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STATE CLEARINGHOUSE

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Environmental Programs and Planning Division
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SENT VIA ELECTRONIC MAIL ONLY (kchuop@portoakland.com)

Subject: Draft Supplemental Environmental Impact Report (SEIR) for the Eagle Rock Aggregates Oakland Terminal Project, Alameda County

Dear Khamly Chuop:

The California State Lands Commission (Commission) staff has reviewed the Draft SEIR for the Eagle Rock Aggregates Oakland Terminal Project (Project) prepared by the Port of Oakland (Port). The Port, as the public agency proposing to carry out the Project, is the lead agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.). Staff submits these comments and suggestions in its capacity as a trustee agency, pursuant to State CEQA Guidelines section 15386, for projects that could directly or indirectly affect sovereign land and their accompanying Public Trust resources or uses. Staff also provides these comments in keeping with its responsibility to provide oversight of the State's granted tidelands and submerged lands pursuant to Public Resources Code section 6009.1, subdivision (b).

Commission Jurisdiction and Public Trust Lands

The Commission has jurisdiction and management authority over all ungranted tidelands, submerged lands, and the beds of navigable lakes and waterways. The Commission also has certain residual and review authority for tidelands and submerged lands legislatively granted in trust to local jurisdictions (Pub. Resources Code, §§ 6009, subd. (c); 6009.1; 6301; 6306). All tidelands and submerged lands, granted or ungranted, as well as navigable lakes and waterways, are subject to the protections of the common law Public Trust Doctrine.

As general background, the State of California acquired sovereign ownership of all tidelands and submerged lands and beds of navigable lakes and waterways upon its admission to the United States in 1850. The state holds these lands for the benefit of all people of the state for statewide Public Trust purposes, which include but are not limited to waterborne commerce, navigation, fisheries, water-related recreation, habitat preservation, and open space. On tidal waterways, the State's sovereign fee ownership extends landward to the mean high tide line, except for areas of fill or artificial accretion or where the boundary has been fixed by agreement or a court. Such boundaries may not be readily apparent from present day site inspections.

The California Legislature is vested with the authority to enact laws involving the State's sovereign Public Trust lands. Since 1851, the Legislature has periodically transferred portions of the State's Public Trust lands to over 80 local governmental entities for management purposes, including California's five major ports. These granted lands are held in trust for the people of California and must be used for Public Trust purposes, including water-related commerce, navigation, and fishing. The granting language conveys the State's legal title to the sovereign lands subject to certain terms and conditions and subject to the common law Public Trust Doctrine.

The proposed project is located within lands that have been legislatively granted in trust to the City of Oakland pursuant to Chapter 657, Statutes of 1911, as amended. Through the City's Charter, portions of these public trust lands, including the project area, are within the Port of Oakland (Port) and are managed by the City acting by and through its Board of Port Commissioners. Any proposed uses involving these granted tidelands must be consistent with the common law Public Trust Doctrine, the City's applicable granting statutes, the California Constitution, and relevant case law.

In 2016, the Commission adopted a five-year Strategic Plan,¹ identifying ports and harbor districts as essential partners for driving economic growth and managing coastal resources. The Strategic Plan identified key actions that relate to ports and harbor districts, including working with various partners to ensure port policies and programs are consistent with Executive Order B-32-15, including the Freight Mobility Plan, the Sustainable Freight Pathways to Zero and Near-Zero-Emissions, and the California Energy Commission's Integrated Energy Policy Report, and working with grantees to ensure that Public Trust land and revenue uses are consistent with the Public Trust.

Project Description

The Port prepared a Draft SEIR to revise and update the Oakland Army Base Area Redevelopment Plan (OAB Plan) Environmental Impact Report (EIR), certified by the City of Oakland in July 2002, and addended by the City of Oakland and the Port on different occasions with the 2006 Maritime Street Addendum, the 2012 Oakland Army Base Addendum, the 2015 Cool Port Addendum, and the 2019 7th Street Grade Separation Addendum. These combined documents are considered the "2002 EIR as

¹ California State Lands Commission. Strategic Plan: 2016-2020. December 18, 2015. Available at: <http://www.slc.ca.gov/wp-content/uploads/2018/07/StrategicPlan.pdf>.

Addended.” The 2002 EIR as Addended evaluated the environmental impacts of the development and use of the Project area for increased cargo operations, assuming only container cargo. Subsequent to the approval of the 2002 EIR as Addended, the Port proposed to modify the OAB Plan for construction aggregates stockpiling and distribution. In proposing these changes, the Port seeks to assist in meeting current and projected needs for sand and gravel supply in the greater San Francisco Bay Area.

From the Project Description, Commission staff understands that:

- Aggregate Maritime Transport and Loading/Unloading: Berth 22 would be utilized for vessel and barge operations to unload aggregate material for stockpiling as well as to load the aggregate on to barges for local and regional distribution.
- Aggregate Stockpiling and Land-Based Transport: Construction aggregates would be offloaded from ocean-going vessels and stockpiled on pavement at the Berths 20, 21, and 22 backlands using a radial stacking conveyor system to create three stockpiles over 40 feet high. The material would then be distributed locally and regionally via truck or barge.

Environmental Review

Commission staff requests that the Port consider the following comments on the Project’s SEIR.

Air Quality and Greenhouse Gas Emissions

1. Deferred Mitigation: In order to avoid the improper deferral of mitigation, mitigation measures (MMs) must be specific, feasible, and fully enforceable to minimize significant adverse impacts from a project, and “shall not be deferred until some future time.” (State CEQA Guidelines, § 15126.4, subd. (a)(1)(B).) MM ERA AQ-1 requires Eagle Rock Aggregates (ERA) to prepare and implement an Operations Air Quality Plan. As written, this Plan must include measures that could reduce the Project’s on-site operational emissions, but the MM does not include an enforceable timeline for plan preparation and lacks adequate detail about how such measures could reduce the Project’s significant impact on air quality. Staff recommends that MM ERA AQ-1 be updated to include more specific performance measures and targets that the Port must ensure are met. These performance measures and targets should be consistent with the near-term emissions reduction actions identified in the Seaport Air Quality 2020 and Beyond Plan (2020 and Beyond Plan) that was adopted by the Port in 2019.

MM ERA AQ-1 states that the Operations Air Quality Plan shall be reviewed and approved by the Port prior to start of Project operations. Commission staff recommends including stakeholder engagement in this review process in accordance with a key strategy of the 2020 and Beyond Plan. Specifically, including stakeholder engagement and public review in the preparation and implementation of the Operations Air Quality Plan would provide ongoing opportunities for meaningful input and authentic involvement in decision-making.

Staff also recommends that ERA work closely with the Port to evaluate equipment and infrastructure needs in order to identify opportunities for zero-emissions equipment. This measure would accord with near-term actions identified in the Port's 2020 and Beyond Plan.

2. Fugitive Dust: Chapter 2 of the Draft SEIR, *Project Description*, notes that water sprayers would be used for dust suppression while the aggregate materials are unloaded and loaded onto vessels or transported along stackers to and from the material stockpiles. In addition, water would be sprayed daily from radial sprayers while the aggregate is stockpiled to retain a moisture content of 1 to 8 percent. Finally, the Project would have a screened barrier and/or stacked containers around the perimeter of the stockpile area to create a visual barrier, which is also referred to as a "wind screen." (Chapter 3.4, *Air Quality*, page 3.4-31.)

The 2002 EIR as Addended identified two Standard Conditions of Approval related to fugitive dust and particles with a diameter of less than 10 or 2.5 micrometers (PM₁₀ and PM_{2.5}, respectively), but these measures address dust generated during the OAB Redevelopment Plan construction and remediation activities and do not appear to apply to the proposed Project's operational phase. The Draft SEIR does not explain why no further dust suppression measures would be needed during the Project's operations. Commission staff notes that although the 2002 EIR as Addended determined that the impacts to air quality were significant and unavoidable, pursuant to section 15092 of the State CEQA Guidelines, lead agencies must reduce or avoid significant effects to the extent feasible prior to approving a project, even if unavoidable significant effects remain after application of all feasible mitigation. The PM₁₀ and PM_{2.5} impacts are of particular concern because the Draft SEIR concedes that the Project's uncovered aggregate stockpiles will result in "...a change in the severity of the previously identified cumulatively considerable significant and unavoidable emissions impact of the OAB Area Redevelopment Plan disclosed in the 2002 EIR as Addended." (Chapter 4, *Cumulative Impacts*, page 4-16.) Commission staff suggests that feasible mitigation to reduce cumulative air quality impacts exists beyond what the Port proposes in the Draft SEIR and therefore recommends that the Final SEIR evaluate all feasible mitigation measures, including placing covers over the stockpiles and the trucks transporting material from the Project site. This could further reduce cumulative human health impacts to the surrounding community.

Environmental Justice

3. Environmental Justice Analysis: Environmental justice is defined by California law as "the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies." (Gov. Code, § 65040.12.) This definition is consistent with the Public Trust Doctrine's principle that management of trust lands is for the benefit of all people.

The Commission adopted an updated Environmental Justice Policy and Implementation Plan in December 2018, found at <https://www.slc.ca.gov/envirojustice/>, to ensure that environmental justice is an essential consideration in the agency's processes, decisions, and programs. Through its policy, the Commission reaffirms its commitment to an informed and open process in which all people are treated equitably and with dignity, and in which its decisions are tempered by environmental justice considerations. Among other goals, the policy commits the Commission to strive to minimize additional burdens on and increase benefits to marginalized and disadvantaged communities resulting from a proposed project or lease. Furthermore, the Commission's Environmental Justice Policy aligns with that of its sister agency the San Francisco Bay Conservation and Development Commission (BCDC). Being one of the agencies responsible for the Project, BCDC will rely on the SEIR when considering any approval related to this Project.

Industrial facilities and transportation projects have historically been built among traditionally marginalized communities who do not have access to resources to address the environmental and public health impacts that come with these developments, causing an environmental justice issue. Based on the information from CalEnviroScreen 3.0, (found at: <https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-30>) the Project is located within a high pollution area relative to the rest of the State, with a pollution burden percentile of 89 percent. In addition, the Census Tracts closest to the Project (Census Tracts 6001425101, 6001425102, 6001425104, and 6001401500) have pollution burden percentiles ranging from 78 percent to 86 percent relative to the rest of the State, depending on the Census Tract. In other words, communities near the Project are disproportionately impacted by various sources of pollution, health hazards, and socioeconomic burdens including diesel emissions, toxic releases, presence of hazardous waste, and groundwater threats. In addition, children, the elderly, and minority populations are affected by health hazards, which include asthma, cardiovascular irregularities, and low birth weights.

Adverse health disparities overwhelmingly affect the marginalized communities adjacent to the Port, and this Project may augment such disparities by increasing dust and air pollution. According to the West Oakland Community Action Plan, "neighborhoods near the Port of Oakland experience nearly three times the cancer risk from local pollution sources, compared to neighborhoods farther away" ([https://www.baaqmd.gov/~media/files/ab617-community-health/west-oakland/100219-files/owning-our-air-plan-summary-pdf.pdf?la=en](https://www.baaqmd.gov/~/media/files/ab617-community-health/west-oakland/100219-files/owning-our-air-plan-summary-pdf.pdf?la=en)). For decades, disadvantaged communities near the Port have endured poor health and poor air. As stated in the SEIR, this Project would increase levels of fugitive dust and other pollutants and would contribute to existing air quality standard violations in the area. Short-term exposure to particulate matters above the Federal or State standards can result in aggravated asthma, acute bronchitis, respiratory symptoms, decreased lung functions, heart attacks, and premature mortality.

The Project's potential public health impacts and lack of full analysis of mitigation measures related to air pollution and fugitive dust, as well as the Draft SEIR's lack of an environmental justice analysis and record of meaningful and authentic community outreach and engagement is of concern to the Commission. Although not legally required in a CEQA document, staff suggests including a section describing any community outreach and engagement the Port undertook in developing the draft SEIR. In this manner, the CEQA public comment process would provide the greatest opportunity for concerned public groups to provide input relating to environmental justice. Commission staff is available to work with the Port and stakeholders to address these concerns.

Thank you for the opportunity to comment on the Draft SEIR for the Project. Staff requests that you consider these trustee agency comments prior to certifying the Final SEIR. Please send copies of future Project-related documents, including electronic copies of the Final SEIR, Mitigation Monitoring and Reporting Program, Notice of Determination, CEQA Findings and, if applicable, Statement of Overriding Considerations when they become available, and refer questions concerning environmental review to Alexandra Borack, Senior Environmental Scientist, at alexandra.borack@slc.ca.gov. For questions about Commission jurisdiction, please contact Reid Boggiano, Public Land Management Specialist, at reid.boggiano@slc.ca.gov. For questions relating to the Commission's Environmental Justice Policy and outreach, please contact Yessica Ramirez, Environmental Justice Liaison, at yessica.ramirez@slc.ca.gov.

Sincerely,



Nicole Dobroski, Chief
Division of Environmental Planning
and Management

cc: Office of Planning and Research
R. Boggiano, Commission
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