

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) effective as of the date executed by the last signatory (“Effective Date”), is made by and among the West Oakland Environmental Indicators Project (“WOEIP”); the People of the State of California (the “People”); the City of Oakland, a municipal corporation, acting by and through its Board of Port Commissioners (the “Port”); and Eagle Rock Aggregates, Inc., a Delaware corporation (“Eagle Rock”). WOEIP, the People, the Port, and Eagle Rock are each referred to herein as “Party” and are collectively referred to as the “Parties.”

RECITALS

A. WHEREAS, on July 31, 2002, the City of Oakland (“City”), as lead agency under the California Environmental Quality Act (“CEQA”) certified an Environmental Impact Report (“EIR”) for the Oakland Army Base (“OAB”) Area Redevelopment Plan (SCH # 2001082058). The OAB Area includes the seaport area of the Port and the EIR included analysis of the environmental impacts of planned increases in cargo throughput at the seaport.

B. WHEREAS, on September 17, 2002, the Port, as a responsible agency under CEQA and in reliance on the EIR, approved the portion of the OAB Area Redevelopment Plan that would be carried out at the seaport.

C. WHEREAS, since 2002, both the City and the Port have modified the EIR through multiple CEQA addenda, including the 2006 Maritime Street Addendum, the 2012 Oakland Army Base Addendum, the 2015 Cool Port Addendum, and the 2019 7th Street Grade Separation Addendum. Together, the EIR and addenda are referred to as the “2002 EIR as Addended.”

D. WHEREAS, in 2018, Eagle Rock approached the Port with a request to construct and operate a bulk sand and gravel marine terminal comprising approximately 18 acres of land and 3 acres of water at Berths 20-22 of the Port’s seaport (the “Project”).

E. WHEREAS, the Port determined in 2019 that it would analyze the proposed Project through a supplemental environmental impact report, rather than another addendum, to the 2002 EIR as Addended.

F. WHEREAS, on August 19, 2019, the Port issued a Notice of Preparation of a Supplemental Environmental Impact Report (“SEIR”) for the Project. WOEIP and the People both responded to the Notice of Preparation. Among their comments were statements that the Project would cause significant impacts to residents of the West Oakland community near the seaport and that an SEIR based on the 2002 EIR as Addended would not comply with CEQA.

G. WHEREAS, on November 6, 2020, the Port issued its Draft SEIR on the Project. WOEIP and the People commented on the Draft SEIR, stating among other comments that the Draft SEIR did not adequately analyze and mitigate the Project’s environmental impacts and that an SEIR was not the proper vehicle for analysis of the Project under CEQA.

H. WHEREAS, in November 2021, the Port issued its Final SEIR for the Project, which included the Port's responses to comments raised by WOEIP, the People, and other commenters.

I. WHEREAS, on December 15, 2021, WOEIP submitted written comments stating, among other comments, that the Final SEIR did not comply with CEQA.

J. WHEREAS, on December 16, 2021, the Port certified the Final SEIR for the Project.

K. WHEREAS, on February 24, 2022, the Port approved the Project, making CEQA findings and a statement of overriding considerations, and adopting a mitigation monitoring and reporting program. The Port and Eagle Rock then entered into the Non-Exclusive Preferential Assignment Agreement, effective as of July 1, 2022 ("NEPAA").

L. WHEREAS, on March 24, 2022, WOEIP filed a Verified Petition for Writ of Mandate and Complaint for Declaratory and Injunctive Relief, Alameda County Superior Court Case No. 22CV008905, alleging that the Port had approved the Project in violation of CEQA (the "Litigation"). The petition named the Port as respondent and Eagle Rock as real party in interest.

M. WHEREAS, on August 4, 2022, the People filed a Petition for Writ of Mandate in Intervention for Declaratory and Injunctive Relief in the Litigation, also alleging that the Port had approved the Project in violation of CEQA.

N. WHEREAS, a map depicting the Project site (labeled "Eagle Rock Terminal"), the "800 Series" site, and the Outer Harbor Terminal is attached hereto as Exhibit A.

O. WHEREAS, the Parties, through their counsel, have engaged in settlement discussions and desire to settle, compromise, and resolve the Litigation. It is in the best interests of the public and judicial economy for the Parties to resolve the claims and disputes in the Litigation. The Parties accordingly agree as follows:

AGREEMENT

Section 1 Air Quality Improvements

1.1 Shore Power for Use by the Project.

(a) **Port Actions.** The Port shall use its best efforts to make shore power available to all ocean-going vessels ("OGVs") calling at the Project (Berths 20-22) by the end of calendar year 2029 at the latest, with the goal of having shore power available in the calendar year 2027.

(i) Within fourteen (14) calendar days of the Effective Date, the Port shall a) provide notice of Change of Long-Term Operations to Pacific Gas and Electric Company ("PG&E") to initiate the agreements or amendments to existing agreements needed to make shore power available at Berths 20-22; and b) begin planning for construction of power

infrastructure so that construction begins, and to the extent feasible is completed, before the PG&E agreements become effective.

(ii) The Port shall make quarterly progress reports to WOEIP, the People, and Eagle Rock regarding the status of the Port's work with PG&E relative to providing shore power to Berths 20-22 (including, but not limited to, System Impact Studies, Facilities Studies, and negotiation of revisions to its Interconnection Agreement, collectively "PG&E Coordination") and Port construction activities that are required to bring shore power to the Project site. The first quarterly report shall be made within fifteen (15) calendar days of the Effective Date of this Agreement, and the last report shall be made after Eagle Rock begins using at least one (1) shore power-capable OGV at its site.

(iii) The Parties acknowledge that they do not control PG&E's process or schedule for PG&E Coordination. The Port shall lead the effort to encourage PG&E to act promptly on the Port's applications.

(b) **Eagle Rock Actions.** As soon as feasible after the Port makes shore power available at the Project site, with a goal of by the end of calendar year 2027, Eagle Rock shall begin using at least one (1) OGV that is equipped to use that shore power and shall ensure that at least one (1) such vessel is designated by its shipping partner for use at the Port. Eagle Rock shall use commercially reasonable efforts to ensure that all OGVs calling at the Project are equipped with shore power.

(i) To the extent any OGV visiting the Project is not equipped to use shore power, Eagle Rock shall provide an explanation to the Port, and the Port shall include an explanation in its final quarterly progress report described in Section 1.1(a)(ii).

(ii) Once shore power is available, at least fifty (50) percent of aggregate delivered to the Project site shall be delivered by OGVs capable of using shore power.

(c) **WOEIP, People, and Eagle Rock Actions.** During the PG&E Coordination, upon the Port's request to any or all of them, Eagle Rock, WOEIP, and/or the People shall use their best efforts to encourage PG&E to take prompt action on the Port's applications.

1.2 Watering of Aggregate Stockpiles: Eagle Rock Actions - Watering Protocol.

(a) Individual aggregate piles shall be sampled weekly in accordance with Standard Practice for Sampling Aggregates ("ASTM D75/DM75-19" or current) and tested weekly for moisture content in accordance with Standard Test Method for Total Evaporable Moisture Content of Aggregate By Drying ("ASTM C566-19" or current). Samples shall be collected from the surface of each quadrant (i.e., north, south, east, and west) of each individual stockpile.

(b) Aggregate piles shall be watered during each operational day and once for every non-operational period exceeding two days from the last watering, in accordance with all Bay Area Air Quality Management District ("BAAQMD") regulations and through the installed

systems as described in the NEPAA, which shall provide 100 percent coverage of the stockpiles, except in the following instances:

- (i) Active rainfall at the facility;
- (ii) Piles are visibly saturated; or
- (iii) Any situation where the safety of workers would be compromised from the watering process.

(c) Should temperatures exceed 75 degrees and humidity fall below 75 percent (based on National Oceanic and Atmospheric Administration (“NOAA”) weather data), watering shall take place a minimum of two (2) times per day unless exceptions noted in subsection (b) immediately above are identified.

(d) Moisture targets are as follows:

- (i) Fine Aggregates (Sand): five (5) to eight (8) percent; and
- (ii) Coarse Aggregates (Gravel): one (1) to two (2) percent.

(e) Duration of watering is dependent on the time of day, ambient temperature, and relative humidity.

(f) If weekly moisture testing results are below moisture targets, frequency of watering shall increase as reasonably determined to be necessary to achieve desired moisture content.

(g) Records of weekly testing results shall be prepared and retained for a minimum of three (3) years.

(h) The weekly testing records shall be made reasonably available to the Port upon the Port’s, WOEIP’s, or the People’s request and shall be considered public records available for disclosure under the California Public Records Act.

1.3 Fully Electric or Other Zero-Emissions Front-End Loaders: Eagle Rock and Port Actions.

Section 4(e) of Exhibit I of the existing NEPAA requires Eagle Rock to procure and deploy, among other reduced-emissions equipment, “three (3) off-road hybrid diesel/electric front-end loaders (John Deere 944k hybrid or equivalent) for loading Cargo into all drayage trucks; and (ii) one (1) electric street sweeper to sweep the Premises and surrounding roadways.” Section 4(e) further requires: “Eagle Rock shall also explore, if feasible, use of other hybrid diesel/electric or electric yard equipment options on a continual basis. Options shall be reviewed and discussed with the Port on an annual basis in accordance with Section 3(f) of this Exhibit I.”

In addition to the requirements of the existing NEPAA described herein, Eagle Rock shall also take the following actions, and Section 4(e) of the NEPAA shall be revised as necessary consistent with the following:

As each of the three (3) off-road hybrid diesel/electric front-end loaders specified in the NEPAA Section 4(e)(i) reaches the end of its useful life (15,000 hours for purposes of this Agreement), Eagle Rock shall procure an electric or other zero-emissions front-end loader to replace the hybrid diesel/electric front-end loader, provided that the replacement meets the following criteria: (a) comparable size and functionality to the current hybrid diesel/electric; (b) available for order and delivery; (c) from an established dealership network with support and repair personnel in California capable of prompt service of the front-end loader when required; and (d) at a comparable purchase price not to exceed more than 20 percent of the price of a replacement new hybrid diesel/electric front-end loader.

Section 2 Non-Reliance on 2002 EIR as Addended for Certain Future Projects

2.1 Port Actions.

(a) Although the development and operation of transloading facilities at the Port's "800 Series" site is within the scope of the 2002 EIR as Addended, the Port shall not approve operation of such newly developed facilities using the air quality analysis in the 2002 EIR as Addended. Instead, the Port's CEQA analysis of such facilities shall treat the project(s) as new and shall compare any project's air quality impacts to existing conditions.

(b) With respect to the Outer Harbor Terminal, the Board of Port Commissioners shall not take a discretionary action to approve projects after December 31, 2026, that rely on the 2002 EIR as Addended.

(c) As to all other Port projects, including but not limited to renewal, repair, and/or replacement projects such as new or replaced substations, new electrical lines, new solar power facilities, new battery storage facilities, new shore power facilities, and general infrastructure projects such as wharf fenders, wharf bollards, substations, replacement of new substations, and new lines, etc., the Port makes no commitment to use or not use the 2002 EIR as Addended.

2.2 Joint Port/WOEIP Action. The Port's agreements described in Section 2.1 above are conditioned on agreement between the Port and WOEIP on a joint press release describing these Port commitments with regard to Section 2.1 of this Agreement.

Section 3 Port Publication of Annual Air Quality Plans Required by SEIR Project Mitigation Measure Eagle Rock Aggregates Air Quality – 1 ("ERA AQ-1")

During the Term of the NEPAA, the Port will annually publish on the Environmental Stewardship Publications & Documents section of the Port's website (or successor section) links to the draft and final air quality plans required by SEIR Project Mitigation Measure ERA AQ-1, as approved by the Port. The draft air quality plans shall be posted within fifteen (15) business days of receipt by the Port and remain on the website until the final related air quality plan is posted, and the final air quality plans shall be posted within five (5) business days of approval by the Port. Final air quality plans shall remain available on the Port's website during the life of the Project.

Section 4 Joint Port/Eagle Rock Webinar/Community Education Session Regarding Project Operations/Dust Control

Within six (6) months of commencement of Project operations, the Port and/or Eagle Rock shall hold an educational webinar or live educational session describing the Eagle Rock terminal operations and dust control measures, with opportunity for a live questions and answers session with the community. The webinar or educational session shall be recorded and made available on the Port's website, where it shall remain available for the Initial Term of the NEPAA, *i.e.*, the first twelve (12) years of the life of the Project. Eagle Rock and/or the Port shall seek WOEIP's input on topics to be covered in the webinar/educational session and on the timing of the session.

Section 5 West Oakland Community Fund

The West Oakland Community Fund, created by the City and the Port in connection with the Oakland Army Base Redevelopment Plan, has not disbursed funds to the West Oakland community because a fiduciary to manage the Fund has not been identified. The Port agrees to work in good faith with the City and the West Oakland Community Advisory Group to identify a fiduciary for distribution of the West Oakland Community Fund within the West Oakland community.

Section 6 Attorneys' Fees and Costs

Within five (5) business days of the Effective Date of this Agreement, Eagle Rock shall pay three hundred thousand dollars (\$300,000) for WOEIP's and the People's attorneys' fees and costs related to the Litigation. WOEIP and the People waive any other claims against Eagle Rock or the Port for any remaining attorneys' fees or costs related to the Litigation.

Payment of two hundred and twenty thousand dollars (\$220,000) shall be made by wire/ACH to Shute, Mihaly & Weinberger LLP in trust for WOEIP.

Payment of eighty thousand dollars (\$80,000) shall be made by check to the Attorney General's Office to reimburse the People's investigative costs, attorneys' fees, litigation costs, and other enforcement costs incurred in connection with the above-captioned matter. The check shall be made payable to the "California Department of Justice Litigation Deposit Fund." The check shall bear on its face the case name *West Oakland Environmental Indicators Project v. Port of Oakland, et al.* and include the internal docket number for this matter, OK2019104951. The check shall be delivered to Davin Widgerow, Deputy Attorney General, Environment Section, Office of the Attorney General, 600 West Broadway, Suite 1800, San Diego, CA 92101.

The money paid to the People via the Attorney General's Office shall be administered by the California Department of Justice and used by the Environment Section of the Public Rights Division of the Attorney General's Office, until all funds are exhausted, for any of the following purposes: (1) implementation of the Attorney General's authority to protect the environment and natural resources of the State of California pursuant to Government Code section 12600 et seq. and as Chief Law Enforcement Officer of the State of California pursuant to Article V, section 13, of the California Constitution; (2) enforcement of laws related to protection of the environment and natural resources of the State of California; and (3) other environmental actions

or initiatives which benefit the State of California and its citizens as determined by the Attorney General. Such funding may be used for: the costs of the Attorney General's investigation, filing fees, and other court costs; payments to expert witnesses and technical consultants; purchase of equipment, laboratory analyses, personnel costs, and travel costs; and other costs necessary to pursue environmental actions or initiatives investigated or initiated by the Attorney General for the benefit of the State of California and its citizens.

Section 7 Dismissal of the Litigation

In consideration of, and in return for, the promises and covenants undertaken in this Agreement by the Parties, and for other good and valuable consideration, within five (5) business days of receipt of the payment described in Section 6, WOEIP and the People shall file with the Alameda County Superior Court a Request for Dismissal with Prejudice of the Litigation. WOEIP and the People will diligently and in good faith pursue having the dismissal entered as expeditiously as possible, and within five (5) days of entry of the dismissal will serve on all Parties notice of entry of the dismissal.

Section 8 No Challenge to Amendment of NEPAA

WOEIP and the People acknowledge that at the same meeting at which the Board of Port Commissioners approves this Agreement, the Port plans to approve NEPAA amendments (potentially through an Amended and Restated NEPAA), to account both for this Agreement and for the delays in planned Project implementation that have resulted, in whole or in part, from the pendency of the Litigation (collectively the "Contemplated Amendments"). WOEIP and the People further acknowledge that the Port will rely on the SEIR when it considers the NEPAA amendments and that if those amendments include only the Contemplated Amendments, no additional CEQA review is required to support the Port's approval of the NEPAA amendments. WOEIP and the People agree not to challenge, either directly or indirectly, nor to encourage any other person or organization to challenge, either through public comments or through litigation, on CEQA or any other basis, NEPAA amendments that do not make any material alteration to the existing NEPAA beyond the Contemplated Amendments.

Section 9 No Admission of Liability

This Agreement is the compromise of disputed claims and shall not in any way be construed as an admission by the Port that it has acted wrongfully or unlawfully with respect to the Project, or that WOEIP or the People have any rights whatsoever against the Port or Eagle Rock except as expressly provided in this Agreement.

Section 10 Complete Resolution

Execution and delivery of this Agreement and compliance with the terms herein constitutes a full and complete satisfaction of all claims and demands by WOEIP and the People against the Port and Eagle Rock related to any alleged failure to comply with applicable law in the Port's approval of the Project.

Section 11 Miscellaneous Provisions

11.1 Entire Agreement. This Agreement, including all exhibits and attachments, contains the entire understanding and agreement of the Parties. There are no oral or written representations, understandings or ancillary covenants, undertakings or agreements that are not contained or expressly referred to in this Agreement.

11.2 Binding on Successors. The covenants, terms, conditions, and restrictions of this Agreement, including all exhibits, shall be binding upon, and inure to the benefit of, the Parties hereto and their respective personal representatives, heirs, successors, and assigns.

11.3 Captions. The headings used in this Agreement are for convenience only and will not affect the interpretation of this Agreement.

11.4 Construction. The provisions of this Agreement and the attached exhibits will be construed as a whole according to their common meaning and the Parties further agree it is the product of joint drafting and will not be construed for or against any Party, but rather in a manner that will achieve the purpose and objectives of this Agreement.

11.5 Notices. Any notice required under this Agreement will be in writing and emailed, sent by first class mail, personally delivered, or sent by overnight delivery, to the Parties listed on Exhibit B attached hereto. Any party may change its mailing address at any time by giving written notice of such change to the other Parties in the manner provided in this Section at least ten (10) calendar days prior to the date such change is effected. All notices under this Agreement will be deemed given, received, made or communicated on the earliest of the date the recipient expressly acknowledges in writing receipt of email or first-class mail, personal delivery is effected, or the delivery date shown on the overnight delivery bill.

11.6 Severability. Except as otherwise expressly provided in this Agreement, if any provision of this Agreement becomes invalid, void or unenforceable for any reason or is determined by a court of competent jurisdiction to be invalid, void or unenforceable, then the remaining provisions of this Agreement will remain in full force and effect and will in no way be affected, impaired or invalidated by such determination, the provisions of this Agreement being severable in such instance.

11.7 Effectiveness. This Agreement will be effective as of the Effective Date, which shall be the date of the last signature on the Agreement.

11.8 No Third-Party Beneficiary. This Agreement is not intended, nor will it be construed, to create any third-party beneficiary rights in any person who is not a Party.

11.9 Modifications. This Agreement may be modified from time to time only by express written consent of all Parties to this Agreement.

11.10 Applicable Law. This Agreement will be governed by California law.

11.11 No Waiver. Unless otherwise expressly provided in this Agreement, no waiver by a Party of any provision hereof shall be deemed to have been made unless expressed in writing and signed by such Party. No delay or omission in the exercise of any right or remedy

accruing to any Party upon any breach under this Agreement shall impair such right or remedy or be construed as a waiver of any such breach theretofore or thereafter occurring. The waiver by a Party of any breach of any term, covenant or condition herein stated shall not be deemed to be a waiver of any other term, covenant, or condition.

11.12 Disputes under Agreement. If a dispute arises concerning a Party's compliance with this Agreement, and if no exigent circumstances require immediate court proceedings, the Party asserting a breach will provide notice (in accordance with Section 11.5) of that assertion to the allegedly breaching Party. Within twenty-one (21) calendar days of the receipt of that notice, if the circumstances constituting the alleged breach have not been cured and if no exigent circumstances require immediate court proceedings, the Parties will meet and confer to attempt in good faith to resolve the dispute. If the Parties are unable to resolve the dispute, the Party asserting a breach shall be entitled to pursue any remedy available to it under the law, including but not limited to specific performance, especially when monetary damages are insufficient compensation when compared to the purpose for the obligations imposed on the Port and Eagle Rock by way of this Agreement, i.e., the reduction of air pollutant emissions in and near the West Oakland community.

11.13 Future Attorneys' Fees and Costs. If a suit is brought or a claim is made to enforce this Agreement, the prevailing party will be entitled to recover its reasonable attorneys' fees and costs.

11.14 Warranties of Authority. The signatories to this Agreement hereby represent and warrant that they are duly authorized to execute this Agreement on behalf of the Parties for which they have signed and that they have all necessary lawful authority; and have taken all necessary actions, to execute this Agreement.

11.15 Press Statement. The Port, Eagle Rock and WOEIP will jointly draft and issue a press statement regarding this Agreement, which will serve as the basis for the Port's and WOEIP's responses to press inquiries.

11.16 Counterparts. This Agreement may be executed in counterparts and may be executed by electronically delivered signatures. All such executed counterparts shall constitute the same agreement, and the signature of any Party to any counterpart shall be deemed a signature to, and may be appended to, any other counterpart. If fully executed as provided for herein, any copy of this Agreement may be used to establish the contents and valid execution of this Agreement. This Agreement shall not be binding until signed and delivered by all Parties.

[Signatures Continued on Next Page]

IN WITNESS WHEREOF, the Parties hereto have executed one or more copies of this Agreement as of the Effective Date.

WEST OAKLAND ENVIRONMENTAL INDICATORS PROJECT

By: *Brian Beveridge*
Brian Beveridge (Jun 29, 2023 08:51 PDT)
Brian Beveridge
Co-Executive Director
Email: bbeveridge@woeip.org

Dated: Jun 29, 2023

Approved as to form:

By: *LDB*
Laura D. Beaton (Jun 26, 2023 10:03 PDT)
Laura D. Beaton
Email: Beaton@smwlaw.com
Shute, Mihaly & Weinberger LLP
Attorneys for West Oakland Environmental Indicators Project

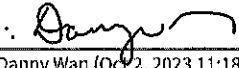
Dated: Jun 26, 2023

Dated: June 26, _____, 2023

ROB BONTA
Attorney General of California

Davin A. Widgerow
Davin A. Widgerow (Jun 23, 2023 17:33 PDT)
ABIGAIL BLODGETT
Supervising Deputy Attorney General
Email: abigail.blodgett@doj.ca.gov
DAVIN WIDGEROW
Deputy Attorney General
Email: davin.widgerow@doj.ca.gov
Attorneys for the People of the State of California, ex rel. Rob Bonta, Attorney General


CITY OF OAKLAND, a municipal corporation,
acting by and through its Board of Port Commissioners

By: 
Danny Wan (Oct 2, 2023 11:18 PDT)

Danny Wan
Executive Director

Dated: Oct 2, 2023

Approved as to form and legality.


By: 
Mary C. Richardson
Port Attorney

Sep 30, 2023

PA# 2023 - 309 Reso: 23-75

Approval Date: 9/14/2023

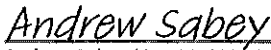
EAGLE ROCK AGGREGATES, INC.,
a Delaware corporation

By: 
Scott Dryden (Jul 5, 2023 10:20 PDT)

Scott Dryden
President & CEO
Email: sdryden@us-concrete.com

Dated: Jul 5, 2023

Approved as to form:

By: 
Andrew Sabey (Jun 30, 2023 10:54 PDT)

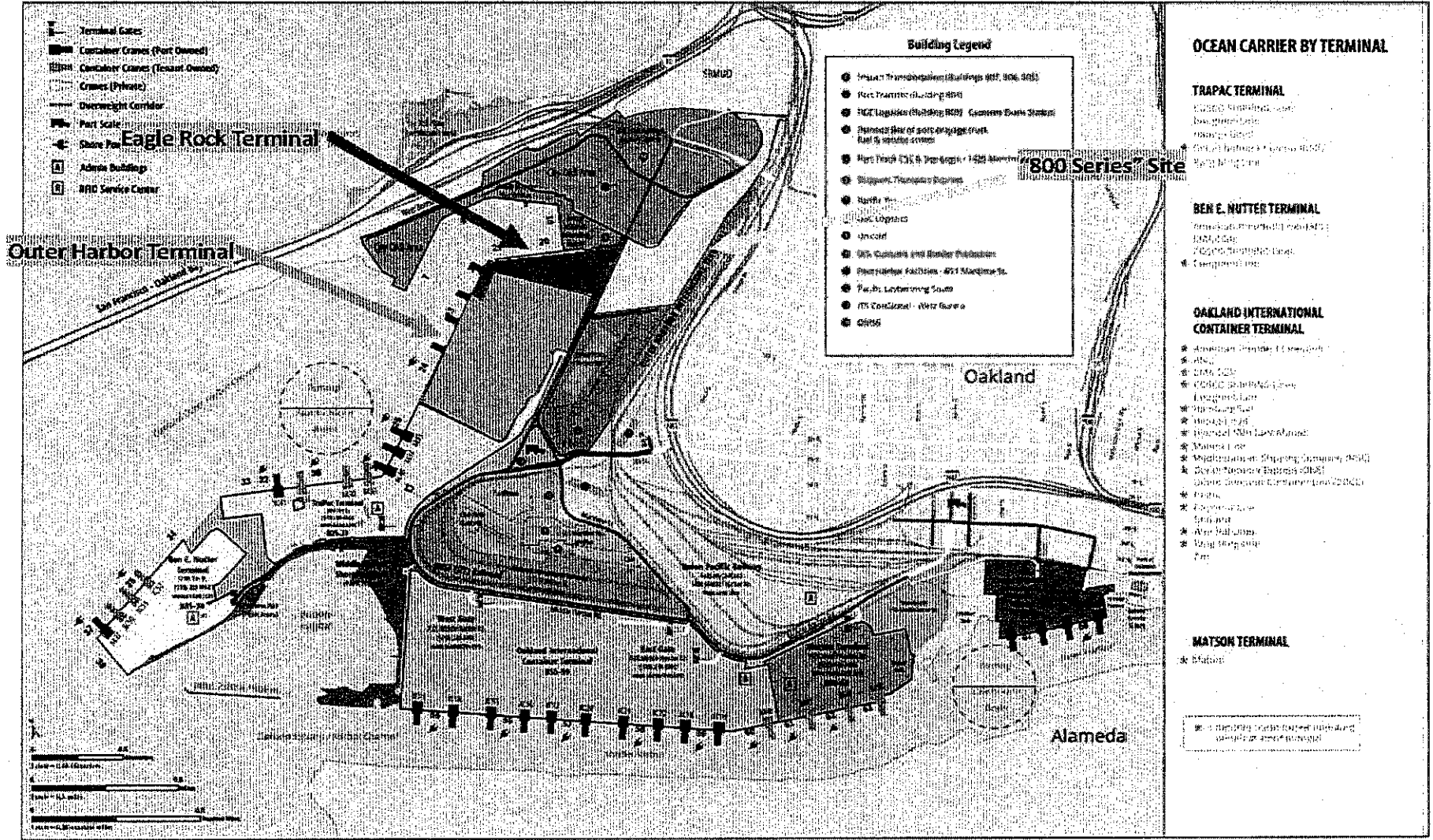
Andrew B. Sabey
Cox Castle & Nicholson LLP
Email: asabey@coxcastle.com
Attorneys for Eagle Rock Aggregates, Inc.

Dated: Jun 30, 2023

EXHIBIT A

[See Attached]

SEAPORT FACILITIES



OCEAN CARRIER BY TERMINAL

TRAPAC TERMINAL

- American Overseas Transportation
- CMA CGM
- Eveready
- K-Line
- Mitsui
- Nippon Yusen
- P&O
- Sealand
- Teikoku
- Y.M. Line

BEN E. HUTTER TERMINAL

- American Overseas Transportation
- CMA CGM
- Eveready
- K-Line
- Mitsui
- Nippon Yusen
- P&O
- Sealand
- Teikoku
- Y.M. Line

OAKLAND INTERNATIONAL CONTAINER TERMINAL

- American Overseas Transportation
- CMA CGM
- Eveready
- K-Line
- Mitsui
- Nippon Yusen
- P&O
- Sealand
- Teikoku
- Y.M. Line

MATSON TERMINAL

• Matson

Map showing locations of terminals and buildings.

EXHIBIT B
NOTICES TO PARTIES

To WOEIP:

Brian Beveridge, Co-Director
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Email: bbeveridge@woeip.org

With Copy To:

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To People:

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To Eagle Rock:

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With Copy To:

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