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

RE: Notice of Preparation of a Draft Supplemental Environmental Impact Report for the
Eagle Rock Aggregates Oakland Terminal Project (SCH #2001082058)

Dear Ms. Mukai:

The California Attorney General's Office has reviewed the Notice of Preparation of a Draft Supplemental Environmental Impact Report (DSEIR) for the Eagle Rock Aggregates Oakland Terminal Project (the Project).¹ The Notice of Preparation indicates that the Port of Oakland seeks comments regarding the scope and content of the DSEIR for the Project. The Project would construct a bulk marine terminal at the former Oakland Army Base that would receive up to 2,500,000 tons of construction aggregates each year and store up to 250,000 tons of aggregates in 25-foot high stockpiles. The Project would also have the infrastructure necessary to support the terminal, including an overhead conveyor system, truck scales, a scale house that can fit two doublewide trailers, and a receiving hopper. In addition, the Project would bring a large volume of new mobile sources into the Project area, including trucks and marine vessels, to transport the construction aggregates on and off-site. Since the Project is located in a low income community and community of color that is already heavily burdened by a disproportionate amount of pollution, it is especially important that the Port analyze, disclose, and mitigate to the extent feasible the Project's significant impacts. We submit these comments for the Port's consideration as it prepares its DSEIR.

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

I. THE PROJECT WILL SITE ANOTHER INDUSTRIAL FACILITY WITH SIGNIFICANT ENVIRONMENTAL IMPACTS IN A HIGHLY BURDENED ENVIRONMENTAL JUSTICE COMMUNITY.

The Project is located in West Oakland, a vibrant and diverse community where approximately 76 percent of the residents are people of color.² West Oakland is also a relatively low-income community, with approximately 52 percent of the population living two times below the federal poverty level.³ The West Oakland community is already exposed to a significant amount of pollution from many stationary and mobile sources, including four major highways, the Port of Oakland, marine vessels, railyards, dozens of industrial facilities, large distribution centers, trucks visiting industrial sites, and truck-related businesses.⁴ According to CalEnviroScreen, a tool created by the Office of Environmental Health Hazard Assessment that ranks every census tract in the state based on environmental, health, and socioeconomic factors, the Project's census tract has a higher pollution burden than 89 percent of California's census tracts and has more pollution than the other census tracts in West Oakland. CalEnviroScreen further scores the Project's census tract in the 100th percentile for cleanup sites, the 99th percentile for exposure to diesel particulate matter, the 97th percentile for hazardous waste sites, the 95th percentile for solid waste facilities, and the 92nd percentile for traffic.⁵

The residents of West Oakland experience serious health impacts from the pollution in their neighborhood, including a disproportionately high rate of asthma. According to the Alameda County Public Health Department, West Oaklanders are 1.75 times more likely than other Alameda County residents to be hospitalized for asthma-related illnesses.⁶ The asthma rates in West Oakland are particularly alarming for children – almost 25 percent of students at the West Oakland Middle School have asthma or breathing problems.⁷ Further, residents of West Oakland have a life expectancy rate that is 6.6 years lower than their neighbors in Alameda

² Bay Area Air Quality Management District and West Oakland Environmental Indicators Project, *Owning Our Air: The West Oakland Community Action Plan* (Oct. 2019), 2-6, <http://www.baaqmd.gov/~media/files/ab617-community-health/west-oakland/proposed-final/proposed-final-plan-vol-1-092619-pdf.pdf>.

³ *Id.* at 2-6.

⁴ *Id.* at 2-3, 2-12.

⁵ A census tract with a high score in CalEnviroScreen experiences a higher pollution burden than a census tract with a lower score. For more information, please visit <https://oehha.ca.gov/calenviroscreen>.

⁶ Muntu Davis, *Air Pollution Risks & Vulnerability to Health Impacts: A Look at West Oakland* (March 2018), 4, <http://acphd.org/media/496252/air-pollution-health-impacts-west-oakland-acphd-2018.pdf>.

⁷ 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/>.

County.⁸ Air pollution related diseases, including cancer, heart disease, stroke, and chronic lower respiratory disease, are some of the leading causes of death in the area.⁹

While the Project's environmental impacts will be felt by all residents of West Oakland and beyond, its impacts will be concentrated in the Prescott neighborhood that is closest to the Project site. The Prescott neighborhood is about 0.6 miles southeast of the Project, and includes residences, parks, and childcare facilities. For example, the Raimondi Park Playground is 0.8 miles east of the Project and the Baby Academy Daycare is 0.85 miles to the southeast. Similar to other West Oakland neighborhoods that border the expansive Port of Oakland, the Prescott neighborhood has an alarmingly high cancer risk of 272 in one million.¹⁰

II. THE PROJECT WILL BE SUBJECT TO SEVERAL REGIONAL EMISSIONS REDUCTION PLANS IN WEST OAKLAND.

Multiple agencies have recognized the significant pollution burdens faced by West Oakland residents and have responded by adopting plans to reduce air emissions in the community and surrounding areas. In 2017, the Bay Area Air Quality Management District (BAAQMD) adopted its latest Clean Air Plan, which aims to protect public health and address climate change by controlling emissions of particulate matter, toxic air contaminants, ozone precursors, and greenhouse gases. The 2017 Clean Air Plan includes emission control measures that will apply to the Project, such as control measures for stationary sources and transportation control measures for trucks and marine vessels.¹¹

The Port of Oakland also has an emissions reduction plan that will apply to the Project, the Seaport Air Quality 2020 and Beyond Plan. The Seaport Air Quality Plan strives to achieve zero diesel and greenhouse gas emissions from the Port.¹² The Port plans to achieve this goal by implementing a number of strategies over three phases, such as converting Port vehicles and equipment to run on electricity, installing electrical infrastructure at container terminals, and switching to renewable diesel fuels.¹³

In addition, the Port of Oakland finalized the West Oakland Truck Management Plan with the City of Oakland in May 2019. The Truck Management Plan sets forth ten strategies to increase safety and reduce air emissions from trucks driving in West Oakland, including better truck routes, improved truck route signage, traffic enforcement, the use of urban design to promote adherence to truck routes, new parking regulations, and improved street intersections

⁸ Davis, *supra* note 6, at 8-10.

⁹ *Ibid.*

¹⁰ West Oakland Community Action Plan, *supra* note 2, 4-4.

¹¹ BAAQMD, Final Clean Air Plan (April 2017), Tables 5-1 and 5-2, http://www.baaqmd.gov/~/_media/files/planning-and-research/plans/2017-clean-air-plan/attachment-a_-proposed-final-cap-vol-1-pdf.pdf?la=en.

¹² Port of Oakland, Seaport Air Quality 2020 and Beyond Plan (May 2019), 1-2, <https://www.portofoakland.com/files/PDF/Volume%20I.pdf>

¹³ *Id.* at 9-15.

near the Port.¹⁴ All of these restrictions and requirements will apply to the Project.

Most recently, the BAAQMD adopted the West Oakland Community Action Plan to reduce localized air emissions. The Air District developed this Plan with the community group West Oakland Environmental Indicators Project after the California Air Resources Board selected West Oakland for an emissions reduction plan pursuant to the Assembly Bill (AB) 617 Community Air Protection Program. West Oakland was selected due to its long history as a disadvantaged community with pollution burdens that are substantially higher than other communities in California. The Community Action Plan is required by law to “result in emissions reductions in the community, based on monitoring or other data.”¹⁵

To achieve this end, the West Oakland Community Action Plan has two ambitious goals: 1) by 2025, reduce air emissions in all West Oakland neighborhoods so every neighborhood has the same air quality as the average West Oakland neighborhood in 2017; and 2) by 2030, ensure that all West Oakland neighborhoods have the same air quality as the cleanest neighborhoods in 2017 (which are all farthest from the Port).¹⁶ The Community Action Plan has 89 strategies that multiple agencies, including the Port of Oakland, must adhere to in order to meet the emission reduction goals.¹⁷ Since the most polluted neighborhoods in West Oakland border the Port, including the Prescott neighborhood near the Project, the Port will have to significantly reduce its air emissions to meet the 2025 and 2030 goals in the Community Action Plan.

III. THE DSEIR MUST EVALUATE ANY INCONSISTENCIES BETWEEN THE REGIONAL EMISSIONS REDUCTION PLANS AND THE PROJECT.

The California Environmental Quality Act (CEQA) requires environmental impact reports to “discuss any inconsistencies between the proposed project and applicable general plans, specific plans, and regional plans.”¹⁸ Such regional plans may include, but are not limited to, “regional transportation plans” and “plans for the reduction of greenhouse gas emissions.”¹⁹ This analysis is typically placed in the “land use and planning” chapter of an environmental impact report. If a project is inconsistent with a plan, there is a “significant effect” that mandates a lead agency to consider mitigation measures to reduce those effects.²⁰ A project is inconsistent with a plan if it will “obstruct” attaining the plan’s objectives and policies.²¹

¹⁴ City of Oakland and Port of Oakland, West Oakland Truck Management Plan (May 2019), <https://cao-94612.s3.amazonaws.com/documents/West-Oakland-Truck-Management-Plan-FINAL-APPROVED.pdf>.

¹⁵ Health & Saf. Code § 44391.2(c)(5).

¹⁶ West Oakland Community Action Plan, *supra* note 2, 4-4 to 4-5.

¹⁷ *Id.* at Table 6-4.

¹⁸ CEQA Guidelines § 15125(d).

¹⁹ *Ibid.*

²⁰ *Joshua Tree Downtown Bus. Alliance v. County of San Bernardino*, 1 Cal.App.5th 677, 695 (2016).

²¹ *Ideal Boat & Camper Storage v. County of Alameda*, 208 Cal.App.4th 301, 311 (2012).

The Port of Oakland's Notice of Preparation states that it does not anticipate the DSEIR to include supplemental review for the Land Use and Planning Chapter of the original environmental impact report for the Oakland Army Base Redevelopment Plan. However, CEQA mandates the Port to analyze the inconsistencies between the Project and all applicable regional plans, including the BAAQMD's Clean Air Plan, the Port of Oakland's Seaport Air Quality Plan, the Port of Oakland's West Oakland Truck Management Plan, and the AB 617 West Oakland Community Action Plan. We therefore urge the Port of Oakland to include this required analysis in the Land Use and Planning Chapter of the DSEIR.

For example, the Project may obstruct the AB 617 West Oakland Community Action Plan's objectives to reduce air emissions. The DSEIR should fully analyze and disclose whether there are inconsistencies between the Project's direct and indirect impacts during the construction and operations of the Project and the Community Action Plan's specific emission reduction goals for particulate matter, diesel emissions, and toxic air emissions.²² The DSEIR should also analyze and disclose the Project's consistency with the 89 strategies set forth in the Community Action Plan that aim to achieve the Plan's overall emission reduction goals.²³ If the DSEIR finds that the Project is inconsistent with any goal, policy, or strategy in a regional plan, the Port must consider and adopt enforceable mitigation measures that will reduce the inconsistencies to the extent feasible.²⁴

IV. THE DSEIR MUST COMPREHENSIVELY EVALUATE THE PROJECT'S ENVIRONMENTAL IMPACTS, INCLUDING ITS IMPACTS ON SENSITIVE RECEPTORS AND CUMULATIVE IMPACTS.

An environmental impact report must clearly identify and describe "direct and indirect significant effects of the project on the environment."²⁵ Indirect effects include impacts that are "reasonably foreseeable."²⁶ Once a lead agency designates an environmental impact as "significant," the agency must reasonably describe "the nature and magnitude of the adverse effect."²⁷ This analysis of environmental effects must include the "relevant specifics of the area" and whether the project will expose "sensitive receptors" to pollution.²⁸ The DSEIR must analyze and disclose all direct and indirect environmental impacts from the construction and operation of all aspects of the Project, as described below.

Considering the Project's location in a community that is already heavily burdened by pollution and its close proximity to the Prescott neighborhood, the DSEIR should include a full health risk assessment that uses age sensitivity factors to measure all particulate matter and other

²² See West Oakland Community Action Plan, *supra* note 2, 4-1 to 4-7.

²³ See *id.*, Table 6-4.

²⁴ See *Joshua Tree Downtown Bus. Alliance*, 1 Cal.App.5th at 695.

²⁵ CEQA Guidelines § 15126.2(a).

²⁶ *Id.* § 15358(a)(2); *Laurel Heights Improvement Ass'n v. Regents of Univ. of Cal.*, 47 Cal.3d 376, 396 (1988).

²⁷ *Cleveland Nat'l Forest Found. v. SANDAG*, 3 Cal.5th 497, 514 (2017).

²⁸ CEQA Guidelines § 15126.2(a), App. G.

toxic air emissions generated by the Project. The health risk assessment should measure the cancer risks associated with the Project itself, the risks caused by mobile sources related to the Project (such as diesel trucks traveling through West Oakland to and from the Project site), and the risks from cumulative projects in the vicinity of the Project. A health risk assessment is required by the BAAQMD's CEQA Guidelines for proposed land uses that will host a high number of non-permitted sources of toxic air contaminants, including facilities like the Project that generate truck and marine vessel trips.²⁹ Furthermore, consistent with the BAAQMD's CEQA Guidelines, the Port should evaluate the impacts to sensitive receptors beyond the 1,000-foot Project radius to ensure the DSEIR adequately analyzes, discloses, and mitigates the Project's impacts on the people most likely to be harmed by the Project.³⁰

Relatedly, the DSEIR's discussion of air quality impacts must disclose how the air emissions translate to adverse health impacts. Pursuant to a recent ruling from the California Supreme Court, CEQA requires an environmental impact report to "discuss relevant specifics regarding the connection between two segments of information already contained in the EIR, the general health effects associated with a particular pollutant and the estimated amount of that pollutant the project will likely produce."³¹ This discussion is necessary to inform decisionmakers and the public about the actual health impacts of the Project.

In addition, the DSEIR must include a full analysis of cumulative impacts. CEQA requires environmental impact reports to analyze whether a project's impacts, while they may appear to be insignificant on their own, are "cumulatively considerable."³² The incremental effects of an individual project are cumulatively considerable if the effects are significant when "viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects."³³ To perform this analysis, a lead agency is expected to "use its best efforts to find out and disclose all that it reasonably can."³⁴ The Port should consult with the BAAQMD to develop its list of other pollution sources in West Oakland for its cumulative impacts assessment since this agency has expertise from its recent work on the West Oakland Community Action Plan.

²⁹ BAAQMD, CEQA Air Quality Guidelines (May 2017), 5-8, http://www.baaqmd.gov/~media/files/planning-and-research/ceqa/ceqa_guidelines_may2017-pdf.pdf?la=en.

³⁰ While the BAAQMD recommends that lead agencies assess impacts to all receptors located within a 1,000-foot radius of a project's fence line, it also recommends that lead agencies "should enlarge the 1,000-foot radius on a case-by-case basis if an unusually large source or sources of risk or hazard emissions that may affect a proposed project is beyond the recommended radius." *Id.* at 5-7.

³¹ *Sierra Club v. County of Fresno*, 6 Cal.5th 502, 521 (2018).

³² CEQA Guidelines § 15130(a)(1).

³³ *Id.* §§ 15065(a)(3), 15355.

³⁴ *Id.* § 15144; *Communities for a Better Env't v. City of Richmond*, 184 Cal.App.4th 70, 96 (2010).

V. THE PORT MUST CONSIDER ALL FEASIBLE MEASURES TO MITIGATE THE SIGNIFICANT IMPACTS OF THE PROJECT.

CEQA requires environmental impact reports to describe and adopt all feasible mitigation measures that minimize the significant environmental impacts of a project.³⁵ Adequate mitigation measures must: 1) avoid the impact altogether by not taking a certain action or parts of an action; 2) minimize impacts by limiting the degree or magnitude of the action and its implementation; 3) rectify the impact by repairing, rehabilitating, or restoring the impacted environment; or 4) reduce or eliminate the impact over time by the preservation and maintenance operations during the life of the action.³⁶ Further, mitigation measures must be “fully enforceable through permit conditions, agreements, or other legally binding instruments.”³⁷

Since the Project is within the Oakland Army Base Redevelopment Area, the Project must, at a minimum, comply with all of the Standard Conditions of Approval and Mitigation Measures adopted by the City of Oakland and the Port for the Redevelopment Area in July 2013.³⁸ The Project should also include additional mitigation measures that will minimize its specific impacts, including its air quality impacts and its impacts on sensitive receptors. For example, possible air quality mitigation measures³⁹ could include:

- Limiting the Project’s capacity;
- Limiting the Project’s operation and construction days and times;
- Establishing and enforcing truck routes that avoid residents and sensitive receptors;
- Requiring all onsite stockpiles to be enclosed or covered to control dust;
- Requiring the Project proponent to install indoor air filtration systems at nearby schools, daycares, and residences;
- Establishing fleet efficiency requirements, such as requiring zero emission or near zero emission trucks to serve the facility;
- Requiring electric vehicle charging infrastructure for both cars and trucks necessary to support zero emission vehicles and equipment on the Project site;
- Requiring and enforcing policies against idling in and around the Project site;
- Requiring the use of electric-powered yard equipment on the Project site;
- Requiring all construction equipment to meet Tier 4 emissions standards;

³⁵ Pub. Res. Code § 21002; CEQA Guidelines § 15126.4(a)(1).

³⁶ CEQA Guidelines § 15370.

³⁷ *Id.* § 15126.4(a)(2).

³⁸ 2012 Oakland Army Base Project, Standard Conditions of Approval and Mitigation Monitoring and Reporting Program, <http://www2.oaklandnet.com/oakca1/groups/ceda/documents/report/oak042281.pdf>.

³⁹ For more in-depth information about potential air quality mitigation measures near high volume roadways, see CARB’s Technical Advisory on the topic and, more generally, the CARB Handbook, which offers more mitigation ideas. Both are available at <https://www.arb.ca.gov/ch/landuse.htm>. The example mitigation measures included in this letter are focused on air quality, but additional mitigation measures may be necessary for traffic, noise, and other significant impacts.

October 21, 2019

Page 8

- Constructing new or improved transit stops, sidewalks, bicycle lanes, crosswalks, and traffic control or traffic safety measures, such as speed bumps or speed limits, near the Project;
- Improving vegetation and tree canopy for residents near the Project; and
- Requiring methods to reduce vehicle traffic from any employees of the Project, such as van shuttles, transit and carpool incentives, and bicycle parking and facilities for employees.

Mitigation measures like these are feasible and have been adopted by similar projects throughout California over the past several years. Adequate mitigation measures are essential to help ensure that the Project will not add to West Oakland's existing pollution burden and interfere with obtaining the goals outlined in the applicable emissions reduction plans for the area. The Attorney General's Office would be happy to provide any assistance it can as the Port considers how best to mitigate the Project's environmental impacts.

VI. CONCLUSION

Thank you for the opportunity to provide these comments. We encourage the Port of Oakland to adequately disclose, analyze, and mitigate the environmental and public health impacts of additional industrial development in one of the most heavily polluted areas in the State, as required by CEQA. We look forward to working with the Port throughout this process to ensure an equitable future for all West Oakland residents.

Sincerely,



ABIGAIL BLODGETT
Deputy Attorney General

For XAVIER BECERRA
Attorney General