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December 18, 2023

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RE: Oakland Harbor Turning Basins Widening Project: Draft Environmental Impact Report
(CEQA State Clearinghouse No. 2022050647)

Dear Ms. Chuop:

The California Attorney General's Office (AGO) has reviewed the Port of Oakland's (Port) Draft Environmental Impact Report (DEIR) for the Oakland Harbor Turning Basins Widening Project (Project). The Project proposes to increase the width of the maritime vessel turning basins in the Port's Outer and Inner Harbors to accommodate the larger container vessels now calling at the Port more frequently. According to the DEIR, the existing turning basins were not designed to accommodate these larger vessels, resulting in inefficiencies when larger vessels enter, exit, and navigate around the Port. By widening and deepening the turning basins, the DEIR explains, the Project will allow larger container vessels to maneuver more efficiently within the Oakland Harbor. We respectfully submit these comments to request clarification and additional information regarding certain aspects of the DEIR, and we encourage the Port to adopt additional mitigation measures to protect the neighboring West Oakland community if the Project is approved.¹

I. BACKGROUND

Although the Port is the lead agency for the Project under the California Environmental Quality Act (CEQA), the U.S. Army Corps of Engineers (Army Corps) is the lead federal agency

¹ The Attorney General submits these comments pursuant to his independent power and duty to protect the environment and natural resources of the State. (Cal. Const., art. V, § 13; Gov. Code, §§ 12511, 12600-12612; *D'Amico v. Bd. of Medical Examiners* (1974) 11 Cal.3d 1, 14-15.) Our comments are not

for the Project and will be constructing the Project if it is approved. The Army Corps prepared an Environmental Assessment (EA) and a Finding of No Significant Impact (FONSI) for the Project under the National Environmental Policy Act (NEPA) in early 2022. The AGO submitted comments on the Army Corps' NEPA documents on May 9, 2022, expressing concerns with the EA's environmental analyses and the Project's apparent inconsistency with the local emissions reduction plan. The AGO's letter also recommended that the Army Corps consider mitigation to reduce the Project's impacts on neighboring communities, which already experience disproportionate levels of pollution and associated adverse health effects. We incorporated our NEPA comments in our July 5, 2022 CEQA comment letter regarding the Port's Notice of Preparation for the DEIR, and recommended further mitigation measures in that letter.

We appreciate the Port's decision to develop a full Environmental Impact Report (EIR) for this Project. We are concerned that the Army Corps' EA/FONSI did not adequately discuss the Project's public health and environmental impacts, and thank the Port for conducting a more thorough analysis in the form of an EIR. However, the DEIR provokes additional questions—it does not describe the Port's larger plans for its future operations with sufficient clarity to address concerns about increasing container throughput at the Port and the associated ship, truck, and rail activities. We request that all of the Port's landside infrastructure projects, and the Project's relationship to these projects, be described and analyzed more fully in a revised EIR. We also reiterate our recommendations for further mitigation measures to protect the Port's neighboring communities from the anticipated growth in Port throughput and activities. We address these concerns in more detail in the following sections.

II. PORT IMPROVEMENT PROJECTS AND THE CUMULATIVE IMPACTS ANALYSIS

The DEIR repeatedly emphasizes that the Project alone will not increase container throughput at the Port, and that projected cargo volumes are expected to increase whether or not the Project is implemented. For example, the DEIR makes the following assertions in various places throughout the document:

“The Proposed Project is not a development project that removes a barrier to growth, shifts cargo from one port to another, or increases the Port's container handling capabilities. It is assumed that the economic variables that directly influence economic growth and subsequent demand for Port services remain constant under the Proposed Project and future conditions without the Proposed Project (The Tioga Group and Hackett Associates 2020); therefore, the Port's total projected volume serviced would remain the same with and without widening of the turning basins....

...[W]idening the turning basins to accommodate longer vessels does not change the Port's container handling capacity (i.e., the number of containers that can move through the Seaport). Widening the turning basins would not change the

intended to object to the Project as a whole, but rather to encourage a detailed and legally compliant analysis of the Project's potential impacts and adoption of all feasible and legally enforceable mitigation measures to prevent further harm to the neighboring communities surrounding the Project site.

number of vessels able to berth, nor would it change the constraints of the yard. *The Proposed Project does not include landside improvements to increase the Port's cargo (or container) handling capacity; and as a result, the Port's capacity remains constant with this Proposed Project....*

Although the Proposed Project would increase efficiencies in waterside operations, *it does not expand or create new landside cargo-handling facilities at the Port and would not increase cargo throughput....*"

(See, for example, DEIR at p. 2-22) (emphasis added.)

The DEIR's assertions that the Project alone will not result in increased container throughput at the Port are based on reassurances that the Project itself does not contain landside infrastructure improvements that would facilitate an increase in container throughput. Rather, the Project is intended to merely to increase the maneuvering efficiency of the larger vessels now calling at the Port, and will itself have no effect on the increased container throughput that will be coming through the Port in any event. (DEIR at pp. 6-5 ["The 2019-2050 Bay Area Seaport Forecast prepared for the San Francisco Bay Conservation and Development Commission (BCDC) indicates that the annual TEU serviced at the Port will increase from approximately 2.5 million TEU in 2020 to over 5 million TEU by 2050, under a moderate growth scenario. This forecast is based on international TEU forecasts of imports and exports and is independent of the Proposed Project..."].)

Nevertheless, the DEIR concludes that some of the Project's construction impacts, when considered alongside the construction and operation of other past, present, and reasonably foreseeable projects, are cumulatively significant and unavoidable. The DEIR concludes that the Project's cumulative construction impacts would expose sensitive populations to substantial pollutant concentrations. (DEIR at p. ES-9.) Per the CEQA Guidelines, the Port developed a list of project types that would cause similar cumulative impacts to those caused by construction of the Project. (See Cal. Code Regs, tit. 14, § 15130, subd. (b)(1)(A) (requiring "[a] list of past, present, and probable future projects producing related or cumulative impacts".) In Table 4.2-1 of the DEIR, 17 projects were identified by the DEIR as causing cumulative impacts alongside impacts caused by the Project's construction. (DEIR, pp. 4-3 to 4-6, Table 4.2-1.)

However, it is unclear whether the list of past, present, and reasonably foreseeable projects contained in Table 4.2-1 includes all of the landside improvement projects planned for the Port that could create significant environmental impacts when implemented alongside construction of the Project. Moreover, the existence of additional planned landside improvements casts doubt on the Port's claims that container throughput is limited by landside infrastructural constraints and that the Port's container capacity "remains constant with the Proposed Project." (DEIR at p. 6-5.) In several instances, the DEIR refers to landside, harbor, and wharf improvements that seem to describe the precise improvements needed in order to increase

container throughput capacity at the Port, but these improvements are not included in the list of foreseeable projects at Table 4.2-1 of the DEIR.

The following is a list of references in the DEIR and Draft Integrated Feasibility Report and Environmental Assessment (Draft IFR/EA) released by the Army Corps in December 2021 to landside and operational improvements that are not included in Table 4.2-1 for the cumulative impacts analysis:

- “The difference between the Proposed Project and No Project future information is the physical changes to the size of the turning basins. With or without the Proposed Project, the Port will experience a 2.1 percent growth in cargo annually. *This also includes planned harbor improvements, terminal upgrades, and wharf improvements that would be anticipated to occur under both the Proposed Project and No Project future scenarios.*” (DEIR at p. 3.3-46.)
- “The difference between the Proposed Project and No Project future information is the physical changes to the size of the turning basins. HarborSym does include several assumptions regarding projected cargo throughput and efficiency improvements that are anticipated to occur regardless of implementation of the Proposed Project and were the same for both the Proposed Project and No Project future scenarios. With or without the Proposed Project, the Port anticipates a 2.1 percent growth in cargo annually. *It also includes planned harbor improvements that would be anticipated to occur under both the Proposed Project and No Project future scenarios.*” (DEIR at pp. 3-4, 3.3-39, 3.6-13, 3.6-17, 3.8-15, 3.8-18.)
- “Although the overall size of the terminal is a constraint, *container terminal operations have transitioned, and continue to transition, to a more densified operation* which includes such methods as placing containers on the ground and in sorted piles.... *This operational shift has also introduced appointment systems to manage container pickup and delivery by trucks.* These appointment systems are maintained and managed by the individual terminal operators to moderate transactions (e.g., hourly truck arrivals to a terminal) in accordance with available equipment and staffing.” (DEIR at pp. 2-17 to 2-18; see similar in Draft IFR/EA at p. 10.)
- “The cranes available to load and unload containers from a vessel, known as ship-to-shore gantry cranes, are electrified, and the total number of operational cranes at the Port has not changed since 2011. *However, in response to larger vessels, modifications and replacements have occurred in recent years to increase crane height and outreach.* [Footnote: “In 2018, *the Port raised two cranes* at the Oakland International Container Terminal to accommodate larger vessels calling the Port. In 2021 a total of four large cranes capable of serving PPX4 class vessels were constructed....”] (DEIR at p. 2-18.)
- “The Port, in partnership with the Alameda County Transportation Commission, *is installing a series of information technology (IT) improvements called the Freight Intelligence Transportation System (FITS) within the Seaport as part of a larger suite of*

programs collectively referred to as the “GoPort Program” to add transparency and efficiencies for Seaport traffic management.... FITS will use radio frequency identification device technology, smart cameras, automated traffic signal systems, changeable message signs, and various other IT improvements to optimize traffic, improve real-time communication flow, and provide increased security.” (DEIR at p. 2-19; see also Draft IFR/EA at p. 11.)

Furthermore, the Revised Draft IFR/EA (Revised IFR/EA) released by the Army Corps in April 2023² also contains references to landside improvement projects that are not included in the DEIR’s list of past, present, and reasonably foreseeable projects in Table 4.2-1:

- “The TraPac Terminal is a container terminal at the north end of the Outer Harbor, adjacent to the Outer Harbor Turning Basin, and is operated by TraPac.... There are typically six container vessel calls to this terminal per week, which keeps the terminal at or near its throughput capacity. *Refer to Section 2.2 Terminal Facilities on future improvements to TraPac to accommodate ultra-large containerhips....*” (Revised IFR/EA at p. 14.)
 - Section 2.2—Terminal Facilities:
 - “Despite its recent partial rehabilitation and expansion to 123 acres, the TraPac terminal, located next to the vacant 150-acre Outer Harbor Terminal (former Ports America) site has space to expand. Recent discussions regarding such an expansion support the assumption in this analysis that *TraPac will expand at least an additional 50 acres in the without-project condition.*” (Revised IFR/EA at p. 24.)
 - “The Port has three parcels of land contiguous with marine terminals available for terminal expansion, including:
 - Berths 33 and 34. *The unused area at Berths 33 and 34, between the Ben E. Nutter and TraPac terminals, totals 23 acres....*
 - Roundhouse Site. *The adjacent Roundhouse site of 39 acres could be used to extend Matson’s terminal to a total of 95 acres....*
 - Berths 20 and 21 and 22 to 24. *The Berth 22 to 24 Outer Harbor Terminal (OHT) site covers 150 acres, and this analysis treats it as potential future TraPac expansion.... The Port intends to use the Berth 20-21 land for dry bulk over the next 15 years, with potential reversion to container use thereafter. In the FWOP condition, all four of these berths are assumed to be added to TraPac for future operations....*” (Revised IFR/EA at p. 24.)
 - “The Port also has about 126 acres of undeveloped off-dock space, part of the former Oakland Army Base. All existing planning documents

² U.S. Army Corps of Engineers, San Francisco District, Oakland Harbor Turning Basins Widening Revised Draft Integrated Feasibility Report and Environmental Assessment, Apr. 26, 2023, <https://www.spn.usace.army.mil/Portals/68/docs/P%20and%20Programs/Oakland%20Harbor%20Turning%20Basin/2023%20Re-Release%20Documents/1_Oakland%20Draft%20draft_for%20rerelease.pdf?ver=7DpgRLIPRTXncgzht5EeA%3d%3d> (as of Nov. 20, 2023).

anticipate this land being used for *ancillary support uses, rail infrastructure, or commercial development like the CenterPoint and CoolPort projects....*” (Revised IFR/EA at p. 25.)

- “The Oakland International Container Terminal is a container terminal located north of the Inner Harbor Channel near downtown Oakland. Stevedoring Services of America Terminals operates it.... *Oakland International Container Terminal has recently raised and replaced its existing cranes to accommodate larger containerhips.*” (Revised IFR/EA at p. 14.)
- “The majority of Port of Oakland’s container traffic is handled at Oakland International Container Terminal. Annual throughput capacity at active terminals is over 2 million TEUs and *expected to increase with the completion of landside infrastructure improvement and expansion projects at all terminals.*” (Revised IFR/EA at p. 17.)

Finally, two slides from the Port’s presentation at the Fall 2023 public workshops for the Project DEIR list various landside projects currently underway at the Port, or for which grant applications have been submitted. As with the DEIR, Draft IFR/EA, and Revised IFR/EA references above, it is not clear whether these projects were included as past, present, and reasonably foreseeable projects in Table 4.2-1 of the DEIR:

- 2022 MARAD Port Infrastructure Development Program (PIDP): Outer Harbor Terminal Redevelopment and Green Infrastructure Improvements; backland improvements (grant awarded).
- California State Transportation Agency (CalSTA) FY 2023 Port & Freight Infrastructure Program (PFIP): Rebuild portion of the Outer Harbor Terminal container yard that will expand the Port’s electrical grid capacity and replace diesel powered [cargo-handling equipment] at Matson with [zero-emission cargo-handling equipment] and infrastructure; roadway improvements (grant awarded).
- 2023 AmNav Advanced Technology Demonstration and Pilot Program (ATDPP): 2023 BAAQMD Infrastructure Grant (grant submitted).
- Roundhouse: track parking and charging projects (project underway).

As noted, it is unclear whether the list of reasonably foreseeable projects contained in Table 4.2-1 includes all of the improvement projects referenced above. These planned improvements undermine the Port’s claim that its container capacity “remains constant with the Proposed Project.” (DEIR at pp. 6-5.) Plainly, there are projects underway or contemplated at the Port that could result in increased container throughput capacity. Although the DEIR concludes that the Project itself does not include these improvements, the Project would arguably *facilitate* the increased container throughput resulting from these projects by allowing larger container

ships to utilize the Port's turning basins more efficiently than at present. To clarify these issues, we recommend that the DEIR be revised in several ways:

First, we request that the DEIR describe all of the landside and operational improvement projects referenced in the DEIR and the Draft and Revised IFR/EA, and how these projects are accounted for—or not—in Table 4.2-1 of the DEIR and in the DEIR's cumulative impacts analysis.

CEQA requires that the “cumulatively considerable” effects of a project be analyzed, i.e., whether the “incremental effects of an individual project are considerable when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.” (*Envtl. Protection Info. Ctr. v. Cal. Dept. of Forestry and Fire Protection* (2008) 44 Cal.4th 459, 523 [citing Pub. Resources Code, § 21083, subd. (b)(2)].) However, the DEIR's cumulative impacts analysis does not analyze whether the Project's effects are cumulatively considerable when evaluated in connection with the above-referenced infrastructure projects. Indeed, these projects are not even identified in the cumulative impacts section.

The DEIR should be revised to: (1) fully identify and describe the above-referenced projects; (2) include these projects in the DEIR's cumulative impacts analysis section if they are reasonably likely to occur; and (3) analyze whether the effects of the turning basins Project, in conjunction with the effects from these projects, would cause cumulatively considerable environmental impacts, particularly for the neighboring West Oakland community.

Second, the DEIR should explain the basis for the Port's claim that its container capacity would “remain constant” even without construction of the turning basins Project—the above-referenced infrastructure projects would presumably facilitate an increase in container capacity, rather than result in container capacity remaining “constant.” This discrepancy needs to be resolved in the final EIR.

Third, we recommend that the Final EIR explain why the Port's decision to analyze the Project separately from the landside projects does not amount to unauthorized “piecemealing” of environmental review under CEQA.

To avoid improper piecemealing or segmentation, EIRs must include “analysis of the environmental effects of a future expansion or action if: (1) it is a reasonably foreseeable consequence of the initial project; and (2) the future expansion or action will be significant in that it will likely change the scope or nature of the initial project or its environmental effects.” (*Banning Ranch Conservancy v. City of Newport Beach* (2012) 211 Cal.App.4th 1209, 1222 [citing *Laurel Heights Improvement Assn. v. Regents of the Univ. of California* (1988) 47 Cal.3d 376, 396].) Piecemealing can occur when an initial project is intended to be the “first step toward future development,” or when an initial project “legally compels or practically presumes completion of another action.” (*Id.* at p. 1223 [citations].) On the other hand, projects are appropriately segmented when they involve “different proponents, serve different purposes, or can be implemented independently.” (*Ibid.*) The DEIR's vague references to past, pending, and forthcoming landside infrastructure projects does not provide sufficient information to determine

whether the turning basins Project is a “first step toward future development” of a Port with greater container throughput capacity, and is thus improperly segmented from those projects, or if it is instead a project serving a different purpose that can be independently implemented. A revised DEIR should include more information about the above-referenced improvement projects, and their relationships to the turning basins Project, in order to clarify this uncertainty.

III. ADDITIONAL RECOMMENDED MITIGATION MEASURES

In our July 2022 comment letter on the Notice of Preparation for the DEIR, we recommended a suite of mitigation measures for inclusion in the Project. Some of these measures have been incorporated into the Project’s construction in various forms. We appreciate that the Port will construct electrical infrastructure at Berths 26 and 68 to support electrical dredging equipment for construction of the Project. (DEIR at p. ES-3.) We also recognize that the Port will deploy a suite of construction air quality measures, including requiring Tier-4 off-road construction equipment or better; two-minute idling prohibitions; watering of exposed surfaces, soil piles, and unpaved areas twice daily; covering and washing haul trucks; deploying wet power vacuum street sweepers; and installing vegetative barriers and wind breaks, among other measures. (DEIR at pp. ES-6 to ES-7.) Finally, we acknowledge the Port’s requirements for the use of zero-emission and hybrid-powered equipment whenever such equipment is available from at least two regional commercial rental facilities, and requirements for pile-driving noise control, construction sound barriers, and traffic control plans. (DEIR at pp. ES-19 to ES-20; ES-24 to ES-25; ES-26 to ES-27.)

However, we are concerned that the Port’s narrow focus on time-limited construction mitigation measures ignores larger realities in the vicinity of the Project. As the DEIR notes, the West Oakland Community Action Plan (WOCAP) was developed for the neighboring West Oakland community per Assembly Bill 617 (Health & Saf. Code, § 44391), and included health risk and cancer risk exposure analyses.³ (DEIR at pp. 3.3-30 - 3.3-31.) The WOCAP also established emission reduction targets for diesel particulate matter (DPM), fine particulate matter (PM_{2.5}), and cancer risk. (*Ibid.*) Per the WOCAP, in 2017, the Port was the contributor of 57 percent of the community’s DPM exposure, 52 percent of the community’s cancer risk exposure, and 17 percent of its PM_{2.5} exposure. (WOCAP, p. 5-9, Fig. 5-4.) Although the Port identified several Project measures that align with some of the WOCAP’s 89 emissions reductions strategies, the DEIR correctly concedes that, “as the WOCAP is currently understood, any contribution [of DPM, PM_{2.5}, or cancer risk] would be inconsistent with the WOCAP’s goals.” (DEIR, p. 3.3-42.) These environmental conditions, and the Port’s role in contributing to them, require the Port to commit to more than just time-limited mitigation measures for this Project.

The Port should also adopt mitigation measures that will protect the community from the annual projected growth of 2.1 percent and the larger container ships the DEIR anticipates for the

³ Bay Area Air Quality Management District and West Oakland Environmental Indicators Project, *Owning Our Air—The West Oakland Community Action Plan, Volume 1*, Oct. 2019, <<https://www.baaqmd.gov/community-health/community-health-protection-program/west-oakland-community-action-plan>>; see also West Oakland Environmental Indicators Project, WOCAP Strategies, <<https://woeip.org/featured-work/owning-our-air/wocap-strategies/>> (both as of Nov. 20, 2023).

near future. (DEIR at p. 3.3-39.) To that end, we provide a list of recommendations below for additional actions the Port can incorporate into the turning basins Project—and preferably Port-wide—to demonstrate that it is preparing for future growth and addressing the accompanying environmental and public health impacts:

A. Portal for Updates on Air Quality Projects

The Port’s DEIR cites to various programs, plans, and regulations that would incorporate additional air quality measures and actions into its operations, particularly the Seaport Air Quality 2020 and Beyond Plan (Seaport 2020 Plan). (DEIR at pp. 3.3-34 - 3.3-35.) Indeed, it is also the Port’s legal responsibility to reduce emissions per a 2019 civil rights enforcement settlement with the U.S. EPA—that “Informal Resolution Agreement” requires the Port to implement a suite of air quality mitigation measures from the Oakland Army Base Redevelopment Plan (OAB Plan), the Maritime Air Quality Improvement Plan (MAQIP), and the Seaport 2020 Plan.⁴

The DEIR helpfully summarizes some of the Port’s progress on implementing these measures, including citing to a December 2022 Seaport 2020 Plan Annual Progress Report.⁵ (DEIR at pp. 3.3-34 - 3.3-35.) However, stakeholders frequently express frustration that progress on the Port’s air quality and electrification activities is challenging to monitor, and that information about the Port’s projects is difficult to locate. The community should not be required to search through an EIR or locate old staff reports, for example, in order to track progress on implementation of the Seaport 2020 Plan or the Port’s other air quality efforts.

Moreover, the Port’s main environmental program website contains a confusing mix of links and documents, without a streamlined way to track projects and their progress.⁶ We recommend that the Port develop a centralized public portal on its webpage where the public can access up-to-date information about the implementation status of all of the Port’s various air quality and electrification projects. The DEIR should be similarly revised to provide a table indicating the implementation status of the Port’s air quality and electrification commitments, including, but not limited to, the status of the projects identified in the OAB Plan, the MAQIP, and the Seaport 2020 Plan.

B. Electric Maintenance Dredging

The DEIR discloses that the turning basins Project will require up to 93,000 additional cubic yards’ of dredging every year. (DEIR at p. 3.3-40.) This dredging will be performed using

⁴ U.S. EPA and Bd. of Port Comm’rs. of the City of Oakland, Informal Resolution Agreement: Complaint Nos. 13R-17-R9 and 14R-17-R9, July 26, 2019, pp. 4-9, <<https://www.epa.gov/ogc/resolution-letter-and-informal-resolution-agreement-administrative-complaint-nos-13r-17-r9-and>> (as of Nov. 21, 2023).

⁵ Port of Oakland, Information Report: Seaport Air Quality 2020 & Beyond Plan—Year 3 Annual Progress Report, Dec. 1, 2022, <<https://portofoakland.legistar.com/View.ashx?M=F&ID=11467392&GUID=437B7C98-88D9-41E1-BA80-725DB6D83C18>> (as of Nov. 21, 2023).

⁶ See for example, Port of Oakland, Environment, <<https://www.portofoakland.com/community/environmental-stewardship/>> (as of Nov. 21, 2023).

diesel equipment and offroad engines that will generate significant emissions.⁷ Electrical maintenance dredging is not feasible per the DEIR “due to continued movement of the dredge and associated electrical cable during maintenance dredging throughout the active waterway, as opposed to the Proposed Project construction which would only occur outside of existing federal navigation channel.” (*Ibid.*)

However, these assertions seem inconsistent with the Port’s shore power progress at its facilities. First, the turning basins Project will install outlets for electrical power at Berths 26 and 68, which serve the Outer and Inner Harbors, respectively. Second, the DEIR explains that in 2012 and 2013, the Port installed two-to-four shore power outlets *per berth*, achieving a 93 percent plug-in rate for July 2023. (DEIR at pp. 2-10, 3.6-4.) This aligns with a 2023 “Shore Power Map” posted to the Port’s website that shows shore power being installed in various phases at almost every berth at the Port, in both the Inner and Outer Harbors.⁸ Finally, the California Air Resources Board’s (CARB) At-Berth Regulations were updated in 2023 and now require a wider range of marine vessels, including container ships, to either use shore power (e.g., plug in to the local electrical grid), or another CARB-approved emissions control technology, to reduce their docking emissions by January 2027. (DEIR at p. 3.3-23.) Indeed, CARB’s website indicates that the Port has submitted shore power plans for container vessels for the following terminal facilities: Ben Nutter (Berths 35-37), Berths 60-63, TraPac (Berths 25-26, 30, 32-33), and the Oakland International Container Terminal (Berths 55-59).⁹

Given that shore power is currently available at multiple berths throughout the Port, it is unclear why electrical maintenance dredging cannot be performed. The availability of multiple plug-in options for electrical dredging cables should mollify the Port’s concerns about whether continued movement of the dredge in the channels would affect electrical cables—presumably, the cables could be plugged and unplugged from berth outlets as necessary to keep the electrical dredger operating continuously and safely.¹⁰ The DEIR does not address this option at all. The DEIR also does not address other emissions control devices for the maintenance dredging, such

⁷ The DEIR anticipates the diesel maintenance dredging will produce average *daily* emissions of 1.12 pounds of reactive organic gases (ROGs), 6.27 pounds of nitrogen oxide (NO_x), 3.67 pounds of PM₁₀, 1.83 pounds of PM_{2.5}, and 4.7 pounds of GHG emissions. (DEIR, App. B, p. 39, Table 21.)

⁸ Port of Oakland, Shore Power, Shore Power Map, <https://www.portofoakland.com/files/PDF/maritime/ShorePower_Map.pdf> (as of Nov. 20, 2023).

⁹ California Air Resources Board (CARB), Ocean-Going Vessels At-Berth Regulation, Terminal and Port Plan Submissions, <<https://ww2.arb.ca.gov/our-work/programs/ocean-going-vessels-berth-regulation/terminal-and-port-plan-submissions>> (as of Nov. 20, 2023).

¹⁰ Indeed, this was one of the explicit objectives of the Maritime Air Quality Improvement Program’s (MAQIP) electrification projects. The final April 2009 MAQIP explained as follows: “All of the 37 cranes on the Port’s marine terminals are electric.... In addition, *the Port installed shoreside connections to power electric dredges engaged in the Port’s channel and berth deepening projects.*” (Port of Oakland, Final Maritime Air Quality Improvement Program (MAQIP), Apr. 2009, p. 87, Table 9-4, <<https://www.portofoakland.com/files/PDF/environment/maqip090515.pdf>> (as of Nov. 22, 2023) (emphasis added).)

as barge-mounted or landside capture-and-control technologies.¹¹ Given that maintenance dredging is a regular activity that will recur indefinitely for the foreseeable future, the Port must produce a revised EIR that considers alternatives to diesel maintenance dredging and/or that incorporates additional mitigation measures to offset the associated emissions.

C. Additional Electrification Measures: DEIR Clarifications and Revisions to the Port Environmental Ordinance

The DEIR includes several electrification measures, including the use of electric dredgers for construction of the turning basins, and requiring zero-emission and hybrid-powered equipment when available at two regional commercial rental facilities. (DEIR at pp. ES-6, ES-19.) However, we recommend that the Port pursue more expansive electrification measures to further mitigate impacts.

First, the Project DEIR should specify that the zero-emission and hybrid-powered “equipment” required by the construction mitigation measures include all forms of equipment, including handheld equipment, cargo-handling equipment, and other forms of yard and construction equipment.

Second, as an additional mitigation measure, the Port should commit to strengthen its Environmental Ordinance to require more effective pollution controls and more aggressive electrification requirements, and also incorporate these requirements into the Project itself.¹² We acknowledge that the Ordinance was amended in March 2023 to require tenants to develop electrification plans for cargo-handling equipment.¹³ We commend this positive first step, but more should be done. The cargo-handling equipment revisions merely require submission of an implementation plan for zero-emission and hybrid-powered equipment, and that Port tenants use their “best efforts” to use the least-polluting equipment available—zero-emission and hybrid-powered cargo-handling equipment are not actually required by any specific component of the Environmental Ordinance.¹⁴ Moreover, the requirements pertain only to “cargo-handling equipment,” which, while broadly defined, does not include all the other vehicles and equipment defined as “Equipment” by the Ordinance.¹⁵

We recommend that the Port amend the Environmental Ordinance further to: (1) include “Equipment,” not just “Cargo-handling Equipment,” in the requirements listed at Section

¹¹ For example, see CARB, LCTI Capture and Control System for Oil Tankers Project, <<https://ww2.arb.ca.gov/lcti-capture-and-control-system-oil-tankers-project>> (as of Nov. 20, 2023).

¹² Port of Oakland Admin. Code, tit. 9: Environmental Plans and Programs, ch. 9.01.010 et seq., <https://library.municode.com/ca/port_of_oakland/codes/administrative_code?nodeId=POOAADCO_TIT_9ENPLPR> (as of Nov. 21, 2023) (hereafter, Env'tl. Ordinance).

¹³ Port of Oakland, Press Release: Port of Oakland Calls for Zero Emissions, Cargo-Handling Plans, Mar. 10, 2023, <<https://www.portofoakland.com/press-releases/port-of-oakland-calls-for-zero-emissions-cargo-handling-plans/>> (as of Nov. 21, 2023).

¹⁴ Env'tl. Ordinance, *supra* fn. 12, at § 9.01.130, subs. (D), (G).

¹⁵ *Id.* at § 9.01.020. “Equipment” is defined as “ocean-going vessels, harbor craft, Cargo-handling Equipment, or drayage trucks.” The “Cargo-handling Equipment” included in this definition refers to

9.01.130; (2) identify a deadline for actual incorporation of zero-emission and hybrid-powered equipment; and (3) incorporate the remaining construction air quality mitigation measures included in the Project DEIR as universal requirements for all projects, such as provisions for Tier-4 engines and renewable diesel fuel; idling restrictions; exposed surface watering protocols; and wind and noise barriers and enclosures.

Finally, the Environmental Ordinance and the Project's mitigation requirements should be revised to include the measures identified in our July 2022 comment letter. These measures were sourced from our office's document entitled, "Warehouse Projects: Best Practices and Mitigation Measures to Comply with the California Environmental Quality Act," which identifies several actions that may also be applicable to Port operations.¹⁶ The measures were also sourced from CARB's "Concept Paper for Freight Handbook," which identifies multiple actions agencies can implement to reduce freight-related impacts to nearby communities.¹⁷ Examples of measures that can be incorporated into the Environmental Ordinance include the following: prohibit diesel-powered equipment unless necessary in an emergency; require installation of air filters at sensitive receptors within a certain radius of facilities' operations; install and maintain air monitoring stations in and around the Port's properties to collect real-time emissions data; require facilities to install solar panels and require building roofs to accommodate solar panels; mandate Tier 2 green building and LEED standards; require installation of physical noise barriers before commencing project construction and operations; and limit operation and construction hours to daytime hours on weekdays, among other measures. Adopting all the aforementioned measures as universally applicable requirements would ensure that all activities and projects at the Port incorporate the most stringent air quality measures, and would provide reassurance to neighboring communities that the Port is taking far-reaching steps to safeguard their health and wellbeing.

Thank you for the opportunity to comment on the Project's DEIR. The CEQA process and the DEIR for this Project provide an opportunity to fully evaluate and disclose the Project's potential impacts, and to adopt meaningful protective measures for the neighboring community if

"any off-road, self-propelled vehicle or equipment used at a port or intermodal rail yard to lift or move container, bulk, or liquid cargo carried by ship, train, or another vehicle, or used to perform maintenance and repair activities...[and] includes, but is not limited to, rubber-tired gantry cranes, yard trucks, top handlers, side handlers, reach stackers, forklifts, loaders, aerial lifts, excavators, dozers, and non-exempt locomotives (both line haul and switcher)."

¹⁶ State of California, Dept. of Justice, Warehouse Best Practices Document (Sept. 2022), <<https://oag.ca.gov/system/files/media/warehouse-best-practices.pdf> <<https://oag.ca.gov/sites/all/files/agweb/pdfs/environment/warehouse-best-practices.pdf>> (as of Nov. 21, 2023).

¹⁷ CARB, Concept Paper for Freight Handbook, Dec. 12, 2019, <https://ww2.arb.ca.gov/sites/default/files/2020-03/2019.12.12%20-%20Concept%20Paper%20for%20the%20Freight%20Handbook_1.pdf> (as of Nov. 21, 2023).

Khamly Chuop
December 18, 2023
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the Project moves forward. We are available to support the Port as it produces a revised EIR for the Project that furthers both of these important goals.

Sincerely,



DAVIN WIDGEROW
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Deputy Attorneys General

For ROB BONTA
Attorney General

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