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

By: T. Smith Deputy

misplaced; for example, Appendix F discusses equipment inventory and activity and is also reflected in related modeling data. (AR 98984-86, 10357-58.)

An extensive discussion of air quality health impacts on people is set out in Appendix E to the EIR, which is a 346-page “Human Health Risk Assessment Technical Report” (“HHRA”). (AR 1229-1574.) The HHRA “estimates cancer risks, chronic (long-term) non-cancer health hazards, and acute (short-term) non-cancer health hazards associated with exposure to toxic air contaminants (TAC) that would be emitted during construction and operation of the [Project] at [OAK].” (AR 1233.) The HHRA explains:

As with all activities at facilities that accommodate vehicles and equipment that consume fuel, activities at OAK release TAC to the air. These TAC may come from aircraft; GSE; other motor vehicles; combustion of fossil fuels to produce hot water, steam, and power; and other sources. These operational releases, and releases during construction activities, are analyzed to see if there could be an effect on people living and working in the vicinity of the Airport. Impacts to human health associated with TAC releases may include increased cancer risks, increased chronic (long-term) non-cancer health hazards, and increased acute (short-term) non-cancer health hazards from inhalation of TAC.

The objective of this HHRA is to assess the potential health impacts from changes in TAC exposure from the construction and operation of the Proposed Project. For this analysis, construction of the Proposed Project was assumed to begin in 2025 and end in 2030, with incremental operations starting in 2028 and market-based demand forecast through 2038. Operational emissions were quantified for existing conditions (2019), Future Year 2028, and Future Year 2038. The approach and methods used in this HHRA follow the [Project HHRA] Methodology Protocol [included as Attachment 1], January 6, 2023, which was reviewed by the Bay Area Air Quality Management District (BAAQMD) prior to the initiation of this HHRA. The analysis discloses whether implementation of the Proposed Project would increase health risks for people living, working, or attending school near OAK.

(AR 1233.)

Petitioner Stop OAK accuses the final EIR of “falsely assert[ing] that operational Toxic Air Contaminants [“TAC’s”] would decrease under the Project.” (Stop OAK Reply at p. 5, citing AR 1260, Table E-10.) While experts may disagree about the inferences to be drawn from the available evidence, Stop OAK’s accusation is not well-founded. The HHRA explains the primary reason for the decrease due to the Project, which is tied to improvements relating to Diesel Particulate Matter or DPM:

The negative values [in the Table cited by Stop OAK] indicate that compared to the 2019 existing conditions, the Proposed Project would result in decreases of

some TAC concentrations (most notably DPM), which would thereby result in decreases in cancer risk estimates, producing beneficial impacts for residents. DPM is primarily emitted from diesel construction equipment, haul trucks, and concrete trucks, as well as diesel-fueled Airport ground support equipment (GSE). Over 80 percent of the cancer risk is driven by DPM, and DPM emissions from on-road trucks, shuttle trips, and Airport GSE would be lower under the Proposed Project than in 2019, producing the reduction in cancer risk. The reduction in DPM emissions for the equipment is due to state and federal regulations that require reductions in on-road and off-road truck and equipment emissions for newer model year vehicles. Because children have a shorter exposure period than adults and beneficial effects are cumulative with each year of exposure, they would experience less beneficial impacts than adults, resulting in the higher incremental cancer risk estimate.

(AR 1261; see AR 1262 [decreased risk for off-airport and on-airport workers relating to DPM].)

Weighing in at 888 pages, another appendix – “Appendix F – Air Quality” – sets out the final EIR’s detailed air quality impacts analysis. “The air quality impact analysis ... estimate[s] air quality emissions associated with the [Project] for criteria air pollutants and GHGs. The inventory estimates [are] then compared to significance thresholds that have been defined by the BAAQMD and described in the most recent version of the BAAQMD CEQA Guidelines, dated May 2017. The result of this comparison [determines] if there are any significant air quality impacts and if the [Project] is in compliance with the California Ambient Air Quality Standards (CAAQS).” (AR 1586.)

The air quality report focuses on “pollutants of concern” under the California Clean Air Act (“CCAA”). (AR 1586.) They include ozone, carbon monoxide, nitrogen dioxide, sulfur dioxide, “particulate matter with an aerodynamic diameter less than or equal to 10 micrometers” and “less than or equal to 2.5 micrometers,” sulfates, lead, hydrogen sulfide, and vinyl chloride. (*Id.*)

The air quality report does not ignore ozone’s precursors. Rather, ozone levels are specifically evaluated “by evaluating emissions of NO_x and ROG” (*Id.*) The report may not specifically discuss quantities of ozone, but it instead uses the approach employed by experts of measuring NO_x and ROG levels to derive the level of risk relating to the resulting ozone. There are no health impacts relating to NO_x and ROG on their own. (AR 10375, 14988-89; see *County of Fresno, supra*, 6 Cal.5th at p. 517; see also AR 75113, 148-49 [San Jose International Master Plan “Supplemental Air Quality Impact Analysis” finding actual impacts from NO_x and ROG daily emissions reached no conclusions about health impacts and explained “actual impacts may be zero”].)

Significance thresholds for the pollutants evaluated in the EIR are promulgated by the BAAQMD. (AR 20506-07.) The BAAQMD thresholds and methodology were applied to the HHRA (Appendix E) and to the air quality report (Appendix F). Appendix F explains:

BAAQMD has developed and updated significance thresholds for air quality impacts under CEQA for several decades. The current summary of significance levels includes: (1) separate daily emission rate thresholds (pounds per day) for project regional construction and operational emissions associated with the project; (2) localized significance thresholds for construction activities that represent the level of construction emissions that could potentially cause a significant impact to ambient air quality at the project fence line; and (3) ambient air pollutant concentration thresholds for most of the criteria pollutants.

(AR 1586-87.) The thresholds of significance for air quality impacts used by the EIR, from the BAAQMD, conform to the air quality criteria described by the CEQA Guidelines (Appendix G, § III).

The HHRA (Appendix E) and the air quality report (Appendix F) identify potentially serious impacts for workers at the airport site. (AR 15022-29.) These include potential chronic and acute non-cancer impacts (rather than cancer).

Petitioners argue that the HHRA is incomplete and misleading because it “used generic sensitivities to different toxic contaminants in different organs and body parts ... and adjusting toxics sensitivity by generic age-specific sensitivity factors. (Stop OAK Open. Br. at pp. 14-15, citing AR 1243-47.) They contend the analysis should have evaluated “the predicted health risks to actual sensitive receptors in the East Oakland community near the airport – i.e., young children, elderly adults, and individuals with medical infirmities that might increase their susceptibility to toxic air contaminants.” (*Id.*)

Petitioners further argue that, beyond just air quality, the Port should have commissioned a “Health Impact Assessment” or “HIA” that would “include a comprehensive analysis of the cumulative public health impacts from the Project.” (Stop Oak Open. Br. at pp. 16-17; see CBE Open. Br. at p. 22.) The Alameda County Department of Public Health proposed the use of an HIA in comments on the draft EIR. (AR 10356-62, 375-377.) As discussed below in connection with Petitioners’ arguments concerning cumulative health impacts on the East Oakland community, Petitioners’ argument that the court require the final EIR include an HIA report would require a change in the law. An HIA would be outside the scope of the requirements of CEQA.

The court is not persuaded by Petitioners’ argument that the lack of a discussion of evaporative emissions in Appendices E or F requires the court to rule for Petitioners as a matter of law. The Port observes that BAAQMD’s air quality protocols did not require that the EIR incorporate a specific quantification of evaporative emissions. (AR 98981-84.) The Port explains “the Project will replace and add below-grade fuel systems and fuel racks, but does not include any additional or replacement fuel storage tanks,” which would indicate that

evaporative emissions would not increase, and might even decrease, as a result of the Project. (AR 14956.)

The court is likewise not persuaded by the argument that the lack of a discussion about emissions of air pollutants from hazardous materials remediation during Project construction requires a finding for Petitioners as a matter of law. The Port observes that the possibility of needing to remove hazardous materials during Project construction is speculative, as discussed below in connection with hazardous waste impacts. Air quality concerns relating to those potential hazardous waste impacts are perhaps even more speculative.

Petitioners argue that the EIR should have presented figures for combined construction and operations emissions annually from 2028-2030 rather than including separate calculations for emissions during construction and from project operations in the future. They contend that combining the figures provides a better sense of the magnitude of potential air quality impacts rather than smaller separate calculations.

The Port could reasonably conclude from the available evidence that the magnitude of the emissions impacts is readily apparent based on the air quality report and HHRA, and that CEQA did not require a table setting out combined numbers just to further hammer the significance home. (See also discussion at Port Opp. Br. pp. 28-29 regarding construction and operations numbers for likely NO_x and ROG emissions in 2028.) The court is “satisfied that the” EIR’s air quality and GHG discussions “(1) include[] sufficient detail to enable those who did not participate in its preparation to understand and to consider meaningfully the issues the proposed project raises (*Laurel Heights I*, *supra*, 47 Cal.3d at p. 405), and (2) makes a reasonable effort to substantively connect a project’s air quality impact to likely health consequences.” (*Sierra Club*, *supra*, 6 Cal.5th at p. 510.)

2. GHG Impacts

CEQA does not set the methodology to be used to assess GHG emissions. Under the CEQA Guidelines (which conform to section 21083.05 of the Public Resources Code), the Port needed to “make a good-faith effort, based to the extent possible on scientific and factual data, to describe, calculate or estimate the greenhouse gas emissions resulting from” the Project. (CEQA Guidelines, § 15064.4(a).) CEQA gives the Port discretion to perform the analysis and to set the appropriate time horizon. (*Id.*)

The EIR needs to present a conclusion concerning whether GHG emissions are “cumulatively considerable.” (*Id.*, subd. (b).) The Port:

should consider the following factors, among others, when determining the significance of impacts from greenhouse gas emissions on the environment:

- (1) The extent to which the project may increase or reduce greenhouse gas emissions as compared to the existing environmental setting;

(2) Whether the project emissions exceed a threshold of significance that the lead agency determines applies to the project.

(3) The extent to which the project complies with regulations or requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of greenhouse gas emissions (see, e.g., section 15183.5(b)). Such requirements must be adopted by the relevant public agency through a public review process and must reduce or mitigate the project's incremental contribution of greenhouse gas emissions. If there is substantial evidence that the possible effects of a particular project are still cumulatively considerable notwithstanding compliance with the adopted regulations or requirements, an EIR must be prepared for the project. In determining the significance of impacts, the lead agency may consider a project's consistency with the State's long-term climate goals or strategies, provided that substantial evidence supports the agency's analysis of how those goals or strategies address the project's incremental contribution to climate change and its conclusion that the project's incremental contribution is not cumulatively considerable.

(CEQA Guidelines, § 15064.4(b).)

The court agrees with the Port that the final EIR conforms with the CEQA Guidelines. It describes the regulatory context for the Project, which is particularly detailed given the heavily regulated field of air travel, air quality standards, and a myriad of state and local concerns regarding a large-scale construction project. (AR 15101-06.) The EIR describes the methodology used to quantify the GHG problem – present and Project-influenced future. (AR 15112-13, 98981-86.)

Petitioners criticize the Port's methodology at some length. But, none of those critiques undermines the fact that the Port had substantial evidence from which to select its methodological approach. For example, the Port notes it derived data on aircraft emissions from the FAA's Airport Environmental Design Tool ("AEDTv3e"). That computer modeling tool estimates emissions, noise, and air quality impacts. It includes multiple aircraft operating modes that relate to airport operations. (AR 98982.) The critique that the model does not include what happens when an aircraft climbs above the "mixing level" (the height where aircraft emissions mixes with the air) does not address airport operations and thus the Project. In addition to ignoring the approach taken by regulatory agencies like the FAA, the argument conflates the assessment of project-related impacts with impacts more broadly from aircraft. Further, as discussed at length above in connection with air travel forecasting, evidence in the Administrative Record indicates that GHG emissions will happen because demand for air travel will be satisfied at OAK or some other Bay Area airport regardless of whether the Project goes forward.

The court discusses above, in connection with “air quality” more generally, Petitioners’ argument that GHG emissions impacts are described in a misleading “piecemeal” way because they calculate NOx and ROG emissions separately rather than reaching aggregate combined ozone emissions figures and because they separately calculate GHG emissions from Project construction versus Project operations. The court does not find the GHG emissions discussion and data presentation in the EIR to be misleading in this regard. Ultimately, the EIR confirms the Project’s impacts from GHG emissions are cumulatively significant and unavoidable. (AR 25-26.)

Petitioners also argue that the EIR is misleading because it discusses a reduction in “stationary source emissions” below the baseline in future years “as a result of boiler efficiency upgrades.” (CBE Open. Br. at p. 23, citing AR 15121.) Petitioners note the boilers were already replaced in 2022 “with five new natural gas-fired boilers” (AR 15001), making a further reduction unlikely. But, as the Port observes, the boilers were replaced in 2022, after the 2019 baseline year, and so the reduction in later years (2028 and 2038) below the baseline was not misleading.

Petitioners also argue that the EIR should have evaluated GHG emissions out beyond 2038. (AFE Open. Br. at pp. 12-14, 22.) But, section 15064.4(b) of the CEQA Guidelines (quoted above) gives the Port the discretion to set the timeframe for the analysis of GHG emissions. The Port used 2038 because that date had associated data set out in the demand Forecast. (AR 1036-37.) Selecting a later date would require a further demand forecast (and, as discussed at length above, Petitioners already have serious disagreements with the demand forecast just out to 2038).

Finally, the court finds there is substantial evidence to support the Port’s conclusion that the Project does not conflict with federal, state, or local GHG reduction plans, policies, or regulations. The Project does not appear to conflict with AB 1279 (2022), seeking net zero GHG emissions by 2045. (AR 15103.) Compliance will generally be in the hands of airlines, and the bigger issue seems more likely to be a federal preemption debate based on conflicting state and federal emissions goals than anything having to do with the Airport’s operations in 2045.

Contrary to Petitioners’ arguments, the EIR explains that the Project is consistent with federal, state, and local GHG statutes, regulations, and policies. For example, the Project is consistent with the California Air Resources Board (“CARB”) 2022 Scoping Plan, which will govern the Airport’s shuttles and require that they meet zero emission standards by the end of 2035. (AR 15104.) The Project also contemplates other vehicles complying with CARB’s “Advanced Clean Fleet Rule and Advanced Clean Trucks Rule.” (AR 15105.) And, the Project “will implement the BAAQMD’s Best Management Practices ‘for construction-related GHG emissions.’” (AR 15109-10, 119.) It will also comply with the District’s “minimum project design elements.” (AR 15111-12.) The EIR also describes Project compliance with Port policies. (AR 15117-18.)

3. Noise Impacts

Petitioners raise a few objections concerning the EIR's discussion of noise impacts from the Project. They argue that the discussion of "single-event noise from aircraft" in the EIR is inadequate and does not yield a "real analysis of single-even noise" because the discussion is set out in Appendix Q to the EIR rather than in the body of the EIR. They also argue that Appendix Q does not adequately compare existing and expected noise levels. (AR00097195.)

Substantial evidence supports the EIR's discussion of noise impacts from the Project. The EIR includes data from two studies of potential future noise impacts from single flights and cumulatively in 2028 and 2038 as well as average daily noise. (AR 10353.) The EIR draws on a "NAWR" methodology (noise at work) "to estimate average numbers of aircraft noise-induced awakenings." (AR 15430.) It also draws on a more "traditional" "SEL" (sound exposure level) analysis. (AR 15495.)

Noise analyses appear in Appendices M and Q. (AR 15430-31, 15495-96.) The technical memorandum set out in Appendix M compares existing and expected noise levels. (AR 15471-72.) The discussion appears adequate under CEQA, and the studies supply substantial evidence to the Port from which to reach its conclusions regarding Project-related noise during construction and during future operations.

4. Ground Transportation Traffic Impacts

The parties dispute the appropriate methodology to use for assessing Project impacts on traffic on the ground. Under CEQA Guidelines, an assessment of "vehicle miles traveled" or "VMT" is favored as the most appropriate way to assess transit impacts (rather than traffic delays). (CEQA Guidelines, § 15064.3.) The EIR uses a VMT analysis on a per-enplaned passenger basis. (AR 15247-48.) Citing comments submitted by the director of the City of Alameda's Building and Transportation division, Petitioners contend that the EIR should have measured VMT per enplanement multiplied by total enplanements. (AR 10440.) By that measure, the region would experience an "increase in 515,355 vehicle miles traveled, or a 69% increase in VMT from 2019 numbers." (*Id.*) Put another way, the EIR uses the change in VMT rates over time as the appropriate measure of the Project's impacts rather than changes in the total aggregate VMT (and Petitioners argue this was error or lacked substantial evidence to justify it).

The Port had substantial evidence from which to conclude the Petitioners' concerns about the VMT data are misplaced. The EIR explains:

VMT for an airport is not a simple calculation based on a published rate. It is determined using a combination of metrics i.e., vehicle trip generation, alternative mode trip generation (transit, bicycle, and pedestrians), passenger enplanements, potential mode shift, and average trip lengths to appropriately represent the overall trip generation and VMT for OAK.

(AR 15248.)

The EIR draws on data from sources including parking activity data, pneumatic tubes (placed on the ground so that vehicles that drive over the tubes are counted), and video camera data, among other sources. (Id.) Data was collected in 2021 and was adjusted to reflect the 2019 baseline used by the EIR (and discussed at length above). (AR 15252.) The discussion of the methodology used in the EIR is extensive. The table at AR 15273 appears to include the total VMT in what the Port calls “absolute terms,” which appears to be what Petitioners sought.

The Port’s experts responded to the City of Alameda’s comments about VMT and set out the evidence supporting the discussion of traffic impacts set out in the EIR. (AR 10542-45, 54.) The Port notes, again, that demand will be market-driven and will rise regardless of whether the Project is built. (AR 10542.) Regarding the concerns cited by Petitioner, the response to the comments explains:

The Port does not agree that the methodology used for the VMT assessment is flawed because it uses a significant criteria of VMT per enplanement rather than total VMT. Lead agencies have the discretion to set or apply their own thresholds of significance [citing Center for Biological Diversity, *supra*, 62 Cal.4th at pp. 218-223]. Because the Port did not have previously established significance criteria for VMT and the State of California Office of Planning and Research (OPR) Technical Advisory on Evaluating Transportation Impacts in CEQA does not have recommendations for airports, a review of similar studies such as the EIR for the [San Jose International] Master Plan used a rate rather than total VMT to establish a threshold of significance. The use of a rate is also consistent with OPR guidance which recommends VMT per capita and VMT per employee be used for residential and office projects, respectively. The VMT analysis presented in the EIR shows a reduction in the VMT per enplanement resulting in no significant impact related to VMT. Because there was no potentially significant impact related to VMT, a reduction in private vehicle usage to mitigate a VMT impact was not required, and no mitigation assessment was needed as part of the EIR.

(AR 10543.)

The discussion of traffic impacts in the EIR is sufficient and the Port’s conclusions regarding their relative lack of significance supported by substantial evidence.

5. Impacts From Hazardous Materials

Petitioners argue that the EIR’s discussion of potential impacts relating to hazardous materials and their removal was inadequate. The Port responds that a discussion of hazardous material impacts is premature given that construction has not commenced and the Port is

unaware of significant issues regarding existing hazardous materials that would require remediation. (See CEQA Guidelines, § 15125(a)(1).)

The EIR concludes that impacts relating to hazardous materials and remediation are more likely during construction. Impacts during future operations of the Project are less than significant. (AR 15142.) Substantial evidence supports the Port's conclusion, and the EIR more than adequately addresses the steps that may need to be taken in the future to address risks relating to hazardous wastes and their remediation.

Relying on *Sierra Club v. State Board of Forestry* (1994) 7 Cal.4th 1215, 1236-1237 (*Board of Forestry*), Petitioners urge the court to apply a de novo review to reject the EIR as a consequence of missing specifics about information missing from the EIR, including topics like missing a discussion of mitigation of hazardous waste and remediation. (E.g., Stop OAK Open. Br. at p. 2.) The *Sierra Club v. State Board of Forestry* decision concerned a situation in which the Board of Forestry, believing that gathering additional information sought by the lead agency, could not be required of the lumber company (real party in interest) involved, failed to even ask for information needed by the Department of Fish and Game concerning the presence of endangered species at the site of the proposed timber harvest plan under review. (7 Cal.4th at p. 1236.) Further, neither the board nor Fish and Game "had made site-specific recommendations regarding mitigation measures" relating to the risk posed to the species at the site (the red tree vole, marbled murrelet, goshawk, and spotted owl). (*Id.*)

Without data and recommendations relating to the endangered species at the site – the protection of which are core to CEQA – the court found that the Board of Forestry had abused its discretion. The court explained:

The record confirms that Fish and Game had reasonably determined that the proposed timber harvest could have a significant adverse effect on the old-growth-dependent wildlife habitat. Therefore, the board, through the department, had an obligation imposed by CEQA to collect information regarding the presence of old-growth-dependent species on the site of the proposed timber harvest. Without that information the board could not identify the environmental impacts of the project or carry out its obligation to protect wildlife as required by the Forest Practice Act (§ 4551), and to prevent environmental damage by refusing to approve projects if feasible mitigation measures are available which will avoid or substantially lessen significant environmental effects as required by CEQA.

(*Board of Forestry, supra*, 7 Cal. 4th at p. 1236, citing Pub. Res. Code, §§ 21000, 21002.)

The *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931 946, also cited by Petitioners, echoes the Board of Forestry decision. There, the court explains

that “when an agency fails to proceed as required by CEQA, harmless error analysis is inapplicable. The failure to comply with the law subverts the purpose of CEQA if it omits material necessary to informed decisionmaking and informed public participation. Case law is clear that, in such cases, the error is prejudicial.” (Ibid., citing Board of Forestry, supra, 7 Cal.4th at p. 1236-1237 [other citations omitted].) The *Amador* decision concerned a large project to increase water supplies by tapping three lakes in the high Sierra. (Id. at p. 940.) The problem was that the lead agency approved the water program before the county had “enact[ed] a general plan” concerning which “places the proverbial cart before the horse.” (Id. at p. 949.) The general plan was still in draft form and had not been adopted, and so adopting the EIR for the project was legal error.

The circumstances here are quite different; they involve factual determinations reviewed for substantial evidence and do not amount to legal error reviewed de novo. The EIR’s discussion relies on a Phase I Environmental Site Assessment (“ESA”) included in the EIR as Appendix J. (AR 15123.) The EIR notes the extensive federal, state, and local regulation of hazardous waste. (AR 15123-33.) The EIR identifies “general types of hazardous materials and activities used during Proposed Project construction and operation.” (AR 15133.) The EIR further evaluated potential impacts “using information on the existing uses of the project site and adjacent properties, historical uses, and known contamination to determine the likelihood of encountering hazardous materials.” (Id.) For example, the EIR identifies materials like firefighting foams containing PFAS, three former landfill sites on the Airport property, use and storage of petroleum hydrocarbons, use of solvents and paints, and historical uses of building materials that include hazardous materials like PCBs. (AR 15133-34.)

Impacts may arise when “modifying, removing, or replacing buildings and other structures,” especially structures built before more modern regulations took effect in 1978. (AR 15137.) The exact impacts from these activities will not be known until after work begins. That said, the EIR includes a discussion of the measures that will be taken to avoid risk during construction as part of the Project and later incorporated into a Hazardous Materials Management Plan (“HMMP”). (AR 15141.) The Port explains it will prepare a Phase II ESA “prior to construction to assess contaminants of concern in soil, soil gas, and groundwater, as appropriate, within the detailed study area with Recognized Environmental Conditions.” (AR 15143.)

The EIR further explains:

In areas where new buildings are planned, vapor intrusion pathways would be assessed. If the contamination encountered during the Phase II ESA is sufficient to exceed applicable regulatory thresholds, cleanup of contaminated sites, including the implementation of engineering controls if appropriate, would be completed before or during construction in the contaminated location but prior to site development. The removal, handling, storage, transport, and treatment

of disposal of such soil would be subject to state and federal requirements relating to hazardous waste

(AR 15143.)

The EIR also notes the potential need for a Site Management Plan (“SMP”). The SMP would “provide[] guidelines for grading and construction projects at sites with potential contamination issues.” (AR 15143-44.) A Hazardous Materials Contingency Plan (“HMCP”) would be prepared prior to demolition or construction to “address potential impacts in soil, soil vapor, and groundwater from releases on or near the Proposed Project, as well as the potential for existing hazardous materials on site (e.g., drums and tanks).” (AR 15144.) In turn, the HMCP would include a Health and Safety Plan (“HASP”) to comply with OSHA and related safety standards. (*Id.*)

6. Cumulative Health Impacts On Vulnerable East Oakland Residents

As discussed above in connection with air quality impacts, Petitioners argue that the Port should have commissioned an HIA report to address cumulative health impacts, including but beyond just air quality, on residents of East Oakland near the Airport. CBE observes that [m]any comments provided evidence that East Oakland residents neighboring the airport would experience health impacts at a higher rate and with more severity than the general population because of existing environmental health burdens,” and “[e]xperts recommended further study.” (CBE Open. Br. at p. 22, citing AR 10372-75.)

Stop OAK describes evidence in the Administrative Record “primarily coming out of the Environmental Justice Element of the Oakland 2045 General Plan, demonstrating that there are highly significant disparities in socio-economic factors within Oakland.” (Stop OAK Open. Br. at p. 17, citing AR 60392 et seq., 60517 et seq., 60531-32, 44-45, 49-53, 70-71.) Stop OAK argues that the data points to “large disparities between different parts of Oakland, and those disparities are associated with the effects of a past history of environmental racism, especially in parts of East Oakland near the Airport.” (Stop OAK Open. Br. at p. 18, citing AR 60412-18.)

Stop OAK describes what an HIA would analyze, as compared to the allegedly inadequate HHRA. According to Stop OAK, an HIA “takes into account a wide variety of factors, ranging from air quality, prevalence of chronic conditions such as asthma, diabetes, and cardiovascular disease, access to medical care, quantity and quality of dietary intake (e.g., caloric intake, fat, protein, and carbohydrate content, essential vitamins, ultra-processed foods), exercise, physical and emotional stress, etc.” (Stop Oak Open. Br. at p. 17.) “All of these factors can significantly affect a population’s response to the presence of a toxic contaminant. (*Id.*, citing AR 97677-78, 107129-30 [“comments from Oakland retired family physician on interaction between heavy social burdens and adverse responses to toxic chemicals such as criteria pollutants”].)

The Port responds that Petitioners have failed to show “that the additional analysis they seek is feasible, that it would provide reliable objective data on health impacts, and that the EIR is legally inadequate in its absence.” (Port Opp. Br. at p. 25.) The Port viewed a potential HIA as outside the environmental review process.

The Port noted in response to public comments that two HIAs prepared in connection with other airports either showed no effect from the projects or were otherwise inconclusive. (AR 10375, 77112-25 [San Jose International], 65849-68 [Santa Monica].) Stop OAK responds that the San Jose International report was more like the HHRA for the Project here while the Santa Monica report focused on pollutants not evaluated in other studies like “black carbon,” ultrafine particles, and polycyclic aromatic hydrocarbons, rather than on allegedly unique health concerns of residents near the airport. The Santa Monica report recommended that operations be reduced or the airport closed to address the impacts of the under-studied particulates. (AR 65851.) The Port notes that the Santa Monica report was not prepared in connection with a development project and does not support Petitioners’ demand for an HIA here, and could not be used as a model for the sort of report Petitioners contemplate for the Project.

The court shares many of the concerns expressed by Stop OAK and other Petitioners concerning the health challenges facing many citizens of East Oakland. But, Stop OAK’s argument that the court should require an HIA rather than the HHRA used in the EIR would require a change in the law. Existing law requires an HHRA in connection with projects like the one here. (*See Berkeley Keep Jets Over the Bay Committee v. Board of Port Commissioners* (2001) 91 Cal.App.4th 1344, 1371.) The HHRA and the air quality report together, along with the discussion in the body of the final EIR, provide the information required by law to assess health impacts on those living near the airport. For example, the HHRA mentions asthma at least 69 times in the context of site-specific survey data. Cardio-vascular health, poverty, unemployment, education, disabilities, and housing are factored into the health and equity reports incorporated in the HHRA.

The HHRAs are based on expert analyses that conform to standards adopted by local, state, and federal air quality and environmental authorities. The Port notes that the Alameda County Public Health Department, which suggested developing an HIA for the Project, did not provide examples of HIAs prepared in connection with any other projects or at all discuss or even summarize the potential methodology to be used to prepare an HIA for the Project. (AR 10372-75.)

Based on the available evidence, the Port could reasonably conclude that a study that goes deeper into an analysis of the particularized potential health impacts of the Project on nearby residents based on assumptions concerning dietary intake, stress, and exercise, among other things, would be inconclusive or next to impossible to undertake. Under the circumstances, the Port could, consistent with CEQA, conclude that an HIA was not required.

F. Mitigation Analysis

Mitigation of significant environmental impacts is one of CEQA's objectives. Under CEQA:

public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects and that the procedures required by this division are intended to assist public agencies in systematically identifying both the significant effects of proposed projects and the feasible alternatives or feasible mitigation measures which will avoid or substantially lessen such significant effects. The Legislature further finds and declares that in the event specific economic, social, or other conditions make infeasible such project alternatives or such mitigation measures, individual projects may be approved in spite of one or more significant effects thereof.

(Pub. Res. Code, § 21002.) To that end, the EIR must "indicate the manner in which" the "significant effects on the environment of a project" "can be mitigated or avoided. (Id., § 21002.1, subd. (a).)

The Port must "mitigate or avoid the significant effects on the environment of" the Project to the extent "it is feasible to do so." (Pub Res. Code, § 21002.1, subd. (b).) As the lead agency for the Project, the Port is "responsible for considering the effects, both individual and collective, of all activities involved" in the Project. (Id., subd. (d).) The analysis in the EIR must "focus the discussion ... on those potential effects on the environment of [the Project] which [the Port] has determined are or may be significant." (Id., subd. (e).) The Port "may limit discussion on other effects to a brief explanation as to why those effects are not potentially significant." (Id.)

Feasible measures to mitigate significant environmental impacts should be implemented unless the mitigation measures "are truly infeasible." (*Yerba Buena Neighborhood Consortium, LLC v. Regents of Univ. of Cal.* (2023) 95 Cal.App.5th 779, 792 (*Yerba Buena Neighborhood Consortium*); Pub. Res. Code, § 21002.1, subd. (b).) The Port may eliminate alternatives based on the "(i) failure to meet most of the basic project objectives, (ii) infeasibility, or (iii) inability to avoid significant environmental impacts." (CEQA Guidelines, § 15126.6, subd. (c).) If the Project has significant environmental impacts that will be left without mitigation, then the Port must find "specific overriding economic, legal, social, technological, or other benefits of the project outweigh the significant effects on the environment." (Pub. Res. Code, § 21081, subd. (b).)

The EIR here summarizes "the results of the environmental consequences analyses for the Proposed Project" in a 26-page table found in the Executive Summary (Table ES-2). (AR 14865, 66-92 [Table ES-2].) The EIR cautions that even with "implementation of mitigation measures, three impacts would be considered significant and unavoidable." (Id.)

Petitioners contend that the discussion of mitigation measures in the EIR is inadequate as to multiple categories of impacts. These include air quality and GHG emissions impacts and construction noise. They also argue that the flawed analysis of environmental impacts led the Port not to identify or assess mitigation measures as to transportation, hazardous waste removal, and comprehensive health impacts on the East Oakland community.

1. Air quality/GHG

The Port is severely constrained on what it can do to mitigate emissions from the most significant source of air pollutants in airport operations – the aircraft themselves – as a matter of federal law. Mitigation of air quality in general, and GHG emissions in particular, resulting from aircraft operations is necessarily constrained by federal law. (See 42 U.S.C. § 7573 [“No State or political subdivision thereof may adopt or attempt to enforce any standard respecting emissions of any air pollutant from any aircraft or engine thereof unless such standard is identical to a standard applicable to such aircraft under this part”].) Federal law will preempt state and local efforts to regulate GHG emissions. Efforts by the Port to mitigate GHG emissions from aircraft operations are legally infeasible under CEQA. (See CEQA Guidelines, § 15364; AR 14883.)

Petitioners contend that referencing federal preemption alone is not enough to satisfy the Port’s obligations under CEQA to identify feasible air quality and GHG emissions impacts. Petitioners propose transforming at least a subset of the Port’s many “sustainability measures” into “enforceable mitigation measures.” (AFE Open. Br. at p. 27.) AFE writes that the sustainability measures:

would be feasible to incorporate into the expansion and ongoing operations. The Port provided no reason why it would be infeasible to make the sustainability measures into enforceable mitigation measures. The Port’s purported commitment to elective measures such as gate electrification, the Airport Carbon Accreditation Program, and other initiatives to reduce GHG emissions demonstrates that such measures are feasible, contrary to the Port’s claim that all mitigation would be infeasible.

(AFE Open. Br. at p. 27.)

From Petitioners’ perspective, “The Port did not demonstrate, with substantial evidence, that regulating flight emissions, which was asserted to be outside of the Port’s authority, was the only way to reduce the Project’s GHG impact. The Port’s conclusory analysis failed to consider other means of reducing the Project’s GHG impact.” (AFE Open. Br. at p. 28.) These include “reductions in non-flight related operational impacts, or the purchase of offsets and funding off-site GHG reductions. The Port also failed to consider the potential to reduce the scope of the project or limiting it to renovations of existing gates without increasing gates, as a potential means of minimizing the GHG impact.” (*Id.*)

With regard to air quality impacts during construction, the Port identifies emissions from use of on- and off-road construction equipment (dozers pavers, supply deliveries, and the like) over a five-year time horizon. (AR 15003.) Other air quality factors include construction dust. (AR 15004.) Emissions during operation after the Project “include aircraft, APUs, GSE [Ground Service Equipment], GAVs [Ground Access Vehicles], and stationary sources” (like boilers, including the new boilers installed in 2022 and discussed above) throughout the life of the Project. (*Id.*)

The Port’s ongoing sustainability measures relating to GHG emissions include participating in the ACI [Airports Council International] Airport Carbon Accreditation (ACA) Program” (AR 15116), which is a certification program to recognize airports’ efforts to reduce carbon emissions.

The Port also “prepared a Carbon Management Plan which includes initiatives to further reduce its carbon footprint. Initiatives include, but are not limited to:

- Conduct energy audits to identify energy conservation measures in airport facilities.
- Continue installation and upgrades to more energy efficient controls related to lighting, HVAC, and other large building loads.
- Develop energy/building systems management protocols and provide training to staff to maintain high levels of building energy performance.
- Evaluate opportunities to develop additional on-site renewable energy production by leveraging available funding sources, building partnerships, or implementing battery energy storage to overcome current capacity constraints.
- Develop a transition plan to convert natural gas consumption to all-electric building systems.
- Use LEED, Envision, or other rating systems to guide the development of OAK-specific toolkits that would help integrate operational carbon reduction measures into airport planning, design, and construction practices.
- Eliminate chlorofluorocarbon-based refrigerants.
- Incorporate green/living or white roofs (high solar reflectance index materials) to combat heat island effect.
- Monitor and promote continued success of the airport concessions composting program and ban single-use plastics in the terminals.
- Install efficient fixtures and fittings within restroom facilities and consider purple pipe application, reducing the amount of potable water used in toilets and basins, with a corresponding reduction in wastewater.
- Continue engaging with airlines and regional partnerships to promote additional Sustainable Aviation Fuel (SAF) use at OAK.
- Continue to work with airlines to encourage transition to all-electric GSE.

- Procure alternative fuel/low-emission Port-owned vehicles where technologically feasible (and install necessary charging infrastructure).
- Evaluate and provide, as feasible, electric vehicle charging infrastructure to passengers, airport employees, tenants, and ground transportation providers.”

(AR 15116-17.)

Port Board resolutions (Resolution Nos. 20467 and 01346) describe further sustainability policies concerning “climate resiliency.” (AR 15117.) These policies include solid waste and construction waste diversion, recycling, LEED design, alternative fuel use for Airport vehicles, alternative transportation, and relying more consistently on renewable energy use (including OAK’s solar power system finished in 2007 among other things). (AR 15118.)

The discussion of sustainability in connection with air quality and GHG emission impacts indicates that the Port is already engaging in efforts to mitigate their harmful effects as part of the Project itself and in connection with ongoing Airport operations. In part, the problems identified by Petitioners are not deficiencies in the EIR but rather reflect that “the Port has considered project design features to be *part of the Proposed Project design and not as mitigation measures.*” (AR 15007.)

The Port’s experts’ drafting choice is likely one reason why the sustainability discussion in connection with GHG reads somewhat like a discussion of mitigation measures. The discussion falls in a chapter of the EIR titled “Existing Conditions and Environmental Impacts,” the heading of the section in which the discussion of sustainability measures appears reads “3.7.3 Environmental Impacts *and Mitigation.*” (AR 15116 [emphasis added].)

Ultimately, the Port has a solid argument that its decision-making regarding air quality and GHG mitigation was supported by substantial evidence. The EIR’s table “Summary of Environmental Impact Levels of Significance and Mitigation Measures” (Table ES-2), breaks the air quality impacts into five sub-categories and GHG impacts into two categories. The GHG emission problem, as discussed at length above, “would result from market-based demand and related aircraft emissions and the Port does not have the authority to mitigate air pollutant emissions associated with aircraft operations.” (AR 14883.) The EIR’s discussion concerning this impact is discussed at length above.

The EIR explains that GHG emissions from construction of the Project or non-aircraft operations would not be significant within the meaning of CEQA (as described at AR 15007-12), making a formal discussion of mitigation measures legally unnecessary. Nevertheless, the discussion of sustainability (described above) would address any impacts. Given their lack of significance, requiring the Port to prepare a new EIR to call the sustainability measures “mitigation measures” would unnecessarily elevate form over substance. Information has not been lost in the methods of disclosure chosen by the Port. Whether or not Petitioners and the court agree with the conclusion, the discussion is there in the EIR and the label is immaterial

given the substantial evidence the Port had available to determine the lack of significance of non-aircraft emissions actually attributable to the Project.

Regarding air quality impacts more broadly, the possibility of “conflict with” or “obstruct[ing] implementation of the applicable air quality plan” is “less than significant” during construction and operation, requiring no mitigation. (AR 14866.) The likelihood of “a cumulatively considerable net increase” of ROG and NO_x emissions, and in connection with exposing “sensitive receptors to substantial” concentrations of these gasses, discussed above, is “less than significant” during construction but “potentially significant and unavoidable” during future operations. Here, the Port notes that it “does not have the authority to regulate” the emissions from aircraft operations. As mitigation, the Port references “electrical infrastructure throughout the terminals and cargo areas for use by commercial and cargo airlines” and states it “would install this electrical infrastructure in the new terminal and relocated cargo area.” (Id.) These measures tie into the electrical infrastructure discussion described in part in connection with other sustainability measures. Possible “localized impacts” of carbon monoxide during construction and operation are “less than significant,” requiring no mitigation discussion. (AR 14867.)

Finally, the impacts of potential TACs, discussed above, are “less than significant” during construction but “potentially significant and unavoidable” during operations. (Id.) The table summarizes:

The majority of 8-hour non-cancer and acute (1-hour) non-cancer human health hazard effects for on-Airport workers would result from aircraft operations, which the Port does not have the authority to regulate.” (Id.) The Port points to improved electrical infrastructure as a mitigation measure. It also “commits to providing environmental awareness training for on-Airport workers (Port employees) and making appropriate personal protective equipment (PPE) available upon request. For on-Airport workers who are not Port employees, the Port will collaborate with tenants and provide environmental awareness documentation and materials to conduct training for their own employees. However, this would not reduce impacts to less-than-significant levels.

(AR 14867-68.)

2. Construction Noise

Petitioners argue that the EIR’s discussion of construction noise mitigation is inadequate because it limits the potential mitigation to what is “feasible” or “practical” without identifying specifics about feasibility or practicality, and then delegates responsibility to the contractor. (CBE Open. Br. at pp. 28-29; CBE Reply at pp. 17-18, citing AR 14887-88.)

The Port responds that the EIR ties noise mitigation to a specific standard – construction noise will not exceed the City of Oakland’s construction noise limits. (AR 15218.) Noise will be

continuously monitored and any indication of a possibility that noise levels are exceeded can be addressed. (AR 15218.) The EIR identifies construction scheduling, location of noisy equipment away from sensitive areas, and use of quieter construction equipment where feasible and commercially available. (*Id.*)

Use of the term “feasible” in connection with things like potential construction equipment is appropriate given the context of the Project, and the potential uncertainty as to what equipment might be used where quieter alternatives may exist. As far as the court can tell, CEQA does not require an itemized list of all potential construction equipment that might be used on a project, unless perhaps there is a particular piece of equipment that the agency knows must be used and that exceeds appropriate noise standards. There is no indication of such a problem here and the EIR’s use of “feasibility” and “practicality” are reasonable.

Petitioners also point to extra-record evidence, a settlement between the Port and the City of Alameda, that they say show the Port could have described more noise mitigation measures in the EIR. The court agrees with the Port that the EIR’s noise mitigation discussion is sufficient regardless of the settlement. The EIR already accounts for the noise monitoring referenced in the settlement. Additionally, the Port notes that noise monitoring alone is not “mitigation” for purposes of CEQA. (Port Opp. Br. at p. 62, citing *Save Agoura Cornell Knoll v. City of Agoura Hills* (2020) 46 Cal.App.5th 665, 687.) The settlement also discusses efforts to avoiding cut-through traffic into Alameda (which is right next to the Airport) does not relate to the Project and would not have made sense to incorporate into the EIR.

G. Responses to Comments

1. Generally

The Port received an enormous volume of comments from the public relating to the Project and the draft EIR. Petitioners identify a number of responses that they argue were inadequate. Generally, the comments identified are characterized as problematic because they conform with findings by the Port that Petitioners argue are objectionable (and that are discussed at length above). (See generally summary at Port Opp. Br. at pp. 63-65.)

After the court’s review, the court finds that the Port responded to comments in good faith with a reasoned analysis to address the environmental issues posed by the Project. (CEQA Guidelines, § 15008(c).) The Administrative Record includes over 2,000 pages of comments and responses. (AR 10310-12467.) As the Port notes, it has “considerable leeway” in responding to public comments under existing law. (*Environmental Protection Information Center v. Dep’t of Forestry and Fire Protection* (2008) 44 Cal.4th 459, 487 n.9.)

2. Procedural Argument Re Documents Linked in Comments

Members of the public, including at least one Petitioner, submitted comments that included links to other documents. The Port did not preserve 100% of the time the functioning

links when it compiled the comments and the Port's responses as part of the Administrative Record. The links, however, are fully legible in the comments included in the reports. (See, e.g., AR10375; AR10383; AR10642.) The court is not aware of any authority requiring the Port to maintain clickable links in its reports.

Conclusion

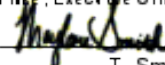
Petitioners have not carried their burden with regard to their argument that the Port should not have approved and certified the EIR for the Project under CEQA. The EIR is a "good faith effort at full disclosure." (Guidelines, § 15151.) Petitioners' arguments attack the Port's decision-making and methodology as to topics that are open to reasonable debate. The Port points to substantial evidence supporting its decision to approve the EIR.

IT IS SO ORDERED.

July 13, 2026



Michael M. Markman
Judge, Superior Court of California
Alameda County

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 2 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.

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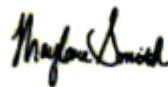
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Dated: 07/13/2026

By:



T. Smith, Deputy Clerk