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Via E-mail

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**RE: Draft Supplemental Environmental Impact Report for the Eagle Rock Aggregates
Oakland Terminal Project (State Clearinghouse No. 2001082058)**

Dear Ms. Chuop:

Thank you for the opportunity to provide comments on the Draft Supplemental Environmental Impact Report (“DSEIR”) for the Eagle Rock Aggregates Oakland Terminal Project (“Project”).¹ The Project seeks to construct a new bulk marine terminal at the Port of Oakland (“Port”) that would bring additional stationary and mobile pollution sources to West Oakland, one of the most historically polluted and disadvantaged communities in the State. There are numerous deficiencies in the DSEIR that must be addressed before the Project is considered for approval. As discussed in more detail below, the DSEIR fails to: include an adequate description of the environmental setting; describe Eagle Rock Aggregates’ plans for its Richmond Terminal and analyze the environmental impacts associated with this connected action; correctly analyze the Project’s particulate matter (“PM”) 2.5 impacts; sufficiently discuss how the Project’s air quality impacts translate to adverse health impacts for the West Oakland community; include a complete analysis of the Project’s consistency with the West Oakland Community Emissions Reduction Plan; analyze the Project’s cumulative impacts in a meaningful way; include mitigation measures that are enforceable, not deferred, and adequate to reduce the Project’s significant impacts; and provide a complete analysis of reasonable alternatives to the Project. We respectfully submit these comments to urge the Port to conduct further environmental analysis pursuant to CEQA, Public Resources Code section 21000 et seq., so all

¹ This comment letter expands on the comments made in our October 21, 2019 letter in response to the Notice of Preparation for the DSEIR. The letter is not intended, and should not be construed, to be an exhaustive discussion of the DSEIR’s compliance with the California Environmental Quality Act (“CEQA”) or the Project’s compliance with any other applicable legal standards.

of the Project's impacts are disclosed, understood, and mitigated to the maximum extent feasible.²

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

The proposed Project is an 18-acre bulk marine terminal at the former Oakland Army Base that would receive up to 2.5 million tons of construction aggregates each year.³ The construction materials would be delivered to the Project by 48 ocean-going marine vessels making new annual visits to the Port.⁴ After the construction aggregates are offloaded from the ships, they would be stored onsite in three different stockpiles up to 40 feet high.⁵ Each pile would be uncovered and contain up to 390,000 tons of construction materials.⁶ The aggregates would be transported from the Project to construction sites by air pollution-generating mobile sources traveling through West Oakland, including an estimated 70,000 trucks and 76 barges every year the Project is in operation.⁷

The Project's DSEIR supplements the environmental impact report for the Oakland Army Base Area Redevelopment Plan, which was certified by the City of Oakland almost two decades ago in July 2002 ("2002 EIR").⁸ Since then, there have been four addendums that update the original 2002 EIR and analyze the impacts associated with additional projects not contemplated for the Port in 2002.⁹ The DSEIR is the fifth addendum to the 2002 EIR. For this Project, the Port determined that a supplemental environmental impact report was required since the 2002 EIR analyzed the development and use of the Port for container cargo operations only and did not include any bulk marine terminals, as proposed in the DSEIR.¹⁰

The communities living near the Project site are already exposed to a considerable array of pollution sources. West Oakland is surrounded by several major highways, including Interstate 880 to the south and west, Interstates 80 and 580 to the north, and Interstate 980 to the east.¹¹ In addition, there are 170 permitted facilities that generate toxic air contaminants in the

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

³ DSEIR at 2-2, 2-12.

⁴ *Id.* at 2-12.

⁵ *Id.* at 2-27.

⁶ *Ibid.*

⁷ *Id.* at 2-13, 2-32.

⁸ *Id.* at ES-2.

⁹ *Ibid.*

¹⁰ *Ibid.*

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

area, such as manufacturing plants, recycling facilities, a cement plant, a wastewater treatment plant, a power plant, paint sprayers, and a large metal shredding facility.¹² West Oakland is also home to the Port of Oakland, one of the busiest and largest ports in the county. The Port is supported by many different businesses and vehicles that are additional pollution sources in the community, including railyards, distribution centers, truck-related companies, trains, diesel trucks, ocean-going vessels, and commercial harbor crafts.¹³

West Oakland's significant pollution burden has translated into serious health challenges for the community. According to the Alameda County Public Health Department, West Oakland residents are 1.75 times more likely than other Alameda County residents to be hospitalized for asthma-related illnesses.¹⁴ The asthma rates in West Oakland are particularly alarming for children. For example, approximately 25 percent of students at the West Oakland Middle School have asthma or breathing problems.¹⁵ In 2016, residents of West Oakland also had a life expectancy rate that was 7.5 years lower than their neighbors in Alameda County.¹⁶ Air pollution related diseases, including cancer, heart disease, stroke, and chronic lower respiratory disease, are some of the leading causes of death in the community, and West Oakland residents are dying from these diseases at higher rates.¹⁷ The West Prescott neighborhood, which is immediately adjacent to the Project site, has a cancer risk of 272 cases for every million people from local emission sources, where the neighborhood located farthest from the Port has a cancer risk of 110 cases for every million people from local sources.¹⁸ Over 90 percent of West Oakland's cancer risk comes from exposure to diesel PM.¹⁹

Due to West Oakland's alarming pollution burden, West Oakland was selected by the California Air Resources Board ("CARB") to be one of the first communities to develop an air emissions reduction plan pursuant to Assembly Bill 617 ("AB 617"). AB 617 requires CARB to select disadvantaged communities affected by high levels of toxic air contaminants and criteria air pollutants for inclusion in the AB 617 program.²⁰ The local air quality management district, in consultation with CARB and a community steering committee, is required to prepare and

("WOCAP") (Oct. 2019), 2-1, *available at* <http://www.baaqmd.gov/~media/files/ab617-community-health/west-oakland/proposedfinal/proposed-final-plan-vol-1-092619-pdf.pdf>

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

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

¹⁴ Muntu Davis, Air Pollution Risks & Vulnerability to Health Impacts: A Look at West Oakland (Mar. 28, 2018), 4, *available at* https://ww2.arb.ca.gov/sites/default/files/2018-03/capp_consultation_group_march_2018_alameda_county_health_presentation.pdf.

¹⁵ Ananya Roy, Environmental Defense Fund, Traffic Pollution Causes 1 in 5 New Cases of Kids' Asthma (Apr. 29, 2019), *available at* <http://blogs.edf.org/health/2019/04/29/traffic-pollution-causes-1-in-5-newcases-of-kids-asthma-in-major-cities-how-data-can-help/>.

¹⁶ WOCAP at 2-9.

¹⁷ Davis at 8-9.

¹⁸ WOCAP at 4-4. These numbers do not include the background cancer risk for West Oakland residents, which is 421 cases per million people. *Id.* at Appendix A: Part 1, 89.

¹⁹ *Id.* at 4-5.

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

adopt a community emissions reduction plan (“CERP”) designed to “result in emissions reductions in the community.”²¹ West Oakland was the first AB 617 community to have a CERP approved by CARB in December 2019.²²

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

It is well established that when evaluating the environmental impacts associated with a proposed project under CEQA, “[t]he significance of an activity depends upon the setting.”²³ As a result, CEQA requires an environmental impact report to include a full description of “the physical environmental conditions in the vicinity of a proposed project.”²⁴ A project that may ordinarily have insignificant impacts on the environment could have significant impacts “in a particularly sensitive environment.”²⁵ Therefore, the discussion of a project’s environmental setting should describe the sensitive receptors in the vicinity of a project, the background environmental burdens faced by impacted communities, and any unique sensitivities of those communities to pollution.²⁶

The DSEIR includes a single sentence about the West Oakland community living next to the Project to describe the Project’s environmental setting. According to the DSEIR’s project description, “[t]he closest residential community is located approximately one-half mile southeast of the Project site in the West Oakland Prescott neighborhood on the opposite (east) side of I-880.”²⁷ The DSEIR does not provide any additional information about the Prescott neighborhood or any other West Oakland communities in any of the environmental setting descriptions in its environmental impacts analyses, not even its analysis of air quality impacts.²⁸ This limited discussion ignores the many sensitive receptors in the neighborhoods east and south of the Project site, such as the Raimondi Park Playground, the Prescott School, the Baby Academy Preschool, and other locations where the occupants may be more susceptible to adverse health effects from pollution exposure. The DSEIR is also silent on the unique characteristics of West Oakland, including its population characteristics and the disproportionate, longstanding pollution burdens borne by its residents. The Port must revise the DSEIR’s environmental setting descriptions to comply with CEQA.

²¹ *Id.* § 44391.2, subd. (c)(1)-(2), (5).

²² BAAQMD, West Oakland Community Action Plan to Improve Air Quality Approved by CARB (Dec. 10, 2019), *available at* https://www.baaqmd.gov/~media/files/communications-and-outreach/publications/news-releases/2019/wocap_191210_2019_096-pdf.

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

²⁴ Cal. Code Regs., tit. 14 (“CEQA Guidelines”), § 15125, subd. (a).

²⁵ *Id.* § 15300.2, subd. (a).

²⁶ Office of the California Attorney General, Environmental Justice at the Local and Regional Level (July 10, 2012), 3, *available at* https://oag.ca.gov/sites/all/files/agweb/pdfs/environment/ej_fact_sheet.pdf.

²⁷ DSEIR at 2-5.

²⁸ *See id.* at Chapter 3.

III. The DSEIR Fails to Disclose Eagle Rock Aggregates' Planned Changes for its Existing Richmond Terminal and Analyze the Environmental Impacts of this Related Action.

Environmental impact reports must disclose all related projects and analyze the combined impacts of these activities as a whole. CEQA defines a project as the “whole of an action,” or all linked activities that have the potential to physically change the environment.²⁹ An environmental impact report must analyze the total effects of the entire proposed action, including all reasonably foreseeable and related future projects.³⁰ “[W]hen one activity is an integral part of another activity, the combined activities are within the scope of the same CEQA project.”³¹ As a result, any “piecemeal” or segmented review of a project’s environmental impacts is prohibited by CEQA.³²

In this case, the DSEIR improperly segments environmental review because it fails to fully disclose and analyze the environmental impacts associated with Eagle Rock Aggregates’ planned changes to its existing construction aggregates marine terminal in Richmond, California (“Richmond Terminal”). Similar to the proposed Project, the Richmond Terminal is a bulk marine terminal for construction aggregates located in a historically disadvantaged environmental justice community. According to CalEnviroScreen, a screening tool that ranks each census tract in the State for pollution and vulnerability, the census tracts with residential communities just north of the Richmond Terminal have an overall score of 90-95 percent.³³ Due to this disproportionate pollution burden, CARB selected Richmond to be one of the first AB 617 communities to prepare a community air monitoring plan in 2018 and the community is now preparing a CERP using its collected emissions data.³⁴ The DSEIR reveals that Eagle Rock Aggregates “plans to move its current Richmond Marine Terminal activities to the Proposed Project site at the Port,” and “may repurpose the Richmond Marine Terminal to serve other bulk

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

³⁰ *Laurel Heights Improvement Assn. v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 396; *Bozung v. Local Agency Formation Com.* (1975) 13 Cal.3d 263, 279, 283-288; *Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonora* (2007) 155 Cal.App.4th 1214, 1231.

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

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

³³ CalEnviroScreen 3.0, available at <https://oehha.ca.gov/calenviroscreen>.

CalEnviroScreen uses environmental, health, and socioeconomic information to produce scores and rank every census tract in the State. A census tract with a high score is one that experiences a much higher pollution burden than a census tract with a low score. Office of Environmental Health Hazard Assessment, CalEnviroScreen 3.0 Report (Jan. 2017), available at <https://oehha.ca.gov/media/downloads/calenviroscreen/report/ces3report.pdf>.

³⁴ See BAAQMD, Richmond Area Community Health Protection Program, available at <https://www.baaqmd.gov/community-health/community-health-protection-program/richmond-area-community-health-protection-program>.

material needs.”³⁵ Regardless, the DSEIR states that “operations at the Richmond Marine Terminal are assumed to remain unchanged; modification or dismantling of the Richmond Marine Terminal is not part of the Proposed Project.”³⁶ This delayed disclosure of the reasonably foreseeable changes to the Richmond Terminal and deferred environmental impacts analysis is unlawful under CEQA. The DSEIR must be revised and recirculated to include the two categories of information discussed below prior to approval of the Project.

First, the DSEIR must include a specific and detailed discussion of Eagle Rock Aggregates’ plans for its Richmond Terminal and how these changes will impact the proposed Project’s operations. The DSEIR should disclose all activities that occur at the existing Richmond Terminal and discuss which activities will be transferred to the new proposed Project in Oakland. The DSEIR should also describe which remaining operations, if any, will continue to occur at the Richmond Terminal. If Eagle Rock Aggregates intends to repurpose its Richmond Terminal for other purposes, these new activities must be disclosed in the DSEIR.

Second, the DSEIR must analyze the environmental impacts of any reasonably foreseeable future changes to the Richmond Terminal’s operations that are related to the Project. If Eagle Rock Aggregates transfers all of its operations for construction aggregates to the Project site and repurposes its Richmond Terminal to receive different materials, these new activities at the Richmond Terminal will be directly linked to the Project. As a result, any environmental impacts that occur from the Richmond Terminal’s new operations must be analyzed in conjunction with the Project’s impacts already disclosed in the DSEIR. This is especially important given that the Richmond Terminal’s operations combined with the Project’s operations would result in new pollution sources for two of the State’s most disadvantaged environmental justice communities.

IV. The DSEIR’s Environmental Impacts Analysis for PM 2.5 is Flawed.

An environmental impact report must include a “detailed statement” that identifies and describes “direct and indirect significant effects of the project on the environment.”³⁷ Once a lead agency designates an environmental impact as “significant,” the agency must reasonably describe “the nature and magnitude of the adverse effect.”³⁸ The significance determination is an essential part of the CEQA process since environmental impact reports must include mitigation measures to reduce all significant impacts to the maximum extent feasible.³⁹ A new and complete analysis of environmental impacts is required in supplemental environmental impact

³⁵ DSEIR at 2-12 to 13.

³⁶ *Id.* at 2-13.

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

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

³⁹ Pub. Resources Code, §§ 21002, 21100, subd. (b)(3); CEQA Guidelines, § 15126.4, subd. (a)(1), (3).

reports if the analysis is “necessary to make the previous EIR adequate for the project as revised.”⁴⁰

The DSEIR’s analysis of environmental impacts related to PM 2.5 does not comply with CEQA since it fails to fully analyze this pollutant and provide concrete significance determinations. The analysis for Impacts Air-2, Air-3, and Air-4 all conclude that the Project’s operations would result in significant impacts to the “maximum exposed individual worker” located approximately 300 feet from the Project due to PM 2.5 above the 2011/2017 BAAQMD significance threshold.⁴¹ These workers would be exposed to elevated levels of PM 2.5 from “fugitive dust emissions associated with the aggregate transfer operations, storage piles, and fugitive dust from on-site vehicle travel.”⁴² Despite these new significant impacts, the DSEIR does not include any mitigation measures to reduce fugitive dust emissions.⁴³ The DSEIR oddly states that the significant increase in PM 2.5 from the Project on nearby workers is provided “for informational purposes only” since this impact was not analyzed in the original 2002 EIR or any of its addendums.⁴⁴ The 2002 EIR and its subsequent updates included some analysis of PM 2.5, but did not analyze PM 2.5 impacts from the entire Oakland Army Base Redevelopment Area or PM 2.5 impacts on workers.⁴⁵ However, the Port’s rationale for not providing a CEQA compliant analysis of PM 2.5 in this DSEIR is nonsensical and not in accordance with the law – CEQA requires supplemental impact reports to include all additions and changes that are “necessary to make the previous EIR adequately apply to the project in the changed situation.”⁴⁶ Since the 2002 EIR did not include a full analysis of PM 2.5 impacts, including PM 2.5 impacts from the entire Oakland Army Base Redevelopment Area and PM 2.5 impacts on nearby workers, these impacts must be fully analyzed now. The Port must correct this faulty analysis in the DSEIR and recirculate the corrected DSEIR for public review.⁴⁷

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

Pursuant to CEQA, environmental impact reports must connect pollutant data to specific adverse human health impacts on a community. In *Sierra Club v. County of Fresno*, the California Supreme Court found a project’s air quality impacts analysis to be inadequate because it included only a “general description of symptoms that are associated with exposure” and a discussion of health impacts for each type of pollutant that was “at most a few sentences of general information.”⁴⁸ This flawed discussion of health impacts “fail[ed] to indicate the

⁴⁰ CEQA Guidelines, § 15163, subd. (b).

⁴¹ DSEIR at 3.4-28 to 30 (Impact Air-2), 3.4-33 (Impact Air-3), 3.4-35 (Impact Air-4).

⁴² *Id.* at 3.4-28.

⁴³ *Compare id.* at 3.4-20 (Table 3.4-6a) to 3.4-21 (Table 3.4-6b) (showing that the single mitigation measure for the Project’s operations will have no impact on fugitive dust PM 2.5).

⁴⁴ *Id.* at 3.4-29.

⁴⁵ *Ibid.*

⁴⁶ CEQA Guidelines, § 15163, subd. (b).

⁴⁷ *See id.*, § 15088.5.

⁴⁸ *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 519.

concentrations at which such pollutants would trigger the identified symptoms” and did not provide the public with any “idea of the health consequences that result when more pollutants are added to a nonattainment basin.”⁴⁹ As a result, the analysis did not satisfy CEQA’s requirement that an environmental impact report make “a reasonable effort to discuss relevant specifics regarding the connection between . . . the general health effects associated with a particular pollutant and the estimated amount of that pollutant the project will likely produce.”⁵⁰

The DSEIR’s discussion of health impacts does not meet the standards established by *Sierra Club v. County of Fresno*. At the end of the analysis for Impact Air-4, which concludes that the Project’s potential to violate air quality standards for ozone and PM 2.5 is a significant and unavoidable impact, the DSEIR notes some health impacts that can occur from ozone, PM 2.5, and PM 10 exposure.⁵¹ However, this brief discussion of the health impacts associated with these air contaminants is disconnected from the DSEIR’s discussion of the amount of pollutants that will be generated by the Project, which is located in the analysis for Impact Air-1.⁵² Even more, the DSEIR does not make any connection between the Project’s nitrogen oxide emissions and ozone (or any other pollutants that can be ozone precursors), leaving the public in the dark about what may trigger the health impacts that can result from ozone exposure. For other pollutants generated by the Project, including “crystalline silica from construction aggregate transfer operations and fugitive dust from the Project site,” the DSEIR is silent on the associated health risks.⁵³ These disjointed and incomplete health impact discussions do not meet CEQA’s requirements, and are especially troubling given the severe disproportionate health burdens faced by the West Oakland community.

VI. The DSEIR’s Analysis of the Project’s Consistency with the West Oakland Community Emissions Reduction Plan is Incomplete.

An environmental impact report must clearly identify and discuss all significant effects of the Project on the environment, including any inconsistencies between the Project and the applicable general, specific, and regional plans.⁵⁴ Here, the DSEIR evaluates the Project’s consistency with the BAAQMD 2017 Clean Air Plan, the Port Seaport Air Quality 2020 and Beyond Plan, and the West Oakland CERP that was recently adopted pursuant to AB 617.⁵⁵ The DSEIR uses three criteria to evaluate the Project’s consistency with these plans under Impact Air-3: 1) does the Project support the primary goals of the plan; 2) would the Project comply with applicable air quality measures contained in the plan; and 3) would the Project disrupt or hinder implementation of any control measures in the plan.⁵⁶ The DSEIR concludes that the Project would be consistent with all applicable air quality plans, except for the BAAQMD 2017

⁴⁹ *Ibid.*

⁵⁰ *Id.* at 521.

⁵¹ DSEIR at 3.4-35 to 36.

⁵² *See id.* at 3.4-16 to 26.

⁵³ *Compare id.* at 3.4-26 to Chapter 3.

⁵⁴ Pub. Resources Code, § 21100, subd. (b)(1); CEQA Guidelines, § 15125, subd. (d).

⁵⁵ DSEIR at 3.4-30 to 34.

⁵⁶ *Id.* at 3.4-30.

Clean Air Plan.⁵⁷ However, this conclusion is based on an incomplete analysis of the West Oakland CERP that ignores the Port's first criteria – whether the Project will support the primary goals of an air quality plan. The West Oakland CERP has two overarching and crucial goals that are ignored by the DSEIR: reduce air emissions in all West Oakland neighborhoods so every neighborhood has the same air quality as the average West Oakland neighborhood by 2025; and ensure that all West Oakland neighborhoods have the same air quality as the cleanest local neighborhood by 2030.⁵⁸ To achieve these goals for 2025 and 2030, the CERP includes numerical emissions reduction goals for diesel PM and PM 2.5 and specific target levels for cancer risk.⁵⁹ The DSEIR must analyze how the Project will support or hinder these goals, as required by CEQA.

VII. The DSEIR's Analysis of Cumulative Impacts is Deficient.

CEQA requires environmental impact reports to analyze whether a project's impacts, while they may appear to be insignificant on their own, are "cumulatively considerable."⁶⁰ The incremental effects of an individual project are cumulatively considerable if the effects are significant when "viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects."⁶¹ To perform this analysis, a lead agency must "use its best efforts to find out and disclose all that it reasonably can."⁶² If a community already bears a high pollution burden, the relevant question is "whether any additional amount" of pollution caused by the project "should be considered significant in light of the serious nature" of the existing problem.⁶³

Here, the DSEIR's analysis of cumulative impacts is deficient since it fails to include any meaningful analysis of how the Project's impacts will interact with the past, current, and future projects near the Project site. The DSEIR states that it uses a "projection approach" to analyze how the Project's impacts relate to the impact projections made in adopted local, regional, and statewide plans, but this approach does not include any discussion of the actual or even predicted impacts from the relevant projects.⁶⁴ Table 4.4-1 claims to list "probable future projects that may cumulatively affect resources of concern for the proposed Project," but it again does not provide any information regarding the projected impacts from the listed plans and projects.⁶⁵ Further, there are glaring and unexplained omissions of probable future projects from the cumulative impacts analysis, including the nearby Howard Terminal Project that would build a

⁵⁷ *Id.* at 4.3-34.

⁵⁸ WOCAP at 4-4.

⁵⁹ *Id.* at 4-5.

⁶⁰ CEQA Guidelines, § 15130, subd. (a).

⁶¹ *Id.* §§ 15065, subd. (a)(3), 15355, subd. (b).

⁶² *Id.* § 15144; *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 96.

⁶³ *Kings County Farm Bureau*, 221 Cal.App.3d at 718.

⁶⁴ DSEIR at 4-6 to 7.

⁶⁵ *Id.* at 4-8 to 10.

large baseball stadium at the Port.⁶⁶ For the Project's cumulative air quality impacts analysis, the DSEIR fails to include any discussion of how the Project's cumulative impacts were assessed beyond a vague table that summarizes the Project's cumulative risk.⁶⁷ Table 4.5-2 shows a significant increase in cancer risk (200 in one million to 207 in one million) and PM 2.5 concentration (1.7 $\mu\text{g}/\text{m}^3$ to 2.8 $\mu\text{g}/\text{m}^3$) from the Project, but provides no explanation for these increases.⁶⁸ This cursory disclosure of the Project's cumulative air quality impacts does not provide sufficient information to the public. For all of these reasons, the DSEIR's cumulative impacts analysis does not satisfy CEQA's requirements, especially since West Oakland is already burdened by substantial and significant pollution sources throughout its neighborhoods.

VIII. The DEIR's Air Quality Mitigation Measures are Unenforceable, Unlawfully Deferred, and Inadequate.

CEQA requires a lead agency to adopt all feasible mitigation measures to minimize the significant environmental impacts of a project.⁶⁹ These measures must be detailed and specific, and "fully enforceable" through permit conditions, agreements, or other legally binding instruments.⁷⁰ The public must be able to discern which steps will be taken to mitigate a project's impacts, and mitigation measures should include criteria or performance standards to measure this implementation.⁷¹ In addition, CEQA generally prohibits the deferred formulation of mitigation measures.⁷² Deferred mitigation is proper only if the environmental impact report expressly commits the lead agency to the mitigation measures, adopts specific performance standards the mitigation will achieve, and identifies potential actions that can feasibly achieve the performance standards.⁷³ The DSEIR includes only two mitigation measures to reduce the Project's significant air quality impacts, and both of these measures are unenforceable and unlawfully deferred.

First, Mitigation Measure ERA AQ-1 ("MM AQ-1") requires the Eagle Rock Aggregates to prepare and implement an "Operations Air Quality Plan" that must be reviewed and approved by the Port before the Project begins operating.⁷⁴ This Plan "shall describe operational measures that the Project applicant will implement upon commencement of Project operations."⁷⁵ At a minimum, these measures must include the use of Tier 4F hybrid-electric front-end loaders, an

⁶⁶ *Id.* at 4-7.

⁶⁷ *Id.* at 4-10 to 13.

⁶⁸ *See id.* at 4-13.

⁶⁹ Pub. Resources Code, § 21002; CEQA Guidelines, § 15126.4, subd. (a)(1).

⁷⁰ Pub. Resources Code, § 21081.6, subd. (b); CEQA Guidelines, § 15126.4, subd. (a)(2); *San Franciscans for Reasonable Growth v. City & County of San Francisco* (1984) 151 Cal.App.3d 61, 79.

⁷¹ *San Joaquin Raptor Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 670.

⁷² CEQA Guidelines, § 15126.4, subd. (a)(1)(B).

⁷³ *Ibid.*

⁷⁴ DSEIR at 3.4-23 to 24.

⁷⁵ *Id.* at 3.4-23.

electric sweeper, and road sweeping twice a day.⁷⁶ Eagle Rock Aggregates must also provide an annual inventory of its equipment and meet with the Port each year to discuss the inventory and evaluate the feasibility of using least-polluting or zero emissions equipment at the Project.⁷⁷ These requirements are a good starting point for ways to reduce the Project's operational air quality impacts, but the way MM AQ-1 is drafted renders its requirements unenforceable and untimely. Since MM AQ-1 does not include any performance standards to determine whether and when the Plan's objectives (i.e. reduce air emissions) are achieved, including deadlines for purchasing the new equipment, a monitoring program to ensure that adequate street sweeping occurs, and a system for ensuring the cleanest equipment technologically available is used at the Project, the measure cannot be enforced. Further, MM AQ-1 is deferred since the Plan will not be created until after the Project is approved and there are no requirements that the air emission reduction measures be implemented before the Project starts its operations. Instead, the Plan and its operational measures should be finalized before the Project is considered for approval. The Plan should also include concrete standards to ensure that its measures do in fact minimize the Project's significant air quality impacts, such as emission reduction goals and techniques for measuring emission reductions.

Second, Mitigation Measure ERA AQ-2 ("MM AQ-2") requires Eagle Rock Aggregates to "utilize construction equipment (excluding on-road trucks which must meet CARB on-road emission standards) meeting Tier 4 emission requirements" to minimize the Project's air quality impacts from construction.⁷⁸ However, MM AQ-2 also allows for "the possible exception of certain types of equipment (vibratory pile drivers and concrete saws), for which suitable Tier 4 equipment may not be available."⁷⁹ Similar to MM AQ-1, MM AQ-2 is unenforceable and deferred because it omits any performance standards for determining when and how exceptions to the Tier 4 construction equipment requirement will be granted. The DSEIR should be revised to provide more specificity regarding its air quality mitigation measures.

Even if MM AQ-1 and MM AQ-2 were sufficient under CEQA, the DSEIR fails to implement all feasible mitigation for air quality impacts and explain why additional mitigation is infeasible. Mitigation is especially needed to minimize PM 2.5 from the Project's operations since the DSEIR concludes that Project operations will have significant and unavoidable PM 2.5 impacts on nearby workers.⁸⁰ The DSEIR should be revised to include concrete and enforceable mitigation measures for emissions from the Project's stockpiles, aggregate transfer operations, and on-site vehicle travel, and other sources of fugitive dust since 95 percent of PM 2.5 comes from these sources.⁸¹ In addition, the DSEIR should add mitigation measures that reduce air quality impacts from vehicles other than on-site equipment, such as ocean-going vessels, commercial harbor craft, and off-site trucks used to transport the aggregates.

⁷⁶ *Id.* at 3.4-23 to 24.

⁷⁷ *Id.* at 3.4-24.

⁷⁸ *Id.* at 3.4-27.

⁷⁹ *Ibid.*

⁸⁰ *Id.* at 3.4-28 to 30, 3.4-34 to 35.

⁸¹ *Id.* at 3.4-28.

The Port has received a number of comment letters that propose additional mitigation measures to reduce the Project's significant air quality impacts.⁸² We strongly urge the Port to publicly evaluate the feasibility of these mitigation measures and adopt all measures that will reduce the Project's impacts with specific, enforceable, and timely actions. This analysis is required to comply with CEQA's mandates regarding mitigation measures.

IX. The Analysis of Project Alternatives in the DSEIR is Insufficient.

An environmental impact report must identify "a reasonable range of alternatives" that would "feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project."⁸³ This discussion allows lead agencies to consider alternatives to a proposed action that will lessen impacts to the environment.⁸⁴ If an environmental impact report claims that an alternative is economically infeasible, this claim must be supported by substantial evidence demonstrating that the additional costs would make the project impractical.⁸⁵ A proper analysis of alternatives is necessary to comply with CEQA's mandate to avoid or substantially lessen a project's environmental impacts whenever feasible.⁸⁶

Here, the DSEIR identifies "Alternative 1: Stockpile Storage in a Building" as the environmentally superior alternative because it would "eliminate" the Project's significant PM 2.5 impacts from fugitive dust.⁸⁷ However, the DSEIR dismisses this alternative as economically infeasible since it would be expensive to design and construct a building with the necessary clearances for the Project's stockpiles and the appropriate geotechnical specifications for the site.⁸⁸ Given these challenges and the cost of a similar, recently-constructed enclosure, the DSEIR estimates that the building would cost \$72,865,000, which is 2.5 times higher than the capital costs for the Project.⁸⁹ This estimate is helpful, but the feasibility analysis for Alternative 1 ignores the best source of comparison – the building that encloses construction aggregate stockpiles at Eagle Rock Aggregates' existing Richmond Terminal.⁹⁰ The DSEIR should be revised to describe the costs associated with the stockpile enclosure at its Richmond Terminal and why that enclosure was feasible but an enclosure at the Project is allegedly not, especially given the massive benefits associated with Alternative 1.

⁸² See Letter from CARB to Port (Dec. 21, 2020), at 7; Letter from BAAQMD to Port (Jan. 8, 2021), at 1-2; Letter from West Oakland Environmental Indicators Project to Port (Jan. 8, 2021), at 7; Letter from Shute, Mihaly & Weinberger LLP to Port (Jan. 8, 2021), at 20-21.

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

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

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

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

⁸⁷ DSEIR at 5-11.

⁸⁸ *Ibid.*

⁸⁹ *Ibid.*

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

X. Conclusion

CEQA provides the opportunity for transparent, thoughtful decision-making by requiring lead agencies to evaluate, disclose, and mitigate a proposed project's significant environmental impacts prior to approval. While the DSEIR provided some information about the Project and its environmental impacts, multiple facets of this discussion and analysis can and should be improved. Further, CEQA requires the DSEIR to include mitigation measures that are enforceable, not deferred, and designed to reduce the Project's significant environmental impacts. The DSEIR's errors and omissions are especially troubling given West Oakland's significant and longstanding pollution burden that has been ignored for far too long. We respectfully urge the Port to revise the DSEIR to address the concerns raised in this letter and recirculate the DSEIR for public review and comment.

Please do not hesitate to contact me if you have any questions or would like to discuss these issues further.

Sincerely,



ABIGAIL BLODGETT
Deputy Attorney General

For XAVIER BECERRA
Attorney General