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WEST OAKLAND ENVIRONMENTAL
8 INDICATORS PROJECT

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **COUNTY OF ALAMEDA**

12 WEST OAKLAND ENVIRONMENTAL
INDICATORS PROJECT,

13 Petitioner,

14 v.

15 PORT OF OAKLAND; BOARD OF
16 PORT COMMISSIONERS OF THE
PORT OF OAKLAND, and DOES 1
17 through 20, inclusive

18 Respondents.

19
20 EAGLE ROCK AGGREGATES; EAGLE
ROCK AGGREGATES, INC.; and DOES
21 21 through 40, inclusive,

22 Real Parties in Interest.
23
24
25
26
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Case No. 22CV008905

**VERIFIED PETITION FOR WRIT OF
MANDATE AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

ACTION BASED ON CALIFORNIA
ENVIRONMENTAL QUALITY ACT

Code of Civ. Proc. § 1094.5 (alternatively, §
1085); Public Resources Code § 21000 et
seq.

1 **INTRODUCTION**

2 1. This action challenges the decision of the Port of Oakland and Board of Port
3 Commissioners of the Port of Oakland (together, “Respondents” or “Port”) to approve the Eagle
4 Rock Aggregates Oakland Terminal Project (“Project”) and certify a Supplemental
5 Environmental Impact Report (“SEIR”) for the Project. Eagle Rock Aggregates, Inc.’s
6 (“Applicant”) Project includes a marine terminal that would import, store, and distribute up to
7 2,500,000 tons of sand and gravel per year on approximately 18 acres at the Port of Oakland.
8 This bulk construction aggregate would be stored in stockpiles as high as 25 feet, holding as
9 much as 329,000 tons each, with no covering to block wind or rain, allowing dust and
10 particulates to blow off the site or run off the piles. The Project would require up to 48 new
11 ocean-going vessel (“OGV”) visits to the Port per year, whose engines burn some of the dirtiest
12 fuel on the planet and would idle in the Port for days (without access to cleaner, electric shore
13 power, which would allow them to turn off the engines), further increasing significant air
14 pollution in the area. An estimated 70,000 truck trips per year would transport the construction
15 aggregate along local West Oakland streets and surrounding highways. The Project would be
16 upwind of the already environmentally overburdened community of West Oakland. The
17 presence of exposed construction aggregate and emissions emitting vessels and trucks would
18 result in increases in air pollution, greenhouse gas (“GHG”) emissions, noise, water pollution,
19 and other impacts, exacerbating existing problems in West Oakland.

20 2. The Port prepared the SEIR under CEQA to review the Project’s environmental
21 impacts. The SEIR is a supplement to the environmental impact report for the Oakland Army
22 Base Redevelopment Plan certified by the City of Oakland in July 2002 (“2002 EIR”). The
23 SEIR failed to adequately analyze and mitigate the Project’s impacts. The result is an
24 environmental analysis that is clearly inadequate under state environmental law and an approval
25 that disregards significant environmental and health impacts to the community in West Oakland,
26 which has long suffered environmental burdens in excess of most other communities in the Bay
27 Area, the State, and the nation.

28 3. Petitioner West Oakland Environmental Indicators Project (“WOEIP”)

1 demonstrated repeatedly in comments and testimony throughout the administrative process, and
2 in personal meetings with the Applicant and the Port, that the Project would have significant
3 negative environmental impacts, on, among other things: air quality and health, hazards and
4 hazardous materials, hydrology and water quality, land use, noise, transportation, GHG
5 emissions, energy consumption, and the Applicant’s related operations at the Port of Richmond.

6 4. Yet the Port failed to adequately analyze these impacts, identify and adopt
7 effective mitigation measures or reduce or avoid them, or consider or adopt reasonable
8 alternatives to the Project, in violation of the California Environmental Quality Act (“CEQA”),
9 Public Resources Code sections 21000, et seq. In particular, the Port refused to even consider
10 relocating an existing concrete plant to Port property, which would eliminate truck trips hauling
11 aggregate through the community.

12 **PARTIES**

13 5. Petitioner WOEIP is a resident-led, community-based environmental justice
14 organization located in West Oakland, California. WOEIP is dedicated to achieving healthy
15 homes, healthy jobs, and healthy neighborhoods for all who live, work, learn, and play in West
16 Oakland. Through engaging in research projects and participating in agency advisory
17 committees as well as stakeholder groups, WOEIP focuses on leveraging community power to
18 support residents in developing and achieving their own vision for healthy neighborhoods,
19 which includes – but is not limited to – clean soil and vibrant surroundings, clean air and clean
20 water, and a resident-led comprehensive vision for redevelopment and economic revitalization
21 in and around West Oakland.

22 6. Leadership and supporters of WOEIP live in West Oakland and would be
23 negatively affected by the Project’s adverse environmental impacts and improper approvals. The
24 interests that WOEIP seeks to further in this action are within the purposes and goals of the
25 organization. WOEIP and its supporters have a direct and beneficial interest in the Port’s
26 compliance with CEQA and the CEQA Guidelines. These interests would be directly and
27 adversely affected by the Project, which violates provisions of law as set forth in this Petition
28 and which would cause substantial and irreversible harm to the natural environment. The

1 maintenance and prosecution of this action will confer a substantial benefit on the public by
2 protecting the public from the environmental and other harms alleged herein. As stated herein,
3 WOEIP submitted comments to the Port objecting to and commenting on the Project and the
4 SEIR.

5 7. Respondent Port of Oakland (“Port”) is responsible for regulating and controlling
6 land use in and around the Port area. The Port is the “lead agency” for the purposes of Public
7 Resources Code Section 21067, with principal responsibility of conducting environmental
8 review of the proposed actions. The Port is a public lands trust agency and has a duty to comply
9 with CEQA and other state laws.

10 8. Respondent Board of Port Commissioners of the Port of Oakland (“Port Board”)
11 exclusively controls and manages the Port under the City of Oakland Charter. As the decision-
12 making body, the Port Board is responsible for granting the various approvals necessary for the
13 Project and for ensuring that the Port has conducted an adequate and proper review of the
14 Project’s environmental impacts under CEQA. The Port Board and its members are sued in their
15 official capacities.

16 9. Petitioner does not know the true names and capacities, whether individual,
17 corporate, associate, or otherwise, of Respondents Doe 1 through Doe 20, inclusive, and
18 therefore sues said Respondents under fictional names. Petitioner alleges, upon information and
19 belief, that each fictionally named Respondent is responsible in some manner for committing the
20 acts upon which this action is based. Petitioner will amend this Petition to show their true names
21 and capacities if and when the same have been ascertained.

22 10. Petitioner is informed and believes, and on that basis alleges, that Real Party in
23 Interest Eagle Rock Aggregates is the entity listed as the “Project Applicant” on the Notice of
24 Determination for the SEIR for the Project filed and posted by the County Clerk of Alameda
25 County on February 25, 2022. As the Project applicant, Eagle Rock Aggregates is a recipient of
26 the approvals granted by Respondents as part of the Project, and thus is a real party in interest
27 within the meaning of Public Resources Code section 21167.6.5.

28 11. Petitioner is informed, and on that basis alleges, that Real Party in Interest Eagle

1 Rock Aggregates, Inc. is a company incorporated in the State of Delaware and doing business in
2 the State of California and that this is the true name of Project applicant Eagle Rock Aggregates.
3 Eagle Rock Aggregates, Inc. is the only active company listed on the California Secretary of
4 State Business Entities Search with the name “Eagle Rock Aggregates.” While Eagle Rock
5 Aggregates, Inc. is not listed on the Notice of Determination for the Project, Petitioner
6 separately names Eagle Rock Aggregates, Inc. in an abundance of caution. As used in this
7 Petition and Complaint, “Eagle Rock Aggregates, Inc.” refers to both Eagle Rock Aggregates
8 and Eagle Rock Aggregates, Inc.

9 12. Petitioner does not know the true names and capacities, whether individual,
10 corporate, associate, or otherwise, of Real Parties in Interest Doe 21 through Doe 40, inclusive,
11 and therefore sues said Real Parties in Interest under fictional names. Petitioner alleges, upon
12 information and belief, that each fictionally named Real Party in Interest is responsible in some
13 manner for committing the acts upon which this action is based or has material interests affected
14 by the Project or by the Port’s actions with respect to the Project. Petitioner will amend this
15 Petition to show their true names and capacities if and when the same have been ascertained.

16 **JURISDICTION AND VENUE**

17 13. Pursuant to California Code of Civil Procedure sections 526, 527, 1094.5
18 (alternatively section 1085), and 1087; and Public Resources Code sections 21168 (alternatively
19 section 21168.5) and 21168.9, this Court has jurisdiction to issue a writ of mandate to set aside
20 Respondents’ decision to certify the SEIR and approve the Project.

21 14. Venue for this action properly lies in the Alameda County Superior Court because
22 Respondents and the proposed site of the Project are located in Alameda County. Many of the
23 significant environmental impacts from the Project that are the subject of this lawsuit would
24 occur in Alameda County, and the Project would affect the interests of Alameda County
25 residents, including Petitioner’s members who reside in Alameda County.

26 15. Respondents have taken final agency actions with respect to adopting the EIR and
27 approving the Project. Respondents had a duty to comply with applicable state laws, including
28 but not limited to CEQA, prior to undertaking the discretionary approvals at issue in this

1 lawsuit.

2 16. Petitioner has complied with the requirements of Public Resources Code section
3 21167.5 by serving a written notice of Petitioner’s intention to commence this action on
4 Respondents on March 23, 2022. A true and correct copy of the written notice and proof of
5 service is attached hereto as Exhibit A.

6 17. Petitioner has complied with the requirements of Public Resources Code section
7 21167.6 by concurrently notifying Respondents of Petitioner’s request to prepare the record of
8 administrative proceedings relating to this action, which notice is filed herewith.

9 18. Petitioner has complied with the requirements of Public Resources Code section
10 21167.7 by sending a copy of this Petition to the California Attorney General on March 24,
11 2022. A true and correct copy of the written notice and proof of service is attached hereto as
12 Exhibit B.

13 19. Petitioner has performed any and all conditions precedent to filing this instant
14 action and have exhausted any and all administrative remedies to the extent required by law,
15 including, but not limited to, timely submitting extensive and detailed comments objecting to the
16 approval of the Project and identifying to Respondents the deficiencies in Respondents’
17 environmental review for the Project.

18 20. This Petition is timely filed in accordance with Public Resources Code section
19 21167 and CEQA Guidelines section 15112.

20 21. Petitioner has no plain, speedy, or adequate remedy in the course of ordinary law
21 unless this Court grants the requested writ of mandate to require Respondents to set aside their
22 certification of the EIR and approval of the Project. In the absence of such remedies,
23 Respondents’ approval will remain in effect in violation of state law, and Petitioner and the
24 West Oakland community that it represents will be irreparably harmed. No money damages or
25 legal remedy could adequately compensate Petitioner and its members and the impacted
26 community for that harm.

1 **STATEMENT OF FACTS**

2 **The Proposed Project and Project Site**

3 22. The proposed Project is a marine terminal at the Port of Oakland that would
4 import, store, and distribute up to 2,500,000 tons of bulk construction aggregate per year. Bulk
5 construction aggregate consists of sand, gravel, and dry concrete additives, such as bauxite, slag,
6 and gypsum. The construction aggregate would be stored in stockpiles as high as 25 feet that
7 hold as much as 329,000 tons each, with no covering to capture substantial fugitive dust
8 emissions. The Project would require up to 48 new ocean-going vessel visits to the Port per
9 year, increasing emissions from vessel engines, which idle at the Port while unloading. The
10 Project includes infrastructure necessary to support the terminal, such as an overhead conveyor
11 system, truck scales, a scale house, and a receiving hopper. An estimated 70,000 trucks
12 transporting the construction aggregate as frequently as 375 trips per day along local roadways
13 would emit additional particulate emissions into West Oakland neighborhoods. The Project’s
14 initial lease is for at least 12 years, and could be extended to up to 27 years, which would expose
15 an entire new generation of West Oaklanders to increased air pollution from birth until
16 adulthood.

17 23. The proposed Project site is an entirely paved, impervious site located
18 immediately adjacent to San Francisco Bay, and includes five storm drain outfalls on the site’s
19 northern perimeter, which empty directly into the harbor. The Project would eliminate 18 acres
20 of overnight truck parking, shipping container/chassis storage, and staging that currently exist on
21 the Project site. The Project would displace trucks, container storage, and staging, likely onto
22 residential streets in surrounding West Oakland neighborhoods, resulting in air quality and noise
23 impacts in the West Oakland community.

24 24. The Project site is located in West Oakland, an area of approximately six square
25 miles and home to a vibrant and diverse shore-front community that has endured poor air quality
26 and poor health for decades due to a long history of industrial, port-related, and transportation
27 uses sited in the area. Surrounded on all sides by Interstate freeways 880, 980, and 580, and
28 adjacent to the Port and its rail yards and rail lines, West Oakland disproportionately

1 experiences among the highest levels of toxic diesel particulate matter (“DPM”) of any
2 community in not only the Bay Area, but also in the state and nation. Sources of DPM in West
3 Oakland include highway and street vehicles, drayage trucks, cargo-handling equipment, ships
4 and harbor craft, locomotives, and stationary sources. Other sources of DPM, fine particulate
5 matter (“PM_{2.5}”), and toxic air contaminants (“TACs”) that impact the West Oakland community
6 include industrial activities such as maritime-freight industry operations, large distribution
7 centers, a wastewater treatment plant, a concrete batch plant, a peaker power plant, and metal
8 and other recycling facilities.

9 25. West Oakland is home to historically oppressed groups. West Oakland has been a
10 traditionally Black community since the 1930s, and it continues to be impacted by a history of
11 red-lining and eminent domain practices that segregated communities of color and built
12 polluting infrastructure in their neighborhoods. West Oakland today is predominantly a low-
13 income community of color with approximately 52% of the population living below the federal
14 poverty level and residents of color representing approximately 76% of the population.

15 26. The Bay Area Air Quality Management District (“BAAQMD”) has identified
16 West Oakland as a priority community affected by a high cumulative exposure burden pursuant
17 to Assembly Bill (“AB”) 617, which directs communities and air districts to address air
18 pollution and related health effects in such overburdened communities. According to the State of
19 California’s CalEnviroScreen air, water, and soil pollution screening tool version 4.0, all West
20 Oakland census tracts are in the top 50% of pollution-burdened census tracts, with the highest
21 score of 91%.

22 27. West Oakland residents face numerous pollution-related health challenges. The
23 community’s asthma rate is among the highest levels in the United States. West Oakland
24 residents are 1.75 times more likely than other Alameda County residents to be hospitalized for
25 asthma-related illnesses. In 2018, approximately 25% of students at the West Oakland Middle
26 School had asthma or breathing problems. In 2016, West Oakland children under five
27 experienced 76% higher asthma emergency visits and hospitalization rates than the Alameda
28 County average and residents of West Oakland had a life expectancy rate that was 7.5 years

1 lower than the rest of Alameda County. Air-pollution-related diseases, including asthma,
2 bronchitis, cancer, chronic lower respiratory disease, emphysema, heart disease, and stroke are
3 some of the leading causes of death in the community, and West Oakland residents are dying
4 from these diseases at higher rates than others in the Bay Area. The West Oakland neighborhood
5 closest to the Project site currently has a cancer risk from local emission sources of 272 cases for
6 every million people, while the neighborhood furthest away has a cancer risk of 110 cases for
7 every million people. Over 90 percent of West Oakland residents' cancer risk comes from
8 exposure to DPM.

9 **West Oakland Community Action Plan and Other Applicable Clean Air Plans**

10 28. Pursuant to AB 617, BAAQMD chose to partner with WOEIP to develop the West
11 Oakland Community Action Plan (“WOCAP” or “Owning Our Air”). WOCAP’s primary goal
12 is to protect and improve community health by eliminating disparities in exposure to local air
13 pollution. The WOCAP’s targets for reductions of DPM, PM_{2.5}, and cancer-risk-related TACs
14 seek to ensure that all West Oakland neighborhoods will have the same air quality as the average
15 West Oakland neighborhood by 2025, and the same air quality as the least impacted West
16 Oakland neighborhood by 2030. WOCAP’s DPM target for the average West Oakland
17 neighborhood is a concentration of DPM of no more than 0.25 micrograms per cubic meter
18 (“ug/m³”) by 2025 and 0.13 ug/m³ by 2030. WOCAP’s PM_{2.5} target for the average West
19 Oakland neighborhood is a concentration of PM_{2.5} of no more than 1.7 ug/m³ by 2025 and 1.2
20 ug/m³ by 2030. WOCAP’s cancer risk targets for the average West Oakland neighborhood is a
21 cancer risk of no more than 200 for every million people by 2025 and 110 for every million
22 people by 2030.

23 29. The BAAQMD 2017 Clean Air Plan (“CAP”) focuses on protecting public health
24 and the climate. The plan includes all feasible measures to reduce ozone emissions from reactive
25 organic gases and nitrogen oxides (“NO_x”) and builds upon BAAQMD’s efforts to reduce
26 emissions of PM_{2.5} and TACs. Consistent with the GHG reduction targets adopted by the State,
27 the plan lays the groundwork to reduce Bay Area GHG emissions 40 percent below 1990 levels
28 by 2030 and 80 percent below 1990 levels by 2050.

1 30. Seaport Air Quality 2020 and Beyond is the Port’s master plan for achieving its
2 vision of a zero-emissions Seaport. The plan is intended to achieve zero diesel and GHG
3 emissions from the Port. The plan includes strategies to: 1) continue emissions reduction
4 programs and projects, 2) promote the pathway to zero emissions equipment and operations, and
5 3) develop infrastructure to support the pathway to zero emissions. The Port also recently
6 finalized the 2019 West Oakland Truck Management Plan with the City of Oakland. The plan
7 includes ten strategies to increase safety and reduce air emissions from trucks driving in West
8 Oakland, including better truck routes, improved truck route signage, traffic enforcement, better
9 urban design to promote truck routes, new parking regulations, and improved street intersections
10 near the Port.

11 **Environmental Review**

12 31. On or about August 22, 2019, the Port issued a Notice of Preparation (“NOP”) for
13 the Project, in which the Port notified public agencies and interested individuals that, as a lead
14 agency, it would be preparing a Draft SEIR to analyze the proposed Project’s potentially
15 significant environmental impacts. The NOP stated the Project may have a significant effect on
16 the environment, including but not limited to potentially significant impacts on air quality,
17 energy, geology and soils, GHG emissions, hazards and hazardous materials, hydrology and
18 water quality, noise, and transportation.

19 32. Several agencies, individuals, and organizations, including WOEIP, submitted
20 comments on the NOP, encouraging the Port to evaluate the full extent of the Project’s
21 environmental impacts in this sensitive community, including but not limited to air quality,
22 aesthetics, geology and soils, GHG emissions, hazards and hazardous materials, hydrology and
23 water quality, land use and planning, and transportation.

24 33. For example, in an email to the Port on September 30, 2019 commenting on the
25 NOP, WOEIP expressed concerns regarding air quality, GHG emissions, job opportunities,
26 shore side electrification, truck and rail traffic, and water quality. Specifically, WOEIP noted: 1)
27 particulate pollution from the open piles would blow into the neighboring residential community
28 and be difficult to regulate; 2) barges bringing the aggregate will not be able use shore power

1 and will therefore release significant amounts of DPM; 3) thousands of truck trips and increased
2 production of concrete at a nearby mixing plant will generate more GHG emissions; 4) potable
3 water used to control the dust from aggregates will worsen drought-related issues; 5) few jobs
4 will be created by the Project; and 6) numerous trucks will be displaced without a dedicated
5 parking space.

6 34. On October 21, 2019, the California Attorney General's office submitted a letter to
7 the Port regarding the NOP, noting that: 1) the Project would site another industrial facility with
8 significant environmental impacts in a highly burdened environmental justice community; 2) the
9 Project would need to take into account several regional emissions reduction plans; 3) the SEIR
10 must comprehensively evaluate environmental impacts, including impacts on sensitive receptors
11 given the proximity of neighborhoods to the Project, and conduct a full analysis of cumulative
12 impacts; and 4) the Port must consider all feasible measures to mitigate the significant impacts
13 of the Project.

14 35. On September 30, 2019, the BAAQMD submitted a letter to the Port regarding the
15 NOP, noting that the Project would significantly contribute to existing air pollution conditions
16 and therefore recommended a robust analysis of potential air quality impacts in the draft SEIR.

17 36. On or about November 6, 2020, the Port circulated the Draft SEIR for public
18 review and comment.

19 37. The Port held two public meetings regarding the Draft SEIR on December 9,
20 2020, one in the morning and one in the evening.

21 38. Petitioner WOEIP and numerous others, including public agencies and
22 organizations, submitted comments pointing out the serious deficiencies in the Draft SEIR. For
23 example, in a letter to the Port on January 8, 2021, WOEIP explained that the Draft SEIR
24 violated CEQA because it failed to: 1) analyze and make significance determinations on whole
25 categories of impacts, including GHG emissions, PM_{2.5}, and energy; 2) analyze the impact of the
26 Project to operations at the Port of Richmond that would occur as a result of the Project's
27 relocation of operations from the site; 3) provide the necessary facts, an adequate analysis of,
28 and mitigation for air quality and health, hazards and hazardous materials, hydrology and water

1 quality, land use, noise, transportation, and impacts related to Project-displaced truck parking; 4)
2 adequately analyze the Project’s cumulative impacts given the existing pollution burden
3 experienced by residents of West Oakland; and 5) adequately analyze alternatives to the Project.

4 39. In an additional comment letter on January 8, 2021, WOEIP identified other
5 inadequacies, including but not limited to: 1) failure to include the West Oakland Community
6 Emissions Reduction Plan as a reference for analysis; 2) unsupported assertions of creating
7 economic value in West Oakland when prior discussions revealed an estimated job creation of
8 19 workers, and a flawed assessment of local needs in the Project Need and Objectives
9 statement; 3) failure to analyze the impact to trucks currently using the Project site for parking
10 and staging; 4) failure to consider shore power for the Project when the Port is already violating
11 state mandates for the use of shore power for marine vessel visits; 5) failure to calculate
12 emissions from trucks distributing aggregate to ready-mix plants around the Bay Area; and
13 reliance on outdated information from the previous 2002 EIR that does not take into account
14 new information on health, climate, and racial equity impacts from freight emissions.

15 40. On January 15, 2021, the California Attorney General’s office submitted a letter
16 explaining to the Port that the Draft SEIR’s disclosure and analysis of the Project’s impacts was
17 inadequate. The letter explained that, *inter alia*, the Draft SEIR failed to: 1) include an adequate
18 description of the environmental setting; 2) describe the Project Applicant’s plans for its
19 Richmond Terminal and analyze the environmental impacts associated with this connected
20 action; 3) correctly analyze the Project’s PM_{2.5} impacts; 4) sufficiently discuss how the Project’s
21 air quality impacts translate to adverse health impacts for the West Oakland community; 5)
22 include a complete analysis of the Project’s consistency with the West Oakland Community
23 Emissions Reduction Plan; 6) analyze the Project’s cumulative impacts in a meaningful way; 7)
24 include mitigation measures that are enforceable, not deferred, and adequate to reduce the
25 Project’s significant impacts; and 8) provide a complete analysis of reasonable alternatives to
26 the Project.

27 41. On January 8, 2021, the BAAQMD submitted a letter explaining that, *inter alia*,
28 the Draft SEIR failed to: 1) disclose quantified cumulative impacts from existing sources in the

1 Health Risk Assessment; 2) properly evaluate the possible increase of truck emission impacts
2 within West Oakland and the impacts from eliminating approximately 25 acres of parking in the
3 transportation analysis; and 3) demonstrate how the Project will be consistent with 2030 GHG
4 targets established in SB 32.

5 42. On December 20, 2020, the California Air Resources Board (“CARB”) submitted
6 a letter explaining that, *inter alia*, the Draft SEIR failed to 1) consider Senate Bill (“SB”) 535,
7 SB 1000, and AB 617 – all of which emphasize the policy goal of protecting disadvantaged
8 communities from the harmful effects of air pollution; 2) account for the environmental impacts
9 from operations conducted at the Richmond Marine Terminal which will be relocated to the
10 Project site; 3) sufficiently mitigate fugitive dust from aggregate piles; and 4) properly identify
11 air pollution mitigation measures with an enforceable timeline.

12 43. On January 8, 2021, the San Francisco Bay Conservation and Development
13 Commission (“BCDC”) submitted a letter explaining that, *inter alia*, the Draft SEIR failed to: 1)
14 include an analysis of sea level rise specific for this Project; 2) discuss the possibility of oil
15 spills or address the Port’s oil spill contingency planning; 3) address concerns for adequate truck
16 parking and maritime activity; and 4) specify the culturally-relevant community outreach and
17 engagement efforts that has or will be conducted for the Project, identify whether the Project is
18 in a vulnerable community, and identify potential disproportionate impacts.

19 44. On January 8, 2021, the California State Lands Commission submitted a letter
20 explaining that, *inter alia*, the Draft SEIR failed to: 1) include more specific performance
21 measures and targets for mitigation, consistent with near-term emission reduction actions in the
22 Port’s Seaport Air Quality 2020 and Beyond Plan; 2) evaluate all feasible mitigation measures,
23 including placing covers over the stockpiles and the trucks transporting material from the
24 Project site; and 3) include an environmental justice analysis and record of meaningful and
25 authentic community outreach and engagement.

26 45. In November 2021, the Port released a Final SEIR for the Project, which included
27 responses to comments on the Draft SEIR.

28 46. On December 15, 2021, WOEIP again submitted extensive comments, detailing

1 how the Final SEIR did not adequately respond to or correct the inadequacies of the Draft SEIR
2 identified by WOEIP or other commenters during the review process. In particular, WOEIP
3 warned the Port that the Final SEIR failed to adequately evaluate the impact of increased GHG
4 and PM_{2.5} emissions and the impact of eliminating 18 acres of overnight truck parking and
5 maritime and activity that will likely be absorbed by the streets in the adjacent residential West
6 Oakland neighborhoods. WOEIP's letter also emphasized the need for the Port to adopt further
7 feasible mitigation to reduce the Project's impacts, especially on air quality.

8 47. On December 27, 2021, Naomi Schiff, a West Oakland resident since 1973,
9 submitted comments via email asking to defer approval of the Project. Identifying as an asthma
10 sufferer familiar with the dangers of particulate pollution and inadequate safety measures, Ms.
11 Schiff supported WOEIP and the Sierra Club in requesting more serious mitigation of potential
12 threats to health and safety of residents and workers.

13 48. On December 16, 2021, BAAQMD submitted comments identifying issues that
14 were not addressed in the Final SEIR, including but not limited to inadequate measures to
15 mitigate nitrous oxide ("NO_x") and PM_{2.5} impacts. In particular, BAAQMD did not support the
16 proposed use of Emission Reduction Credits to offset NO_x emission, and stated that more
17 comprehensive mitigations were needed on or near the Project site.

18 **The Port Board's Approval of the Project and Certification of the SEIR**

19 49. On December 16, 2021, the Port Board held a public hearing and approved
20 Resolution 21-87 to certify the Supplemental Environmental Impact Report for the Project and
21 adopt CEQA Findings, a Statement of Overriding Considerations, and a Mitigation and
22 Monitoring and Reporting Program (MMRP). At the same hearing, the Board conducted the first
23 reading of Ordinance 4631 to approve the Project.

24 50. On February 24, 2022, the Port Board held a public hearing and conducting the
25 second reading of Ordinance 4631 and adopted that ordinance to approve the Project.

26 51. On February 25, 2022, the Port recorded a Notice of Determination for the Project,
27 which stated that the Port had approved the Project, certified the SEIR, and adopted Findings
28 and a Statement of Overriding Considerations.

1 **FIRST CAUSE OF ACTION**

2 **Violations of CEQA**

3 52. Petitioner hereby incorporates by reference each and every allegation set forth in
4 the preceding paragraphs.

5 53. CEQA was enacted by the Legislature to ensure that long-term protection of the
6 environment be the guiding criterion in public decisions. CEQA applies to any discretionary
7 action taken by an agency that may cause a reasonably foreseeable change in the environment.

8 54. CEQA requires the lead agency for a project with the potential to cause significant
9 environmental impacts to prepare an environmental impact report for the project that complies
10 with the requirements of the statute, including, but not limited to, the requirement to analyze the
11 project’s potentially significant environmental impacts. The environmental impact report must
12 provide sufficient environmental analysis such that the decisionmakers and the public can
13 intelligently and fully consider environmental consequences when acting on the proposed
14 project. Such analysis must include and rely upon thresholds of significance that are based on
15 substantial evidence in the record.

16 55. CEQA also mandates that the lead agency analyze and adopt feasible and
17 enforceable mitigation measures that would reduce or avoid any of a project’s significant
18 environmental impacts, as well as analyze a reasonable range of alternatives to the project. If
19 any of the project’s significant impacts cannot be mitigated to a less-than-significant level, then
20 CEQA bars the lead agency from approving a project if a feasible alternative is available that
21 would meet the project’s objectives while avoiding or reducing its significant environmental
22 impacts.

23 56. CEQA further mandates that a lead agency may approve a project that would have
24 significant, unavoidable environmental impacts only if the agency finds that the project’s
25 benefits would outweigh its unavoidable impacts.

26 57. CEQA requires that substantial evidence in the administrative record support all of
27 the agency’s findings and conclusions, including those contained in the environmental impact
28

1 report, and that the agency explain how the evidence in the record supports the conclusions the
2 agency has reached.

3 58. Respondents violated CEQA by certifying an SEIR for the Project that is
4 inadequate and fails to comply with the requirements of CEQA and the CEQA Guidelines.
5 Among other things, Respondents:

6 a. **Improperly neglected analysis in the SEIR of whole categories of**
7 **environmental impacts.** The SEIR fails to comply with CEQA’s requirement to adequately
8 disclose, analyze, or mitigate the Project’s significant impacts on the environment because the
9 SEIR’s analysis and mitigation for whole categories of impacts are missing, including analysis
10 and mitigation for impacts to GHG emissions, PM_{2.5}, and energy.

11 b. **Failed to provide a lawful project description, including by improperly**
12 **segmenting a linked project.** The SEIR acknowledges that the Applicant will relocate its
13 existing operations at the Richmond Marine Terminal to the Project site but does not analyze the
14 impacts to the Richmond Marine Terminal from relocating operations to the Port of Oakland.

15 c. **Failed to describe the Project’s existing setting directly adjacent to a**
16 **historically environmentally burdened community.**

17 d. **Failed to adequately disclose, analyze, or mitigate the Project’s**
18 **significant impacts on the environment,** including but not limited to the Project’s impacts on
19 air quality, hazards and hazardous materials, hydrology and water quality, land use, noise, and
20 transportation, as well as the Project’s cumulative impacts.

21 e. **Failed to consider an adequate range of alternatives, failed to**
22 **adequately analyze alternatives considered, and improperly dismissed potentially feasible**
23 **alternatives suggested by WOEIP.**

24 f. **Failed to adequately respond to comments on the SEIR.**

25 59. Respondents also violated CEQA by adopting inadequate findings. Respondents’
26 findings do not provide adequate reasoning or the analytic route from facts to conclusions, as
27 required by law. The Findings of Fact and Statement of Overriding Considerations are
28 unsupported by substantial evidence in the record.

1 60. As a result of the foregoing defects, Respondents prejudicially abused their
2 discretion by certifying an SEIR that does not comply with the requirements of CEQA or the
3 CEQA Guidelines and precluded informed decision-making. As such, Respondents' certification
4 of the SEIR and approval of the Project must be set aside.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Petitioner prays for judgment as follows:

7 1. For alternative and peremptory writs of mandate directing Respondents to vacate
8 and set aside (a) certification of the SEIR, (b) adoption of the Findings and Statement of
9 Overriding Considerations, and (c) approval of all associated Project permits, entitlements, and
10 approvals;

11 2. For alternative and peremptory writs of mandate directing Respondents to comply
12 with CEQA and the CEQA Guidelines and take any other action as required by Public
13 Resources Code section 21168.9;

14 3. For a temporary stay, temporary restraining order, and preliminary and permanent
15 injunctions restraining Respondents and their agents, servants, and employees, and all others
16 acting in concert with them or on their behalf, from taking any action to implement, fund, or
17 construct any portion or aspect of the Project, pending full compliance with the requirements of
18 CEQA and the CEQA Guidelines;

19 4. For a stay, and preliminary and permanent injunctions, restraining Real Party in
20 Interest and its agents, employees, officers, and representatives from undertaking any activity to
21 implement the Project in any way pending full compliance with the requirements of CEQA and
22 the CEQA Guidelines;

23 5. For a declaration that Respondents' actions in certifying the SEIR and approving
24 the Project violated CEQA and the CEQA Guidelines, and that the certification and approvals
25 are invalid and of no force or effect, and that the Project is inconsistent with other applicable
26 plans, policies, or regulations;

27 6. For costs of suit;

28 7. For attorneys' fees as authorized by Code of Civil Procedure section 1021.5 and

1 other provisions of law; and

2 8. For such other and further relief as the Court deems just and proper.

3
4 DATED: March 24, 2022

SHUTE, MIHALY & WEINBERGER LLP

5
6 By: 

7
8 LAURA D. BEATON

9 Attorneys for Petitioner
10 WEST OAKLAND ENVIRONMENTAL
INDICATORS PROJECT

11 1483236.9

1 **VERIFICATION**

2 **STATE OF CALIFORNIA, COUNTY OF ALAMEDA**

3 I have read the foregoing VERIFIED PETITION FOR WRIT OF MANDATE AND
4 COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF and know its contents.

5 I am co-director of West Oakland Environmental Indicators Project, a party to this action.
6 The matters stated in the foregoing document are true of my own knowledge except as to those
7 matters which are stated on information and belief, and as to those matters I believe them to be
8 true.

9 I declare under penalty of perjury under the laws of the State of California that the
10 foregoing is true and correct.

11 Executed on March 23, 2022, at OAKLAND, California.

12
13 Brian Beveridge
14 Print Name of Signatory

Signature 

Exhibit A

SHUTE MIHALY
& WEINBERGER LLP

396 HAYES STREET, SAN FRANCISCO, CA 94102
T: (415) 552-7272 F: (415) 552-5816
www.smwlaw.com

LAURA D. BEATON
Attorney
Beaton@smwlaw.com

March 23, 2022

Via E-Mail and U.S. Mail

Board of Port Commissioners
c/o Board Secretary Daria Edgerly
Port of Oakland
530 Water Street
Oakland, CA 94607
E-Mail: dedgerly@portoakland.com

Re: Notice of Commencement of CEQA Litigation

Dear Ms. Edgerly:

This letter is to notify you that the West Oakland Environmental Indicators Project (“WOEIP”) will file suit against the Port of Oakland and Board of Port Commissioners of the Port of Oakland (together, the “Port”) for failure to observe the requirements of the California Environmental Quality Act (“CEQA”), Public Resources Code section 21000 et seq., and the CEQA Guidelines, California Code of Regulations section 15000 et seq. in the administrative process that culminated in the approval of the Eagle Rock Aggregates Oakland Terminal Project (“Project”), and certification of a Supplemental Environmental Impact Report (“SEIR”) for the Project (Resolution No. 21-87 and Ordinance No. 4631). This notice is given pursuant to Public Resources Code section 21167.5.

Pursuant to Public Resources Code section 21167.6, the record of proceedings for the Port’s actions includes, among other items, all “internal agency communications, including staff notes and memoranda related to the project or to compliance with [CEQA].” Because all e-mails and other internal communications related to the Project are part of the administrative record for the lawsuit to be filed by WOEIP, the Port may not destroy or delete such documents prior to preparation of the record in this case.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Laura D. Beaton

PROOF OF SERVICE

West Oakland Environmental Indicators Project v. Port of Oakland, et al.
Superior Court of the State of California - County of Alameda

At the time of service, I was over 18 years of age and **not a party to this action**. I am employed in the County of San Francisco, State of California. My business address is 396 Hayes Street, San Francisco, CA 94102.

On March 23, 2022, I served true copies of the following document(s) described as:

NOTICE OF COMMENCEMENT OF CEQA LITIGATION

on the parties in this action as follows:

Board of Port Commissioners
c/o Board Secretary Daria Edgerly
Port of Oakland
530 Water Street
Oakland, CA 94607
E-Mail: dedgerly@portoakland.com

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Shute, Mihaly & Weinberger LLP's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

BY E-MAIL OR ELECTRONIC TRANSMISSION: I caused a copy of the document(s) to be sent from e-mail address mburton@smwlaw.com to the persons at the e-mail addresses listed in the Service List. I did not receive, within a reasonable time after the transmission, any electronic message or other indication that the transmission was unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 23, 2022, at San Francisco, California.



Mike Burton

Exhibit B

SHUTE MIHALY
& WEINBERGER LLP

396 HAYES STREET, SAN FRANCISCO, CA 94102
T: (415) 552-7272 F: (415) 552-5816
www.smwlaw.com

LAURA D. BEATON
Attorney
Beaton@smwlaw.com

March 24, 2022

Via U.S. Mail

Attorney General Rob Bonta
Office of the Attorney General
1300 I Street
Sacramento, CA 95814

Re: Notice of Filing CEQA Litigation: *West Oakland Environmental Indicators Project v. Port of Oakland, et al.*, Alameda County Superior Court

Dear Attorney General Bonta:

Enclosed please find a copy of the Verified Petition for Writ of Mandate in the above-titled action. The petition is provided to you in compliance with Public Resources Code section 21167.7 and Code of Civil Procedure section 388. Please acknowledge receipt in the enclosed prepaid, self-addressed envelope. Thank you.

Very truly yours,

SHUTE, MIHALY & WEINBERGER LLP



Laura D. Beaton

Encl.: Verified Petition for Writ of Mandate

Attorney General Rob Bonta
March 24, 2022
Page 2

PROOF OF SERVICE

West Oakland Environmental Indicators Project v. Port Of Oakland, Et Al.
Superior Court of the State of California - County of Alameda

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On March 24, 2022, I served true copies of the following document(s) described as:

NOTICE OF FILING CEQA LITIGATION

on the parties in this action as follows:

Attorney General Rob Bonta
Office of the Attorney General
1300 I Street
Sacramento, CA 95814

BY MAIL: I enclosed the document(s) in a sealed envelope or package addressed to the persons at the addresses listed in the Service List and placed the envelope for collection and mailing, following our ordinary business practices. I am readily familiar with Shute, Mihaly & Weinberger LLP's practice for collecting and processing correspondence for mailing. On the same day that the correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service, in a sealed envelope with postage fully prepaid.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on March 24, 2022, at San Francisco, California.



Mike Burton