

December 21, 2020

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Environmental Programs and Planning Division
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Submitted via email: kchuop@portoakland.com

Dear Khamly Chuop:

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

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

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

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

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

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

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

a. Senate Bill 535 (De León, 2012)

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

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

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

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

b. Senate Bill 1000 (Leyva, 2016)

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

c. Assembly Bill 617 (Garcia, 2017)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

V. Conclusion

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

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

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CARB appreciates the opportunity to comment on the DSEIR for the Project and can provide assistance on zero-emission technologies and emission reduction strategies, as needed. If you have questions, please contact Stanley Armstrong, Air Pollution Specialist, at stanley.armstrong@arb.ca.gov.

Sincerely,

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

Heather Arias, Chief
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cc: See next page.

cc: (via email)

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