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Sent via email

Dear Eric Jolliffe:

Thank you for providing the California Air Resources Board (CARB) with the opportunity to comment on the Draft Integrated Feasibility Report, Environmental Assessment (EA), and Finding of No Significant Impact (FONSI) for the Oakland Harbor Turning Basins Widening Navigations Study (Project). The Project is proposed within the Port of Oakland (Port). The United States Army Corps of Engineers (Army Corps) is the lead federal agency for the EA. CARB has reviewed the EA and FONSI and has concerns about the air quality and public health impacts should the Project be approved. The comments provided in this letter are preliminary. CARB will submit a more comprehensive comment letter on the Draft Environmental Impact Report (DEIR) that will be released for public review in late 2023.

As part of the Project, the Army Corps and Port propose to increase the width of the Port's the existing Outer Harbor Channel Turning Basin (OHTB) and Inner Harbor Turing Basin (IHTB) to accommodate larger vessels. The OHTB and IHTB were originally designed and constructed to accommodate ships with a 1,129-foot overall length, 140-foot beam, and 48-foot draft. In recent years, the length and width of the ships calling to the Port have become greater than the maximum ship dimensions required to safely transit through the two existing turning basins, which have resulted in transit restrictions limiting the efficiency of the Port. To improve the efficiency of ships calling to the Port, the Army Corps and Port propose to increase the width of these two existing turning basins to accommodate ships with a capacity of 19,000 twenty-foot equivalent units (TEU) and a length of 1,310 feet. The Army Corps states in the EA that the proposed modifications to the OHTB and IHTB would increase the TEU carrying capacity of ships calling to the Port from 6,500 to 19,000 TEU, resulting in a 192 percent increase in TEU carrying capacity.

The widening of the OHTB and IHTB would begin in July 2027 and be completed over 2.5 years. The widening of the IHTB would require dredging the basin to 50 feet below mean lower low water (MLLW), removing dryland, structures, pavement, and pile-support structures adjacent to the existing, and installing a new bulkhead. The widening of the OHTB would require dredging the basin to 50 feet, but would not impact dryland. Dredging would be performed during approved environmental windows with an electric-powered barge-mounted clamshell/excavator dredge. Overall, modifying the OHTB and IHTB would result in the installation of 2,380 linear feet of bulkhead and the removal and placement of

approximately 2.4 million cubic yards of aquatic dredged and excavated land-based materials. Most of the dredged material would be placed at a beneficial use site to protect, restore, or create aquatic wetland habitats. Some excavated and dredged material may require disposal at a Class I or II landfill.

CARB has the following preliminary concerns: (1) the Army Corps does not provide sufficient evidence in the EA supporting the assumption that the modification of the two existing turning basins would not result in long-term air quality impacts on the neighboring West Oakland Communities that have been classified as disadvantaged communities under Assembly Bill (AB) 617 (Garcia, Chapter 136, Statutes of 2017),¹ (2) the Army Corps and Port should have prepared a joint environmental impact statement/environmental impact report (Joint EIS/EIR) for the Project, and (3) the EA does not demonstrate consistency with the West Oakland Community Action Plan (WOCAP).² CARB urges the Army Corps to carefully consider the potential air quality and public health impacts that may result from the operation of the Project and ensure that appropriate measures are taken to minimize any negative effects. CARB urges the Army Corps and the Port to carefully consider the comments in this letter while preparing the Final Environmental Assessment (Final EA) and while preparing the draft environmental impact report (DEIR) as required under the California Environmental Quality Act (CEQA) for the Project.

The Army Corps Did Not Adequately Evaluate the Project's Potential Operational Air Quality and Localized Health Impacts

The Army Corps did not evaluate the potential regional air quality and localized health impacts in the EA. In Section 6.13 (Air Quality) of the EA, the Army Corps states, "the waterway improvements proposed in the future with project alternatives would not increase cargo throughput or induce growth."³ The Army Corps asserts that there is no need to model the Project's impact on the Port's freight activities because the implementation of the Project would result in a reduction in vessel transits and overall vessel idling durations compared to the no-action alternative; resulting in a beneficial impact on air quality. The Army Corps also supports this assertion by pointing to their greenhouse gas (GHG) analysis in Section 6.13 (Greenhouse Gases) of the EA, which shows the Project reducing GHG emissions to below baseline line levels.

¹ Assembly Bill 617, Garcia, C., Chapter 136, Statutes of 2017, modified the California Health and Safety Code, amending § 40920.6, § 42400, and § 42402, and adding § 39607.1, § 40920.8, § 42411, § 42705.5, and § 44391.2.

² BAAQMD. Owning Our Air: The West Oakland Community Action Plan. October 2019. Accessible at: <https://www.baaqmd.gov/~media/files/ab617-community-health/west-oakland/100219-files/final-plan-vol-1-100219-pdf.pdf?la=en>

³ Army Corps. Oakland harbor Turning Basins Widening Revised Draft Integrated Feasibility Report and Environmental Assessment. Revised April 2023. Page 226.

The statements made by the Army Corps in the EA are not entirely accurate. Although the use of larger ships to transport cargo to and from the Port may result in a reduction in ship emissions, which should have already been evaluated in the EA, the air quality and GHG analysis presented in the EA do not account for impacts from the increase TEU throughput that would result after two existing turning basins have been modified. Figure 10 of the EA shows that the Army Corps projected the number of TEU passing through the Port under a strong and weak economy. The figure indicates TEU throughput at the Port sharply increasing after 2029, which is the date the Project is expected to be completed. It is clear from this figure that the Port's future growth depends on the widening of the existing turning basins to allow ships with greater TEU capacity compared to the ships that presently call at the Port. To this end, modifying the existing turning basins would impact the freight activities at the Port. Although there will be fewer ships calling to the Port, due to the larger TEU capacity of the ships, the terminals at the Port would very likely have to acquire more onsite equipment to facilitate the transport of the TEUs off and on ships, and increase the number of heavy-duty diesel-powered trucks and locomotives to transport these TEUs out of the Port. Based on CARB's review of the air quality and GHG analysis and health risk assessment that the Army Corps prepared for the Project, there was no evaluation of the potential environmental impacts associated with the Project's impact on the Port's freight activities.

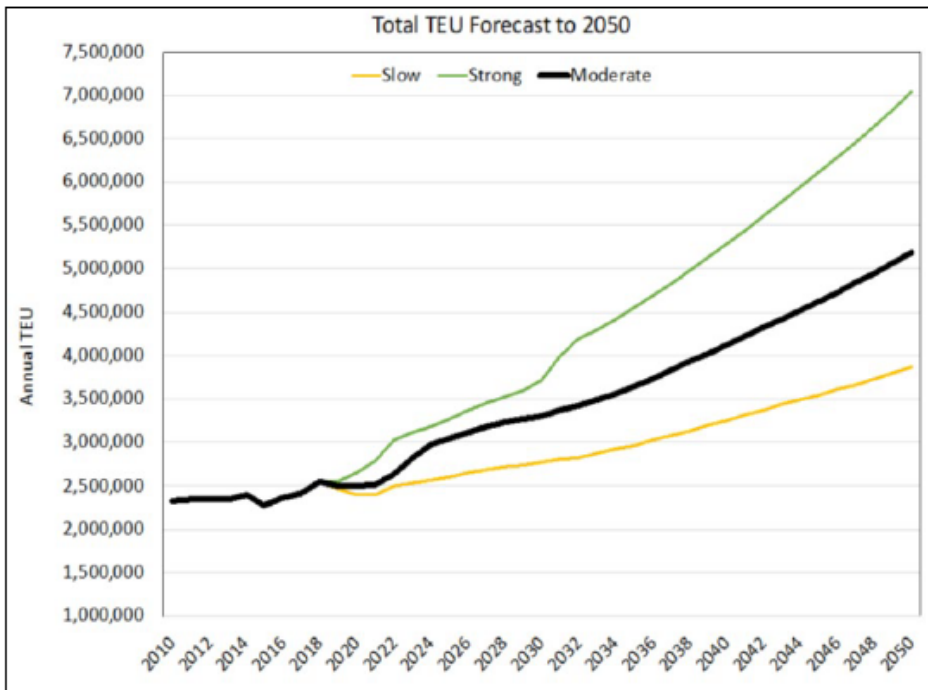


Figure 10. Total TEU Forecast to 2050 in All Scenarios¹⁰

Source: Army Corps. Oakland harbor Turning Basins Widening Revised Draft Integrated Feasibility Report and Environmental Assessment. Revised April 2023. Page 28. Figure 10 (Total TEU Forecast to 2050 in All Scenarios)

Furthermore, the implementation of the Project may increase the number of heavy-duty diesel-powered truck and locomotive trips traveling through the West Oakland Community. CARB urges the Army Corps to evaluate all of the Project's impacts on air quality and public health by modeling the Project's without and with project scenario to assess how implementing the Project would increase air pollution emissions over baseline levels. CARB also urges the Port to evaluate this potential operational impact in the DEIR that is slated to be released for public review in late 2023. If it is found that the operation of the Project will result in an increase in freight activities at the terminals at the Port, the Army Corps must include mitigation measures in the EA that require the implementation of electric trucks and locomotives, Tier 4 tugboats, and onsite electric equipment.

The Project is Inconsistent with the Strategies found in the West Oakland Community Action Plan

The State of California has emphasized protecting local communities from the harmful effects of air pollution through the passage of Assembly Bill (AB) 617 (Garcia, Chapter 136, Statutes of 2017).⁴ AB 617 required CARB to develop the process that creates new community-focused and community-driven action to reduce air pollution and improve public health in communities that experience disproportionate burdens from exposure to air pollutants. In response to AB 617, CARB established the Community Air Protection Program with the goal of reducing exposure in communities heavily impacted by air pollution. As part of its role in implementing AB 617, CARB must annually consider the selection of communities for development and implementation of community air monitoring plans and/or community emission reduction programs for those communities affected by a high cumulative exposure burden. The West Oakland Community is one of 15 communities statewide chosen thus far for inclusion in the Community Air Protection Program.

In 2018, the West Oakland Community was selected for the development of a Community Emissions Reduction Plan due to its high cumulative exposure burden, the presence of sensitive populations (children, elderly, and individuals with pre-existing conditions), and the socioeconomic challenges experienced by its residents. CARB approved the WOCAP in 2019, which describes strategies to achieve emission and exposure reductions throughout this community, including significantly reducing or eliminating emissions from heavy-duty mobile sources and industrial stationary sources, including strategies aimed at reducing emissions from port and rail activities associated with the Port.

Of the 89 strategies listed in the WOCAP, 12 identify the Port as the lead partner agency for planning for zero-emission trucks; addressing noise issues, collecting fees, and charging issues; creating truck and chassis parking sites; developing electric barge and tug incentives

⁴ Assembly Bill 617, Garcia, C., Chapter 136, Statutes of 2017, modified the California Health and Safety Code, amending § 40920.6, § 42400, and § 42402, and adding § 39607.1, § 40920.8, § 42411, § 42705.5, and § 44391.2.

and incentives for Tier 2 and 3 marine vessels; and transitioning to clean locomotives. These strategies are listed below.⁵

- **Strategy #5:** The City of Oakland and Port of Oakland amends existing Ordinances, Resolutions, or Administrative policies to accelerate relocation of truck yards and truck repair, service, and fueling businesses in West Oakland currently located within the freeway boundaries that do not conform with the zoning designations adopted in the West Oakland Specific Plan.
- **Strategy #FSM 6:** The Bay Area Air Quality Management District (Air District) works with the Port of Oakland to optimize the Port appointment system to minimize truck idling.
- **Strategy #19:** The Port of Oakland adopts an Electrical Infrastructure Plan for the maritime waterfront areas of Oakland. This Plan seeks to remove barriers to adoption of zero-emission trucks, such as cost, land, and ownership of charging equipment.
- **Strategy #21:** The Air District works with the City and Port of Oakland and other agency and local partners to create a Sustainable Freight Advisory Committee to provide recommendations to each agency's governing board or council. The Committee's scope includes: air quality issues, enhanced/increased enforcement of truck parking and idling, improved referral and follow-up to nuisance and odor complaints related to goods movement, improvements to the Port appointment system, charging infrastructure and rates, developing land-use restrictions in industrial areas, funding, and consideration of video surveillance to enforce truck parking, route, and idling restrictions.
- **Strategy #26:** The City and Port of Oakland will work to establish permanent locations for parking and staging of Port-related trucks and cargo equipment, i.e. tractors, chassis, and containers. Such facilities will provide long-term leases to parking operators and truck owner-operators at competitive rates. Such facilities will be at the City or Port logistics center or otherwise not adjacent to West Oakland residents.
- **Strategy #37:** The Port of Oakland, as part of the 2020 and Beyond Seaport Air Quality Plan, supports the transition to zero-emission drayage truck operations, including setting interim year targets out to 2035, coordinating an extensive zero-emission truck commercialization effort, working with the City of Oakland to amend local ordinances to increase the allowable weight limits for single-axle, zero-emission trucks on local streets located within the Port and the Oakland Army Base/Gateway areas, and developing an investment plan for needed upgrades to the Port's electrical infrastructure. The Port of Oakland also works with the California

⁵ BAAQMD. Owing Our Air: The West Oakland Community Action Plan. October 2019. Accessible at: https://www.baaqmd.gov/~/_media/files/ab617-community-health/west-oakland/100219-files/final-plan-vol-1-100219-pdf.pdf?la=en

Public Utilities Commission and the California Energy Commission to study the development of time-of-day electric rate structures favorable to truck operators.

- **Strategy #42:** The City and Port of Oakland award long-term leases to vendors that will deliver trucker services (including mini-market and convenience stores, fast food, and fast casual restaurants), and parking to keep trucks off West Oakland streets.
- **Strategy #43:** The Port of Oakland studies the effects on truck flow and congestion due to increasing visits from larger container ships, the feasibility of an off-terminal container yard that utilizes zero-emission trucks to move containers to and from the marine terminals, and the potential efficiency gains from increasing the number of trucks hauling loaded containers on each leg of a roundtrip to the Port.
- **Strategy #50:** The Air District plans to offer financial incentives to upgrade tugs and barges operating at the Port of Oakland with cleaner engines every year.
- **Strategy #63:** The Port of Oakland implements a Clean Ship Program to increase the frequency of visits by ships with International Maritime Organization Tier 2 and Tier 3 engines.
- **Strategy #64:** The Port of Oakland implements a Clean Locomotive Program to increase the number of U.S. EPA Tier 4 compliant locomotives used by the UP, BNSF, and OGRE railways to provide service in and out of the Port of Oakland
- **Strategy #65:** The Port of Oakland studies the feasibility of using electric switcher locomotives at the two Port railyards.

By not evaluating the Project's impacts on the future freight activities at the terminals in the Port, the Army Corps does not demonstrate in the EA how the Project will be consistent with the WOCAP strategies. Specifically, the EA asserts, without providing any analysis, that the Project's impact on traffic and congestion during the construction of the Project would be minimal. The EA does not address how the Port will address truck and container parking and transiting through the West Oakland Community during its future operations. Lastly, the Army Corps did not evaluate, in the EA, how the operation of the Project will adopt the electrification and clean-engine strategies recommended in the WOCAP. By not including project design and mitigation measures in the EA that reflect the WOCAP strategies, the Project is inconsistent with the strategies identified in the WOCAP. To be consistent with the WOCAP strategies, the Army Corps and Port should analyze the Project's potential impact on the freight activities at the terminals in the Port and adopt the WOCAP strategies in the Final EA.

The Army Corps and Port Should Have Prepared a Joint EIS/EIR

To fully evaluate the Project's construction and operational impact on air quality and public health, CARB urges the Army Corps and Port to coordinate their NEPA and CEQA review of these impacts. NEPA requires federal agencies to cooperate with State, Tribal, and local agencies "to the fullest extent practicable" to reduce duplication between NEPA and State,

Tribal, and local requirements. 40 C.F.R. § 1506.2(b), (c). Indeed, “[w]here State or Tribal laws or local ordinances have environmental impact statement or similar requirements in addition to but not in conflict with those in NEPA, Federal agencies may cooperate in fulfilling these requirement . . . so that one document will comply with all applicable laws.” Id., § 1506.2(c).

The EA found that the construction of the Project would result in a less than significant effect on air quality but includes a list of avoidance and mitigation measures to reduce fugitive dust and diesel exhaust emissions from heavy-duty off-road construction equipment. Although the air pollutant emissions were concluded in the EA to result in a less than significant effect under NEPA, the Project’s construction air pollutant emissions, when compared to the Air District’s more stringent CEQA significance thresholds, may result in a significant impact under CEQA, which will require additional mitigation measures to reduce those impacts that were not evaluated in the EA. To this end, CARB urges the Army Corps and Port to prepare a joint NEPA/CEQA document that assesses the Project’s construction and operational impacts and mitigation measures to reduce those impacts.

Conclusion

CARB is concerned about the lack of analysis presented in the EA. The Army Corps does not provide sufficient evidence in the EA supporting the assumption that the modification of the two existing turning basins would not result in long-term air quality impacts on the neighboring West Oakland Communities that have been classified as disadvantaged under AB 617. Second, the Army Corps and Port should have prepared a joint EIS/EIR for the Project. Lastly, the Army Corps does not demonstrate consistency with the WOCAP. CARB will be reviewing the Project in more detail leading up the start of the public review period for the DEIR that is anticipated to be released by the Port in late 2023.

Given the breadth and scope of projects subject to NEPA and CEQA review throughout California that have air quality and greenhouse gas impacts, coupled with CARB’s limited staff resources to substantively respond to all issues associated with a project, CARB must prioritize its substantive comments here based on staff time, resources, and its assessment of impacts. CARB’s deliberate decision to substantively comment on some issues does not constitute an admission or concession that it substantively agrees with the lead agency’s findings and conclusions on any issues on which CARB does not substantively submit comments.

CARB appreciates the opportunity to comment on the EA and FONSI and can provide assistance on zero-emission technologies and emission reduction strategies, as needed. Please include CARB on your list of selected State agencies that will receive the Final EA. If you have questions, please contact Stanley Armstrong, Air Pollution Specialist via email at stanley.armstrong@arb.ca.gov.

Sincerely,



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