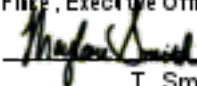


07/13/2026

Clerk of the Court, Executive Officer / Clerk of the Court

By:  Deputy
T. Smith

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ALAMEDA

Dept. No. 1

Date: 7/13/2026

Hon. MICHAEL MARKMAN, Judge

STOP OAK EXPANSION COALITION,

Petitioner,

v.

PORT OF OAKLAND and DOES 1 to 10,

Respondents.

ADVOCATES FOR THE ENVIRONMENT,

Petitioner,

v.

PORT OF OAKLAND; BOARD OF PORT
COMMISSIONERS OF THE PORT OF
OAKLAND; and DOES 1 to 10,

Respondents.

Case Nos. 24CV104161; 24CV104164; and
24CV105232

ORDER ON WRITS OF MANDATE

COMMUNITIES FOR A BETTER
ENVIRONMENT; SIERRA CLUB,

Petitioners,

v.

PORT OF OAKLAND; BOARD OF PORT
COMMISSIONERS OF THE PORT OF
OAKLAND; and DOES 1 to 10,

Respondents.

I. Orders

The court DENIES the Petitions for Writ of Mandate filed by the Stop OAK Expansion Coalition (“Stop OAK”), Advocates for the Environment (“AFE”), Communities for a Better Environment (“CBE”), and Sierra Club (collectively “Petitioners”). Respondents Port of Oakland and the Board of Port Commissioners of the City of Oakland (“the Port”) is to prepare a proposed final judgment and send it to Petitioners for review within ten court days of this Order. They are to then file it with the court five court days thereafter or upon Petitioners’ approval, whichever is sooner. Consistent with the parties’ requests, the court is coordinating these three sets of writ petitions. The proposed judgment is to be filed in each case.

The court GRANTS Stop OAK’s Request for Judicial Notice, relating to highway express lanes in the vicinity of the Project (on Highways 580 and 680). The court GRANTS CBE and Sierra Club’s Motion to Consider Extra-Record Evidence (Exhibit A of the Small Declaration), which is documentation relating to the March 2025 settlement of claims brought by the City of Alameda and the Citizens League for Airport Safety and Serenity relating to potential mitigation measures concerning the Project.

II. Introduction

The three sets of writ petitions in these cases address whether the Port failed to comply with its obligations under the California Environmental Quality Act (“CEQA”) in connection with its role in approving and certifying the Environmental Impact Report (“EIR”) for the Oakland International Airport Terminal Modernization and Development Project (referred to here as the “Project”). The Port of Oakland owns and operates the Oakland San Francisco Bay Airport. The Port intends to modernize the airport’s existing facilities and to build a new terminal, with the goals of optimizing safety, accommodating demand, and improving the passenger experience. (AR14940.)

Petitioners raise a number of arguments concerning the inadequacy of the EIR approved and certified by the Port. They contend that the Port’s EIR: (1) used an inaccurate description of the Project by omitting specifics like site plans and the ultimate total of new terminal gates; (2) failed to set an appropriate baseline, choosing the year of peak demand on airport facilities – 2019 – rather than taking into account a post-pandemic drop in demand by using a more-recent baseline year; (3) relied on inaccurate airline traffic assumptions relating to growth rates in passenger usage; (4) failed to adequately consider increases in greenhouse gas (“GHG”) emissions based on likely increased usage; (5) included an inadequate analysis of the effects of the Project on air quality, noise, traffic, and health on the communities near the airport; (6) failed to adequately discuss plans for the mitigation of likely harms from the Project; (7) included an inadequate analysis of alternatives to the Project; and (8) failed to adequately address comments regarding the EIR prior to its approval and certification. The Port disagrees with these contentions.

III. Factual Background

A. Preparation of the EIR

On May 7, 2021, Respondent issued a Notice of Preparation of a Draft Environmental Impact Report for the Oakland International Airport Terminal Modernization and Development Project. (AR575–592.) The Port released a draft EIR for public review and comment in July 2023. (AR575–592.) During the comment period, Petitioner Stop OAK Expansion Coalition submitted written comments; members of Petitioner Communities for a Better Environment submitted remarks orally. (AR10310–47; AR16190.) By Petitioner’s count, “a total of 1,238 comments were received, including nine from public agencies, 23 from organizations, and 1,206 from individuals.” (Stop OAK Open. Br. at p. 2.)

On October 17, 2024, Respondent published its final EIR. (AR14847–15426.) On November 20, 2024, Advocates for the Environment submitted a comment letter outlining the issues presented in this Petition to Colleen Liang, acting Director of Environmental Programs at the Port of Oakland. (AR96992.) On November 21, 2024, the Port certified the final EIR, adopted CEQA findings and mitigation measures, and adopted a statement of overriding considerations for those potentially significant impacts that would not be mitigated. (AR 3–48; 16532 [hearing video]; 107094-144 [revised transcript]; 1-2 [Notice of Determination].)

B. Overview of the Project

The Oakland International Airport (“Airport” or “OAK”) currently has two passenger terminals and is used for both passenger and freight transportation. The existing terminals were designed to accommodate an estimated 8 to 10 million annual passengers. (AR14941.) In 2019, more than 13 million annual passengers traveled through OAK, resulting in a degraded passenger experience. (*Ibid.*) The Port has found that Terminal 1 ticketing and baggage claim building is at the end of its useful life and does not meet current seismic and fire protection requirements. (*Ibid.*) Cargo and support facilities need to be relocated to service passenger airline and cargo aircraft and provide adequate passenger and employee parking. (*Ibid.*) As airlines continue to bring larger aircraft, some of the Airport’s passenger gates and associated apron areas need to be reconfigured to enable each gate to be operated independently. (AR14941–42.)

The Project would expand OAK by adding a third terminal, constructing up to 25 new gates and demolishing 9 existing gates for a net increase of up to 16 new passenger gates. (AR 14949.) OAK currently has 29 gates. The EIR describes three possible locations for the new terminal. It also describes a “hardstand” alternative (loading and unloading passengers on the tarmac rather than via a jet bridge), alternatives that are not feasible due to a lack of jurisdiction and control, and a “no Project” alternative. (AR 15336-15340.)

IV. Standard of Review

The purpose of CEQA is to “[e]nsure that the long-term protection of the environment ... shall be the guiding criterion in public decisions.” (Pub. Res. Code, § 21001, subd. (d).) Our Supreme Court very recently reiterated the applicable standard of review:

CEQA sets out the applicable standard of review: “In any action or proceeding ... to attack, review, set aside, void or annul a determination, finding, or decision of a public agency on the grounds of noncompliance with [CEQA], the inquiry shall extend only to whether there was a prejudicial abuse of discretion. Abuse of discretion is established if the agency has not proceeded in a manner required by law or if the determination or decision is not supported by substantial evidence.

(*Sunflower Alliance v. Department of Conservation* (June 25, 2026) 2026 WL 1830258, at *4 (*Sunflower Alliance*), quoting *City of San Diego v. Board of Trustees of California State University* (2015) 61 Cal.4th 945, 956, quoting Pub. Res. Code, § 21168.5.) No one disputes that the Project is subject to CEQA, the Port is the lead agency for purposes of CEQA, and that the Port undertook environmental review of the Project. (See *Sunflower Alliance*, *supra*, at *5.)

The Port’s final EIR is the focus of this case. “The EIR, with all its specificity and complexity, is the mechanism prescribed by CEQA to force informed decision making and to expose the decision-making process to public scrutiny.” (*Planning and Conservation League v. Department of Water Resources* (2000) 83 Cal.App.4th 892, 910, citing *No Oil, Inc. v. City of Los Angeles* (1974) 13 Cal.3d 68, 86.) “An EIR provides the public and responsible government agencies with detailed information on the potential environmental consequences of an agency’s proposed decision.” (*Planning and Conservation League*, *supra*, 83 Cal.App.4th at p. 910, citing *No Oil*, *supra*, 13 Cal.3d at p. 81.)

“CEQA also requires the public agency to consider feasible alternatives to the project which would lessen any significant adverse environmental impact. [Citations.] One alternative is ‘no project.’ [Citations.]” (*Id.*, citing CEQA Guidelines, §§ 21002, 21081, 15126, subd. (d)(2) [case citations omitted; cites to the “Guidelines” are to the CEQA Guidelines, generally found in title 14 of the California Code of Regulations.]) “[T]he no project alternative discussed in an EIR” is to “address ‘existing conditions’ as well as ‘what would be reasonably expected to occur in the foreseeable future if the project were not approved, based on current plans and consistent with available infrastructure and community services.’” (*Id.*, quoting Guidelines, § 15126.6, subd. (e)(2).) “The description must be straightforward and intelligible, assisting the decision maker and the public in ascertaining the environmental consequences of doing nothing; requiring the reader to painstakingly ferret out the information from the report is not enough.” (*Id.*, citing *Environmental Planning & Information Council v. County of El Dorado* (1982) 131 Cal.App.3d 350, 357; *Dusek v. Redevelopment Agency* (1985) 173 Cal.App.3d 1029, 1043.)

Whether or not an EIR is adequate is reviewed for abuse of discretion under the standards set out in section 21168.5 and 21005. (*Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 512 (*County of Fresno*).) “[A]n agency may abuse its discretion under CEQA either by failing to proceed in the manner CEQA provides or by reaching factual conclusions unsupported by substantial evidence.” (*Id.*, quoting Pub. Res. Code, § 21168.5.)

The court reviews de novo “whether the agency has employed the correct procedures, ‘scrupulously enforce[ing] all legislatively mandated CEQA requirements.’” (*Golden Door Properties, LLC v. County of San Diego* (2020) 50 Cal.App.5th 467, 504-505 (*Golden Door*).) The court must “accord greater deference to the agency’s substantive factual conclusions.” (*Id.*)

The court must “apply the substantial evidence test to conclusions, findings, and determinations, and to challenges to the scope of an EIR’s analysis of a topic, the methodology used for studying an impact, and the reliability or accuracy of the data upon which the EIR relied because these types of challenges involve factual questions.” (*City of Long Beach v. Los Angeles Unified School Dist.* (2009) 176 Cal.App.4th 889, 898 (*City of Long Beach*), citing *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1198 (*Bakersfield*).) That said, “whether a description of an environmental impact is insufficient because it lacks analysis or omits the magnitude of the impact is not a substantial evidence question.” [Citation.] Where the ultimate inquiry is whether an EIR omits material necessary to reasoned decisionmaking and informed public participation, the inquiry is predominantly legal and, ‘[a]s such, it is generally subject to independent review.’” (*Golden Door, supra*, 50 Cal. App. 5th at p. 505, citing *Chico Advocates for a Responsible Economy v. City of Chico* (2019) 40 Cal.App.5th 839, 846-847.)

Substantial evidence is “enough relevant information and reasonable inferences from this information that a fair argument can be made to support a conclusion even though other conclusions might also be reached.” (*Laurel Heights Improvement Assn. v. Regents of University of California* (1988) 47 Cal.3d 376, 393 (*Laurel Heights I*), quoting CEQA Guidelines, § 15384, subd. (a)’ *California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 985.) “In reviewing for substantial evidence, the reviewing court ‘may not set aside an agency’s approval of an EIR on the ground that an opposite conclusion would have been equally or more reasonable,’ for, on factual questions, our task is ‘not to weigh conflicting evidence and determine who has the better argument.’” (*Id.*, citing *Vineyard Area Citizens for Responsible Growth, Inc. v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 435, quoting *Laurel Heights I, supra*, 47 Cal.3d at p. 3934.)

The court therefore begins with the presumption the decision to certify the EIR is correct. (*Save Our Peninsula Committee v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99, 117.) Petitioners have the burden of showing the EIR is not adequate. (*California Native Plant Society v. City of Rancho Cordova* (2009) 172 Cal.App.4th 603, 614.) When evaluating whether substantial evidence supports the Port’s decision to approve and certify the EIR, the “court must resolve all reasonable doubts in favor of the administrative finding and decision.” (*Laurel Heights I, supra*, 47 Cal.3d at p. 393.) Petitioners must show that

“based on the evidence before the agency, a reasonable person could not reach the conclusion reached by the agency.” (*Greenebaum v. City of Los Angeles* (1984) 153 Cal.App.3d 391, 401-402, quoting *McMillan v. American Gen. Fin. Corp.* (1976) 60 Cal.App.3d 175, 186 [emphasis in original].)

The court will not “substitute [its] views for those of the agency whose determination is being reviewed, nor reweigh conflicting evidence presented to that body.” (*San Francisco Upholding the Downtown Plan v. City & County of San Francisco* (2002) 102 Cal.App.4th 656, 674 [citations omitted].) The court will “presume the agency’s findings are correct and resolve all conflicts and reasonable doubts in favor of the findings.” (*Citizens for Positive Growth & Preservation v. City of Sacramento* (2019) 43 Cal.App.5th 609, 629, citing *Center for Biological Diversity v. County of San Bernardino* (2010) 185 Cal.App.4th 866, 881-882.)

V. Discussion

A. The Project Description

Petitioners (particularly CBE) contend that the project description in the EIR is inadequate as a matter of law. (CBE Open. Br. at pp. 10-11.) CBE argues the EIR’s project description “lacks technical characteristics” including specific site plans. While the EIR shows the location and square footage of the new terminal (AR 14945, 49), but from CBE’s perspective “there is not even the most rudimentary plan for what the new terminal will look like. From Petitioners’ perspective, even the final number of gates is unknown, with the total number for the new terminal ‘up to 25,’ for “a total of up to 45 aircraft gates.” (CBE Open. Br. at p. 11, citing AR 14949.) “[T]here is nothing about what the new terminal will look like or how many gates it will have except at most 25” (CBE Reply at p. 6.) They also argue that the EIR describes relocating, expanding, and upgrading fuel and utility systems but does not describe the specifics. (*Id.*, citing AR 14956-57.) Among other things, the description does not show a roadway to access the fuel system or show its size or describe whether pipelines might be rerouted. (*Id.*, citing AR 14945, 14957.) CBE also contends the project description does not include “necessary remediation” relating to hazardous waste removal. (*Id.*, citing AR 15359-60.)

CBE notes that “An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR.” (*Id.* at p. 10, quoting *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 193.) “An agency’s failure to provide an accurate, stable, and finite project description is a failure to proceed in a manner required by law.” (*Buena Vista Water Storage Dist. v. Kern Water Bank Auth.* (2022) 76 Cal.App.5th 576, 588; *Stopthemillenniumhollywood.com v. City of Los Angeles* (2019) 39 Cal.App.5th 1, 20 [“failure to include relevant information” precludes informed decision making and “informed public comment”].)

The EIR does not need to get into the level of detail demanded by CBE in order to be approved. The lack of architectural drawings or true-to-life renderings of the terminal does not make the EIR deficient under CEQA. Petitioners concede that the Port disclosed that the “new

terminal would include up to 25 aircraft gates”; that “existing utility systems” would be improved, including via upgrades to the fuel system that would require “expansion and relocation” and a “roadway” constructed “to provide access to the expanded fuel farm”; and that remediation of hazardous substances might be required. (AR14949; AR14956–57; AR14945; AR15142–45.)

“A project description may use a flexible parameter when the project is subject to future changing conditions.” (*Buena Vista Water*, *supra*, 76 Cal.App.5th at p. 590.) CEQA requires that disclosures be reasonable, rather than perfect or exhaustive. (*Id.*, p. 591.) While “[a]ll EIR’s must cover the same general content (Guidelines, §§ 15120-15132),” “[t]he level of specificity of an EIR is determined by the nature of the project and the “rule of reason” (*Laurel Heights*, *supra*, 47 Cal.3d at p. 407), rather than any semantic label accorded to the EIR. (*Al Larson Boat Shop, Inc. v. Bd. of Harbor Commissioners* (1993) 18 Cal. App. 4th 729, 741–42.)

The EIR describes six sets of multiple components of the Project (demolition of existing facilities (with 14 components), passenger terminal improvements (including construction of the new terminal and modernization of the two existing terminals), airfield (three components), landside (10 components), airport support (four components, and utility improvements (four components)). (AR 14942-14957.) Project staging is described, from demolition of the catering building and associated parking in stage 1 in 2025 to construction of the expanded employee parking area at the terminal infill lot in stage 6, anticipated in 2030. (AR 14957-59.)

While it receives the most attention from Petitioners, the construction of a new passenger terminal is just one of the Project’s (approximately 37 by the court’s count) components. (AR 14949, Project Component B-1.) The EIR describes:

This project component would result in the construction of an approximately 830,000-square-foot new terminal north of the existing Terminal 1 with a connector building between the existing terminals and the new terminal. Demolition of the multi-tenant cargo and support building and associated parking (Project Component D-8), the fuel rack and below-grade fuel systems (Project Component D-5), some offices and storage buildings (Project Component D-4), a portion of the remote and cargo aircraft parking positions and existing taxilanes (Project Component D-6, employee parking (Project Component D-7), and economy parking (Project Component D-9) would be required for the construction of the new terminal. The new terminal would include up to 25 aircraft gates, holdrooms, concessions, ticketing/check-in, baggage claim, passenger security screening, baggage screening, public restrooms, public circulation, and other support functions.

(AR 14949.)

The Project would build a new terminal apron for the new terminal to include “areas for parking, loading, unloading, and servicing aircraft and equipment at the new terminal (Project Component B-1). Demolition of a number of areas, including the fuel rack and below-grade fuel systems,” would be demolished to build the new terminal apron. (AR 14950.)

The EIR also describes modernization of the existing terminals at OAK. It would add 81,600 square feet of space to the existing Terminals 1 and 2. (*Id.*) It would reduce the number of gates from 29 to 20, expand the ticketing/check-in area for Terminal 2, reconfigure the baggage claim area, renovate the concourses, expand the Terminal 1 international baggage claim, expand international arrivals facilities, and include other improvements. (AR 14949-50.) Notably, the Project will not increase the Airport’s overall capacity to handle incoming and outgoing flights because it will not reconfigure OAK’s runways. (AR 10793-94, 10799-800.)

Here, the Project description in the 580-page final EIR is sufficient and does not “fail as an informational matter.” (CBE Reply at p. 6.) The failure to include a rendering or architectural plan of the proposed new terminal, as just one example, does not amount to legal error. The Project description begins at AR 14931. The Project description shows where the Project will be located relative to the existing terminals and what will be built. (AR 14933, 14935, 14937, 14945, 14949-50.) It describes what existing facilities will need to be demolished (AR 14942-49.) It describes what will be done to the airfield itself (AR 14950), to parking areas, access to public transit, and to the terminal curbside (AR 14950-55). It explains planned improvements to airport support facilities (AR 14955-56) and to utilities (AR 14956-57). Fuel system upgrades are described, if not in precise detail then in sufficient terms to be able to assess environmental impacts (including impacts as to views from nearby walking trails). (AR 14975 [existing system], AR 14979.) The access road to airline fuel is shown in the EIR, contrary to CBE’s argument to the contrary. (AR 14945 [“Upgrade of Fuel System” is element U-3 and the road is drawn in pink].) The anticipated sequence of construction is described. (AR 14957-59.) The EIR also discloses the need to remediate hazardous waste as part of the Project as set out in a lengthy Environmental Site Assessment. (See AR 14942, 47-50, 57-59, 15142-45.)

In summary, the EIR’s Project description has enough detail for the Port and the public to “understand and consider meaningfully the issues raised by the proposed project.” (See *Claremont Canyon Conservancy v. Regents of Univ. of Cal.* (2023) 92 Cal.App.5th 474, 484, quoting *Sierra Club, supra*, 6 Cal.5th at p. 516; cf. *Stopthemillennium hollywood.com, supra*, 39 Cal.App.5th at p. 18 [“draft EIR does not describe a building development project at all,” but rather “different conceptual scenarios” that future developer might pursue].)

B. The Project Baseline

Petitioners contend that the Port used a Project baseline in the EIR that inaccurately minimizes the environmental impacts of the Project. The EIR describes the baseline conditions at OAK as of 2019, which was the last year of full airport operations prior to the COVID-19 pandemic. Petitioners argue that 2020 is the more appropriate baseline.

The EIR compares that 2019 baseline against expert projections approved by the FAA for 2028 and 2038. (See AR1031–1204 [“Comprehensive Aviation Activity Forecast Report (2019–2038)”].) The pandemic saw a significant drop in air traffic as passengers avoided air travel. In the years since 2019, however, the number of flights in and out of OAK (and the number of passengers) has rebounded – but is still not yet back to 2019 levels. Preparation of the EIR got under way in May 2021, and so Petitioners argue that 2020 is the more appropriate baseline to measure. (See Guidelines, § 15125, subd. (a)(1).) Petitioners also argue that CEQA obligated the Port to re-circulate the EIR once it became clear that demand for air travel had not yet returned to pre-COVID levels, citing evidence that through March 2024, passenger traffic was 8.1% lower than expected, and 2025 numbers were even lower. (AR51071; AR97105.)

The Port responds that a baseline of 2020 would “give a misleading image of the conditions that would actually be affected by the project.” (Port Opp. Br. at p. 8; AR 10351.) The 2019 baseline is appropriate, the Port explains, under section 15125(a)(1) of the Guidelines because “Where existing conditions change or fluctuate over time, and where necessary to provide the most accurate picture practically possible of the project’s impacts, a lead agency may define existing conditions by referencing historic conditions, or conditions expected when the project becomes operational, or both, that are supported with substantial evidence.” (Guidelines, § 15125, subd. (a)(1).)

“Neither CEQA nor the CEQA Guidelines mandates a uniform, inflexible rule for determination of the existing conditions baseline. Rather, an agency enjoys the discretion to decide, in the first instance, exactly how the existing physical conditions without the project can most realistically be measured, subject to review, as with all CEQA factual determinations, for support by substantial evidence.” (*Communities for a Better Env’t v. S. Coast Air Quality Mgmt. Dist.* (2010) 48 Cal.4th 310, 328.) “Environmental conditions may also change during the period of environmental review, and temporary lulls or spikes in operations that happen to occur during the period of review should not depress or elevate the baseline.” (*Cherry Valley Pass Acres & Neighbors v. City of Beaumont* (2010) 190 Cal.App.4th 316, 336.)

Air travel is influenced by a wide range of factors in a global economy. The Covid pandemic is one example, as borne out by the extensive discussion in the Administrative Record. One would imagine that higher air fuel prices due to the war with Iran are the cause for a dip in air travel numbers in 2026.

The traffic and passenger forecast prepared as part of the EIR (and discussed below) draws on data from “base years” 2019, 2020, and 2021. (AR 1036.) Appendix C to the EIR is

titled “Comprehensive Aviation Activity Forecast Report” (“the Forecast”). (AR 1031-1204.) As the Port explains in its response to multiple comments about the EIR concerning the baseline, the Forecast “further document[s] how unprecedented 2020 was.” (AR 10351.) The Forecast describes:

At the onset of the pandemic, public health directives, the lack of vaccines and effective treatments, and the negative impact on economic activity severely limited demand for air transportation. Passenger traffic at OAK decreased 96% in March of 2020 compared to March of 2019. As vaccines and treatments became available, passenger demand increased, especially in the leisure and visiting friends and relatives segments. OAK’s Passenger traffic at the end of 2020 was approximately 70% below pre-pandemic levels in 2019. Throughout 2021, passenger demand increased at OAK to levels approximately 30% below pre-pandemic levels.

(AR 1036.)

The Forecast further notes:

National demand flagged somewhat during the Delta and Omicron variant surges in COVID-19 infections in early 2022,” but “passenger traffic at OAK has been [in 2022 when the Forecast was prepared] approximately 28% below 2019 levels. Business and long-haul international demand recovery has lagged other segments ... but airlines have begun to report the return of business travel from small and medium sized businesses. (e.g., Deloitte 2022 study on corporate travel).

(*Ibid.*)

Regarding later years, the Forecast explains:

While the COVID-19 Pandemic has had a significant impact on aviation demand since 2020, the impact of the pandemic is not expected to change future aviation trends over the long term. Passengers are forecast to recover to pre-pandemic levels in 2023. Passenger operations are forecast to recover to pre-pandemic levels in 2025. Passenger operations recovery is expected to lag total passengers due to higher load factors and up-gauged aircraft. Air cargo and general aviation demand was not negatively impacted by the COVID-19 Pandemic, so those forecasts have not been changed.

(*Ibid.*) Operations did not quite rebound entirely in 2023 for passengers or in 2025 for passenger operations; they are still diminished as compared to their height in 2019. But, the prediction in the Forecast was a reasonable one at the time based on the available evidence.

Against this backdrop, the Port's choice of 2019 as the baseline against which to compare Project impacts finds substantial evidence to support it in the Administrative Record. The Port explained that "2019 is not a projected hypothetical future baseline, but rather is the most recent actual concrete representation of normal airport operations without the pressure of a global ban on non-essential travel." (AR 651-52.) Using 2020 – the year of Covid, before any vaccine existed and a time of great uncertainty – as a baseline would eschew any effort to compare the impacts from normal airport operations to the Project's impacts.

The record provides a reader with context for the 2019 baseline data. (AR 1070, 1076-82.) While reasonable minds may disagree, the Port has a point that, when work began on the EIR, "the most recent actual concrete representation of normal airport operations without the pressure of a global ban on non-essential travel" was indeed 2019. (AR 652.) Historical conditions strongly favored the Port's choice of 2019. (See *Association of Irrigated Residents v. Kern County Board of Supervisors* (2017) 17 Cal.App.5th 708, 729.)

Petitioners' arguments to the contrary would require an agency to almost continuously update the baseline, and all the analyses that might be influenced by the choice of the baseline. 2019 reflected record high demand for air travel out of OAK. 2020 reflected record low demand as a result of Covid. Going a bit beyond the Administrative Record just to emphasize the point, 2021, the year work began on the EIR, likely reflected low demand also as a result of Covid; a vaccine did not become available until early in that year. The years 2022-2025 likely reflected recovering demand, though they did not match the height of demand in 2019. And 2026 would appear to reflect diminishing demand as a result of global economic factors including the war with Iran.

While the 2019 data might indicate slightly higher (or "over-optimistic," as Stop OAK accurately labels it) usage than existing conditions, using 2020 data would result in data known to be substantially lower than Airport usage in a typical operating year. The Port's conclusion that pre-pandemic conditions would eventually return is an entirely reasonable conclusion.

C. The Comprehensive Aviation Activity Forecast Report

The parties have a real debate concerning the EIR's forecast of flights and passengers traveling through OAK if the Project is built. Drawing on forecasting data assembled and analyzed by expert consultants and from FAA data and analyses, the Port's experts conclude that increased flights and passengers are coming to OAK regardless of whether or not the Port goes forward with the Project. Comparing the Project with the "no project" alternative, the Port's conclusion from the data is that traffic will increase in roughly the same way. (AR 10348-10350.)

Effectively the Port concludes from the data that more flights and people are coming either way. The Project will improve the customer experience and will improve operations and efficiency for airlines using the airport, including by allowing flights to arrive and depart more

quickly, but the Project will not really influence the aggregate numbers of flights or passengers in a significant way.

Petitioners disagree with the Port's conclusions. They particularly object to the experts' methodology – using an unconstrained forecast methodology to calculate future demand. They argue that any reliable forecast must necessarily be constrained by the Airport's existing facilities. Traffic cannot increase beyond a certain point without facilities improvements, like the gates, fuel facilities, and other components of the Project.

Petitioners contend that the Project will necessarily increase the number of flights through the Airport. Among other things, they reason that without the Project's improvements larger jets will be less likely to use OAK, and passengers will not flock to an airport without a new terminal due to the degraded passenger experience. The debate is significant because it influences multiple other points of contention concerning whether the EIR appropriately evaluates environmental impacts from greenhouse gas emissions, other emissions harmful to the health of the community, community health impacts more broadly (i.e., beyond the harm caused by emissions), traffic, and noise. Of course, the EIR's evaluation of those impacts, in turn, influences conclusions relating to mitigation.

Petitioners concerns are serious, and reasonable minds can and do disagree. Petitioners' concern is that the EIR ignores the reality: "If you build it they will come." (*Field of Dreams* (1989 Gordon Company).) The Port's rebuttal is: "They're coming either way."

The court's role is not to determine which side is correct. (*North Coast Rivers Alliance v. Marin Muni. Water Dist. Bd. of Dirs.* (2013) 216 Cal.App.4th 614, 642 ["The fact that different inferences or conclusions could be drawn, or that different methods of gathering and compiling statistics could have been employed, is not determinative in a substantial evidence review"].) Rather, the court's job is to determine if the Port relied on substantial evidence when it concluded that the flights and passengers are coming anyway. (See *City of Long Beach v. City of Los Angeles* (2018) 19 Cal.App.5th 465, 480-481 [domestic cargo growth rates were "reasoned predictions by experts on which the city is entitled to rely"], citing *Save Round Valley Alliance v. County of Inyo* (2007) 157 Cal.App.4th 1437, 1467; *City of Long Beach, supra*, 176 Cal.App.4th at p. 898 ["We apply the substantial evidence test to conclusions, findings, and determinations, and to challenges to the scope of an EIR's analysis of a topic, the methodology used for studying an impact, and the reliability or accuracy of the data upon which the EIR relied because these types of challenges involve factual questions"], citing *Bakersfield, supra*, 124 Cal.App.4th at p. 1198.)

In other words, the court is required to evaluate whether the Port abused its discretion in drawing its conclusions about forecasted future use of the Airport. The key question is whether the Port's conclusion is based on substantial evidence. The Port argues that the dispute is really about the methodology used to determine the forecast, and that the court and Petitioners are not in a position to challenge the methodology since it was prepared by experts

and is supported by substantial evidence. Petitioners contend that the conclusions are so unreasonable as to lack substantial evidence to support them.

The Forecast (AR 1031-1204) is summarized in the final EIR. (AR 14939-40.) The Forecast notes that “[t]he Bay Area is the 4th largest metropolitan population base in the country,” and that OAK is considered a “Medium Hub Airport” that “plays a critical role in the system of three commercial service airports serving the San Francisco Bay Area.” (AR 1036.) The report discusses the future air travel demand in the area served by OAK over the next 30 years. The court describes the Forecast’s discussion of near-term demand (up to 2025) above, in connection with the parties’ dispute concerning the appropriate Project baseline.

Petitioners’ primary objection is that the use of an unconstrained forecasting methodology (AR 1044) led the Port to conclude that the number of passengers using the airport would remain the same whether or not the Port implemented the Project. The Forecast “assumes the Airport will have enough flights to carry all the passengers it predicts. There would be more congestion, more flight delays, and a travel experience below industry standard service levels. (AR 487.)” (Stop OAK Open. Br. at p. 7.) The Port reached this conclusion despite the fact that the Project is designed to add capacity to the Airport – it would add new taxiways for more takeoffs and landings and add up to 15 new gates (allowing increased flight capacity through the Airport). Petitioners argue this means that the assumption the Project would have no effect on the Airport’s future usage is unsupported by substantial evidence. (Id. at p. 8.)

The Forecast provides a concise overview of the methodology the experts used to prepare it. “The forecasts have been prepared using a combination of traditional top-down econometric modeling and bottom-up analysis of carrier networks. The bottom-up approach is used in the short term forecast as estimates of economic activity in the near term tend to diverge, and the published capacity of the airline is more reliable. Over the long term, the relationship between the economic and demographic drivers is more reliable.” (AR 1036.)

The Forecast further explains:

The forecasts of aviation activity at OAK were prepared using a combination of methodologies including a review of recent industry trends and expectations of future airline service and schedule data to inform near-term forecasts, and statistical analyses of the relationship between historical demand and local and national economic conditions to inform the longer-term forecasts.

(AR 1091.)

The Forecast includes a far more detailed description of the methodologies used for each of the sub-categories of air traffic analyzed. The formulas used and data sources relied upon are described in detail, and are accompanied with the reasons that the experts made certain choices in the analysis. These descriptions are found at AR 1091-1108, interspersed at

times with forecast results. Based on the court's review, it is a comprehensive and understandable discussion of the experts' methodology.

The court agrees with the Port that the Forecast is consistent with a study prepared by the National Academies of Sciences called "The Airport Passenger Terminal Planning and Design Guidebook." A full copy of the 422-page Guidebook is part of the Administrative Record starting at AR 17593. Chapter IV, on "Forecasts," similarly describes relying on "economics, demographics, geographic attributes, and aviation-business related factors as primary considerations for air traffic forecasting." (Port Opp. Br. at p. 16, citing AR 17684-85.) The Guidebook also describes the use of the FAA's Terminal Area Forecast (TAF) to help develop forecasting models. (AR 17684.) The Guidebook further describes appropriate forecast methodology. (AR 17685-17691.) It notes the usefulness of flight activity data from the FAA particularly citing the FAA's TAFs. (AR 17688.)

The FAA's San Francisco Airports District Office itself approved the Forecast in a letter dated December 29, 2022. (AR 89466-67.) The FAA letter notes:

The COVID-19 adjusted forecast alternative recovery scenario analysis, forecast assumptions including demographic shifts, airline letter documentation, and updated Planning Activity Levels (PAL) presented are considered reasonably supported. The subject aviation activity forecast is considered generally consistent with the Terminal Area Forecast (TAF).

(AR 89466.) The FAA does hedge on using the Forecast to "constitute justification for future projects," would need to be "based on activity levels at the time the project is requested for development" in order to justify federal funding. (*Ibid.*)

The Port concedes, as it must, that the Forecast relies on an unconstrained forecasting methodology. (Port Opp. Br. at p. 15.) The Port explains that the unconstrained methodology is the industry standard. The Forecast explains that its methodology "is similar to the methodology used by the FAA to develop" the FAA's "TAF" (or "Terminal Area Forecast"). "The FAA notes the TAF assumes a demand driven forecast for aviation services based upon local and national economic conditions, as well as conditions within the aviation industry and is developed independent of the ability of the airport and air traffic control system to furnish the capacity required to meet demand." (AR 1091.) The Port observes that the City of San Jose used an unconstrained model in connection with preparation of its Airport Master Plan EIR. (AR 77020; 77042.)

The Port also argues, citing AR 1091, that use of the unconstrained methodology is a feature not a bug – it "ensured that the environmental impacts of the full amount of potential growth in operations at the Airport would be disclosed in the EIR." In the Port's view, "A constrained forecasting approach ... would have reduced the level of forecasted aircraft activity analyzed in the EIR, thereby reducing the expected impacts that would be reported in the EIR, in comparison with the unconstrained forecasting method." (Port Opp. Br. at p. 17.)

Interestingly, the FAA concludes that it will not use the Forecast to update its own Terminal Area Forecast. The reason why is that it believed “the market share shift (i.e., return to prior share) is plausible, it is also somewhat subjective and optimistic. Therefore, it is premature to incorporate this scenario into the TAF until such time that an actual trend occurs.” (AR 89466.) This supports the Port’s contention that the Forecast might be over-estimating environmental impacts to at least some degree in its attempt to provide a realistic view of environmental impacts, consistent with the spirit of CEQA’s disclosure rules.

The Port points to demographic data to support the drive for demand notwithstanding the potential lack of an additional terminal. The Forecast notes that OAK is the most accessible airport for travel to and from Napa, Sonoma, and Solano counties (not to mention Alameda County), which are all experiencing growth viewed as likely to continue. (AR 1075.) The convenience of OAK’s location, availability of flights, and overall seat capacity all help drive demand. (AR 1092.) Southwest Airlines announced plans to locate more business at OAK as a hub, moving flights from San Francisco to OAK. (AR 1048, 1073.) Historical data is a key underpinning of the Forecast. (AR 1048, 1070-71, 1110.)

In the court’s view, further context in the “No Action Analysis Summary,” which relies on the Forecast, helps explain why the use of an unconstrained methodology by the experts was a reasonable approach. (AR 1205.) The no-action summary explains:

Without additional contact gates at OAK, use of the existing hardstands would increase for passenger flights and, when combined with the use of OAK’s existing contact gates, would be able to serve the forecast activity levels through PAL 2. The resultant conditions, however, would include crowded terminals, new airfield busing operations, and increased ground loading operations, none of which are consistent with the Port’s objectives regarding passenger experience and efficiency of operations.

(AR 1208.)

“PAL 2” is one of two “Planning Activity Levels.” “PAL 2” represents a forecasted 24.7 million annual passengers, which is a demand level based on an “unconstrained forecast” that is “consistent with the aviation activity forecast for OAK.” (AR 1207-1208 [with Table 1 comparing 2019 activity with “PAL 2” forecast].)

The no-action analysis summary describes in more detail:

The analysis considered the operational feasibility of accommodating PAL 2 aircraft operations at the 29 existing contact gates at the terminal complex and the 34 existing remote hardstands located at the Apron Remote, Tango Remote, Stadium Remote, and OMC/Midfield Remote areas at OAK as shown on Exhibit 1. This was accomplished by “gating” the DDFS by assigning each flight to an

available contact gate or remote hardstand as further described below. Arrival or departure operations that could not be accommodated at the existing contact gates were assigned to remote hardstands. Aircraft at hardstands would be accessed either directly by traversing the apron via protected paths and ramps to access the terminal, or by busing for those that cannot be accessed via the apron due to their distance from the terminal and the need to cross active taxiways or taxilanes. For those remote hardstands requiring busing, this analysis determined the number of busing hardstands needed, the number of passengers served by those hardstands, and the resulting number of bus trips required to serve those passengers, and then tested the feasibility of the operation.

(AR 1208.)

From a passenger's perspective, the description of the "no action" scenario under the increased traffic conditions predicted in the future sounds pretty miserable. Indeed, the no action summary observes:

Key findings of the analysis demonstrate that PAL 2 activity can be accommodated at the existing facilities using contact gates and remote hardstands. However, the resulting conditions would not meet the Port's objectives to efficiently accommodate the market-based passenger demand (passenger aircraft operations and passenger enplanements and deplanements) at industry standard levels of service, improve the passenger experience, and optimize safety and security for passengers and workers. The No-Action scenario would require ground loading of aircraft and a busing operation, which would add travel time and inconvenience for passengers. It would also result in increased vehicular traffic on the apron for passenger buses and ground handling equipment and would introduce additional complexities and inefficiencies to airline operations at the Airport.

(AR 1211.) The analysis summary continues at some length. (AR 1205-1227.) Among the details are flight scheduling and gate assignment models. (AR 1214-1221.)

Petitioners argue that the Port failed to consider the impact of induced demand and deterred demand, analogizing to increasing highway capacity. (See AR59857.) But, the Port cites data showing "no correlation between the construction of the passenger terminal building and an increase in annual enplanements." (AR10348.) The Port also responds that Petitioners' theory would be extremely difficult to "translate[] into a model that [] could feasibly provide reliable forecasts of future aviation activity," (Opp. Br. at p. 18.) In any event, the Port accurately notes that substantial evidence underlies its decision-making concerning the Forecast, and CEQA instructs the court to defer to the Port in its ultimate decision.

Petitioners make a number of critiques of the Forecast's conclusions based on their interpretation of the data. For example, they argue flights declined at other mid-sized airports

after new terminals opened. (Stop OAK Open. Br. at p. 12; CBE Open. Br. at p. 17.) Stop OAK argues the Forecast is wrong because it predicted 2023 enplanement numbers lower than what actually happened in 2023. (Stop OAK Open. Br. at p. 13.) Neither of these criticisms go to the lack of substantial evidence to support the Forecast, and its use in the EIR, at the time the Port adopted the EIR. Forecasts are necessarily forecasts – they attempt to make reasonably good predictions about future conditions that are influenced by myriad different factors. That is one of the reasons that CEQA instructs the court to undertake a review for whether the lead agency’s decision is supported by substantial evidence rather than to weigh the evidence itself.

Petitioners’ further major criticism of the Forecast is that it relies on population growth, economic, and demographic factors to the extent of ignoring the possibility that demand will increase based on Project improvements. The Port responds by arguing the Petitioners are missing the point of the EIR, which is an analysis of environmental impacts. The Port’s use of the Forecast means that “the EIR attributed all future growth in Airport operations and aircraft activity *to the Project* and thereby attributed all of the impacts of that growth *to the Project*.” (Opp. Br. at p. 19.) Indeed, Petitioners do not seem to suggest that they have evidence that the Project would drive future demand above and beyond what is described in the Forecast.

Based on the available evidence, the court cannot find that the EIR failed to adequately describe the Project’s various environmental impacts due to the Forecast (or anything else). Transportation, noise, and growth impacts are all potentially influenced by the Forecast. Substantial evidence is in the Administrative Record to support a conclusion that the Forecast does not cause the EIR to understate those impacts (the court will separately discuss Petitioners’ concerns about the EIR’s discussions of various important environmental impacts later in the decision).

Regarding transportation, the EIR used vehicle miles traveled in future years based on the growth projections in the Forecast. (AR 9769, 15273.) It compared vehicle miles traveled per enplaned passenger in 2019 (the baseline year) with the future years as set out in the Forecast. (Id.) The EIR did not ignore vehicle miles traveled. (AR 15256.)

Regarding noise, the EIR compares anticipated levels based on growth in 2028 and 2038 with the 2019 baseline. (AR 15213.) The increased noise is attributed to the Project, regardless of the possibility that the “no plan” analysis suggests the growth and resulting noise levels might go up regardless of whether the Port goes forward with the Project. The EIR’s description is based on an analysis using the FAA’s noise monitoring tools. (AR 15213, 16, 24, 26.) Much of the additional noise will be over the Bay. (AR 15224-27.) The EIR included a sleep disturbance analysis as well. (AR 15448.)

Regarding regional growth, the EIR describes the potential near the Airport. (AR 15345.) The EIR concludes that passenger growth is likely to take place with or without the Project (as described above). It concludes the growth would not trigger indirect negative effects near the Airport. (AR 15345.) The potential for a good airport to draw residents into a community may be there, but it is exceptionally difficult to measure given the massive number of variables that

impact the demographic mix of the Bay Area in general and the East Bay in particular. What is known is that the Project is unlikely to add to or conflict with the growth anticipated by various regional land use plans. (AR 15345; Guidelines, § 15126.2(e).)

The court concludes that substantial evidence supports the Forecast, the Port's decision to rely on the Forecast as part of the EIR, and the ultimate decision to approve the EIR to the extent it relies on the Forecast.

Finally, Petitioners contend that differences between the Forecast and the lower actual passenger numbers for 2023 and 2024 undermine the validity of the Forecast and that the EIR ought to be recirculated as a result. (CBE Open. Br. at pp. 32-33.) The court finds that CEQA does not require recirculating the EIR under the circumstances here.

The CEQA Guidelines explain that recirculation is required:

when significant new information is added to the EIR after public notice is given of the availability of the draft EIR for public review ... but before certification. As used in this section, the term "information" can include changes in the project or environmental setting as well as additional data or other information. New information added to an EIR is not "significant" unless the EIR is changed in a way that deprives the public of a meaningful opportunity to comment upon a substantial adverse environmental effect of the project or a feasible way to mitigate or avoid such an effect (including a feasible project alternative) that the project's proponents have declined to implement. "Significant new information" requiring recirculation include, for example, a disclosure showing that:

- (1) A new significant environmental impact would result from the project or from a new mitigation measure proposed to be implemented.
- (2) A substantial increase in the severity of an environmental impact would result unless mitigation measures are adopted that reduce the impact to a level of insignificance.
- (3) A feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the environmental impacts of the project, but the project's proponents decline to adopt it.
- (4) The draft EIR was so fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded. (*Mountain Lion Coalition v. Fish and Game Com.* (1989) 214 Cal.App.3d 1043)

(CEQA Guidelines, § 15088.5(a).)

None of those circumstances are present here. The difference between the Forecast and the actual traffic numbers for 2023 and 2024 do not reveal any material in the

environmental impact anticipated from the Project. While it would have been an error not to include available actual traffic data in the Administrative Record, including the data does not require recirculation of the EIR for another round of review because of deviations between the Forecast and actual numbers for the earliest years addressed by the Forecast. Differences between a forecast and actual numbers are frequently to be expected, and the context in the Forecast itself notes the possibility. But, the data does not indicate a new previously-undisclosed environmental impact or a material change in the impact analysis found in the EIR.

D. Project Alternatives

Petitioners contend that the discussion of the alternatives to the Project set out in the final EIR are inadequate under CEQA. Stop OAK argues that the project objectives in the EIR were inappropriately constrained, leading the EIR to reject potentially feasible alternatives. (Stop OAK Open. Br. at p. 26.) Similarly, CBE and the Sierra Club argue the Port “concededly refused to consider alternatives with fewer gates, holdrooms, and passenger processing facilities than identified.” (CBE Reply Br. at p. 18.) They argue the port “used an artificially narrow screening criteria to find improperly that ‘there are no feasible alternatives within its powers that would substantially lessen or avoid any significant effect the Proposed Project would have on the environment.’” (CBE Open. Br. at p. 30, quoting AR 29-30.) They reason that the EIR did not use “an adequate method of screening as it defines the success or failure of an alternative based on the very scope of the proposal for the Project. Automatic rejection of every less ambitious alternative is not compatible with the requirements of CEQA.” (*Id.*)

In their view (though not their burden to establish), the Port specifically “should have analyzed an alternative with fewer additional gates and some enhancements to existing facilities without a full-scale expansion.” (*Id.* at p. 31, citing AR 10729-30, 14941.) “The failure to do so is even inconsistent with the project description, which specifies gates ‘up to 45,’ suggesting that fewer gates would be consistent with the Project’s goals.” (*Id.*, citing AR 14949.)

An EIR’s discussion of alternatives:

shall describe a range of reasonable alternatives to the project, or to the location of the project, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives. An EIR need not consider every conceivable alternative to a project. Rather it must consider a reasonable range of potentially feasible alternatives that will foster informed decisionmaking and public participation. An EIR is not required to consider alternatives which are infeasible. The lead agency is responsible for selecting a range of project alternatives for examination and must publicly disclose its reasoning for selecting those alternatives. There is no ironclad rule governing the nature or scope of the alternatives to be discussed other than the rule of reason. (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553 and *Laurel*

Heights Improvement Association v. Regents of the University of California (1988) 47 Cal.3d 376).

(CEQA Guidelines, § 15126.6(a).)

The point of the discussion of alternatives is to help “identify ways to mitigate or avoid the significant effects that a project may have on the environment (Public Resources Code Section 21002.1)”. (CEQA Guidelines, § 15126.6(b).) Consequently, “the discussion of alternatives shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project, even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly. (Id.)

The discussion of alternatives is supposed to be focused. It must “set forth only those alternatives necessary to permit a reasoned choice.” (CEQA Guidelines, § 15126.6(f).) The CEQA Guidelines explain:

The range of potential alternatives to the proposed project shall include those that could feasibly accomplish most of the basic objectives of the project and could avoid or substantially lessen one or more of the significant effects. The EIR should briefly describe the rationale for selecting the alternatives to be discussed. The EIR should also identify any alternatives that were considered by the lead agency but were rejected as infeasible during the scoping process and briefly explain the reasons underlying the lead agency's determination. Additional information explaining the choice of alternatives may be included in the administrative record. Among the factors that may be used to eliminate alternatives from detailed consideration in an EIR are:

- (i) failure to meet most of the basic project objectives,
- (ii) infeasibility, or
- (iii) inability to avoid significant environmental impacts.

(CEQA Guidelines, § 15126.6(c).)

The court evaluates the analysis using a “rule of reason.” (CEQA Guidelines, § 15126.6(a) [citing cases and identified in quote above].) It defers to the agency’s analysis of the alternatives unless the analysis is “manifestly unreasonable.” (*Save Our Access-San Gabriel Mountains v. Watershed Conservation Authority* (2021) 68 Cal.App.5th 8, 32 (*Save Our Access*)).

Petitioners’ argument regarding the Port’s screening criteria requires some context. The EIR explains that the:

alternatives were screened using three factors. The first factor considered reasonable alternatives within the context of the Port’s project objectives

(Factor 1 Screening). These objectives ... are repeated below to assist the reader in understanding the Factor 1 Screening.

Objective 1: Modernize existing terminal facilities to optimize safety and security for passengers and workers.

Objective 2: Provide replacement and new terminal facilities that are sized to efficiently accommodate the market-based passenger demand at industry standard levels of service³⁶⁵ and designed to improve the passenger experience.

Objective 3: Modify and replace existing non-terminal facilities at OAK to accommodate the market-based demand.

Objective 4: Provide adequate aircraft gates, aircraft parking, and terminal facilities that are sized and configured to accommodate the larger-sized aircraft fleet forecast at the Airport.

(AR 15325.)

The EIR goes on to explain that “Factor 2 Screening” evaluated alternatives “in terms of constructability, cost, level of service, and airfield operational functionality considerations.” (AR 15326.) Next, “Factor 3 Screening evaluated alternatives based on their potential effect on specific environmental resources (air quality, greenhouse gas emissions, special-status species, historic resources, wetlands, and coastal resources) that are affected by the Proposed Project.” (Id.) “The alternatives were evaluated using all three factors to determine if any alternative would be considered feasible to implement” (*id.*), as required by CEQA. The EIR describes the criteria underlying each of the screening factors at some length. (AR 15325-27.)

Petitioners’ argument boils down to whether it is appropriate to use Project objectives – the “Factor 1 Screening” – as a factor to screen out potential alternatives and identified alternatives in the analysis required under CEQA. From their perspective, the Port’s evaluation of alternatives was purely performative. If meeting all Project objectives are a criteria for screening, then the vast majority of potential alternatives would be screened out because the Project’s objectives can really only be met by the Project itself.

The court finds that the use of project objectives as one of several screening tools applied to analyze project alternatives does not violate CEQA. The objectives identified in the EIR are sufficiently broad that they would not rule out all possible reasonable alternatives to the Project. The Project objectives are framed broadly. They do not specify criteria that would be exclusive to the Project described in the EIR and could include many possible alternatives. Further, the failure to meet all the Project objectives was not the exclusive reason for the EIR to rule out an alternative.

The Port analyzed eight alternatives, including a “no project” alternative and a project without a new terminal. (See AR15328–40.) The EIR describes three alternative development areas for the new terminal, distinct from the area contemplated by the Project. (AR 15328.) They are shown in Fig. 4-1 of the EIR. The EIR describes two “on-Airport environmental avoidance alternatives”: keeping the Terminal 1 ticketing and baggage claim building and the use of hardstands with no new terminal. (AR 15328.) Next, the EIR discusses two “off-airport alternatives” – developing a new airport site in the region and closing OAK and relocating operations to an existing airport and closing OAK. (AR 15330.) The “no Project” alternative is analyzed at AR 15336-39.)

The screening criteria, described above, “screened” the eight alternatives analyzed in the EIR “from further consideration.” (AR 15330.) For example, the alternative development areas for the new terminal would meet the Project objectives (under Factor 1) but had serious problems with regard to “Factor 2” concerning “constructability” because of the “extensive wetlands fill required and would lengthen the construction period.” (Id.) Cost was problematic due to the need to fill in wetlands, among other things. (Id.) Operational issues like “duplication of services and facilities and more complicated wayfinding for airline passengers ... could have the effect of lowering the level of service.” (Id.) “Factor 3” criteria were also a problem because, while the passenger traffic would be the same, the different location “would result in impacts to special-status species and wetlands that are of a greater magnitude than that of the Proposed Project.” (Id.) The other alternative locations had similar problems. (AR 15333.)

In connection with the alternative of keeping the Terminal 1 ticketing and baggage claim building, the EIR explains it could avoid “identified significant impacts of the Proposed Project and this alternative avoids a potentially significant unavoidable adverse impact to historic resources.” (AR 15333.) The existing terminal may qualify for listing on the National Register of Historic Places (“NRHP”). (Id.) The EIR finds that “market-based demand would occur at the Airport with or without construction of the Proposed Project,” meaning “there is no potential avoidance alternative for air quality and greenhouse gas (GHG) operational emissions as the emissions are [a] result of aircraft activity. Impacts to wetlands and other waters of the U.S. would still occur as the enabling project components would still occur to accommodate relocated parking and taxiway improvements.” (Id.)

Evaluating the alternative of using hardstands without a new terminal to accommodate the anticipated growth of passenger traffic in the decade to come, the EIR explains that “OAK in its current layout could accommodate the projected demand through the use of remote hardstands.” (AR 15334.) The EIR continues:

One or two gates of the existing terminal would be reconfigured to provide space for passengers to access a busing operation that would travel between the terminal and hardstands. However, the conditions for passengers would be congested and the operation would involve busing passengers to remote aircraft parking positions for some flights. This would increase passenger travel times

and congestion in the terminals, and result in poor levels of service. This alternative would require ground loading of aircraft and would add travel time and inconvenience for passengers. It would also result in increased vehicular traffic on the apron for passenger buses and ground support equipment and would introduce additional complexities and inefficiencies to airline operations at the Airport. Therefore, this alternative would not meet Factor 1 or Factor 2 Screening criteria because it would not provide new and modernized facilities that are sized to accommodate market-based passenger demand at industry-standard levels of service and would have an adverse effect on airfield operational functionality.

(AR 15334.) The alternative would meet “Factor 3 Screening criteria” by avoiding demolition of historic resources beyond seismic retrofitting. (*Id.*) Air quality and GHG emissions would remain a problem, since those are driven by anticipated passenger and airline demand over time. (AR 15334-35.)

The EIR “evaluated hypothetically” the alternative of building an entirely new airport at a different site and closing OAK. (AR 15335.) The alternative did not pass the “Factor 2 or 3” screening criteria. Among the many obvious problems with this alternative, “no location, or even the desire for such a location, has been identified by the FAA or the Association of Bay Area Governments (ABAG) / Metropolitan Transportation Commission (MTC).” (*Id.*) Further, “[t]here is insufficient land available within the Port’s jurisdiction to develop a new airport that meets the market-based demand. In addition, this alternative would violate the conditions encumbered on the Port when accepting grant funding from the FAA for past Airport development.” (*Id.*)

Similarly, the alternative of relocating operations to other airports in the region – SFO, SJC, SMF, and/or SCK – was evaluated hypothetically. (AR 15335-36.) Of course, “the Port does not have the ability to dictate to an airline the airport at which it operates,” and the alternative “would violate the conditions encumbered on the Port when accepting grant funding from the FAA for past Airport development.” (AR 15335.) Forecasts for the other regional airports do not take the possibility of “absorbing all of OAK’s operations,” raising problems under “Factor 1.” (*Id.*) Operational problems under “Factor 2” were problematic, and “regional studies have shown that air passenger activity in Northern California needs the support of all airports (SFO, SJC, OAK, SMF, and SCK) to accommodate long-term projections.” (AR 15336.) Factor 3 criteria were not applied to the “move operations to a different airport” alternative given that environmental impacts triggered by the need for further development to accommodate all of OAK’s passengers and air traffic at the other regional airports were unknown in the absence of more specific information. (*Id.*)

Of the eight alternatives, the EIR explained that only the “no Project” alternative was an “environmentally superior alternative” to the Project itself. (AR 15339.) While it obviously “would not meet any of the project objectives,” it “would have the fewest environmental impacts.” (AR 15339.) The EIR explains that the Project “has been studied extensively over the

past 20 years through documents such as the Airport Development Plan and associated CEQA process, terminal concept planning based on the 2006 Master Plan, and the Terminal 1 Renovation and Retrofit studies.” (AR 15336.) The EIR concludes that none of the alternatives analyzed “can both meet all project objectives and reduce environmental impacts.” (*Id.*)

The CEQA Guidelines require that “If the environmentally superior alternative is the ‘no project’ alternative, the EIR shall also identify an environmentally superior alternative among the other alternatives.” (CEQA Guidelines, § 15126.6(e).) The EIR then identifies the Project itself as “the environmentally superior alternative.” (AR 15340.) It explains:

All but two of the significant impacts can be reduced to less than significant with the Proposed Project, one of which (Air Quality) would also occur under the No Project Alternative. Further, the alternatives that did meet the Factor 1 Screening criteria, specifically the Terminal Development Areas A and C, would have resulted in greater impacts to biological resources, wetlands, and/or coastal resources compared to the Proposed Project. Therefore the Proposed Project is considered to be the environmentally superior alternative because it meets the four objectives outlined [earlier] with the least amount of environmental impact.

(AR 15340.)

Petitioners AFE and Stop OAK argue that the EIR violated CEQA by identifying the Project as the superior environmental alternative, thereby “entirely circumventing conducting a legally adequate analysis of project alternatives (Stop OAK Open. Br. at p. 26; AFE Open. Br. at pp. 31-32), and should have selected one of the alternatives to further evaluate instead. CEQA does not bar selecting a proposed project as the “superior environmental alternative” in its analysis. (*Save Our Access, supra*, 68 Cal.App.5th at p. 18.)

The main focus of Petitioners’ argument is on project alternatives that were not among the eight discussed in the EIR. As noted above, Petitioners contend the EIR should have evaluated the possibility of a smaller passenger terminal with fewer gates. Based on the Port’s responses to comments raising a smaller terminal as a possible alternative, Petitioners argue that the “Factor 1” criteria, concerning project objectives, was used to avoid discussing a smaller terminal as an alternative. The problem is that the CEQA Guidelines themselves contemplate using project objectives as a criteria for excluding potential alternatives. Section 15126.6(c) notes that “failure to meet most of the basic project objectives” is a reason to *exclude* an alternative from discussion, as are “infeasibility” and “inability to avoid significant environmental impacts.”

Petitioners’ argument has a few flaws. First, “‘CEQA does not require that an agency consider specific alternatives that are proposed by the public or other outside agencies.’” (*South of Market Community Action Network v City and County of San Francisco* (2019) 33 Cal.App.5th 321, 345 (*South of Market*), quoting *City of Maywood v. Los Angeles Unified School*

Dist. (2012) 208 Cal.App.4th 362, 420-421 (*City of Maywood*); *Save Our Capitol! v. Dep't of Gen. Servs.* (2023) 87 Cal.App.5th 655, 703.)

Second, the Port's decision not to require the EIR to evaluate a "smaller terminal" option was not "manifestly unreasonable." (See *Save Our Access v. Watershed Conservation Authority* (2021) 68 Cal.App.5th 8, 32; *South of Market, supra*, 33 Cal.App.5th at p. 345.) Specifically, there is no indication the Administrative Record or elsewhere how a smaller terminal would avoid the environmental impacts of the Project. The Port had substantial evidence from which to conclude that increased passenger traffic is coming whether or not the Project is built, and so a smaller terminal accommodating fewer planes would not mitigate air, traffic, noise, growth, or other environmental impacts. Further, as summarized in response to one of the comments to the draft EIR regarding impacts to air quality, "it is not the footprint nor the size of the Proposed Project that causes these impacts, but the forecast flights at OAK that result in the identified significant air quality impacts." (AR 10799 [Response No. 60].) There is also no indication that construction time would be reduced if the terminal were smaller, perhaps reducing noise impacts or impacts to air quality based on the duration of construction.

Additionally, the passenger terminal component of the Project itself is defined as building a terminal with "up to 25 aircraft gates," with a net increase of 16 gates after planned demolition of nine gates in the modernization of the two existing terminals. (AR 14949.) The Project thus arguably subsumes variations of the new passenger terminal with, say, 10 or 15 gates instead. From that perspective, the "smaller terminal" alternative is not an alternative at all but rather one of the potential implementations of the Project itself. Also, as the Port observes, the Project does not include plans to "increase airfield capacity" and therefore "would not increase the number of flights that the airport could accommodate" or their flight paths. (AR 10793-94, 10799-800 [from Appendix P, Draft EIR Comments and Responses to Comments].)

Third, Petitioners do not "submit evidence showing the rejected alternative was both 'feasible' and 'adequate,' because it was capable of attaining most of the basic objectives of the project, taking into account site suitability, economic viability, availability of infrastructure, general plan consistency, and other relevant factors." (*South of Market, supra*, 33 Cal.App.5th at p. 345, citing *Center for Biological Diversity v. Department of Fish & Wildlife* (2015) 234 Cal.App.4th 214, 256; CEQA Guidelines, § 15126.6(f); *City of Maywood, supra*, 208 Cal.App.4th at pp. 421-422.)

The court therefore finds that the alternatives discussion in the final EIR is adequate, and the Port's decision to certify it with that discussion was supported by substantial evidence.

E. Identification of Environmental Impacts

Petitioners argue that the final EIR "failed in its basic function" of "identify[ing] and focus[ing] on the significant effects of the proposed project on the environment." (CBE Open.

Br. at p. 19, citing CEQA Guidelines, § 15126.2(a).) They assert that the final EIR amounts to a “clearly inadequate or unsupported study” that deserves “no judicial deference.” (*Id.*, quoting *Laurel Heights, supra*, 47 Cal.3d at p. 409 n.12.) They argue that the EIR omitted analysis of parts of the Project and did not “properly analyze the magnitude” of certain effects, which they contend amount to legal error and do not require a substantial evidence analysis by the court. (CBE Open. Br. at p. 19.)

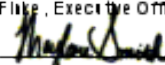
Petitioners identify concerns regarding the discussion in the EIR of air quality impacts generally (CBE Open. Br. at pp. 20-22; CBE Reply at pp. 11-13 [EIR ignores ROG and NO_x as precursors to ozone]) and greenhouse gas (“GHG”) emissions (and emissions of precursor chemicals to GHGs) in particular (AFE Open. Br. at pp. 11-22; CBE Open. Br. at pp. 22-24; Stop OAK Open. Br. at pp. 20-24), noise impacts (CBE Open. Br. at pp. 24-25), ground transportation impacts (CBE Open. Br. at pp. 25-26), impacts from hazardous materials (CBE Open. Br. at p. 26), and cumulative health impacts on “the vulnerable East Oakland Community and its members.” (Stop OAK Open. Br. at pp. 14-19.)

1. Air Quality Impacts

Petitioners have multiple objections to the final EIR’s discussion of air quality impacts from the Project. Categorizing the objections as legal error, as to which the court owes the Port no deference, Petitioners contend that the EIR failed to analyze the entire Project by “omitting evaporative emissions,” which CBE characterizes as legal error requiring no deference to the Port’s decision-making. Petitioners argue that the EIR identifies emission levels of Reactive Organic Gasses (“ROGs”) and Nitrogen Oxides (“NO_x”) that are above the thresholds of significance but then disregards the gasses because they are not individually dangerous to humans, despite the fact that they are precursors to ozone. (CBE Reply at p. 11.) They also argue that the EIR effectively ignores ozone problems by failing to “calculate the ozone expected to be generated or the resulting health effects.” (*Id.*)

Petitioners accuse the Port of ignoring the health effects of air pollutants generally “because doing so would likely be inconclusive.” (*Id.* at p. 12, citing Port Opp. Br. at pp. 30-31.) They further argue the final EIR’s discussion of the health effects of TACs was a “ cursory description without comparison to the volume of TACs” that would “make it possible for the public to understand ‘the nature and magnitude of the health and safety problems caused by the physical changes resulting from the Project.’” (CBE Reply at p. 12, quoting *County of Fresno, supra*, 6 Cal.5th at p. 522.) The impact may be “significant,” but Petitioners argue the EIR is unclear as to whether the magnitude of the problem amounts to mere “mild irritation” or instead to a serious risk of “developing severe chronic lung disease.” (*Id.*)

Falling under the category of a substantial evidence review, Petitioners identify further concerns. They include the EIR’s alleged “lack of (1) an emissions inventory, (2) documentation of equipment assumptions, (3) adequate inputs, (4) emissions factors, or (5) application of methodology.” (CBE Reply at p. 13.) Petitioners also contend that several tables in the Air Quality Appendix (Appendix F) of the EIR are unreliable. (*Id.*) Some of these concerns seem

SUPERIOR COURT OF CALIFORNIA COUNTY OF ALAMEDA	Reserved for Clerk's File Stamp
COURTHOUSE ADDRESS: Rene C. Davidson Courthouse 1225 Fallon Street, Oakland, CA 94612	FILED Superior Court of California County of Alameda 07/13/2026
PLAINTIFF/PETITIONER: Stop OAK Expansion Coalition	Chad Finke, Executive Officer / Clerk of the Court By:  Deputy T. Smith
DEFENDANT/RESPONDENT: Port of Oakland et al	
CERTIFICATE OF ELECTRONIC SERVICE CODE OF CIVIL PROCEDURE 1010.6	CASE NUMBER: 24CV104161

I, the below named Executive Officer/Clerk of Court of the above-entitled court, do hereby certify that I am not a party to the cause herein, and that on this date I served one copy of the Orders on Writs of Mandate PART 1 entered herein upon each party or counsel of record in the above entitled action, by electronically serving the document(s) from my place of business, in accordance with standard court practices.

Jason Flanders
Aqua Terra Aeris Law Group
jrf@atalawgroup.com

Joshua Patashnik
Perkins Coie LLP
jpatashnik@perkinscoie.com

Julie Jones
Perkins Coie LLP
jjones@perkinscoie.com

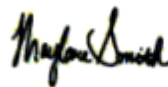
Kenya Rothstein
Aqua Terra Aeris Law Group
ksr@atalawgroup.com

Stuart Milton Flashman
Law Offices of Stuart M. Flashman
stu@stuflash.com

Chad Finke, Executive Officer / Clerk of the Court

Dated: 07/13/2026

By:



T. Smith, Deputy Clerk