

1 ROB BONTA
Attorney General of California
2 ABIGAIL BLODGETT
Supervising Deputy Attorney General
3 DAVIN A. WIDGEROW (State Bar No. 277401)
4 Deputy Attorney General
State Bar No. 277401
5 600 West Broadway, Suite 1800
6 P.O. Box 85266
San Diego, CA 92186-5266
7 Telephone: (619) 738-9316
8 Fax: (619) 645-2271
E-mail: davin.widgerow@doj.ca.gov

9 *Attorneys for the People of the State of California*
10 *ex rel. Rob Bonta, Attorney General*

**Exempt from filing fees pursuant to
Government Code section 6103**

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF ALAMEDA

14
15 **WEST OAKLAND ENVIRONMENTAL
INDICATORS PROJECT,**

16
17 Petitioner,

18 v.

19 **PORT OF OAKLAND; BOARD OF PORT
COMMISSIONERS OF THE PORT OF
20 OAKLAND; and DOES 1 through 20,
inclusive,**

21 Respondents.

22 **EAGLE ROCK AGGREGATES; EAGLE
ROCK AGGREGATES, INC.; and DOES
23 21 through 40, inclusive,**

24 Real Parties in Interest.

25
26 **THE PEOPLE OF THE
STATE OF CALIFORNIA,**

27 Petitioner and Plaintiff-Intervenor.
28

Case No. 22CV008905

**PEOPLE'S PETITION FOR WRIT OF
MANDATE IN INTERVENTION FOR
DECLARATORY AND INJUNCTIVE
RELIEF**

ACTION BASED ON THE CALIFORNIA
ENVIRONMENTAL QUALITY ACT

[Code Civ. Proc. §§ 387, 526, 1060, 1085,
1094.5; Gov. Code §§ 12606, 12607; Public
Resources Code § 21000 et seq.]

ASSIGNED FOR ALL PURPOSES TO:
Judge: Hon. Frank Roesch
Dept.: 17

Action Filed: March 24, 2022

INTRODUCTION

1
2 1. The People of the State of California, acting by and through Attorney General Rob
3 Bonta (“the People”), intervene as a matter of right in this action pursuant to Government Code
4 section 12606 and Code of Civil Procedure section 387, subdivision (d). The People challenge
5 Respondents the Port of Oakland (“Port”), the Board of Port Commissioners of the Port of
6 Oakland (“Port Board”), and Does 1 through 20’s (collectively, “Respondents”) approval of the
7 Eagle Rock Aggregates Oakland Terminal (“Project”) and certification of the Final Supplemental
8 Environmental Impact Report (“SEIR”) for the Project under the California Environmental
9 Quality Act (“CEQA”), Public Resources Code section 21000 et seq.

10 2. The Project would construct a new marine terminal at the Port of Oakland that is
11 designed to annually receive up to 2.5 million tons of construction aggregates, including sand,
12 gravel, and other concrete additives. These aggregates would arrive on approximately 48 ocean-
13 going vessels each year and be stored at the Project site in three large stockpiles, with each
14 stockpile reaching up to 40 feet high and containing a total of 350,000 tons of aggregates. The
15 stockpiles would be entirely uncovered, providing almost no protections against dust and
16 particulate matter (“PM”) traveling offsite and into nearby communities and waterways. When
17 ready for use, the aggregates would be transported by trucks and barges for regional distribution,
18 generating an estimated 70,000 truck trips and 76 barge trips to and from the Project site annually.

19 3. The Port’s environmental analysis for the Project concluded that the Project would
20 cause multiple significant environmental impacts, including the exposure of sensitive populations
21 and onsite workers to substantial air pollution, the emission of nitrogen oxide in excess of
22 applicable thresholds, and new sources of diesel emissions. Additionally, the Port’s environmental
23 analysis disclosed that the Project’s three uncovered stockpiles will annually emit 900 pounds of
24 crystalline silica PM_{2.5} and 6,000 pounds of PM₁₀ emissions.¹ The Project will also generate
25 substantial emissions from mobile vehicles affiliated with the Project’s operations each year:

26 ¹ PM particles with a diameter of 10 microns or less (PM₁₀) can be inhaled into lungs and induce
27 adverse health effects. Fine PM is defined as particles that are 2.5 microns or less in diameter
28 (PM_{2.5}). (California Air Resources Board, Inhalable Particulate Matter and Health (PM_{2.5} and
PM₁₀), available at <<https://ww2.arb.ca.gov/resources/inhalable-particulate-matter-and-health>>
(last accessed July 13, 2022).)

1 ocean-going vessels will produce 52 tons of nitrogen oxide, 1,300 pounds of PM₁₀, and 1,240
2 pounds of PM_{2.5}; truck trips will generate 10.67 tons of nitrogen oxide, 5,800 pounds of PM₁₀,
3 and 1,000 pounds of PM_{2.5}; tugs and barges will emit 480 pounds of PM_{2.5}; and off-road
4 equipment will produce 500 pounds of PM_{2.5}. These emissions will be cumulative to those
5 generated by other projects at the Port of Oakland and the surrounding area, including the
6 proposed Howard Terminal Ballpark Stadium Project and U.S. Army Corps of Engineers' Turning
7 Basins Expansion Project. Despite these serious environmental impacts, the Project's SEIR fails
8 to consider and adopt all feasible mitigation measures to reduce pollution burdens.

9 4. The Project site is less than a mile away and upwind from West Oakland, a
10 community that has for decades experienced disproportionate pollution impacts and related
11 adverse health outcomes from various sources, including from Respondents' operations. Indeed,
12 West Oakland's residents are already exposed to more pollution than approximately 80 to 93
13 percent of all other Californians. Multiple sensitive receptors, including an elementary school,
14 two daycare facilities, five parks, numerous places of worship, and several public and subsidized
15 housing developments, are all located within a one-mile radius of the Project.

16 5. Pursuant to Assembly Bill 617 ("AB 617"), local stakeholders worked with regional
17 and state agencies to develop and adopt an emissions reduction plan that identifies goals, targets,
18 and strategies to reduce pollution and improve health and wellbeing in West Oakland. The
19 emissions reduction plan describes how Respondents' operations contribute to the significant
20 pollution burdens in West Oakland, and includes numerous strategies for Respondents to meet the
21 plan's goals and targets.

22 6. Despite the new and significant environmental impacts that the Project will impose on
23 the West Oakland community, Respondents failed to perform an adequate evaluation under CEQA
24 of the Project's fundamental inconsistency with the AB 617 emissions reduction plan. Moreover,
25 Respondents failed to analyze and adopt all feasible and enforceable alternatives and mitigation
26 measures to reduce the Project's impacts on West Oakland's residents, particularly from
27 windblown dust and particulates emanating from the Project's three, 40-foot high uncovered
28 aggregate stockpiles.

1 7. On March 24, 2022, the West Oakland Environmental Indicators Project (“Petitioner”
2 or “WOEIP”) initiated the instant case by filing a Verified Petition for Writ of Mandate and
3 Complaint for Declaratory and Injunctive Relief in Alameda County Superior Court, challenging
4 Respondents’ approval of the Project and their compliance with CEQA. Petitioner contends that
5 the Port’s certification of the SEIR and its approval of the Project violates CEQA by, among other
6 ways, failing to: adequately analyze and mitigate the Project’s impacts, describe the Project’s
7 existing setting within an environmental justice community, consider reasonable alternatives to
8 the Project, and adequately respond to comments during the Project’s environmental review.

9 8. The People file this Petition in support of Petitioner. The People join Petitioner’s
10 arguments that Respondents failed to consider and analyze all reasonable alternatives to the
11 Project, adopt all feasible mitigation measures available to reduce the Project’s impacts, and
12 impermissibly deferred mitigation. The People’s Petition also contends that Respondents violated
13 CEQA by failing to adequately disclose and analyze the Project’s inconsistency with the goals,
14 targets, and strategies of West Oakland’s AB 617 emissions reductions plan. This Project will
15 increase West Oakland’s exposure to pollution and obstruct the emission reduction plan’s air
16 quality goals. The People seek a court order directing Respondents to vacate their approval of the
17 Project and certification of the SEIR, and providing injunctive relief restraining Respondents
18 from taking any action to implement the Project until they have fully complied with CEQA.

19 **ALLEGATIONS SUPPORTING INTERVENTION**

20 9. Pursuant to Code of Civil Procedure section 387, subdivision (d)(1)(A), the People
21 seek to intervene in this action in support of the Petitioner. The Petitioner initiated this instant
22 case by filing a Verified Petition for Writ of Mandate and Complaint for Declaratory and
23 Injunctive Relief in Alameda County Superior Court on March 24, 2022, challenging
24 Respondents’ approval of the Project and their compliance with CEQA.

25 10. The Attorney General has an unconditional right to “intervene in any judicial or
26 administrative proceeding in which facts are alleged concerning pollution or adverse
27 environmental effects which could affect the public generally.” (Gov. Code, § 12606.) WOEIP’s
28 petition in this action alleges facts concerning pollution and adverse environmental effects.

1 Therefore, the People have a mandatory statutory right to intervene in this action pursuant to
2 Government Code section 12606.

3 11. The People’s intervention is appropriate because it is being sought within reasonable
4 time, it will prevent a multiplicity of lawsuits, the People have a direct interest in this litigation,
5 and the existing parties will not be prejudiced by the People’s intervention at this early stage of
6 the proceedings.

7 **PARTIES**

8 12. The Attorney General, as chief law officer of the State of California, has broad
9 independent powers under the California Constitution and the Government Code to participate in
10 all legal matters in which the State is interested. (Cal. Const., art. V, § 13; Gov. Code, § 12511.)
11 The Attorney General has express statutory authority to participate in cases involving the
12 protection of California’s environment and a unique and important role in the enforcement of
13 CEQA. (Gov. Code, §§ 12600-12612; Pub. Resources Code, §§ 21167.7, 21177, subd. (d).) “The
14 Attorney General may maintain an action for equitable relief in the name of the people of the
15 State of California against any person for the protection of the natural resources of the state from
16 pollution, impairment, or destruction.” (Gov. Code, § 12607.) The People file this petition
17 pursuant to the Attorney General’s independent power to protect the natural resources of the State
18 from pollution, impairment, or destruction in furtherance of the public interest.

19 13. Petitioner WOEIP is a “resident-led, community-based environmental justice
20 organization dedicated to achieving healthy homes, healthy jobs and healthy neighborhoods for
21 all who live, work, learn and play in West Oakland, California.”² The organization, founded in
22 2012, works to advance environmental justice through collaborative problem-solving, partnership
23 agreements, and community-based participatory research. The organization has focused its efforts
24 on reversing the negative effects of industrialization, and on working to reduce exposure to toxic
25 soils, polluting businesses, and the diesel truck traffic moving through West Oakland
26 neighborhoods, among other projects.

27 _____
28 ² West Oakland Environmental Indicators Project, About WOEIP, available at <<https://woeip.org/about-woeip/>> (last accessed June 23, 2022).

1 14. Respondent Port is and was, at all relevant times, the public entity responsible for
2 regulating and controlling land use in and around the Port area. The Port is the steward of more
3 than 800 acres of land on the east shore of San Francisco Bay, per a Tidelands Trust grant issued
4 by the State of California.³ The Port is responsible for administering and regulating the seaport at
5 the Port of Oakland, as well as the Oakland Municipal Airport and various commercial real estate.
6 The Port is the “lead agency” for the Project under CEQA per Public Resources Code section
7 21067, and is charged with conducting the environmental review of the Project.

8 15. Respondent Port Board is an independent and autonomous department of the City of
9 Oakland that is charged with the exclusive control and management of the Port per the charter of
10 Oakland.⁴ As the body with exclusive control and management of the Port and the authority to
11 grant final approval to the Project, the Port Board was responsible for certifying that a thorough
12 and adequate review of the Project’s environmental impacts was conducted in accordance with
13 CEQA. The Port Board and its members are sued herein in their official capacities.

14 16. Respondents Does 1 through 20, inclusive, are persons whose names and identities
15 are unknown to the People at this time, and the People therefore sue them under these fictitious
16 names. The People will amend this petition to allege the true names and capacities of
17 Respondents Does 1 through 20 as soon as they are discovered.

18 17. The People are informed and believe, and on that basis allege, that Real Parties in
19 Interest Eagle Rock Aggregates, Inc., and/or Eagle Rock Aggregates (“Eagle Rock”) are the
20 applicants for this Project, and are described as “Eagle Rock Aggregates (ERA)” in the Notice of
21 Determination for this Project that was filed with the County of Alameda by the Port on February
22 25, 2022. Accordingly, Eagle Rock are real parties in interest in this action per CEQA, Public
23 Resources Code section 21167.6.5, subdivision (a). The People are informed and believe, and on
24 that basis allege, that Eagle Rock Aggregates, Inc., is a Delaware corporation that is authorized to
25 and does conduct business in the State of California. Eagle Rock Aggregates, Inc. is the only

26 _____
27 ³ Port of Oakland, About the Port, available at <<https://www.portfoakland.com/port/>> (last
28 accessed June 23, 2022).

⁴ Port of Oakland, Board of Port Commissioners, available at <[https://www.portfoakland.com/
port/board-of-commissioners/](https://www.portfoakland.com/port/board-of-commissioners/)> (last accessed June 24, 2022).

1 active entity registered with the California Secretary of State under the name “Eagle Rock
2 Aggregates.” Nevertheless, out of an abundance of caution, the People have separately identified
3 both Eagle Rock Aggregates, Inc., and Eagle Rock Aggregates in this petition. As used in this
4 petition, “Real Parties in Interest” and “Eagle Rock Aggregates, Inc.” refer to both Eagle Rock
5 Aggregates, Inc., and Eagle Rock Aggregates.

6 18. Real Parties in Interest Does 21 through 40, inclusive, are persons whose names and
7 identities are unknown to the People at this time, and the People therefore sue them under these
8 fictitious names. The People will amend this petition to allege the true names and capacities of
9 Real Parties in Interest Does 21 through 40 as soon as they are discovered.

10 JURISDICTION AND VENUE

11 19. The Court has jurisdiction over the matters alleged in this petition pursuant to Code of
12 Civil Procedure sections 526, 527, 1060, 1085, and 1094.5, as well as Public Resources Code
13 sections 21168, 21168.5, and 21168.9.

14 20. Venue is proper in the Alameda County Superior Court per Code of Civil Procedure
15 section 394, which provides that an action or proceeding against a city or other local agency may
16 be tried in the county in which that city or local agency is located. A “local agency” is “any
17 governmental district, board, agency, or other body or corporation,” but not the State of California
18 or any of its agencies, departments, or other subsidiary bodies. (Code Civ. Proc., § 394, subd. (b).)
19 Respondents are located within Alameda County, so venue is appropriate in Alameda County
20 Superior Court per Code of Civil Procedure section 394, subdivision (a).

21 21. Additionally, venue is proper in the Alameda County Superior Court per Code of
22 Civil Procedure section 393, subdivision (b), which provides that an action against public officers
23 may be tried in the county “in which the cause, or some part of the cause arose.” The Project was
24 approved by Respondents in Alameda County and would be located in Alameda County, so venue
25 is proper in Alameda County Superior Court per Code of Civil Procedure section 393, subdivision
26 (b). (See *Cal. State Parks Foundation, et al., v. Super. Ct.* (2007) 150 Cal.App.4th 826.)

27 22. The People have satisfied the jurisdictional prerequisites to filing this action. Further,
28 the People have submitted multiple comment letters regarding the Project, but are exempt from

1 CEQA’s requirements for exhaustion. (Pub. Resources Code, § 21177, subd. (d).)

2 **CEQA’S LEGAL REQUIREMENTS**

3 23. CEQA is a comprehensive statute designed to provide for the long-term protection of
4 the environment. (Pub. Resources Code, §§ 21000-21189.) CEQA’s primary purposes are to:
5 inform governmental decisionmakers and the public of a project’s potential significant
6 environmental effects before the project is approved and those effects become irreversible;
7 identify ways that environmental damage can be avoided or reduced; prevent significant,
8 avoidable environmental damage by requiring the adoption of feasible alternatives or feasible
9 mitigation measures; and disclose to the public a governmental agency’s reasons for approving a
10 project with significant environmental impacts. (Cal. Code Regs., tit. 14, § 15002, subd. (a)
11 “CEQA Guidelines”).)

12 24. CEQA requires a “lead agency” evaluating a proposed project to prepare an
13 environmental impact report (“EIR”) if the agency determines that the project may have a
14 significant direct, indirect, or cumulative effect on the environment. (CEQA Guidelines, § 15064,
15 subd. (f)(1).) “CEQA is essentially an environmental full disclosure statute, and the EIR is the
16 method by which this disclosure is made.” (*Rural Landowners Assn. v. City Council* (1983) 143
17 Cal.App.3d 1013, 1020; see also Pub. Resources Code, § 21061.) Such disclosure of a project’s
18 environmental consequences ensures that “long term protection of the environment . . . shall be
19 the guiding criterion in public decisions.” (Pub. Resources Code, § 21001, subd. (d).)

20 25. To meet CEQA’s disclosure requirements, an EIR must be “prepared with a sufficient
21 degree of analysis to provide decisionmakers with information which enables them to make a
22 decision which intelligently takes account of environmental consequences.” (Cal. Code Regs., tit.
23 14, § 15151.) The EIR has been described as “an environmental ‘alarm bell’ whose purpose is to
24 alert the public and its responsible officials to environmental changes before they have reached
25 ecological points of no return.” (*County of Inyo v. Yorty* (1973) 32 Cal.App.3d 795, 810.)

26 26. Among other things, CEQA requires EIRs to discuss any inconsistencies between
27 projects and applicable regional plans, including “air quality attainment or maintenance” plans
28 and “plans for the reduction of greenhouse gas emissions.” (CEQA Guidelines, § 15125, subd.

1 (d.) “Applicable” plans are those that have been adopted and are applicable to the project at
2 issue. (*Chaparral Greens v. City of Chula Vista* (1996) 50 Cal.App.4th 1134, 1145, fn. 7.) A
3 determination that a project is consistent or inconsistent with a plan must be supported by
4 substantial evidence. (*Golden Door Properties, LLC v. County of San Diego* (2020) 50
5 Cal.App.5th 467, 540.) A fair argument for a significant impact likely exists when a project is
6 inconsistent with a plan specifically intended to mitigate environmental impacts. (*Joshua Tree*
7 *Downtown Bus. All. v. County of San Bernardino* (2016) 1 Cal.App.5th 677, 695.) A project is
8 inconsistent with a regional plan if it will “obstruct” attainment of the plan’s objectives and
9 policies. (*Spring Valley Lake Assn. v. City of Victorville* (2016) 248 Cal.App.4th 91, 99.)

10 27. EIRs are also required to describe a range of reasonable alternatives to a project
11 “which would feasibly attain most of the basic objectives of the project but would [also] avoid or
12 substantially lessen any of the significant effects of the project, and [EIRs are required to]
13 evaluate the comparative merits of the alternatives.” (CEQA Guidelines, § 15126.6, subd. (a).) An
14 EIR “must contain ‘sufficient information about each alternative to allow meaningful evaluation,
15 analysis, and comparison with the proposed project,’” the adequacy of which analysis is judged
16 against “a rule of reason.” (*Center for Biological Diversity v. County of San Bernardino* (2010)
17 185 Cal.App.4th 866, 883 [citations omitted].) “A local agency must make an initial
18 determination as to which alternatives are feasible and which are not. . . .If an alternative is
19 identified as at least potentially feasible, an in-depth discussion is required.” (*Ibid.* [citations
20 omitted].) “Even as to alternatives that are rejected, however, the ‘EIR must explain why each
21 suggested alternative either does not satisfy the goals of the proposed project, does not offer
22 substantial environmental advantages[,] or cannot be accomplished.’” (*Ibid.*)

23 28. Lead agencies “should not approve projects as proposed if there are feasible
24 alternatives or feasible mitigation measures available which would substantially lessen the
25 significant environmental impacts of such projects[.]” (Pub. Resources Code, § 21002.) As such,
26 CEQA requires a lead agency to “mitigate or avoid the significant effects on the environment of
27 projects that it carries out or approves whenever it is feasible to do so.” (Pub. Resources Code, §
28 21002.1, subd. (b).)

1 29. Lead agencies must “ensure that feasible mitigation measures will actually be
2 implemented as a condition of development, and not merely adopted and then neglected or
3 disregarded.” (*Federation of Hillside and Canyon Assns. v. City of Los Angeles* (2000) 83
4 Cal.App.4th 1252, 1261 [citing Pub. Resources Code, § 21002.1, subd. (b)].) Mitigation measures
5 adopted pursuant to an EIR to mitigate or avoid a project’s significant impacts on the
6 environment must be “fully enforceable through permit conditions, agreements, or other
7 measures.” (Pub. Resources Code, § 21081.6, subd. (b).)

8 30. An EIR should not defer mitigation. However, when immediate mitigation is
9 “impractical or infeasible,” mitigation may be fully developed after project approval under certain
10 limited conditions. (CEQA Guidelines, § 15126.4, subd. (a)(1)(B).) Deferral is permissible
11 provided the agency “(1) commits itself to the mitigation, (2) adopts specific performance
12 standards the mitigation will achieve, and (3) identifies the type(s) of potential action(s) that can
13 feasibly achieve that performance standard and that will be considered, analyzed, and potentially
14 incorporated into the mitigation measure.” (*Ibid.*)

15 31. “When the informational requirements of CEQA are not met but the agency
16 nevertheless certifies the EIR as meeting them, the agency fails to proceed in a manner required
17 by law and abuses its discretion.” (*Cherry Valley Pass Acres and Neighbors v. City of Beaumont*
18 (2010) 190 Cal.App.4th 316, 327.) “The error is prejudicial ‘if the failure to include relevant
19 information precludes informed decisionmaking and informed public participation, thereby
20 thwarting the statutory goals of the EIR process.’” (*Id.* at p. 328, quoting *San Joaquin*
21 *Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 721-722.)
22 Abuse of discretion is established if the agency has not proceeded in a manner required by law or
23 if the determination or decision is not supported by substantial evidence. (Pub. Resources Code, §
24 21168.5; *Cleveland Nat. Forest Foundation v. San Diego Assn. of Governments* (2017) 3 Cal.5th
25 497, 511.)

26 STATEMENT OF FACTS

27 I. THE WEST OAKLAND COMMUNITY AND ENVIRONMENTAL SETTING

28 32. West Oakland is a diverse, multi-racial community where 42 percent of residents

1 identify as Black or African American, 18 percent identify as Hispanic or Latino, and 11 percent
2 identify as Asian. It is also a relatively low-income community with approximately 52 percent of
3 the population living two times below the poverty level, compared to 23 percent in the broader
4 San Francisco Bay Area.⁵ West Oakland already experiences disproportionately high levels of air
5 pollution from the Port of Oakland, four highways, industrial facilities, and truck-related
6 businesses.⁶ According to the State of California's statewide pollution burden screening tool,
7 CalEnviroScreen 4.0, West Oakland residents endure greater pollution exposure than 80-93
8 percent of all other Californians.⁷ CalEnviroScreen further identifies the census tracts
9 surrounding the Port as falling within the top 90 percent of all census tracts statewide for
10 exposure to diesel PM pollution.

11 33. The West Oakland community suffers from serious health impacts that are related to
12 this pollution exposure. CalEnviroScreen finds that residents in West Oakland are more likely to
13 suffer from asthma than 99 percent of other Californians. The Alameda County Public Health
14 Department reports that people living in West Oakland are 1.75 times more likely to be
15 hospitalized for asthma-related illnesses than the general population of residents in Alameda
16 County.⁸ The asthma rates in West Oakland are particularly alarming for children—almost 25
17 percent of the student body at the West Oakland Middle School has asthma or breathing
18 problems.⁹ Further, air pollution-related diseases, including cancer, heart disease, stroke, and

19 ⁵ Bay Area Air Quality Management District and WOEIP, *Owning Our Air: The West Oakland*
20 *Community Action Plan* (October 2019) at p. 2-6, <[https://www.baaqmd.gov/~media/files/ab617-community-health/west-oakland/100219-files/final-plan-vol-1-100219-pdf.pdf?la=en](https://www.baaqmd.gov/~/media/files/ab617-community-health/west-oakland/100219-files/final-plan-vol-1-100219-pdf.pdf?la=en)>
21 (citing American Community Survey (ACS) 2013-2017 DP05 [census tracts 4014, 4015, 4016, 4017, 4018, 4022, 4024, 4025, 4026, 4027, 4105, 9819, and 9820].)

22 ⁶ *Ibid.*

23 ⁷ CalEnviroScreen is a tool created by the Office of Environmental Health Hazard Assessment
24 that considers environmental, health, and socioeconomic information to produce scores and rank
25 every census tract in the state. A census tract with a high score is one that experiences a much
26 higher pollution burden than a census tract with a low score. CalEnviroScreen 4.0 is available at
27 <https://experience.arcgis.com/experience/4af93cf9888a424481d2868391af2d82/page/Draft-CalEnviroScreen-4.0/?data_id=dataSource_2-1762adfe08c-layer-5percent3A5169> (last accessed
28 July 9, 2022).

29 ⁸ Muntu Davis, *Air Pollution Risks & Vulnerability to Health Impacts: A Look at West Oakland*
30 (March 2018) at Slide 4, <https://ww2.arb.ca.gov/sites/default/files/2018-03/capp_consultation_group_march_2018_alameda_county_health_presentation.pdf> (last accessed July 9, 2022).

31 ⁹ Environmental Defense Fund, *Traffic Pollution Causes 1 in 5 New Cases of Kids' Asthma*
32 (April 2019), <<http://blogs.edf.org/health/2019/04/29/traffic-pollution-causes-1-in-5-new-cases->

1 chronic lower respiratory disease, are some of the leading causes of death in West Oakland, where
2 the average life expectancy of residents is 6.6 years lower than the average life expectancy of
3 residents across Alameda County.¹⁰ Per CalEnviroScreen, infants born to families residing in
4 West Oakland are born with lower birth weights than 83-96 percent of all other Californians. In
5 short, West Oakland is an environmental justice community affected by multiple sources of
6 pollution and related health challenges.¹¹

7 **II. THE WEST OAKLAND COMMUNITY ACTION PLAN**

8 34. The pervasive challenges facing West Oakland have been recognized by various
9 government agencies. In 2019, pursuant to AB 617, the California Air Resources Board
10 (“CARB”) identified West Oakland as a community disproportionately burdened by
11 environmental pollution, and with the participation of community stakeholders and the Bay Area
12 Air Quality Management District (“BAAQMD”), adopted a community emissions reduction plan
13 (“CERP”) for West Oakland—the West Oakland Community Action Plan (“WOCAP”). (See
14 Health & Saf. Code, § 44391.2, subd. (c).)

15 35. The WOCAP discloses that Port-related emissions contribute 57 percent of the diesel
16 PM emissions to West Oakland, 52 percent of the cancer risk, and 17 percent of the PM_{2.5}
17 emissions, and that diesel PM emissions account for over 90 percent of the community’s total
18 cancer risk.¹² The WOCAP further states that West Oakland suffers from cancer risk exposure in
19 excess of BAAQMD risk thresholds, and that the community was subjected to PM_{2.5} emissions of
20 around 1.70 µg/m³ in 2017.¹³

21 36. The WOCAP establishes emission reductions goals and targets to address these

22 [of-kids-asthma-in-major-cities-how-data-can-help/](#)> (last accessed July 9, 2022).

23 ¹⁰ Davis, *supra* note 8, at Slides 8-10.

24 ¹¹ West Oakland is also a historically redlined community. Beginning in the 1930s, federal
25 housing policy directed investment away from “risky” communities of color in the East Bay,
26 including West Oakland, Emeryville, and parts of Berkeley, Alameda, and Oakland. (WOCAP,
supra note 5, at p. 2-2.) The neighborhoods in West Oakland were coded red, signifying the least
27 desirable areas where investment was to be avoided. (*Id.* at pp. 2-2 to 2-3; see also University of
28 Richmond Digital Scholarship Lab, Mapping Inequality, Oakland, CA, <[https://dsl.richmond.edu/
panorama/redlining/#loc=14/37.804/-122.293&city=oakland-ca&adview=full](https://dsl.richmond.edu/panorama/redlining/#loc=14/37.804/-122.293&city=oakland-ca&adview=full)> (last accessed
July 9, 2022).)

¹² WOCAP, *supra* note 5, at pp. 4-5, 5-7 to 5-9 (Table 5-2 and Fig. 5-4), 6-15 (Table 6-2).

¹³ *Id.* at p. 4-7 (Fig. 4-4).

1 serious burdens faced by the West Oakland community. The WOCAP includes two overarching
2 goals: (1) by 2025, all neighborhoods throughout West Oakland will experience the same air
3 quality conditions as the average West Oakland residential neighborhood in 2017; and (2) by
4 2030, all neighborhoods throughout West Oakland will experience the same air quality conditions
5 as the least impacted neighborhood (i.e., the neighborhood with the cleanest air) in 2017.¹⁴

6 37. To achieve these goals, the WOCAP sets forth emission reduction targets for diesel
7 PM, PM_{2.5}, and cancer risk. Per the WOCAP, local emission sources, including Port-related
8 trucks, marine vessels, operations, and equipment, combined may emit no more than the
9 following concentrations into West Oakland neighborhoods: for diesel PM, no more than 0.25
10 µg/m³ by 2025 and no more than 0.13 µg/m³ by 2030; for PM_{2.5}, no more than 1.7 µg/m³ by 2025
11 and no more than 1.2 µg/m³ by 2030. Further, the WOCAP’s cancer risk targets are less than 200
12 cases for every 1 million people in 2025, and less than 110 cases for every 1 million people in
13 2030.¹⁵

14 38. The WOCAP also identifies 89 strategies that multiple agencies, including the Port,
15 must implement to meet the WOCAP’s goals and targets. The WOCAP identifies 12 strategies
16 specifically applicable to the Port, including: truck and container parking solutions; measures to
17 transition to zero-emission vehicles (“ZEV” or “ZEVs”); ZEV infrastructure transition planning;
18 adoption of incentives for cleaner marine vessels; and standards for upgrading to cleaner
19 locomotives and locomotive infrastructure.¹⁶

20 **III. THE PROPOSED EAGLE ROCK AGGREGATES TERMINAL PROJECT**

21 39. Eagle Rock distributes construction aggregates throughout North America. The
22 aggregates are mined in British Columbia and shipped to cities along the western United States.
23 Eagle Rock currently operates two marine terminals in California—one in Richmond (“Richmond
24 Terminal”) and the other in Long Beach.

25 40. The proposed Project would construct Eagle Rock’s newest terminal less than a mile
26 from West Oakland. This terminal would use a northwestern corner of the Port for marine vessel

27 ¹⁴ *Id.* at p. 4-4.

28 ¹⁵ *Id.* at p. 4-7 (Fig. 4-4).

¹⁶ *Id.* at pp. 6-21 to 6-32 (Table 6-4).

1 operations and for aggregate stockpiling and distribution. The site is currently used for truck
2 parking and shipping container storage.

3 41. The Project is designed to receive 2.5 million tons of aggregates annually. The
4 aggregates would arrive on approximately 48 ships each year, which would offload the aggregates
5 onto an overhead conveyer system. The conveyer would deposit the aggregates into three
6 uncovered, open-air stockpiles, each reaching up to 40 feet in height, and containing
7 approximately 350,000 tons of aggregates combined. The aggregates would then be loaded onto
8 trucks and barges for transport to regional facilities and projects. The Project will generate 375
9 daily truck trips, 70,000 annual truck trips, and be authorized to operate for at least 27 years.

10 42. The Port's CEQA analysis for the Project concluded that the Project would expose
11 sensitive populations and onsite workers to substantial air pollution, would produce emissions of
12 nitrogen oxide in excess of applicable thresholds, and create new sources of diesel emissions. The
13 analysis further disclosed that the Project's three uncovered aggregate stockpiles will annually
14 emit 900 pounds of PM_{2.5} and 6,000 pounds of PM₁₀, that emissions from the Project-affiliated
15 ocean-going vessels will annually generate 52 tons of nitrogen oxide, 1,300 pounds of PM₁₀, and
16 1,240 pounds of PM_{2.5}, and that the 70,000 Project-related truck trips will generate 10.67 tons of
17 nitrogen oxide, 5,800 pounds of PM₁₀, and 1,000 pounds of PM_{2.5} per year. Further, the Project
18 will produce substantial PM_{2.5} emissions from tugs and barges (480 pounds per year) and off-road
19 equipment (500 pounds per year).

20 **IV. PROJECT ENVIRONMENTAL REVIEW AND PROCEDURAL HISTORY**

21 **A. Notice of Preparation of the SEIR**

22 43. Rather than prepare a new EIR, the Port chose to supplement its 2002 Final
23 Environmental Impact Report for the Oakland Army Base Redevelopment Project to evaluate the
24 Project's environmental impacts. The Port issued a Notice of Preparation ("NOP") of the Draft
25 SEIR for the Project in August 2019. The NOP disclosed that the Project could have significant
26 environmental impacts on air quality, energy, greenhouse gas emissions, hazards and hazardous
27 materials, water quality, and transportation, among other impacts.

28 44. The Port received several comments on the NOP, including from state and local

1 agencies as well as community groups. The People submitted comments on the NOP in October
2 2019, expressing concerns about the impacts of the Project on West Oakland residents and calling
3 for a full analysis of the Project’s consistency with the WOCAP. The People recommended the
4 Port adopt all feasible mitigation measures to ameliorate the Project’s impacts, such as enclosing
5 or covering the stockpiles, establishing ZEV transition deadlines for all vehicles and equipment
6 servicing the Project, constructing ZEV charging infrastructure, enforcing truck routes and idling
7 restrictions, limiting Project hours of operation, installing air filtration systems for nearby
8 sensitive receptors, and constructing vegetative barriers and tree canopy near the Project site to
9 reduce emissions and filter out air contaminants.

10 45. BAAQMD, the local air quality agency, also commented on the NOP. BAAQMD
11 recommended a robust analysis of the pollution affecting the West Oakland community and the
12 Project’s potential impacts. BAAQMD also urged that zero-emission equipment be used for
13 Project operations, as well as incorporation of all feasible measures to minimize air quality and
14 greenhouse gas impacts from the Project.

15 46. Petitioner WOEIP submitted comments regarding the NOP as well. WOEIP expressed
16 concern about the Project’s potential impacts to air quality from particulate and truck emissions,
17 from extensive water use for dust control, and from the displacement of truck and container
18 parking from the Project.

19 **B. Draft SEIR**

20 47. The Port released the Draft SEIR in November 2020. The Draft SEIR concluded that
21 the Project would cause several significant and unavoidable impacts to air quality, and that it
22 would increase the severity of the air quality impacts analyzed as part of the prior Army Base
23 Redevelopment Project. The Draft SEIR found that some potentially significant impacts—such as
24 impacts to aesthetics, hazardous materials exposure, noise levels, transportation infrastructure,
25 and energy use—could be reduced to less than significant levels with incorporation of certain
26 mitigation measures.

27 48. The People commented on the Draft SEIR in January 2021. The People explained that
28 the Draft SEIR was deficient in several ways, including that it failed to adequately account for the

1 Project's impacts on the neighboring community, that it failed to describe how the Project would
2 affect Eagle Rock's Richmond Terminal operations, and that it failed to correctly analyze the
3 Project's PM_{2.5} emissions. Additionally, the People's letter stated that the Draft SEIR did not
4 include a complete analysis of the Project's inconsistency or consistency with the WOCAP, failed
5 to analyze and adopt all feasible mitigation measures, improperly deferred mitigation, and failed
6 to analyze reasonable alternatives. The People specifically recommended that the Draft SEIR
7 include mitigation measures to reduce emission-related impacts from the Project's uncovered
8 stockpiles, aggregate transfer operations, vehicle trips, and fugitive dust, as well as air quality
9 impacts from Project-affiliated ocean vessels, commercial harbor craft, and off-site trucks.

10 49. CARB, the State's primary air quality agency, commented on the Draft SEIR in
11 December 2020. CARB's letter noted that the Project would increase exposure to air pollution in
12 West Oakland as well as in Richmond, and recommended additional mitigation and design
13 measures to alleviate these impacts, including completely covering the aggregate stockpiles,
14 requiring all Project equipment to be zero-emission from the start of operations, requiring trucks
15 servicing the Project to be model year 2014 or later with a transition to ZEVs by 2030, and
16 requiring tug boats and ocean vessels affiliated with the Project to be equipped with Tier 4 or
17 cleaner engines, among other measures. It further urged the Port to require all marine vessels,
18 trucks, locomotives, off-road vehicles, and cargo handling equipment to be zero-emission prior to
19 or by 2035. CARB also criticized the Draft SEIR for impermissibly deferring mitigation by
20 failing to include specific targets and performance standards. Finally, CARB expressed concern
21 about the deficiencies in the Draft SEIR and the potential impacts the Project would have on
22 disadvantaged communities, and urged the Port to coordinate with the West Oakland community
23 to ensure that the Project was consistent with the WOCAP.

24 50. BAAQMD also commented on the Draft SEIR in January 2021. BAAQMD
25 recommended the following additional mitigation measures for the Project: more stringent
26 measures to reduce exposure to PM_{2.5} emissions, including incorporation of "maximum feasible
27 controls" for the aggregate stockpiles, construction of vegetative or physical barriers to reduce
28 winds within the Project site; requiring all stationary equipment to be zero-emission and using the

1 lowest-emitting mobile equipment; including shore power to provide electricity to berthed ocean
2 vessels and requiring Project-affiliated ocean vessels and tugs to contain Tier 3 or Tier 4 engines;
3 requiring trucks to be covered and installing truck watering stations at the Project site; and
4 requiring heavy duty trucks to be zero-emission by 2030, among other measures. Further,
5 BAAQMD recommended additional analysis of the cumulative health impacts and the impacts of
6 truck emissions on surrounding communities.

7 51. Petitioner WOEIP submitted extensive comments on the Draft SEIR in January 2021.
8 Petitioner argued that the Draft SEIR failed to analyze whole categories of potential impacts,
9 failed to analyze the impacts on the Richmond Terminal, failed to adopt mitigation adequate to
10 alleviate the Project's impacts, and failed to examine reasonable alternatives to the Project,
11 among other deficiencies. Petitioner further noted that the Draft SEIR failed to analyze whether
12 the Project would support the goals and targets in the WOCAP. Like other commenters, Petitioner
13 recommended additional mitigation measures, including installation of shore power to electrify
14 berthed ocean vessels, requiring Project tugs and ocean vessels to utilize Tier 4 or cleaner
15 engines, relocating the concrete facility currently located in West Oakland, requiring trucks to be
16 sprayed prior to exiting the Project site, establishing emissions standards and deploying air
17 quality monitoring devices, requiring zero-emission equipment for Project operations, controlling
18 emissions from the aggregate stockpiles by watering or covering the stockpiles, and mandating
19 that all heavy-duty trucks servicing the Project be zero-emission by 2030, among other measures.
20 WOEIP also contended that the Draft SEIR failed to adequately compare the environmental
21 benefits of several alternatives to the Project, including an alternative that would enclose the
22 stockpiles in a building and which the Draft SEIR concluded would eliminate localized PM
23 emissions from the stockpiles.

24 **C. Certification of the Final SEIR and Approval of the Project**

25 52. The Port released the Final SEIR for public review on November 30, 2021. It also
26 scheduled a public hearing on December 16, 2021, for the Port Board to consider certification of
27 the Final SEIR and approval of the Project.

28 53. In advance of the Port Board's hearing, WOEIP sent a comment letter to the Port on

1 December 15, 2021, expressing similar concerns about the Final SEIR as it did regarding the
2 Draft SEIR. Petitioner emphasized that air quality impacts from the Project’s fugitive dust,
3 marine vessels, and truck traffic would exacerbate the pollution-related health impacts
4 experienced by the West Oakland community. Petitioner also noted that the Project would
5 displace existing truck and container parking space into neighboring residential streets. Petitioner
6 recommended mitigation measures that could alleviate these impacts, including, at minimum:
7 requiring the aggregate stockpiles to be covered or watered to an equivalent degree; reducing
8 emissions on poor air quality days by reducing truck trips, reducing aggregate hauling, increasing
9 watering, and using only electric vehicles; and including greater community input in the Project’s
10 air quality planning. Finally, Petitioner explained that its concerns with the Draft SEIR’s analyses
11 had not been rectified, such as the failure to analyze whole categories of impacts, the failure to
12 analyze impacts to the Richmond Terminal, the failure to adequately analyze health impacts, and
13 the failure to adequately analyze the Project’s inconsistency with the WOCAP, among other
14 deficiencies.

15 54. BAAQMD also commented on the Final SEIR on December 16, 2021. BAAQMD
16 supported the Project’s mobile equipment electrification measures and the requirement that four
17 Project-affiliated trucks be fully electric. However, BAAQMD explained that it was “concerned
18 with the significant and unavoidable NOx [nitrogen oxide] and PM impacts” the Project will
19 produce, and urged the Port to address its comments regarding the Draft SEIR. The letter rejected
20 the use of emission reduction credits as mitigation, and recommended additional measures to
21 control the Project’s air quality impacts, including: requiring shore power for marine vessels;
22 requiring ocean vessels and tugboats to use cleaner engines; fully enclosing the aggregate
23 stockpiles to reduce fugitive dust; mandating a full transition to ZEV trucks by 2030 and
24 requiring zero-emission yard trucks and cargo handling equipment onsite; and funding cleaner
25 locomotive engines.

26 55. Notwithstanding the concerns raised by Petitioner and BAAQMD regarding the Final
27 SEIR, the Port Board voted to certify the Final SEIR and its associated documents and materials
28 at the public hearing on December 16, 2021, via Resolution 21-87. The Port Board also

1 conducted the first reading of the ordinance to approve the Project itself, Ordinance 4631, at the
2 December 16, 2021 meeting.

3 56. The Port Board subsequently conducted the second reading of Ordinance 4631 and
4 voted to finally approve the Project at a scheduled public meeting on February 24, 2022.

5 57. The Port recorded a Notice of Determination for the Project in accordance with
6 CEQA requirements on February 25, 2022. The Notice of Determination explained that the Port,
7 as lead agency for purposes of CEQA, had approved the Project on February 24, 2022, and that
8 mitigation measures were adopted to address the Project’s significant environmental impacts.

9 **FIRST CAUSE OF ACTION**

10 **Violations of CEQA**

11 **(Pub. Resources Code, § 21000 et seq.; Code Civ. Proc., § 1094.5)**

12 58. The allegations in paragraphs 1 through 57 are realleged and incorporated by
13 reference herein as though set forth in full.

14 59. The Project is a discretionary act subject to CEQA. (Pub. Resources Code, §§ 21065,
15 21080; CEQA Guidelines, § 15378.) CEQA requires lead agencies to prepare EIRs for projects
16 which substantial evidence shows may have significant effects on the environment. (Pub.
17 Resources Code, § 21082.2, subd. (d); CEQA Guidelines, § 15064, subd. (a)(1).) EIRs prepared
18 by the lead agency must comply with the requirements of the CEQA statutes and regulations.

19 60. CEQA requires EIRs to discuss and analyze any inconsistencies between projects and
20 applicable general, specific, and regional plans, including “applicable air quality attainment or
21 maintenance” plans and “plans for the reduction of greenhouse gas emissions.” (CEQA
22 Guidelines, § 15125, subd. (d).) “Applicable” plans are those that have been adopted and are
23 applicable to the project at issue. (*Chaparral Greens v. City of Chula Vista* (1996) 50 Cal.App.4th
24 1134, 1145, fn. 7.) A determination that a project is consistent or inconsistent with a plan must be
25 supported by substantial evidence. (*Golden Door Properties, LLC v. County of San Diego* (2020)
26 50 Cal.App.5th 467, 540.) A fair argument for a significant impact likely exists when a project is
27 inconsistent with a plan specifically intended to mitigate environmental impacts. (*Joshua Tree*
28 *Downtown Business Alliance v. County of San Bernardino* (2016) 1 Cal.App.5th 677, 695.) A

1 project is inconsistent with a regional plan if it will “obstruct” attainment of the plan’s objectives
2 and policies. (*Spring Valley Lake Assn. v. City of Victorville* (2016) 248 Cal.App.4th 91, 99.)

3 61. CEQA requires EIRs to advance the statute’s public informational goals by requiring
4 EIRs to describe, analyze, and compare a reasonable range of alternatives to a project which
5 would feasibly attain most of the project’s basic objectives, but would [also] avoid or
6 substantially lessen any of the project’s significant effects. (CEQA Guidelines, § 15126.6, subd.
7 (a).) An EIR “must contain ‘sufficient information about each alternative to allow meaningful
8 evaluation, analysis, and comparison with the proposed project,’” the adequacy of which analysis
9 is judged against “a rule of reason.” (*Center for Biological Diversity v. County of San Bernardino*
10 (2010) 185 Cal.App.4th 866, 883.) “If an alternative is identified as at least potentially feasible
11 [by the agency], an in-depth discussion is required.” (*Ibid.*) “Even as to alternatives that are
12 rejected, however, the ‘EIR must explain why each suggested alternative either does not satisfy
13 the goals of the proposed project, does not offer substantial environmental advantages[,] or cannot
14 be accomplished.’” (*Ibid.*)

15 62. CEQA also requires EIRs to describe and analyze all feasible mitigation measures to
16 minimize or avoid projects’ significant environmental impacts. (Pub. Resources Code, § 21002;
17 CEQA Guidelines, § 15126.4, subd. (a)(1).) Approval of a project without including such feasible
18 mitigation to avoid or minimize environmental damage violates CEQA. (CEQA Guidelines, §
19 15021.) CEQA further requires that adopted mitigation measures be fully enforceable. (Pub.
20 Resources Code, § 21081.6, subd. (b); CEQA Guidelines, § 15126.4, subd. (a)(2).)

21 63. CEQA prohibits lead agencies from deferring mitigation in EIRs, except under
22 specific circumstances. Mitigation may only be deferred until after a project’s approval only if its
23 immediate implementation is “impractical or infeasible,” with certain conditions. (CEQA
24 Guidelines, § 15126.4, subd. (a)(1)(B).) Deferral is permissible provided the agency “(1)
25 commits itself to the mitigation, (2) adopts specific performance standards the mitigation will
26 achieve, and (3) identifies the type(s) of potential action(s) that can feasibly achieve that
27 performance standard and that will be considered, analyzed, and potentially incorporated into the
28 mitigation measure.” (*Ibid.*)

1 64. Respondents violated CEQA by certifying the SEIR without complying with its
2 mandates for environmental review documents. Among other deficiencies, Respondents' SEIR
3 violated CEQA in at least four ways:

- 4 1. The SEIR fails to adequately disclose, discuss, and analyze the Project's
5 inconsistency with the WOCAP. The SEIR fails to disclose and discuss the
6 Project's fundamental inconsistencies with the WOCAP's overarching air quality
7 goals and its air pollutant emissions and cancer risk reductions targets. The SEIR
8 also fails to analyze and incorporate all the feasible WOCAP strategies
9 applicable to the Port as mitigation measures, and does not describe why the
10 excluded strategies are infeasible as mitigation. Because a fair argument for a
11 significant impact exists when projects are inconsistent with plans intended to
12 mitigate environmental impacts, the SEIR's failure to disclose and analyze the
13 Project's inconsistency with the WOCAP's goals and targets is also a failure to
14 identify, analyze, and mitigate any associated significant environmental impacts.
- 15 2. The SEIR failed to identify, analyze, or compare a reasonable range of
16 alternatives to the Project, and failed to provide substantial evidence to support
17 its conclusion that the single project alternative it did consider is infeasible. The
18 SEIR failed to consider additional alternatives to the Project's open-air aggregate
19 stockpiles, such as three separate enclosed structures or three-sided enclosures to
20 cover the stockpiles. Instead, it only considered and rejected as infeasible one
21 single, massive, enclosure for all of the stockpiles. Moreover, the SEIR failed to
22 provide substantial evidence that the massive structure it did consider was
23 infeasible—the SEIR presents only bare assertions comparing this alternative to
24 Eagle Rock's enclosed Richmond Terminal.
- 25 3. The SEIR failed to adopt all feasible mitigation measures that would avoid or
26 reduce the Project's significant impacts. Specifically, the SEIR failed to disclose,
27 analyze, or adopt feasible mitigation measures to enclose or cover the three
28 aggregate stockpiles, to control fugitive dust, to transition to zero-emission

1 trucks and vehicles, and to require marine vessels to utilize cleaner engines. The
2 SEIR also failed to analyze and incorporate feasible measures from the WOCAP
3 that would avoid or reduce the Project's impacts.

- 4 4. The SEIR improperly deferred mitigation by failing to show that the mitigation
5 would be impractical or infeasible to implement at the start of Project operations,
6 and by failing to adopt performance standards for the deferred mitigation. The
7 SEIR failed to show why analyses for zero-emission technologies are postponed
8 until after Project operations have begun, explain why Tier 3 or Tier 4 engines
9 cannot be utilized by marine vessels, justify a delayed timeline for incorporation
10 of cleaner marine vessel engines, and substantiate the performance standards and
11 timelines applicable to a pilot capture-and-control study. The SEIR also failed to
12 require that the Project use construction equipment with the best available
13 emissions control technology as soon as it becomes available.

14 65. Because Respondents' SEIR failed to comply with CEQA's requirements,
15 Respondents' approval of the Project must be set aside.

16 **PRAYER FOR RELIEF**

17 The People pray for judgment as follows:

- 18 1. For peremptory and alternative writs of mandate under Code of Civil Procedure
19 section 1094.5 and Public Resources Code section 21168.9:
- 20 a. Directing Respondents to void, vacate, and set aside every determination,
21 finding, and/or decision approving the Project, including certification of the
22 Final SEIR, the adoption of the Findings and the Statement of Overriding
23 Considerations, and the approval of all associated Project permits, entitlements,
24 and other approvals;
- 25 b. Directing Respondents and Real Parties in Interest, and any of their agents,
26 servants, and employees, to suspend any and all activities pursuant to, or in
27 furtherance of, Respondent's determinations, findings, and/or decisions related
28 to the Project's approval, and to restrain them from taking any action to

1 implement, fund, or construct any portion or aspect of the Project, until
2 Respondents have taken all actions necessary to comply with CEQA; and
3 c. Directing Respondents to fully comply with the requirements of CEQA with
4 respect to the Project, and take any other specific action that may be necessary
5 to bring Respondents' determination, finding, and/or decision into compliance
6 with CEQA and the CEQA Guidelines, as required by Public Resources Code
7 section 21168.9.

8 2. For a declaration pursuant to Code of Civil Procedure section 1060 that Respondents'
9 certification of the Final SEIR and approval of the Project violated CEQA and the CEQA
10 Guidelines, that any further certifications and approvals are void, invalid, and without effect, and
11 that the Project is inconsistent with applicable plans and policies, including the West Oakland
12 Community Action Plan;

13 3. For costs of this suit;

14 4. For attorneys' fees as authorized by Code of Civil Procedure sections 1021.5 and
15 1021.8, and other provisions of law; and

16 5. For such other and further relief as the Court deems proper.

17
18
19 Dated: August 4
 _____, 2022

Respectfully Submitted,

ROB BONTA
Attorney General of California
ABIGAIL BLODGETT
Supervising Deputy Attorney General

Davin A. Widgerow

DAVIN A. WIDGEROW
Deputy Attorney General
*Attorneys for the People of the State of
California, ex rel. Rob Bonta, Attorney General*

25 OK2019104951
26 83529840.docx

27
28

DECLARATION OF SERVICE BY E-MAIL

Case Name: **Eagle Rock Aggregates Port of Oakland Terminal (BEJ)**

Case No.: **22CV008905**

I declare:

I am employed in the Office of the Attorney General, which is the office of a member of the California State Bar, at which member's direction this service is made. I am 18 years of age or older and not a party to this matter.

On **August 4, 2022**, I served the attached:

**PEOPLE'S PETITION FOR WRIT OF MANDATE IN INTERVENTION FOR
DECLARATORY AND INJUNCTIVE RELIEF**

by transmitting a true copy via electronic mail.

SEE ATTACHED SERVICE LIST

I declare under penalty of perjury under the laws of the State of California and the United States of America the foregoing is true and correct and that this declaration was executed on **August 4, 2022**, at San Diego, California.

A. Lopez



Declarant

Signature

SERVICE LIST

**West Oakland Environmental Indicators Project v. Port of Oakland, et al.
Case No. 22CV008905
Superior Court of the State of California - County of Alameda**

<p>Laura D. Beaton Sara A. Clark Stacy Lee Shute, Mihaly & Weinberger, LLP 396 Hayes Street San Francisco, California 94102</p> <p>beaton@smwlaw.com clark@smwlaw.com slee@smwlaw.com</p>	<p><i>Attorneys for Petitioner WEST OAKLAND ENVIRONMENTAL INDICATORS PROJECT</i></p>
<p>Julie Jones Perkins Coie, LLP 505 Howard Street, Suite 1000 San Francisco, CA 94105</p> <p>jjones@perkinscoie.com</p>	<p><i>Attorneys for Respondents PORT OF OAKLAND and BOARD OF PORT COMMISSIONERS OF THE PORT OF OAKLAND</i></p>
<p>Andrew B. Sabey Amy Foo Cox Castle & Nicholson LLP 50 California Street, Suite 3200 San Francisco, CA 94111</p> <p>asabey@coxcastle.com afoo@coxcastle.com</p>	<p><i>Attorneys for Real Parties in Interest EAGLE ROCK AGGREGATES and EAGLE ROCK AGGREGATES, INC.</i></p>