.3 of the DSEIR and Section 4-15 of the 2002 EIR as Addended. Also see Response to Comment H-69.

[3] Stormwater treatment system to follow Basic Treatment per the Washington Department of Ecology Technology Assessment Protocol – Ecology (TAPE) Program: https://ecology.wa.gov/Regulations-Permits/Guidance-technical-assistance/Stormwater-permittee-guidance-resources/Emerging-stormwater-treatment-technologies.

- Policy 3 requires that new projects be sited, designed, constructed, and maintained to prevent or minimize discharge of pollutants to the Bay. As described above, a Small Project SWPPP would be prepared and implemented for construction (see Section 3.8.3, Impact HYD-1, of the DSEIR). Infrastructure as well as operational measures such as sweeping will minimize discharge of pollutants (see Section 3.8.3, Impact HYD-2, of the DSEIR). See Response to Comment G-15.

- Policy 4 requires that projects in areas polluted by toxic or hazardous substances not cause harm to the public or to the Bay. These substances, though potentially present subsurface, would not be released to the to the Bay or cause harm to the public with implementation of SCA HAZ-1, HAZ-2, HAZ 3, and HAZ-7 (see Section 3.7.3 Impacts HAZ-1 and HAZ-2, of the DSEIR).

- Policy 6 requires that new development be sited and designed consistent with standards in municipal stormwater permits and that impacts from increased impervious areas and land disturbances be offset. The Proposed Project is designed consistent with the standards in the Port's NPDES Phase II Municipal General Permit and does not increase impervious areas (see Section 3.8.3, Impact HYD-4, of the DSEIR).

- Several policies address preparation for sea level rise. See Response to Comment G-11.

Response to Comment G-8

This comment raises concerns about dust impacts associated with the aggregate stockpiles that could impact Bay water quality and air quality in neighboring communities.

Although the aggregate stockpiles would be uncovered, a consistent moisture content would be maintained between 1% and 8% depending on the aggregate size. Maintaining moisture levels at the stockpiles would prevent measurable dust impacts on the surface of the Bay. Also see Master Response 4: Fugitive Dust. See Response to Comment F-8 regarding applicable air quality regulations related to dust and avoidance measures that the Proposed Project would adopt, and revised Mitigation Measure ERA AQ-1 included in Response to Comment A-11.

Response to Comment G-9

The comment summarizes the findings of Section 3.8 of the DSEIR, regarding potential construction-related water quality impacts. Comment is noted.

Response to Comment G-10

This comment requests additional discussion in the FSEIR addressing how Proposed Project design elements address BCDC water quality policies.

See Response to Comment G-7. A more detailed discussion of the Proposed Project's consistency with BCDC policies will be included in the BCDC permit application.

Response to Comment G-11

The comment requests an analysis of sea level rise specific to the Proposed Project, including a discussion of flood hazards, potential for flooding to result in a release of pollutants, and a description of the Proposed Project site's existing and future vulnerability to inundation and storm surge.

As noted in the comment, an analysis of sea level rise scenarios on Port facilities inclusive of the Proposed Project site can be found in the Port's 2019 Sea Level Rise Assessment Report (Port of Oakland 2019a). The Port's Sea Level Rise Assessment uses the most recent State of California coastal flood and sea level rise inundation mapping projections prepared by the California Ocean Protection Council Science Advisory Team Working Group (OPC, 2018), as well as the BCDC Adapting to Rising Tides Program (ART [BCDC 2021]). The Sea Level Rise Assessment illustrates the extent of flooding based on 2030, 2050, and 2100 projections of the hundred-year storm event plus sea level rise. The maximum duration of the Proposed Project is 27 years, so only the 2030 and 2050 projections are applicable and discussed further. The Port analyzed storm surge based on the OPC recommended 0.5% probability scenario (1 in 200 chance of occurrence) for the 2030 and 2050 scenarios, which are summarized below.

> **2030 Scenario** – (1 foot of sea level rise plus the 100-year storm tide event, 0.5% probability of occurrence). In the 2030 scenario, extreme flooding would overtop low-lying stretches of shoreline along the Bay Bridge touchdown and near Jack London Square. Some inland low-lying areas of the Port would also experience flooding to the north, northeast, and east of the Proposed Project site. Under this scenario, the Proposed Project site would not be impacted.
>
> **2050 Scenario** – (2 feet of sea level rise plus the 100-year storm tide event, 0.5% probability of occurrence). In the 2050 scenario, in addition to the 2030 flooding extent, low-lying areas of the Port would experience flooding, including portions of Maritime Street and 17th Street, immediately east of the Proposed Project area, which would experience 0 to 2 feet of flooding. Under this scenario, the Proposed Project site would not be impacted. This scenario would occur around the end of the Proposed Project's maximum 27-year lease term.

Flooding associated with sea level rise and extreme storm events could result in the release of pollutants to the Bay. There is a low annual probability of significant flooding of the Proposed Project site in all scenarios through the projected project life. As described in Section 3.8 of the DSEIR, new stormwater infrastructure (i.e., new storm drainage pipes, catch basins, asphalt curb, and HDS or other approved stormwater vault treatment system[4]) would be installed on site that would facilitate site drainage to prevent flooding. Although shoreline protection is not included as part of the Proposed Project, the Port is evaluating potential strategies to address sea level rise for the entire Seaport, which includes the Proposed Project site. These strategies are evaluated in the Port's Sea Level Rise Assessment and would help ensure that the Port maritime area is resilient to mid-century and end of century sea level rise projections. The Port is planning on additional evaluation of sea level rise in the maritime area in the future.

[4] Stormwater treatment system to follow Basic Treatment per the Washington Department of Ecology Technology Assessment Protocol – Ecology (TAPE): https://ecology.wa.gov/Regulations-Permits/Guidance-technical-assistance/Stormwater-permittee-guidance-resources/Emerging-stormwater-treatment-technologies.

Response to Comment G-12

The comment summarizes the findings of Section 3.8 of the DSEIR, regarding potential flooding and water quality impacts. Comment is noted.

Response to Comment G-13

This comment raises concerns about the need to evaluate sea level rise impacts as required by and consistent with Bay Plan policies, including provision of graphic illustrations of expected sea level rise at the Proposed Project site. See Response to Comment G-11; sea level rise is not expected to affect the Proposed Project site for the duration of its 27-year lease. For graphic illustrations regarding sea level rise at the Seaport including the Proposed Project site, see the Port's AB 691 Sea Level Rise Assessment dated July 2019 available at the Port's website:

https://www.portofoakland.com/community/environmental-stewardship/publications/

Response to Comment G-14

The comment summarizes the findings of Section 3.7 of the DSEIR regarding potential construction-related hazards. Comment is noted.

Response to Comment G-15

The comment suggests that the FSEIR address 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.

Potential impacts related to hazardous materials and water quality are discussed in Section 3.7 and Section 3.8 of the DSEIR. The potential for hazardous material impacts under the Proposed Project would be similar to that under existing truck and vessel transportation patterns. Construction and operation of the Proposed Project would involve the use, transport, and disposal of hazardous materials, such as fuels, gasoline, and oil and grease. Use of these materials could potentially result in accidental spills that could release hazardous materials into the environment, affecting water quality.

All use, transport and disposal of hazardous materials during construction would be conducted in compliance with existing regulations and the Small Project SWPPP, which includes implementation of good housekeeping measures for proper storage and management of hazardous materials, as well as spill prevention, control, and countermeasures. To reduce potential impacts during operational-related activities, including from on-site fueling, maintenance of off-road equipment, and any associated changes in haul truck and vessel transportation patterns, such activities would be conducted in compliance with federal, state, and local laws and regulations. Additionally, operational-related activities would require written confirmation from the Fire Prevention Bureau, Hazardous Materials Unit that such laws and regulations are followed, as specified in SCA HAZ-7 (see section 3.7 of the DSEIR).

In accordance with Industrial General Permit (IGP), the Proposed Project would include specific procedures to minimize spills/leaks and minimize the discharge of industrial materials generated through spill/leaks and identify appropriate spill response personnel. Advanced BMPs (e.g., structural treatment controls) would also be required when implementation of minimum BMPs (e.g., good housekeeping) do not meet the requirements of IGP, along with periodic monitoring involving visual observations and sampling of discharges. Likewise, spill kits would be located throughout the Proposed

Project site in accordance with the IGP and all on-site employees would be trained to contain and remove any unintentional leaks and releases according to federal, state, and local regulations.

The scope of this SEIR is limited to the incremental difference in the environmental impacts between the OAB Area Redevelopment with the Proposed Project and the redevelopment plan analyzed in the 2002 EIR as Addended. For the reasons mentioned above and as discussed in Section 3.7 and 3.8 of the DSEIR, the Proposed Project would not increase the potential for releases of hazardous materials into the Bay during construction or operation as compared to the redevelopment plan analyzed in the 2002 EIR as Addended.

Response to Comment G-16

The comment suggests that the FSEIR should include a discussion of potential impacts on Bay Plan policies regarding navigational safety and oil spill prevention.

The Proposed Project would not change current navigational safety or necessitate changes to current oil spill contingency plans as the operation of a bulk cargo terminal would be similar to an operation of a container terminal in that both would involve OGVs, tugs, and trucks. It is anticipated that this finished facility will be regulated by the United States Coast Guard Marine Terminal Facilities found in 49 CFR.

During construction, the Proposed Project (landside) would meet and comply with existing regulations regarding the use, transport, and disposal of hazardous materials according to USEPA Standards and implementation of the Small Project SWPPP. All vessels (which may include the use of barges) would be operated under strict guidance and regulations for ocean going vessels as regulated by the United States Coast Guard. This includes compliance with oil spill prevention in accordance with Oil Pollution Act of 1990 and USEPA water quality regulations as they relate to San Francisco Bay Area Spill Contingency Plans.

Response to Comment G-17

The comment notes that the Proposed Project would not include additional filling of the Bay. The comment requests that the FSEIR provide a map and describe the Proposed Project areas that were subject to tidal action at any point since September 17, 1965. The comment also requests a description of the development, activity, and uses for the filled areas and consistency with BCDC's laws and policies See Response to Comment G-5.

Response to Comment G-18

The comment requests greater specificity regarding the details of the erosion and sediment control plan, soils report, geotechnical report, and the SWPPP.

The above-mentioned documents will be prepared as part of the Proposed Project's Port Development Permit process and can be made available to BCDC upon request.

Response to Comment G-19

The comment summarizes the transportation-related impacts associated with the Proposed Project from the DSEIR, and requests clarification if circulation impacts under DSEIR Impact 4.3-11 would be temporary or long-term.

These impacts would be temporary in nature during the Proposed Project construction period.

Response to Comment G-20

The comment states that the Port should not rely on Howard Terminal as an alternative parking site due to this site's own development proposals, and that alternative ancillary maritime services (AMS) locations should be identified in the FSEIR. See Master Response 3: Truck Parking and Container Staging.

Response to Comment G-21

The comment expresses concern that there is room for adequate truck parking and AMS at the Port. See Master Response 3: Truck Parking and Container Staging.

Response to Comment G-22

The comment requests information on how community concerns related to trucking and truck parking have been addressed in the DSEIR analysis. See Master Response 3: Truck Parking and Container Staging and Master Response 9: Stakeholder Engagement and Environmental Justice. Also see Response to Comment A-2.

Response to Comment G-23

The comment requests additional discussion of how the views in the area, including the shoreline, would be impacted by the Proposed Project and the Proposed Project's consistency with Bay Plan Appearance, Design, and Scenic Views policies.

Views of Proposed Project operations would primarily be blocked by a visual barrier installed along the north, south, and east perimeter of the Proposed Project site. New structures associated with the Proposed Project would be consistent with the existing industrial and maritime uses of the Proposed Project site and the surrounding area. Thus, views of the Proposed Project site with implementation of the Proposed Project would be similar to current views of the Proposed Project area. See Section 3.3 of the DSEIR for a more detailed analysis of the Proposed Project's potential visual impacts.

The scope of this SEIR is limited to the incremental difference in the environmental impacts between the OAB Area Redevelopment with the Proposed Project and the redevelopment plan analyzed in the 2002 EIR as Addended. The 2002 EIR as Addended concluded that the OAB Area Redevelopment Plan would have a less-than-significant impact on scenic vistas as views of the OAB Area Redevelopment Plan area consist of industrialized uses along the Bay and do not constitute important scenic vistas. Thus, impacts to scenic vistas were not discussed further in the DSEIR as the conclusions of the 2002 EIR as Addended would still be relevant to the Proposed Project. The Proposed Project site is located in an active port, surrounded by industrial uses and ongoing maritime operations. The Proposed Project would continue the operation of the Port's marine terminal and all new structures associated with the bulk terminal would be consistent with surrounding uses. Thus, the Proposed Project would not conflict with any of the applicable Bay Plan policies governing scenic quality.

Response to Comment G-24

The comment requests greater specificity regarding the visual barrier proposed around the Proposed Project site perimeter.

As described in Chapter 2, Project Description, of the DSEIR, a visual barrier consisting of either screen fencing, stacked freight containers, or a combination thereof would be located along the north, south, and east perimeter of the Proposed Project site to block views of Proposed Project operations. The visual barrier would vary from approximately 8 feet to 45 feet in height. Views of the visual barrier south from Burma Road across the Oakland Outer Harbor would primarily be blocked by vessels at Berths 20 and 21; the visual barrier would also blend in with the existing port/industrial uses and be difficult to distinguish. The visual barrier would be visible from Maritime Street, located to the east of the Proposed Project site, and would block views of Proposed Project operations from motorists, pedestrians, and cyclists on Maritime Street.

Response to Comment G-25

The comment asks if there are public access opportunities or barriers that may be considered in designing or implementing the Proposed Project.

The Proposed Project does not include a public access component. The Proposed Project involves changing a portion of the existing terminal planned for container cargo to bulk construction aggregates. The Proposed Project site is surrounded by active marine operations in a highly industrialized area; thus, during the lease term no public access is currently provided nor would be provided with implementation of the Proposed Project. Because no public access facilities exist within or immediately adjacent to the Proposed Project site, implementation of the Proposed Project would not affect any public access opportunities. The Port provides public access to the Bay shoreline at Middle Harbor Shoreline Park, located approximately 1 mile southwest of the Proposed Project site, and Port View Park located at the end of 7th Street adjacent to Middle Harbor Shoreline Park.

Response to Comment G-26

This comment requests that the FSEIR specify the culturally-relevant community outreach and engagement efforts that have or will be conducted for the Proposed Project, identify whether the Proposed Project is in a vulnerable community, and if so, identify potential disproportionate impacts consistent with Bay Plan policies.

As noted in the comment, the Proposed Project is located near the West Oakland community. Community engagement and environmental justice are discussed in Master Response 9.

Also see Master Response 4: Fugitive Dust, Master Response 5: Community Health Risks from Air Quality Impacts, Master Response 6: Waterside Emissions Controls, and Master Response 8: Consistency with West Oakland Community Action Plan.

Response to Comment G-27

This comment requests that the FSEIR address environmental concerns through community outreach and engagement consistent with the BCDC Bay Plan Environmental Justice policies. Specifically, the comment identifies three concerns: 1) operational or physical measures that control stockpile aggregates impacts on air and water resources, and community health; 2) reduced emissions through use of zero or low-emission vehicles, equipment, and ocean-going vessels; shore power; and no-idling requirements; and 3) meaningful community consultation in the development of all operational plans and amendments to such plans.

With regard to the first item, see Response to Comment A-11, Master Response 4: Fugitive Dust, and Master Response 5: Community Health Risks from Air Quality Impacts. For item 2, see Master Response 6: Waterside Emissions Controls, Master Response 8: Consistency with West Oakland Community Action Plan, and Responses to Comments A-1, A-11, A-12, and F-1. For item 3, see Master Response 9: Stakeholder Engagement and Environmental Justice, which includes discussion of plans to initiate a Seaport Stakeholder Group.

Response to Comment G-28

The comment raises concern regarding use of plans and documents that were used for the 2002 Oakland Army Base Redevelopment that may be outdated.

The comment does not identify particular plans and documents used in the 2002 EIR that the commenter concludes are no longer relevant. The comment also does not mention previous addenda that have modified the 2002 EIR, most importantly the 2012 Addendum. Any plans or regulations that were updated since development of the 2012 Addendum are summarized for each resource topic in the DSEIR. Also see Master Response 1: Use of Supplemental EIR.

Response to Comment G-29

The comment encourages use of best available current science and technology for the FSEIR analysis, particularly regarding sea level rise. See Response to Comment G-11.

Response to Comment G-30

The comment provides a link for more information regarding the BCDC permit application process. Comment is noted.

3.2.3 Additional Stakeholder Groups

Letter H: Shute, Mihaly & Weinberger, LLP (January 8, 2021)

Letter H

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January 8, 2021

Via Electronic Mail Only

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

Dear Ms. Chuop:

H-1 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.

H-2 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.

H-3 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

H-3 cont.

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.[1] The Project would import up to 2,500,000 tons of aggregate per year,[2] which would be stored in three 40-foot-tall uncovered stockpiles that could hold up to 329,000 tons of aggregate each.[3] This activity would require up to 48 new ocean-going vessel ("OGV") calls per year to the Port.[4] The initial lease for the Project is for 12 years and could be extended to up to 27 years,[5] exposing a whole new generation of West Oaklanders to increased air pollution from birth until adulthood.

H4

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").[6] 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."[7] 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.[8]

H-5

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."[9] 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."[10]

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[1] Eagle Rock Aggregates Terminal Project, Draft Supplemental Environmental Impact Report (Nov. 2020) ("DSEIR") at ES-1, 2-2.
[2] *Id.* at 2-12.
[3] *Id.* at 2-27.
[4] *Id.* at 2-12.
[5] *Id.* at 2-14.
[6] *Id.* at ES-2.
[7] *Id.* at 1-2 – 3.
[8] *Id.* at 1-4.
[9] *Laurel Heights Improvement Ass'n v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 392 ("*Laurel Heights I*") (citations omitted).
[10] *Id.* (citations omitted).

H-6 cont. 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.

H-11 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."[11] 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.[12]

H-12 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.

H-13

H-14

[11] *See* Pub. Resources Code § 21061.
[12] Cal. Code Regs., tit. 14 ("CEQA Guidelines" , § 15088.5.

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

H-15

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).[13] The supplemental EIR must contain "the information necessary to make the previous EIR adequate for the project as revised."[14]

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.[15] 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.[16]

H-16

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 $PM_{2.5}$ impacts "for informational purposes,"[17] but absolves itself of a CEQA-compliant analysis of $PM_{2.5}$ impacts or legally mandated significance determination[18] because the 2002 EIR as Addended failed to make such an analysis. The

H-17

DSEIR takes a similar approach to greenhouse gas emissions, providing some information but avoiding a significance determination.[19] And the DSEIR provides

H-18

absolutely no information about or mitigation for the Project's energy impacts, as

[13] *Id.* §§ 15162(a), 15163(a).
[14] *Id.* § 15163(b).
[15] DSEIR at 1-4.
[16] *Id.*
[17] *See, e.g.*, *id.* at 3.4-29.
[18] Pub. Resources Code § 21100(b)(1).
[19] *See generally* DSEIR, Chapter 3.6.

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H-18 cont. required by Public Resources Code section 21100(b)(3) and CEQA Guidelines Appendix F, rendering the EIR "fatally defective."[20]

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.[21] 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.

H-19 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.[22] 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.[23]

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.[24] Here, the trigger is not the presence of

[20] *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).
[21] *See* DSEIR at 3.6-1, 4-13, 4-17.
[22] CEQA Guidelines §§ 15162(a), 15163(a).
[23] *Compare* CEQA Guidelines § 15162(a)(1) *with* § 15162(a)(3).
[24] *See, e.g.*, *Concerned Dublin Citizens v. City of Dublin* (2013) 214 Cal.App.4th 1301, 1320; *Citizens for Responsible Equitable Envt'l Development v. City of San Diego* (2011) 196 Cal.App.4th 515, 532.

H-19 cont. new information, but the fact that the Port now proposes a substantial change to Port operations considered under the 2002 EIR as Addended.

H-20 To be clear, the Port need not provide a new analysis of $PM_{2.5}$, 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.[25]

H-21 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.[26] Indeed, the DSEIR admits that the Project would result in impacts related to increased $PM_{2.5}$ pollution,[27] cancer risk,[28] and greenhouse gas emissions[29] that would be significant under applicable thresholds. Yet, because of its attempted shortcut, the Port absolves itself completely of any attempt to identify mitigation.

H-22 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

[25] *See* CEQA Guidelines § 15002(a)(1).
[26] *See* Pub. Resources Code §§ 21002, 21000(a 3).
[27] *See* DSEIR at 3.4-29.
[28] *Id.*
[29] *See id.* at 3.6-7, 4-17.

H-22 cont.

required.[30] 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.[31] 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.

H-23

The omission of adequate impacts analyses and, most importantly, a significance determination and associated mitigation for $PM_{2.5}$ 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."[32] 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.[33]

H-24

II. THE DSEIR IMPROPERLY SEGMENTS A LINKED PROJECT.

H-25

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.[34] Longstanding CEQA law holds that where two projects are linked, they must be analyzed together.[35] 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.[36] Rather, "when one

[30] CEQA Guidelines § 15163(a)(2).
[31] *Id.* § 15162(a)(1).
[32] *County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.
[33] CEQA Guidelines § 15088.5.
[34] DSEIR at 2-12, 2-13.
[35] *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.
[36] *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."[37]

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."[38] 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.[39] 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.[40] 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."[41] The DSEIR fails to provide any further information about the anticipated future repurposing of the Richmond Marine Terminal for "other bulk material needs."

H-25 cont.

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.[42] 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

[37] *Tuolumne County Citizens for Responsible Growth*, 155 Cal.App.4th at 1229.
[38] DSEIR at 2-12, 2-13.
[39] *Id.* at 2-12, 2-13.
[40] *See id.* at 2-9.
[41] *Id*. at 2-13.
[42] *Laurel Heights I*, 47 Cal.3d at 396.

H-25 cont.

reasonably foreseeable current and future impacts of alteration of uses at the Richmond site, because those changes are integrally linked to the proposed Project.[43] 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.[44] 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.

H-26

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."[45] To do so, an EIR must contain facts *and* analysis, not just an agency's bare conclusions.[46] 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."[47, 48]

H-27

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

[43] *See Bozung*, 13 Cal.3d at 279, 282; *Tuolumne County Citizens*, 155 Cal.App.4th at 1231.
[44] *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).
[45] *Laurel Heights Improvement Ass'n v. Regents of Univ. of Cal.* (1993) 6 Cal.4th 1112, 1123 ("*Laurel Heights II*").
[46] *Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 568.
[47] CEQA Guidelines § 15163(b).
[48] Nonetheless, WOEIP maintains that a subsequent EIR is called for here. *See* Section I, *supra*.
[49] CEQA Guidelines § 15126.4.
[50] *See, e.g.*, *Sierra Club v. County of San Diego* (2014) 231 Cal.App.4th 1152, 1168.

H-27 cont.

mitigation measures available which would substantially lessen the significant environmental effects of such projects."[51] 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.[52] 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.

H-28

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.

H-29

When analyzing a project's adverse environmental impacts under CEQA, "[t]he significance of an activity depends on the setting."[53] 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.[54] 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*."[55] 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

[51] Pub. Resources Code § 21002.
[52] *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 . . . .").
[53] *Kings County Farm Bureau*, 221 Cal.App.3d at 718; *see also* CEQA Guidelines § 15125.
[54] *See* CEQA Guidelines § 15125(a).
[55] *Id.* § 15125(c) (emphasis added).

H-29 cont.

project that is ordinarily insignificant in its impact on the environment may in a particularly sensitive environment be significant."[56] 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.

H-30

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."[57] 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.

H-31

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[58] (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

[56] *Id.* § 15300.2(a).
[57] DSEIR at 2-5.
[58] The California Office of Environmental Health Hazard Assessment's CalEnviroScreen 3.0 is available at https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-30.

H-31 cont.

than the average person in Alameda County.[59] 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.[60] 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[61] – more than *nine times* the United States average of 30 in 1 million[62] and more than two and a half times the United States Environmental Project Agency's 100 in 1 million threshold for elevated cancer risk mandating action.[63] DPM is responsible for over 90 percent of the total cancer risk in West Oakland.[64]

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.[65] Eighteen percent of the West Oakland community is Hispanic, 11 percent is Asian, and 24 percent is white.[66] 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.[67] 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

[59] 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.
[60] *Id.* at 2-10.
[61] *Id.* at 4-4.
[62] 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.
[63] *Id.* at 2.
[64] WOCAP at 4-4.
[65] *Id.* at 2-6.
[66] *Id.*
[67] *Id.*

H-31 cont.

contaminants and criteria air pollutants for development of a Community Emission Reduction Plan, which is intended to "result in emissions reductions in the community."[68]

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.[69]

H-32

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.

H-33

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.[70] Next, the EIR must identify all feasible mitigation measures for each significant impact.[71] This sequence – analyze impacts first, then identify mitigation – is crucial, as "[o]nly by [the agency] making this disclosure can

[68] Health & Saf. Code § 44391.2.
[69] WOCAP at ES-1.
[70] *Lotus v. Dept. of Transportation* (2014) 223 Cal.App.4th 645, 653 (citing Pub. Resources Code § 21100(b)).
[71] *Id.*

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

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.[73] 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.[74]

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."[75] 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."[76]

H-33 cont.

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.[77] 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.

[72] *Id.* at 654 (citation omitted).
[73] *Id.* at 655-56.
[74] *See* DSEIR at 3.4-19.
[75] *See Lotus*, 223 Cal.App.4th at 657.
[76] *Id.* at 658.
[77] *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."[78] Only then can the public "make an informed decision [about the project], as CEQA requires."[79] Here, the DSEIR's air quality analysis fails to provide this information.

H-34 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*."[80] 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.[81]

H-35 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_{10}, $PM_{2.5}$, 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.[82] Then, pages later, the DSEIR notes that exposure to ozone, PM_{10}, and $PM_{2.5}$ 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."[83] The omission is compounded by the fact that for ozone –

[78] *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 521.
[79] *Id.*
[80] DSEIR at 3.7-7 (emphasis added).
[81] *See id.* at 3.4-26.
[82] *Id.* at 3.4-27 – 30 (Tables 3.4-9a, 3.4-9b, 3.4-10a, 3.4-10b).
[83] *Id.* at 3.4-35 – 36.

H-35 cont. which is created by other emissions from the project like NO_x – 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.

H-36 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*.[84] 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 DSIER fails to adequately analyze whether the Project conflicts with or obstructs applicable air quality plans.

H-37 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?"[85] 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.

H-38 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.[86] Indeed, some of listed measures are mentioned nowhere else in the DSEIR.

H-39 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.[87]

[84] (2018) 6 Cal.5th 502.
[85] DSEIR at 3.4-30.
[86] *Id.* at 3.4-30 – 31.
[87] *See id.* at 3.4-32.

H-40 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.[88] This analysis is important especially in light of the Project's proximity to the overburdened West Prescott neighborhood of West Oakland.

H-41 Fourth, the DSEIR fails to explain how the Project would comply with applicable air quality measures contained in the WOCAP, including those for DPM, $PM_{2.5}$, and cancer risk.[89] 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 $PM_{2.5}$ and cancer risk in West Oakland.[90]

H-42 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."[91]

H-43 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.

H-44 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.[92] The agency must ensure that these measures are "fully enforceable" through permit conditions, agreements, or other legally binding

[88] *See* WOCAP at 4-1.
[89] *See id.* at 4-5.
[90] *See* DSEIR at 4-13 (Table 4.5-2).
[91] WOCAP at 6-23.
[92] Pub. Resources Code § 21002.

instruments.[93] 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."[94]

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.[95] In particular, a mitigation measure must include criteria or performance standards against which the mitigation's actual implementation can be measured.[96] The reader must be able to discern what steps will be taken to mitigate the project's impacts.[97] 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.

H-44 cont.

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 $PM_{2.5}$ and cancer risk impacts.

H-45

H-46

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."[98] However, where the agency has identified practical

H-47

[93] *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.
[94] *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).
[95] *San Franciscans for Reasonable Growth v. City & County of San Francisco* (1984) 151 Cal.App.3d 61, 79.
[96] *See San Joaquin Raptor Rescue Ctr. v. County of Merced* (2007) 149 Cal.App.4th 645, 670.
[97] *Id.*
[98] *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,[99] 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.[100]

H-47 cont.

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."[101] 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.[102] 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."[103]

H-48

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.

H-49

H-50

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

[99] *Preserve Wild Santee*, 210 Cal.App.4th at 280.
[100] CEQA Guidelines § 15126.4(a)(1)(B).
[101] DSEIR at 3.4-23 – 24.
[102] *Id.*
[103] *Id.* at 3.4-24.

H-50 cont. aggregate stockpiles and transfer.[104] 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.

H-51 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.

H-52 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.[105] 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.[106]

H-53 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.[107]

H-54 3. Require all tugs and OGVs serving the Project to be equipped with Tier 4 or cleaner engines.

H-55 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

[104] *See id.* at 3.4-22 (Table 3.4-7a).
[105] Pub. Resources Code § 21002.
[106] 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.
[107] 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.

H-55 cont.

through West Oakland and reduce exposure of residents of West Oakland to emissions from the concrete plant.[108]

H-56

5. Require all trucks transporting aggregate to be sprayed down (including tires and undercarriage) and covered prior to exiting the Project site.

H-57

6. Set emissions standards for control of dust from aggregate storage and transfer that must be met through watering or covering.

H-58

7. Require real-time perimeter air quality monitoring and identify response actions when exceedances are detected.

H-59

8. Require all service equipment used at the Project site to be completely zero emission.

H-60

9. Require development and implementation of a program to ensure that all heavy-duty trucks entering the Project site are zero emissions by 2030.

H-61

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.

H-62

11. Set a goal to be using at least 100 electric tractors in the Port area by 2023.

H-63

12. Require tugs and other harbor craft be upgraded to use alternative power systems and renewable/low-emissions fuels.

H-64

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.

H-65

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

[108] This measure should also be considered as an alternative to the proposed Project. *See* Section V, *infra*.

H-65 cont.

section notes that the Project could expose employees, off-site workers, and residents to respirable crystalline silica, which can cause severe health effects.[109] 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."[110]

H-66

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.[111] 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.[112] 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.[113]

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.[114] 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.

[109] DSEIR at 3.7-7.
[110] *See id.*
[111] *Id.* at 3.7-7 – 8.
[112] *Id.* at 3.7-8.
[113] *Id.*
[114] (1990) 221 Cal.App.3d 692, 716.

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

H-67

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.[115] 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.

H-68

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."[116] 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.[117] 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."[118] 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.[119] Instead, the DSEIR must explain the specific impacts to water

[115] DSEIR at 3.8-6 (Impact HYD-1).
[116] *Id.* at 3.8-5.
[117] *Id*.
[118] *Id*.
[119] *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 .

H-68 cont. quality the Project could cause, and then explain how the specific regulatory requirements would lessen or prevent those impacts.

H-69 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."[120] 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.[121] Aggregates would be stored in three uncovered, outdoor stockpiles on the site, which would have a combined capacity of 325,000 tons.[122] 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."[123] 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.

H-70 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" .[124] 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."[125] 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.[126] 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

[120] DSEIR at 3.8-2.
[121] *Id.* at 3.8-4.
[122] *Id.* at 2-28.
[123] *Id.* at 3.8-5.
[124] *Id.* at 2-30.
[125] *Id.* at 3.8-5.
[126] *Id.* at 3.8-6.

H-70 cont. pollution or sediment that would ultimately enter the harbor despite implementation of the stormwater BMPs. Without this analysis, the DSEIR fails its informational purpose.

H-71 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.[127] 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."[128] 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.[129] 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.[130] 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.[131]

H-72 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."[132] 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

[127] *Id.* at 3.8-6 (Impact HYD-2).
[128] *Id*.
[129] *Id*.
[130] *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.
[131] DSEIR at 3.8-6.
[132] *Id.* at 3.8-8 (Impact HYD-4).

H-72 cont.

pumped from the holds of oceangoing ships, which "would have the potential to be a source of stormwater pollution."[133] 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.[134] 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."[135]

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.[136] 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.[137] 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.

H-73

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."[138] The DSEIR claims this consistency would be achieved by "incorporating on-site green stormwater infrastructure … and low-emission

[133] *Id.* at 3.8-7.
[134] *Id.*
[135] *Id.*
[136] *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.
[137] DSEIR at 3.8-8.
[138] *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/OAK028334.

H-73 cont.

equipment."[139] This conclusion blithely ignores the fact – disclosed in the DSEIR itself – that the Project would expose West Oakland residents to significantly higher $PM_{2.5}$ 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."

H-74

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,"[140] when the DSEIR has failed to provide the energy impacts analysis required by CEQA[141]

H-75

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."[142] 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.

H-76

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.[143] 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.[144] 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.

H-77

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

[139] DSEIR at 3.9-3.
[140] *Id.*; *see also* West Oakland Specific Plan at 2-12.
[141] *See* Section I, *supra*.
[142] West Oakland Specific Plan at 2-11.
[143] DSEIR at 3.1-1.
[144] *Id.* at 3.10-1.

H-77 cont.

operational activities would not be perceptible and the nearest residential receptors,"[145] 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.

H-78

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.[146] 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.[147] 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.[148] 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.

H-79

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

[145] *Id.* at 3.10-10.
[146] *Id.* at 3.11-16.
[147] *Id*.
[148] *Id*.

H-79 cont.

future mitigation will be both "feasible and efficacious."[149] 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.[150] 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.

H-80

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."[151] However, the DSEIR fails to provide adequate evidence or analysis in support of this conclusion.

H-81

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.[152] The DSEIR states that "[p]roject-displaced parking results from the project's removal of standard on-street parking and legally required off-

[149] *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).
[150] DSEIR at 3.11-16.
[151] *Id.* at 3.11-19.
[152] *Id.* at 3.11-12, 3.11-18.

H-81 cont. street parking (non-public parking which is legally required ."[153] Here, the DSEIR's analysis fails to adequately consider Project-displaced parking impacts, despite acknowledging that these impacts must be evaluated.

H-81 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."[154] The DSEIR notes that the Project would eliminate approximately 18 acres of existing AMS uses.[155] 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."[156] However, the DSEIR fails to provide adequate evidence or analysis in support of this conclusion.

H-82 Moreover, the DSEIR fails to analyze any of the other environmental impacts of displacing existing AMS operations from the Project site.

H-83 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.[157] Here, construction of the Project will require the permanent displacement of 18 acres of AMS uses, including truck parking, container storage, and staging.[158] 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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[153] *Id.*
[154] *Id.* at ES-1; 2-2; 3.1-1; 3.9-1.
[155] *Id.* at 3.11-18, 3.11-19.
[156] *Id.* at 3.11-19 (Impact TRANS-4).
[157] *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).
[158] DSEIR at 3.11-18, 3.11-19.

H-84 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."[159] The 18 acres of AMS uses that would be removed from the Project site help to satisfy this 30-acre requirement.

H-85 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."[160] 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.

H-86 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."[161] 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.

H-87 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

[159] *Id.* at 3.11-19.
[160] *Id.*
[161] *Id.* at 5-8.

H-87 cont.

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.

H-88

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.[162]

IV. THE DSEIR'S CUMULATIVE IMPACTS ANALYSIS IS INADEQUATE.

H-89

Under CEQA, an EIR must discuss significant "cumulative impacts."[163] 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.[164] 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."[165] 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."[166] 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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[162] *Id.* at 3.11-19.
[163] CEQA Guidelines § 15130(a).
[164] *Id.* § 15355(b).
[165] *Communities for a Better Environment*, 103 Cal.App.4th at 114 (overruled on other grounds).
[166] DSEIR at 4-2, 4-6.

H-89 cont.

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.[167] Instead, Tables 4.5-1 and 4.5-2 include information about *current* air quality at the Port and in West Oakland.[168] 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.[169] The EIR must be revised to comply with CEQA's direction to analyze how the project interacts with past, present, and future projects.

H-90

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 $PM_{2.5,}$ when the community already suffers from PM levels that are twice the BAAQMD threshold is clearly troubling.[170] But the DSEIR offers no actual information for community members on what health impacts they might expect from any approval.[171]

H-91

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."[172] And

H-92

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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[167] *Id.* at 4-8.
[168] *Id.* at 4-12, 4-13.
[169] *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).
[170] DSEIR at 4-13.
[171] *See Sierra Club v. County of Fresno*, 6 Cal.5th at 521.
[172] *Center for Biological Diversity v. National Highway Traffic Safety Admin*. (9th Cir. 2007) 508 F.3d 508, 550.

H-92 cont.

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

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

H-93

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.[174] Indeed, the analysis of alternatives lies at the "core of an EIR."[175] 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."[176] 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.

H-94

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[177] and an alternative requiring installation of an emissions capture-and-control system to reduce OGV emissions.[178] 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.[179] 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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[173] *Kings County Farm Bureau*, 221 Cal.App,3d at 718.
[174] 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.
[175] *Citizens of Goleta Valley*, 52 Cal.3d at 564.
[176] *Laurel Heights I*, 47 Cal.3d at 404.
[177] DSEIR at 5-6.
[178] *Id.* at 5-7.
[179] *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.

H-94 cont.

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

H-95

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."[181] 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.[182] Readers must be able to "evaluate [alternatives'] comparative merits."[183] 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 $PM_{2.5}$ resulting from dust."[184] This is no small difference from the Project, which would produce substantial $PM_{2.5}$ 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.

H-96

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

[180] *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.
[181] *Kings County Farm Bureau*, 221 Cal.App.3d at 733 (citing cases).
[182] *Id.*
[183] *Id.*
[184] DSEIR at 5-9.

H-96 cont.

leaving the Project going to the plant.[185] 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.

H-97

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."[186]

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

H-98

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

[185] *Id.* at 3.11-13.
[186] CEQA Guidelines § 15088.5.

H-98 cont. reduce the Project's impacts on the already environmentally overburdened community of West Oakland.

Best Regards,

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Response to Comment H-1

The comment suggests that the DSEIR fails to comply with CEQA.

The DSEIR was prepared in accordance with CEQA Guidelines Section 15163 and Public Resources Code Sections 21090 and 21166. Also see Master Response 1: Use of Supplemental EIR.

Response to Comment H-2

The comment provides background on the WOEIP. Comment is noted.

Response to Comment H-3

The comment raises concerns regarding significant impacts to the West Oakland community, in particular increased air pollution, and summarizes project description information.

See Master Response 3: Truck Parking and Container Staging, Master Response 4: Fugitive Dust, Master Response 5: Community Health Risks from Air Quality Impacts, Master Response 6: Waterside Emissions Controls, Master Response 8: Consistency with West Oakland Community Action Plan, and Master Response 9: Stakeholder Engagement and Environmental Justice. Also see Responses to Comments A-2, A-3, A-6, and A-11.

Response to Comment H-4

The comment summarizes the Port's rationale for preparation of an SEIR. Comment is noted.

Response to Comment H-5

The comment expresses the position of an EIR functioning as a "document of accountability."

The Port agrees that the purpose of an EIR is to disclose and consider environmental impacts associated with an action prior to the Proposed Project's approval or rejection by local public officials.

Response to Comment H-6

The comment states that the DSEIR violates CEQA by not analyzing and making significance determinations on whole categories of impacts, including greenhouse gases.

The DSEIR analyzes all of the topics cited, including new resource topics that have been added to the CEQA Checklist following the completion of the 2002 EIR as Addended. Further, the DSEIR is a supplemental document that builds upon the 2002 EIR as Addended (see Master Response 1: Use of Supplemental EIR). Also see Responses to Comments H-15 through H-24 for responses to more specific comments on this topic.

Response to Comment H-7

The comment states that the DSEIR violates CEQA by not analyzing the changes of operations at the Richmond Marine Terminal. See Master Response 2: Operations at Richmond Terminal.

Response to Comment H-8

The comment states that the DSEIR violates CEQA by not adequately analyzing Proposed Project impacts and mitigation to air quality and health, hazards and hazardous materials, hydrology and water quality, land use, noise, and transportation. See Responses to Comments H-26 through H-88.

Response to Comment H-9

The comment states that the DSEIR violates CEQA by not adequately analyzing Proposed Project cumulative impacts. See Responses to Comments H-89 through H-92 and Master Response 7: Cumulative Impacts.

Response to Comment H-10

The comment states that the DSEIR violates CEQA by not adequately analyzing a reasonable range of alternatives. See Responses to Comments B-9 and H-93 through H-96.

Response to Comment H-11

The comment states that the DSEIR does not satisfy the basic goals of CEQA, and that the DSEIR must be revised and recirculated. See Response to Comment B-30.

Response to Comment H-12

The comment requests that the Port analyze all environmental impacts and significance determinations even if they were not addressed in the 2002 EIR as Addended. See Response to Comment H-6.

Response to Comment H-13

The comment requests that effective and enforceable mitigation measures be adopted as part of the Proposed Project, specifically regarding air quality effects to the West Oakland community.

The Proposed Project would implement effective and enforceable mitigation measures to reduce air quality effects to neighboring communities, including West Oakland. Based on input received during the public comment period, Mitigation Measure ERA AQ-1 was modified to include more specific performance standards related to the Operations Air Quality Plan to reduce emissions associated with OGVs, tugs, off-road engines, and off-site haul trucks, as described in Response to Comment A-11.

Response to Comment H-14

The comment requests that the relocation of the Central Concrete plant on Peralta Street to the Proposed Project site be evaluated as a feasible alternative.

The Proposed Project's direct impacts from truck trips to and from the concrete plant are addressed in the revised Mitigation Measure ERA AQ-1 included in Response to Comment A-11 and in the Port's lease agreement with the Applicant, which requires that only electric-powered trucks be used for these trips and that covers be used for these electric trucks.

Under CEQA, the test for feasibility of both alternatives and mitigation measures is whether they are "capable of being accomplished in a successful manner within a reasonable period of time, taking into

account economic, environmental, legal, social, and technological factors." Relocation of the concrete plant to Port of Oakland property would not meet this feasibility test for several reasons.

Although the Central Concrete plant and the Applicant, Eagle Rock Aggregates, are both U.S. Concrete subsidiaries, they are separate companies that operate independently from each other. The Central Concrete plant would need to independently determine if moving to the Proposed Project site or Port Maritime property would be something that Central Concrete wanted to pursue. Even if both the Central Concrete plant owner and the Port supported such a relocation, the Port could not relocate the concrete plant onto Port property in a reasonable period of time. Land use under the Port of Oakland maritime jurisdiction is limited to water-dependent uses, and concrete plants are not ordinarily considered water-dependent. Lengthy California State Lands Commission, Bay Conservation and Development Commission, City, and Port analyses would be required, and might not result in a determination that the relocation would be legally permissible. In addition, the City is now initiating a planning effort, which will include the Port and other community stakeholders, to develop policies regarding industrial preservation and identification of future locations for industrial facilities within the City. This is expected to be a multi-year effort and it is unknown whether the Port would be identified as a destination for industrial facilities, such as the concrete plant, that are currently located elsewhere in Oakland.

It should also be noted that relocation of the Central Concrete plant is not an alternative to the Proposed Project; it would not achieve any of the objectives identified for the Proposed Project, listed in Section 2.1 of the DSEIR.

Response to Comment H-15

The comment states that the DSEIR does not analyze whole categories of environmental impacts based on an incorrect interpretation of CEQA law. See Master Response 1: Use of Supplemental EIR and Responses to Comments H-16 through H-23.

Response to Comment H-16

The comment states that the DSEIR does not provide significance determinations on whole categories of impacts, including for the Proposed Project's PM2.5 impacts.

See Master Response 1: Use of Supplemental EIR. The Proposed Project's PM2.5 emissions are described in Section 3.4 of the DSEIR.

The analysis in the 2002 EIR as Addended is considered final and is not subject to reconsideration in this SEIR. The SEIR augments the 2002 EIR as Addended with information to make it adequate for the project as revised. The scope of the SEIR is limited to the incremental difference in the environmental impacts between the OAB Area Redevelopment with the Proposed Project and the redevelopment plan analyzed in the 2002 EIR as Addended. The adoption of new guidelines for analyzing and evaluating the significance of data does not constitute new information if the underlying information was otherwise known or should have been known at the time the EIR was certified. Information about the effects of PM2.5 and GHG emissions was known at the time the 2002 EIR was certified (and subsequently addended). Thus, it is appropriate for the SEIR to use the same methodology and thresholds as those contained in the 2002 EIR as Addended.

Response to Comment H-17

The comment states that the DSEIR does not provide a significance determination on greenhouse gas emissions. See Responses to Comments F-16 and H-16.

Response to Comment H-18

The comment states that the DSEIR does not provide information or mitigation on the Proposed Project's potential energy impacts.

Section 3.12 of the DSEIR explains that the Proposed Project would not substantially increase the severity of, or result in a change in, the previously identified less-than-significant energy impact disclosed in the 2002 EIR as Addended. Also see Response to Comment H-20.

Response to Comment H-19

The comment states that the Proposed Project's DSEIR omits necessary environmental analysis of impacts under CEQA.

Applying new significance threshold guidelines to analyzing the OAB Area Redevelopment Plan as modified by the Proposed Project, as suggested by the comment, would be inconsistent with CEQA's supplemental review provisions.

The assertion in the comment that CEQA's definition of "new information" should vary depending on whether a supplemental EIR is prepared is not supported by CEQA or its case law.

Response to Comment H-20

The comment requests a new impact analysis for PM2.5, greenhouse gas emissions, and energy impacts for the changed aspect of the original OAB Redevelopment Plan.

The Proposed Project's PM2.5 emissions are described in Section 3.4.4 of the DSEIR. The Proposed Project's GHG emissions are described in Sections 3.4.4 and 3.6.3 of the DSEIR. The Proposed Project's energy usage effects are described in Section 3.12.3 of the DSEIR.

The appropriate use of a supplemental EIR is discussed in Master Response 1: Use of Supplemental EIR. Consistent with CEQA's subsequent review provisions, the DSEIR analyzes the differences in environmental impacts between the OAB Area Redevelopment with the Proposed Project and the redevelopment plan considered in the 2002 EIR as Addended.

Also see Response to Comment H-16.

Response to Comment H-21

This comment claims that by avoiding significance determinations, the Port is absolving itself of identifying mitigation.

As described in Section 3.4 of the DSEIR, there would be no change in the severity of the cancer risks and greenhouse gas emissions from operation of the Proposed Project, even under new BAAQMD thresholds. Further, as described in both Section 3.4 and 3.6, equipment and truck emissions, including

GHG emissions, from the Proposed Project are comparable to the emissions that would be expected if the site were used as a container terminal as assumed in the 2002 EIR as Addended.

The DSEIR does not absolve itself of any attempt to identify mitigation for these impacts. Instead, it applies Mitigation Measures SCA AIR-1 and SCA AIR-2 from the 2002 EIR as Addended, as well as two new mitigation measures (ERA AQ-1 and ERA AQ-2) specifically tailored to the characteristics of the Proposed Project. As mentioned in Response to Comment A-11, Mitigation Measure ERA AQ-1 has been further clarified based on input received during the public comment period.

Also see Master Response 1: Use of Supplemental EIR and Response to Comment H-16.

Response to Comment H-22

The comment states that due to the Proposed Project's substantial change in use and associated air quality impacts, a subsequent EIR would be the appropriate CEQA document as opposed to a supplemental EIR.

See Master Response 1: Use of Supplemental EIR and Response to Comment H-16.

Response to Comment H-23

The comment restates the assertion that adequate impact analyses are not provided in the DSEIR for several impact topics. See Response to Comment H-20.

Response to Comment H-24

The comment states that the DSEIR must be revised and recirculated. See Response to Comment B-30.

Response to Comment H-25

The comment states that the relocation of the existing Richmond Marine Terminal to the Proposed Project site is a foreseeable consequence of the Proposed Project and that the impacts to Richmond Terminal operations should be addressed in the DSEIR.

See Master Response 2: Operations at Richmond Terminal.

Response to Comment H-26

The comment states that the discussion of the Proposed Project's environmental impacts in the DSEIR is deficient and not based on facts. See Response to Comment H-6.

Response to Comment H-27

The comment states that an EIR must identify feasible mitigation measures that are effective and enforceable and that would substantially lessen the significant environmental effects.

See Response to Comment A-11 regarding clarifying changes made to Mitigation Measure ERA AQ-1.

Response to Comment H-28

The comment states that the DSEIR does not adequately analyze and mitigate Proposed Project impacts on air quality, especially to the West Oakland community.

Air quality impacts are thoroughly analyzed in Section 3.4 of the DSEIR. See Master Response 4: Fugitive Dust, Master Response 5: Community Health Risks from Air Quality Impacts, Master Response 8: Consistency with West Oakland Community Action Plan. Also see Responses to Comments A-2, A-3, A-6, and A-11.

Response to Comment H-29

The comment states that describing the Proposed Project's environmental setting is important for setting up the baseline for evaluating the Proposed Project's environmental impact and also notes that Project impacts on the West Oakland community should be carefully analyzed due to the sensitive environment.

See Responses to Comments B-14, B-15, and H-28.

Response to Comment H-30

The comment requests that additional information describing the West Oakland community and existing air pollution be added to the DSEIR. See Responses to Comments B-14 and B-15.

Response to Comment H-31

The comment provides background information and statistics on the West Oakland community and the existing burdens that are experienced. Comment is noted.

Response to Comment H-32

The comment states that the DSEIR must be revised to provide the additional information on the West Oakland community and existing environmental effects provided in the preceding comment. See Responses to Comments B-14 and B-15.

Response to Comment H-33

The comment suggests that the DSEIR analysis is inconsistent with the *Lotus v. Department of Transportation* court case, avoids disclosing the full scope of Proposed Project impacts, and fails to consider other possible mitigations that would be more effective.

The DSEIR meets the standard of analysis under CEQA and analyzes impacts before and after application of SCA and mitigation measures identified in the 2002 EIR as Addended, as well as new mitigation measures identified in the DSEIR.

In *Lotus v. Department of Transportation*, the court held that the EIR entirely failed to analyze whether the highway improvement project's impacts on adjacent redwood trees would be significant. The court explained that the EIR's flaws were twofold: it failed to identify any standard of significance for analyzing the project's impacts to redwood trees, and it improperly treated mitigation measures as part of the project description. Those measures—including site restoration, invasive plant removal, special

construction equipment, and tree watering—were designed to minimize or offset the project's impacts to redwood trees.

The DSEIR does not have the flaws that the court identified in the *Lotus* case. The proposed lease requires that at least 25% of vessel calls meet Tier 2 or better emission standards. As explained in Section 3.4 of the DSEIR, the Port imposed this requirement in the lease in part to help implement Strategy 64 in the WOCAP (Implement Clean Ship Program) and Control Measure TR20 in the BAAQMD 2017 CAP (Ocean Going Vessels). As a negotiated term in the lease between the Port and Applicant, it is an integral part of the Proposed Project. This requirement is unlike the mitigation measures in the *Lotus* case, which were specific construction techniques and post-construction measures that were designed to minimize or offset the project's impacts. In addition, unlike in *Lotus*, the DSEIR contains standards of significance and analyzes whether the Proposed Project's impacts would be significant.

Since the DSEIR was published and based on the comments received on the DSEIR, the proposed Tier 2 lease requirement discussed in the DSEIR was modified so that in addition to the requirement that at least 25% of vessel calls will meet Tier 2 or better emission standards in the first and second year of the lease, 30% of vessels calls will be Tier 2 in lease years 3 through 12, and 40% of vessel calls will be Tier 2 during the remaining lease years if the lease is extended (as described in Master Response 6: Waterside Emissions Controls). These terms are stated in the Proposed Project lease and will therefore be legally binding if the Port approves the Proposed Project. Both the Port Maritime Division and Port Attorney's Office coordinate on ensuring and enforcing lease terms.

As explained in Section 3.4, the DSEIR conservatively assumes for its analysis that 25% of vessel calls would meet Tier 2 emission standards and that 75% of vessel calls would be made by Tier 0 vessels, even though vessels serving the Proposed Project are expected to have a range of engines ranging from Tier 0 to Tier 1 to Tier 2. Emissions in future years with the revised lease terms would decrease from the peak average daily emissions reported assuming 25% of vessel calls are Tier 2.

The concerns raised in the comment about information disclosure are addressed in the DSEIR. The DSEIR includes information about air emissions both with and without the lease requirement. As explained in Section 3.4 of the DSEIR, requiring 25% of vessel calls to meet Tier 2 or better emission standards would reduce NOx emissions by 6% compared to what those emissions would be if all calls were made by Tier 0 vessels. More detailed information is presented in Table 19 in DSEIR Appendix C, *Air Quality and Greenhouse Gas Analysis*, which summarizes emissions on a per voyage basis for representative Tier 0 and Tier 2 vessels that are anticipated to be used for the Proposed Project. For informational purposes, new Table 32 below was prepared to show the OGV emissions if all 48 vessel calls were Tier 0 engines. In addition, new Table 33 below was prepared to show the total average daily emissions if using Tier 0 engines compared to the CEQA significance thresholds. As shown in new Table 3-3 below, the significance determination would not change even if all Tier 0 OGVs were used, as only the NOx threshold would be exceeded and no other pollutant emissions would be close to exceeding the average daily thresholds.

Table 32. OGV Emissions Summary – 100% Tier 0

	ROG	CO	NOx	PM10	PM2.5	SOx	CO_2	CH_4	N_2O	DPM
Transit (Inbound and Outbound)	1.04	1.81	22.85	0.24	0.22	0.53	840.06	0.02	0.04	0.239
Maneuvering (Inbound and Outbound)	0.13	0.22	2.92	0.03	0.03	0.08	131.01	0.00	0.01	0.031
Hotelling	1.15	2.42	30.31	0.42	0.39	1.03	1,636.84	0.02	0.08	0.395
Total	**2.32**	**4.45**	**56.09**	**0.70**	**0.65**	**1.64**	**2,607.92**	**0.04**	**0.13**	**0.666**

ROG = reactive organic gas; CO = carbon monoxide; NOx = nitrogen oxide; PM10 = particulate matter with a diameter less than 10 microns; PM2.5 = particulate matter with a diameter less than 2.5 microns; SOx = sulfur oxide; CO2 = carbon dioxide; CH4 = methane; N2O = nitrous oxide; DPM = diesel particulate matter

Table 33. OGV Average Daily Emissions (lb/day)

Source Name	ROG	CO	NOx	PM10	PM2.5	SOx
OGV Transit and Maneuvering	7.52	12.97	165.20	1.78	1.64	3.91
OGV Hotelling	7.36	15.54	194.33	2.72	2.51	6.58
BAAQMD 1999 Threshold of Significance (lb/day)	80	N/A	80	N/A	N/A	N/A
Exceed 1999 BAAQMD Thresholds?	No	N/A	Yes	N/A	N/A	N/A
BAAQMD 2011/2017 Thresholds of Significance	54	N/A	54	82	54	N/A
Exceed 2011/2017 BAAQMD Thresholds?	No	N/A	Yes	No	No	N/A

lb = pounds\; ROG = reactive organic gas; CO = carbon monoxide; NOx = nitrogen oxide; PM10 = particulate matter with a diameter less than 10 microns; PM2.5 = particulate matter with a diameter less than 2.5 microns; SOx = sulfur oxide

For purposes of the air quality and greenhouse gas analysis in the DSEIR, the Port considered three vessels that are anticipated to be the primary vessels used for the Proposed Project (HH Jackman, CSL Tecumseh, and Sheila Ann). As explained in Section 2.1 of DSEIR Appendix C, these three vessels were used in the analysis as representative vessels that the Proposed Project would use, even though not all calls may use these specific vessels. The actual vessels are expected to be similar to these vessels in size and other characteristics. Thus, the CSL Tecumseh is not the only Tier 2 vessel that could be used for the Proposed Project. If the CSL Tecumseh goes out of service, no increased emissions would be expected, because the Applicant would still be responsible for complying with the lease requirement that a percentage (escalating during the lease term) of vessel calls meet Tier 2 or better emission standards, and the Applicant's expected vessel carrier (CSL Group, Inc.) has other Tier 2 vessels that could be used to meet the lease requirement.

The concern expressed in the comment that the DSEIR does not address mitigation to reduce the Proposed Project's OGV emissions does not account for Mitigation Measure ERA AQ-1. This mitigation

measure requires the Applicant to prepare and implement an Operations Air Quality Plan, which the Port must review and approve both prior to the beginning of Proposed Project operations and every year thereafter. After the DSEIR was released, the Port modified this mitigation measure to reflect the BAAQMD requirement that OGV and tug NOx emissions be offset with BAAQMD-eligible ECRs at a ratio of 1.15:1.0 (see Response to Comment A-11).

Response to Comment H-34

This comment states that the DSEIR fails to discuss any relevant connection between implementation of the Proposed Project and general health effects, including effects associated with exposure to airborne crystalline silica.

Health effects associated with crystalline silica are discussed in the Health Risk Assessment (see FSEIR Volume 2, Appendix D, *Health Risk Assessment for the Draft SEIR*) and in Section 3.7 of the DSEIR. Also see Response to Comment B-19.

Response to Comment H-35

The comment states that the DSEIR does not discuss relevant health effects related to ozone, PM10, PM2.5, and DPM.

Health effects related to other pollutants including ozone, PM10, PM2.5, and DPM are discussed in Section 3.4 of the DSEIR. Also see Response to Comment B-19 and Master Response 5: Community Health Risks from Air Quality Impacts.

Response to Comment H-36

The comment cites the *Sierra Club v. County of Fresno* court case and states that the Proposed Project does not link air quality emissions to health effects.

See Master Response 5: Community Health Risks from Air Quality Impacts and Response to Comment B-19.

Response to Comment H-37

The comment states that the DSEIR does not provide a complete consistency analysis of the Proposed Project with applicable air quality plans.

See Section 3.4 of the DSEIR, which discusses Proposed Project consistency with the BAAQMD 2017 CAP, Port of Oakland 2020 and Beyond Plan, and the WOCAP. Also see Master Response 8: Consistency with West Oakland Community Action Plan.

Response to Comment H-38

The comment states that the DSEIR does not provide sufficient detail on how compliance with the measures of the BAAQMD 2017 CAP will be enforced and that these measures are not mentioned anywhere else in the DSEIR.

Section 3.4 of the DSEIR explains that the Proposed Project would comply with applicable BAAQMD 2017 CAP control measures for stationary sources and transportation. The Proposed Project's mitigation

measures would ensure that applicable BAAQMD 2017 CAP control measures are followed. Further, many of the CAP measures addressed by the Port in its 2020 and Beyond Plan include regular review to determine feasibility in the future. Finally, compliance with BAAQMD control measures would be enforced through the BAAQMD Authority to Construct and Permit to Operate.

Also see Response to Comment A-11 and Master Response 4: Fugitive Dust.

Response to Comment H-39

The comment states that the DSEIR air quality section does not discuss the Proposed Project's consistency with the Port's 2020 and Beyond Plan's Intermediate-Term Equipment and Infrastructure Goals, including deploying zero-emission drayage trucks.

Consistency with the Port's 2020 and Beyond Plan is discussed in Section 3.4 of the DSEIR. Zero emission trucks are part of the Port's 2020 and Beyond Plan. See Response to Comments A-1, A-11, and H-62. Additionally, all trucks traveling from the Proposed Project site to the Central Concrete plant in West Oakland would be zero emission.

Also see Responses to Comments A-1 and A-12.

Response to Comment H-40

The comment states that the DSEIR does not discuss consistency with the WOCAP goal of protecting and improving community health in West Oakland. See Master Response 8: Consistency with the West Oakland Community Action Plan.

Response to Comment H-41

The comment states that the DSEIR does not explain how the Proposed Project would be consistent with applicable air quality measures related to DPM, PM2.5, and cancer in the WOCAP. See Master Response 8: Consistency with the West Oakland Community Action Plan.

Response to Comment H-42

The comment states that the DSEIR does not address how the displacement of truck parking at the Proposed Project site would be consistent with the WOCAP implementing strategy #26 to establish permanent locations for parking and staging for Port related trucks.

See Master Response 3: Truck Parking and Container Staging.

Response to Comment H-43

The comment states that the DSEIR must correct deficiencies in its analysis of the Proposed Project's consistency with applicable air quality plans.

See Master Response 8: Consistency with the West Oakland Community Action Plan. Also see Section 3.4.4 of the DSEIR.

Response to Comment H-44

The comment states that the air quality analysis does not provide adequate mitigation measures to mitigate the Proposed Project.

See Response to Comment A-11 and Master Response 4: Fugitive Dust.

Response to Comment H-45

The comment states that the DSEIR does not provide any feasible mitigation measures beyond changes to Port vehicles.

See Response to Comment A-11 and Master Response 4: Fugitive Dust.

Response to Comment H-46

The comment states that the DSEIR does not make significance determinations for the Proposed Project's PM2.5 or cancer risk.

See Responses to Comments H-16, H-20, and H-21.

Response to Comment H-47

The comment states that Mitigation Measure ERA AQ-1 as written in the DSEIR defers mitigation.

Mitigation Measure ERA AQ-1 was modified to more clearly define performance standards required for each category of emissions including BAAQMD permitted sources, OGVs and tugs, off-road equipment used onsite, and material hauling vehicles. See Response to Comment A-11.

Response to Comment H-48

The comment states that the DSEIR does not explain the reason for preparing the mitigation plan after approval of the Proposed Project. See Response to Comment H-47.

Response to Comment H-49

The comment states that Mitigation Measure ERA AQ-1 as written in the DSEIR does not identify performance standards and is not enforceable. See Response to Comment H-47.

Response to Comment H-50

The comment states that Mitigation Measure ERA AQ-1 as written in the DSEIR does not address air quality effects from OGVs, tugs, off-site trucks, or aggregate stockpiles. See Response to Comment H-47.

Response to Comment H-51

The comment states that Mitigation Measure ERA AQ-2 is vague regarding the use of non-Tier 4 equipment and does not provide for oversight of the Applicant's decisions.

As described in Section 3.4 of the DSEIR, Mitigation Measure ERA AQ-2 identifies a performance standard requiring all Tier 4 off-road construction equipment, with the possible exception of limited categories of equipment (potentially including vibratory jackhammers and concrete saws) for which

suitable Tier 4 equipment may not be available. During construction, the Port would require reporting of compliance with applicable mitigation measures and SCA of the Proposed Project-specific Mitigation and Monitoring Reporting Plan (MMRP) and to provide additional documentation to the Port as needed. The Port's Engineering and Environmental departments would ensure and enforce compliance during construction.

Response to Comment H-52

The comment suggests requiring shore power facilities to mitigate air quality and health impacts of the Proposed Project. See Master Response 6: Waterside Emissions Controls.

Response to Comment H-53

The comment suggests requiring a program to adapt vessels to use shore power or a USEPA-verified exhaust capture and control system. See Master Response 6: Waterside Emissions Controls.

Response to Comment H-54

The comment suggests requiring all tugs and OGVs to be equipped with Tier 4 or cleaner engines. See Master Response 6: Waterside Emissions Controls.

Response to Comment H-55

The comment suggests relocating the Central Concrete plant to the Proposed Project site. See Response to Comment H-14.

Response to Comment H-56

The comment suggests spraying down trucks and requiring load covering prior to exiting the Proposed Project site. See Master Response 4: Fugitive Dust.

Response to Comment H-57

The comment suggests setting emission standards for control of dust from aggregate storage and transfer that must be met through watering and covering. See Master Response 4: Fugitive Dust.

Response to Comment H-58

The comment suggests that real-time perimeter air quality monitoring should be conducted and that the DSEIR should identify response actions when exceedances are detected. See Response to Comment C-2.

Response to Comment H-59

The comment suggests that all service equipment used at the Proposed Project site should have zero emissions. See Response to Comment A-12.

Response to Comment H-60

The comment suggests that the Port develop and implement a program to ensure all heavy-duty trucks entering the Proposed Project area are zero emissions by 2030. See Responses to Comments A-1 and A-12.

Response to Comment H-61

The comment suggests that the Port work with the City to modify weight and axle limits on adjacent streets to accelerate the adoption of electric tractors at the Port.

Modifying the weight and axle limits on Maritime Street, Seventh Street, and Middle Harbor Boulevard is not required for the Proposed Project and is outside of the scope of the Proposed Project and thus is not considered a feasible mitigation measure. The use of electric trucks for the route between the Proposed Project Site and the Central Concrete plant has been added to the revised Mitigation Measures ERA AQ-1 (see Response to Comment A-11). The Port's 2020 and Beyond Plan includes strategies and process to address the Port's transition to zero emission drayage trucks (see Response to Comment A-1, A-11, B-14 and H-62.

Response to Comment H-62

The comment suggests that the Port set a goal to use at least 100 electric tractors in the Port area by 2023.

Implementing this emissions reduction strategy is outside of the scope of the Proposed Project and is thus not considered a feasible mitigation measure. The 2020 and Beyond Plan is the Port's master plan for achieving zero-emission Seaport operations through changes in equipment, operations, fuels, and infrastructure. The 2020 and Beyond Plan framework outlines several steps to determining feasibility including assessing exposure reduction, affordability, cost-effectiveness, commercial availability, operational feasibility, acceptability, and need. See Response to Comments A-1, A-11, and H-62.

Response to Comment H-63

The comment suggests that all tugs and harbor crafts be required to be upgraded to use alternative power systems and renewable/low emission fuels. See Master Response 6: Waterside Emissions Controls.

Response to Comment H-64

The comment suggests that the Port identify a community liaison who can be contacted regarding any air quality concerns during Proposed Project operation. See Master Response 9: Stakeholder Engagement and Environmental Justice, which includes a discussion of plans to initiate a Seaport Stakeholder Group.

Response to Comment H-65

This comment states that the hazards and hazardous materials section of the DSEIR does not adequately analyze hazardous impacts related to respirable crystalline silica. See Response to Comment B-19.

Response to Comment H-66

The comment states that the DSEIR's reliance on existing hazardous materials regulations does not necessarily mean that the Proposed Project would not have a significant impact on the environment associated with release of hazardous materials during construction or operation.

The Proposed Project's potential impacts related to the release of hazardous materials are addressed in Section 3.7 of the DSEIR, which does not merely cite applicable regulatory requirements, but also

explains how those regulations would prevent any substantial hazard to the public or the environment. The DSEIR explains the Small Project SWPPP, the construction best management practices and other measures that are required under the cited regulations. With respect to crystalline silica, the explanation is based on OSHA standards, which require maintaining stockpiles at a moisture content of 1% to 8% (depending on the aggregate size) to maintain dust below action levels for on-site employees, with accompanying monitoring requirements and corrective actions if any standard is not met. See page 3.7.7 of the DSEIR and Responses to Comments B-19 and G-15.

Response to Comment H-67

The comment claims that the DSEIR lacks sufficient analysis to support the conclusion that the Proposed Project would not violate any water quality standards or waste discharge requirements.

The Proposed Project's potential impacts to hydrology and water quality are addressed in Section 3.8 of the DSEIR. Pursuant to CEQA, the Proposed Project would adhere to applicable DTSC, USEPA, OSHA, California Occupational Safety and Health Administration (Cal/OSHA), Alameda County Department of Environmental Health (ACDEH), and California State Water Resources Control Board (SWRCB) regulations and permits (i.e., Industrial General Permit), local discharge permits (i.e., EBMUD), the Small Project SWPPP, and SCA. Thus, through compliance with these permits and measures, the Proposed Project would not violate any water quality standards or waste discharge requirements and impacts would be less than significant.

Response to Comment H-68

The comment states the DSEIR does not adequately analyze water quality impacts during Proposed Project construction, instead relying on applicable regulations and permit requirements.

As described in Section 3.8 of the DSEIR, construction activities have the potential to impact water quality from ground disturbance and the use of hazardous materials. To reduce potential impacts to water quality during construction, the Applicant would be required to prepare a Small Project SWPPP as part of the Port Development Permit application, which requires the implementation of BMPs to reduce and/or prevent impacts to water quality.

Large construction projects that have a high likelihood of impacting water quality are required by the State Water Board to achieve coverage under the Construction General Permit or other Waste Discharge Permit. The Proposed Project is small enough that the State does not deem to need that level of coverage; however, the Port requires that all projects on Port property demonstrate the project risk to water quality and present a Small Project Storm Water Pollution Prevention Plan (SWPPP) in order to plan and prevent for water quality impacts. The Small Project SWPPP would require implementation of erosion and sediment control BMPs and good housekeeping BMPs to reduce impacts associated with construction. The Port uses industry standards in the California Stormwater Quality Association (CASQA) BMP Handbook to review and require BMPs in the Small Project SWPPP. The Small Project SWPPP process includes requirements to analyze all project-related pollution sources, including common construction issues such as sediment, material storage & handling, vehicle fluids, hazardous materials, trash, and spill response. The Port reviews the Small Project SWPPP and requires that each project-related pollution source has a site Best Management Practice in place to prevent that source from encountering stormwater or leaving the site prior to approval. Additionally, the Port requires that all projects include storm drain spill protection devices within 50 feet or downstream of active construction activities. The Port Stormwater Ordinance holds that any violation of or failure to implement the

required SWPPP constitutes a violation of the Port ordinance, and the Port enforces on violations to the submitted SWPPP, should they occur. By being required to go through the Small Project SWPPP review, approval, and implementation process, the Proposed Project would effectively reduce and/or prevent impacts to water quality during construction. Thus, the Proposed Project would not violate any water quality standards or waste discharge requirements during construction and impacts would be less than significant.

Response to Comment H-69

The comment states the DSEIR does not adequately analyze water quality impacts during Proposed Project operation.

As described in Section 3.8 of the DSEIR, the aggregate piles associated with the Proposed Project would be a potential source of additional sediment loads compared to the previous container cargo use analyzed in the 2002 EIR as Addended; however, other pollutant loads (i.e., oil, grease, and lubricant from equipment) would similarly be present during Proposed Project operation. To prevent these loads from entering the storm drain system and receiving waters, a subsurface HDS system (or other approved stormwater vault treatment system[5]) would filter out sediment and other pollutants from runoff originating from the subwatersheds of the site that contain aggregate piles, including crystalline silica from the aggregate piles, prior to being conveyed to the storm drain outfalls at Berth 20 and Berth 10. Additionally, a sweeper or other pre-treatment would be applied prior to runoff entering a bioretention treatment basin on the eastern portion of the site across from the scale house (i.e., where there are no aggregate piles). The bioretention basin itself would reduce sediment and other pollutants (e.g., lubricants, fuels) from discharging into the storm drain system. Runoff from the western portion of the site (i.e., where there are no aggregate piles), was previously described in the DSEIR as being conveyed to a stormwater retention pond intended for excess water storage for onsite use.

Following publication of the DSEIR, the Applicant has elected to utilize EBMUD recycled water as a secondary water source to ship hold water stored onsite; therefore, runoff from the western portion of the site (i.e., where there are no aggregate piles) would also be treated by a subsurface HDS system instead of collected in stormwater retention pond. Finally, the Proposed Project would be required to prepare an on-site operational SWPPP under the Industrial General Permit compliance requirement, which would include assessment of potential pollutant sources from industrial activities and periodic monitoring to determine the effectiveness of stormwater treatment practices. Thus, with these post-construction measures, water quality impacts associated with operation of the Proposed Project would be reduced.

As described in Chapter 4, Revisions to the Draft Supplemental Environmental Impact Report, of this volume, these modifications have been incorporated into the FSEIR Project Description as follows:

> Runoff originating from the western portion of the site (i.e., where there are no aggregate piles) would ~~enter a 57,600-gallon stormwater retention pond~~ flow through subsurface HDS, which

[5] Stormwater treatment system to follow Basic Treatment per the Washington Department of Ecology Technology Assessment Protocol – Ecology (TAPE): https://ecology.wa.gov/Regulations-Permits/Guidance-technical-assistance/Stormwater-permittee-guidance-resources/Emerging-stormwater-treatment-technologies.

would filter out sediment and other pollutants prior to being conveyed to the storm drain outfalls located at Berth 20 and Berth 10.

Response to Comment H-70

The comment states that the DSEIR does not include an analysis on the effectiveness of the HDS, bioretention system, or retention pond in reducing water quality impacts.

The subsurface HDS (or other approved stormwater vault treatment system[6]) system would treat runoff associated with the aggregate piles on the western portion of the Proposed Project site. HDS systems are effective in removing particles 50 microns or larger (e.g., gravel and sand) and can remove up to 100% of pollutants depending upon the pollutant and flow rate (Contech 2021). Further, the Applicant follows ASTM C33, which specifically requires that all material passing 75 microns not exceed 3% (in the last two years, the Applicant has determined this has been 1.1% and 1.2% respectively). The bioretention treatment basin would treat runoff from the eastern portion of the Proposed Project site where there are no aggregate piles. Bioretention treatment basins have been shown to be effective in removing sediment, metals, organics, and bacteria (CASQA 2003) and would be required under the Port's Phase II MS4 Permit. The bioretention treatment basin would be designed per the Port's Post-Construction Design Manual and subject to Port approval to treat the site's Regulated Arfea of replaced impervious surface. The retention pond was originally included in the Proposed Project as a means of providing additional water for dust control during Proposed Project operations. Following publication of the DSEIR, the Applicant has elected to utilize EBMUD recycled water as a secondary water source to ship hold water stored onsite for dust control during Proposed Project operations. Runoff from the western portion of the site (i.e., where there are aggregate piles) would also be treated by a subsurface HDS system.

Thus, the HDS system was selected to treat stormwater runoff from the Proposed Project site for its ability to remove sediment and other pollutants from stormwater runoff. The bioretention treatment basin is a state permitting requirement.

Response to Comment H-71

The comment states that the DSEIR does not adequately analyze water quality impacts from erosion or siltation associated with the Proposed Project. See Responses to Comments H-68 through H-70.

Response to Comment H-72

The comment states that the DSEIR does not adequately analyze impacts from stormwater runoff. See Responses to Comments H-68 through H-70.

[6] Stormwater treatment system to follow Basic Treatment per the Washington Department of Ecology Technology Assessment Protocol – Ecology (TAPE) https://ecology.wa.gov/Regulations-Permits/Guidance-technical-assistance/Stormwater-permittee-guidance-resources/Emerging-stormwater-treatment-technologies.

Response to Comment H-73

The comment states that the DSEIR does not adequately discuss consistency with the goals and objectives of the West Oakland Specific Plan or increased air pollution and related health effects associated with implementation of the Proposed Project.

See Master Response 4: Fugitive Dust, Master Response 5: Community Health Risks from Air Quality Impacts, and Master Response 8: Consistency with the West Oakland Community Action Plan.

Response to Comment H-74

The comment states that the DSEIR does not provide an energy impacts analysis required by CEQA. See Response to Comment H-18.

Response to Comment H-75

The comment states that the Proposed Project would result in significant truck traffic, including truck traffic to the Central Concrete plant, requiring a consistency analysis with the West Oakland Specific Plan. See Response to Comment A-2.

Response to Comment H-76

The comment states that the DSEIR does not provide an updated environmental setting for noise and relies on outdated information from the 2002 EIR as Addended.

The dominant sources of noise on the Proposed Project site are traffic, Port operations, railroad, and Bay Area Rapid Transit (BART), which are the same sources of noise identified in the 2002 EIR as Addended. Thus, because the Port has continued to develop the surrounding area in a manner consistent with the 2002 EIR as Addended and because the existing conditions related to noise sources have not changed substantially from the regional and local setting of the 2002 EIR as Addended, the environmental setting from the 2002 EIR as Addended was summarized in the DSEIR. Also see Master Response 1: Use of Supplemental EIR.

Response to Comment H-77

The comment states that the DSEIR does not discuss or quantify vibration generated from the Proposed Project.

As described in Section 3.10 of the DSEIR, the operation of heavy construction equipment and pile driving during construction could result in groundborne vibration impacts. Vibration may also be generated during operational activities. Due to the existing surrounding Port operations, distance to the nearest residential land use with intervening structures and existing sound barriers, and with implementation of SCA, vibration generated during construction and operation would not substantially increase above the existing condition, which was analyzed in the 2002 EIR as Addended.

Response to Comment H-78

The comment states that the DSEIR does not adequately describe how Mitigation Measure ERA TRANS-1 would achieve Level of Service (LOS) C at the intersection of Maritime Street and 17th Street, and further that the DSEIR improperly defers implementation with no performance standards.

Mitigation Measure ERA TRANS-1 involves optimizing signal timing for the p.m. peak hour at the Maritime Street/17th Street intersection to reduce LOS impacts to acceptable levels from operation of the Proposed Project. To implement this measure, the Port would ensure that the Applicant submits Plans, Specifications, and Estimates (PS&E) to the City's Transportation Engineering Division and Caltrans for review and approval. Mitigation Measure ERA TRANS-1 would be effective in reducing traffic impacts to the local intersection as described in Section 3.11 of the DSEIR. Modelling was performed for signal timing optimization and results indicated that the LOS would be reduced to LOS C with 32.7 seconds of delay (see Optimized Signal Timing at Maritime St./17th Street Intersection in DSEIR Appendix F, *Transportation Technical Appendix*).

Response to Comment H-79

The comment states that Mitigation Measure ERA TRANS-1 defers mitigation and contains no assurance that the measure will be effective in optimizing the signal at the Maritime Street/17th Street intersection to reduce the LOS impact associated with the Proposed Project. See Response to Comment H-78.

Response to Comment H-80

The comment states that the transportation section does not adequately analyze the Proposed Project's impacts on parking in surrounding neighborhoods See Master Response 3: Truck Parking and Container Staging.

Response to Comment H-81

The comment states that the Proposed Project does not adequately analyze Proposed Project-displaced parking impacts. See Master Response 3: Truck Parking and Container Staging.

Response to Comment H-82

The comment states that the DSEIR does not adequately analyze the environmental impacts associated with displacement of the AMS operation. See Master Response 3: Truck Parking and Container Staging.

Response to Comment H-83

The comment states that the DSEIR does not analyze indirect environmental impacts, including to air quality, noise, and traffic associated with the displacement of the 18 acres of AMS uses. See Master Response 3: Truck Parking and Container Staging.

Response to Comment H-84

The comment states that the Proposed Project would remove 18 acres of AMS that are needed to support the Port's anticipated growth through 2050. See Master Response 3: Truck Parking and Container Staging.

Response to Comment H-85

The comment states that the DSEIR assumes that all displaced parking, staging, and AMS uses from the Proposed Project could be accommodated at the Roundhouse and/or Howard Terminal without providing evidence of this claim. See Master Response 3: Truck Parking and Container Staging.

Response to Comment H-86

The comment states that the DSEIR does not analyze whether the Roundhouse or Howard Terminal sites have sufficient space for the displaced AMS uses. See Master Response 3: Truck Parking and Container Staging.

Response to Comment H-87

The comment states the DSEIR should identify other possible locations where parking and AMS uses can be relocated besides the Roundhouse and Howard Terminal sites. See Master Response 3: Truck Parking and Container Staging.

Response to Comment H-88

The comment states that the DSEIR did not adequately analyze parking impacts resulting from displaced truck parking, container storage, and staging. See Master Response 3: Truck Parking and Container Staging.

Response to Comment H-89

The comment notes that the cumulative impact analysis included in the DSEIR should be revised to comply with CEQA so that the Proposed Project is analyzed in comparison to reasonably foreseeable past, present and future projects. See Master Response 7: Cumulative Impacts.

Response to Comment H-90

The comment states that the cumulative air quality analysis does not state the health effects associated with an increase in air pollution.

See Master Response 4: Fugitive Dust, Master Response 5: Community Health Risks from Air Quality Impacts, and Master Response 7: Cumulative Impacts.

Response to Comment H-91

The comment states that the DSEIR does not provide information on greenhouse gas emissions. See Master Response 7: Cumulative Impacts.

Response to Comment H-92

The comment states that the DSEIR does not address cumulative impacts associated with hydrology and water quality and transportation. See Master Response 7: Cumulative Impacts.

Response to Comment H-93

The comment states that the DSEIR alternatives analysis is not adequate. See Response to Comment B-9.

Response to Comment H-94

The comment states that the DSEIR dismisses alternatives involving installation of shore power and installation of an emissions capture-and-control system for being economically infeasible without evaluating potential funding assistance.

See Response to Comment B-9 and Master Response 6: Waterside Emissions Controls.

Response to Comment H-95

The comment states that the DSEIR alternatives analysis should be revised to more clearly compare the alternatives' environmental impacts, particularly Alternative 1, Stockpile Storage in a Building, against the impacts of the Proposed Project.

In addition to the No Project Alternative, Section 5.6 of the DSEIR compares the Proposed Project with Alternative 1 with a focus on air quality impacts because all other environmental effects associated with operations under Alternative 1 would essentially be the same as the Proposed Project. The Port acknowledges that the emissions of PM2.5 could be approximately 22% less under Alternative 1; however, the cost associated with designing and constructing a warehouse style building of the magnitude required for the Proposed Project would exceed the estimated Proposed Project cost by approximately 2.5 times, making it economically infeasible to implement. Also see Response to Comment B-9 for a discussion of the alternatives analysis that was performed for the Proposed Project.

Response to Comment H-96

The comment requests that the relocation of the Central Concrete plant to the Proposed Project site be evaluated as a feasible alternative to the Proposed Project. See Response to Comment H-14.

Response to Comment H-97

The comment states that the DEIR must be recirculated due to substantial revision to the impact analyses and mitigation.

See Response to Comment B-30. As evidenced in the responses provided to Letter H comments, as well as the responses to all the other comment letters, the Port has not identified any significant new information meeting the criteria for recirculation of the DSEIR.

Response to Comment H-98

The comment states that there are numerous deficiencies in the DSEIR necessitating revision and recirculation of the DSEIR.

See Responses to Comments H-14, H-52 through H-64, and H-97.

Letter I: West Oakland Environmental Indicators Project (January 8, 2021)

Letter I

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

I-1

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,

1 DSEIR Eagle Rock Aggregates - WOEIP comments

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.

I-1 cont.

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.

2 DSEIR Eagle Rock Aggregates - WOEIP comments

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[1]. 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.

I-2

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.[2]

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.

I-3

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

[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

[2] http://www.polarismaterials.com/

3 DSEIR Eagle Rock Aggregates - WOEIP comments

I-3 cont. 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.

I-4 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.

I-5 The Oakland proposal anticipates "significant and unavoidable" negative impacts from particulate matter, noise, light and traffic.

I-6 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

I-7 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.

I-8 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?

I-9 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.

I-10 Section 2.1 states that the project will *"allow for sustainable job creation."* See our above comment.

I-11 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.

I-12 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.

I-13 In short, the Project Need statement is flawed in its assessment of local need and provides little or no support for its assumptions.

I-14 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

I-15 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.

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I-16 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.

I-17 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

I-18 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

I-19 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.

I-20 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…"

I-21 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.

I-22 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

I-23 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.

I-24 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.

I-25 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.

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I-26 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

I-27 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.

I-28 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.

I-29 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 NOx and 0.071 g/mi for PM2.5. 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
NOx: 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.

I-30 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.

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CONCLUSION

I-31 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.

I-32 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.

I-33
- Designate specific permanent truck parking and container staging areas adequate to serve the displaced fleet *prior* to approving the Project

I-34
- Begin pursuit of funding for installation of shore power facilities at Berth 22 immediately. Implement construction of those facilities as soon as financially possible.

I-35
- Requirement in the land lease implementation of a pilot program to adapt the proposed vessels to shore power or other vessel emission capture system.

I-36
- Eliminate truck trips through West Oakland by relocating the Central Cement ready mix plant from Peralta St. to the Project site.

I-37
- 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.

I-38
- Set a goal of 100 electric tractors operating within the Port area by 2023.

I-39
- Upgrading of all tugs and harbor craft working in the Port area, including commuter ferries to new or alternative power systems and renewable fuels.

I-40
- 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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Union of Concerned Scientists

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Response to Comment I-1

The comment provides background information and statistics on the West Oakland community and the existing burdens that are experienced. Comment is noted.

Response to Comment I-2

The comment provides a brief overview of the Proposed Project and describes background information on the operations and ownership of the Applicant. Comment is noted.

Response to Comment I-3

The comment provides a limited summary of the Proposed Project. The comment states that the Applicant intends to service gravel operations at one or more other shallow-water San Francisco Bay Area (Bay Area) import terminals and potentially consolidate those operations at the Oakland Marine Terminal.

To clarify, the only other shallow-water import terminals in the Bay Area are the Redwood City Marine Terminal and the Richmond Marine Terminal. Under the Proposed Project, incoming OGVs would travel from the Pacific Ocean to the Oakland Marine Terminal for offloading, continue on to the Redwood City Marine Terminal for offloading, and return to the Pacific Ocean for the return trip to British Columbia.

The comment is correct in stating that cement (or concrete) trucks, as 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. However, it should be noted that cement trucks that may be used during Proposed Project construction are subject to CARB's In-Use Off-Road Diesel-Fueled Fleets Regulation, which requires a cement truck for all sized fleets to meet fleet average emissions targets or BACT requirements and forbids addition to the fleet of lower Tier engines. Thus, while the same regulation does not apply to cement trucks as to haul trucks, there is a regulation that requires fleet improvements of cement trucks depending on the horsepower of the trucks. Cement/concrete trucks would only be in use during the construction phase of the Proposed Project.

The comment states that the Applicant operates a similar gravel import facility inside a containment structure at the Port of Richmond. However, as described in section 2.3.1 of the DSEIR, the Applicant's existing BAAQMD Permit for operation of the Richmond Marine Terminal allows up to 1,500,000 tons of construction aggregates per year (tpy), whereas the Proposed Project would be permitted up to 2,500,000 tpy. Thus, the Richmond operation is significantly smaller by comparison. Also see Response to Comment B-29.

The comment states that the Proposed Project would increase fugitive dust from the proposed use of open construction aggregate piles. During operation of the Proposed Project, fugitive dust would be generated from the movement of construction aggregates from ships to aggregate stockpiles, the transfer of aggregate from stockpiles to hauling trucks or barges, resuspension of accumulated dust on roads and surfaces, and from windblown erosion of the aggregate stockpiles. For a discussion of how the Proposed Project conservatively estimates fugitive dust, would minimize fugitive dust, and the feasibility of different stockpile mitigation options, see Master Response 4: Fugitive Dust.

Response to Comment I-4

The comment suggests that the Applicant's unwillingness to build an enclosed structure to capture emissions from aggregate storage piles is related to a desire to keep costs at a minimum. See Responses to Comments B-9 and H-95.

Response to Comment I-5

The comment states that the Proposed Project anticipates "significant and unavoidable" negative impacts from particulate matter, noise, light, and traffic.

As stated in Section ES-4 of the DSEIR, three significant and unavoidable impacts were identified for air quality and two significant and unavoidable impacts were identified for cumulative air quality for the Proposed Project. The Proposed Project would not result in any new significant impacts not previously disclosed in the 2002 EIR as Addended; however, it would increase the severity of two air quality impacts (Impact AIR-3 and Impact AIR-4) and a cumulatively significant air quality impact (Cumulative Impact AIR-1) disclosed in the 2002 EIR as Addended. To address the increase in severity related to PM fugitive dust emissions, the Proposed Project is requiring watering of the storage piles and wheel washing of all trucks leaving the Proposed Project site during operations. The extent of the increase in severity is limited to potential work areas located on Port property and not any residential areas.

The significant and unavoidable noise, light, and traffic impacts identified in the comment are associated with the entire OAB Area Redevelopment, as disclosed in the 2002 EIR as Addended. With regard to noise impacts associated with the Proposed Project, certain construction activities would potentially violate City noise code and nuisance ordinances (Impact NOI-1 and Impact NOI-2); however, these impacts would be less than significant with Mitigation Measure 4.5-1, which would address the noisiest construction equipment (associated with pile driving) by requiring approval of a noise reduction plan prior to the start of construction (see Section 3.10.2 of the DSEIR). With regard to new light sources, the Proposed Project would create a new source of nighttime light (Impact AES-2); however, this impact would be less than significant with Mitigation Measure 4.11-1, which would require new lighting to be designed to minimize off-site light spillage, including shields for lighting fixtures (see Section 3.3.3 of the DSEIR). Additionally, with regard to traffic, signalized intersections could experience reduced levels of service (Impact TRANS-1); however, this impact would be less than significant with mitigation measure ERA TRANS-1, which would optimize signal timing and coordinate the signal timing changes at the intersection of Maritime Street and 17th Street with adjacent intersections. Finally, the Proposed Project would add between 2 and 13 trips per hour per direction to the associated freeway segments (Impact TRANS-2) and impacts would be less than significant to freeways; however, the impact for the OAB Area Redevelopment would still result in a significant and unavoidable impact since the level of service of congested freeway segments would still be degraded (i.e., LOS F) (see Section 3.11.3 of the DSEIR).

Response to Comment I-6

The comment supposes what may happen in the future if the Applicant or a successor in interest seeks to extend its lease and/or to handle other bulk products.

The initial term of the Applicant's lease from the Port for the Proposed Project site is proposed to be approximately twelve (12) years followed by a ten-year option to extend and then a five-year option to extend, both subject to mutual agreement between the Applicant and the Port, for a total of twenty-seven (27) years. Any change in bulk products, whether desired by Eagle Rock Aggregates or any

other applicant, and any extension of the lease beyond the 27 years, would require additional CEQA review and Board approval.

Response to Comment I-7

The comment states that the DSEIR fails to mention or reference the West Oakland Community CERP that was certified by CARB and the BAAQMD in December of 2019. See Master Response 8: Consistency with the West Oakland Community Action Plan.

Response to Comment I-8

The comment states that the DSEIR does not explain how the Proposed Project would strengthen the economic base in West Oakland and asks how many West Oakland residents are members of the International Longshore Workers Union (ILWU).

See Master Response 9: Stakeholder Engagement and Environmental Justice, which includes a discussion of economic benefits of the Proposed Project.

Response to Comment I-9

The comment states that strengthening the economic base in West Oakland would require the provision of contracts to local businesses and jobs for unemployed workers.

See Master Response 9: Stakeholder Engagement and Environmental Justice, which includes a discussion of economic benefits of the Proposed Project.

Response to Comment I-10

The comment notes that the DSEIR states the Proposed Project would "allow for sustainable job creation" and refers to Comment I-9.

See Master Response 9: Stakeholder Engagement and Environmental Justice, which includes a discussion of economic benefits of the Proposed Project.

Response to Comment I-11

The comment states that displacing on-site AMS from the Port area is more likely to reduce Port efficiency by forcing trucks to travel longer distances and spend time in freeway traffic. See Master Response 3: Truck Parking and Container Staging.

Response to Comment I-12

The comment states that the Applicant would move existing operations from Redwood City Marine Terminal and consolidate operations at the Oakland Marine Terminal and suggests that these actions would not strengthen the economic base but would instead result in longer truck trips for deliveries of aggregate to regional ready-mix plants.

This comment is based on an incorrect premise as the Applicant does not have its own facility at the Port of Redwood City but does offload materials at the Redwood City Marine Terminal. The Proposed Project would remove lightering at Anchorage 9 in the Bay; however, deliveries of aggregates via ship to the Port of Redwood City would continue the same as they do today.

Response to Comment I-13

The comment states that the Project Need statement in the DSEIR is flawed in its assessment of local need and provides little or no support for its assumptions.

See Master Response 9: Stakeholder Engagement and Environmental Justice, which includes a discussion of economic benefits of the Proposed Project.

Response to Comment I-14

The comment states that the Port's lack of attention to trucking operations has resulted in truck parking and staging in residential areas and is a negligent action. See Master Response 3: Truck Parking and Container Staging.

Response to Comment I-15

The comment states that the DSEIR does not assess the additional diesel emissions from displaced trucking activities and that trucks would park on local streets. See Master Response 3: Truck Parking and Container Staging and Responses to Comments A-1 and A-12.

Response to Comment I-16

The comment suggests that diesel emissions resulting from a loss of current AMS activities (e.g., truck parking) at the Proposed Project site would add to the pollution burden along the freeway corridor and would not provide jobs for disadvantaged residents. See Master Response 3: Truck Parking and Container Staging.

Response to Comment I-17

The comment recommends that the Port and the Applicant create a specific plan to relocate trucks currently using the Proposed Project site for parking and container staging operations elsewhere within the Port. See Master Response 3: Truck Parking and Container Staging.

Response to Comment I-18

The comment states that, according to CARB, marine vessel maneuvering accounts for approximately 30% of total diesel particulate in the Bay region and expresses concern that the increase in total miles traveled by vessels as part of the Proposed Project would increase regional ship emissions.

For container ships (based on the Port's 2017 Seaport Emissions Inventory [Port of Oakland 2019b]), maneuvering accounts for 16% of total OGV emissions. Maneuvering is defined as the portion of travel between the Bay Bridge and the berths. Under the Proposed Project, incoming OGVs would travel from the Pacific Ocean to the Oakland Marine Terminal for offloading, continue on to the Redwood City Marine Terminal for offloading, and return to the Pacific Ocean for the return trip to British Columbia. Due to the greater water depth at the Oakland Marine Terminal, the Applicant would be able to berth fully-loaded OGVs; lightering at Anchorage 9 and use of Westar Rock Barge #2 would no longer be required with implementation of the Proposed Project, thus reducing the amount of OGV maneuvering between the Bay Bridge and the berths. See Section 2.4 of the DSEIR for additional information on barge and vessel operations including Figure 2-4, which compares OGV routes under existing conditions and the Proposed Project. For information on how the Port continues to plan for reducing the air pollutants

and GHG emissions of Seaport activities, see Responses to Comments A-1 and A-12. Also see Master Response 6: Waterside Emissions Controls.

Response to Comment I-19

The comment raises concerns about additional at-berth emissions resulting from additional OGV visits to the Port of Oakland, and that the Port is already falling short on state mandates for the use of shore power for marine vessels.

As described in Section 3.4.4 of the DSEIR, any additional at-berth emissions are already accounted for in the 2002 EIR as Addended. Section 3.4.4 also includes an analysis comparing the level of emissions that might reasonably be expected from a container terminal with emissions from the Proposed Project. Overall, the results show that the significant and unavoidable impact from Proposed Project NOx emissions does not represent a substantial increase in the severity of the significant impact previously identified in the 2002 EIR as Addended. Further, emissions of DPM and GHG from the Proposed Project are projected to fall within the range of emissions that would be expected from use of the site as a container terminal and therefore do not represent a new or more severe impact than what was disclosed under the 2002 EIR as Addended. Table 3.4-8 of the DSEIR summarizes this comparison.

Further, the Port does not fall short of state mandates for the use of shore power for marine vessel visits. See Master Response 6: Waterside Emissions Controls regarding state requirements.

Response to Comment I-20

The comment quotes DSEIR Section 5.4.3 regarding the use of shore power. Comment is noted.

Response to Comment I-21

The comment states that public funding to support investments in shore power infrastructure is available and questions why it is not in use.

The Port is currently working with the Applicant to secure grant funding for shore power or other at-berth emission control options. Should insufficient grant funding be available, the Port will fund shore power infrastructure and the Applicant will fund retrofits. Shore power would cost approximately $5-10 million for shoreside installation and approximately $1-2 million per vessel for OGV retrofitting for shore power. Also see Master Response 6: Waterside Emissions Controls.

Response to Comment I-22

The comment notes that ocean-going vessels cannot be designated for service to Oakland and questions why this is not possible given that specific vessel names are listed in the DSEIR.

As stated in Section 5.4.1 of the DSEIR, the Applicant does not own its own ships and instead has a long-term contract with an outside bulk carrier service to deliver its construction aggregates to its various ports of call on one of six OGVs. See Master Response 6: Waterside Emissions Controls.

The vessels listed in Table 2.4-1 of the DSEIR are regional barges that may transport construction aggregates within San Francisco Bay; they are not the OGVs that transport construction aggregates by sea. The OGVs that have called Bay Area ports in the past are known by name; however, there are no

individual OGVs specifically dedicated to Bay Area seaports, and the Applicant does not have ownership of these vessels.

Response to Comment I-23

The comment states that all California ports operate under the same mandates for shore power and electrification and that modifying ocean-going vessels for shore power would be expected to align with the demands of other ports. See Master Response 6: Waterside Emissions Controls.

Response to Comment I-24

The comment describes the regular travel route of OGVs from British Columbia to the Bay Area and questions why ships cannot be designated for service and modified appropriately to reduce emissions. See Master Response 6: Waterside Emissions Controls and Response to Comment I-22.

Response to Comment I-25

The comment notes that the DSEIR states that California's At-Berth Regulation for emission reductions does not apply to bulk cargo vessels, as indicated in Section 3.4.1 of the DSEIR. See Master Response 6: Waterside Emissions Controls regarding regulations for bulk carriers.

Response to Comment I-26

The comment notes the DSEIR's conclusion regarding the feasibility of at-berth emission capture systems, and that the existence of shore-based emission capture systems have been in use in southern California for many years. See Master Response 6: Waterside Emissions Controls.

Response to Comment I-27

The comment states that trucks typically hauling sand and gravel are not considered drayage trucks under CARB's regulations but are rather subject to CARB's Truck and Bus regulation.

Trucks loading aggregates at the Proposed Project facility must comply with the Port's drayage truck requirements described in its Comprehensive TMP. For a discussion of the Proposed Project's consistency with applicable CARB truck regulations, see Response to Comment A-12.

Response to Comment I-28

The comment asserts that the best the community can expect of the Proposed Project is rock haulers using twelve-year-old trucks, yet many market-available Class 7 or 8 electric tractors could meet the required round trip hauling range.

The Applicant does not maintain control over the type of trucks their operators use; however, the Proposed Project has committed to running electric haul trucks to the Central Concrete plant, an affiliated company on Peralta Street in West Oakland. Also see Responses to Comments A-2, A-3, and A-12.

Response to Comment I-29

The comment states that the DSEIR fails to calculate emissions from haul trucks travelling to ready-mix plants throughout the Bay Area.

This comment is incorrect, as all truck emissions are included in Table 3.4-6 of the DSEIR using the weighted average trip length, which is discussed in detail in DSEIR Appendix C, *Air Quality and Greenhouse Gas Analysis*. As stated in Appendix C, this analysis uses the current CARB fleetwide average truck emissions using CARB's latest recommended emission estimation tools approved by USEPA (EMFAC2017) as the basis for emission factors. EMFAC2017 takes into account the average age of equipment and deterioration of the vehicle and its emissions over time. The EMFAC model year population distribution is accounted for in this model. The emissions presented in the DSEIR assumed model years from 2010-2023 with operational emissions for the year 2022 using the heavy heavy duty truck (HHDT) vehicle class, since CARB fleet rules will require 2010 or newer model year trucks by January 1, 2023. This represents the most reasonable estimate of emissions given the expected range of model years and vehicle deterioration, with an average weighted emission factor of 2.729 grams (g) NOx per mile and 0.072 g PM2.5 per mile.

The comment includes estimates for a single model year, which is a standard practice used in estimating vehicle emissions and is consistent with other standard statewide models such as the California Emission Estimator Model (CalEEMod). However, using a single model year would result in a substantial overstatement of actual emissions given the information known about the actual population and model years of equipment in use. The projected population of 2008 HHDT in 2022 is less than 5% of all vehicle miles traveled by HHDT vehicles, with the majority being newer model year trucks. While the comment is correct in that the emissions from EMFAC2017 were multiplied by 70,000 truck trips at an average trip length of 27 miles, the emission factors provided in the comment are not appropriate to use and not consistent with the analysis presented in the DSEIR, since they would result in an overestimation of total truck emissions. The total truck emissions are used as a basis for significance determination for Impact AIR-1.

Response to Comment I-30

The comment states that significant impacts are numerous and lists significant impacts from the DSEIR.

Many of the impacts cited in the comment are potentially significant impacts that are mitigated to a less than significant level (see Section 5.3.2 of the DSEIR). Also see Response to Comment I-5.

Response to Comment I-31

The comment states that the DSEIR relies on an 18-year-old assessment that does not reflect modern research on the health impacts of freight emissions, contemporary demands for racial equity, or climate change.

See Master Response 1: Use of a Supplemental EIR, Master Response 3: Truck Parking and Container Storage, Master Response 4: Fugitive Dust, Master Response 5: Community Health Risks from Air Quality Impacts, Master Response 6: Waterside Emissions Controls, Master Response 8: Consistency with the West Oakland Community Action Plan, and Master Response 9: Stakeholder Engagement and Environmental Justice. Also see Responses to Comments A-2, A-3, and A-6.

Response to Comment I-32

The comment recommends a suite of actions (i.e., Comments I-33 through I-40) to offset significant and unavoidable direct emissions from the Proposed Project.

See revised Mitigation Measure ERA AQ-1 in Response to Comment A-11 for a discussion of how direct emissions would be addressed by the Proposed Project. See Response to Comment B-26 for a discussion of the complete offset of all OGV and tug NOx emissions. Off-road equipment used during construction and operation would be Tier 4 or better, with the possible exception of limited categories of equipment (potentially including vibratory jackhammers and concrete saws) for which suitable Tier 4 equipment may not be available (see Response to Comment H-51). On-road trucks would meet required CARB fleet regulation requirements and electric trucks would be used to transport construction aggregates to the Central Concrete plant located on Peralta Street in the West Oakland community. Fugitive dust emissions from stationary sources would be required to achieve BACT in order to obtain an air permit (see Master Response 4: Fugitive Dust). Thus, there are several requirements in place to reduce direct emissions.

In addition, the revised Mitigation Measure ERA AQ-1 also requires annual review by both the Applicant and the Port of new technology that may become feasible in the future. Furthermore, the Port and the Applicant have committed to pursuing external grant funding for emission reductions that would otherwise not meet cost effectiveness or commercial availability requirements.

Response to Comment I-33

The comment recommends designating specific permanent truck parking and container staging areas adequate to serve the displaced fleet prior to approving the Proposed Project. See Master Response 3: Truck Parking and Container Staging.

Response to Comment I-34

The comment recommends pursuing funding for installation of shore power facilities at Berth 22 immediately and implement construction of those facilities as soon as financially possible. See Response to Comment I-21 and Master Response 6: Waterside Emissions Controls.

Response to Comment I-35

The comment recommends requiring implementation of a pilot program to adapt the proposed vessels to shore power or other vessel emission capture system in the Port's lease with the Applicant. See Master Response 6: Waterside Emissions Controls.

Response to Comment I-36

The comment recommends eliminating truck trips through West Oakland by relocating the Central Concrete plant from Peralta Street to the Proposed Project site. See Response to Comment H-14.

Response to Comment I-37

The comment recommends accelerating the implementation of electric tractors within the Port area by changing weight and axle limits on Maritime Street, Seventh Street (west of Maritime Street) and Middle Harbor Road. See Response to H-61.

Response to Comment I-38

The comment recommends setting a goal of 100 electric tractors operating within the Port area by 2023. See Response to Comment H-62.

Response to Comment I-39

The comment recommends upgrading all tugs and harbor craft working in the Port area, including commuter ferries to new or alternative power systems and renewable fuels. See Master Response 6: Waterside Emissions Controls.

Response to Comment I-40

The comment recommends that the Port use its bonding power to underwrite Black-owned mixed-use development in West Oakland. See Master Response 9: Stakeholder Engagement and Environmental Justice, which includes a discussion of the economic benefits of the Proposed Project. The Port's charter does not allow the proposed use of bonding power.

3.3 Public Meeting Comments and Responses

Public meeting comments were recorded during the virtual public meetings held on December 9, 2020 during the DSEIR public review period. Questions on CEQA process, location of information in the DSEIR, and clarifications on the project description were responded to during the meetings by Port staff. Individual public comments regarding the DSEIR content and analysis are identified and responded to below. A link to the recorded videos of each meeting can be found on the Port's webpage at:

https://www.portofoakland.com/community/environmental-stewardship/publications/

3.3.1 Response to Public Meeting #1 Comments (December 9, 2020; 10am)

Comment PM 1-1

The commenter noted that there would be 70,000 truck trips per year and asked if the environmental impact of fugitive dust had been studied.

Response to Comment PM 1-1

Data related to truck traffic can be found in Appendix D, *Health Risk* Assessment *of the Draft SEIR*. Impacts of fugitive dust were addressed in Section 3.4.4 of the DSEIR. Also see Master Response 4: Fugitive Dust, Master Response 5: Community Health Risks from Air Quality Impacts, and Response to Comment B-19.

Comment PM 1-2

The commenter asked if the Port used an equity lens in the allocation of contracts in figuring out how that might economically impact communities of color in Oakland.

Response to Comment PM 1-2

See Master Response 9: Stakeholder Engagement and Environmental Justice.

Comment PM 1-3

The commenter asked if there has been a study of the loss of truck parking and what that does for congestion in Oakland.

Response to Comment PM 1-3

The loss of truck parking is addressed in Section 3.11 of the DSEIR. See also Master Response 3: Truck Parking and Container Staging.

Comment PM 1-4

The commenter asked how many of Port ships are self-unloading, whether it is new or standard practice and/or new to the Port, and whether it would reduce the work force.

Response to Comment PM 1-4

Vessels associated with the Proposed Project are "self-discharging bulk" vessels, which differs from operations at the container terminals currently in use at the Port (see Section 2.3.1 of the DSEIR). As explained in the public meeting, this type of facility is not new to the Bay Area. Further, there are existing labor and staffing arrangements, and use of self-unloading vessels would not displace existing operations since the Proposed Project site is not currently being used as a container terminal.

Comment PM 1-5

The commenter asked if a concrete mixing component would be moved to the Port.

Response to Comment PM 1-5

See Response to Comment H-14.

3.3.2 Response to Public Meeting #2 Comments (December 9, 2020; 6pm)

Comment PM 2-1

The commenter asked if there would be uncovered, 20-foot piles, and asked how often dust control would occur.

Response to Comment PM 2-1

As explained in the public meeting and in Section 2.4.2 of the DSEIR, construction aggregate piles would be uncovered, and the conveyors would be outfitted with water sprayers for dust control. Aggregate piles would initially be approximately 20 feet tall and would ultimately be up to 40 feet tall. See Section 2.4.2 of the DSEIR. See also Master Response 4: Fugitive Dust and Response to Comment G-8.

Comment PM 2-2

The commenter stated that the DSEIR indicates dust control would only occur in May and October, and not year-round.

Response to Comment PM 2-2

Construction aggregate material arrives wet and moisture content would be maintained onsite year-round. Section 3.12.3 of the DSEIR states that 8,000 to 10,000 gallons per day of water would be required during warmer months (e.g., May-October) and approximately 5,000 gallons per day during the rest of the year to maintain stockpile moisture levels and provide dust control during material storage and transfer. See also Response to Comment G-8 and Master Response 4: Fugitive Dust.

Comment PM 2-3

The commenter asked how much dust will not be captured, states that some dust will escape if the pile is 20 feet high, and that this is not addressed in the SEIR. The commenter also states that some dust will blow out either to the water, the ground, or the community. Finally, the commenter states that the DSEIR does not indicate whether the trucks would be covered or electrified and asks whether the 650 trucks would be allowed on the streets and freeways without being covered.

Response to Comment PM 2-3

See Responses to Comments A-2, A-11, and G-8 and Master Response 4: Fugitive Dust. Covered, electric haul trucks would be required for deliveries from the Proposed Project site to the Central Concrete plant in West Oakland.

Comment PM 2-4

The commenter asked if a truck can spew out dust without any enforcement behind it.

Response to Comment PM 2-4

See Master Response 4: Fugitive Dust, Master Response 5: Community Health Risks from Air Quality Impacts, and Response to Comment F-8.

Comment PM 2-5

The commenter stated the WOCAP is a compulsory document for planning purposes under state law that it is not referenced in the DSEIR.

Response to Comment PM 2-5

The WOCAP is addressed in Section 3.4.4 of the DSEIR. Also see Master Response 8: Consistency with the West Oakland Community Action Plan.

Comment PM 2-6

The commenter asked if there was a calculation of the added emissions by displacing the logistics and truck parking. The commenter also states that one might assume the trucks will move to east Oakland or San Leandro or Vallejo and run around empty more and asks whether those emissions are accounted for.

Response to Comment PM 2-6

Section 3.11 of the DSEIR addresses truck parking and assumes activity would continue at the Port. See also Master Response 3: Truck Parking and Container Staging.

Comment PM 2-7

The commenter asked what is meant by “sufficient” parking and if there is a plan to redirect this activity.

Response to Comment PM 2-7

The transportation analysis in the DSEIR relies on The Tioga Group’s 2019-2050 Bay Area Seaport Forecast. See Master Response 3: Truck Parking and Container Staging.

Comment PM 2-8

The commenter stated that the term “abundance of caution” is a legal problem and that the Port is violating air quality standards, which should disqualify the Proposed Project right out of the box.

Response to Comment PM 2-8

See Responses to Comments A-11 and B-19 and Master Response 5: Community Health Risks from Air Quality Impacts.

Comment PM 2-9

The commenter asked if the DSEIR can be translated into a series of digestible, accessible, readable, bullet points for the general public.

Response to Comment PM 2-9

As explained in the public meeting, the DSEIR includes an Executive Summary that may be helpful in understanding the key elements and impact conclusions in the DSEIR.

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Chapter 4
REVISIONS TO THE DRAFT SUPPLEMENTAL ENVIRONMENTAL IMPACT REPORT

This chapter describes revisions made to the Draft Supplemental Environmental Impact Report (DSEIR). The DSEIR was revised based on certain specific comments, as identified in Chapter 2, *Master Responses*, and Chapter 3, *Individual Responses to Comments,* and at the initiation of Port of Oakland (Port) staff and consultants.

All substantive revisions to the DSEIR are shown in underline/~~strikeout~~ in Volume 1 (SEIR) of this Final Supplemental Environmental Impact Report (FSEIR).

4.1 Changes in Response to Specific Comments on the Draft Environmental Impact Report

As indicated in Chapter 3 of this FSEIR (Volume 3), the DSEIR was revised based on specific comments received, where warranted. Although shown in Volume 1 of this FSEIR, these revisions are reproduced here for reference.

Master Response 4: Fugitive Dust

As a result of comments received and the Port's ongoing lease negotiation with the Applicant since publication of the DSEIR, the Eagle Rock Aggregates Oakland Terminal Project (Proposed Project) now includes a tire wash station for trucks to utilize prior to leaving the Proposed Project site. These modifications have been incorporated into Chapter 2, *Project Description*, Section 3.8, Hydrology and Water Quality, and Section 3.12, Utilities, Energy, and Service Systems, of the FSEIR as follows:

> ***Truck Tire Wash***
>
> At least one and up to two truck tire wash system(s) would be located immediately after the outbound truck scale to ensure that haul trucks do not track materials off the Project site and to further reduce dust generation on adjacent streets. Each truck wash system would be a self-contained system with side spray blasters and wash troughs with galvanized grates to capture and reuse wash water. Each tire wash water collection tank would hold a maximum of 9,000 gallons (for a total of 18,000 gallons) and would discharge to the sanitary sewer for wash water.

Master Response 6: Waterside Emissions Controls

Since the DSEIR was published and considering the comments received, the Port has changed Applicant lease terms to reflect a focus on reducing emissions from ships at berth. The updated lease terms are described below and reflected in Chapter 2, *Project Description*, and several other sections of the FSEIR.

NOx Reductions

- In lease years 1 and 2, 25% of Proposed Project vessel calls would meet Tier 2 or better emission standards (included in the Draft SEIR for entire lease term; basis for SEIR's annual emissions calculations).
- In years 3 through 12, 30% of Proposed Project vessel calls would meet Tier 2 or better emission standards (new).
- Starting in year 13, 40% of Proposed Project vessels would meet Tier 2 or better emission standards (new).

NOx + PM Reductions

- From year 0 to year 6, Applicant would be required to pursue a pilot study for an emissions recovery system (land or barge-based) if determined to be feasible (new).
- From year 7 to year 12, PM10 (particulate matter with a diameter less than 10 microns) emissions at-berth would be required to be reduced by 40% from the PM10 emissions calculated for this category in the SEIR (new).
- If the lease is extended by both parties, starting in year 13, PM10 exhaust emissions would be required to be reduced by 65% from the emissions calculated for this category in the SEIR (new).

The possible, but not yet determined to be feasible, particulate matter (PM) emissions reduction options known at this time include:

- Shore power;
- Emissions Recovery/Capture and Control; and,
- Alternative fuels[1].

[1] One such alternative fuel is liquefied natural gas (LNG). LNG is in the very early stages of being used as a ship fuel. A small number of container ships have been built to be compatible with future use of LNG, and a smaller number are being built to run on LNG now. Early testing results from the use of LNG on a ferry show that LNG fueled marine engines can achieve large reductions in nitrogen oxide (NOx) and PM over diesel fuel, over 90% (CARB 2020). However, it is too soon to know whether LNG would be a viable option for bulk carriers. There are also a host of operational issues that would need to be resolved such as where to purchase the LNG and how much it would cost.

Response to Comment A-2

In response to Comment A-2, the text in Chapter 2, *Project Description,* and Section 3.11 of the DSEIR has been modified as follows:

> Trucks traveling to or from the north would utilize West Grand Avenue to access Maritime Street, and trucks traveling to or from the south would utilize 7th Street to access I-880 (see Figure 2-11). This pattern would divert trucks away from the stretch of I-880 between 7th Street and West Grand Avenue and the associated Frontage Road. The Port would place signage at appropriate locations along the truck routes to indicate the required routes for aggregate trucks, and the Applicant would impose a three strikes rule to ban truck drivers from the Oakland Terminal if they do not adhere to the route restrictions.

Response to Comment A-11

In response to Comment A-11, Mitigation Measure AQ-1 in Section 3.4, Air Quality, has been modified as follows:

> Mitigation Measure ERA AQ-1: For Project operations, the applicant shall reduce NOx, PM (exhaust and fugitive dust), and GHG impacts as follows:
>
> a) NOx emissions from ocean-going vessels (OGVs) and tugs associated with loading and unloading of aggregate to and from the facility shall be offset with Bay Area Air Quality Management District (BAAQMD)-eligible Emission Reduction Credits (ERCs) at a ratio of 1.15:1.0 for NOx emissions, which ensures that these emissions are reduced to a net zero for their regional NOx contribution. These ERCs will need to be surrendered to BAAQMD as part of the permit process (BAAQMD Regulation 2 Rule 2 2-2-302) prior to the start of operations. [It is unknown if other pollutants which are part of the eligible ERCs that would be secured for the Project would be similarly offset. The quantities of additional pollutants tied to the ERCs is unknown since other pollutant reductions may differ.]
>
> b) As part of the annual Operations Air Quality Plan process described in section h below, the Applicant shall document that for the first two years of the lease term, a minimum of 25% of OGV calls are made by ships with engines meeting United States Environmental Protection Agency (USEPA) Tier 2 or higher -tier emissions standards. Beginning in Year 3 of the lease term, the Applicant shall document that the minimum percentage of OGV calls made by USEPA Tier 2 or higher -tier vessels is 30%. After Year 12 of the lease term, the minimum percentage of OGV calls made by USEPA Tier 2 or higher tier vessels shall increase to 40%.
>
> c) On-site equipment: The Project's three front-end loaders shall be hybrid-electric and meet USEPA Tier 4 Final standards. The Project's sweeper, skid steer loader, and personnel lift shall be electric powered.

d) Within 24 months of the lease commencement date, all four (4) haul trucks to be used to transport material between the Project site and the Central Concrete plant in West Oakland and all future trucks for this route shall be electric-powered or other alternative technology approved by the Port, and loads shall be covered.

e) All haul truck tires shall be washed at the Project site exit.

f) The Applicant shall plant trees and other landscaping between the Project site and the West Oakland neighborhood to reduce transport of particulate matter with a diameter less than 2.5 microns (PM2.5) and maintain the added landscaping for the duration of the lease.

g) The Applicant shall sweep on-site roads a minimum of twice daily during all days of operation and shall comply with any additional measures to limit PM in the atmosphere through control of trackout of solid materials onto paved public roads pursuant to BAAQMD Regulation 6 Rule 6, 6-6-301.

h) Because additional NOx and PM mitigation measures may become feasible over the term of the proposed lease, the Applicant shall prepare and implement an Operations Air Quality Plan as specified below. The feasibility of potential additional mitigation elements to be added by the Operations Air Quality Plan shall be evaluated using the same feasibility standards the Port applies under its Seaport Air Quality 2020 and Beyond Plan, which outlines steps to determining feasibility that include assessing exposure reduction, affordability, cost -effectiveness, commercial availability, operational feasibility, acceptability, and need.

The Applicant shall submit its initial Operations Air Quality Plan to the Port, which shall review, comment upon, and approve the Plan prior to the start of Project operations.

The Applicant shall conduct the following on an annual basis over the term of the lease:

- Reevaluate and update the Operations Air Quality Plan and submit it to the Port for review and approval.

- Provide to the Port a written equipment inventory in spreadsheet format of all equipment used the previous year; the inventory shall include the estimated hours of use, truck gate counts, and equipment fuel consumption by type and usage associated with the equipment.

- Meet with the Port to discuss the equipment inventory and evaluate the feasibility of: using least -polluting or zero -emissions equipment (for example, electric front-end loaders should they become commercially available); and exceeding BAAQMD best available control technology (BACT) and toxics best available control technology (TBACT) requirements (as defined by BAAQMD Regulation 2 Rule 2 New Source Review 2-2-301 and Regulation 2 Rule 5 New Source Review of Toxic Air Contaminants 2-5-301) for aggregate transfer operations and storage piles.

In addition, the Operations Air Quality Plan shall provide that in Years 1 through 6 of the lease, the Applicant shall, if determined to be feasible, implement a pilot project to test a capture and control system for OGV emissions. Regardless of whether such a pilot program is determined to be feasible, and whether, if the pilot program is implemented, the capture and control system is determined to be feasible for continued use, the Operations Air Quality Plan shall also outline an at-berth emission reduction plan as follows: Applicant shall demonstrate that in Years 7 through 12 of the lease, PM10 emissions from OGVs are reduced by 40% compared to those projected in the SEIR, and that after Year 12, PM10 emissions from OGVs are reduced by 65% compared to those projected in the SEIR. The Applicant will continue to meet the terms of the at-berth emissions reduction plan during the term of its lease even if even if such terms are more stringent than regulatory requirements.

~~**Mitigation Measure ERA AQ-1:** The Project applicant shall prepare and implement an Operations Air Quality Plan.~~

~~The Plan shall be reviewed and approved by the Port prior to start of Project operations. The Plan shall describe operational measures that the Project applicant will implement upon commencement of Project operations to reduce air emissions, including compliance with the BAAMQD 2017 CAP control measures for stationary sources. At a minimum, the Plan shall include a) purchase and use of hybrid-electric front-end loaders with engines conforming to USEPA Tier 4 Final (Tier 4F) emissions standards in place of conventional front-end loaders, b) purchase and use of an electric sweeper in place of a diesel-powered model, and c) sweeping of on-site roads a minimum of twice daily during all days of operation. In addition, the Project applicant shall provide to the Port an annual written inventory in spreadsheet format of all equipment used; the inventory shall include the estimated hours of use, truck gate counts, and fuel type and usage associated with the equipment. The Project applicant shall meet with the Port annually to discuss the inventory and evaluate the feasibility of using least-polluting or ZE equipment.~~

Response to Comment E-3

In response to Comment E-3, the text in Chapter 2, *Project Description*, and in Section 3.8, Hydrology and Water Quality, of the FSEIR have been modified as follows:

Stored water from the OGV aggregate holds would be used for material stockpile wetting and on-site dust control, thereby minimizing the need for supplemental recycled ~~potable~~ water. OGV ship hold water as well as EBMUD recycled water ~~pumped water from the on-site stormwater retention pond~~ would be kept in the ~~twenty~~one-million~~10,000~~-gallon on-site water storage tank~~s (total combined capacity of 200,000 gallons)~~.

Response to Comment H-69

In response to Comment H-69, the text in Chapter 2, *Project Description*, of the FSEIR has been modified as follows:

Runoff originating from the western portion of the site (i.e., where there are no aggregate piles) would ~~enter a 57,600-gallon stormwater retention pond~~ flow through subsurface HDS, which would filter out sediment and other pollutants prior to being conveyed to the storm drain outfalls located at Berth 20 and Berth 10.

4.2 Changes Initiated by Port Staff and Consultants

The DSEIR was revised at the discretion of Port staff and consultants to correct typos or errors and/or to update or to clarify or correct certain language for the FSEIR. The substantive changes are shown in in Volume 1 of this FSEIR and are described here. The changes to the DSEIR initiated by Port staff and consultants included the following:

- In the Executive Summary, *Summary of Environmental Impacts and Analysis* (Section ES-4), the discussion of Proposed Project impacts was updated to clarify that the Proposed Project would not result in any new significant impacts not previously disclosed in the 2002 EIR as Addended, but would result in an increase in the severity of certain air quality impacts.

- In Chapter 2, *Project Description* (Section 2.4.2), the following changes were made: the description of Proposed Project onshore components was updated to include a truck tire wash system and a water tank with a one-million gallon capacity for dust control during Proposed Project operations; the term "radial stacker conveyor" was replaced with the term "barge loading radial stacker conveyor"; the text was modified to indicate that water spray bars would be installed along the conveyor system at conveyor transfer points; the capacity of the stockpiles was updated to 102,000 tons, 126,000 tons, and 122,000 tons, respectively; the description of the barge reclaim system was updated to include a second barge loading radial stacker conveyor; the description of stormwater improvements was revised to explain that a subsurface hydrodynamic separator system (HDS) or other approved stormwater vault treatment system would be used to filter out sediment and other pollutants from site runoff; and that EBMUD recycled water would be used to supplement pumped clean water from the self-unloading OGV aggregate holds for dust control as necessary.

- In Chapter 2, *Project Description* (Section 2.4.5), the discussion of truck trips was revised to describe trips between the Proposed Project site and the Central Concrete plant, which would involve electric trucks with covered loads.

- In Chapter 2, *Project Description* (Section 2.4.6), the discussion of operational workforce equipment was revised to include a description of equipment that would be hybrid electric and other equipment that would be electric powered.

- In Chapter 2, *Project Description* (Section 2.5.1), the Proposed Project schedule was revised to indicate that the construction is anticipated to begin in late 2021 and end in late 2022.

- In Chapter 2, *Project Description* (Section 2.5.6), the total site disturbance was reduced to 39,855 square feet (.67 acre).

- In Chapter 2, *Project Description* (Section 2.5.7), Table 2.5-1, *Construction Sequencing and Required Construction Equipment*, was revised to include the truck tire wash system and remove the stormwater retention pond.

- In Chapter 2, *Project Description* (Section 2.5.10), Table 2.5-2, *Estimated Construction Material Quantities and Haul Trips*, was revised to include updated quantities and haul trips.

- In Chapter 2, *Project Description* (Section 2.7.1), Table 2.7-1, *Proposed Project Regulatory Permits and Approvals*, was revised to include an EBMUD discharge permit for the truck tire wash system.

- In Section 3.4, Air Quality, minor updates were made to Table 3.4, *Summary of BAAQMD CEQA Significance Thresholds Applied in This Analysis*, Table 3.4-6a, *Maximum Annual Operational Emissions: Unmitigated – Tons per Year*, Table 3.4-6b, *Maximum Annual Operational Emissions: Mitigated–Tons per Year,* Table 3.4-7a, *Daily Average Operational Emissions: Unmitigated – Pounds per Day,* and Table 3.4-7b, *Daily Average Operational Emissions: Mitigated – Pounds per Day*. In addition, minor clarifying text was added to the Impact AIR-3.

- In Section 3.7, Hazards and Hazardous Materials, SCA-3 was removed because it was determined that it would not apply to the Proposed Project.

- In Section 3.8, Hydrology and Water Quality, the discussion was revised to include the truck tire wash system and water storage tank, and to describe the subdrainage areas of the Proposed Project site.

- In Section 3.12, Utilities, Energy, and Service Systems, the environmental setting was revised to include the location of the recycled water supply line along Maritime Street.

4.3 Changes to Create the Final Supplemental Environmental Impact Report

As described previously, Volumes 1 and 2 (SEIR and SEIR Appendices) of this FSEIR are the revised/updated versions of what had been the DSEIR in its entirety. To create the FSEIR, in addition to making the changes described in Sections 4.1 and 4.2, numerous other minor changes were made to update the DSEIR text. For example, the title pages of the respective volumes were updated to say "Final Supplemental Environmental Impact Report" and to reference the current date, and the tables of contents were updated to reflect the structure of the FSEIR (i.e., two total volumes). Throughout Volume 1, generally, "DSEIR" was changed to "FSEIR" in the text, and footers were updated with the current date and to say "Final Supplemental Environmental Impact Report".

Additionally, the description of the public involvement process in the Executive Summary and Chapter 1, *Introduction* was updated to:

- Describe the DSEIR public review period in the past tense and describe the extension to the review period afforded to the public by the Port due to end of year holidays and at the request of a responsible party;

- Describe the number and type of comment letters received during the DSEIR review period (one comment letter was received after the review period);

- Summarize the comments received on the Proposed Project during the review period, and summarize the changes to the Proposed Project that were incorporated into the DSEIR Project Description, based on the comments received;

- Describe the process for preparing the FSEIR, including responding to comments received during the DSEIR review period, as well as organizing the FSEIR into two volumes (Volume 1 being the revised DSEIR), and

- Remove the section of the DSEIR describing how to submit comments on the DSEIR.

Chapter 1, Section 1.7 also was amended to include a description of Volume 3 ("Comments and Responses to Comments on the Draft Supplemental Environmental Impact Report") and the chapters/contents of this volume, including the changes described in the bullets above. Two appendices were updated, including addition of the final Geotechnical Conditions Report and updated Safety Data Sheet. Generally, these changes were not considered substantive and are not shown in underline/strikeout in Volume 1.

Chapter 5
REFERENCES

Chapter 1, Introduction

None.

Chapter 2, Master Reponses

BAAQMD. *See* Bay Area Air Quality Management District.

Bay Area Air Quality Management District. 2017. *Spare the Air, Cool the Climate: A Blueprint for Clean Air and Climate Protection*; Final 2017 Clean Air Plan. April. Available at: https://www.baaqmd.gov/~/media/files/planning-and-research/plans/2017-clean-air-plan/attachment-a_-proposed-final-cap-vol-1-pdf.pdf?la=en. Accessed April 16, 2021.

Bay Area Air Quality Management District. 2010. *Revised Draft Options and Justification Report, California Environmental Quality Act Thresholds of Significance*, June 2, 2010.

California Air Quality Management District. 2020. Local Air Benefits by Switching from Diesel Fuel to LNG on a Marine Vessel. March. Available at: https://ww2.arb.ca.gov/sites/default/files/2021-01/LNG%20Ferry%20ARB%20Draft%20Report%20Final%20-%20CARB_ADA.pdf

California Air Quality Management District. 2021. Cease and Desist Letter to Advanced Environmental Group and Revoked Executive Order. Available at: https://ww2.arb.ca.gov/sites/default/files/2021-04/AEG-AMECS%20Immediate%20Cease%20and%20Desist%20Letter_ADA.pdf. Accessed April 29, 2021.

CARB. *See* California Air Quality Management District.

Port of Oakland. 2018. 2017 Seaport Air Emissions Inventory. Available at: https://www.portofoakland.com/community/environmental-stewardship/seaport-air-emissions-inventory-2005/. Accessed April 16, 2021.

Western Regional Air Partnership. 2006. WRAP Fugitive Dust Handbook. Available at: https://www.wrapair.org/forums/dejf/fdh/content/FDHandbook_Rev_06.pdf. Accessed April 16, 2021.

WRAP. *See* Western Regional Air Partnership.

Chapter 3, Individual Responses to Comments

BAAQMD. *See* Bay Area Air Quality Management District.

Bay Area Air Quality Management District. 2017. California Environmental Quality Act Air Quality Guidelines. http://www.baaqmd.gov/~/media/files/planning-and-research/ceqa/ceqa_guidelines_may2017-pdf.pdf?la=en.

Bay Conservation and Development Commission. 2021. Adapting to Rising Tides: Bay Shoreline Flood Explorer [database]. https://www.sfei.org/projects/adapting-rising-tides-bay-shoreline-flood-explorer. Accessed April 5, 2021.

BCDC. *See* Bay Conservation and Development Commission.

California Environmental Protection Agency's Office of Environmental Health Hazard Assessment. 2015. Air Toxics Hot Spots Program Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments. February. Available at: https://oehha.ca.gov/media/downloads/crnr/2015guidancemanual.pdf. Accessed April 16, 2021.

California Ocean Protection Council Science Advisory Team Working Group. 2018.

California Stormwater Quality Association. 2003. TC-32 Bioretention. Available at: https://www.casqa.org/sites/default/files/BMPHandbooks/tc-32_from_newdevelopmentredevelopment_handbook.pdf. Accessed April 8, 2021.

CASQA. *See* California Stormwater Quality Association.

Contech Engineered Solutions. 2021. Introduction to Designing and Sizing Hydrodynamic Separators [web page]. Available at: https://www.conteches.com/knowledge-center/pdh-article-series/introduction-to-designing-sizing-hydrodynamic-separators. Accessed April 8, 2021.

East Bay Municipal Utility District. 1959-2020. Regulations Governing Water Service. Available at: https://www.ebmud.com/customers/new-meter-installation/regulations/regulations-governing-water-service. Accessed April 8, 2021.

EBMUD. *See* East Bay Municipal Utility District.

OEHHA. *See* California Environmental Protection Agency's Office of Environmental Health Hazard Assessment.

Office of Environmental Health Hazard Assessment. 2015. Air Toxics Hot Spots Program Risk Assessment Guidelines Guidance Manual for Preparation of Health Risk Assessments. February. Available at: https://oehha.ca.gov/media/downloads/crnr/2015guidancemanual.pdf. Accessed April 16, 2021.

OPC. *See* California Ocean Protection Council Science Advisory Team Working Group.

Port of Oakland. 2020. Sewer System Management Plan. Available at: https://www.portofoakland.com/community/environmental-stewardship/programs/. Accessed April 2, 2021.

Port of Oakland. 2019a. Sea Level Rise Assessment, July 1, 2019. Available at: https://www.portofoakland.com/files/PDF/Task%207_20190709%20Port%20Oak%20SLR%20Assmt_Rev2.pdf. Accessed April 5, 2021.

Port of Oakland. 2019b. Eratta for the Port of Oakland 2017 Seaport Air Emissions Inventory. Available at: https://www.portofoakland.com/files/PDF/Port_Oakland_2017_Emissions_Inventory.pdf. August 20, 2019. Accessed April 2, 2021.

Sacramento Metropolitan Air Quality Management District. 2020. Greenhouse Gas Thresholds for Sacramento County. Available at: http://airquality.org/LandUseTransportation/Documents/SMAQMDGHGThresholds2020-03-04v2.pdf. Accessed April 16, 2021.

SMAQMD. *See* Sacramento Metropolitan Air Quality Management District.

Chapter 4, Revisions to the Draft Supplemental Environmental Impact Report

None.

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Chapter 6
REPORT PREPARATION

This chapter presents the list of individuals who assisted in preparing and/or reviewing Volume 3, "Comments and Responses to Comments on the Draft Supplemental Environmental Impact Report" (DSEIR). For the list of individuals who assisted in preparing and/or reviewing Volume 1 (SEIR) and Volume 2 (SEIR Appendices), please refer to Chapter 7, *Report Preparation,* of Volume 1.

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