APPENDIX A NOTICE OF PREPARATION AND SCOPING COMMENTS

May 31, 2022

PORT OF OAKLAND

NOTICE OF PREPARATION OF A
DRAFT ENVIRONMENTAL IMPACT REPORT

NOTICE OF VOLUNTARY VIRTUAL PUBLIC SCOPING MEETINGS
June 14, 2022 from 12:00 pm to 1:00 pm PDT
June 15, 2022 from 6:00 pm to 7:00 pm PDT

Project Title: Oakland Harbor Turning Basins Widening

Project Sponsor: Port of Oakland

Project Location: Oakland Seaport; Submerged lands in the Outer and Inner Harbor Turning Basins and adjacent drylands in the cities of Oakland and Alameda

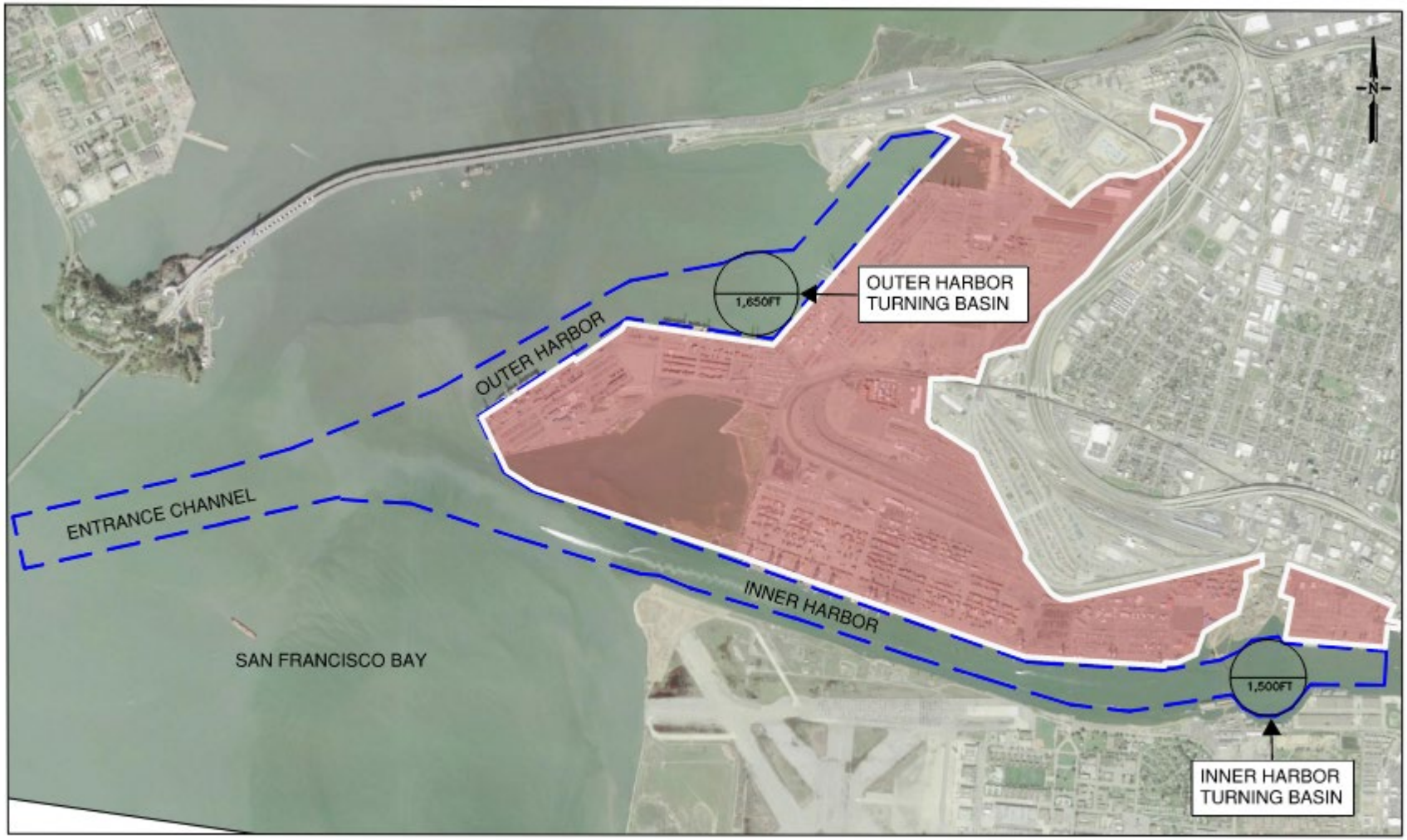
Background: Oakland Seaport (**Figure 1**) encompasses approximately 1,300 acres of waterfront land and nearby properties, including container terminals, general purpose/cargo terminals, break-bulk cargo, rail yards, and cargo transloading and storage facilities. Based on 2021 data, the Oakland Seaport is the ninth-busiest container port in the United States in twenty-foot equivalent units (TEU) of cargo and is ranked among the three principal Pacific Coast gateways for U.S. containerized cargoes, along with San Pedro Bay in southern California and Puget Sound in the Pacific Northwest. The Oakland Seaport loads to or from a container ship more than 99 percent of the containerized goods moving through Northern California.

The Oakland Harbor waterways (**Figure 2**) include the Entrance Channel, the Outer Harbor Channel and Outer Harbor Turning Basin (OHTB), and the Inner Harbor Channel and Inner Harbor Turning Basin (IHTB). The Outer Harbor Channel and OHTB serve TraPac and Ben E. Nutter terminals. The Inner Harbor Channel and IHTB serve the Oakland International Container Terminal, Matson Terminal, Howard Terminal, and Schnitzer Steel Terminal. The Oakland Harbor, including the OHTB and IHTB, are maintained to a depth of 50 feet below mean lower low water (MLLW).

The existing federal navigation channels in the Oakland Harbor, including both turning basins, were designed and constructed for a 6,500 TEU capacity ship with a 1,139-foot overall length, 140-foot beam (how wide a boat is), and 48-foot draft (how deep the boat is under the water). Today, vessels routinely calling Oakland are longer and wider than the design vessel that determined the width of Oakland's turning basins. Vessels in Oakland with lengths greater than 1,139 feet have transit restrictions which result in inefficiencies and negative economic and environmental impacts. These inefficiencies and impacts are projected to persist and increase over time should these restrictions continue.

Figure 1: Location – Port of Oakland

Figure 2: Oakland Harbor



OAKLAND HARBOR DEEP DRAFT CHANNEL LIMITS

Approximate Federal Channel Limits

General Port of Oakland Seaport Area

Project Location/Vicinity Map
(No Scale)

Project Description: To improve the efficiency of vessels entering and exiting the Oakland Harbor, the Oakland Harbor Turning Basins Widening (Proposed Project) proposes to increase the width of existing turning basins to accommodate a vessel with a capacity of 19,000 TEU and a length of 1,310 feet.

To construct the widened IHTB, submerged waters would be deepened to 50 feet below MLLW where necessary. Dryland and structures within the widening area would be removed in locations adjacent to the existing IHTB; potential locations include: private property on the Oakland shoreline, property owned by the Port of Oakland (Howard Terminal), and private property along the Alameda shoreline. Other improvements would include removing pavement and pile-supported structures, installing new bulkhead (a dividing steel and concrete vertical wall), excavating landside soil between the new and existing bulkhead, installing a new anchor/tie back, and demolishing bulkheads. Partial demolition of existing warehouses on the Alameda shoreline would be required.

To construct the widened OHTB, submerged waters would be deepened to 50 feet below MLLW where necessary. No dryland impacts would occur as a result of the proposed footprint of a widened OHTB.

The Proposed Project construction duration is approximately 2.5 years, tentatively scheduled to start in July 2027. Dredging would be performed during approved environmental windows with an electric-powered barge-mounted clamshell/excavator dredge. The majority of the dredged material would be placed at a beneficial use site for the protection, restoration, or creation of aquatic wetland habitats. Some excavated and dredged material may require disposal at a Class I or Class II landfill.

Construction staging for the IHTB improvements would occur at Howard Terminal and on the Alameda shoreline, immediately adjacent to the excavation areas; no staging would occur at Schnitzer Steel. Construction staging for the OHTB improvements would occur at Berth 10, at the eastern end of the Outer Harbor.

Environmental Review: CEQA requires that the Port, as the Lead Agency with the principal responsibility for approving the project, conduct an environmental review of the project. This Notice of Preparation (NOP) is being issued pursuant to the Port's compliance with CEQA.

The Port has determined that an Environmental Impact Report (EIR) will be the required CEQA document for the Proposed Project, in accordance with Sections 15162 and 15163 of the CEQA Guidelines. The EIR will discuss potential environmental impacts related to **Aesthetics, Agriculture and Forestry Resources, Air Quality, Biological Resources, Cultural Resources, Energy, Geology and Soils, Greenhouse Gas Emissions, Hazards and Hazardous Materials, Hydrology and Water Quality, Land Use and Planning, Mineral Resources, Noise, Population and Housing, Public Services, Recreation, Transportation, Tribal Culture Resources, Utilities and Service Systems, and Wildfire.**

Scoping: The Port is issuing this NOP to invite comments on the scope and content of the Draft EIR. The scoping period begins on May 31, 2022.

The Port is sending this NOP to all interested parties and Responsible Agencies who will rely on the EIR for their approval. When the Draft EIR is published, it will be sent to persons who respond to this NOP or otherwise indicate interest in the Proposed Project. Responses to this NOP and any related questions or comments regarding the scope or content of the Draft EIR should be submitted in writing (email or hard copy) to:

Port of Oakland
Environmental Programs and Planning Division
530 Water Street, Oakland, CA 94607
Attn: Jan Novak
Email: Turningbasins@portoakland.com
Phone: 510.627.1176

Comments on the scope and content of the Draft EIR must be received at the above mailing or email address on or before July 5, 2022 by 3 pm PDT. Please reference the project title as shown above in all correspondence.

Meeting Information: Two separate virtual public scoping meetings will be held for this project. The meetings will be Zoom webinars, and each meeting will provide the same information and the same opportunity for providing comments on the scope and content of the Draft EIR. The meetings will be held at the dates and times identified below. Additional information on accessing the virtual scoping meetings is available at: https://www.oaklandseaport.com/oakland-harbor-turning-basins-widening-navigation-study/

- Virtual Public Scoping Meeting #1: **June 14, 2022 from 12:00 pm to 1:00 pm PDT**
- Virtual Public Scoping Meeting #2: **June 15, 2022 from 6:00 pm to 7:00 pm PDT**

Accessibility for Public with Disabilities: To request auxiliary aids or services such as interpreters or closed captioning, please contact Jan Novak at 510.627.1176 or Turningbasins@portoakland.com no later than 5:00 p.m. PDT on June 09, 2022. For requests not received by June 09, 2022, the Port will attempt to provide auxiliary aids or services if possible.

Información de la reunión: Se llevarán a cabo dos reuniones públicas virtuales separadas para este proyecto. Las reuniones serán seminarios web de Zoom, y cada reunión proporcionará la misma información y la misma oportunidad para proporcionar comentarios sobre el alcance y el contenido del borrador del EIR (Revision Ambiental). Las reuniones se celebrarán en los siguientes horarios. Información adicional sobre el acceso a las reuniones virtuales de alcance está disponible en: https://www.oaklandseaport.com/oakland-harbor-turning-basins-widening-navigation-study/

- Reunion Pública Virtual #1: 14 de junio de 2022 de 12:00 pm a 1:00 pm PDT
- Reunion Pública Virtual #2: 15 de junio de 2022 de 6:00 pm a 7:00 pm PDT

Accesibilidad para el público con discapacidades: Para solicitar ayudas o servicios auxiliares como intérpretes o subtítulos, comuníquese con Jan Novak al 510.627.1176 o Turningbasins@portoakland.com

a más tardar a las 5:00 p.m. PDT del 9 de junio de 2022. Para las solicitudes no recibidas antes del 09 de junio de 2022, el Puerto intentará proporcionar ayudas o servicios auxiliares si es posible.

会议信息：将为该项目举行两次单独的虚拟公共范围界定会议。这些会议将是Zoom网络研讨会，每次会议都将提供相同的信息和相同的机会，以便就EIR草案的范围和内容提供意见。会议将在以下时间举行. 有关访问虚拟范围界定会议的其他信息，请访问：https://www.oaklandseaport.com/oakland-harbor-turning-basins-widening-navigation-study/

- 虚拟公共范围界定会议#1：2022年6月14日下午12：00至下午1：00（太平洋夏令时）

- 虚拟公共范围界定会议#2：2022年6月15日下午6：00至下午7：00（太平洋夏令时）

残疾公众的无障碍环境：要申请辅助辅助工具或服务，如口译员或隐藏式字幕，请致电 510.627.1176 或 Turningbasins@portoakland.com 不迟于 2022 年 6 月 9 日太平洋夏令时 5：00 p.m.对于在2022年6月9日之前未收到的请求，港口将尽可能尝试提供辅助辅助或服务。

Note regarding Federal Requirements: This project will require federal approval and is subject to review under the NEPA. The United States Army Corps of Engineers is the lead agency for NEPA documentation.

Comment Letters Received on the Notice of Preparation

1. United States Environmental Protection Agency
2. Native American Heritage Commission
3. California Department of Transportation
4. California Department of Toxic Substances Control
5. California Department of Fish and Wildlife
6. California Department of Justice
7. Bay Area Air Quality Management District
8. San Francisco Bay Conservation and Development Commission
9. San Francisco Bay Regional Water Quality Control Board
10. Sheppard, Mullin, Richter, & Hampton LLP, on behalf of Bay Ship & Yacht Co. and Alameda Commercial Properties, LLC
11. Pacific Merchant Shipping Association

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IX
75 Hawthorne Street
San Francisco, CA 94105-3901

July 1, 2022

Jan Novak, Port of Oakland
Environmental Programs and Planning Division
530 Water Street
Oakland, California 94607

Subject: EPA Scoping Comments on the Oakland Harbor Turning Basins Widening Project, Draft Environmental Impact Report, Alameda County, California

Dear Jan Novak:

The U.S. Environmental Protection Agency has reviewed the Port of Oakland Notice of Preparation to prepare a Draft Environmental Impact Report in order to comply with the California Environmental Quality Act for the above-referenced Project. The NOP states that the Port of Oakland proposes to improve the efficiency of vessels entering and exiting the Oakland Harbor by increasing the width of existing turning basins to accommodate a vessel with a capacity of 19,000 twenty-foot equivalent unit and a length of 1,310 feet (Proposed Project).

On February 14, 2022, the EPA submitted comments (enclosed) on the Oakland Harbor Turning Basins Widening Navigation Study, Draft Integrated Feasibility Report/Environmental Assessment (Draft EA) that was prepared by the United States Army Corps of Engineers to comply with the National Environmental Policy Act. We note that the Draft EA did not fully analyze impacts from the Proposed Project and we therefore request that the Port of Oakland coordinate closely with USACE to include additional analysis and disclosure of impacts, as noted in the enclosure and reiterated herein, to fully analyze, disclose, and mitigate for potential project impacts and inform the public and decisionmakers.

NEPA/CEQA Integration
Through our enclosed comments to the USACE following publication of the Draft EA for the Proposed Project, the EPA strongly recommended synchronizing the NEPA and CEQA analysis to provide a more cohesive public engagement and feedback process, and to reduce the potential need to revisit decisions based on environmental analyses not being jointly published and considered. We continue to recommend publishing joint NEPA/CEQA documents. The development of the Draft EIR provides an opportunity to further clarify the project need, and further analyze and disclose potential impacts that were not fully assessed and disclosed in the USACE Draft EA. We continue to recommend that the Port of Oakland and USACE refer to State of California and Council on Environmental Quality guidance

(NEPA and CEQA: Integrating Federal and State Environmental Reviews, 2014)[1] as the environmental review process proceeds. Because the CEQA Notice of Preparation of the Draft EIR for the Proposed Project occurred after the publication of the NEPA Draft EA, the CEQA process provides an opportunity to address any Draft EA deficiencies identified through the prior NEPA public commenting period; the Draft EIR can then serve as a source to inform joint environmental analyses and future decision-making by the USACE and the Port of Oakland.

Further, given that the Inner Harbor widening results in greater impacts across multiple resources than widening the Outer Harbor, we also recommended in the NEPA Draft EA that the USACE analyze and disclose the potential impacts of an Outer Harbor Only Alternative that integrates electric dredge commitments. The EPA reiterates this recommendation for the development of the Draft EIR and encourages the Port of Oakland to fully analyze an Outer Harbor Only with Electric Dredge Alternative so that the public and decisionmakers can understand how this alternative may meet project goals while reducing impacts in the Inner Harbor.

Project Setting and Protecting Community Health

The NOP states that the project area is located near the West Oakland community that faces a high cumulative exposure burden to criteria pollutants and toxic air contaminants, and that West Oakland was selected by the California Air Resources Board to participate in the state's Community Air Protection Program pursuant to California Assembly Bill 617. We understand that the Bay Area Air Quality Management District is working with the community to implement the West Oakland Community Action Plan to address disproportionate air pollution impacts. The EPA understands that the Port of Oakland is an Agency Member on the West Oakland Community Action Steering Committee. The NOP identifies measures to lessen potential adverse air quality impacts, including commitment for electric dredge; however, given that the project area experiences some of the worst air quality in the nation, the EPA also strongly recommends that the Port of Oakland describe the need for the Proposed Project in the context of the port's ability to meet current and future demand without the associated environmental impacts of harbor widening. Should the Port of Oakland move forward with harbor widening, the EPA recommends identifying and committing to all available measures, beyond the commitment for electric dredge, to reduce environmental impacts to low-income communities and communities of color that would be impacted by construction and operation of the project.

Community Engagement

The EPA recommends that the Port of Oakland and the USACE establish and maintain continued meaningful community engagement throughout the planning process – to ensure ample time to incorporate community feedback into the project – and commit to robust outreach approaches to allow for active engagement, including community meetings designed to maximize community participation (e.g., promoting broadly within local community forums, sharing with existing relevant groups, and sharing via social media, etc.). The EPA recommends that all project-related updates are conveyed using plain language so that community members can readily understand the project and its potential impacts. Describe any efforts that the Port of Oakland would undertake to address language and technology barriers to community engagement. We also recommend that the Port of Oakland engage with the West Oakland AB 617 Steering Committee given that the West Oakland AB617 group includes a diverse array of community representatives and other stakeholders who have deep community knowledge and

[1]NEPA and CEQA: Integrating Federal and State Environmental Reviews
https://opr.ca.gov/docs/NEPA_CEQA_Handbook_Feb2014.pdf

desire to address disproportionate air quality impacts in the community. We note that in July 2019, the EPA's External Civil Rights and Compliance Office entered into an informal resolution agreement with the City of Oakland and Port of Oakland to resolve a Title VI (Civil Rights Act of 1964) complaint relating to a redevelopment project at the Port. That resolution agreement required, in part, a robust public engagement plan for the redevelopment project. The EPA recommends that the public engagement plan developed be considered as a starting point for outreach for the Oakland Harbor Widening Project and urges continuing refinement of meaningful public engagement best practices as the project evolves.

Air Quality – Construction and Operations

The NOP states that the Proposed Project would improve the efficiency of vessels entering/exiting the Oakland Harbor. The EPA encourages the Port of Oakland to work with the USACE to analyze and disclose all impacts that would result from construction activities and changes to throughput and operations. Identify how the resulting container movement efficiencies would influence the timing, scope, and location of port and freight throughput operations, and the transport, temporary storage, and movement of freight through communities. Identify all impacts associated with the above activities including direct and indirect air emissions and adverse health effects to communities living near the port and in all communities potentially affected by construction and sediment transportation and disposal. To protect the health of the neighboring Oakland communities, it is critical that the Draft EIR identify all available strategies to reduce emissions from the construction and operations activities.

Air Quality - Comparing Vessel Transit Emissions

The EPA also recommends that the Draft EIR clearly compare current operational air quality emissions (with the harbor turning basins not widened) to those anticipated after harbor widening. Include consideration of operations-related increases in emissions given anticipated increases to total throughput as a result of improved efficiency. Analyze and disclose the emissions from calls made by vessels with a capacity of 19,000 TEU, and a length of 1,310 feet given the port's current facility footprint; and analyze and disclose emissions from vessel operations if harbor widening were to proceed as proposed. Include details of current vessel transit emissions incurred by vessels waiting in anchorage or in standby at a dock compared to complete vessel transit emissions that would result if the harbor were to be widened. Identify projected emissions from an active turning event for a PPX Gen IV vessel under current standard practices given the current facility footprint (with navigational limitations) compared to an active turning event for the same vessel with the proposed changes to existing turning basins (without navigational limitations). Clarify net emissions reductions/increases between these scenarios.

Air Quality - Truck Impacts

Truck traffic, idling, and parking are major concerns for community members due to their localized impacts on community health and safety. In the Draft EIR, describe the types of impacts the neighboring communities may experience related to emissions from diesel truck traffic and idling, as well as from parking. Identify any additional mitigation measures that could further reduce impacts to potentially affected communities. The EPA recommends that the Port of Oakland commit to the deployment of zero emission port support vehicles and haul trucks to minimize tailpipe emissions from truck activity associated with the project. Where zero emission vehicles are not available, commit to using trucks powered with engines which meet Tier IV standards and to using renewable diesel fuel. Include commitments to avoid designating truck routes and truck parking in and near residential areas and other sensitive land uses.

Beneficial Reuse of Dredged Sediment
The EPA encourages continued coordination with the agencies of the Long Term Management Strategy for the Placement of Dredged Material in the Bay Region (which includes EPA and USACE) as information regarding dredged volume is refined. We continue to encourage the Port of Oakland to ensure that project logistics and funding enable beneficial use of sediment to the fullest extent. The EPA encourages the Port of Oakland, in coordination with USACE, to indicate the potential for Clean Water Act discharges from all alternatives analyzed, and to identify avoidance, minimization, and mitigation measures required by the CWA permitting mechanisms as the project description is further refined.

The NOP states that, should the harbor be widened, the majority of the dredged material would be placed at a beneficial use site for the protection, restoration, or creation of aquatic wetland habitats, and states that some material from dredging may be contaminated and require disposal at a Class I/Class II landfill. The EPA recommends that the Draft EIR analyze the full impacts of removing, conveying, storing, transferring, and trucking/transporting the contaminated dredged sediment from its origin, throughout the entirety of the transportation process to the ultimate destination, and at the site of any offsite landfills. The entirety of the analysis of these impacts was not included in the Draft EA recently published by USACE, therefore referencing the prior Draft EA will not be a sufficient disclosure and analysis of impacts to adequately inform decisionmakers.

Integration with Land Use Planning and Cumulative Impacts
The public and decisionmakers would benefit from understanding how this project integrates with other planned actions at the Port and in the City of Oakland. The EPA recommends that the Draft EIR include details regarding potential conflicts with other planned construction activities and potential cumulative impacts to resources and communities if multiple projects proceed at the same time. For example, the environmental planning process for the Oakland Harbor Turning Basins provides an opportunity to identify potential cumulative impacts from altered truck ingress/egress routes and truck traffic volume when considering all projects and their associated construction/operation timelines. The potential A's Stadium proposed for the Howard Terminal and the Eagle Rock Aggregates Oakland Terminal Project may also affect the timing, location, and scope of environmental impacts identified through the analysis for the Oakland Harbor Turning Basins. The CEQA and NEPA environmental review process is the appropriate forum to identify commitments for reducing potential impacts from multiple ongoing projects anticipated to proceed concurrently.

The EPA appreciates the opportunity to submit scoping comments in response to the Notice of Preparation. Please notify Andy Zellinger when the Draft EIR is released for public review and make an electronic copy available. If you have any questions, please contact me at (415) 947-4167, or contact Andy Zellinger, the lead reviewer for this project, at 415-972-3093 or zellinger.andrew@epa.gov.

Sincerely,

JEAN PRIJATEL Digitally signed by JEAN PRIJATEL Date: 2022.07.01 14:21:50 -07'00'

Jean Prijatel
Manager, Environmental Review Branch

Enclosures: EPA February 14, 2022 Oakland Harbor Turning Basin Draft EA Comment Letter

Cc via email: Eric Jolliffe, United States Army Corps of Engineers, San Francisco District
Alison Kirk, Bay Area Air Quality Management District
Stanley Armstrong, California Air Resources Board
Julia Kelly, San Francisco Bay Conservation and Development Commission
Kevin Lunde, State Water Quality Control Board

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June 8, 2022

Jan Novak
Port of Oakland
530 Water Street
Oakland, CA 94607

Governor's Office of Planning & Research

Jun 13 2022

STATE CLEARINGHOUSE

Re: 2022050647, Oakland Harbor Turning Basins Widening Project, Alameda County

Dear Ms. Novak:

The Native American Heritage Commission (NAHC) has received the Notice of Preparation (NOP), Draft Environmental Impact Report (DEIR) or Early Consultation for the project referenced above. The California Environmental Quality Act (CEQA) (Pub. Resources Code §21000 et seq.), specifically Public Resources Code §21084.1, states that a project that may cause a substantial adverse change in the significance of a historical resource, is a project that may have a significant effect on the environment. (Pub. Resources Code § 21084.1; Cal. Code Regs., tit.14, §15064.5 (b) (CEQA Guidelines §15064.5 (b)). If there is substantial evidence, in light of the whole record before a lead agency, that a project may have a significant effect on the environment, an Environmental Impact Report (EIR) shall be prepared. (Pub. Resources Code §21080 (d); Cal. Code Regs., tit. 14, § 5064 subd.(a)(1) (CEQA Guidelines §15064 (a)(1)). In order to determine whether a project will cause a substantial adverse change in the significance of a historical resource, a lead agency will need to determine whether there are historical resources within the area of potential effect (APE).

CEQA was amended significantly in 2014. Assembly Bill 52 (Gatto, Chapter 532, Statutes of 2014) (AB 52) amended CEQA to create a separate category of cultural resources, "tribal cultural resources" (Pub. Resources Code §21074) and provides that a project with an effect that may cause a substantial adverse change in the significance of a tribal cultural resource is a project that may have a significant effect on the environment. (Pub. Resources Code §21084.2). Public agencies shall, when feasible, avoid damaging effects to any tribal cultural resource. (Pub. Resources Code §21084.3 (a)). **AB 52 applies to any project for which a notice of preparation, a notice of negative declaration, or a mitigated negative declaration is filed on or after July 1, 2015.** If your project involves the adoption of or amendment to a general plan or a specific plan, or the designation or proposed designation of open space, on or after March 1, 2005, it may also be subject to Senate Bill 18 (Burton, Chapter 905, Statutes of 2004) (SB 18). **Both SB 18 and AB 52 have tribal consultation requirements**. If your project is also subject to the federal National Environmental Policy Act (42 U.S.C. § 4321 et seq.) (NEPA), the tribal consultation requirements of Section 106 of the National Historic Preservation Act of 1966 (154 U.S.C. 300101, 36 C.F.R. §800 et seq.) may also apply.

The NAHC recommends consultation with California Native American tribes that are traditionally and culturally affiliated with the geographic area of your proposed project as early as possible in order to avoid inadvertent discoveries of Native American human remains and best protect tribal cultural resources. Below is a brief summary of portions of AB 52 and SB 18 as well as the NAHC's recommendations for conducting cultural resources assessments.

Consult your legal counsel about compliance with AB 52 and SB 18 as well as compliance with any other applicable laws.

AB 52

AB 52 has added to CEQA the additional requirements listed below, along with many other requirements:

1. Fourteen Day Period to Provide Notice of Completion of an Application/Decision to Undertake a Project: Within fourteen (14) days of determining that an application for a project is complete or of a decision by a public agency to undertake a project, a lead agency shall provide formal notification to a designated contact of, or tribal representative of, traditionally and culturally affiliated California Native American tribes that have requested notice, to be accomplished by at least one written notice that includes:

- **a.** A brief description of the project.
- **b.** The lead agency contact information.
- **c.** Notification that the California Native American tribe has 30 days to request consultation. (Pub. Resources Code §21080.3.1 (d)).
- **d.** A "California Native American tribe" is defined as a Native American tribe located in California that is on the contact list maintained by the NAHC for the purposes of Chapter 905 of Statutes of 2004 (SB 18). (Pub. Resources Code §21073).

2. Begin Consultation Within 30 Days of Receiving a Tribe's Request for Consultation and Before Releasing a Negative Declaration, Mitigated Negative Declaration, or Environmental Impact Report: A lead agency shall begin the consultation process within 30 days of receiving a request for consultation from a California Native American tribe that is traditionally and culturally affiliated with the geographic area of the proposed project. (Pub. Resources Code §21080.3.1, subds. (d) and (e)) and prior to the release of a negative declaration, mitigated negative declaration or Environmental Impact Report. (Pub. Resources Code §21080.3.1(b)).

- **a.** For purposes of AB 52, "consultation shall have the same meaning as provided in Gov. Code §65352.4 (SB 18). (Pub. Resources Code §21080.3.1 (b)).

3. Mandatory Topics of Consultation If Requested by a Tribe: The following topics of consultation, if a tribe requests to discuss them, are mandatory topics of consultation:

- **a.** Alternatives to the project.
- **b.** Recommended mitigation measures.
- **c.** Significant effects. (Pub. Resources Code §21080.3.2 (a)).

4. Discretionary Topics of Consultation: The following topics are discretionary topics of consultation:

- **a.** Type of environmental review necessary.
- **b.** Significance of the tribal cultural resources.
- **c.** Significance of the project's impacts on tribal cultural resources.
- **d.** If necessary, project alternatives or appropriate measures for preservation or mitigation that the tribe may recommend to the lead agency. (Pub. Resources Code §21080.3.2 (a)).

5. Confidentiality of Information Submitted by a Tribe During the Environmental Review Process: With some exceptions, any information, including but not limited to, the location, description, and use of tribal cultural resources submitted by a California Native American tribe during the environmental review process shall not be included in the environmental document or otherwise disclosed by the lead agency or any other public agency to the public, consistent with Government Code §6254 (r) and §6254.10. Any information submitted by a California Native American tribe during the consultation or environmental review process shall be published in a confidential appendix to the environmental document unless the tribe that provided the information consents, in writing, to the disclosure of some or all of the information to the public. (Pub. Resources Code §21082.3 (c)(1)).

6. Discussion of Impacts to Tribal Cultural Resources in the Environmental Document: If a project may have a significant impact on a tribal cultural resource, the lead agency's environmental document shall discuss both of the following:

- **a.** Whether the proposed project has a significant impact on an identified tribal cultural resource.
- **b.** Whether feasible alternatives or mitigation measures, including those measures that may be agreed to pursuant to Public Resources Code §21082.3, subdivision (a), avoid or substantially lessen the impact on the identified tribal cultural resource. (Pub. Resources Code §21082.3 (b)).

7. Conclusion of Consultation: Consultation with a tribe shall be considered concluded when either of the following occurs:

a. The parties agree to measures to mitigate or avoid a significant effect, if a significant effect exists, on a tribal cultural resource; or

b. A party, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached. (Pub. Resources Code §21080.3.2 (b)).

8. Recommending Mitigation Measures Agreed Upon in Consultation in the Environmental Document: Any mitigation measures agreed upon in the consultation conducted pursuant to Public Resources Code §21080.3.2 shall be recommended for inclusion in the environmental document and in an adopted mitigation monitoring and reporting program, if determined to avoid or lessen the impact pursuant to Public Resources Code §21082.3, subdivision (b), paragraph 2, and shall be fully enforceable. (Pub. Resources Code §21082.3 (a)).

9. Required Consideration of Feasible Mitigation: If mitigation measures recommended by the staff of the lead agency as a result of the consultation process are not included in the environmental document or if there are no agreed upon mitigation measures at the conclusion of consultation, or if consultation does not occur, and if substantial evidence demonstrates that a project will cause a significant effect to a tribal cultural resource, the lead agency shall consider feasible mitigation pursuant to Public Resources Code §21084.3 (b). (Pub. Resources Code §21082.3 (e)).

10. Examples of Mitigation Measures That, If Feasible, May Be Considered to Avoid or Minimize Significant Adverse Impacts to Tribal Cultural Resources:

a. Avoidance and preservation of the resources in place, including, but not limited to:

i. Planning and construction to avoid the resources and protect the cultural and natural context.

ii. Planning greenspace, parks, or other open space, to incorporate the resources with culturally appropriate protection and management criteria.

b. Treating the resource with culturally appropriate dignity, taking into account the tribal cultural values and meaning of the resource, including, but not limited to, the following:

i. Protecting the cultural character and integrity of the resource.

ii. Protecting the traditional use of the resource.

iii. Protecting the confidentiality of the resource.

c. Permanent conservation easements or other interests in real property, with culturally appropriate management criteria for the purposes of preserving or utilizing the resources or places.

d. Protecting the resource. (Pub. Resource Code §21084.3 (b)).

e. Please note that a federally recognized California Native American tribe or a non-federally recognized California Native American tribe that is on the contact list maintained by the NAHC to protect a California prehistoric, archaeological, cultural, spiritual, or ceremonial place may acquire and hold conservation easements if the conservation easement is voluntarily conveyed. (Civ. Code §815.3 (c)).

f. Please note that it is the policy of the state that Native American remains and associated grave artifacts shall be repatriated. (Pub. Resources Code §5097.991).

11. Prerequisites for Certifying an Environmental Impact Report or Adopting a Mitigated Negative Declaration or Negative Declaration with a Significant Impact on an Identified Tribal Cultural Resource: An Environmental Impact Report may not be certified, nor may a mitigated negative declaration or a negative declaration be adopted unless one of the following occurs:

a. The consultation process between the tribes and the lead agency has occurred as provided in Public Resources Code §21080.3.1 and §21080.3.2 and concluded pursuant to Public Resources Code §21080.3.2.

b. The tribe that requested consultation failed to provide comments to the lead agency or otherwise failed to engage in the consultation process.

c. The lead agency provided notice of the project to the tribe in compliance with Public Resources Code §21080.3.1 (d) and the tribe failed to request consultation within 30 days. (Pub. Resources Code §21082.3 (d)).

SB 18

SB 18 applies to local governments and requires local governments to contact, provide notice to, refer plans to, and consult with tribes prior to the adoption or amendment of a general plan or a specific plan, or the designation of open space. (Gov. Code §65352.3). Local governments should consult the Governor's Office of Planning and Research's "Tribal Consultation Guidelines," which can be found online at: https://www.opr.ca.gov/docs/09_14_05_Updated_Guidelines_922.pdf.

Some of SB 18's provisions include:

1. Tribal Consultation: If a local government considers a proposal to adopt or amend a general plan or a specific plan, or to designate open space it is required to contact the appropriate tribes identified by the NAHC by requesting a "Tribal Consultation List." If a tribe, once contacted, requests consultation the local government must consult with the tribe on the plan proposal. **A tribe has 90 days from the date of receipt of notification to request consultation unless a shorter timeframe has been agreed to by the tribe.** (Gov. Code §65352.3 (a)(2)).

2. No Statutory Time Limit on SB 18 Tribal Consultation. There is no statutory time limit on SB 18 tribal consultation.

3. Confidentiality: Consistent with the guidelines developed and adopted by the Office of Planning and Research pursuant to Gov. Code §65040.2, the city or county shall protect the confidentiality of the information concerning the specific identity, location, character, and use of places, features and objects described in Public Resources Code §5097.9 and §5097.993 that are within the city's or county's jurisdiction. (Gov. Code §65352.3 (b)).

4. Conclusion of SB 18 Tribal Consultation: Consultation should be concluded at the point in which:

- **a.** The parties to the consultation come to a mutual agreement concerning the appropriate measures for preservation or mitigation; or
- **b.** Either the local government or the tribe, acting in good faith and after reasonable effort, concludes that mutual agreement cannot be reached concerning the appropriate measures of preservation or mitigation. (Tribal Consultation Guidelines, Governor's Office of Planning and Research (2005) at p. 18).

Agencies should be aware that neither AB 52 nor SB 18 precludes agencies from initiating tribal consultation with tribes that are traditionally and culturally affiliated with their jurisdictions before the timeframes provided in AB 52 and SB 18. For that reason, we urge you to continue to request Native American Tribal Contact Lists and "Sacred Lands File" searches from the NAHC. The request forms can be found online at: http://nahc.ca.gov/resources/forms/.

NAHC Recommendations for Cultural Resources Assessments

To adequately assess the existence and significance of tribal cultural resources and plan for avoidance, preservation in place, or barring both, mitigation of project-related impacts to tribal cultural resources, the NAHC recommends the following actions:

1. Contact the appropriate regional California Historical Research Information System (CHRIS) Center (https://ohp.parks.ca.gov/?page_id=30331) for an archaeological records search. The records search will determine:

- **a.** If part or all of the APE has been previously surveyed for cultural resources.
- **b.** If any known cultural resources have already been recorded on or adjacent to the APE.
- **c.** If the probability is low, moderate, or high that cultural resources are located in the APE.
- **d.** If a survey is required to determine whether previously unrecorded cultural resources are present.

2. If an archaeological inventory survey is required, the final stage is the preparation of a professional report detailing the findings and recommendations of the records search and field survey.

- **a.** The final report containing site forms, site significance, and mitigation measures should be submitted immediately to the planning department. All information regarding site locations, Native American human remains, and associated funerary objects should be in a separate confidential addendum and not be made available for public disclosure.
- **b.** The final written report should be submitted within 3 months after work has been completed to the appropriate regional CHRIS center.

3. Contact the NAHC for:

a. A Sacred Lands File search. Remember that tribes do not always record their sacred sites in the Sacred Lands File, nor are they required to do so. A Sacred Lands File search is not a substitute for consultation with tribes that are traditionally and culturally affiliated with the geographic area of the project's APE.

b. A Native American Tribal Consultation List of appropriate tribes for consultation concerning the project site and to assist in planning for avoidance, preservation in place, or, failing both, mitigation measures.

4. Remember that the lack of surface evidence of archaeological resources (including tribal cultural resources) does not preclude their subsurface existence.

a. Lead agencies should include in their mitigation and monitoring reporting program plan provisions for the identification and evaluation of inadvertently discovered archaeological resources per Cal. Code Regs., tit. 14, §15064.5(f) (CEQA Guidelines §15064.5(f)). In areas of identified archaeological sensitivity, a certified archaeologist and a culturally affiliated Native American with knowledge of cultural resources should monitor all ground-disturbing activities.

b. Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the disposition of recovered cultural items that are not burial associated in consultation with culturally affiliated Native Americans.

c. Lead agencies should include in their mitigation and monitoring reporting program plans provisions for the treatment and disposition of inadvertently discovered Native American human remains. Health and Safety Code §7050.5, Public Resources Code §5097.98, and Cal. Code Regs., tit. 14, §15064.5, subdivisions (d) and (e) (CEQA Guidelines §15064.5, subds. (d) and (e)) address the processes to be followed in the event of an inadvertent discovery of any Native American human remains and associated grave goods in a location other than a dedicated cemetery.

If you have any questions or need additional information, please contact me at my email address: Cody.Campagne@nahc.ca.gov.

Sincerely,

Cody Campagne

Cody Campagne
Cultural Resources Analyst

cc: State Clearinghouse

California Department of Transportation

DISTRICT 4
OFFICE OF TRANSIT AND COMMUNITY PLANNING
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June 29, 2022

SCH #: 2022050647
GTS #: 04-ALA-2022-00659
GTS ID: 25358
Co/Rt/Pm: ALA/880/31.727

Jan Novak, Associate Planner and Scientist
Port of Oakland
539 Water Street
Oakland, CA 94607

Re: Oakland Harbor Turning Basins Widening – Notice of Preparation (NOP) of a Draft Environmental Impact Report (DEIR)

Dear Jan Novak,

Thank you for including the California Department of Transportation (Caltrans) in the environmental review process for the Oakland Harbor Turning Basins Widening. We are committed to ensuring that impacts to the State's multimodal transportation system and to our natural environment are identified and mitigated to support a safe, sustainable, integrated and efficient transportation system. The following comments are based on our review of the May 2022 NOP.

Project Understanding
The proposed project would increase the width of the Port's two existing turning basins to accommodate a vessel with a capacity of 19,000 Twenty-Foot Equivalent Uni (TEU) and a length of 1,310 feet. This project will also require federal approval under National Environmental Policy Act (NEPA).

Climate Change
Please keep Caltrans Transportation Planning & Local Assistance's Climate Change Branch informed about the adaptation measures as they are developed and implemented near the Oakland Harbor shoreline. Caltrans D4 is interested in engaging in multi-agency collaboration early and often, to find multi-benefit sea level rise solutions when planning and implementing adaptation measures, including nature-based solutions. Please contact Vishal Ream-Rao Climate Change Branch Chief, at vishal.ream-rao@dot.ca.gov with any questions.

Equitable Access
If any Caltrans facilities are impacted by the project, those facilities must meet American Disabilities Act (ADA) Standards after project completion. As well, the project must maintain bicycle and pedestrian access during construction. These access considerations support Caltrans' equity mission to provide a safe, sustainable, and equitable transportation network for all users.

Thank you again for including Caltrans in the environmental review process. Should you have any questions regarding this letter, or for future notifications and requests for review of new projects, please email LDR-D4@dot.ca.gov.

Sincerely,

MARK LEONG
District Branch Chief
Local Development Review

c: State Clearinghouse

Department of Toxic Substances Control

Meredith Williams, Ph.D., Director
8800 Cal Center Drive
Sacramento, California 95826-3200

Jared Blumenfeld
Secretary for
Environmental Protection

Gavin Newsom
Governor

SENT VIA ELECTRONIC MAIL

June 29, 2022

Port of Oakland
Environmental Programs and Planning Division
Attn: Ms. Jan Novak
530 Water Street
Oakland, CA 94607
Turningbasins@portoakland.com

Governor's Office of Planning & Research

Jun 29 2022

STATE CLEARINGHOUSE

NOTICE OF PREPARATION OF A DRAFT ENVIRONMENTAL IMPACT REPORT FOR THE OAKLAND HARBOR TURNING BASINS WIDENING – DATED MAY 2022 (STATE CLEARINGHOUSE NUMBER: 2022050647)

Dear Jan Novak:

The Department of Toxic Substances Control (DTSC) received a Notice of Preparation of a Draft Environmental Impact Report (DEIR) for the Oakland Harbor Turning Basins Widening (Project). The Lead Agency is receiving this notice from DTSC because the Project includes one or more of the following: groundbreaking activities, work in close proximity to a roadway, presence of site buildings that may require demolition or modifications, importation of backfill soil, and/or work on or in close proximity to an agricultural or former agricultural site.

DTSC recommends that the Hazards and Hazardous Materials section of the DEIR address actions to be taken for any sites impacted by hazardous waste or hazardous materials within the Project area, not just those found on the Cortese List. Not all sites impacted by hazardous waste or hazardous materials will be found on the Cortese List. DTSC recommends consulting with other agencies that may provide oversight to hazardous waste facilities and sites in order to determine a comprehensive listing of all sites impacted by hazardous waste or hazardous materials within the Project area. DTSC hazardous waste facilities and sites with known or suspected contamination issues can be found on DTSC's EnviroStor data management system. The EnviroStor Map feature can be used to locate hazardous waste facilities and sites for a

county, city, or a specific address. A search within EnviroStor indicates that numerous hazardous waste facilities and sites are present within the Project's region.

DTSC recommends that the following issues be evaluated in the Hazards and Hazardous Materials section of the DEIR:

1. The DEIR should acknowledge the potential for historic or future activities on or near the Project site to result in the release of hazardous wastes/substances on the Project site. In instances in which releases have occurred or may occur, further studies should be carried out to delineate the nature and extent of the contamination, and the potential threat to public health and/or the environment should be evaluated. The DEIR should also identify the mechanism(s) to initiate any required investigation and/or remediation and the government agency who will be responsible for providing appropriate regulatory oversight.

2. Refiners in the United States started adding lead compounds to gasoline in the 1920s in order to boost octane levels and improve engine performance. This practice did not officially end until 1992 when lead was banned as a fuel additive in California. Tailpipe emissions from automobiles using leaded gasoline contained lead and resulted in aerially deposited lead (ADL) being deposited in and along roadways throughout the state. ADL-contaminated soils still exist along roadsides and medians and can also be found underneath some existing road surfaces due to past construction activities. Due to the potential for ADL-contaminated soil, DTSC recommends collecting soil samples for lead analysis prior to performing any intrusive activities for the Project described in the DEIR.

3. If buildings or other structures are to be demolished on any project sites included in the proposed project, surveys should be conducted for the presence of lead-based paints or products, mercury, asbestos containing materials, and polychlorinated biphenyl caulk. Removal, demolition and disposal of any of the above-mentioned chemicals should be conducted in compliance with California environmental regulations and policies. In addition, sampling near current and/or former buildings should be conducted in accordance with DTSC's 2006 *Interim Guidance Evaluation of School Sites with Potential Contamination from Lead Based Paint, Termiticides, and Electrical Transformers*.

4. If any projects initiated as part of the proposed Project require the importation of soil to backfill any excavated areas, proper sampling should be conducted to ensure that the imported soil is free of contamination. DTSC recommends the imported materials be characterized according to *DTSC's 2001 Information Advisory Clean Imported Fill Material*.

5. If any sites included as part of the proposed Project have been used for agricultural, weed abatement or related activities, proper investigation for organochlorinated pesticides should be discussed in the DEIR. DTSC recommends the current and former agricultural lands be evaluated in accordance with DTSC's 2008 *Interim Guidance for Sampling Agricultural Properties (Third Revision)*.

DTSC appreciates the opportunity to comment on the DEIR. Should you need any assistance with an environmental investigation, please visit DTSC's Site Mitigation and Restoration Program page to apply for lead agency oversight. Additional information regarding voluntary agreements with DTSC can be found at DTSC's Brownfield website.

If you have any questions, please contact me at (916) 255-3582 or via email at Brian.McAloon@dtsc.ca.gov.

Sincerely,

Brian McAloon
Project Manager
Site Evaluation and Remediation Unit
Site Mitigation and Restoration Program
Department of Toxic Substances Control

cc: (via email)

Governor's Office of Planning and Research
State Clearinghouse
State.Clearinghouse@opr.ca.gov

Mr. Dave Kereazis
Office of Planning & Environmental Analysis
Department of Toxic Substances Control
Dave.Kereazis@dtsc.ca.gov

State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Marine Region
1933 Cliff Drive, Suite 9
Santa Barbara, CA 93109
wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director

July 5, 2022

Jan Novak
Port of Oakland
Environmental Programs and Planning Division
530 Water Street
Oakland, CA 94607
TurningBasins@portoakland.com

Dear Mr. Novak:

Oakland Harbor Turning Basins Widening (Project)
Notice of Preparation (NOP)
SCH# 2022050647

The California Department of Fish and Wildlife (Department) received a NOP from the Port of Oakland (Port) for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.[1]

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that the Department, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

Department ROLE

The Department is California's Trustee Agency for fish and wildlife resources and holds those resources in trust by statute for all the people of the state. (Fish & G. Code, Section 711.7, subd. (a) & 1802; Pub. Resources Code, Section 21070; CEQA Guidelines Section 15386, subd. (a).) The Department, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*Id.*, Section 1802.) Similarly for purposes of CEQA, the Department is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources. The Department is also responsible for marine biodiversity protection under the Marine Life Protection Act in coastal marine waters of California, and ensuring fisheries are sustainably managed under the Marline Life Management Act.

[1] CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

The Department is also submitting comments as a Responsible Agency under CEQA. (Pub. Resources Code, Section 21069; CEQA Guidelines, Section 15381.) The Department may need to exercise regulatory authority as provided by the Fish and Game Code. To the extent implementation of the Project as proposed may result in take as defined by State law of any species protected under the CESA (Fish & Game Code, Section 2050 et seq.), related authorization as provided by the Fish and Game Code will be required. Pursuant to our jurisdiction, the Department has the following comments and recommendations regarding the Project.

REGULATORY REQUIREMENTS

California Endangered Species Act: Please be advised that a CESA permit will be recommended if the Project has the potential to result in "take" of plants or animals listed under CESA, either during construction or over the life of the project. Issuance of a CESA permit is subject to CEQA documentation; the CEQA document must specify impacts, mitigation measures, and a mitigation monitoring and reporting program. If the Project will impact CESA listed species, early consultation is encouraged, as significant modification to the Project and mitigation measures may be required to obtain a CESA Permit.

CEQA requires a Mandatory Finding of Significance if a project is likely to substantially restrict the range or reduce the population of a threatened, rare, or endangered species. (Pub. Resources Code, Section 21001, subd. (c), 21083; CEQA Guidelines, Sections 15380, 15064, and 15065). Impacts must be avoided or mitigated to less-than-significant levels unless the CEQA Lead Agency makes and supports Findings of Overriding Consideration (FOC). The CEQA Lead Agency's FOC does not eliminate the Project proponent's obligation to comply with Fish and Game Code section 2080.

PROJECT DESCRIPTION SUMMARY

Proponent: Port of Oakland

Objective: The objective of the Project is to improve the efficiency of vessels entering and exiting the Oakland Harbor, the Project proposes to increase the width of existing turning basins to accommodate large vessels and a length of 1,310 feet. Primary Project activities include dredging to deepen the turning basin to 50 feet below mean lower low water, remove shoreline structures within the widening area, pile removal, bulkhead removal and installation, new anchor/tie back installation.

Location: Along the eastern shoreline of San Francisco Bay in Oakland Inner and Outer Harbors within the Cities of Oakland and Alameda, Alameda County.

Timeframe: The Project is proposed to start in July 2027 and take approximately 2.5 years to complete.

MARINE BIOLOGICAL SIGNIFICANCE

The San Francisco Bay-Delta is the second largest estuary in the United States and supports numerous aquatic habitats and biological communities. It encompasses 479 square miles, including shallow mudflats. This ecologically significant ecosystem supports both state and federally threatened and endangered species and sustains important commercial and recreational fisheries.

STATE AND FEDERALLY LISTED AND COMMERCIALLY/RECREATIONALLY IMPORTANT SPECIES

Protected species under the State and Federal Endangered Species Acts that could potentially be present near Project activities include:

- Chinook salmon (*Oncorhynchus tshawytscha*), state and federally threatened (Sacramento River Spring-run), state and federally endangered (Sacramento River Winter-run)
- Steelhead (*Oncorhynchus mykiss*), federally threatened (Central California Coast and Central Valley evolutionary significant units)
- Green sturgeon (*Acipenser medirostris)*, federal threatened (Southern Distinct Population Segment)
- White Sturgeon (*A. transmontanus)*, state species of special concern
- Longfin smelt (*Spirinchus thaleichthys*), state-threatened
- Brown pelican (*Pelecanus occidentalis californicus*), state fully protected
- California least tern (*Sternula antillarum browni*), federal and state endangered and state fully protected

Several species with important commercial/recreational fisheries value and habitat value for spawning and rearing could potentially be present near Project activities. These include:

- Dungeness crab (*Cancer magister*),
- Pacific herring (*Clupea pallasii*),
- Rockfish (*Sebastes* spp.),
- California halibut (*Paralichthys californicus*)
- Surfperches (*Embiotocidae*).
- Eelgrass (*Zostera marina*).

COMMENTS AND RECOMMENDATIONS

The Department offers the comments and recommendations below to assist the Port in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources.

Editorial comments or other suggestions may also be included to improve the document.

I. Marine Project Level Impacts and Other Considerations

Work Windows

Comment: The NOP addresses work windows that were put into place by multiple state and federal agencies under the San Francisco Bay Long Term Management Strategy (LTMS) (attached). As described in the NOP, work is planned to take place within the specified work windows during the anticipated 2.5 years of construction. The general in-water work window for dredging and pile driving activity is June 1 through November 30. However, Least Terns, a state endangered and fully protected species, are present nearby and could be impacted by Project activities. If potential impacts to Least Terns are identified, the work window to avoid impacts to this species and other aquatic species would be August 1 through November 30.

Recommendations: The Department recommends that the Draft Environmental Impact Report (DEIR) discuss the work window to avoid impacts to certain species. The DEIR should also address the potential for impacts, both direct and indirect, to Least Terns.

Dredging

Comment: The NOP mentions that the majority of dredged material would be placed at a beneficial use site with some contaminated sediment being disposed at a land fill. It is not clear if this will account for 100% of the material. The Department expects all uncontaminated material to be beneficially reused within San Francisco Bay.

Recommendations: The Department recommends that the DEIR discuss whether any uncontaminated material will be placed anywhere other than a beneficial reuse site or be used for the specific purpose of habitat restoration or creation. The Department recommends the DEIR include a complete accounting, to the extent known, of where the estimated amount of material may be reused or disposed.

Hydroacoustic Impacts

Comment: The NOP describes the installation of a new bulkhead using steel and concrete walls. The extent to which pile driving and other construction related in-water activities will be necessary for the installation of this structure is not clear.

Recommendations: The Department recommends the DEIR discuss whether pile driving will occur and the expected materials and methods that will be utilized to

construct the new bulkhead. If pile driving is anticipated to occur, the Department recommends the following minimization measures:

- A vibratory hammer should be used to the maximum extent feasible.
- If an impact a hammer is necessary, a soft start technique should be implemented.
- Impact pile driving should occur at low tide, if possible.
- All impact pile driving should use a wood cushion block between the hammer and pile.
- Impact pile driving larger diameter steel and concrete piles should include a bubble curtain for additional sound attenuation.

If hydroacoustic sound levels are still anticipated to exceed the interim hydroacoustic thresholds for injury to fish (attached), the DEIR should include discussion on consultation with the Department to receive incidental take coverage via a 2081(b) Incidental Take Permit for potential take of state listed species.

Eelgrass

Comment: There is documented eelgrass habitat within and near both the Oakland Inner and Outer harbors. It is not clear from the NOP whether eelgrass may be present and/or impacted from the proposed Project activities.

Recommendations: The Department recommends the DEIR discuss the potential impacts to eelgrass from Project activities. If it is determined that impacts may occur, the DEIR should also discuss avoidance measures and surveys will occur prior to and during construction such as:

- Pre- and post-construction eelgrass surveys consistent with the recommendations within the California Eelgrass Mitigation Policy (attached)
- Installation of turbidity curtains
- Light monitoring
- Vessel transit routes to avoid eelgrass during the process of construction

ENVIRONMENTAL DATA

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a data base which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDB). The CNNDB field survey form can be found at the following link: https://wildlife.ca.gov/Data/CNDDB/SubmittingData#44524420-pdf-field-survey-form. The completed form can be mailed electronically to CNDDB at the following email

address: CNDDB@wildlife.ca.gov. The types of information reported to CNDDB can be found at the following link: https://wildlife.ca.gov/Data/CNDDB/Plants-and-Animals.

FILING FEES

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by the Department. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, Section 753.5; Fish & G. Code, Section 711.4; Pub. Resources Code, Section 21089.)

CONCLUSION

The Department appreciates the opportunity to comment on NOP to assist the Port in identifying and mitigating Project impacts on biological resources.

Questions regarding this letter or further coordination should be directed to Arn Aarreberg, Environmental Scientist, Marine Region at (707) 791-4195 or Arn.Aarreberg@wildlife.ca.gov.

Sincerely,

Craig Shuman, D. Env
Marine Regional Manager

Enclosures

Interim Criteria for Injury to Fish from Pile Driving Activities
National Marine Fisheries Service California Eelgrass Mitigation Policy
San Francisco Bay Long Term Management Strategy Environmental Work Windows

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State Clearinghouse (SCH No. 2022050647)
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ROB BONTA
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July 5, 2022

Jan Novak
Associate Planner and Scientist
Environmental Programs and Planning Division
Port of Oakland
530 Water Street
Oakland, CA 94607
Turningbasins@portoakland.com

RE: Oakland Harbor Turning Basins Widening Project: Notice of Preparation of Draft Environmental Impact Report per the California Environmental Quality Act (CEQA) (CEQA State Clearinghouse No. 2022050647)

Dear Mr. Novak:

The California Attorney General's Office (AGO) has reviewed the Port of Oakland's (Port) Notice of Preparation of a Draft Environmental Impact Report (NOP) for the Oakland Harbor Turning Basins Widening Project (Project). The Project proposes to increase the width of the maritime vessel turning basins in the Port's Outer and Inner Harbors to accommodate the larger container vessels now calling at the Port more frequently. Per the NOP, the existing turning basins were not designed to accommodate these larger vessels, resulting in inefficiencies when larger vessels enter, exit, and maneuver within the Port. By widening and deepening the turning basins, the NOP explains, the Project will allow large container vessels to maneuver more efficiently within the Oakland Harbor. We respectfully submit these comments to encourage the Port to conduct a thorough analysis of all of the Project's potential impacts, and if the Project is approved, to adopt all feasible mitigation measures that are necessary to protect the neighboring West Oakland community.[1]

[1] The Attorney General submits these comments pursuant to his independent power and duty to protect the environment and natural resources of the State. (Cal. Const., art. V, § 13; Gov. Code, §§ 12511, 12600- 12612; *D'Amico v. Bd. of Medical* Examiners (1974) 11 Cal.3d 1, 14-15.) Our comments are not intended to object to the Project as a whole, but rather to encourage a detailed and legally compliant analysis of the Project's potential impacts and adoption of all feasible and legally enforceable mitigation measures to prevent further harm to the neighboring communities surrounding the Project area.

Although the Port is the lead agency for the Project under the California Environmental Quality Act (CEQA), the U.S. Army Corps of Engineers (Army Corps) is the lead federal agency for the Project and will be constructing the Project if it is approved. The Army Corps prepared an Environmental Assessment (EA) and a Finding of No Significant Impact (FONSI) for the Project per the National Environmental Policy Act (NEPA) in early 2022. The AGO submitted comments on the Army Corps' NEPA documents on May 9, 2022, expressing concerns with the EA's environmental analyses and the Project's apparent inconsistency with the local emissions reduction plan (see Attachment A). The AGO's letter also recommended that the Army Corps consider mitigation to ameliorate the Project's impacts to neighboring communities, which already experience disproportionate levels of pollution and associated adverse health effects.

As stated in the AGO's May 9 letter, we are concerned that the Project will increase pollution in neighboring West Oakland communities, which already experience adverse pollution burdens. The Project will enable the Port to routinely accommodate vessels with almost 200 percent more container carrying capacity.[2] Larger vessels with greater carrying capacity will likely increase the volume of cargo coming through the Port. The increased cargo volume at the Port, due to the expanded turning basins, will in turn generate more truck and freight traffic in order to unload the additional goods in these containers and distribute them to regional markets. The Project's construction and operational impacts would impose additional public health and environmental burdens on West Oakland communities.

The CEQA process affords the Port an opportunity to fully analyze these potential impacts and, if the Project is approved, adopt the mitigation necessary to protect neighboring residents. We recommend that the Port conduct a more rigorous environmental review than the Army Corps did in its EA and FONSI, and adopt all necessary and feasible mitigation measures to protect communities in West Oakland. To that end, we repeat the concerns and recommendations raised in the AGO's May 9 letter to the Army Corps here and incorporate them as comments on the Port's NOP. Specifically, we encourage the Port to consider and address the following items in the forthcoming environmental impact report (EIR):

- Operational Impacts Analysis: The Port's EIR should evaluate and analyze all of the Project's post-construction operational impacts, including, but not limited to, the impacts resulting from more calls at the Port by vessels with greater container carrying capacity, increased goods movement in and out of the Port, increased truck and freight trips, increased air pollutant emissions and greenhouse gas emissions, and pollution impacts to communities in West Oakland. It is important to note that the Project could generate operational impacts even if it does not generate additional goods and container throughput, such as increased concentrations of trucks, freight, and equipment at certain berths closest to the expanded turning basins. We recommend the Port analyze the Project's operational impacts regardless of whether the Project induces additional goods and container throughput at the Port.

[2] The existing turning basins were designed for ships with a carrying capacity of 6,500 twenty-foot equivalent units (TEUs). TEUs, or "twenty-foot equivalent units," refers to "the total number of available container slots" on a vessel, per the Army Corps' EA. The Project would increase the turning basins to accommodate ships with a carrying capacity of 19,000 TEUs, a 192.3 percent increase in carrying capacity.

- Air Quality, Water, and Traffic Impacts: The Port's EIR should analyze the potential impacts to air quality from the Project's operations and the increase in calls by vessels with greater container carrying capacity. The EIR should also analyze how the dredging and construction activity associated with the Project could impact local groundwater aquifers and other water resources. Finally, the EIR should analyze the local traffic impacts that will be caused by the construction and operation of the Project. We understand that a draft Health Risk Assessment was utilized by the Army Corps in the NEPA process to evaluate the Project's potential impacts on neighboring communities—we request that this draft Assessment be disclosed, updated if necessary, finalized, and included in the Project's EIR.

- Cumulative Impacts Analysis: The Port's EIR should evaluate and analyze the cumulative and reasonably foreseeable impacts of constructing and operating the Project alongside other projects approved and pending at the Port, particularly the Eagle Rock construction aggregate terminal project and the Howard Terminal baseball stadium project. At the very least, the EIR should analyze the potential environmental and health impacts that would result from joint construction and operation of these three projects, with particular emphasis on impacts to the neighboring West Oakland community.

- Assembly Bill 617 Community Emissions Reduction Plan Analysis: The Port's EIR should conduct a meaningful analysis of the Project's consistency or inconsistency with the local emissions reductions plan developed by the community per Assembly Bill 617. (Health & Saf. Code, § 44391.2.) This emissions reduction plan, the West Oakland Community Action Plan (WOCAP), contains overarching goals and targets designed to alleviate the pollution and health problems burdening the community. The WOCAP also identifies 89 strategies designed to achieve emissions reductions in West Oakland. The Port's EIR should describe whether the Project overall is consistent or inconsistent with the WOCAP. Additionally, and more specifically, the EIR should evaluate whether the Project's anticipated construction and operational impacts would advance or obstruct the WOCAP's 2025 and 2030 neighborhood air quality goals or its emissions reductions targets for diesel particulate matter, particulate matter 2.5, and cancer risk exposure. Additionally, the EIR should evaluate the feasibility of incorporating as many of the 89 strategies identified in the WOCAP as possible, either as project features or as mitigation measures.

- Incorporation of Protective Mitigation Measures: The Port's EIR should adopt meaningful and effective mitigation to ameliorate the Project's anticipated construction and operational impacts, and to protect the West Oakland community from additional pollution. As noted above, the WOCAP contains 89 strategies that should be evaluated for inclusion in the EIR as project features or mitigation measures. Additionally, the AGO published a document titled "Warehouse Projects: Best Practices and Mitigation Measures to Comply with the California Environmental Quality Act" (Warehouse Best Practices Document) that recommends numerous measures for mitigating the harmful impacts of warehouse projects on neighboring communities that are applicable here.[3] Because of the similar impacts associated with

[3] State of California, Dept. of Justice, Warehouse Best Practices Document (Mar. 2021), https://oag.ca.gov/sites/all/files/agweb/pdfs/environment/warehouse-best-practices.pdf (last accessed June 20, 2022).

warehouse projects and port-related projects, these measures should be evaluated for incorporation into the EIR as project features or mitigation measures. Finally, the California Air Resources Board (CARB) has developed a "Concept Paper for Freight Handbook" that identifies multiple measures that local governments can adopt and require in order to reduce impacts to neighboring communities.[4] The Port should analyze and consider for incorporation into the Project the following measures, among others, from the AGO's Warehouse Best Practices Document and CARB's Concept Paper for Freight:

- *Industrial Siting and Design*: require facilities within the expanded turning basin area to be sited at least 1,000 feet away from the nearest sensitive receptors; establish property line setbacks and transition zones between property lines of nearest sensitive receptors to turning basin facilities' operation areas, loading areas, and truck areas; and require that facilities' entry points, exit points, dock doors, loading zones, and other on-site operations be located in areas farthest from sensitive receptors.

- *Physical, Structural, or Vegetative Barriers*: require physical, structural, or vegetative barriers to surround all turning basin-associated facilities to minimize and prevent pollution and noise dispersal; mandate the planting of evergreen tree barriers to ensure faster maturity and four-season coverage; require tenants and owners to maintain onsite trees and vegetation for the duration of the tenancy or ownership, including replacement of dead or unhealthy trees and vegetation.

- *Truck and Freight Mitigation*: require tenants and facilities to prepare enforceable truck routing and management plans; require onsite parking and maintenance of trucks servicing the turning basin area to prevent parking and maintenance on neighboring streets and to reduce off-site truck yards; require facilities to adopt and enforce three-minute idling limits for diesel-powered trucks and other vehicles; install physical barriers to block trucks from restricted areas; positioning facilities' entry gates within site boundaries and at locations farthest away from sensitive receptors; and post signs showing designated entry and exit points for trucks and service vehicles, identifying onsite circulation patterns, and warning that truck parking and maintenance must be conducted within designated on-site areas and not within the surrounding community.

- *Vehicle and Equipment Electrification/Zero-Emission Transition*: require facilities serving the expanded turning basins to be operated with zero-emission vehicles and equipment whenever feasible; require installation of zero-emission vehicle and equipment charging infrastructure at all facilities serving the expanded turning basins; require off-road construction equipment to be hybrid electric-diesel or zero-emission, where available, and all diesel-fueled off-road construction equipment to contain CARB Tier IV-compliant engines or better; require facilities to use electric-powered hand tools, forklifts, and pressure washers; require all heavy-duty drayage vehicles to

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[4] California Air Resources Board [CARB], Concept Paper for Freight Handbook, https://ww2.arb.ca.gov/sites/default/files/2020-03/2019.12.12%20-%20Concept%20Paper%20for%20the%20Freight%20Handbook_1.pdf> (last accessed June 24, 2022).

be zero-emission beginning in 2030; require motorized equipment, such as forklifts and yard trucks, to be zero-emission; require tenants to use zero-emission light- and medium-duty vehicles for operations; and require facilities to construct electric light-duty vehicle charging stations proportional to the number of employee parking spaces.

- *Air Quality and Greenhouse Gas Emissions*: prohibit diesel-powered equipment, including generators, unless necessary due to emergency situations or constrained supply, and in such cases limit use to no more than 10 hours per day; prohibit grading on poor air quality days and limit nighttime grading; require installation of air filters at sensitive receptors within a certain radius of the expanded turning basin area; require installation and maintenance of air monitoring stations in and around the expanded turning basin area; require facilities serving the expanded turning basins to install solar panels and photovoltaic systems that produce electrical capacity equal to or greater than facilities' projected energy needs; require all facility building roofs to accommodate solar panels; prohibit truck idling for longer than three minutes; install permanent reflective signage in English and Spanish along the interior of the truck yard and loading docks stating the limits on engine idling, vehicle lights, and auxiliary power units (APUs); install at least one APU plug-in at multiple locations where trucks park and signage in English and Spanish identifying where such APU plug-ins are located; and require compliance with Tier 2 green building and LEED standards.

- *Noise Control Measures*: require noise impact analyses for activities nearby to sensitive receptors that consider the impacts of peak (not average) noise levels; mandate installation of physical, structural, or vegetative noise barriers before commencing dredging and construction of the turning basins; require location of stationary construction equipment as far from sensitive receptors as possible; limit operation and construction hours to daytime hours (e.g., 7 A.M. to 7 P.M.) on weekdays; prohibit the use of outdoor speakers near residences during evening and nighttime hours (e.g., 7 P.M. to 7 A.M.); and require facilities to orient public speaker systems away from sensitive receptors.

- *Other Measures*: require appointment of compliance officers to ensure implementation of mitigation measures; mandate contributions to a fund for installation of HVAC systems, dual-paned windows, and sound-reducing insulation at nearby sensitive receptors; require installation of skylights to provide natural light to interior worker areas if indoor buildings are included in this Project; require onsite truck operator lounges and amenities; provide a designated ombudsman and 24-hour hotline to address neighbor concerns prior to the commencement of construction and through the duration of construction, and maintain the hotline for the duration of construction; and mandate installation of shade parking, cool pavements, and industrial facility climate control and air filters inside any buildings.

Many of the measures in the AGO's Warehouse Best Practices Document and in CARB's Concept Paper for Freight Handbook will be applicable to and feasible for Port operations and

tenants. We urge the Port to evaluate the measures listed above, in the AGO's Warehouse Best Practices Document, and CARB's Concept Paper, identify which are feasible and infeasible for inclusion as features or mitigation measures for this Project, and adopt all feasible measures. Incorporation of these and other measures will help to ensure that West Oakland's communities are protected if the Project is approved.

Thank you for the opportunity to comment on the Project's NOP. The CEQA process and the EIR for this Project provide an opportunity to fully evaluate and disclose the Project's potential impacts, and to adopt meaningful protective measures for the neighboring community if the Project moved forward. We are available to support the Port as it produces an EIR for the Project that furthers both of these important goals.

Sincerely,

OMONIGHO OIYEMHONLAN
DAVIN WIDGEROW
Deputy Attorneys General

For ROB BONTA
Attorney General

91516394

Attachment A

ROB BONTA
Attorney General

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VIA ELECTRONIC MAIL

May 9, 2022

Eric Jollifee, Environmental Planner
United State Army Corps of Engineers
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San Francisco, California 94102
OaklandHarborTurningBasinsStudy@usace.army.mil

RE: Oakland Harbor Turning Basins—Draft Integrated Feasibility Report and Draft Environmental Assessment

Dear Mr. Jollifee:

The California Attorney General's Bureau of Environmental Justice has reviewed the United States Army Corps of Engineers' ("Army Corps") Draft Integrated Feasibility Report, Environmental Assessment ("EA"), and Finding of No Significant Impact ("FONSI") for the Oakland Harbor Turning Basins Widening Navigation Study ("the Project") at the Port of Oakland. We respectfully submit these comments to express several concerns with the environmental analysis provided in the EA and the Army Corps' decision to issue a FONSI.[1] First, the Army Corps was required to prepare an Environmental Impact Statement ("EIS") because the EA demonstrates that the Project may cause significant adverse environmental impacts. Second, the EA fails to adequately assess the Project's operational, cumulative, and reasonably foreseeable impacts. Third, the EA fails to analyze or disclose the Project's inconsistency with state and local laws and plans. As a result of these issues with the EA, we are concerned that the Army Corps has not adequately disclosed, analyzed, or meaningfully considered mitigation of the adverse environmental consequences associated with widening the turning basins in the Oakland Harbor, as required by the National Environmental Policy Act ("NEPA").[2] We also urge the Army Corps to coordinate its environmental review with the Port of Oakland's ("the Port") environmental review under the California Environmental Quality Act ("CEQA"). Finally, the Army Corps should adopt all measures necessary to protect the already

[1] The Attorney General submits these comments pursuant to his independent power and duty. See Cal. Const., art. V, § 13; *D'Amico v. Bd. of Medical Examiners*, 520 P.2d 10, 20-21 (Cal. 1947).
[2] Our comments are not intended to object to the Project as a whole, but rather to express concerns regarding the adequacy of the Army Corps' environmental analysis required under NEPA.

severely overburdened neighborhoods in West Oakland, which will bear the brunt of the impacts of the Project.

I. THE PROJECT WILL INCREASE POLLUTION IN ONE OF THE MOST POLLUTION-BURDENED COMMUNITIES IN CALIFORNIA.

This Project proposes to widen the width of the turning basins in the Inner and Outer Harbors, to better facilitate the visitation of larger shipping vessels at the Port of Oakland ("the Port"). The existing turning basins were designed for ships that are 1,139 long, 140 feet wide, and have a carrying capacity of 6,500 twenty-foot equivalent units (TEUs).[3] The Project will widen the turning basins by dredging land around the existing turning basins to allow ships that are 1,310 feet long, 193 feet wide, and have a carrying capacity of 19,000 TEUs to more easily make 360 degree turns in the harbor without causing a backlog at the Port. These proposed alterations to the turning basins could lead to a 200% increase in TEU shipping capacity and processing at the Port,[4] which will inevitably impose additional environmental burdens on West Oakland.

The Project Study Area includes West Oakland, a community of color where 42% of its residents identify as African American, 18% identify as Hispanic, and 11% identify as Asian. It is also a relatively low-income community with approximately 52% of the population living two times below the poverty level, compared to 23% in the broader Bay Area.[5] West Oakland already experiences high levels of air pollution from the Port, four highways, industrial facilities, and truck-related businesses.[6] According to California's statewide pollution burden screening tool, CalEnviroScreen 4.0, West Oakland residents endure greater pollution exposure than 85-90% of all other Californians.[7] CalEnviroScreen identifies the census tracts surrounding the Port as falling within the top 90% of all census tracts statewide for exposure to traffic pollution from diesel particulate matter (DPM) emissions, with the Prescott neighborhood scoring within the top

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[3] "TEUs" or "twenty-foot equivalent units" refers to "the total number of available container slots" on a vessel. (EA at 20.)

[4] This figure reflects the percentage change in TEU capacity based on the original design vessel for the existing turning basins and the new design vessel that the Project will accommodate. (*See* EA at ii, iii.) The turning basins are currently designed for vessels with 6,500 TEU carrying capacity, and the Project will expand the turning basins to accommodate vessels with 19,000 TEU carrying capacity—a 192.3% increase in TEU carrying capacity. (*Id.*)

[5] Bay Area Air Quality Management District and West Oakland Environmental Indicators Project, Owning Our Air: The West Oakland Community Action Plan (October 2019) at 2-6, https://www.baaqmd.gov/~/media/files/ab617-community-health/west-oakland/100219-files/final-plan-vol-1-100219-pdf.pdf?la=en (hereafter, "WOCAP") (citing American Community Survey (ACS) 2013-2017 DP05 [census tracts 4014, 4015, 4016, 4017, 4018, 4022, 4024, 4025, 4026, 4027, 4105, 9819, and 9820].)

[6] *Id.*

[7] CalEnviroScreen is a tool created by the Office of Environmental Health Hazard Assessment that considers environmental, health, and socioeconomic information to produce scores and rank every census tract in the state. A census tract with a high score is one that experiences a much higher pollution burden than a census tract with a low score.

98%, and falling within the top 100th percentile statewide for exposure to contaminants from cleanup site and groundwater threats.

West Oakland residents suffer serious health impacts from this pollution exposure. CalEnviroScreen finds that neighborhoods in West Oakland are more likely to suffer from asthma than 99% of other California communities. The Alameda County Public Health Department reports that people living in West Oakland are 1.75 times more likely to be hospitalized for asthma-related illnesses that the general population of residents in Alameda County.[8] The asthma rates in West Oakland are particularly alarming for children – almost 25 percent of the student body at the West Oakland Middle School has asthma or breathing problems.[9] Further, air pollution-related diseases, including cancer, heart disease, stroke, and chronic lower respiratory disease, are some of the leading causes of death in West Oakland, where the average life expectancy of residents is 6.6 years lower than the average life expectancy of residents across Alameda County.[10] Per CalEnviroScreen, infants born to families residing in West Oakland are born with birth weights lower than 93-96% of all other Californians. In short, West Oakland is undeniably an environmental justice community affected by multiple sources of pollution.[11]

The pervasive harms facing West Oakland have been recognized by various government agencies. In 2019, per Assembly Bill 617[12] ("AB 617"), the California Air Resources Board ("CARB") identified West Oakland as a community disproportionately burdened by environmental pollution, and with the participation of community stakeholders and the Bay Area Air Quality Management District ("BAAQMD"), adopted a community emissions reduction plan ("CERP") for West Oakland—the West Oakland Community Action Plan ("WOCAP"). The WOCAP disclosed that Port-related emissions contribute 57% of the diesel PM emissions to West Oakland, 52% of the cancer risk, and 17% of the $PM_{2.5}$ emissions, and that diesel PM emissions account for over 90% of the community's total cancer risk.[13] The WOCAP further found that West Oakland suffers from cancer risk exposure in excess of BAAQMD risk thresholds, and that the community was subjected to $PM_{2.5}$ concentrations of around 1.70 $\mu g/m^3$

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[8] Muntu Davis, Air Pollution Risks & Vulnerability to Health Impacts: A Look at West Oakland (March 2018) at Slide 4, https://ww2.arb.ca.gov/sites/default/files/2018-03/capp_consultation_group_march_2018_alameda_county_health_presentation.pdf.

[9] Environmental Defense Fund, Traffic Pollution Causes 1 in 5 New Cases of Kids' Asthma (April 2019), http://blogs.edf.org/health/2019/04/29/traffic-pollution-causes-1-in-5-new-cases-of-kids-asthma-in-major-cities-how-data-can-help/.

[10] Davis, *supra* note 8, at Slides 8-10.

[11] West Oakland is also a historically redlined community. Beginning in the 1930s, federal housing policy directed investment away from "risky" communities of color in the East Bay, including West Oakland, Emeryville, and parts of Berkeley, Alameda, and Oakland. *Id.* at 2-2. The neighborhoods in West Oakland were coded red, signifying the least desirable areas where investment was to be avoided. *Id.* See also University of Richmond Digital Scholarship Lab, Mapping Inequality, Oakland, CA, https://dsl.richmond.edu/panorama/redlining/#loc=14/37.804/-122.293&city=oakland-ca&adview=full.

[12] Cal. Health & Safety Code, § 44391.2(c) (West 2018).

[13] WOCAP, *supra* note 5, at 5-9 (Fig. 5-4), 4-5.

in 2017.[14] To address these serious burdens faced by the West Oakland community, BAAQMD and CARB established emissions reductions goals and targets in the WOCAP to improve conditions in West Oakland, and identified 89 strategies that multiple agencies, including the Port, must implement to meet these goals.

Additionally, the Port and the City of Oakland are subject to an Informal Resolution Agreement with the U.S. Environmental Protection Agency that requires both agencies to implement a suite of public engagement, air quality, and other measures to rectify the history of Title VI civil rights violations exacted on the West Oakland communities by these agencies.[15]

II. THE ARMY CORPS SHOULD COORDINATE THE PROJECT'S ENVIRONMENTAL REVIEW PROCESSES UNDER STATE AND FEDERAL LAW.

We urge the Army Corps to coordinate its NEPA review of the Project with the environmental review the Port is required to undertake for the Project pursuant to the California Environmental Quality Act (CEQA). NEPA requires federal agencies to cooperate with State, Tribal, and local agencies "to the fullest extent practicable" to reduce duplication between NEPA and State, Tribal, and local requirements. 40 C.F.R. § 1506.2(b), (c). Indeed, "[w]here State or Tribal laws or local ordinances have environmental impact statement or similar requirements in addition to but not in conflict with those in NEPA, Federal agencies may cooperate in fulfilling these requirement . . . so that one document will comply with all applicable laws." *Id.*, § 1506.2(c).

The Army Corps should make every effort to coordinate the NEPA and CEQA environmental review processes moving forward to avoid any potential discrepancies in the nature and extent of environmental impacts evaluated under each process. A coordinated review process serves the public information purposes of both NEPA and CEQA, and may resolve many of the substantive issues identified in the public comments addressing this Project. Coordination will also ensure a more robust public engagement process, and create efficiencies, for example by reducing the need for the Army Corps to revise findings in the EA when the Port publishes its CEQA analysis of the same Project. The Army Corps and the Port can avoid potential discrepancies in their separate environmental analyses of the Project by working together to produce a joint EIR/EIS. If the Army Corps does not coordinate its environmental review with the Port, it will need to address any inconsistencies between the separate state and federal environmental analyses of the Project. This approach will create additional work for the Army Corps and the Port and could generate public confusion if their separate analyses of the nature and scope of the Project's impacts are inconsistent with one another. As such, producing a supplemental EA after the Port completes its CEQA analysis is a poor alternative to producing a joint EIS/EIR with the Port.

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[14] *Id.* at 4-7 (Fig. 4-4).

[15] Resolution Letter and Informal Resolution Agreement for Administrative Complaint Nos. 13R-17-R9 and 14R-17-R9 (July 26, 2019), available at https://www.epa.gov/ogc/resolution-letter-and-informal-resolution-agreement-administrative-complaint-nos-13r-17-r9-and> (last accessed May 3, 2022).

III. THE EA FAILS TO TAKE A HARD LOOK AT THE ENVIRONMENTAL IMPACTS OF THE PROPOSED PROJECT.

The Army Corps failed to take a "hard look at the environmental consequences" of this Project. Had it done so, the agency would have determined that construction and operation of the Project raises "substantial questions . . . as to whether [the] proposed project may cause significant degradation of some human environmental factor." *Bark v. United States Forest Service*, 958 F.3d 865, 870 (9th Cir. 2020). When such questions exist, preparation of an EIS is required. *See* 42 U.S.C. § 4332(2)(C) (An EIS is required for federal action that "significantly affect[s] the quality of the human environment.").

Here, the Army Corps published an EA and FONSI despite outstanding questions about the nature, extent, and intensity of the Project's operational, cumulative, and growth-inducing impacts; its effect on environmental justice communities, water and air quality, and traffic; and its inconsistency with local laws and plans applicable to the Study Area. Moreover, the impacts that are discussed in the EA reveal that implementation of the Project will foreseeably cause significant adverse effects on the environment and local community. Thus, the Army Corps must prepare an EIS, rather than an EA, and provide a more detailed and thorough analysis of the Project's impacts and mitigation of those harmful effects.[16]

A. The EA's description of the Project's purpose is inaccurate.

An EA must "discuss the purpose and need for the proposed action." 40 C.F.R. § 1501.5. The scope of a proposed action's environmental review "depends on the underlying 'purpose and need' specified by the agency for the proposed action." *League of Wilderness Defenders-Blue Mountains Biodiversity Project v. U.S. Forest Service*, 698 F.3d 1060, 1069 (9th Cir. 2012) (citations omitted). "An agency may not define the objectives of its action in terms so unreasonably narrow that only one alternative from among the environmentally benign ones in the agency's power would accomplish the goals of the agency's action, and the EIS would become a foreordained formality." *Id.* (internal quotations and citations omitted).

The Army Corps has not fully disclosed the purpose and need for the Project. The EA states that the purpose of the Project is: "to address navigation inefficiencies currently experienced by vessels in the Oakland Harbor." (EA at 1.) But the EA also acknowledges that the Project will "realize economies of scale" that will significantly expand operations at the Port. (EA at 93, 20 [noting the positive correlations "between the economic condition of a port and its total nominal vessel capacity"].) The Army Corps glosses over this particular motivation for the Project by calling it a "navigation improvement project." (EA at 1.) In doing so, the Army Corps skews the EA's environmental analysis by intentionally excluding an important dimension of the Project—that the Project will increase the volume of cargo that is processed at the Port as larger

[16] Even the Army Corps' implementing regulations for NEPA express a clear preference for preparing an EIS for projects requiring a feasibility report. *See* 33 C.F.R. §230.6(a) ("Actions normally requiring an EIS are . . . [f]easibility reports for authorization and construction of major projects.").

ships with significantly greater carrying capacity more efficiently maneuver the wider turning basins in the Inner and Outer Harbors. Based on this inaccurate project description, the EA does not discuss the environmental impacts of the Project's expanded Port operations. Because the Army Corps' EA does not accurately describe the Project's purpose, it precludes meaningful review of the Project's impacts in violation of NEPA.

B. The EA omits an analysis of the Project's operational impacts without explanation.

NEPA requires that the Army Corps "[i]dentify [the Project's] environmental effects and values in adequate detail so they can be compared to economic and technical analyses," 40 C.F.R. § 1501.2(b), "to ensure that relevant environmental information is identified and considered . . . to ensure informed decision making by Federal agencies," 40 C.F.R. § 1500.1(b). Here, the Army Corps failed to comply with this requirement because the EA does not examine the Project's operational impacts; the EA's analyses of every environmental category of impacts is limited to the Project's construction phase (i.e. activity associated with widening the turning basins in the Inner and Outer harbors).

The Army Corps failed to analyze operational impacts based on a faulty assumption. The EA states that: "Under [a] future without and future with project conditions, the same volume of cargo is assumed to move through Oakland Harbor." (EA at 19, 130.) Yet, the EA contains statements that conflict with the Army Corps' assumption and strongly suggest that widening the width of the turning basins will increase operations at the Port. For example:

- The existing turning basins were designed for a ship that is 1,139 feet long, 140 feet wide, and has a carrying capacity of 6,500 twenty-foot equivalent units (TEUs). (EA at ii.) The Project will widen the width of the turning basins to allow larger ships with three times the cargo carrying capacity of the turning basins' original design vessel to efficiently rotate in the turning basins. (*See* EA at iii [the Project will accommodate ships that are 1,310 feet long, 193 feet wide, and can carry 19,000 TEUs].)

- The cargo capacity for ships serving the Port has "grown at an average rate of 2.1% per year, and that rate of growth is expected to persist throughout the forecast period, which ends in 2050. This will roughly double the TEU volumes handled by the Port by the end of the forecast period. [. . .] *The Port will see an increase in vessel traffic to accommodate this increase in volume*." (EA at 95, 101 [emphasis added].)

- "While smaller vessels are being replaced by larger ones to carry more cargo on a single voyage, the *overall number of vessels will have to increase* to match increasing [cargo capacity] volumes over time." (EA 101-102 [emphasis added].)

- "It is reasonable to assume that upwards of 40% of Oakland's [cargo capacity] volume would be shifted to these larger classes of vessels [referring to vessels with 15,000 to 23,000 TEUs] by the end of the forecast period." (EA at 102.) These ships "have called infrequently at the Port historically" due to the turning basins not being wide enough, but

the Army Corps anticipates that pattern will reverse and the Port can achieve "economies of scale" after widening the width of the turning basins (the Project). (*Id.*)

Conversely, the EA fails to provide any compelling evidence that supports its assumption that there will be no change in operations at the Port following construction of the Project. The Army Corps purports to rely on a "multiport analysis" and commodity and fleet forecasts, but there is no information in the EA that explains how the data supports the agency's assumption that there will be no post-Project change in operations at the Port even though larger ships with significantly more carrying capacity are expected to service the Port more frequently once the turning basins are widened. The statements provided above strongly suggest that Project will lead to a direct increase in the number of large vessels servicing the Port and cargo volumes that are processed at the Port. The Army Corps was obligated to investigate the extent to which operations at the Port would change and it failed to do so. (*See* EA at 19-20; 102.)

C. The EA's analysis of Project-related impacts is deficient.

NEPA requires that a federal agency analyze the potential environmental impacts of any "major Federal actions significantly affecting the quality of the human environment." 42 U.S.C. § 4332(2)(C). When there are substantial questions about whether a project may cause significant degradation of the human environment, a federal agency must prepare an EIS. *See id.*; 40 CFR 1501.3(b) (listing factors for weighing the significance of an impact); *Bark v. United States Forest Service*, 958 F.3d 865, 868 (9th Cir. 2020) (internal citations omitted).

As a preliminary step, an agency may decide to prepare an EA to determine whether to prepare an EIS or a FONSI. *See* 40 C.F.R. 1501.5(c)(1). "In reviewing an agency's finding that a project has no significant effects, courts must determine whether the agency has met NEPA's hard look requirement, based [its decision] on a consideration of the relevant factors, and provided a convincing statement of reasons to explain why a project's impacts are insignificant." *Bark*, 958 F.3d at 869 (internal citations and quotations omitted). "Standing together, the FONSI and EA must be 'sufficient to establish the reasonableness of th[e] decision not to prepare an EIS.'" *Center for Biological Diversity v. Bureau of Land Management*, 937 F.Supp.2d 1140, 1154 (N.D. Cal. 2013) (citing *Ctr. for Biological Diversity v. Nat'l Highway Traffic Safety Admin.,* 538 F.3d 1172, 1215 (9th Cir. 2008)).

The Army Corps issued a FONSI without taking the mandatory "hard look" at the Project's environmental consequences. Accordingly, the EA's evaluation of Project-related impacts is not sufficiently developed or supported by compelling evidence to justify a FONSI for the Project.

1. The EA does not adequately disclose the Project's impacts to air quality.

The EA acknowledges that the Bay Area is a designated nonattainment area for the federal ozone and $PM_{2.5}$ standard, (EA at 182), and that West Oakland has a "high cumulative air pollution exposure burden, particularly to DPM [diesel particulate matter]." (EA at 186.) The

Army Corps also found that the Project would exceed BAAQMD's local threshold of 54 pounds of NO_X [nitrogen oxide] per day. *Id*. Nevertheless, the EA concludes that its proposed construction mitigation measures (i.e., requiring electric dredge equipment and certified Tier 4 Final construction equipment, and implementing BAAQMD's recommended mitigation measures) will reduce emission-related health risks to sensitive receptors in the West Oakland community. (EA at 126, 182, 189). There is no support for this determination.

Moreover, the Army Corps' conclusion that there will be no significant impacts to air quality post-mitigation is wrong. The EA clearly states its air quality analysis focused only on construction emissions and did not address the air quality impacts from increased operations. (EA at 183.) The Army Corps' air quality analysis ostensibly relied on a Health Risk Assessment (HRA) prepared by the Port of Oakland that: (1) was not made available for public review as part of the appendix to the EA, in violation of NEPA;[17] (2) may not have reported health risks associated with operation of the Project; and (3) was a draft assessment. Thus, as discussed above, the Army Corps did not take a hard look at the reasonably foreseeable degradation of ambient air quality resulting from increased Port traffic and cargo volumes that will follow after the turning basins are widened.

2. *The EA ignores potential impacts to groundwater.*

NEPA requires a reasonably complete discussion of possible mitigation measures to ensure that the environmental consequences of the Project have been fairly evaluated. *See* 42 U.S.C. § 4332(2)(C)(ii); 40 C.F.R. § 1502.16; *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 352 (1989). Here, the EA describes multiple pathways for groundwater contamination, but fails to take a "hard look at possible mitigation measures." *See Okanogan Highlands All. v. Williams*, 236 F.3d 468, 473 (9th Cir. 2000) (internal quotations omitted).

The dredging and construction activity needed to widen the turning basins will require excavating 17 feet below groundwater elevation, which can increase saltwater intrusion into groundwater. (EA at 140-142.) The EA identifies a serious concern that the construction activity that takes place on the Schnitzer Steel and Howard Terminal properties will leach "contaminants of concern (COCs) such as dioxin, hydrocarbons, PCBs, and heavy metals in[to] soils and/or groundwater." (EA at 140.) The EA acknowledges that dredging in the Project area "ha[s] the potential to adversely affect groundwater if improperly managed." (EA at 141.) Despite this, the EA concludes that the Project's effect on water quality will be less than significant, ostensibly relying on the fact that the groundwater underlying the Project is not currently a source of drinking water. (EA at 141, 144.)

NEPA requires the Army Corps take a hard look at the extent to which groundwater in the

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[17] *See Natural Resources Defense Council v. Duvall*, 777 F.Supp. 1533, 1539 (E.D. Cal. 1991) ("[B]ecause the purpose of an EA is to decide whether an EIS must be prepared, . . . the document itself (any attachments or appendices included with it) must facilitate or enable public comment concerning the agency's determination that the project does not significantly affect the environment.").

Project area may be contaminated by implementation of the Project and how that will affect environmental quality for West Oakland residents. CalEnviroScreen ranks West Oakland in the 100th percentile statewide for exposure to groundwater threats. NEPA also requires the Army Corps consider mitigation measures that may avoid any potential impacts to groundwater caused by the Project. *See South Fork Band Council of Western Shoshone of Nevada v. U.S. Dept. of Interior*, 588 F.3d 718, 727 (9th Cir. 2009) (holding agency was required to "give some sense" of whether impacts to groundwater could be avoided). The Army Corps should identify feasible mitigation measures to avoid anticipated harms to groundwater.

3. *The EA downplays the Project's impacts to traffic.*

Similar to the EA's treatment of ground water, the EA does not properly evaluate options to mitigate the traffic impacts associated with construction of the Project. It notes that there will be land-based traffic associated with construction activities, including "dump trucks hauling excavated soil and other materials to landfills," (EA at 167), that will cause "localized effects along roadways closest to the construction site." (EA at 176.) At the same time, the EA claims that construction-related traffic will not "inhibit the existing or planned public transit, bicycle, or pedestrian circulation routes." (EA at 167-168.) However, the EA's "perfunctory description" of measures to mitigate the Project's effect on roadways is inadequate. *Neighbors of Cuddy Mountain v. U.S. Forest Service* 137 F.3d 1372, 1380 (9th Cir. 1998); *see also Okanogan Highlands Alliance*, 236 F.3d 468 at 473 ("A mere listing of mitigation measures is insufficient to qualify as the reasoned discussion required by the NEPA."). The Army Corps must provide more than a hasty list of possible mitigation strategies to include in a proposed traffic management plan. (EA at 176.) Critically, the EA also fails to examine the traffic impacts owing to the unanalyzed operational impacts of the Project. (*See* discussion in section IV.B.) For example, it utterly fails to consider the impacts of increased truck traffic that will result from the larger number of cargo containers entering the Port. The Army Corps should identify mitigation measures for traffic impacts.

4. *The EA fails to meaningfully analyze the Project's cumulative and indirect effects.*

The EA does not contain a cumulative or indirect effects impacts analysis. Indeed, the EA fails to analyze the effects of the two most prominent projects potentially occurring at the Port of Oakland alongside the Project: the Eagle Rock aggregates terminal project and the Howard Terminal ballpark project. Both of these projects, when combined with the Army Corps' Project, would significantly exacerbate the poor environmental and health conditions experienced by neighboring communities. However, the EA does not discuss the cumulative or indirect impacts of joint construction and operation of these projects. Because the Eagle Rock project and Howard Terminal project could generate substantial construction and operational emissions, traffic, and other impacts alongside the impacts predicted for the Army Corps' turning basin Project, the potential impacts of all three projects combined should have been analyzed and disclosed in the EA.

Where several projects have a "cumulative environmental impact," their consequences must be discussed in an EA and EIS. *Quechan Tribe of Ft. Yuma Indian Reservation v. U.S. Dep't*

of the Interior, 927 F.Supp.2d 921, 942 (S.D. Cal. 2013) (citations omitted). A "cumulative impact" is the impact of a project "'when added to other past, present, and reasonably foreseeable future actions.'" *Id.* (citing 40 C.F.R. §§ 1508.7, 1508.8(b)). Similarly, "indirect effects" are defined as effects "which are caused by the action and are later in time or farther removed in distance, but are still reasonably foreseeable." *Id.* at p. 945 (citing 40 C.F.R. § 1508.8(b)). Indirect effects "may include growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems." *Ibid.* Cumulative impacts analyses are particularly important in EAs "because so many more EAs than EISs are prepared, and thus there is a higher risk of cumulative impacts resulting from the many smaller decisions." *Soda Mountain Wilderness Council v. Norton*, 424 F.Supp.2d 1241, 1266 (E.D. Cal. 2006) (citations omitted).

The Eagle Rock project will construct a facility adjacent to the outer harbor turning circle for construction aggregate stockpiling and distribution. The facility will receive up to 2.5 million tons of construction aggregates annually, arriving on 48 ships. The aggregates will be conveyed into three 40-foot-high uncovered open air stockpiles, combined containing 350,000 tons of aggregate. The uncovered aggregates would then be loaded onto trucks or floating barges for transport to regional facilities and projects. The project anticipates generating up to 375 daily truck trips and 70,000 annual truck trips.[18]

The Howard Terminal is slated for redevelopment as a new ballpark for the Oakland A's baseball team. The project envisions a 35,000-seat waterfront ballpark, 3,000 housing units, office and retail uses, a performance venue, hotels, and parking.[19] Approximately 250,000 roundtrip vehicle trips will occur during the construction phase, and buildout and operation of the project will generate approximately 28,000 new daily vehicle trips.[20] The Oakland City Council certified the EIR for the baseball park project on February 17, 2022, but the Port is significantly involved in this project.[21] The Port approved a term sheet with the A's in May 2019 that gave the team four years to advance the stadium proposal and executed an MOU with the

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[18] See Port of Oakland, Eagle Rick Aggregates Oakland Terminal Project, Final Supplemental Environmental Impact Report, Vol. 1 (Nov. 2021), at 2-12, 2-27—2-28, 2-32—2-34, https://www.portofoakland.com/files/PDF/PortOak_ERA_FSEIR_Vol.1_SEIR_Nov2021_ADA.pdf (as of Feb. 18, 2022).

[19] Ravani, *Oakland Council Certifies Environmental Review of A's Waterfront Ballpark Plan*, San Francisco Chronicle (Feb. 18, 2022), available at 2022 WLNR 5117688.

[20] City of Oakland, Waterfront Ballpark District at Howard Terminal, Draft Environmental Impact Report at 4.2-62, 4.2-71, https://cao-94612.s3.amazonaws.com/documents/Chapter-4.2-Air-Quality_2021-02-26-012844.pdf (as of Feb. 18, 2022).

[21] *Ibid.* See also Bay City News, *Oakland City Council Certifies EIR for A's Howard Terminal Ballpark Proposal*, KTVU Fox 2 TV (Feb. 18, 2022), https://www.ktvu.com/news/oakland-city-council-certifies-eir-for-as-howard-terminal-ballpark-proposal (as of Feb. 18, 2022).

City of Oakland in February 2020 to cooperate on development of the ballpark project.[22] Finally, after the City approved the EIR, the Port relinquished to the City it responsibilities for permitting and administering projects at the Howard Terminal site.[23] Per the Port, Howard Terminal was last used for container operations in 2013, and is currently used "for vessel berthing, truck and container parking and depot operations, training of longshore workers and other logistics services that support Port operations."[24] Notably, the Port reserved the right to use approximately 10 acres of the Howard Terminal property to expand the inner harbor turning circle in order to accommodate larger cargo ships.[25]

The Army Corps Project EA does not discuss the either the cumulative or indirect impacts of combined construction and operation of the turning basins Project, the Eagle Rock project, or the Howard Terminal ballpark project. The EA's sole, oblique reference to the Eagle Rock project notes only that "the Port intends to use the Berth 20-21 land for dry bulk over the next 15 years…." (EA at 18.) The EA is similarly scant when discussing the Howard Terminal ballpark project, referencing only the environmental investigations conducted for the ballpark project and its proposed bicycle infrastructure and affordable housing units. (*Id.* at 36, 70, 84-85.) In one instance, the EA perplexingly remarks that "there are no significant expansion options for Howard [Terminal]…." (*Id.* at 18.) There are no other discussions of the Eagle Rock project or the Howard Terminal ballpark project anywhere in the EA.

Because both the Eagle Rock project and Howard Terminal ballpark project could each generate substantial construction and operational emissions, traffic, and other impacts alongside the impacts predicted for the Army Corps' turning basin Project, the cumulative and indirect impacts of all three projects combined should have been analyzed in the EA. The combined impacts from all three projects are foreseeable, are not geographically or temporally remote from each other, and are not the product of a lengthy causal chain. Moreover, both the Eagle Rock and Howard Terminal projects are capable of being analyzed. Both have final CEQA environmental documents, and both have been preliminarily approved. Their details and specifications, and their anticipated environmental impacts, have been documented in detailed analyses, and are not too speculative for the EA to analyze. The Army Corps must analyze the cumulative or indirect impacts analysis for the three projects combined.

5. *The EA obfuscates the Project's impact on West Oakland, an environmental justice community.*

The EA's inadequate discussion of the Project's potential environmental impacts is even more consequential because of the Project's potential harm to West Oakland, an environmental

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[22] City of Oakland, Frequently Asked Questions About the Waterfront Ballpark District at Howard Terminal (Updated Feb. 10, 2022), https://www.oaklandca.gov/resources/waterfront-ballpark-district-at-howard-terminal-faqs (as of Feb. 18, 2022).
[23] *Ibid.*
[24] Port of Oakland, Proposed Howard Terminal Project, Project Overview, https://www.portofoakland.com/howard-terminal/overview/ (as of Feb. 18, 2022).
[25] *Ibid.*

justice community in the Project area. However, the EA's analysis of the Project's impacts to environmental justice communities does not fully analyze, disclose, and consider for mitigation harms to all the census tracts that make up West Oakland. By artificially limiting the geographic scope of its environmental justice analysis, the EA found the Project's environmental justice impacts related to air quality, noise, traffic would be less than significant and result in negligible "lifetime health risks." (EA at 134; *see also id.* at 131 - 135.)

Executive Order 12898 requires federal agencies to include an environmental justice analysis as part of their NEPA reviews. Agencies must "identify[] and address[], as appropriate, disproportionately high and adverse human health or environmental effects of its programs, policies, and activities on minority populations and low-income populations."[26] Here, however, the EA's analysis failed to consider whether the Project will have a "disproportionately high and adverse" impact on all of West Oakland.

The EA initially identified 12 census tracts within a one-mile radius of the center of each turning basin that meet the threshold criteria for a federal environmental justice community. It then narrowed the scope of its impact analysis to just "three minority environmental justice communities [census tracts] of concern . . . within the project's 0.5-mile study area." (EA at 25.) The EA does not explain or justify the Army Corps' selection of a one-mile radius as the starting point of its environmental justice analysis. Indeed, a one-mile radius compressed the geographic scope of the Army Corps' environmental justice analysis to the point that it missed an obvious environmental justice community of concern—West Oakland. According to CalEnviroScreen, nine out of the ten census tracts that make up the West Oakland community rank in the top 25% of the most polluted geographic areas in the state. A CalEnviroScreen map depicting the Project Area and the affected census tracts in surrounding area is reproduced as Attachment A to this letter. The Army Corps' decision to use a one-mile radius was arbitrary and guaranteed that the agency did not take a hard look at the Project's impacts on environmental justice communities or consider the full range of effective measures to mitigate the Project's adverse environmental consequences for those communities.

The EA also does not explain the Army Corps' decision to further narrow its environmental justice analysis from 12 census tracts within a one-mile radius of the turning basins to just three census tracts (tracts 9820, 4017, and 4287) within a half-mile radius of the turning basins. Of the twelve census tracts within a one-mile radius of both turning basins, eight census tracts meet the definition of a federal environmental justice community. But only one of the three census tracts (census tract 4287) the Army Corps chose to make the focus of its environmental justice analysis meets this definition. Furthermore, four of the excluded census tracts have a larger "minority" population than all three of the selected census tracts. (EA at 25.)

The Army Corps' missteps are compounded by the EA's recognition that certain Project impacts will extend beyond the half-mile and one-mile radius it arbitrarily selected for is

[26] Executive Order 12898 (Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations) 59 Fed. Reg. 7,629 (Feb. 16, 1994).

environmental justice analysis and into "the surrounding communities of the West Oakland and Alameda." (EA at 130); *see also Vecinos para el Bienestar de la Comunidad Costera v. Federal Energy Regulatory Commission* 6 F.4th 1321, 1330-31 (D.C. Cir. 2021) (rejecting the federal agency's environmental justice analyses under NEPA because it limited the analysis to "within two miles of the project site" even though it had "determined that the environmental effects of the project would extend beyond the . . . two-mile radius").

The Army Corp was statutorily obligated to fully examine the Project's impacts on West Oakland. This community meets the threshold criteria for an environmental justice community and the community will be harmed by project construction and expanded operations at the Port, regardless of whether they fall within a half-mile or one-mile radius of the Project. Based on the foregoing information, it is clear the Army Corps unreasonably and arbitrarily narrowed the geographic scope of its environmental justice analysis, skewing the EA's analysis and conclusion of the Project's potential impact on West Oakland. The EA excludes a reasonable and adequate analysis of the Project's consequences on all potentially affected environmental justice community.

IV. THE EA DOES NOT ANALYZE THE PROJECT'S INCONSISTENCIES WITH LOCAL PLANS DEVELOPED FOR THE PROTECTION OF WEST OAKLAND.

NEPA requires federal agencies to analyze inconsistencies with state or local laws and plans. "Where an inconsistency exists, the [environmental document] should describe the extent to which the agency would reconcile its proposed action with the plan or law. While the statement should discuss any inconsistencies, NEPA does not require reconciliation." 40 C.F.R. § 1506.2(d); *see also Quechan Tribe*, 927 F.Supp.2d at 946. The EA fails to discuss the Project's apparent inconsistencies with the goals and strategies of the WOCAP, the community emissions reduction plan that was adopted by BAAQMD and CARB to address the dangers of air pollution in the West Oakland community. The Army Corps must analyze and disclose the Project's inconsistencies with the WOCAP.

A. The Project is Inconsistent with the WOCAP's Primary Goals and Targets.

The WOCAP establishes two overarching goals: (1) By 2025, all neighborhoods throughout West Oakland will experience the same air quality conditions as the *average* West Oakland residential neighborhood in 2017; (2) by 2030, all neighborhoods throughout West Oakland will experience the same air quality conditions as the *least impacted* neighborhood (i.e., the neighborhood with the cleanest air) in 2017. (WOCAP at 4-4.)

To achieve these goals, the WOCAP establishes emissions reductions targets for diesel PM, $PM_{2.5}$, and cancer risk.[27] (WOCAP at 4-4.) Per the WOCAP, local emission sources,

[27] Local emissions risks in West Oakland are attributable to goods movement, infrastructure, and industrial uses in the vicinity. (WOCAP at 4-1.) Port-related emissions contribute 57% of the diesel PM emissions, 52% of the cancer risk, and 17% of the $PM_{2.5}$ emissions to West Oakland. (WOCAP at 5-9

including trucks and Port-related resources (*Id.* at 2-12), may emit no more than the following concentrations into West Oakland neighborhoods by 2025 and 2030:

POLLUTANT	2025 TARGET	2030 TARGET
Diesel PM	< 0.25 $\mu g/m^3$	< 0.13 $\mu g/m^3$
$PM_{2.5}$	< 1.7 $\mu g/m^3$	< 1.2 $\mu g/m^3$
Cancer Risk	< 200/1 million	< 110/1 million

The EA does not discuss the WOCAP's goals and targets at all. The EA briefly discusses AB 617, noting that West Oakland experiences high exposure to pollution from heavy-duty vehicles, trains, off-road equipment, stationary sources, and maritime vessels. (EA at 83.) The EA mentions that local community groups developed the WOCAP, but omits that the plan was adopted by BAAQMD and CARB. (EA at 84.) However, there is no analysis of the WOCAP's goals and reduction targets. Indeed, the EA fails to acknowledge that the Project will increase emissions in West Oakland in conflict with the WOCAP's express goal of decreasing emissions.

First, the WOCAP explains that West Oakland already suffers from cancer risk exposure at rates of 204-per-1 million in 2017, far in excess of the 10-per-1 million BAAQMD health risk thresholds. (WOCAP at 4-7 [Fig. 4-4], 5-23.) But the EA does not analyze cancer risk at all, even though the Project's emissions could add more cancer exposure risk to the community. Second, the EA finds the Project will generate approximately 2.1 tons (4,200 lbs.) of construction-related $PM_{2.5}$ emissions. (EA at 190 [Table 52].) However, the WOCAP found that West Oakland *already* experienced $PM_{2.5}$ concentrations of around 1.70 $\mu g/m^3$ in 2017, and the Project's 2.1-ton contribution would exacerbate this situation.[28] (WOCAP at 4-7 [Fig. 4-4].) Third, the Project's construction emissions, scheduled to begin in 2027, would exceed the WOCAP's 2025 $PM_{2.5}$ targets. (EA at 190 [Table 52].)

The EA states that electric dredgers will result in fewer emissions than diesel dredgers, thereby complementing the WOCAP, but it does not discuss whether these reductions would help to achieve the WOCAP's targets, if at all. (EA at 126.) Finally, because the EA's analysis is confined solely to construction emissions, and does not include emissions from operational impacts, the Project's actual emissions impacts could be much higher, and that much more in conflict with the WOCAP's goals. The Project will increase emissions in West Oakland in direct conflict with the WOCAP's goals and targets. The EA was therefore required to analyze the inconsistencies between the Project and the WOCAP; however, it does not. NEPA requires the Army Corps to analyze the Project's inconsistency with the WOCAP's specific goals and targets and evaluate whether the Project would hinder their achievement.

[Fig. 5-4].) Moreover, diesel PM emissions account for over 90% of the community's total cancer risk. (*Id*. at p. 4-5.) Accordingly, the WOCAP explains, reductions in diesel PM and $PM_{2.5}$ should be driven by reductions from Port-related sources. (*Id*. at 4-5 - 4-6.)

[28] Converting the Project's construction emissions into a $\mu g/m^3$ figure and a comparative point of analysis to the WOCAP is an essential part of an EA or EIS, but no such analysis occurred here.

B. The Project is Inconsistent with WOCAP Strategies.

The WOCAP identifies 89 strategies to achieve its goals. The WOCAP does not identify the Army Corps as responsible for any of the strategies, but it identifies the Port as responsible for 11 of the them, including planning for zero-emission trucks; measures to address noise, fee, and charging issues; creation of truck and chassis parking sites; development of electric barge and tug incentives and incentives for Tier 2 and 3 marine vessels; and transitioning to clean locomotives. (WOCAP at 6-21—6-32 [Table 6-4].) The EA touts the Project's electric dredgers and their anticipated emissions reductions, and these measures do further some of the WOCAP's electrification goals. (EA at 134.) However, the EA does not specifically discuss the WOCAP's 89 strategies or the 11 strategies assigned to the Port, nor whether the Project is inconsistent with any of the strategies.

This omission is particularly notable for WOCAP strategy no. 43. WOCAP strategy no. 43 calls on the Port to study "the effects on truck flow and congestion *due to increasing visits from large container ships*…." (WOCAP at 6-26 [Table 6-4] [emphasis added].) The EA purports to analyze a Project designed specifically to cater to the large container ships referenced by this WOCAP strategy, but it does not mention the strategy. The EA analyzes truck traffic and congestion impacts from construction of the Project and concludes that impacts would be minimal (EA at 132, 133, 135, 167-79), but does not analyze the foreseeable operational impacts from additional vehicles servicing additional large container ships using the expanded turning basins, as the WOCAP strategy recommends. The EA's failure to study these operational impacts is in conflict with the WOCAP strategy.

The WOCAP also identifies the Port as responsible for several truck and chassis parking actions. WOCAP strategy No. 5 urges the Port to relocate non-conforming truck yard, service, and refueling businesses currently located in West Oakland. (WOCAP, pp. 6-21 [Table 6-4].) WOCAP strategy No. 26 urges the Port and City of Oakland to establish permanent truck parking and chassis and cargo storage areas "not adjacent to West Oakland residents." *Id.* at 6-23—6-24. WOCAP strategy no. 42 calls on the Port to arrange vendor leases and parking "to keep trucks off West Oakland's streets." *Id.* at 6-26. Finally, WOCAP strategy No. 21 recommends that agencies, including the Port, participate in stakeholder committees addressing truck, nuisance, charging infrastructure, and route enforcement issues. *Id.* at 6-23.

However, the EA does not address truck and container parking at all aside from *construction* vehicle parking and storage. If adequate permanent parking is not available for the additional trucks and containers required to service the additional large ships facilitated by the Project, it could force trucks and containers to be parked in West Oakland neighborhoods.[29]

[29] The EA's failure to discuss this strategy is particularly puzzling given that both the Eagle Rock project and the Howard Terminal stadium project appear to displace truck and chassis parking locations identified by the Port as surplus parking and storage areas. See Port of Oakland, Eagle Rock Aggregates Oakland Terminal Project, Final Supplemental Environmental Impact Report, Vol. 1, *supra*, at 3.11-19; Port of Oakland, Proposed Howard Terminal Project, Project Overview, *supra*, https://www.portofoakland.com/howard-terminal/overview/

Although the Project is designed to facilitate increasing numbers of large container ships, the EA omits analysis of the impacts from the trucks and equipment that will service these vessels, and makes no mention of any of the WOCAP strategies specifically identified to deal with truck and container issues. The Army Corps should analyze the inconsistencies between the WOCAP's truck parking strategies and the Project's potential to exacerbate existing truck and container parking issues.

Finally, the EA fails to analyze or adopt several electrification and clean-engine strategies recommended by the WOCAP. WOCAP strategy No. 19 urges the Port to develop an Electrical Infrastructure Plan to "remove barriers to the adoption of zero-emission trucks, such as cost, land, and ownership of charging equipment." (WOCAP at 6-23 [Table 6-4].) Similarly, WOCAP strategy No. 37 recommends that the Port support the transition to zero-emission drayage truck operations by setting interim phase-in targets, coordinating zero-emission truck commercialization, upgrading infrastructure, and studying time-of-day electric rates. *Id.* at 6-25. WOCAP strategy No. 50 urges the Port to work with BAAQMD to develop incentives for clean engine barges and tugs, (*Id.* at 6-27), while WOCAP strategies Nos. 63, 64, and 65 envision Port adoption of clean ship and locomotive programs and infrastructure. *Id.* at 6-28. The EA emphasizes that the Army Corps will utilize electric dredgers for construction of the Project, but the EA does not otherwise discuss the WOCAP strategies at all, nor does it contain any operational or other electrification measures that would further the recommended Electrical Infrastructure Plan, the zero-emission truck transitions, or the clean ship and locomotive efforts envisioned by the WOCAP.

In sum, although the Project will facilitate visitation of larger container ships and larger volumes of cargo to the Port, the EA fails to analyze whether the Project furthers the various strategies recommended by the WOCAP to ameliorate the impacts of Port operations on local residents. Indeed, the Project does not analyze or adopt any operational mitigation to address the impacts it will generate and fails to analyze numerous WOCAP strategies to reduce these potential impacts. Increasing vessel calls and container throughput without adopting operational mitigation is inherently inconsistent with the multiple WOCAP strategies specifically identified to address these activities. The Army Corps should analyze the applicable WOCAP strategies and disclose the Project's inconsistencies with those strategies.

V. CONCLUSION

NEPA provides the opportunity for transparent, thoughtful decision-making by requiring federal agencies to evaluate, disclose, and consider mitigation of a proposed project's environmental impacts prior to approval. The Army Corps must comply with NEPA by fully examining and disclosing the environmental impacts of the Project in an EIS before it can proceed with implementing the Project. Furthermore, the Army Corps should adopt all measures necessary to protect the local community and coordinate its NEPA review of the Project with the environmental analysis that the Port will undertake pursuant to CEQA.

Sincerely,

OMONIGHO OIYEMHONLAN
DAVIN WIDGEROW
Deputy Attorneys General

For ROB BONTA
Attorney General

Cc: Richard Sinkoff, Director of Environmental Programs and Planning—Port of Oakland (RSinkoff@portoakland.com)

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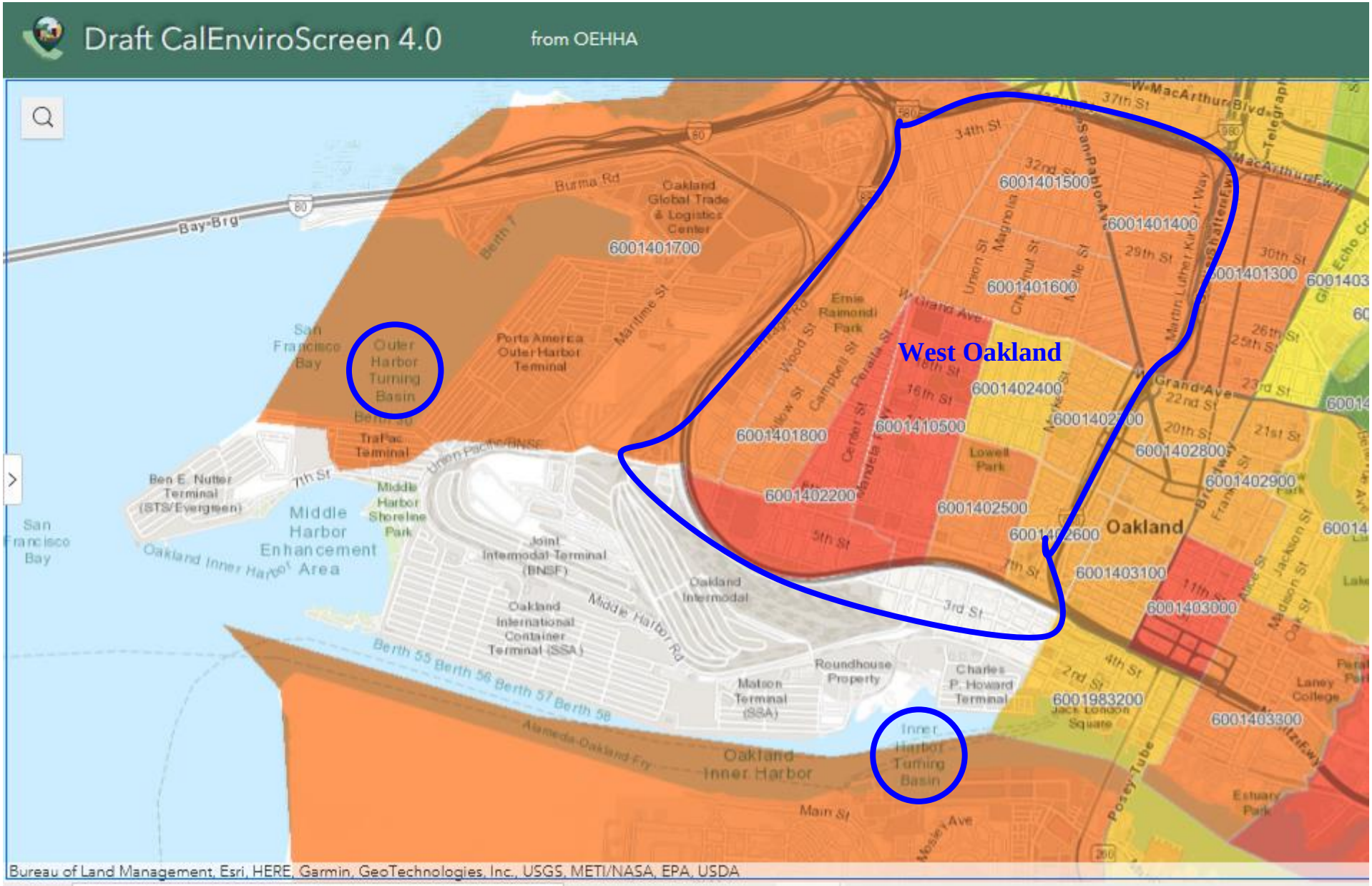
ATTACHMENT A: CALENVIROSCREEN MAP OF THE PROJECT'S STUDY AREA AND AFFECTED CENSUS TRACTS



BAY AREA
AIR QUALITY
MANAGEMENT
DISTRICT

ALAMEDA COUNTY
John J. Bauters
(Chair)
Pauline Russo Cutter
David Haubert
Nate Miley

CONTRA COSTA COUNTY
John Gioia
David Hudson
Karen Mitchoff
Mark Ross

MARIN COUNTY
Katie Rice

NAPA COUNTY
Brad Wagenknecht

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

SAN MATEO COUNTY
David J. Canepa
Carole Groom
Davina Hurt
(Vice Chair)

SANTA CLARA COUNTY
Margaret Abe-Koga
Otto Lee
Sergio Lopez
Rob Rennie

SOLANO COUNTY
Erin Hannigan
Steve Young

SONOMA COUNTY
Teresa Barrett
(Secretary)
Lynda Hopkins

Sharon Landers
INTERIM
EXECUTIVE OFFICER/APCO

Connect with the
Bay Area Air District:

July 5, 2022

Jan Novak
Associate Planner and Scientist
Port of Oakland
530 Water Street
Oakland, CA 94607

Subject: Oakland Harbor Turning Basins Widening Notice of Preparation of a Draft Environmental Impact Report

Dear Mr. Novak:

Bay Area Air Quality Management District (Air District) staff has reviewed the Notice of Preparation (NOP) of a Draft Environmental Impact Report (EIR) for the Oakland Harbor Turning Basins Widening Project (Project) to evaluate the potential widening of Oakland's turning basins. The Project proposes to increase the width of the Port of Oakland's (Port) two existing turning basins to accommodate a vessel with a capacity of 19,000 twenty-foot equivalent units (TEU) and a length of 1,310 feet. The Project will require federal approval under the National Environmental Policy Act (NEPA). The U.S. Army Corps of Engineers (USACE), in partnership with the Port, released the Project's draft Environmental Assessment (EA) pursuant to the NEPA on December 17, 2021, and the Air District provided comments on the draft EA on February 14, 2022.

The community of West Oakland is located east and northeast of the Outer Harbor Channel and Inner Harbor Channel, respectively. The Air District and the West Oakland Environmental Indicators Project (WOEIP) worked with a community Steering Committee to develop the West Oakland Community Action Plan (WOCAP), adopted by the Air District Board of Directors and the California Air Resources Board (CARB) in 2019. The WOCAP sets goals and targets for reducing exposure to fine particulate matter ($PM_{2.5}$), diesel emissions and cancer risk from toxic air contaminants (TACs). Any increases in local $PM_{2.5}$, diesel emissions or cancer risk would be inconsistent with the WOCAP and would hinder progress toward the agreed upon targets set by the West Oakland Steering Committee, the Air District and CARB.

Incorporation of Air District Comments on Environmental Assessment

The EIR should address all Air District comments on the Oakland Harbor Turning Basins Widening Navigation Study Project Draft Integrated Feasibility Report and Environmental Assessment, submitted to the US Army Corps of Engineers on February 14, 2022 and incorporated here by reference, such as providing evidence to support the claim that increased navigational efficiency will not result in an increase in the number of ship calls

or throughput at the Port. The Project will allow larger vessels to access the Port and should clearly discuss the types of vessels (and the associated emissions) that could visit the Port as a result of the Project. Additionally, the Project should analyze all potential operational phase emissions, including any changes in emissions due to changes in vessel activity during ship calls, changes in types of vessels calling at the Port, increased ship calls, and any increased use of off-road equipment and on-road truck trips. Given the current elevated air pollution exposures and health inequities in West Oakland and the recently adopted WOCAP, any potential increase in emissions resulting from this project should be fully mitigated.

Consistency with Adopted Plans

Air District staff recommend the EIR evaluate the Project's consistency with the following adopted plans, including demonstrating the Project's consistency with the plan strategies or measures:

- West Oakland Community Action Plan, described above. In addition to discussing the WOCAP goals, strategies, and demonstrating consistency with the Plan's strategies, Air District staff recommend the Port engage with the West Oakland Steering Committee regarding the Project and describe community engagement efforts in the EIR. The WOCAP can be found on the Air District's website: https://www.baaqmd.gov/community-health/community-health-protection-program/west-oakland-community-action-plan.

- Air District 2017 Clean Air Plan (2017 CAP). The 2017 CAP can be found on the Air District's website: http://www.baaqmd.gov/plans-and-climate/air-quality-plans/current-plans.

- Port of Oakland Seaport Air Quality Plan 2020 and Beyond.

Evaluate Air Quality Impacts and Implement All Feasible Mitigation Measures

The West Oakland community is currently cumulatively impacted with air pollution, which highlights the urgency of avoiding additional air pollution in the community. The EIR should estimate and evaluate the potential health risk to existing and future sensitive populations near the Project area from $PM_{2.5}$ and TACs as a result of the Project's construction and operation.

The EIR should fully evaluate potential significant impacts and implement all feasible measures to minimize air quality impacts to the greatest extent possible. Emission reduction measures the EIR should evaluate and consider for both construction and operational phases include:

- Prohibiting or minimizing the use of diesel fuel, consistent with the Air District's Diesel Free By '33 initiative (http://dieselfree33.baaqmd.gov/).
- Requiring the use of zero-emission dredges consistent with Resolution 21-61 adopted by the Port of Oakland Board of Port Commissioners on September 30, 2021.

- Requiring use of grid power for construction activities whenever possible; if grid power is not available, use of alternative power such as battery storage, hydrogen fuel cells, or, if no other options are available, use of Final Tier 4 generators using renewable diesel fuel.
- Maximizing the use of renewable diesel alternatives to the Port's diesel-powered equipment and vehicle fleet consistent with the Port of Oakland's Seaport Air Quality Plan 2020 and Beyond.
- Requiring construction vehicles to operate with Final Tier 4 engines using renewable diesel or zero-emission drivetrains, as commercially available.
- Prohibiting trucks from idling for more than two minutes or prohibit idling altogether.
- Implementing a program that incentivizes construction workers to carpool, use EVs, or use public transit to commute to and from the site. The program may include the following features, as feasible: providing a shuttle service to and from BART; preferential parking to carpool vehicles, vanpool vehicles, and EVs; and scheduling work shifts to be compatible with the schedules of local transit services.

Climate Impact Analysis

The EIR should fully evaluate and discuss the GHG emissions associated with the project and compare them to the State's GHG reduction goals for 2030 (a 40% reduction below 1990 levels) and 2045 (carbon neutrality). This evaluation should include a comparison of the Project's projected GHG emissions to baseline GHG emissions. If the Project's emissions are inconsistent with the State's 2030 and 2045 GHG reduction goals, then the project would likely have a significant climate impact. Alternatively, the Project can demonstrate consistency with a local GHG Reduction Strategy that meets the criteria under State CEQA Guidelines Section 15183.5(b).

Additional Recommendations

- The Air District's CEQA website contains several tools and resources to assist lead agencies in analyzing air quality and climate impacts. These tools include guidance on quantifying local emissions and exposure impacts. The tools can be found on the Air District's website: http://www.baaqmd.gov/plans-and-climate/california-environmental-quality-act-ceqa/ceqa-tools. If the Project requires a site-specific analysis, please contact Air District staff to obtain more recent data.

- The EIR should include a discussion of compliance with Air District Regulation 6, Rule 6: Prohibition of Trackout for construction sites where the total land area covered by construction activities and/or disturbed surfaces at the site are one acre or larger as it applies to the Project. To review the regulation, please visit https://www.baaqmd.gov/rules-and-compliance/rules/regulation-6-rule-6-prohibitionof-trackout and consult with staff from the Air District's Compliance and Enforcement Division at (415) 749-4795 or compliance@baaqmd.gov.

- Certain aspects of the Project may require an air quality permit (Authority to Construct/Permit to Operate) from the Air District (for example, diesel generators, certain portable equipment being used in a stationary manner). Please contact Barry Young, Senior Advanced Projects Advisor in the Air District's Engineering Division, at (415) 749-4721 or byoung@baaqmd.gov to discuss permit requirements. Any applicable Air District permit requirements should be discussed in the EIR.

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 Alesia Hsiao, Senior Environmental Planner, at ahsiao@baaqmd.gov or Alison Kirk, Assistant Manager, at akirk@baaqmd.gov.

Sincerely,

for Greg Nudd

Greg Nudd
Deputy Air Pollution Control Officer

cc: BAAQMD Chair John J. Bauters
BAAQMD Director Pauline Russo Cutter
BAAQMD Director David Haubert
BAAQMD Director Nate Miley
Stanley Armstrong, California Air Resources Board
Brian Beveridge, West Oakland Environmental Indicators Project
Connell Dunning, U.S. EPA Region 9
Ms. Margaret Gordon, West Oakland Environmental Indicators Project

Attachment: Air District comment letter to Mr. Eric Jolliffe, US Army Corps of Engineers, dated February 14, 2022, "Oakland Harbor Turning Basins Widening Navigation Study Project Draft Integrated Feasibility Report and Environmental Assessment"

BAY AREA
AIR QUALITY
MANAGEMENT
DISTRICT

ALAMEDA COUNTY
John J. Bauters
(Vice Chair)
Pauline Russo Cutter
David Haubert
Nate Miley

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

MARIN COUNTY
Katie Rice

NAPA COUNTY
Brad Wagenknecht

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

SAN MATEO COUNTY
David J. Canepa
Carole Groom
Davina Hurt
(Secretary)

SANTA CLARA COUNTY
Margaret Abe-Koga
Cindy Chavez
Rich Constantine
Rob Rennie

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:

February 14, 2022

Mr. Eric Jolliffe
Environmental Manager
US Army Corps of Engineers
450 Golden Gate Ave 4th Floor
San Francisco, 94102

RE: Oakland Harbor Turning Basins Widening Navigation Study Project Draft Integrated Feasibility Report and Environmental Assessment

Dear Mr. Jolliffe:

Bay Area Air Quality Management District (Air District) staff has reviewed the Draft Integrated Feasibility Report and Environmental Assessment (Feasibility Report) for the Oakland Harbor Turning Basins Widening Navigation Study Project (Project). The United States Army Corps of Engineers (USACE) is the federal sponsor, and the Port of Oakland (Port) is the local sponsor of the Project. The stated purpose of the Feasibility Report is to determine if there is a technically feasible, economically justifiable, and environmentally acceptable recommendation for federal participation in an improvement project to the existing federal navigation channels of Oakland Harbor.

The Project proposes to expand the Outer Harbor Channel and Outer Harbor Turning Basin (OHTB) and the Inner Harbor Channel and Inner Harbor Turning Basin (IHTB). The OHTB is south of the San Francisco-Oakland Bay Bridge and is maintained to a depth of -50 feet mean lower low water (MLLW). The OHTB serves the existing TraPac and Ben E. Nutter terminals. The OHTB expansion would widen the existing turning basin from 1,650 to 1,965 feet, which would be dredged to a depth of -50 feet MLLW. The IHTB is approximately 2.5 miles from the Inner Harbor entrance and is maintained to -50 feet MLLW. The IHTB serves the existing Oakland International Container, Matson, and Schnitzer Steel terminals. The IHTB expansion would widen the existing turning basin from 1,500 feet to 1,834 feet, which would be dredged to a depth of -50 feet MLLW. In addition to in-water work to widen the IHTB, land at Schnitzer Steel, Howard Terminal, and private property located along the Alameda shoreline would be impacted.

The community of West Oakland is located east and northeast of the Outer Harbor Channel and Inner Harbor Channel, respectively, and the Feasibility Report identifies the West Clawson neighborhood of West Oakland as an Environmental Justice (EJ) community within one mile of the Project. The Air District and the West Oakland Environmental Indicators Project (WOEIP) worked with a community Steering Committee to develop the West Oakland Community Action Plan (WOCAP), adopted by the Air District Board of

Directors and the California Air Resources Board (CARB) in 2019. The WOCAP sets goals and targets for reducing exposure to fine particulate matter (PM2.5), diesel emissions and cancer risk from toxic air contaminants (TACs). Any increases in local PM2.5, diesel emissions or cancer risk would be inconsistent with the WOCAP and would hinder progress toward the agreed upon targets set by the West Oakland Steering Committee, the Air District and CARB.

The Air District commends the USACE and Port for selecting a project alternative that will employ electric-powered barge-mounted excavator dredging equipment. However, Air District staff remain concerned that the Feasibility Report and General Conformity criteria fail to accurately characterize the extent of the Project's air quality impacts. The Feasibility Report determines the Project would have no impact based solely on an evaluation of construction related emissions using the General Conformity criteria of not exceeding, in any calendar year during construction, the ozone precursors and fine particulate matter (PM2.5) *de minimis* threshold of 100 tons per year. Air District staff does not support the use of General Conformity de minimis levels as appropriate thresholds for identifying potentially significant local and regional air quality impacts. The Feasibility Report does not provide substantial evidence that Project-related emissions will not increase concentrations of PM2.5, diesel emissions, or cancer risk in local communities, including the (federally determined) EJ community of West Clawson. In addition, the Feasibility Report includes no information to support the conclusion that the Project would not result in an increase in criteria pollutants, TACs, or greenhouse gases due to the increased capacity at the Port.

Air District staff recommends that the USACE and the Port evaluate the Project's potential air quality impacts to local communities in a detailed and publicly accessible environmental analysis prepared pursuant to the California Environmental Quality Act (CEQA) and the National Environmental Protection Act (NEPA). We recommend the CEQA analysis rely on the Air District's current CEQA Air Quality Guidelines to establish thresholds, and fully evaluate the regional criteria pollutants, local risks and hazards, and greenhouse gases of the Project.

Comments on the Feasibility Report

The Feasibility Report should provide evidence to support the following aspects of the analysis:

(1) Additional information should be provided on the number and type of haul trucks that will be used during construction to substantiate the analysis. Disposal of excavated landside material, piles and debris from warehouse demolition would require approximately 31,310 truck trips during Project construction, likely adding new truck trips and associated emissions to already overburden communities.

(2) Evidence should be provided to support the statement of no change in operational emissions at the Port, including documentation to support the claim that increased navigational efficiency will not result in an increase in the number of ship calls or

throughput at the Port. Even if the number of ship calls were to remain unchanged, the Project would allow larger vessels – with different emissions profiles – to access the Port. The environmental analysis should clearly discuss the types of vessels (and the associated emissions) that could visit the Port as a result of the Project.

(3) Evidence should be provided to support the statement that increased navigational efficiency would result in a decrease in emissions from ship idling and turning maneuvers, and documentation should be provided to confirm which EJ communities could benefit from these decreased emissions.

(4) The Feasibility Report cites Appendix A-4 for documentation of the Port's Health Risk Assessment (HRA). However, Appendix A-4 only documents construction criteria pollutant emissions. To support the finding of no impact to nearby EJ communities, an HRA or similar localized health analysis must evaluate the potential increase in local risks and hazards from PM 2.5, diesel emissions, and TACs from the Project. Without this analysis, the Feasibility Report's finding of no impact cannot be substantiated.

Further Recommendations for completion of an EIS/EIR

A joint EIS/EIR should be prepared and provide evidence to support all findings, including a full evaluation of regional criteria pollutants, local risks and hazards, and greenhouse gases, and commit to all mitigations to address impacts and protect health, including but not limited to the recommendations below:

(1) Analyze construction phase emissions from all equipment, including tugboats and other marine vessels, on-road and off-road trucks, and other equipment.

(2) Analyze all potential operational phase emissions, including any changes in emissions due to changes in vessel activity during ship calls, changes in types of vessels calling at the Port, increased ship calls, and any increased use of off-road equipment and on-road truck trips.

(3) Complete an HRA to evaluate the potential increase in local emissions and exposure to PM2.5 and TACs from construction and operational phases of the Project in federally identified EJ communities, the entire community of West Oakland as described in the WOCAP, and any additional overburdened communities that may be impacted by travel to and from the Project site, such as Martinez, Bay Point, and Pittsburg.

(4) Complete an analysis of air quality impacts of the Project's operational phase, including a cumulative analysis that considers all reasonability foreseeable projects with the potential to further burden West Oakland with exposure to emissions, such as the Eagle Rock Aggregate Project and the Oakland Waterfront Ballpark District Project.

(5) Implement mitigation measures and/or Project alternatives to reduce emissions and local community health risk from the construction and operational phases, including selecting and enforcing truck routes, requiring use of zero-emission on-road trucks and off-road construction equipment, and implementing other strategies to reduce exposure consistent with the WOCAP.

(6) Demonstrate the Project is consistent with the WOCAP per the California Environmental Quality Act (CEQA) Guidelines, Appendix G, https://opr.ca.gov/ceqa/guidelines/. The analysis should discuss how the Project supports the WOCAP goals and targets; identify which WOCAP strategies are incorporated into the Project, and justify the reasons, supported by substantial evidence, any strategies are not incorporated; and demonstrate that the Project would not cause disruption, delay, or otherwise hinder implementation of any WOCAP strategies.

Air District staff is available to assist the USACE and Port in addressing these comments and to assist during the EIS/EIR development process. If you have questions or would like to discuss Air District recommendations, please contact Alison Kirk, Assistant Manager, at akirk@baaqmd.gov.

Sincerely,

Greg Nudd
Deputy Air Pollution Control Officer

Cc: BAAQMD Director John J. Bauters
BAAQMD Director Pauline Russo Cutter
BAAQMD Director David Haubert
BAAQMD Director Nate Miley
Stanley Armstrong, California Air Resources Board
Brian Beveridge, West Oakland Environmental Indicators Project
Connell Dunning, U.S. EPA Region 9
Ms. Margaret Gordon, West Oakland Environmental Indicators Project
Danny Wan, Port of Oakland

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San Francisco Bay Conservation and Development Commission

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

State of California | Gavin Newsom – Governor | info@bcdc.ca.gov | www.bcdc.ca.gov

July 5, 2022

Via Electronic Mail Only: Turningbasins@portoakland.com

Jan Novak
Environmental Programs and Planning Division
530 Water Street
Oakland, CA 94607

Governor's Office of Planning & Research

Jul 5 2022

STATE CLEARINGHOUSE

SUBJECT: Notice of Preparation of a Draft Environmental Impact Report for the Oakland Harbor Turning Basins Widening Project; SCH #2022050647

Dear Mr. Novak,

Thank you for the opportunity to comment on the Notice of Preparation (NOP) of a Draft Environmental Impact Report (DEIR) for the proposed Oakland Harbor Turning Basins Widening Project at the Port of Oakland (Port) in Oakland, California, dated May 31, 2022, and received via email on May 31, 2022. The purpose of the Port's proposed action is to increase the width of the Inner Harbor Turning Basin (IHTB) and Outer Harbor Turning Basin (OHTB) to allow vessels that are 1,310 feet in length with a 19,000 TEU (20-foot equivalent) capacity, to turn around more efficiently. Given that enlarging the turning basins will enable larger ships to call on the Port more frequently, which may significantly affect the quality of the human and aquatic environment, the cumulative impacts of the proposed project on human and aquatic health should be carefully assessed in the DEIR and the DEIR should also describe how the Port intends to manage the additional cargo throughput and additional container storage.

The San Francisco Bay Conservation and Development Commission (BCDC) is a responsible agency for this project and will rely on the DEIR when it considers the project. While the description of the project in the NOP is not 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 DEIR and/or through the BCDC permitting process. The Commission itself has not reviewed the NOP; the following comments are based on BCDC staff review of the NOP and the McAteer-Petris Act and the San Francisco Bay Plan (Bay Plan).

Commission Jurisdiction.
The project site indicated in the NOP is within BCDC permitting jurisdiction. Per the McAteer-Petris Act, BCDC is responsible for granting or denying permits for any proposed fill; extraction of materials; or substantial changes in use of any water, land, or structure within the

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Commission's jurisdiction (California Government Code [CGC] Section 66632). Based on the NOP's 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 (land lying below mean low tide) (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]).

As the proposed project includes a change in use on the project site and in the Bay, and portions of the project site may be located within the 100-foot shoreline band, the project would require a major permit from the Commission. Approval of a BCDC permit will require consistency with the McAteer-Petris Act and the Bay Plan. The DEIR 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, where applicable. We look forward to reviewing the Port's permit application for the proposed project.

Commission Law and Bay Plan Policies Relevant to the Project. The following list of laws and policies are applicable to this project, but may not include all applicable policies. We recommend you review the McAteer Petris Act and the Bay Plan and consider the needs for analysis related to this law and plan when developing the DEIR.

1. **Bay Fill.** Section 66605 of the McAteer-Petris Act states that fill in San Francisco Bay should "only be authorized when": (1) the public benefits from the fill clearly exceed the public detriment from the loss of water area and should be limited to water-oriented uses (such as ports, water-related industry, airports, bridges, wildlife refuges, water-oriented recreation and public assembly) ... or minor fill for improving shoreline appearance or public access to the Bay; (2) no upland alternative location is available for the project purpose; (3) the fill is the minimum amount necessary to achieve the purpose of the fill; (4) the nature, location and extent of any fill will minimize harmful effects to the Bay; and (5) the fill should be constructed in accordance with sound safety standards (See Safety of Fills Section below). It appears from the NOP that a new bulkhead would be installed in San Francisco Bay as part of the project. Thus, the DEIR should indicate any locations of new fill, the proposed method of fill, the approximate volume and surface area of the Bay to be filled, as well as the uses associated with the proposed new fill for each specific area.
2. **Fish, Other Aquatic Organisms and Wildlife.** The policies in this Bay Plan section address the benefits of fish, other aquatic organisms and wildlife, and the importance of protecting the Bay's subtidal habitats, native, threatened, or endangered species, and species that are candidates for listing as endangered or threatened. Policy No. 1 requires that the Bay's subtidal habitats are to be conserved, restored and increased "to the greatest extent feasible." The DEIR should address how the construction and use of the proposed project would meet these policies and avoid or minimize impacts to special-status species and

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habitat in the Bay. Please also provide a detailed analysis of the potential impacts to fish and wildlife that may result from the additional number of ultra large container vessels anticipated to be transiting through the Bay to and from the Port.

3. **Water Quality and Dredging.** Per Water Quality Policy 1 and Dredging Policy 2 of the Bay Plan, Bay water pollution should be prevented to the greatest extent feasible and sediment to be dredged must meet the water quality requirements of the San Francisco Bay Regional Water Quality Control Board. Sediments proposed for dredging should be sampled and sediment quality tested based on the recommendations of the Dredged Material Management Office (DMMO), in order to ensure that dredged sediments meet the water quality requirements for placement. Therefore, the DMMO should review the sampling and analysis plan and testing results as part of the normal sediment suitability determination process.

   Dredging Policy 3 and 4 together require that in Bay disposal is reduced and beneficial reuse of dredged sediment is maximized. Furthermore, sediment dredged during this widening project is considered new work dredging (see Subtidal Areas Section below), which necessitates placement at a beneficial reuse site in alignment with the LTMS program. To meet these policies, please clarify how the project intends to maximize beneficial reuse of dredged sediment.

   Furthermore, Dredging Policy 9 states that, “to protect underground freshwater reservoirs (aquifers): (a) all proposals for dredging or construction work that could penetrate the mud "cover" should be reviewed by the San Francisco Bay Regional Water Quality Control Board and the State Department of Water Resources; and (b) dredging or construction work should not be permitted that might reasonably be expected to damage an underground water reservoir. Applicants requesting permission to dredge should provide additional data on groundwater conditions in the area of construction to the extent necessary and reasonable in relation to the proposed project.” Therefore, please provide data on groundwater conditions within and near the action area so that we can confirm the project will not damage any aquifers.

4. **Subtidal Areas.** Subtidal Areas Policy 1 states, “Any proposed filling or dredging project in a subtidal area should be thoroughly evaluated to determine the local and Bay-wide effects of the project on: (a) the possible introduction or spread of invasive species; (b) tidal hydrology and sediment movement; (c) fish, other aquatic organisms and wildlife; (d) aquatic plants; and (e) the Bay's bathymetry. Projects in subtidal areas should be designed to minimize and, if feasible, avoid any harmful effects.” The proposed project involves new work dredging of subtidal habitat that has not been subject to dredging in the recent past. Therefore, the benthic community is considered to be relatively undisturbed and well-developed in these areas. The DEIR should evaluate the new-work dredging impacts to subtidal habitat and provide mitigation for such impacts.

5. **Environmental Justice and Social Equity**. In 2019, the Commission adopted a Bay Plan Amendment to include Environmental Justice and Social Equity polices and is committed to eliminating disproportionate adverse economic, environmental, and social project impacts caused by Commission approvals, actions and activities, particularly in disadvantaged and

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vulnerable communities. As outlined in Policy 3, project applicants should meaningfully "involve potentially impacted communities for major projects … in underrepresented and/or identified vulnerable and/or disadvantaged communities, and such outreach and engagement should continue throughout the Commission review and permitting processes."

As, you're aware, the Port of Oakland is immediately adjacent to West Oakland, a community of approximately 25,000 people. West Oakland is considered a vulnerable community, and the residents face a disproportionate pollution burden that leads to negative health impacts. The Port, which moves the fourth highest international container volume in the U.S., is one of the reasons the community of West Oakland is overburdened by pollution. As such, the Commission is committed to ensuring the West Oakland community participates in the planning of this project to ensure their concerns are addressed and incorporated.

Air Quality. As you may be aware, West Oakland has higher rates of asthma, cardiovascular disease and premature death compared to the rest of Alameda County, which is an environmental justice issue. According to a 2019 *Owning Our Air* report by WOEIP and the Bay Area Air Quality Management District (BAAQMD), West Oakland is home to the highest levels of diesel particulate matter in the Bay Area and has higher concentrations of air pollutants like black carbon, NO and NO2. Neighborhoods near the Port and Seventh Street experience three times the cancer risk from local pollution sources compared to neighborhoods farther away. The 2019 report also states that, "about 33 percent of diesel particulate matter comes from ocean-going vessels associated with the Port." The DEIR should evaluate the anticipated cumulative increase in emissions the Bay Area could experience as a result of more ultra large container vessels transiting through the Bay in addition to the increase in emissions from larger ships idling within the Port. The DEIR should also assess the impacts of additional truck parking and idling, increased traffic, and resulting air quality impacts on adjacent and vulnerable communities that would occur as a result of this project.

The Commission's Environmental Justice and Social Equity Policy 4 states "if 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." Please discuss how the contaminated sediment issue will be address in relationship to vulnerable communities that may be impacted by the dredging or disposal of contaminated sediments.

As noted in Environmental Justice and Social Equity Policy 3, evidence of how community concerns were addressed should be provided to Commission staff, and per Environmental Justice and Social Equity Policy 2, Commission staff will continue to review the community engagement work conducted by the Port and provide feedback to ensure the engagement work is in alignment with these policies.

6. **Climate Change**. Climate Change policies in the Bay Plan include requirements that planning for shoreline areas or larger shoreline projects should include preparation of a risk assessment by a qualified engineer that takes into account "the best estimates of future sea

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level rise" and current and planned flood protection (Policy 2); that within areas determined through a risk assessment to be "vulnerable to future shoreline flooding that threatens public safety, all projects… should be designed to be resilient to a mid-century sea level rise projection" (Policy 3); and that if a proposed project is likely to remain in place longer than mid-century, "an adaptive management plan should be developed to address long-term impacts… using the best available science-based projection for sea level rise at the end of the century" (Policy 3). As of September 2019, the best available science-based projections for sea level rise were found in the State of California's 2018 Sea-Level Rise Guidance, available at: http://www.opc.ca.gov/webmaster/ftp/pdf/agenda_items/20180314/Item3_Exhibit-A_OPC_SLR_Guidance-rd3.pdf.

7. **Safety of Fills**. According to the Bay Plan Dredging Policy 7, all proposed channels, berths, turning basins, and other dredging projects should be carefully designed so as not to undermine the stability of any adjacent dikes, fills or fish and wildlife habitats. The proposed expansion of the IHTB involves removal of terrestrial and aquatic sediment, which could impact the stability of adjacent fills and habitats, and therefore careful design is required. Per the Safety of Fills Policies 1 and 2, it is likely that any future structural engineering plans will need to be evaluated by BCDC's Engineering Criteria Review Board.

8. **Shoreline Protection.** Shoreline Protection Policy 5 states in part that, "All shoreline protection projects should evaluate the use of natural and nature-based features … and should incorporate these features to the greatest extent practicable. Therefore, the DEIR should evaluate possible modifications to the new bulkheads to include surface treatments that would provide invertebrate habitat benefitting aquatic organisms and other wildlife.

9. **Public Access and Appearance, Design, and Scenic Views.** The McAteer-Petris Act requires the Commission to ensure that any project within its jurisdiction provide maximum feasible public access to the Bay's shoreline consistent with the project." Public Access Policy 1 states in part that, "A proposed fill project should increase public access to the Bay to the maximum extent feasible." The NOP mentions that a new bulkhead would be installed and new anchor tie backs, which the Commission considers to be new Bay fill. Given that new fill in the Bay is proposed, please describe any public access features that could be provided as part of the project.

   Further, the Bay Plan's Appearance, Design, and Scenic Views Policy 5 states in part that, "to enhance the maritime atmosphere of the Bay Area, ports should be designed, whenever feasible, to permit public access and viewing of port activities by means of (a) viewpoints (e.g., piers, platforms, or towers), restaurants, etc." The DEIR should discuss whether the proposed project and associated increase in large container vessels calling on the Port would have an adverse effect on a scenic vista, and whether it would conflict with Bay Plan policies governing scenic quality. Please describe whether or not the Port plans to provide new viewing access to the waterfront or enhance any existing features to make them more accessible to the public. Understanding that public access with the Port's operational areas maybe infeasible, please describe any potential in lieu public access opportunities that may be available.

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10. **Mitigation.** Any mitigations designed as part of the proposed project and any mitigation measures included in the SEIR should be consistent with the Bay Plan's Mitigation policies. The Mitigation policies state, in part, that projects should be designed to avoid adverse environmental impacts to Bay resources, and if adverse impacts cannot be avoided, they should be minimized to the greatest extent possible. The policies also include BCDC's requirements for planning compensatory mitigation projects.

11. **Navigation Safety and Oil Spills**. We understand that the purpose of widening the turning basins is to increase navigational safety for very large containerships with a 19,000 TEU capacity. Per Navigational Safety and Oil Spill Policy 1, "Physical obstructions to safe navigation, as identified by the U.S. Coast Guard and the Harbor Safety Committee of the San Francisco Bay Region, should be removed to the maximum extent feasible when their removal would contribute to navigational safety and would not create significant adverse environmental impacts. Removal of obstructions should ensure that any detriments arising from a significant alteration of Bay habitats are clearly outweighed by the public and environmental benefits of reducing the risk to human safety or the risk of spills of hazardous materials, such as oil." Given the fact that 19,000 TEU container vessels carry 4.5 million gallons of fuel, and more of these would be coming into the Bay and calling at the Port, please explain how the risk of oil spills would be reduced and what oil spill prevention plans are in preparation.

We appreciate the opportunity to comment on the scope and contents of the DEIR. If you should have questions or concerns regarding this letter, please feel free to contact me at (415) 352-3646 or julia.kelly@bcdc.ca.gov. We look forward to working with the Port to further evaluate this proposed project.

Sincerely,

JULIA KELLY, PhD
Environmental Scientist

cc:
CA State Clearinghouse, state.clearinghouse@opr.ca.gov
West Oakland Environmental Indicators Project, Margaret.woeip@gmail.com
West Oakland Environmental Indicators Project, bbeveridge@woeip.org
Earthjustice, mghafar@earthjustice.org
Bay Area Air Quality Management District, ahsiao@baaqmd.gov
Bay Area Air Quality Management District, akirk@baaqmd.gov
US Environmental Protection Agency, Siu.Jennifer@epa.gov
US Army Corps of Engineers, OaklandHarborTurningBasinsStudy@usace.army.mil
Regional Water Quality Control Board, Kevin.Lunde@waterboards.ca.gov

JK/rc

San Francisco Bay Regional Water Quality Control Board

Sent via electronic mail: No hard copy to follow

February 7, 2022
WDID: 2 CW 433008
Place ID: 815608

Mr. Eric Jolliffe
USACE San Francisco District
450 Golden Gate Ave, 4th Floor
San Francisco CA 94102
E-mail: OaklandHarborTurningBasinsStudy@usace.army.mil

Subject: Comments on Oakland Harbor Turning Basins Widening Navigation Study Draft Integrated Feasibility Report and Environmental Assessment

Dear Mr. Jolliffe:

The San Francisco Bay Regional Water Quality Control Board (Water Board) appreciates the invitation to comment on the Draft Integrated Feasibility Report and Environmental Assessment Document with the comment period ending February 14, 2022. To date, the Water Board has participated in both the public meetings and the Regulatory Advisory Workgroup Meetings. Our previous verbal comments asked the Corps to take all suitable dredged sediment to beneficial reuse sites and we are extremely pleased that on page iv of the document's Executive Summary, the Corps commits to take all suitable material, as defined by the Dredge Material Management Office, to an approved beneficial reuse site as either cover or non-cover material. The Corps estimates approximately 1,676,000 cy of sediment will help San Francisco Bay adapt to future sea level rise resulting from climate change.

We ask that the Corps clarify whether a water quality certification (Certification) under Section 401 of the Clean Water Act (CWA) is required for this project and whether it intends to request one from the Water Board. Chapter 7, Table 57 indicates, "If applicable, a water quality certification for the project will be obtained after the feasibility phase, in the pre-construction design phase." This statement shows the Corp's is not certain if the Certification is required. However, Corps staff indicated via email on January 11, 2022, that the current plan is to not request a Certification because the project does not result in fill of federal waters. The Water Board believes a Certification is required for this project, and we ask to meet with the Corps to discuss the basis for the Corps' recent communication that no Certification is required.

This Project is subject to CWA section 402 because it will result in pollutants being discharged in stormwater during and after the project. During construction, 7.4 acres of land currently with industrial and commercial uses will be disturbed thereby creating the potential for sediment and other pollutants to be entrained in stormwater and subsequently discharged to waters of the U.S. Further, the project will make "minor, permanent alterations to upland drainage patterns at Howard Terminal." Although CWA section 402 and National Pollutant Discharge Elimination System requirements relative to stormwater are discussed in Section 3.4.1 and 6.4.1, this CWA requirement and permit step were not mentioned in Section 7 as applying to the project. Projects that disturb one or more acres of soil are required to obtain coverage under the General Permit for Discharges of Storm Water Associated with Construction Activity Construction General Permit Order 2009-0009-DWQ. This project could qualify for coverage under Statewide Construction General Permit; however, the magnitude of potential water quality impacts associated with stormwater discharges from the project may warrant an individual construction stormwater permit issued by the Water Board.

We also believe the Corps is subject to the Porter-Cologne Water Quality Control Act (Porter Cologne). The project as described is discharging or proposing to discharge waste that could affect water quality (Water Code section 13260), which triggers the requirement for a report of waste discharge. Under CWA section 313, federal agencies "engaged in any activity resulting, or which may result, in the discharge or runoff of pollutants . . . shall be subject to, and comply with, all Federal, State, interstate, and local requirements and administrative authority, and process and sanctions respecting the control and abatement of water pollution in the same manner as any nongovernmental entity." (33 U.S.C. § 1323.) The Water Board intends to issue waste discharge requirements (WDRs) for this project. WDRs may be sought in a combined application for a Certification.

The Port of Oakland as described in section Chapter 8 is the local sponsor for the project. The local sponsor is responsible for funding 50 percent of the project design and 50 percent of project construction. In addition, the Port is the landowner for the affected land and according to information provided at the January 12, 2022, public meeting, is responsible for following requirements of California Environmental Quality Act (CEQA). Because of the above, we have determined that the Port of Oakland is a co-project proponent for the project and is also subject to both CWA and Porter Cologne. Therefore, the Port of Oakland shall co-apply with the Corps to receive Certification, NPDES permit, and WDRs for the project. These permits will ensure that best management practices are implemented to prevent spills and leaks of fuel, oil, soil, sediment, and other pollutants during the excavation, dredging, and transport of soil and sediment.

Should you have questions or concern, please send Kevin Lunde, of my staff, an email at Kevin.Lunde@waterbaords.ca.gov.

Sincerely,

Xavier Fernandez
Planning Division Manager

cc (via email):
BCDC, San Francisco, CA (Brenda Goeden, Brenda.Goeden@bcdc.ca.gov / Pascale Soumoy, Pascale.Soumoy@bcdc.ca.gov / Julia Kelly, Julia.Kelly@bcdc.ca.gov)
CSLC, Sacramento, CA (Dobri Tutov, Dobri.Tutov@slc.ca.gov)
CDFW, Santa Rosa, CA (Arn Aarreberg, Arn.Aarreberg@wildlife.ca.gov)
CDFW, Fairfield, CA (Garrett Allen, Garrett.Allen@wildlife.ca.gov)
USACE, San Francisco, CA (Jessica Vargas, Jessica.M. Vargas@usace.army.mil / Tessa Beach, Tessa.E.Bernhardt@usace.army.mil / Thomas Kendall, Thomas.R.Kendall@usace.army.mil)
USEPA, San Francisco, CA (Jennifer Siu, Siu.Jennifer@epa.gov)
Water Board, Oakland, CA (Thomas Mumley, Thomas.Mumley@waterboards.ca.gov)

SheppardMullin

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June 30, 2022

File Number: 81MF-344750

VIA EMAIL AND U.S. MAIL

Port of Oakland
Environmental Programs and Planning Division
530 Water Street
Oakland, CA 94607
Attn: Jan Novak
Email: turningbasins@portoakland.com

Re: Notice of Preparation of a Draft Environmental Impact Report dated May 31, 2022 ("NOP") - Oakland Harbor Turning Basins Widening Project ("Project")

Dear Mr. Novak:

On behalf of Bay Ship and Yacht Co. ("Bay Ship") and Alameda Commercial Properties, LLC ("ACP"), we appreciate the opportunity to offer these comments on the scope and content of the Draft EIR.

Bay Ship and ACP continue to support the Port of Oakland's (the "Port") and US Army Corps of Engineers ("Corps") efforts to maintain, modernize and improve the two turning basins for the benefit of the community, and we appreciate the Port's careful approach in proceeding with the Draft EIR. Regarding the scope and content of the Draft EIR, we offer the following comments concerning the Inner Harbor Turning Basin ("Turning Basin") portion of the Project. Our comments are largely limited to certain specifics of the Project that the EIR will study.

1. BAY SHIP IS A SIGNIFICANT CONTRIBUTOR TO THE PORT AND THE BAY AREA.

Bay Ship operates a shipyard providing a full range of refit and repair services for commercial, government and private vessels at 2900 Main Street, in Alameda, California. Its shipyard immediately adjoins the existing Turning Basin – an existing bulkhead of the Turning Basin forms the shipyard's shoreline. Bay Ship moors the vessels it is repairing to this bulkhead. (An aerial photograph of the shipyard is attached as Exhibit A.) Bay Ship employs 350-400 people. Bay Ship's operations support the missions of national defense and homeland security, water emergency preparedness, and not least, the support vessels essential to a thriving Port. Bay Ship is the only shipyard in the region with the capacity to provide 24/7 emergency service, such as in a major earthquake when bridges may be unusable. Bay Ship's tenant, Marine Express, also provides important services to Port vessels and the working waterfront. More information on Bay Ship is available at its website, www.bay-ship.com.

ACP owns a substantial portion of the shipyard's land and the submerged lands offshore beneath the Turning Basin. ACP is under common ownership with Bay Ship.

2. THE DRAFT EIR SHOULD SPECIFICALLY IDENTIFY THE LOCATION AND EXTENT OF THE PROJECT'S NORTHEASTLY SHIFT.

Bay Ship appreciates the slight northeasterly shift of the Project recommended by the Port's Executive Director, Danny Wan, in his June 3, 2022 letter to the Corps, and confirmed by Justin Taschek, the Port's Senior Maritime Projects Administrator, at the June 14, 2022 virtual public scoping meeting. This slight northeasterly shift, properly implemented, is a key step towards enabling Bay Ship to continue its vital ship repair function and remain in business.

While the northeasterly shift is very welcome, the Draft EIR should specifically identify the revised location of the Turning Basin that includes this northeasterly shift, including the shift's extent. We also request that the Draft EIR do this at a scale and in sufficient detail that its interaction with Bay Ship and the remainder of the Alameda shoreline can be seen and understood at least as well as they can be seen on the attached Exhibit A to this letter.

Exhibit A below shows the impact to Bay Ship from the previous project proposal and how the northeast shift (the "Equitable Basin") can reduce this impact. Exhibit B further shows how the northeasterly shift to the Equitable Basin minimizes the impact to Bay Ship. Larger and more readable versions of these exhibits are attached at the end of this letter.

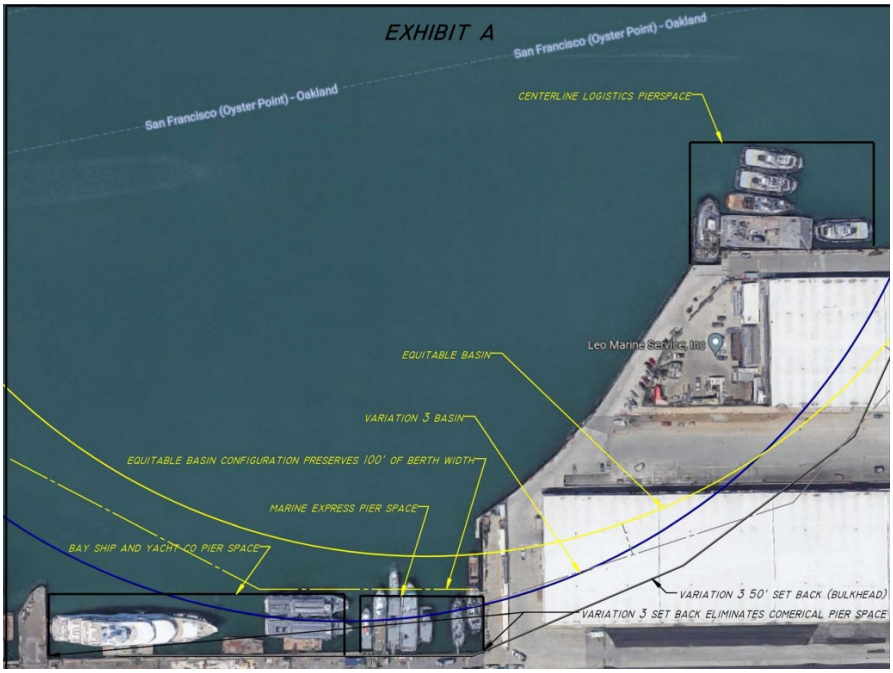
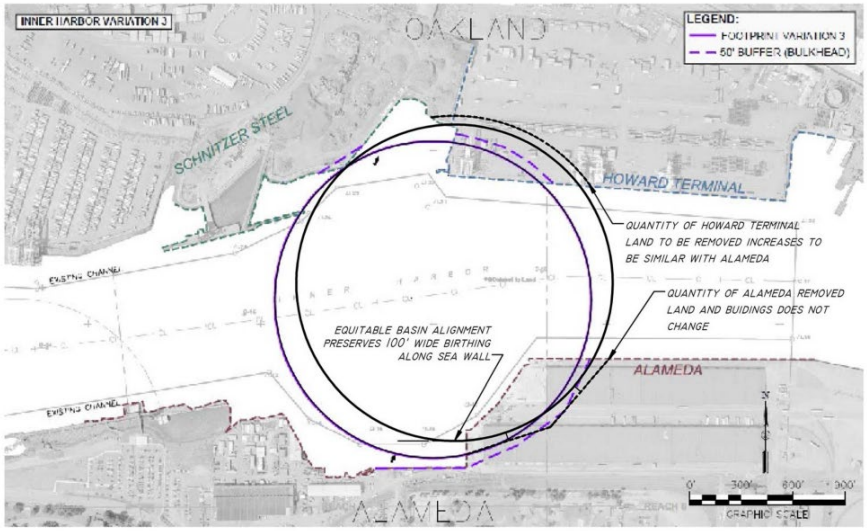


EXHIBIT B



3. **<u>THE DRAFT EIR SHOULD SPECIFICALLY IDENTIFY THE LOCATION AND TIMING OF CONSTRUCTION STAGING.</u>**

The Draft EIR should specifically identity the locations of the construction staging areas on land, their size, their parking for equipment and workers, and their duration. Also, the Draft EIR should identify the locations, duration, and timing of the staging and mooring of dredging and support vessels and equipment during construction, together with the provision that will be made for vessels transiting the Turning Basin to or from Bay Ship.

The Port's May 31, 2022 Notice of Preparation ("NOP") states that "construction staging for the IHTB improvements would occur . . . on the Alameda shoreline, immediately adjacent to excavation areas." While this provides some guidance as to the location of the staging, the precise location and timing need to be more specifically identified. This is necessary so that the affected parties, including Bay Ship and Marine Express which are on the Alameda shoreline, can identify to what extent their businesses will be impacted by this staging.

Significantly, the NOP indicates an expected construction duration of 2.5 years. Depending on the phasing and the area taken for construction staging, the Project may disrupt Bay Ship's ability to conduct its business for extended periods of time. The Project's construction could literally put Bay Ship and other Alameda companies out of business altogether if it were to interfere in a major way with their operations during construction, and thereby cost Bay Ship's 350-400 employees their jobs.

Bay Ship accordingly requests that the staging areas be in locations that will not interrupt its business operations. Bay Ship, as a supporter of the Turning Basins Project, would welcome the opportunity to work constructively and directly with the Port to reduce the construction and

Project impacts in a way that satisfies the Port's objectives. As a long-time business at its present location, Bay Ship may be able to offer suggestions, ideas, and help.

4. **THE DRAFT EIR SHOULD IDENTIFY THE EXISTING BULKHEADS THAT WILL BE DEMOLISHED, THE LAND AREAS THAT WILL BE EXCAVATED AND THE NEW BULKHEADS THAT WILL BE CONSTRUCTED, AND THE DURATION AND TIMING OF EACH.**

The NOP indicates that some existing bulkheads will be demolished, the land behind them excavated further inland to an undefined extent, and new bulkheads constructed further inland. (NOP, p.4, 2d para., "Other improvements would include ….") It does not say which existing bulkheads will be removed, nor what new bulkheads will be constructed. The Draft EIR should specifically identify which existing bulkheads will be demolished, the land area to be excavated behind them, the location, size, and tie backs of the new bulkheads that will replace them, and the duration and timing of the demolition, excavation, and construction. It should also identify whether these activities will in any way interfere with the business operations of Bay Ship and other Alameda shoreline businesses and identify the new bulkheads that will be constructed on the Alameda shoreline.

Bay Ship's yard has an existing bulkhead along its shoreline that faces the southern border of the existing Turning Basin. It is shown on Exhibit A. The demolition and removal of this existing bulkhead, followed by excavation behind it landward, and then construction of the new bulkhead, will permanently take a significant part of Bay Ship's fully improved shipyard. Moreover, the area required for construction will likely be greater than the area taken, since land access will probably be needed to construct these massive steel and concrete structures.

Hopefully, the northeast shift of the Turning Basin will avoid any need to remove this existing bulkhead. If so, this will provide the Corps and Port with major savings and also help the Corps' cost-benefit ratio. If, somehow, the existing bulkhead at Bay Ship is planned for demolition, Bay Ship requests that this be reconsidered and avoided if at all possible. Again, Bay Ship would welcome the opportunity to work constructively and directly with the Port and Corps to reduce the construction and Project impacts.

5. **THE CORPS SHOULD ADDRESS HOW THE PROJECT WILL IMPACT LOCAL BUSINESSES**.

The Corps' draft Integrated Feasibility Study and its cost-benefit ratio should include the Project's adverse impacts to local businesses such as Bay Ship, both on and off the water. The Project may disrupt Bay Ship's ability (and that of other businesses) to conduct its business for extended periods of time. This risk is particularly high during the Project's construction, when (as noted above) the Project could literally put Bay Ship and other Alameda companies out of business altogether if it were to interfere in a major way with their operations during construction.

The Integrated Feasibility Study should also include a detailed description and rendering of the widened Inner Harbor Turning Basin. Without this, it will be impossible to comprehensively

assess potential adverse impacts to local businesses such as Bay Ship or to other operations within the community. The economic impacts of the Project must be properly analyzed by the Corps, and this cannot be done without an analysis of the potential impacts on local businesses such as Bay Ship.

6. CONCLUSION.

We hope that the Port will carefully consider the above comments in the preparation of the Draft EIR and fully involve Bay Ship in future discussions, and that the Corps will consider them in its revision of its Integrated Feasibility Study. Bay Ship and ACP appreciate the Project's slight northeast shift and would welcome the opportunity to work constructively and directly with the Port to reduce the construction and Project impacts in a way that satisfies the Port's objectives.

Very truly yours,

Sean P. O'Connor

Sean P. O'Connor
SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

Attachments (Exhibits A & B)

cc: Alan Cameron, General Manager, Bay Ship & Yacht Co.
Justin Taschek, Senior Maritime Projects Administrator Port of Oakland

SMRH:4861-2679-3766.4

EXHIBIT A

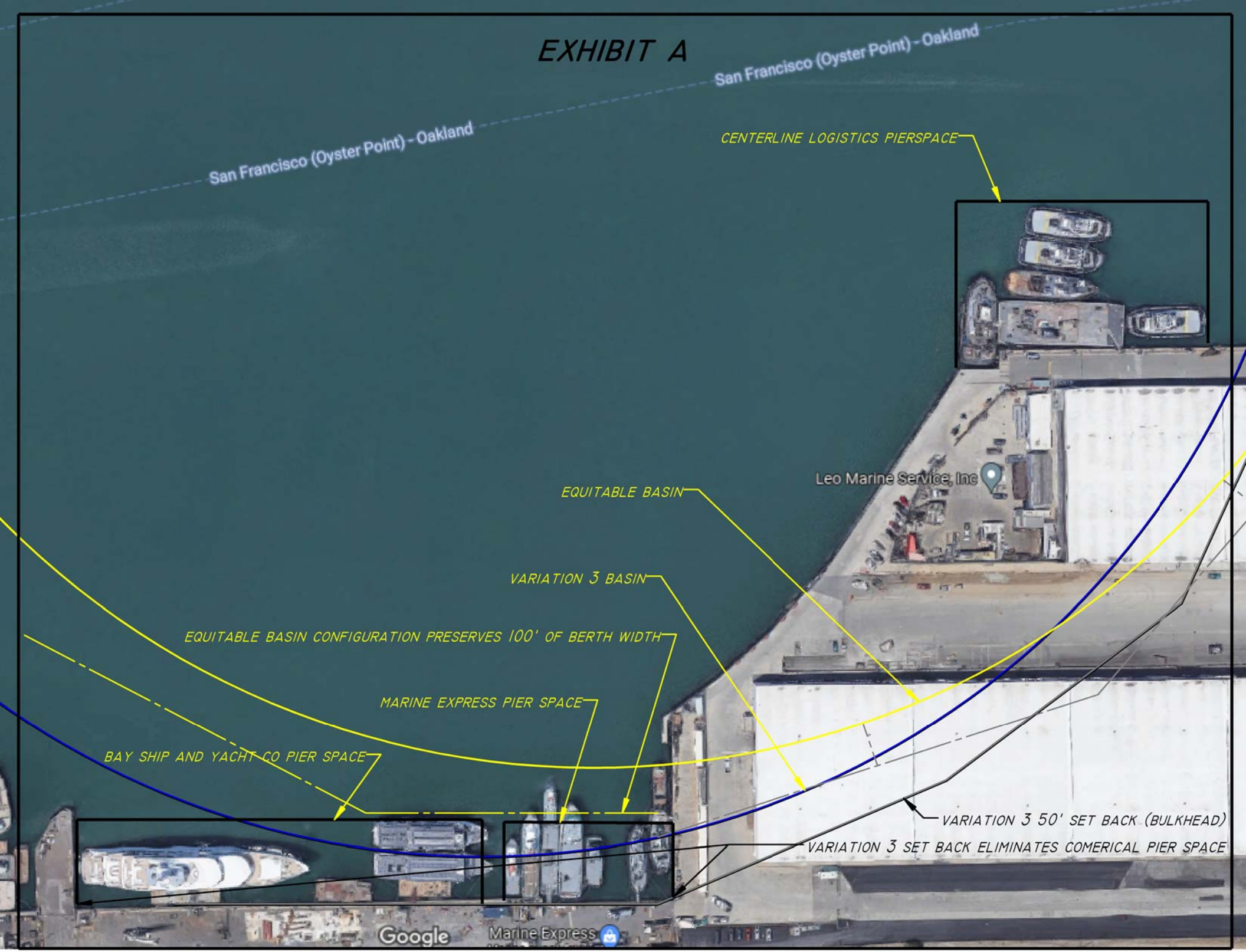
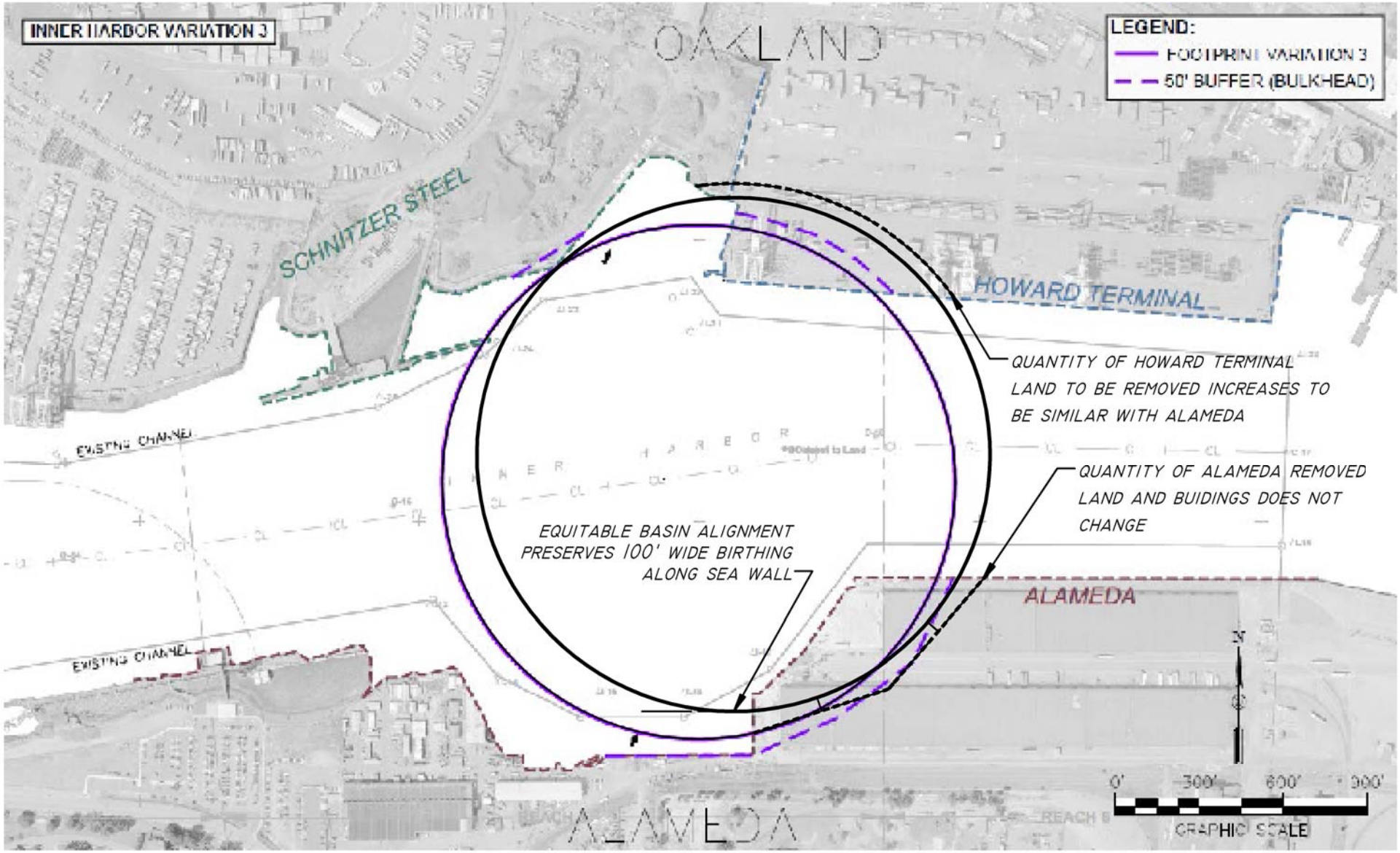

San Francisco (Oyster Point) - Oakland
San Francisco (Oyster Point) - Oakland
CENTERLINE LOGISTICS PIERSPACE
Leo Marine Service, Inc
EQUITABLE BASIN
VARIATION 3 BASIN
EQUITABLE BASIN CONFIGURATION PRESERVES 100' OF BERTH WIDTH
MARINE EXPRESS PIER SPACE
BAY SHIP AND YACHT CO PIER SPACE
VARIATION 3 50' SET BACK (BULKHEAD)
VARIATION 3 SET BACK ELIMINATES COMERICAL PIER SPACE
Google
Marine Express

EXHIBIT B


INNER HARBOR VARIATION 3
LEGEND:
FOOTPRINT VARIATION 3
50' BUFFER (BULKHEAD)
OAKLAND
SCHNITZER STEEL
HOWARD TERMINAL
QUANTITY OF HOWARD TERMINAL LAND TO BE REMOVED INCREASES TO BE SIMILAR WITH ALAMEDA
QUANTITY OF ALAMEDA REMOVED LAND AND BUIDINGS DOES NOT CHANGE
EQUITABLE BASIN ALIGNMENT PRESERVES 100' WIDE BIRTHING ALONG SEA WALL
ALAMEDA
EXISTING CHANNEL
EXISTING CHANNEL
N
0'
300'
600'
900'
GRAPHIC SCALE
ALAMEDA

PACIFIC MERCHANT SHIPPING ASSOCIATION

July 5, 2022

Port of Oakland
530 Water St.
Oakland, CA 94607
Attn: Environmental Programs and Planning Division
c/o Jan Novak
Delivered via email to: turningbasins@portoakland.com

Re: Oakland Harbor Turning Basins Widening Project –
Notice of Preparation of Draft Environmental Impact Report (NOP)

On behalf of the members of the Pacific Merchant Shipping Association (PMSA), we respectfully offer these comments on the Notice of Preparation (NOP) for the Draft Environmental Impact Report (DEIR) for the Oakland Harbor Turning Basins Widening Project.

The Turning Basin widening project will significantly enhance navigational safety and reduce the risk of maritime casualties, increase efficiency, promote economic growth within existing infrastructure thresholds, will improve the environment by reducing actual emissions and the rate of growth of emissions per container, and reduce GHG emissions by avoiding cargo diversion.

PMSA represents ocean carriers, marine terminal operators, and various other maritime interests which conduct business on the U.S. West Coast, including at the Port of Oakland. All of the Port of Oakland's current Marine Terminal Operator tenants, as well as the overwhelming majority of the ocean carriers calling at these terminals, are members of and represented by PMSA. As an association, PMSA is headquartered in Oakland and proud to call the Port of Oakland our home.

PMSA has reviewed the NOP for the Project and offers these substantive comments with respect to the environmental impacts subject to analysis in this process. These comments are supplemental to our February 14, 2022 letter to the US Army Corps of Engineers regarding the Draft IFR/EA on the Oakland Harbor Turning Basins Widening Navigation Study, which is hereby incorporated by reference.

The existing channel and turning basins were designed for panamax-era container vessels which were state of the art 25 years ago – and which have a carrying capacity roughly 1/3 the capacity of today's ultra-large container vessels. While larger ships have been able to be accommodated, these vessels are not operating at maximum efficiency and have little to no margin for error upon their approach or departure within the turning basin. These current limitations on the Port of Oakland stem directly from the size and dimensions of the current turning basins, not from the balance of the channels which continue to be maintained at the depths authorized by the -50 Foot Project.

The Environmental Impact Report for the proposed Turning Basins Project should consider all of the following in order to accurately and completely assess potential significant impacts and mitigation measures related to this project:

- The environmental benefits of lowering emissions per ton and emissions per container are endemic to the usage of larger and more efficient vessels. Larger vessels are also the newest vessels which are more likely to have newer tier engines, alternative-fueled engines, and overall lower environmental impacts. And, most importantly, the use of larger vessels requires that fewer vessels will be required to call upon Oakland in order to move cargo, and this tautology is applicable no matter which cargo volumes are forecast or used as a baseline for the CEQA analysis. This should be reflected in both the evaluation and analysis of the project benefits directly and in the "No Project Alternative."

  To that end, the "No Project Alternative" must clearly delineate that without the turning basin expansion project that more vessel traffic will be required in order to accommodate the same cargo volume, that emissions per TEU are higher for smaller ships than they are for larger ships, and that this is true on a per container basis but also in part due to fewer vessel trips. More vessel traffic in a "No Project Alternative" also increases safety issues and safety risks while increasing emissions.

- The USACOE Draft IFR/EA on the Turning Basins Project recommended the selection of Alternative D-2 which requires the utilization of electric dredges in order to reduce the potential cumulative impacts of additional diesel particulate matter on the surrounding community. As you may be aware, every component of the intermodal supply chain at California ports has been successfully employing aggressive measures for many years in an effort to significantly reduce the emissions of diesel emissions and improve air quality in the communities and regions surrounding our freight hubs. These include significant investments and remarkable progress made by ocean-going vessels and marine terminal operators. We welcome the project joining in these efforts and ensuring that the additional emissions associated with the turning basin expansions are truly "minor" as identified in the report.

- Enhancement of the competitiveness of the Port of Oakland is critical to its ongoing success. Competitiveness for import growth is imperative for the Port's future, otherwise it cannot grow its revenues, which in turn support and maintain its commitment to an environmental improvement program which requires accelerated investments in non-revenue infrastructure and equipment. In short, if the Port of Oakland can no longer physically accommodate the largest vessels plying the Pacific trade lanes, it will suffer from less access to vessel traffic and a significant limitation on the Port's ability to grow both its volumes and revenues, which will in turn starve its ability to fund its laudable but aggressive environmental commitments and goals, including those included in its "2020 and Beyond" planning efforts.

- All EIR analyses should acknowledge that vessel movements and subsequent container movements are separate and distinct from one another. The latter in the case of the movement of containers facilitated by the expansion of the turning basin are limited by marine terminal capacity and throughput parameters. To the extent that the movement of containers off of a

vessel and then through the Port ecosystem and infrastructure is facilitated, it is facilitated by a marine terminal and not by an ocean-going vessel. These activities are already accounted for under CEQA under the environmental clearances adopted by the Port of Oakland at the time of the construction, lease, or other project related to the Port's marine terminals.

- Likewise, the project EIR should evaluate the potential impacts within the existing CEQA-clearance baseline for marine terminals. To the extent that one is to measure or evaluate the potential environmental impacts of the volume of containers on a vessel as a result of the turning basin expansion, that would be an appropriate analysis for this EIR, and not duplicative of the environmental clearance already provided to a marine terminal providing services to a vessel. And, on the other hand, to the extent that one is to measure or evaluate the potential environmental impacts of how a marine terminal handles the volume of containers offloaded from a vessel, that would not be an appropriate analysis for this EIR, because the marine terminals have already been environmentally cleared for providing this service and the volumes to be handled at those facilities are already accounted for within those approvals.

- The inability to accommodate vessels at the Port of Oakland may result in diversion which would also lead to increased levels of greenhouse gas emissions system wide. Ocean-going vessels are the most environmentally-friendly means of moving cargo as they have the smallest greenhouse gas (GHG) emissions footprint of any transportation mode. Because California ports are primary cargo gateways for Asian cargo, the transportation of cargo by ship from the US West Coast to and from Asia is the most optimal way to conduct trade per ton of cargo relative to greenhouse gas emissions. PMSA commissioned a study to evaluate the relative impacts of cargo diversion on GHG emissions, and the result was that GHG emissions were an average of 22% higher when shippers bypassed a California port for an East Coast or Gulf Coast port. (See attached) There is simply no question that if projects like the turning basin expansion do not go forward to facilitate the most efficient and beneficial use of the cleanest vessels in the trade lanes with the shortest distances, that the resulting impact of the associated diversion of this cargo will be higher GHG emissions.

- Regarding the potential Oakland Waterfront Ballpark District at Howard Terminal, PMSA is concerned that this project poses very real and significant risks to the Oakland Turning Basins Widening Project. In addition, PMSA along with other maritime community stakeholders is currently litigating the question of the adequacy of the environmental documents for this proposed project. Some of the questions and issues in that litigation are related to and derivative of the interaction of the Howard Terminal development project with the Oakland Turning Basins Widening Project. PMSA reserves all rights to further address the interaction of these projects both pending the development of this EIR and in relation to the pendency of ongoing litigation and development of further entitlements for the Howard Terminal project which may encroach, limit, or prohibit further expansion of the Inner Harbor Turning Basin.

In sum, the Environmental Impact Report for the turning basins expansion project in both the Inner and Outer Harbors should describe the project as one which will facilitate safety, accessibility, and reductions in emissions per unit of cargo by allowing for the newest and most advanced vessels which are in ocean carriers' Pacific Ocean strings to call on the Port of Oakland.

Given the intensity, scale, and location of the project, PMSA agrees with the NOP's conclusion that a full EIR will likely be required for this project. We observe that while the NOP notes that this determination has been made, no Initial Study documentation is referenced or included on the Project website (https://www.oaklandseaport.com/oakland-harbor-turning-basins-widening-navigation-study/). While there is no legal requirement to conduct an Initial Study if a lead agency affirmatively concludes that a full EIR preparation will be necessary for a project, the completion of an Initial Study may still be advisable for a myriad of good planning reasons. 14 CCR §15063 ("If the lead agency can determine that an EIR will clearly be required for the project, an initial study is not required but may still be desirable."), see Initial Study "Purposes," at 14 CCR §15063(c)). To this end, PMSA believes that it would be appropriate and encouraged for the Port to affirmatively state in its preparation documents the bases upon which it has chosen not to pursue an Initial Study for this project. Moreover, PMSA would encourage an affirmative statement that the Port is relying on the US Army Corps' Draft IFR/EA on the Oakland Harbor Turning Basins Widening Navigation Study as an initial guidance document for this determination pursuant to 14 CCR §15063(a)(2) ("… the lead agency may use an environmental assessment or a similar analysis prepared pursuant to the National Environmental Policy Act.")

Thank you for affording PMSA the opportunity to comment on this important project to improve the safety, economic vitality, and environmental footprint of vessel operations represented by the expansions of the Inner Harbor and Outer Harbor turning basins.

Sincerely,

Mike Jacob
Vice President & General Counsel