

**NEW STEPS TOWARD ENVIRONMENTAL JUSTICE: THE  
CALIFORNIA COASTAL ACT AND ENVIRONMENTAL JUSTICE  
NEAR PORTS<sup>1</sup>**

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I. INTRODUCTION

California's coast is home to several seaports of varying sizes, each with an individual history of development and community advocacy deserving of its own article. One thing ports tend to have in common are that the neighboring communities are majority communities of color and low-income families, in sharp contrast to more affluent sections of the coast that are sometimes mere miles away. Unlike these affluent coastal communities who benefit from access to power and resources that give them a say in shaping their communities and coasts, as well as the peace of mind to know their lives will not be sacrificed for the economy and the prospect of jobs, port-adjacent communities are not given that luxury. These communities instead face severe health and environmental impacts from port operations, and furthermore often cannot access the well-paying jobs associated with ports and the logistics industry.<sup>5</sup>

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5. See CATALINA GARZON-GALVIS ET AL., DITCHING DIRTY DIESEL, MAKING A GOOD MOVE FOR HEALTH: A HEALTH IMPACT ASSESSMENT OF SELECT STRATEGIES OF THE ALAMEDA COUNTY GOODS MOVEMENT PLAN 24 (2016), [http://www.rampasthma.org/D:Web%20Siteswww.rampasthma.orgwp-content/uploads/2016/02/DDD-HIA-Report\\_FINAL.pdf](http://www.rampasthma.org/D:Web%20Siteswww.rampasthma.orgwp-content/uploads/2016/02/DDD-HIA-Report_FINAL.pdf); HARBOR CMTY. BENEFIT FOUND., HARBOR COMMUNITY OFF-PORT LAND USE STUDY: A LOOK AT THE PORT OF LOS ANGELES, SAN PEDRO, AND WILMINGTON 186-97 (2017). There has also been a shift in the jobs available in the

Most people are familiar with a port skyline: huge cranes moving containers arriving to the port by ship, rail, and truck. However, communities impacted by freight describe the way the port's footprint goes far beyond the cranes and the containers—it is the trucks driving through the neighborhood spewing toxic black smoke; the nuisance and danger of hundreds of container storage yards piled high like buildings; the noise and pollution from freight railyards and container ships; the polluting refinery lit up like a city; the warehouses where the cargo arrives; and the factories and processing facilities preparing goods for distribution. The corridors along which communities acutely feel the impacts from port and port-related development are known as “freight corridors.” These corridors have highly localized impacts on adjacent communities,<sup>6</sup> as well as regional air pollution and climate change impacts.

The development and expansion of goods movement infrastructure in these communities did not occur naturally but rather was a result of intentional private and public investment in ports as economic anchors.<sup>7</sup> There are numerous examples of local governments touting the ports as critical to the region without engaging in the nuance of how ports were developed and sited or the economic and health burdens they place on directly-impacted communities.<sup>8</sup> Low-income communities of color

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goods movement industry to hiring through private companies and misclassifying workers as independent contractors. See *Port of Hueneme Expansion: How Would It Impact Us?*, CAUSE (Sept. 2019),

<https://causenow.org/sites/default/files/Port%20Expansion%20Fact%20Sheet%202019.pdf> (“For generations, the Port of Hueneme has created many good jobs in our community for union longshore workers on the docks. But over time, more and more jobs have shifted to expansion areas offsite, often with private companies that offer much lower wages and benefits.”). Today, only 10% of port jobs are union. See *id.*

6. In San Pedro and Wilmington, California, development related to the Port of Los Angeles was found to be three times more likely to locate in these communities than in Los Angeles overall. HARBOR CMTY. BENEFIT FOUND., *supra* note 5. In Newark and Elizabeth, New Jersey, railyards were large contributors to toxic emissions even beyond the communities they were immediately located in; trucks also produced high, but more localized, toxic emissions. PAUL ALLEN ET AL., M. J. BRADLEY & ASSOCS., NEWARK COMMUNITY IMPACTS OF MOBILE SOURCE EMISSIONS 9 (2020), [http://www.njeja.org/wpcontent/uploads/2020/11/NewarkCommunityImpacts\\_FINAL-2.pdf](http://www.njeja.org/wpcontent/uploads/2020/11/NewarkCommunityImpacts_FINAL-2.pdf).

7. See Juan De Lara, “*This Port Is Killing People*”: *Sustainability Without Justice in the Neo-Keynesian Green City*, 108 ANNALS AM. ASS’N OF GEOGRAPHERS 538, 540 (2018) (“[P]olitical and business leaders mounted an elaborate campaign to frame logistics as a solution to the region’s looming deindustrialization and environmental crisis during the 1990s.”).

8. L.A. CNTY. METRO. TRANSP. AUTH., LA COUNTY GOODS MOVEMENT STRATEGIC PLAN 6 (2020), [https://media.metro.net/2020/Goods\\_Movement\\_SP\\_Draft.pdf](https://media.metro.net/2020/Goods_Movement_SP_Draft.pdf).

Successful societies across the history of civilization share similar hallmarks—in particular, their economic competitiveness and quality of life depend greatly on a strong transportation system that allows for the efficient movement and delivery of goods. Unsurprisingly, the rise of Los Angeles

disproportionately bear the burden of living along freight corridors due to the segregation that permeates in cities as a result of discriminatory lending, redlining, and land use decisions.<sup>9</sup>

Despite the Coastal Act's broad goals of achieving equitable access to the coast for all Californians, to date, ports have continued to expand largely unbounded by coastal land use authorities.<sup>10</sup> This has exacerbated existing inequities and resulted in the potential for infinitely growing pollution burdens for port-adjacent communities. In 2019, as a result of strong community advocacy, the California Coastal Commission adopted an Environmental Justice (EJ) Policy that made important commitments to promote environmental justice goals, community-led decision-making, and address systemic inequities in coastal land-use decisions.<sup>11</sup> Expansive use of this policy requires a shift in the framework of decision-making in the case of port-related development, centering the voices and needs of the community and considering the resulting economic benefits and burdens holistically.

In this article we will explore the ample authority in the Coastal Act for coastal land use authorities to address environmental justice for port-adjacent communities in their decision-making. We begin with a brief description of the adverse impacts of port development on environmental justice communities to situate the reader with the realities facing these communities.

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County as a regional, national and international economic, industrial and manufacturing powerhouse traces its genesis directly to the development of its regional, multimodal freight system. *Id.* "As a growing and diversified region, efficient goods movement is important to the long-term success of the [San Joaquin Valley] economy." SAN JOAQUIN VALLEY POL'Y COUNCIL, THE SAN JOAQUIN VALLEY INTERREGIONAL GOODS MOVEMENT PLAN I (2013), <http://sjvcogs.org/wp-content/uploads/2016/01/2013-05-30-Exec-Summ-Goods.pdf>.

9. See JESSICA TROUNSTINE, SEGREGATION BY DESIGN: LOCAL POLITICS AND INEQUALITY IN AMERICAN CITIES 30-38 (2018); Douglas Houston et al., *Structural Disparities of Urban Traffic in Southern California: Implications for Vehicle-Related Air Pollution Exposure in Minority and High-Poverty Neighborhoods*, 26 J. URB. AFFS. 565, 577, 579 (2004) (citing Laura Pulido, *Rethinking Environmental Racism: White Privilege and Urban Development in Southern California*, 90 ANNALS ASSOC. OF AM. GEOGRAPHERS 12, 32 (2000)) ("The entrenchment of residential segregation for the poor and communities of color in Southern California raises serious equity concerns given that these neighborhoods are plagued by disinvestment, declining property values, deteriorated housing, limited business opportunities, insurance redlining, and poor schools.").

10. In some instances, the California Coastal Commission has pushed back against port dredging and expansion projects, arguing that the expansions would inadequately dispose of contaminants and/or impact sea life. See Jeff Leeds, *Coastal Commission OKs Permit for Long Beach Port Terminal*, L.A. TIMES (Jan. 9, 1997, 12:00 AM), <https://www.latimes.com/archives/la-xpm-1997-01-09-me-16951-story.html>; Greg Krikorian, *Coastal Commission Delays Action on Plan for \$2-Billion Port Project*, L.A. TIMES (Aug. 13, 1992, 12:00 AM), <https://www.latimes.com/archives/la-xpm-1992-08-13-me-5625-story.html>.

11. See STATE OF CAL., NAT. RES. AGENCY, CALIFORNIA COASTAL COMMISSION ENVIRONMENTAL JUSTICE POLICY 4 (2019).

We then discuss the origins of the Coastal Act, and development of an EJ Policy. Next, we discuss provisions of the Coastal Act and other areas of law that provide coastal land use agencies with authority to promote environmental justice. Finally, the article discusses the various coastal land use decision-making processes and notes concrete ways that agencies can integrate environmental justice into their decision-making.

## II. THE IMPACTS OF PORT DEVELOPMENT ON ENVIRONMENTAL JUSTICE COMMUNITIES

The severe impacts from ports and port-related development are well-documented by the communities closest to these impacts and acknowledged by ports and regulators alike. While the precise local and regional impacts vary by location, it is possible to generalize some of the impacts from seaports. Below is a summary of some studies by communities, academics, the ports, and regulators of the impacts from port-related activities, but each community has a localized experience and should be consulted directly for a full understanding of the existing, future, and historical harms.

### A. *Ports and Port-Related Development Contribute to Unhealthy Air Quality*

Poor air quality is a major concern for residents who live near ports, as it has been linked to serious short and long-term health issues, including impacts to respiratory and cardiovascular systems, cancer, premature births, and premature death.<sup>12</sup> The majority of port air emissions come from ships,

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12. See, e.g., CITY OF LONG BEACH DEPT. OF HEALTH AND HUM. SERVS., COMMUNITY HEALTH ASSESSMENT 120-21 (2013); HARBOR CMTY. BENEFIT FOUND., *supra* note 5, at 184 fig. 21. In the Bay Area Air Quality Management District (BAAQMD), cancer risk-weighted emissions in the Bay Area are highest in areas in proximity to transportation infrastructure, including freeways, seaports, and airports. PHILIP MARTIEN ET AL., BAY AREA AIR QUALITY MGMT. DIST., IMPROVING AIR QUALITY & HEALTH IN BAY AREA COMMUNITIES: COMMUNITY AIR RISK EVALUATION PROGRAM RETROSPECTIVE & PATH FORWARD 2003-2014, at 32 (2014), [https://www.baaqmd.gov/~media/Files/Planning%20and%20Research/CARE%20Program/Documents/CARE\\_Retrospective\\_April2014.ashx?la=en](https://www.baaqmd.gov/~media/Files/Planning%20and%20Research/CARE%20Program/Documents/CARE_Retrospective_April2014.ashx?la=en). A 2006 CARB analysis found there were 2,400 premature deaths, 62,000 cases of asthma symptoms, and more than one million respiratory-related school absences a year related to port and goods movement pollution. AIR RES. BD, *Air Resources Board Approves Emission Reduction Plan for California Ports* (April 20, 2006), <https://ww2.arb.ca.gov/news/air-resources-board-approves-emission-reduction-plan-california-ports>. A 2007 study found that annually 60,000 lives are lost due to ship-related air emissions. James Corbett et al., *Mortality from Ship Emissions: A Global Assessment*, 41 *Env't Sci. & Tech.* 8512, 8517 (2007). Port-related land uses emit toxic pollutants, such as diesel particulate matter (“diesel PM”), particulate matter (“PM”), hydrocarbons (“HC”), and nitrogen oxides (“NOx”). See MARTIEN ET AL., *supra* note 12, at 52; see also U.S. EPA OFF. INSPECTOR GEN., 09-P-0125, EPA NEEDS TO IMPROVE ITS EFFORTS TO REDUCE AIR EMISSIONS AT U.S. PORTS 1 (2009),

trucks, cargo-handling equipment, trains, and harbor craft that run on diesel,<sup>13</sup> all of which contribute to poor local air quality.<sup>14</sup> The cumulative impact of port operations, in addition to industrial development along freight corridors, and freight traffic<sup>15</sup> result in high amounts of toxic air emissions that impact local<sup>16</sup> and regional<sup>17</sup> air quality.

Port-related air pollution is especially toxic to neighboring communities due to permanent health impacts on adults and children.<sup>18</sup> Studies conducted in the South Coast Air Quality Management District and the Bay Area Air Quality Management District have shown that cancer risks are highest near ports and other sources of diesel particulate matter (“diesel PM.”).<sup>19</sup> Children who live or go to school near freeway traffic have been shown to have serious problems with lung development as compared with children living further

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<https://www.epa.gov/sites/production/files/2015-11/documents/20090323-09-p-0125.pdf>; CAL. EPA OFF. OF ENV'T HEALTH HAZARD ASSESSMENT, PROPOSED IDENTIFICATION OF DIESEL EXHAUST AS A TOXIC AIR CONTAMINANT 1-1 (1998), <https://ww3.arb.ca.gov/regact/diesltac/partb.pdf>.

13. EPA OFF. INSPECTOR GEN., *supra* note 12, at 1.

14. For example, in one community, port operations were the highest contributor of PM<sub>2.5</sub> within a port-adjacent study area. PAUL ALLEN ET AL., *supra* note 6, at 11.

15. The freeways that connect ports to the rest of the region carry substantial port-related diesel truck traffic. Douglas Houston et al., *Disparities in Exposure to Automobile and Truck Traffic and Vehicle Emissions Near the Los Angeles—Long Beach Port Complex*, 104 AM. J. PUB. HEALTH 156, 156 (2014); see also Tony Barboza, *Freeway Pollution Travels Farther than We Thought. Here's How to Protect Yourself*, L.A. TIMES (Dec. 30, 2017), <https://www.latimes.com/local/california/la-me-freeway-pollution-what-you-can-do-20171230-htmlstory.html>. In Southern California, 76% of CO emissions, 45% of volatile organic compounds (VOC), and 63% percent of NOx emissions come from on-road mobile source emissions, such as cars and trucks. Houston et al., *supra* note 9, at 566.

16. Often, industrial land uses can have hyperlocal impacts. For example, West, Central, and North Long Beach had twenty times more diesel PM than a neighborhood less than a mile away. Brian Addison, *Long Beach's Most Marginalized Neighborhoods Bear the Biggest Burden Environmentally*, LONGBEACHIZE (Aug. 10, 2017, 10:15 AM), <https://lbpost.com/longbeachize/urban-design/who-bears-the-biggest-burden>; PAUL ALLEN ET AL., *supra* note 6.

17. Houston et al., *supra* note 9, at 566 (citing S. COAST AIR QUALITY MGMT. DIST., 2003 DRAFT AIR QUALITY MANAGEMENT PLAN (2003)) (describing how secondary pollutants can be formed downwind from emission sources).

18. CATALINA GARZON-GALVIS ET AL., *supra* note 5, at 12; CAL. EPA, OFF. OF ENV'T HEALTH HAZARD ASSESSMENT, *supra* note 12. In Southern California, approximately seventy percent of estimated carcinogenic risk for air toxins are due to diesel particulate emissions. Houston et al., *supra* note 9, at 585.

19. See S. COAST AIR QUALITY MGMT. DIST., MATES V: MULTIPLE AIR TOXICS EXPOSURE STUDY, FINAL REPORT 4-12-4-16 (Aug. 2021), <http://www.aqmd.gov/docs/default-source/planning/mates-v/mates-v-final-report-9-24-21.pdf?sfvrsn=6>; MARTIEN ET AL., *supra* note 12, at 35; AIR RES. BD., SUPPLEMENT TO THE JUNE 2010 STAFF REPORT ON PROPOSED ACTIONS TO FURTHER REDUCE DIESEL PARTICULATE MATTER AT HIGH-PRIORITY CALIFORNIA RAILYARDS A-18 (July 5, 2011), <http://www.arb.ca.gov/railyard/commitments/suppcomceqa070511.pdf>.

away<sup>20</sup> and are at a higher risk of developing asthma and bronchitis symptoms.<sup>21</sup> Air pollution also impacts adults; a study showed that adults with asthma who spent just two hours walking on a street with heavy diesel traffic suffered acute health impacts.<sup>22</sup> There are also short-term health effects from exposure to pollution from ports, such as irritation of the eyes, nose, throat, and lungs, nausea, headaches, and higher susceptibility to other allergens like dust and pollen.<sup>23</sup> As a result, studies have shown that communities across the globe pay high costs that can be attributed to port and goods movement pollution.<sup>24</sup> These serious health impacts are not a surprise to ports. The Port of Long Beach, for example, acknowledges that port operations contribute to elevated health risks as high as 501 in a million in some areas.<sup>25</sup>

These impacts harm communities that are disproportionately poor and people of color.<sup>26</sup> The most sensitive populations within those communities,

20. Because lung development is nearly complete by age eighteen, individuals with a deficit during this age will probably continue to have less than healthy lung function for the rest of their lives. Hricko, *supra* note 12, at A80.

21. See CATALINA GARZON-GALVIS ET AL., *supra* note 5, at 12.

22. Hricko, *supra* note 12, at A80 (citing a study published in December 2007, in the *New England Journal of Medicine*).

23. CAL. EPA, OFF. OF ENV'T HEALTH HAZARD ASSESSMENT, *supra* note 12.

24. See, e.g., *Overview: Diesel Exhaust & Health*, CAL. AIR RES. BD., <https://ww2.arb.ca.gov/resources/overview-diesel-exhaust-and-health> (last accessed Feb. 14, 2022) (stating that, in California, approximately 730 non-cancer deaths, 160 hospitalizations, and 370 asthma-related emergency room visits can be attributed to diesel pollution); S.J. Brandt et al., *Costs of Childhood Asthma Due to Traffic-Related Pollution in Two California Communities*, 40 *EURO. RESPIRATORY J.* 363, 363-69 (2012), <http://doi.org/10.1183/09031936.00157811> (researchers estimated an annual health cost of \$18 million for asthma and exacerbations of asthma due to freight-related air pollution in two Southern California communities impacted by goods movement activities); AIR RES. BD., APPENDIX D: HEALTH IMPACTS OF ON-ROAD DIESEL VEHICLES D-4 (2008), <https://www.arb.ca.gov/regact/2008/truckbus08/appd.pdf> (explaining that CARB estimates that diesel PM from trucks and buses contributed to roughly 4,500 premature deaths across California in 2008); James J. Corbett et al., *Mortality from Ship Emissions: A Global Assessment*, *ENVIRO. SCI. TECH.* (2007), <https://earthjustice.org/sites/default/files/black-carbon/corbett-2007.pdf> (estimating ship emissions contribute to 60,000 premature deaths globally); AIR RES. BD., *Air Resources Board Approves Emission Reduction Plan for California Ports* (April 20, 2006), <https://ww2.arb.ca.gov/news/air-resources-board-approves-emission-reduction-plan-california-ports> (describing how CARB identified 2,400 premature heart-related deaths, among other health impacts, associated with port and goods movement pollution in California alone in 2006).

25. PORT OF LONG BEACH, PORT OF LONG BEACH COMMUNITY IMPACT STUDY 1-1, 2-7 (2016) (“The Port [of Long Beach] recognizes, however, that its environmental impacts have had years to accumulate, and even the Port’s cutting-edge and aggressive mitigation efforts do not fully address the cumulative effects of Port operations on neighboring communities.”).

26. Black, Latinx, and Asian American residents in the Northeast and Mid-Atlantic regions are more likely than white residents to be exposed to high levels of PM2.5 and face increased health harms. UNION OF CONCERNED SCIENTISTS, *INEQUITABLE EXPOSURE TO AIR POLLUTION FROM VEHICLES IN THE NORTHEAST AND MID-ATLANTIC* 2 (2019),

such as children, pregnant people and their fetuses, the elderly, and people with respiratory and cardiopulmonary conditions, are the most heavily harmed.<sup>27</sup> Workers in the freight transport industry, such as truck drivers and other operators of diesel-powered vehicles, are also disproportionately exposed to harmful emissions.<sup>28</sup> For these reasons, it is crucial to consider any new development or expansion in the context of the existing cumulative and toxic air pollution burdens port-adjacent communities already face.

### B. Other Port Impacts on Daily Life

While unhealthy air is a major concern for port-adjacent communities, port developments also have other localized impacts on surrounding communities, such as infringement on coastal access, displacement, and quality-of-life impacts. Ports are often physical barriers between a coastal community and the coast, and port-related industrial development reduces areas available for open space<sup>29</sup> and reduces the opportunities for public or active transportation in adjacent communities.<sup>30</sup> Ports, and port-related development and traffic, make port-adjacent areas less accessible and

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<https://www.ucsusa.org/sites/default/files/attach/2019/06/Inequitable-Exposure-to-Vehicle-Pollution-Northeast-Mid-Atlantic-Region.pdf>; see also Houston et al., *supra* note 9, at 571 (describing disparate impact from living near high-density traffic on Californian children of color and poor children).

27. PORT OF LONG BEACH, *supra* note 25, at 2-5.

28. CATALINA GARZON-GALVIS ET AL., *supra* note 5, at 12; Marla Cone, *Diesel—The Dark Side of Industry*, L.A. TIMES (May 30, 1999), <https://www.latimes.com/archives/la-xpm-1999-may-30-mn-42608-story.html> (“At the Ports of Long Beach and Los Angeles—massive operations that are filled with trucks, ships, trains, and cranes—workers breathe some of the most severe doses of diesel exhaust found anywhere in California.”).

29. CITY OF LONG BEACH, DEPT. OF HEALTH AND HUM. SERVS., *supra* note 12, at 123 (highlighting the need for more open and green space in Long Beach); Letter from Maricela Morales, Exec. Dir., Cent. Coast All. United for a Sustainable Econ. to the Coastal Comm’n Staff (Nov. 6, 2018) (on file with authors); HARBOR CMTY. BENEFIT FOUND., *supra* note 5, at 121 (“Stakeholders maintain that if it were not for the Port of Los Angeles, San Pedro and Wilmington would have some of the best and most expensive coastal views.”); SCOTT L. CUMMINGS, BLUE AND GREEN: THE DRIVE FOR JUSTICE AT AMERICA’S PORT 61-64 (2018) (describing efforts by community activists in Wilmington to gain recreational access to the harbor, among other demands).

30. See PORT OF LONG BEACH, *supra* note 25, at 3-1.

desirable to visit.<sup>31</sup> Freight activity generates substantial levels of noise, affecting quality of life.<sup>32</sup>

Throughout history, many communities and community resources have been displaced by ports and port-related development,<sup>33</sup> starting with the Indigenous peoples originally displaced and dispossessed of their traditional lands.<sup>34</sup> For example, starting in the nineteenth century, Tongva communities were violently displaced in what is now called the San Pedro Bay by American settlers to make way for oil extraction and the physical reshaping of the harbor to suit their developments.<sup>35</sup> Indigenous peoples, in addition to other communities of color, continue to bear disproportionate harms from industrial port development.

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31. HARBOR CMTY. BENEFIT FOUND., *supra* note 5, at x-xi (describing how industrial land use negatively impacts pedestrian and bicycle activity, driver safety, and beach water quality, among other adverse impacts). Pollution impacts include water contamination carried by runoff from paved surfaces for freight activities. See Lakis Polycarpou, *No More Pavement! The Problem of Impervious Surfaces*, COLUM. UNIV. (July 13, 2010), <https://blogs.ei.columbia.edu/2010/07/13/no-more-pavement-the-problem-of-impervious-surfaces/>.

32. Port-related truck and train traffic also generates significant noise along neighborhoods, parks, and schools. See PORT OF LONG BEACH, *supra* note 25, at 4-1; Debbie L. Sklar, *Port of San Diego Releases Barrio Logan Nighttime Noise Report*, TIMES OF SAN DIEGO (July 9, 2020), <https://timesofsandiego.com/crime/2020/07/09/port-of-san-diego-releases-barrio-logan-nighttime-noise-report> (describing how nighttime noises from trucks, bells and horns from rail, constant freeway noise, and operations at the waterfront disrupt residents of Barrio Logan near the Port of San Diego).

33. A close-knit Japanese-American fishing community was forcibly displaced from Terminal Island during World War II and internment and replaced by industrial facilities, warehouses, and a prison. Hadley Meares, *Off the Coast of San Pedro, a Japanese Community Erased*, CURBED L.A. (Mar. 30, 2018, 11:35 AM), <https://la.curbed.com/2018/3/30/17147942/san-pedro-history-terminal-island-internment>; Martin Macias Jr., *Furusato: The Lost Japanese Fishing Village Between LA's Ports*, COURTHOUSE NEWS SERV. (June 12, 2018), <https://www.courthousenews.com/furusato-the-lost-japanese-fishing-village-in-las-port/>. While this community was not directly displaced by port development, their story is reminiscent of many other communities that have been bulldozed and removed for more “productive” development. *Id.*

34. See KATHRYN NORTON-SMITH ET AL., USDA, CLIMATE CHANGE AND INDIGENOUS PEOPLES: A SYNTHESIS OF CURRENT IMPACTS AND EXPERIENCES 69 (Oct. 2016), [https://www.fs.fed.us/pnw/pubs/pnw\\_gtr944.pdf](https://www.fs.fed.us/pnw/pubs/pnw_gtr944.pdf) (“In the context of development, the interests of the federal government have often clashed with the interest of affected indigenous peoples. In these cases, institutionalized racism has often affected decisions about land ownership, participation, consultation, and decisionmaking.”). As part of UCLA’s Mapping Indigenous LA Story Map project, Craig Torres, a Tongva educator, described the displacement and dispossession of Tongva villages and communities by Spanish, Mexican, and American settlers in what is currently called Los Angeles. See Craig Torres et al., *Perspectives on a Selection of Gabrieleño/Tongva Places*, MAPPING INDIGENOUS LA (citing Mapping Indigenous LA, *Craig Speaks About Importance of the LA Harbor*, YOUTUBE (Oct. 5, 2015), <https://www.youtube.com/watch?v=Pu1a9fxz4tc>), <https://arcg.is/mLH1rhttps://mila.ss.ucla.edu> (last visited Feb. 14, 2022).

35. Craig Torres et al., *supra* note 35.

In recent years, freeway and rail expansions have continued to threaten communities with displacement.<sup>36</sup> Port expansions and new or growing industrial development are often used to justify highway and rail expansions.<sup>37</sup> For example, a proposed expansion of the I-710 freeway that connects the San Pedro Bay Ports to the region, expected to carry an additional 36,000 trucks daily, was slated to displace hundreds of homes, businesses, and community spaces, despite almost twenty years of community advocacy<sup>38</sup> and recognized impacts on adjacent communities, including air and noise pollution.<sup>39</sup>

Lastly, ports are also major contributors to climate change. Measures that center equity and reduce the localized emissions and harms on nearby communities can simultaneously reduce greenhouse gas emissions.<sup>40</sup> Port-

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36. Freeways in particular have a long and racist history of bulldozing and fracturing entire communities. Eric Raymond Avila, *Reinventing Los Angeles: Popular Culture in the Age of White Flight, 1940-1965*, at 20, 176 (1997) (Ph.D. dissertation, University of California, Berkeley) (ProQuest). Displacement has been an integral part of urban development since the 19th Century, when an urban renewal effort to create the Paris we are familiar with today evicted 10,000 poor people and displaced them to the periphery of the city. ERIC AVILA, *THE FOLKLORE OF THE FREEWAY: RACE AND REVOLT IN THE MODERNIST CITY* 9 (2014); *see also* SCOTT L. CUMMINGS, *supra* note 29, at 67 (“The Alameda Corridor rail line cut through East Wilmington, eliminating many of the gritty neighborhood’s only businesses . . .”).

37. *See* Complaint Under Title VI of the Civil Rights Act of 1964 from Erin Gaines et al., Att’y, Tex. RioGrande Legal Aid, Inc. to Fed. Highway Admin. (Mar 5, 2015) (on file with authors) (describing how the Harbor Bridge expansion, proposed by the Texas Department of Transportation to facilitate fossil fuel exports, would disparately impact Black neighborhoods through increased air pollution and noise, as well as reduce property values); *see also* Plaintiffs’ Opening Brief at 4-5, *Fast Lane Transp., Inc. v. City of L.A.*, No. CIVMSN14-300 (Cal. Super Feb. 27, 2015) (describing how a proposed railyard would add over a million new truck trips and thousands of new train trips to accommodate increased cargo throughput at the Port of Los Angeles).

38. L.A. CNTY. METRO. TRANSP. AUTH., I-710 SOUTH CORRIDOR PROJECT 4 (2020), <https://media.metro.net/2020/I-710-Corridor-Project-Next-Steps-Combined.pdf>; STATE OF CAL. DEP’T OF TRANSP. & THE L.A. CNTY. METRO TRANSP. AUTH., I-710 CORRIDOR PROJECT 32 (July 2017), [http://media.metro.net/projects\\_studies/I710/images/DEIR-SEIS/RDEIR\\_SDEIS-July-2017.pdf](http://media.metro.net/projects_studies/I710/images/DEIR-SEIS/RDEIR_SDEIS-July-2017.pdf).

39. “Although I can’t imagine Los Angeles without its freeways, we are fully aware of the possibilities and problems of the freeway metropolis, for example, smog, congestion and blight. These have been the most severe consequences of highway construction, not to mention our deepening addiction to fossil fuels.” *Q&A: Eric Avila on the Bitter Legacy of L.A.’s Freeways*, UCLA NEWSROOM (Feb. 5, 2015), <https://newsroom.ucla.edu/stories/q-a-eric-avila-on-the-bitter-legacy-of-l-a-s-freeways>.

40. CAL. AIR RES. BD., CALIFORNIA GREENHOUSE GAS EMISSIONS FOR 2000 TO 2018, at 6, 18-19 (2020), [https://ww3.arb.ca.gov/cc/inventory/pubs/reports/2000\\_2018/ghg\\_inventory\\_trends\\_00-18.pdf](https://ww3.arb.ca.gov/cc/inventory/pubs/reports/2000_2018/ghg_inventory_trends_00-18.pdf); PORT OF LONG BEACH, *supra* note 25, at 2-4.

adjacent communities also face heightened vulnerability to the effects of climate change, including sea level rise.<sup>41</sup>

*C. Port Growth Will Exacerbate Impacts, And Local Benefits Are Oversold*

Communities near ports and freight corridors have pushed back against the infinite expansion of port facilities and cargo throughput due to concerns that this growth will exacerbate existing burdens and public health impacts.<sup>42</sup> Often, the health and quality of life of predominantly low-income, Black, Latinx, and/or immigrant communities are sacrificed to accommodate expansion of industrial facilities.<sup>43</sup>

Many U.S. ports are expanding to capitalize on rising international trade volumes.<sup>44</sup> On the West Coast, containerized shipping has increased at ports by over 2,000% since the 1970s.<sup>45</sup> Online retail, especially since 2020, has driven an increase in port cargo volumes, with some ports having their highest cargo volumes ever,<sup>46</sup> at the same time that the global COVID-19

41. Rosanna Xia, *Must Reads: Destruction from Sea Level Rise in California Could Exceed Worst Wildfires and Earthquakes, New Research Shows*, L.A. TIMES (Mar. 13, 2019, 5:00 AM), <https://www.latimes.com/local/lanow/la-me-california-coast-storm-damage-20190313-story.html>.

42. See, e.g., Letter from Maricela Morales, *supra* note 29 (“When ports, power plants, and oil refineries in coastal environmental justice communities propose to expand or redevelop, polluting the air of nearby communities, or companies leave behind old industrial facilities and toxic waste, contaminating the soil for neighboring residents, this threatens public health.”); Letter from Long Beach All. for Child. with Asthma et al. to Matthew Arms, Dir. of Env’t Planning and Members of the Harbor Comm’n (Oct. 3, 2019) (on file with authors).

43. See, e.g., CUMMINGS, *supra* note 29, at 61-68 (explaining how despite years of community advocacy, community-driven proposals at the San Pedro Bay Ports stalled while port expansions were approved and constructed).

44. Bureau of Transp. Stats., *Long-Term Trends in Container Throughput*, U.S. DEP’T OF TRANSP. (Jul. 27, 2012), [https://www.bts.gov/archive/publications/americas\\_container\\_ports/2011/long\\_term\\_trends](https://www.bts.gov/archive/publications/americas_container_ports/2011/long_term_trends).

45. Angie Fredrickson, *The California Coastal Act and Ports: The Unintended Environmental Justice Implications of Preserving California’s Coastline*, 41 COASTAL MGMT. 258, 260 (2013).

46. *Port of Long Beach Marks Record Year After Imports Spike*, CONTAINER MGMT. (Jan. 19, 2021), <https://container-mag.com/2021/01/19/port-of-long-beach-marks-record-year-after-imports-spike/>; *Port of Oakland Loaded Imports Up 11% in December 2020*, MARITIME EXEC. (Jan. 14, 2021), <https://maritime-executive.com/corporate/port-of-oakland-loaded-imports-up-11-in-december-2020>. The Ports of LA and Long Beach moved record-breaking cargo volumes in 2021, each experiencing their busiest years ever. See *Port of Long Beach Sets Annual Record with 9.38 Million TEUs*, PORT LONG BEACH (Jan. 19, 2022), <https://polb.com/port-info/news-and-press/port-of-long-beach-sets-annual-record-with-9-38-million-teus-01-19-2022/>; *Los Angeles Breaks Cargo Record in 2021, Sets Priorities for 2022*, PORT L.A. (Jan. 20, 2022), [https://www.portoflosangeles.org/references/2022-news-releases/news\\_012022\\_sotp](https://www.portoflosangeles.org/references/2022-news-releases/news_012022_sotp).

pandemic has devastated communities, particularly communities of color and those exposed to elevated levels of air pollution.<sup>47</sup>

For example, the Ports of Los Angeles and Long Beach, already the largest ports in the country, are planning to more than double their cargo volumes by 2040.<sup>48</sup> As of the writing of this article, the Port of Oakland,<sup>49</sup> the Ports of Los Angeles and Long Beach,<sup>50</sup> and the Port of Hueneme<sup>51</sup> have planned expansions or have completed significant expansions in the past four to five years. Port-adjacent communities have raised concerns about how planned port expansions will continue to disproportionately harm the surrounding communities.<sup>52</sup>

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47. At the same time that communities of color were dying at disproportionate rates from the virus, ports used the pandemic as an excuse to delay their environmental programs. *Port of Long Beach Delays New Clean Truck Rate*, ASS'N OF PACIFIC PORTS (Aug. 6, 2020), <https://www.pacificports.org/port-of-long-beach-delays-new-clean-truck-rate/>. The fact that they ended the year with record cargo volumes speaks to the public health burden that communities were forced to suffer for others' economic gain. Even worse, because global shipping ticked up so rapidly towards the end of 2020, many cargo and cruise ships idled at-anchor in the LA and Long Beach harbor, spewing diesel pollution for weeks or months without mitigation, or even government accounting of the health impacts. For more information, see Rose Szoke & Jacob Goldberg, *San Pedro Bay Ports Clean Air Action Plan*, SAN PEDRO BAY PORTS (Jan. 27, 2021), <https://cleanairactionplan.org/about-the-plan/stakeholder-advisory-group/>, and Freight Working Group #5, *LA County Goods Movement Strategic Plan*, L.A. CNTY. METRO. TRANSP. AUTH. (Jan. 19, 2021).

48. MERCATOR INT'L LLC & OXFORD ECON., SAN PEDRO BAY LONG-TERM UNCONSTRAINED CARGO FORECAST 4 (Jan. 2016), <http://docplayer.net/storage/63/50080768/1618168514/cperFmBOQpORdrosoIrYmg/50080768.pdf>.

49. *TraPac Expansion*, PORT OF OAKLAND, <https://www.portoakland.com/year-review-2018/growing-our-business/trapac-expansion/> (last visited Feb. 14, 2022) ("The Port of Oakland's second-largest marine terminal is now nearly twice as large.").

50. Mercator Int'l LLC & Oxford Econ., *supra* note 52.

51. See *First PLA Project in Port History Breaks Ground*, PORT OF HUENEME (July 2019), <https://www.portofhueneme.org/port-modernization-groundbreaking-july-2019>; KRISTIN DECAS ET AL., THE PORT OF HUENEME OXNARD HARBOR DIST., COMPREHENSIVE ANNUAL FINANCIAL REPORT 6 (2018) ("This [project] will result in less trucking and more rail on/off moves for the OEMs, and allow for increases in capacity and throughput for the ro-ro segment."); *id.* at 7 ("The deeper water will allow the Port to handle deeper draft ro-ro vessels and creates the very real potential for increased business in non-automotive cargoes as well.").

52. See, e.g., Lucia Marquez, *Guest Column: Port of Hueneme Needs to Commit to a Zero Emissions Policy*, VENTURA CNTY STAR (Jan. 23, 2022, 5:13 PM), <https://www.vcstar.com/story/opinion/columnists/2022/01/24/column-port-hueneme-needs-commit-zero-emissions-policy/6599784001/> (describing the need for the growing Port to take aggressive action to reduce emissions); Andrea Lopez-Villafaña, *Truck Traffic Around San Diego's Portside Neighborhood Would Triple with New Deal*, SAN DIEGO UNION-TRIB. (Dec. 8, 2020, 8:44 PM), <https://www.sandiegouniontribune.com/communities/san-diego/story/2020-12-08/truck-traffic-around-san-diegos-portside-neighborhood-would-triple-with-new-deal> (describing community advocacy calling for zero emission technology in response to a proposed development that would double diesel truck traffic); Meena Palaniappan, *Ditching Diesel*, REIMAGINE, <http://www.reimaginepe.org/node/163> (last visited Mar. 16, 2021) (describing community

While ports and industry often reference job benefits associated with expansions, the local job benefits are not always seen by residents to the extent promised.<sup>53</sup> Furthermore, some communities have seen a decline in the quality of jobs available as a result of port expansions, leading to rising concerns about worker misclassification<sup>54</sup> and reduced access to secure and high-paying employment.<sup>55</sup> Port truck drivers have mobilized in many places to insist that they be properly classified as employees and receive all wages and benefits due to them.<sup>56</sup> Ultimately, offering low-paying and non-union jobs reduces the industry's costs while increasing local and state spending due to the need to support low-wage workers through subsidized rent, development of affordable housing, and health care costs.<sup>57</sup> Even the localized benefits that do materialize must be considered alongside the accumulation of many different burdens that go beyond exposure to pollution. Not only are there health and cultural harms but also harms due to wage theft, over-policing, immigration enforcement, and the economic impacts from displacement, medical costs, lost workdays due to illness, and decreases in property values.<sup>58</sup>

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advocacy to shift truck traffic, including growing port traffic, away from West Oakland communities).

53. HARBOR CMTY. BENEFIT FOUND., *supra* note 5, at 188-97; CATALINA GARZON-GALVIS ET AL., *supra* note 5, at 24.

54. Misclassification consists of the illegal labelling of workers as independent contractors rather than employees, which allows employers to avoid paying full wages and withhold workers' compensation, unemployment insurance, and other workplace protections. See *Solutions to Independent Contractor Misclassification*, NELP, <https://www.nelp.org/campaigns/misclassification/> (last visited Feb. 14, 2022).

55. See *Port of Hueneme Expansion: How Would It Impact Us?*, *supra* note 5.

56. See REBECCA SMITH ET AL., THE BIG RIG OVERHAUL: RESTORING MIDDLE-CLASS JOBS AT AMERICA'S PORTS THROUGH LABOR LAW ENFORCEMENT 7-9 (2014), <http://www.laane.org/wp-content/uploads/2014/02/BigRigOverhaul2014.pdf>; see also Jessica Durrum, *Global Codes of Conduct Put to the Test by CA Driver Misclassification*, PORT INNOVATIONS (Sept. 12, 2019), <http://portinnovations.com/global-codes-of-conduct-put-to-the-test-by-ca-driver-misclassification/> (describing a 2019 port truck drivers' strike due to violations of labor standards).

57. See, e.g., Sarah Kaplan, *Study: When Companies Pay Low Wages, Taxpayers End Up with the Rest of the Bill*, WASH. POST (Apr. 13, 2015), <https://www.washingtonpost.com/news/morning-mix/wp/2015/04/13/study-when-companies-pay-low-wages-taxpayers-end-up-with-the-rest-of-the-bill/>; LAURA DRESSER, CTR. ON WISC. STRATEGY, WHEN WORK DOESN'T PAY: THE HIDDEN COST OF LOW-WAGE JOBS IN WISCONSIN 1-2 (2006), [https://laborcenter.berkeley.edu/pdf/2006/when\\_work\\_doesnt\\_pay.pdf](https://laborcenter.berkeley.edu/pdf/2006/when_work_doesnt_pay.pdf).

58. HARBOR CMTY. BENEFIT FOUND., *supra* note 5, at 183-86 (local employment impacts); *id.* at 198-210 (impacts on real estate values from industrial uses); ASTHMA & ALLERGY FOUND. OF AM., ASTHMA CAPITALS 2019: THE MOST CHALLENGING PLACES TO LIVE WITH ASTHMA 30 (2019), <https://www.aafa.org/media/2426/aafa-2019-asthma-capitals-report.pdf>; Houston et al., *supra* note 9, at 566-67; CATALINA GARZON-GALVIS ET AL., *supra* note 5, at 5.

Through decades of community organizing, litigation, and environmental justice advocacy, communities have brought about new policies and changes in operations at California's ports that have reduced pollution, forced California ports to become leaders in clean technology, and shifted the goods movement industry. For example, community advocacy brought about the first Clean Air Action Plan at the ports of Los Angeles and Long Beach in 2006.<sup>59</sup> The Plan was more recently updated in 2017 after community organizing brought about commitments by the Mayors of Los Angeles and Long Beach to achieve zero-emission cargo handling equipment operations by 2030, and to transition to zero-emission trucks by 2035.<sup>60</sup> However, continued port growth and expansions have continued to inflict harms on communities despite these wins. The Clean Air Action Plan has been lauded as reducing diesel pollution 87% since 2006; however, many of these gains were achieved in the early years of the program, and emissions have not significantly improved in recent years, and state data indicates that the ports released significant excess emissions while processing rising cargo volumes in 2021.<sup>61</sup> Enforcement can also be barrier to achieving program

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59. CUMMINGS, *supra* note 29, at 59-101 (describing the decades of community and labor activism that led up to the CAAP); *see also* Tony Barboza, *L.A. and Long Beach Mayors Sign Pact Setting Zero-Emissions Goals for Ports*, L.A. TIMES (June 12, 2017, 2:45 PM), <https://www.latimes.com/local/california/la-me-ports-clean-air-20170612-story.html>.

60. *See* Tony Barboza, *supra* note 62; PORT OF LONG BEACH & PORT OF L.A., SAN PEDRO BAY PORTS: CLEAN AIR ACTION PLAN 2017, at 4 (2017), <https://cleanairactionplan.org/documents/final-2017-clean-air-action-plan-update.pdf/>.

61. *Compare* STARCREST CONSULTING GRP., PORT OF LONG BEACH 2016 AIR EMISSIONS INVENTORY (2017), <https://polb.com/download/14/emissions-inventory/6565/2016-air-emissions-inventory.pdf>, STARCREST CONSULTING GRP., PORT OF LONG BEACH 2017 AIR EMISSIONS INVENTORY (2018), <https://polb.com/download/14/emissions-inventory/6564/2017-air-emissions-inventory.pdf>, *and* STARCREST CONSULTING GRP., PORT OF LONG BEACH 2018 AIR EMISSIONS INVENTORY (2019), <https://polb.com/download/14/emissions-inventory/7853/2018-air-emissions-inventory.pdf>, *with* STARCREST CONSULTING GRP., PORT OF LONG BEACH 2019 AIR EMISSIONS INVENTORY (2020), <https://polb.com/download/14/emissions-inventory/10596/2019-air-emissions-inventory.pdf>, *and* 2020 Emissions Inventory, PORT LONG BEACH, <https://polb.com/environment/air/#emissions-inventory> (last visited Mar. 1, 2022). A report by the California Air Resources Board shows that emissions are rising due to increased cargo activity. *Emissions of Freight Movement Increases and Congestion Near Ports of Los Angeles and Long Beach: Jan. 2022*, Cal. Air. Res. Bd. (Jan. 27, 2022), [https://ww2.arb.ca.gov/sites/default/files/2022-01/SPBP\\_Freight\\_Congestion\\_Emissions\\_Jan2022.pdf](https://ww2.arb.ca.gov/sites/default/files/2022-01/SPBP_Freight_Congestion_Emissions_Jan2022.pdf).

goals.<sup>62</sup> Furthermore, in some cases significant oversight is necessary to ensure compliance with these projects.<sup>63</sup>

The impacts and likelihood of increased growth of ports and of goods movement infrastructure means that agencies need to immediately engage on these issues to prevent continued harm and improve conditions for port-adjacent communities. Decision-making processes related to port and freight corridor developments should meaningfully engage impacted communities from the beginning to incorporate community priorities and solutions, as well as to understand the specific harms and burdens that will be placed on communities by the development.

### III. THE COASTAL ACT AND DEVELOPMENT OF AN ENVIRONMENTAL JUSTICE POLICY

#### A. *History of the Coastal Act*

In the early 1970s, the public recognized that the California coast was becoming privatized, under the patchwork of hundreds of decentralized jurisdictions that were permitting coastal development and jeopardizing the long-term viability of an open and accessible coastline.<sup>64</sup> When the Legislature failed to act on statewide coastal legislation, citizens set out to organize grassroots support for an initiative.<sup>65</sup> Despite industry opposition, they succeeded in passing Proposition 20, the California Coastal Zone Conservation Act of 1972, which provided an overarching coastal policy to preserve long-term public access to the coast and limit development.<sup>66</sup> Under

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62. In the past, a local environmental justice organization in San Diego has raised concerns about increased localized diesel pollution due to a lack of truck route enforcement. *Port of San Diego*, ENV'T HEALTH COAL., <https://www.environmentalhealth.org/index.php/en/where-we-work/san-diego-region/port-of-san-diego> (last visited Feb. 14, 2022).

63. The Port of Oakland set up a Community Benefits Agreement that required the creation of local jobs for port improvement projects, but implementation has been imperfect. CATALINA GARZON-GALVIS ET AL., *supra* note 5, at 24-25. As of 2016, only 3.5% of construction hours were given to West Oakland residents. *Id.*; see also Andrea Lopez-Villafaña, *Barrio Logan Residents Say Enforcement of City-Designated Truck Route Is Low*, SAN DIEGO UNION-TRIB. (Sept. 3, 2019, 5:00 AM), <https://www.sandiegouniontribune.com/communities/san-diego/story/2019-08-30/barrio-logan-residents-say-enforcement-of-city-designated-truck-route-is-low>.

64. In the early 1970s, only 508 out of 1,072 miles of California coast were in the public ownership with 75.3 of those miles along military lands and unavailable for public recreation. CAL. COASTAL ZONE CONSERVATION COMM'N, CALIFORNIA COASTAL PLAN 152 (1975), [https://digitalcommons.law.ggu.edu/cgi/viewcontent.cgi?article=1090&context=caldocs\\_agencies](https://digitalcommons.law.ggu.edu/cgi/viewcontent.cgi?article=1090&context=caldocs_agencies).

65. For more information on the history of Proposition 20, see Janet Adams, *Proposition 20—A Citizens' Campaign*, 24 SYRACUSE L. REV. 1019 (1973).

66. Prop. 20 provided that no permit shall be issued unless the developer makes a showing both that it “will not have any substantial adverse environmental” or ecological effect and that it is

Proposition 20, the California Coastal Plan was developed and many of its 162 recommended policies formed the basis for the Coastal Act.<sup>67</sup>

The California Coastal Act, enacted soon after in 1976, created a Coastal Commission tasked with overseeing coastal planning and development in the state's Coastal Zone.<sup>68</sup> The Act espouses an overarching intent to protect the coast for future generations.<sup>69</sup> Consistent with its grassroots origins, the Coastal Act recognized several overarching goals, including maximizing public access to the coast, protecting and restoring natural areas, balancing development with the social and economic needs of the people, and maximizing public participation in decision-making.<sup>70</sup> The Act also established Coastal Zone boundaries, which generally extend seaward three miles and inland up to five miles, but vary by region.<sup>71</sup> Several California ports, including the Port of Oakland, do not fall within the Coastal Zone and are therefore subject to different oversight than Southern California ports.<sup>72</sup>

The Commission is made up of twelve appointed voting members of which six are elected officials and six are public members (including one environmental justice member), plus three nonvoting members.<sup>73</sup> As a quasi-judicial administrative agency, it is charged with making legal and factual determinations about case-specific development and coastal planning, guided

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consistent with the findings and declarations embedded in the initiative, as well as the statute's long-range planning objectives. *Id.* at 1044.

67. See CAL. COASTAL ZONE CONSERVATION COMM'N, *supra* note 64, at 152; CAL. PUB. RES. CODE § 30002 (West 2018 & Supp. 2021).

68. Generally, the Coastal Commission "is designated as the state coastal zone planning and management agency for any and all purposes." CAL. PUB. RES. CODE § 30330. The Commission may exercise all powers set forth in the Federal Coastal Zone Management Act. *Id.*

69. *Id.* § 30001.

70. *Id.* §§ 30001.5, 30006.

71. For a map of the Coastal Zone boundary, see *Maps: Coastal Zone Boundary*, CAL. COASTAL COMM'N, <http://www.coastal.ca.gov/maps/czb/> (last visited Feb. 14, 2022). "Coastal zone" means that land and water area of the State of California from the Oregon border to the border of the Republic of Mexico, specified on the maps identified and set forth in Section 17 of Chapter 1330 of the Statutes of 1976, extending seaward to the state's outer limit of jurisdiction, including all offshore islands, and extending inland generally 1,000 yards from the mean high tide line of the sea. In significant coastal estuarine, habitat, and recreational areas it extends inland to the first major ridgeline paralleling the sea or five miles from the mean high tide line of the sea, whichever is less, and in developed urban areas the zone generally extends inland less than 1,000 yards. The coastal zone does not include the area of jurisdiction of the San Francisco Bay Conservation and Development Commission, established pursuant to Title 7.2 (commencing with section 66600) of the Government Code, nor any area contiguous thereto, including any river, stream, tributary, creek, or flood control or drainage channel flowing into such area. CAL. PUB. RES. CODE § 30103(a).

72. The Coastal Zone boundaries exclude the San Francisco Bay, which is regulated by the San Francisco Bay Conservation and Development Commission. CAL. COASTAL ZONE CONSERVATION COMM'N, *supra* note 67, at 148.

73. *Commissioners & Alternates*, CAL. COASTAL COMM'N, <https://www.coastal.ca.gov/roster.html> (last visited Feb. 14, 2022).

by the legal standards set forth in the Coastal Act.<sup>74</sup> Its decisions must be supported by substantial evidence, and may be challenged by writ of mandate.<sup>75</sup> It also can issue cease and desist orders on unpermitted developments and to enforce any requirements of a local coastal plan or a port master plan, including against a local government or a port district under certain circumstances.<sup>76</sup> Unlike other quasi-judicial agencies, the Commission is uniquely comprised of political appointees.<sup>77</sup>

In addition to the Coastal Commission, the State Lands Commission (SLC) is a state agency with authority over port land.<sup>78</sup> The SLC is charged with implementing the state common law Public Trust Doctrine and California Constitution, requiring that tidelands and submerged lands along the coast and navigable lakes and rivers<sup>79</sup> are held in trust for the people of California and are used for public purposes.<sup>80</sup> The legislature has granted management of public trust lands to five major ports in California,<sup>81</sup> and the SLC maintains oversight to investigate, audit, and review ports' administration of those lands.<sup>82</sup> Further, the SLC adopted a new

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74. Ralph Faust, *The California Coastal Commission: Increasing Transparency, Accountability, and Opportunities for Effective Public Participation*, 2019 UCLA PRITZKER ENV'T L. & POL'Y BRIEFS, no. 12, at 1.

75. Commission decisions are reviewable under California Code of Civil Procedure section 1094.5.

76. CAL. PUB. RES. CODE § 30809 (West 2018 & Supp. 2021); see also *Enforcement: Coastal Act Violations*, CAL. COASTAL COMM'N, <https://www.coastal.ca.gov/enforcement/> (last visited Mar. 18, 2021).

77. It has been noted that there are inherent conflicts of interest that stem from this administrative design. Deborah A. Sivas, *California Coastal Democracy at Forty: Time for a Tune-up*, 36 STAN. ENV'T L.J. 109, 122 (2016).

78. The State Lands Commission has jurisdiction over "tidelands, submerged lands, the beds of navigable lakes and rivers, and historic tidelands and submerged lands that are presently filled or reclaimed." CAL. CODE REGS. tit. 14, § 13577(f) (2019).

79. *Id.* Tidelands overseen by the SLC in some instances overlap with the Coastal Zone boundary, such as with the Ports of Long Beach, Los Angeles, Oakland, San Diego and San Francisco. *Granted Public Trust Lands: Grantee Information*, CAL. STATE LANDS COMM'N (Aug. 21, 2018), [https://www.slc.ca.gov/granted\\_lands/](https://www.slc.ca.gov/granted_lands/).

80. CAL. CODE REGS. tit. 14, § 13577(f) (including lands for "commerce, navigation, fisheries, recreation, and other public purposes.").

81. These ports include the Ports of Long Beach, Los Angeles, Oakland, San Diego, and San Francisco. These ports are required by various statutes to manage land consistent with the public trust doctrine. *Granted Public Trust Lands: Grantee Information*, *supra* note 79.

82. CAL. STATE LANDS COMM'N, STRATEGIC PLAN 2016-2020, at 27 (2015), <http://www.slc.ca.gov/wp-content/uploads/2018/07/StrategicPlan.pdf>; CAL. PUB. RES. CODE § 6301 (2015 & Supp. 2021); CAL. PUB. RES. CODE § 6306(e); CAL. STATE LANDS COMM'N, *Exhibit A: Public Trust Policy*, in MINUTE ITEM 48 (Dec. 14, 2006), [https://www.slc.ca.gov/Meeting\\_Summaries/2006\\_Documents/12-14-06/Items/121406R48.pdf](https://www.slc.ca.gov/Meeting_Summaries/2006_Documents/12-14-06/Items/121406R48.pdf).

environmental justice policy in December 2018 following significant community input.<sup>83</sup>

Implementation of the Coastal Act has been successful in preserving coastal access for some, but not all, Californians. Particularly with respect to ports, decision-making has tilted toward accommodating growing port footprints to the detriment of the health and well-being of port-adjacent communities. However, there is much untapped potential for the Act to be leveraged to benefit port-adjacent communities. Recent developments, including the 2019 Environmental Justice Policy, have provided a new direction for coastal decision-making moving forward.

### B. *Development of an Environmental Justice Policy*

In 2016, the California Legislature explicitly acknowledged the role of environmental justice in coastal development.<sup>84</sup> Assembly Bill 2616 (AB 2616) gave the Commission and other coastal-development permitting agencies explicit authority to consider environmental justice when considering coastal development permits.<sup>85</sup> AB 2616 also created a position for an Environmental Justice (EJ) member on the Commission, requiring that one of the Governor’s appointees must “reside in, and work directly with,

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83. See generally *Environmental Justice*, CAL. STATE LANDS COMM’N, <https://www.slc.ca.gov/envirojustice/> (last visited Feb. 16, 2022). While this article does not review the SLC’s opportunities to advance environmental justice for port communities, this could be a fruitful area for additional research. In the past, there has been at least one instance where the State Lands Commission issued findings that a proposed coastal development and accompanying Port Master Plan update violated the public trust doctrine. CAL. STATE LANDS COMM’N, MINUTE ITEM 48, *supra* note 82. In that instance, the Commission staff issued detailed factual and legal findings, and determined that a proposed timeshare did not comply with the acceptable uses under the Public Trust. *Id.* The Commission then transmitted these findings to the Port and the Coastal Commission. *Id.*

84. MICHAEL JARRED, CONCURRENCE IN SENATE AMENDMENTS ANALYSIS, A.B. 2616, Reg. Sess. (Cal. 2016).

According to the Office of Environmental Health Hazard Assessment, approximately eight million Californians (twenty-one percent) live in zip codes that are considered “highly impacted” by environmental, public health, and socioeconomic stressors. Nearly half of all Californians live within six miles of a facility that is a significant greenhouse gas emitter (forty-six percent), and they are disproportionately people of color (sixty-two percent). Throughout California, people of color face a fifty percent higher risk of cancer from ambient concentrations of air pollutants listed under the Clean Air Act. These impacts are felt by all Californians. The Air Resources Board estimates that air pollution exposure accounts for 19,000 premature deaths, 280,000 cases of asthma, and 1.9 million lost workdays every year.

*Id.*

85. CAL. PUB. RES. CODE § 30604(h) (West 2018 & Supp. 2021); Legislative analysis concluded that the bill “provides the Commission the ability to consider environmental justice issues when making decisions regarding the California coast.” WILLIAM CRAVEN, SENATE NATURAL RESOURCES AND WATER, A.B. 2616, Reg. Sess. (Cal. 2016).

communities in the state that are disproportionately burdened by, and vulnerable to, high levels of pollution and issues of environmental justice.”<sup>86</sup> AB 2616 also amended the Coastal Act to affirm that anti-discrimination laws apply to all coastal-development permitting agencies.<sup>87</sup>

The Commission’s EJ Policy was developed following AB 2616, to provide guidance for Commissioners, agency staff, and the public on how the agency will implement its authority to consider environmental justice, and to broadly integrate environmental and social justice into the core of agency activities.<sup>88</sup> The EJ Policy explicitly recognizes that implementation of the Coastal Act has not achieved aspirations of equal coastal access, and acknowledges the systemic forces that have resulted in disproportionate over-pollution of communities of color.<sup>89</sup>

Broadly, the EJ Policy commits the Commission to advancing “equitable access to clean, healthy, and accessible coastal environments” for communities that have been historically overburdened by pollution or denied environmental benefits.<sup>90</sup> The Commission is required to conduct in-depth

86. CAL. PUB. RES. CODE § 30301(f).

87. *Id.* § 30013 (adopting language of section 11135(a) of the California Government Code: “No person in the State of California shall, on the basis of race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, genetic information, or disability, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state.”); CAL. PUB. RES. CODE § 30107.3 (adopting the definition of environmental justice in section 65040.12(e) of the California Government Code, providing that “environmental justice means the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies.”).

88. Final Public Review Draft and Motion and Resolution to Adopt the Env’t Just. Pol’y at 5 (Cal. Coastal Comm’n Feb. 22, 2019) (Staff Report), <https://documents.coastal.ca.gov/reports/2019/3/F5/F5-3-2019-report.pdf>; Adopted Tribal Consultation Policy at 2-3 (Cal. Coastal Comm’n Aug. 8, 2018), <https://documents.coastal.ca.gov/assets/env-justice/tribal-consultation/Adopted-Tribal-Consultation-Policy.pdf>. While this Article does not focus on the Tribal Consultation Policy, its implementation is an important factor in how the Coastal Commission will be able to advance environmental justice for indigenous communities.

89. Cal. Coastal Comm’n Env’t Just. Pol’y (Mar. 8, 2019), [https://documents.coastal.ca.gov/assets/env-justice/CCC\\_EJ\\_Policy\\_FINAL.pdf](https://documents.coastal.ca.gov/assets/env-justice/CCC_EJ_Policy_FINAL.pdf). It recognizes the “[g]enerations of injustices towards California’s Native American communities, people of color, and other marginalized populations through forms of discriminatory land use policies, desecration of sacred lands and cultural resources, and concentration of environmental pollution” which has “resulted in inequitable distribution of environmental benefits and burdens.” *Id.* at 2.

90. *Id.*

The Commission will use its legal authority to ensure equitable access to clean, healthy, and accessible coastal environments for communities that have been disproportionately overburdened by pollution or with natural resources that have been subjected to permanent damage for the benefit of wealthier communities. Coastal development should be inclusive for all who work, live, and recreate on California’s coast and provide equitable benefits for communities that have historically been excluded, marginalized, or harmed by coastal development.

analyses of EJ issues in decision-making, consider project alternatives that avoid impacts to EJ communities, propose permit conditions, and mitigate adverse impacts.<sup>91</sup> The Policy also commits the Commission to examining public access to recreation, affordable housing, and clean water in land-use decisions, and to be a voice for maximizing those benefits.<sup>92</sup>

Importantly, environmental justice groups played a key role in shaping the final EJ Policy and AB 2616. Even though they were not compensated for their time and effort, which is often the case, their participation pushed the Commission to develop a much more robust policy than what was initially proposed.<sup>93</sup>

### C. Implementation of the EJ Policy Thus Far

At the time of the writing of this article, it has been more than five years since AB 2616 explicitly gave coastal development agencies authority to consider environmental justice in their decision-making, and three years

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*Id.*; see also *id.* at 16 (providing that the Commission will “explore ways to mitigate for historical forces that excluded low-income people from the coast, by undertaking new measures to encourage coastal access.”).

91. Coastal Comm’n Env’t Just. Pol’y, *supra* note 89, at 10.

When evaluating projects, programs and activities, Commission staff shall consider, when applicable, whether and how proposed development will positively or negatively affect marginalized communities, and will be fully transparent in that analysis in staff reports and presentations. The Commission will make use of CalEnviroScreen, U.S. EPA EJSCREEN, U.S. Census data and/or similar tools and data to identify disadvantaged communities. Where project impacts to disadvantaged or overburdened communities are identified, and where otherwise consistent under the Coastal Act, civil rights and environmental justice laws, the Commission staff shall propose permit conditions to avoid or mitigate those impacts to underserved communities to the maximum extent feasible while protecting coastal resources. Analysis of mitigation measures will include consideration of the technical knowledge and lived experiences of affected communities.

Any third party studies, reports or analyses will be evaluated to ensure they have been conducted by reputable, independent parties, using the best available science and other appropriate knowledge. When warranted by applicable Coastal Act or LCP policies, analysis will assess meaningful alternatives beyond mitigation measures to re-siting projects with negative environmental health impacts in disadvantaged communities, to minimize or avoid adverse impacts to those communities. If viable alternatives are available, consider those in permitting decisions.

*Id.*; see also *id.* at 16 (staff will include an analysis of environmental justice issues in staff reports and proposing mitigation measures).

92. Coastal Comm’n Env’t Just. Pol’y, *supra* note 93, at 10-11 (“The Commission will use the powers within its authority to examine the level of inclusive access to public recreation, affordable housing and clean water in any proposed coastal development, as well as be a voice for maximizing these benefits for disadvantaged communities during review of projects.”).

93. See, e.g., Letter from Marce Gutiérrez-Graudiņš, Founder and Director, Azul et al. to Jack Ainsworth, Executive Director, California Coastal Commission, Re: Comments on the California Coastal Commission’s Draft Environmental Justice Policy (Nov. 7, 2018) (on file with authors); Letter from Maricela Morales, *supra* note 29.

since the EJ Policy was adopted. Some gains have been made, but as of December 2020 the Policy has not yet been tested in the context of port-related development.

A review of the Commission's application of the EJ Policy between its passage in Spring 2019 and December 2020 reveals that the EJ Policy was most often implicated when a proposed project undermined public access for members of an underserved community due to increased costs of coastal amenities, such as parking fees or demolition of low-cost accommodations, or the physical obstruction of a public access route to the coast.<sup>94</sup> In those instances, the Commission conditionally approved projects with modifications intended to offset EJ issues,<sup>95</sup> including requiring more outreach for low-income parking passes, requiring a detailed plan for a sailing program for youth from underserved communities, and requiring construction of additional residential units to address concerns of housing loss.<sup>96</sup>

The Commission has engaged in more robust EJ analysis in at least two instances where it has considered the procedural and substantive impacts on EJ communities. In these analyses, the Commission not only identified specific impacted EJ communities, but also gathered qualitative evidence from the community itself through interviews<sup>97</sup> and considered the impacts, including cumulative impacts, on these communities in its decision-

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94. See Coastal Dev. Permit Hearing for Application of AMJT Cap. LLC & Bolinas Cmty. Pub. Util. Dist., No. 2-17-0438, (Cal. Coastal Comm'n Mar. 11, 2020) (Staff Report), <https://documents.coastal.ca.gov/reports/2020/3/W17b/w17b-1-2020-report.pdf>.

95. See Amendment of City of Eureka LCP, No. LCP-1-EUR-20-0009-1, at 3 (Cal. Coastal Comm'n Oct. 9, 2020) (Staff Report), <https://documents.coastal.ca.gov/reports/2020/10/F8a/f8a-10-2020-report.pdf>.

96. See, e.g., Coastal Dev. Permit Hearing for Application of City of Pacifica, No. 2-10-0586 (Cal. Coastal Comm'n Mar. 11, 2020) (Staff Report), <https://documents.coastal.ca.gov/reports/2020/3/W17a/w17a-3-2020-report.pdf>; Regular Calendar Hearing for Application of Dana Point Harbor Partners LLC, No. 5-19-0971 (Cal. Coastal Comm'n Sept. 9, 2020) (Staff Report), <https://documents.coastal.ca.gov/reports/2020/9/W13c/W13c-9-2020-report.pdf>; De Novo and Regular Calendar Hearing for Application of Mobile Park Investment, No. 5-20-0363 & A-5-VEN-18-0049 (Cal. Coastal Comm'n Aug. 12, 2020) (Staff Report), <https://documents.coastal.ca.gov/reports/2020/8/W16b/w16b-8-2020-report.pdf>.

97. Recommendation on Appeal for Cal. Am. Water Co., No. A-3-MRA-19-0034, at 3 (Cal. Coastal Comm'n Nov. 14, 2019) (Staff Report), [https://documents.coastal.ca.gov/reports/2019/11/Th8a\\_9a/Th8a\\_9a-11-2019%20staff%20report.pdf](https://documents.coastal.ca.gov/reports/2019/11/Th8a_9a/Th8a_9a-11-2019%20staff%20report.pdf); De Novo Appeal and Consol. Coastal Dev. Permit Hearing on Appeal for Cal. Am. Water Co., No. A-3-MRA-19-0034, at 3, 8 (Cal Coastal Comm'n Sept. 17, 2020) (Staff Report), <https://documents.coastal.ca.gov/reports/2020/9/Th3a&4a/Th3a&4a%20Staff%20Report.pdf> [hereinafter De Novo Appeal for Cal. Am. Water Co.].

making.<sup>98</sup> Besides these instances, as of December 2020, the Commission had rarely identified specific environmental justice communities or engaged with impacted members or groups.<sup>99</sup> Its analysis typically focused on how a proposed project could impact the general population of low-income people and/or people of color in California, possibly because it acknowledged most people living along California's coast are affluent and white.<sup>100</sup>

As discussed below, the Commission can and should consider creative measures to engage with EJ communities and robustly implement its EJ

98. In its consideration of the Cal-Am desalination plant permit, Commission staff recommended the denial of the permit based on a determination that the impacts on costs, disparate distribution of benefits, and direct and indirect environmental burdens on EJ communities were too great and that an alternative existed that would greatly reduce these impacts. *De Novo Appeal for Cal. Am. Water Co.*, *supra* note 101, at 3, 92-100. The applicant withdrew their application ahead of the Commission's hearing. Rosanna Xia, *Water Company Withdraws Desalination Proposal as Battle over Environmental Justice Heats Up*, L.A. TIMES (Sept. 16, 2020, 6:20 PM), <https://www.latimes.com/california/story/2020-09-16/monterey-bay-desalination-plant-withdrawn>. On March 18, 2021, the Coastal Commission also voted unanimously to phase out recreational off-road vehicle use at Oceano Dunes. Louis Sahagún, *Off-road Vehicles to Be Banned at Oceano Dunes Within Three Years*, L.A. TIMES (Mar. 19, 2021, 1:20 PM), <https://www.latimes.com/california/story/2021-03-19/off-road-vehicles-will-be-banned-at-oceano-dunes-within-three-years>. The Commission's analysis considered the environmental, health, and air pollution burdens that the vehicular activity has on impacted communities. Oceano Dunes Coastal Development Permit 4-82-300 Review at 4 (Cal. Coastal Comm'n Feb. 16, 2021) (Staff Report), <https://documents.coastal.ca.gov/reports/2021/3/special-hearing/Th3-3-2021-report.pdf>. The Commission's decision has since been challenged in court. Mackenzie Shuman, *Six Organizations Want to Help Defend Oceano Dunes Off-roading Ban. Here's How*, SAN LUIS OBISPO TRIB., (Feb. 22, 2022), <https://www.sanluisobispo.com/news/local/environment/article258476253.html>.

99. One other outlier is in considering night access to the beach, and specifically a nighttime curfew in Santa Cruz and overnight closure of an observation room on the Santa Monica pier. In both instances, the Commission considered the impact to unsheltered populations as EJ communities in closing off their access to sleep on the beach and in an observation room respectively, but found that the unsheltered population's interests did not rise to the level of "public access" considerations within the Commission's purview. *See* Coastal Dev. Permit Application Hearing on Application of City of Santa Cruz Dep't of Parks and Recreation, No. 3-20-0088, at 4-5 (Cal. Coastal Comm'n Mar. 11, 2020) [hereinafter Hearing on Application of City of Santa Cruz] (Staff Report), <https://documents.coastal.ca.gov/reports/2020/3/W22c/W22c-3-2020%20report.pdf>; Permit Amend. Hearing on Application of City of Santa Monica, No. 5-19-311-A3, at 2 (Cal. Coastal Comm'n Nov. 4, 2020) [hereinafter Hearing on Application of City of Santa Monica (Staff Report)], <https://documents.coastal.ca.gov/reports/2020/11/W16c/w16c-11-2020-report.pdf>. Instead, they found that restricting nighttime access to these facilities promoted public access, because other beachgoers could recreate with enhanced public safety (e.g. reduce hypodermic needles, feces/urine, drug use, threats of assault). *See* Hearing on Application of City of Santa Cruz, *supra* note 103; Hearing on Application of City of Santa Monica, *supra* note 103.

100. Regular Calendar Hearing on Application of Dana Point Harbor Partners LLC, No. 5-19-0971, at 54 (Cal. Coastal Comm'n Sept. 9, 2020) (Staff Report), <https://documents.coastal.ca.gov/reports/2020/9/W13c/W13c-9-2020-report.pdf> (using low-income communities and communities of color as examples of underserved communities); *id.* (referencing spatial analysis identifying most common socioeconomic traits—white, affluent, and older in age—of those closest to the coast).

Policy, particularly in the port development context where EJ communities live near the coast and suffer from cumulative sources of industrial pollution and socioeconomic stressors. While the Commission's application of the policy through December 2020 in some instances was encouraging, it should continue to improve.

#### IV. COASTAL COMMISSION'S AUTHORITY TO ADVANCE ENVIRONMENTAL JUSTICE IN COASTAL DECISION-MAKING FOR PORT-ADJACENT COMMUNITIES

The Coastal Commission has the statutory authority to address the longstanding inequities that coastal development has had on port-adjacent communities, and it should implement its EJ Policy consistent with this authority. In 2020, the California Legislature handed the Commission its latest tool when it amended the Coastal Act to provide a more expansive definition of environmental justice. This definition includes, but is not limited to, all of the following:

- (1) The availability of a healthy environment for all people.
- (2) The deterrence, reduction, and elimination of pollution burdens for populations and communities experiencing the adverse effects of that pollution, so that the effects of the pollution are not disproportionately borne by those populations and communities.
- (3) Governmental entities engaging and providing technical assistance to populations and communities most impacted by pollution to promote their meaningful participation in all phases of the environmental and land use decisionmaking process.
- (4) At a minimum, the meaningful consideration of recommendations from populations and communities most impacted by pollution into environmental and land use decisions.<sup>101</sup>

Together with the authority provided in AB 2616, the Commission can consider substantive and procedural factors in coastal land-use decision-making. This section explores the Commission's legal authority to advance the environmental justice goals of port-adjacent communities.<sup>102</sup> Our discussion will describe how the Coastal Act's broad mandates and the EJ Policy require decisionmakers to: (1) provide public access and public trust

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101. CAL. PUB. RES. CODE § 30107.3(b) (West 2018 & Supp. 2021).

102. Such a view better accomplishes the promise of A.B. 2616, which specifies that the Act "does not preclude or otherwise restrict the consideration of environmental justice or the equitable distribution of environmental benefits in communities throughout the state." Reg. Sess. (Cal. 2016). Indeed, the Commission has recognized that the new authority given to it by AB 2616 "is consistent with and expands upon the spirit, intent, mission and history of this agency." Final Public Review Draft and Motion and Resolution to Adopt the Env't Just. Pol'y, *supra* note 88, at 2.

uses of the coast; (2) harmonize social and environmental considerations with port development; (3) engage meaningfully with the public in coastal decision-making; (4) avoid and minimize adverse environmental outcomes; and (5) use all available tools to gather information on the environmental justice impacts to inform decision-making. It will also address agencies' separate obligations under civil rights law to consider EJ impacts. Taken together, these statutory frameworks provide a strong basis for the Commission, local governments, and ports to address historic inequities and take bold and creative stances that advance environmental justice for port-adjacent communities.

*A. Robust Implementation of the EJ Policy Is Consistent with the Coastal Act's Broad Mandates*

i. Public Access and Protecting Clean Air

Fundamentally, the Coastal Act protects public access to the coast for the people of California, counteracting private property owners' attempts to privatize beaches and industrial developers seeking to exploit the coastline's natural resources.<sup>103</sup> From the California Constitution to the public trust doctrine in common law to the statutory language of the Coastal Act itself, the foundational authorities to provide such access run broad and deep. The constitutional right to public access to the coast provides broad authority for the Commission to advance environmental justice in its decision-making. The California Constitution declares that no entity "shall be permitted to exclude the right of way to [coastal and other] such water . . . [so that] access to the navigable waters of this State shall be always attainable for the people thereof."<sup>104</sup> The Coastal Act builds on this section by guaranteeing provision of maximum public access and recreational opportunities for the people.<sup>105</sup> These authorities provide for both *maximum* and *equitable* public access.<sup>106</sup>

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103. See *supra* note 64 (citing to the California Coastal Plan and remarking on how there is a very limited amount of California coastal land in public ownership and available for public recreation). When the legislature failed to act on statewide coastal legislation, citizens set out to organize grassroots support for an initiative to protect the coast from increasing privatization and inconsistent decisionmaking by local governments. See Adams, Janet. "Proposition 20 – a Citizen's Campaign." 24 *Syracuse Law Review* 1019 (1973). Adams, *supra* note 65 at 1023-25.

104. CAL. CONST. art. X, § 4.

105. CAL. PUB. RES. CODE § 30210.

106. The Coastal Act provides that "*maximum* access . . . shall be provided for *all the people*," CAL. PUB. RES. CODE § 30210 (emphasis added), and includes a central goal to "[m]aximize public access to and along the coast and maximize public recreational opportunities in the coastal zone," *id.* § 30001.5(c).

And the Coastal Act explicitly aims to prevent development from inhibiting public access to the sea.<sup>107</sup>

While the Commission's actions have been heralded as largely successful in countering private development from monopolizing the shoreline,<sup>108</sup> implementation of coastal policies has not resulted in equal beach access for all. Black, Latinx, indigenous, and lower-income people are underrepresented within 1 km of the coastline compared to their population in California as a whole, while white people are overrepresented.<sup>109</sup> Exclusionary beach policies, whites-only deed restrictions, and other discriminatory housing practices have contributed to this disparity.<sup>110</sup> Local government decisions have further exacerbated inequalities in coastal access

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107. "Development shall not interfere with the public's right of access to the sea . . . including, but not limited to, the use of dry sand and rocky coastal beaches." *Id.* § 30211. An equitable public access requirement is also implicit in the public trust doctrine where inhibiting coastal access for one group would imply a failure to manage the coast in trust for all. *See* Dan R. Reineman et al., *Coastal Access Equity and the Implementation of the California Coastal Act*, 36 STAN. ENV'T L.J. 89, 94 n.23 (2016).

108. In some instances, the Commission has taken bold and innovative actions to protect public access to the beach when faced with the threat of private development. For example, the Commission denied a permit for a proposed toll road through San Onofre State Beach in part because of public access concerns as the project would close trails, severely limit campground use, and degrade recreational uses of the beach. Revised Staff Report & Recommendation on Consistency Certification, No. CC-018-07, at 6-7 (Cal. Coastal Comm'n Feb. 6, 2008), <https://documents.coastal.ca.gov/reports/2008/2/W8b-2-2008.pdf>. Also, for decades, the Commission has been fighting to ensure public access to the beach at Hollister Ranch. *See Hollister Ranch: Public Access Program*, CAL. COASTAL COMM'N, <https://www.coastal.ca.gov/hollister-ranch/> (last visited Feb. 25, 2021). In Malibu, the Commission issued cease and desist orders to the City to remove boulders that were blocking public parking at the beach. Robert Garcia & Erica Flores Baltodano, *Free the Beach! Public Access, Equal Justice, and the California Coast*, 2 STAN. J.C.R. & C.L., 143, 159 (2005). More recently, the Commission required modifications of public parking policies in an LCP to safeguard public access to the coast. *See* Santa Barbara Land Use Plan Amendment, No. LCP-4-SBC-18-0062-1, at 41-43 (Cal. Coastal Comm'n Apr. 25, 2019), <https://documents.coastal.ca.gov/reports/2019/5/Th20f/th20f-5-2019-report.pdf>.

109. *See* Reineman et al., *supra* note 107, at 96. One study found large racial discrepancies for those who live near the shoreline, showing that people of color and low-income households are majorly underrepresented within 1 km of the coast. *See id.* Specifically, the study found that there are disproportionately "25% more white people and 30% more senior citizens, . . . 52% fewer Hispanic or Latino people, 60% fewer Black or African American people, 57% fewer American Indians, and 18% fewer households below the poverty line" as one would expect compared to their population in California overall." *Id.*

110. *See* Garcia & Flores Baltodano, *supra* note 108, 153-54. These inequities were formed in part because of discriminatory land-use decisions—many of which were intentional—that excluded Black people from accessing the beach. *See id.* In Los Angeles, Black people were explicitly limited to accessing the "Inkwell," a half-mile stretch of beach in Santa Monica, and Bruce's Beach in Manhattan Beach. *Id.* at 153. Whites only-deed restrictions, racially-restrictive covenants, and discriminatory housing practices further segregated Los Angeles and limited people of color's access to beaches. *Id.* at 154. Many of these practices were upheld by California courts and the Federal Housing Authority. *Id.* In particular, in Malibu, racially restrictive covenants blocked people of color from moving into beachfront properties. *Id.* at 155-56.

by providing physical impediments to reach the coast and even eliminating public transportation options for inland communities of color in some cases.<sup>111</sup>

Unlike other seaside communities, many port-adjacent communities are disproportionately communities of color and low-income communities.<sup>112</sup> In addition, port-adjacent communities have been left to deal with the impacts of exponentially growing cargo volumes with little action by the Commission to constrain, avoid, mitigate, or minimize the public health and environmental harms associated with that growth. Port growth and port-related development both physically obstruct coastal access for many of the state's coastal communities of color and diminish otherwise accessible coastal resources due to high levels of pollution. The Commission's public access provisions have long been overlooked as sources of authority to address pollution, particularly with respect to the goods movement industry's diesel death zones. This was a key concept underpinning the California Coastal Plan, which treated clean air as an essential public resource, necessary to safeguard and effectuate the statewide policies of coastal access, recreation, and protection.<sup>113</sup> Even in the early 1970s when the Plan was developed, there was a recognition that industrial pollution along the coast was harming public health, both in terms of coastal access and for communities living farther inland.<sup>114</sup>

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111. *See id.* at 200-01. In the 1980s, Southern California cities ended public transportation to Manhattan Beach and Palos Verdes from historically Black communities in the inner city. *Id.* at 165-66.

112. *See* U.S. ENV'T PROT. AGENCY, NATIONAL PORT STRATEGY ASSESSMENT: REDUCING AIR POLLUTION AND GREENHOUSE GASES AT U.S. PORTS 4 (2016), <https://nepis.epa.gov/Exe/ZyPDF.cgi?Dockey=P100PGK9.pdf>.

113. *See* CAL. COASTAL ZONE CONSERVATION COMM'N, *supra* note 64, at 76. The Plan also identified air quality as an economic resource, contributing to agriculture and recreation in order to "provide a needed refuge for people with asthma and other illnesses." *Id.* at 65. The Plan also proposed to limit industrial development in the coastal zone on the basis of air quality. One major finding of the Plan was to "Protect Coastal Air Quality," and it included a policy intended to *prevent siting of* "major new pollution-generating developments . . . from portions of the coastal zone" in air quality non-attainment and maintenance areas, unless there was no less environmentally damaging alternative, and, if permitted, would also require polluting developments "to be designed . . . to minimize adverse effects on coastal air quality." *Id.* at 7. Even further, the Plan required that "the cumulative impact of development on coastal air quality" be considered in land use plans. *Id.* Specifically, the Plan ensured that new coastal developments be "planned, designed, and operated to protect and restore coastal zone air quality to the maximum extent possible." *Id.* at 66-67. It restricted development of major polluting developments in areas that were in violation of federal, state, or local air quality regulations, and restricted siting of such sources if they would cause deterioration of local or regional coastal air quality. *See id.*

114. "Air pollution limits specifically set to protect human health are now being exceeded in some locations along the coast, creating not totally quantified but very real damage and human suffering." *Id.* at 65. Even at that time, goods movement zones were called out as specifically concerning sources of pollution. *Id.* ("Studies suggest intensive transportation corridors are major

Going forward, air quality should become a major consideration for coastal land use agencies in reviewing developments, and particularly those in the vicinity of ports. The public trust doctrine requires that clean air be considered an intrinsic resource to recreational and ecological uses, and as such, air quality is within the scope of the public trust doctrine.<sup>115</sup> The State Lands Commission has officially recognized that the public trust doctrine conveys port authority to mitigate air pollution,<sup>116</sup> including impacts stemming from port operations occurring within the port's boundaries as well as those generated by port-related sources, such as ships.<sup>117</sup> As a state agency responsible for protecting public trust uses,<sup>118</sup> the Coastal Commission should adopt a similar reading and include port-generated pollution in its consideration of environmental justice impacts.<sup>119</sup> Such a reading is

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sources of concentrated vehicle emissions creating a special hazard for humans, wildlife, and plants located nearby.”). The Plan also recognized the extent to which pollution in the coastal zone impacts residents further inland, finding that “as winds move the air inland, pollutants produced in the coastal zone can contribute to severe smog at inland locations where the pollutants react with sunlight.” *Id.*

115. See *Nat'l Audubon Soc'y v. Superior Ct.*, 658 P.2d 709, 719 (Cal. 1983) (reasoning that “purity of the air” is within the scope of the recreational and ecological values protected by the public trust doctrine when applying the doctrine to Mono Lake); *Marks v. Whitney*, 491 P.2d 374, 380 (Cal. 1971) (recognizing public trust value of the tidelands, preservation of those lands in their natural state, and the need to protect ecological resources of the tidelands).

116. See Letter from Sheri Pemberton, Chief, External Affs. Div., Cal. State Lands Comm'n, to Heather Tomley, Dir. of Env't Plan., Port of Long Beach (July 19, 2016), <https://thehelm.polb.com/download/319/community-grants/5566/state-lands-commission-community-grants-commendation-7-19-2016.pdf>. In interpreting the public trust doctrine in the context of the Port of Long Beach's authority to utilize port funds for mitigation of public trust impacts, the letter finds that:

Ports *may* conduct discretionary mitigation that is not CEQA-mandated, such as offsetting impacts from general port operations or impacts that accumulated over the years, but only under certain conditions. Those conditions are: 1) that port operations are directly responsible for the impacts being mitigated; 2) there is a nexus between the direct impacts and the proposed mitigation; 3) the proposed mitigation is proportional to the impacts; and 4) the mitigation cannot be inconsistent with the Public Trust Doctrine or the ports overall management responsibilities for its granted public trust lands.

*Id.* at 1 (emphasis added).

117. Accordingly, “the Port may only expend trust revenues off of port property when they are mitigating for direct port impacts. Direct impacts are impacts from land within the Port's jurisdiction as well as impacts from port-related sources, such as cargo vessels originating from or destined for the port.” *Id.*

118. “The state has an affirmative duty to take the public trust into account in the planning and allocation of water resources, and to protect public trust uses whenever feasible.” *Nat'l Audubon Soc'y v. Super. Ct.*, 658 P.2d 709, 728 (Cal. 1983). Specifically, the Commission is required to ensure that port development “provide[s] for beneficial uses consistent with the public trust.” Cal. Pub. Res. Code § 30708(a), (d) (West 2018).

119. However, the Commission may not deny a coastal development permit based solely on adverse impacts occurring outside the Coastal Zone. Cal. Pub. Res. Code § 30604(d) (West 2018).

consistent with the Commission's EJ policy, which acknowledges that concentrated industrial pollution has impeded coastal access for EJ communities.<sup>120</sup> The Commission has in at least one instance considered air pollution impacts on an EJ community as a factor in its decision-making, which is encouraging and consistent with the Commission's mandate under the Act.<sup>121</sup>

ii. Balancing Coastal Development, Environmental Protection, and the Public Interest

The balancing mandate of the Coastal Act provides another strong basis for the Commission to advance environmental justice. The Act aims to balance preservation and development of coastal zone resources, "taking into account the social and economic needs of the people of the state."<sup>122</sup> While recognizing that siting and expanding industrial facilities in the Coastal Zone may promote a public interest in some cases, the Act also places limits on such development.<sup>123</sup> The Act requires decision makers to consider alternatives, the public welfare, and mitigation of environmental impacts before approving coastal industrial development.<sup>124</sup> The Commission must also analyze cumulative impacts when considering proposed developments,

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Likewise, the Commission's jurisdiction does not extend to developments sited outside of the Coastal Zone. *See* *Sierra Club v. Cal. Coastal Comm'n*, 111 P.3d 294, 300-01 (Cal. 2005).

120. The Staff Report for the final EJ Policy recognizes "how heavy industrialization and environmental contamination of concentrated sections of California's coast has effectively eliminated much of the public coastal use in these areas." Final Public Review Draft and Motion and Resolution to Adopt the Env't Just. Pol'y, *supra* note 88, at 5. It acknowledges the need to consider coastal development impacts on air quality and soil health in EJ communities, because these environmental factors "reduce the positive health and recreational benefits associated with coastal access for pollution-burdened communities." *Id.*

121. CDP Amend. Hearing No. 3-12-050-A1, *supra* note 98, at 34 ("These communities of color bear the brunt of the burden of ODSVRA use, including with respect to adverse air quality, thereby raising prototypical environmental justice concerns regarding the benefits and burdens of environmental protection, and thus necessitating an analysis regarding the proposed amendment's compliance with Coastal Act environmental justice provisions.").

122. CAL. PUB. RES. CODE § 30001.5(b) (West 2018 & Supp. 2021); *see also* Nat. Res. Def. Council, Inc. v. Cal. Coastal Zone Conservation Comm'n, 129 Cal. Rptr. 57, 64 (Ct. App. 1976).

123. The Coastal Act recognizes that although industrial facilities, such as ports, may pose adverse environmental impacts, they may be necessary to locate such developments in the coastal zone to preserve inland resources and ensure that "orderly economic development proceeds within the state." CAL. PUB. RES. CODE § 30001.2. The Act provides that coastal-dependent industrial development "shall be encouraged to locate or expand within existing sites and shall be permitted reasonable long-term growth" when consistent with the Act. *Id.* § 30260.

124. Where new or expanded industrial development is not consistent with the Act, it may be permitted only "if (1) alternative locations are infeasible or more environmentally damaging; (2) to do otherwise would adversely affect the public welfare; and (3) adverse environmental effects are mitigated to the maximum extent feasible." *Id.* § 30260.

port master plans, and local coastal programs.<sup>125</sup> Where conflicts arise between one or more policies of the Act, they must “be resolved in a manner that which on balance is the most protective of significant coastal resources.”<sup>126</sup> All of these considerations weigh towards the Commission’s authority to advance environmental justice when contemplating the costs and benefits of port development.

The balancing principle is rooted in the California Coastal Plan, which sought to balance development with social well-being.<sup>127</sup> The Coastal Plan acknowledges some development of coastal resources is in the public interest, but it also recognizes the concept of a carrying capacity, or threshold of development, that the Coastal Zone can endure.<sup>128</sup> With respect to ports, the Plan contemplated that while ports would expand and modernize, they would be “planned to minimize environmental degradation.”<sup>129</sup> It called for

125. *Greene v. Cal. Coastal Comm’n*, 253 Cal. Rptr. 3d 789, 794 (Ct. App. 2019) (“The Coastal Act . . . requires the Commission to consider a proposed project’s cumulative effects in light of other present, past, and probable future developments.”); *Stanson v. San Diego Coast Reg’l Comm’n*, 161 Cal. Rptr. 392, 398 (Ct. App. 1980)) (“There is precedent that the policy of the Act requires the agency to consider cumulative impacts before granting approval of a project . . . . [Appellant’s] construction of the Act would reduce the Regional Commission’s planning function to a shambles resulting in a piecemeal approach which would guarantee the destruction of coastal resources.”); *see also* CAL. PUB. RES. CODE §§ 30105.5, 30006.5 (defining cumulative effects); CAL. PUB. RES. CODE § 30250 (Coastal Development Permits); CAL. PUB. RES. CODE § 30514(d)(1) (Commission must consider whether the LCP amendment may have a cumulative impact before determining it is de minimis); CAL. PUB. RES. CODE § 30716(c)(1) (Commission must consider whether a port master plan amendment may have a cumulative impact before determining it is de minimis).

126. CAL. PUB. RES. CODE § 30007.5.

127. With respect to coastal-dependent industrial development, Coastal Plan stated that if coastal-dependent development would have a:

[S]ubstantial adverse effect on coastal resources, they shall be permitted *only* if (1) alternative locations are either infeasible or more environmentally damaging; (2) a careful balancing of environmental effects against regional, State, and national economic needs is made, with irreversible environmental damage weighing heavily in the comparison; and (3) the environmental damage is mitigated to the maximum extent technically feasible in the design and execution of the project.

CAL. COASTAL ZONE CONSERVATION COMM’N, *supra* note 64, at 82. Thus, the plan covered both the siting and feasibility of mitigation in formulating how coastal-dependent development should be considered.

128. Indeed, one ecological planning principle underpinning the Coastal Plan recognizes that: Every ecosystem has a carrying capacity, which is limited. Coastal zone management must recognize the limiting factors, and they should be of primary concern in environmental analysis. People must recognize the balance of nature and limit use of natural resources so that they do not destroy options for the future.

*Id.* at 19.

129. *Id.* at 15.

careful analysis to determine future port needs.<sup>130</sup> It also recognized that California ports would compete with each other, which could result in overbuilding and inflicting avoidable environmental harm.<sup>131</sup> These considerations prompted the policies underlying the Coastal Act, and should be explicitly considered for port development today. Indeed, the Coastal Act limits uses such as industrial development or agriculture if they are outweighed by harmful impacts to coastal resources.<sup>132</sup> The Commission is not required to prioritize development and its associated economic benefits above the policies and goals delineated by the Act.<sup>133</sup>

Port growth has continued largely unchecked since the Coastal Act was passed, with cargo throughput now far exceeding regional needs. Ports' plans for expansion focus on their goal of maintaining market share of cargo volumes<sup>134</sup> rather than the needs of the region, leading to an ever-increasing

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130. *Id.* at 149. Indeed, the Coastal Plan would have required that new dredging or filling for port development only be conducted where “there is a clear need for it” and when environmental impacts were “minimized to the greatest extent feasible.” *Id.* at 150. The coastal agency and Department of Transportation and/or Department of Navigation and Ocean Development were to evaluate the need for a project, only allowing filling and dredging for port development or expansion when there was a proven need for projected types of cargo and vessels based on regional commodity flows and if other regional facilities are at capacity or unavailable. *See id.* This had the suggestion of ensuring that all ports in the state are utilized to the extent of their existing boundaries. With respect to San Pedro Bay Harbor in particular, the Plan contemplated that “[b]ay-wide economic and port facilities studies shall be conducted on a continuing basis for San Pedro Bay, taking into account regional, national, and international economic factors as well as social and environmental impacts. Such studies shall guide future expansion and renewal programs.” *Id.* at 250.

131. *Id.* at 148. The Coastal Plan recognized that such competition could “result in overbuilding . . . as each port tries to capture the most cargo and to keep pace with changes in shipping technology.” *Id.*; *see also id.* at 149 (“Unnecessary Port Development Results in Avoidable Environmental Damage.”).

132. *See* *Mountainlands Conservancy, LLC v. Cal. Coastal Comm’n*, 260 Cal. Rptr. 3d 683 (Ct. App. 2020), *cert. denied*, No. 20-821, 2021 WL 666444 (U.S. Feb. 22, 2021). The Commission has the authority to push back against local governments who have tried to put the gains of development above the harms to coastal habitats. *See* *City of Chula Vista v. Superior Ct.*, 183 Cal. Rptr. 909, 922 (Ct. App. 1980) (upholding Commission’s rejection of local government’s argument that “it will take all economically feasible mitigating measures and . . . the remaining risks are justified by the gain in public access to and enjoyment of the bayfront area as a result of the planned development.”).

133. *See* *City of Chula Vista*, 183 Cal. Rptr. at 923 (“The Commission must be permitted to decide the necessary level of protection. If it is compelled to accept risks it regards as unjustified in the name of economic necessity, it cannot carry out its statutory mandate to provide permanent protection for the state’s distinctive and valuable coastal zone for the benefit of the people of California (§ 30001.5).”).

134. *See* PORT OF LONG BEACH, DRAFT PORT MASTER PLAN UPDATE app. A at ES-2 (2019), [https://thehelm.polb.com/download/391/port-master-plan-update-program-eir/7080/port-master-plan-update-draft-program-eir-appendix-a\\_port-master-plan-update-081419.pdf](https://thehelm.polb.com/download/391/port-master-plan-update-program-eir/7080/port-master-plan-update-draft-program-eir-appendix-a_port-master-plan-update-081419.pdf).

overconcentration of impacts.<sup>135</sup> As an agency overseeing port land use, the Commission is uniquely situated to interrogate and counter this infinite growth paradigm, and reject the assumption that unlimited growth is beneficial for the residents of the state. In fact, as described in Part II, port development creates economic harms and burdens that are borne primarily by adjacent communities and workers. Growing cargo volumes should not be conflated with growing economic benefits to the people of the region and the state. A renewed focus on planning and considering what amount of growth is in the public interest is needed. Such determinations must consider environmental justice communities' perspectives on the threshold of growth that their communities can withstand. The Commission can and should analyze economic impacts in a holistic way by considering the full suite of health costs associated with port pollution, and the quality of jobs available for local residents.

One Coastal Act policy that inadvertently undermines environmental justice is the policy of concentrating industrial uses in already developed areas.<sup>136</sup> This policy, while intended to prevent sprawl and reduce automobile usage, concentrates expansion within existing borders of industrial sites<sup>137</sup> and, accordingly, has widened inequalities with respect to coastal access, clean air and water, and economic opportunity. As communities of color have been marginalized to the most polluted corners of the state's coastline through discriminatory housing policies, the policy of concentrating development within these communities is ripe for re-examining. This is particularly true in light of the Commission's mandate to consider cumulative impacts, which require the Commission to consider proposed projects' impacts in relation to past, current and probable future projects.<sup>138</sup> Importantly, the Commission has already shown a willingness to consider the cumulative impact of a new project on an EJ community already over-burdened by multiple industrial facilities.<sup>139</sup>

Indeed, the Commission is charged with protecting the coastal interests of all Californians against the harms of privatization and development. A central tenet underlying Proposition 20 and the Coastal Act was reorganizing coastal decision-making under one statewide authority, to counter the patchwork of inconsistent development decisions and promote long-term and

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135. Even with environmental initiatives in place, ever-increasing growth threatens to undermine community benefits. See De Lara, *supra* note 7, at 542-45.

136. CAL. PUB. RES. CODE §§ 30701, 30260 (West 2018 & Supp. 2021).

137. CAL. COASTAL ZONE CONSERVATION COMM'N, *supra* note 64, at 25.

138. CAL. PUB. RES. CODE § 30105.5.

139. De Novo Appeal and Consol. Coastal Dev. Permit Hearing, *supra* note 97, at 100.

statewide public interests.<sup>140</sup> As one court recognized, “[W]here the ecological and environmental impact of land use affect the people of the entire state, they can no longer remain matters of purely local concern.”<sup>141</sup> The Commission should consider environmental justice, economic benefits and burdens, coastal preservation, and quality of life, for all people in the state, in line with the EJ Policy’s promise.

### iii. Meaningful Public Engagement

Built on Proposition 20’s roots in citizen advocacy, the Coastal Act creates a public “right” to “fully participate” in coastal planning and development decisions.<sup>142</sup> The Act recognizes that sound coastal development is *dependent* on public understanding and support, and that coastal planning and development should include “the widest opportunity for

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140. While this central decision-making was somewhat whittled down by the time the Coastal Act was passed—

providing authority to local governments for their own coastal plans—the Commission maintains authority to promote statewide interests. The Coastal Act strikes a balance between local governance of land use, and state involvement to:

[P]rotect regional, state, and national interests in assuring the maintenance of the long-term productivity and economic vitality of coastal resources necessary for the well-being of the people of the state, and to avoid long-term costs to the public and a diminished quality of life resulting from the misuse of coastal resources, to coordinate and integrate the activities of the many agencies whose activities impact the coastal zone, and to supplement their activities in matters not properly within the jurisdiction of any existing agency, it is necessary to provide for continued state coastal planning and management through a state coastal commission.

CAL. PUB. RES. CODE § 30004(b).

141. *CEED v. Cal. Coastal Zone Conservation Comm’n*, 118 Cal. Rptr. 315, 327 (1974). The court added that “the impact of an activity which in times past has been purely local, may under changed conditions transcend municipal boundaries” and “where the activity, whether municipal or private, is one which can affect persons outside the city, the state is empowered to ‘prohibit or regulate the externalities.’” *Id.* at 326.

142. CAL. PUB. RES. CODE § 30006.

The commission shall: (a) Ensure full and adequate participation by all interested groups and the public at large in the commission’s work program. (b) Ensure that timely and complete notice of commission meetings and public hearings is disseminated to all interested groups and the public at large. (c) Advise all interested groups and the public at large as to effective ways of participating in commission proceedings. (d) Recommend to any local government preparing or implementing a local coastal program and to any state agency that is carrying out duties or responsibilities pursuant to this division, additional measures to assure open consideration and more effective public participation in its programs or activities.

*Id.* § 30339. The Commission, in its role as primary enforcer of the Coastal Act, must consider how local governments sought and integrated public knowledge and input when developing local coastal plan amendments or approving coastal development plans to ensure local governments are providing the maximum opportunities required by the Act. *See id.* In addition, the Commission is responsible for ensuring that port master plans provide adequate opportunities for public engagement. *Id.* § 30711(a)(5).

public participation.”<sup>143</sup> These broad mandates should include, and arguably require, a seat at the table for environmental justice stakeholders.<sup>144</sup> The Commission’s EJ Policy and 2020 Strategic Plan commit the Commission to addressing and improving on these issues.<sup>145</sup>

The public participation provisions should be considered in the context of Commission decision-making that has historically privileged private property owners and developers and shut out EJ communities.<sup>146</sup> The Commission, as well as port districts<sup>147</sup> and local governments<sup>148</sup>, should consider what reforms are necessary to ensure public access to decision-making, particularly for environmental justice communities. The opportunity to “fully participate” in coastal decisionmaking requires affirmative actions to ensure culturally competent procedural inclusivity,<sup>149</sup> improvements to transparency and electronic access to documents,<sup>150</sup> and

143. *Id.* § 30006.

144. See Letter from Maricela Morales, *supra* note 29 (“A strong environmental justice policy at the [Commission] should include . . . [e]nsuring that residents who face complex barriers to participation are proactively engaged and listened to in order to ensure equitable participation from the most vulnerable and most impacted communities in critical decisions.”).

145. See Cal. Coastal Comm’n Env’t Just. Pol’y, *supra* note 89, at 9-10; CAL. COASTAL COMM’N, FINAL STRATEGIC PLAN 2021-2025, at 30-31 (Nov. 6, 2020) [hereinafter CAL. COASTAL COMM’N, FINAL STRATEGIC PLAN], [https://documents.coastal.ca.gov/assets/strategicplan/CCC\\_Strategic\\_Plan\\_Adopted\\_11.06.20.pdf](https://documents.coastal.ca.gov/assets/strategicplan/CCC_Strategic_Plan_Adopted_11.06.20.pdf).

146. The Commission has been criticized for failing to provide adequate public access, and for prioritizing developer interests. Sivas, *supra* 77, at 133-35. There have also been recent alleged violations of ex parte rules to the benefit of pro-development interests. *Id.* at 134-35. Local coastal decisionmakers have faced similar criticisms for failure to provide public access to coastal land use planning discussions, see Taxpayers for Livable Cmtys. v. City of Malibu, 24 Cal. Rptr. 3d 493, 494 (2005) (describing allegations the city councilmembers and staff improperly held private meetings about a draft Land Use Plan).

147. Ports are required to set forth provisions for adequate public hearings and public participation in their master plans. CAL. PUB. RES. CODE § 30711(a)(5). Ports must consider relevant testimony, statements, and evidence submitted by the public in formulating port master plans. *Id.* § 30712.

148. Local governments must provide the public and affected government agencies with maximum opportunities to participate during the preparation, approval, certification, and amendment of any local coastal plan. See *id.* § 30503. Before submitting a local coastal plan update to the Commission, the local government must provide a hearing for the portion of the program that has not been subject to a public hearing in the past four years. *Id.*

149. See JORDAN DIAMOND ET AL., THE PAST, PRESENT, AND FUTURE OF CALIFORNIA’S COASTAL ACT: OVERCOMING DIVISION TO COMPREHENSIVELY MANAGE THE COAST 7-8 (2017); see also Natalie R. Sampson et al., *Improving Public Participation to Achieve Environmental Justice: Applying Lessons from Freight’s Frontline Communities*, 7 ENV’T JUST. 45, 46 (2014). The Commission has taken some recent steps in this direction by interviewing community members impacted by a proposed development as part of its staff analysis. See De Novo Appeal and Consol. Coastal Dev. Permit Hearing, *supra* note 97, at 95.

150. Faust, *supra* note 74, at 4-5 (providing recommendations for increasing transparency and public engagement in the Commission’s proceedings). Information sharing can come in the form of fact sheets, workshops, town halls, one-on-one meetings, tours (for both community members

meaningful engagement with directly-impacted communities in formulating mitigation measures and alternatives to adverse impacts. The Commission's 2021-2025 Strategic Plan incorporates some of these commitments, including making meetings more accessible geographically and through interpretation, translation of materials, attendance of community meetings and workshops, improved outreach, and building staff's proficiency with environmental justice concepts.<sup>151</sup> Other reforms could go to the very structure of the Commission's quasi-judicial proceedings, which pose difficulties to public transparency, fairness, and meaningful public participation, thereby permitting those with power to exert unequal pressure.<sup>152</sup>

One promising example of effective community engagement can be found in the State Lands Commission's process for creating its EJ Policy. The SLC created an Environmental Justice Working Group, comprised of eight organizations that work with environmental justice communities, to provide recommendations for the SLC's EJ policies.<sup>153</sup> The SLC partnered with some of these environmental justice groups to host community forums for the EJ Policy. These forums allowed community residents to directly engage with staffers and have their input given directly on the draft plan. Further, because the SLC staff worked with community organizations, the forums were crafted to center and accommodate for community needs by providing transportation, interpretation, food, and child watch.<sup>154</sup> The Commission, ports, and local governments should consider conducting similar processes for comprehensive updates to port master plans or local coastal plans.

#### iv. Minimizing Adverse Environmental Impacts and Considering Alternatives

The Coastal Act's mandate to minimize adverse environmental impacts is another lever that coastal land use agencies can use to advance

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and agency staff), and data sharing. For examples from MDOT, see Natalie R. Sampson, *Freight Transportation and Health* 123 (2013) (Ph.D. dissertation, University of Michigan), <https://deepblue.lib.umich.edu/handle/2027.42/99894>.

151. CAL. COASTAL COMM'N, FINAL STRATEGIC PLAN, *supra*, note 145.

152. See Faust, *supra* note 74, at 3-4 (describing Commission practices that favor developers and inhibit public participation); Sivas, *supra* note 77, at 136-42 (describing pro-developer political constraints on Commission decision-making).

153. *Environmental Justice*, CAL. STATE LANDS COMM'N, *supra* note 83.

154. This is based on the authors' personal experiences participating in the SLC's community forums and/or discussions with participants.

environmental justice.<sup>155</sup> In addition to minimizing environmental impacts, they must also consider alternatives that *avoid* environmental harms.<sup>156</sup> These are key authorities<sup>157</sup> to promoting environmental justice and can be used to limit new development from inflicting additional pollution on overburdened port-adjacent communities.

To this end, the EJ Policy commits staff to consider and propose mitigation measures that incorporate “the technical knowledge and lived experiences of affected communities.”<sup>158</sup> Mitigation measures should provide benefits and impact reduction to communities that are already disparately overburdened and under-benefited. The EJ Policy similarly commits staff to assessing “meaningful alternatives beyond mitigation measures to re-siting projects with negative environmental health impacts in disadvantaged communities.”<sup>159</sup> Considering alternatives can allow coastal land use agencies to avoid siting polluting facilities in EJ communities and concentrate benefits in historically under-resourced coastal places. Above all, the Commission should listen to communities who are best positioned to design real solutions when considering mitigation measures and alternatives.<sup>160</sup>

#### v. Gathering Robust Information to Inform Decision-making

There are a number of tools available for coastal permitting agencies to consider when conducting environmental justice analyses. First and foremost is considering qualitative data and community-science based data that reflects the lived experiences of communities.<sup>161</sup> Agencies must recognize that lived experience is valuable expertise and critical for effective

155. See Cal. PUB. RES. CODE §§ 30231, 30233, 30244, 30260, 30263, 30708 (West 2018 & Supp. 2021).

156. *Id.* §§ 30233, 30250, 30260, 30263, 30708.

157. The Commission is also subject to the provisions of CEQA that impose the policy of avoiding significant adverse effects on the environment when feasible. See *Mountain Lion Found. v. Fish & Game Comm’n*, 939 P.2d 1280, 1284 (Cal. 1997). The Commission may not approve an amended local coastal plan if there are feasible alternatives or mitigation measures that would substantially lessen any significant adverse impacts on the environment from the proposed activity. CAL. PUB. RES. CODE § 21080.5(d)(2)(A). Port Master Plan amendments must also undergo CEQA review. See *infra* Section V.B.

158. Cal. Coastal Comm’n Env’t Just. Pol’y, *supra* note 89, at 10.

159. See *id.*

160. See, e.g., Sampson, *supra* note 149, at 46.

161. See Phil Brown, *Qualitative Methods in Environmental Health Research*, 111 ENV’T HEALTH PERSP. 1789, 1789, 1793 (2003); ANA ISABEL BAPTISTA, TISHMAN ENV’T JUST. DESIGN CTR., LOCAL POLICIES FOR ENVIRONMENTAL JUSTICE: A NATIONAL SCAN 6 (2019), <https://www.nrdc.org/sites/default/files/local-policies-environmental-justice-national-scan-tishman-201902.pdf>.

decision-making,<sup>162</sup> and should provide compensation for environmental justice groups' labor in informing coastal decision-making. Agencies can also use data from CalEnviroScreen, EPA's ECHO, and EPA's EJSCREEN to analyze cumulative sources of pollution, demographics, and other environmental justice related factors. Agencies should work with impacted communities to determine what tools and scientific resources contain the most accurate and relevant information to evaluate environmental justice in a particular community.

Coastal permitting agencies also have ample authority to utilize scientific experts in studying and addressing environmental justice. Fundamentally, the Act recognizes that scientific recommendations are necessary for coastal planning and development decisions.<sup>163</sup> It explicitly recognizes the "cumulative impact of coastal zone developments" as an area where the Commission should receive technical advice from experts, among others.<sup>164</sup> To gain an accurate accounting of cumulative impacts, disproportionate pollution burdens, health outcomes, and inequitable coastal access, the Commission can establish scientific panels to review technical information and make recommendations, in addition to meaningfully engaging the impacted community.<sup>165</sup> The Commission may, and in some cases must, also prepare additional plans, maps, and studies to establish baseline impacts, assess unmet needs, and better effectuate the Coastal Act's

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162. See Julie Koppel Maldonado, *A Multiple Knowledge Approach for Adaptation to Environmental Change: Lessons Learned from Coastal Louisiana's Tribal Communities*, 21 J. POL. ECOLOGY 61, 75-76 (2014).

163. CAL. PUB. RES. CODE § 30006.5 (West 2018 & Supp. 2021).

The Legislature further finds and declares that sound and timely scientific recommendations are necessary for many coastal planning, conservation, and development decisions and that the commission should, in addition to developing its own expertise in significant applicable fields of science, interact with members of the scientific and academic communities in the social, physical, and natural sciences so that the commission may receive technical advice and recommendations with regard to its decision-making, especially with regard to issues such as coastal erosion and geology, agriculture, marine biodiversity, wetland restoration, sea level rise, desalination plants, and the cumulative impact of coastal zone developments.

*Id.*

164. *Id.*

165. *Id.* § 30335.5

The commission shall, if it determines that it has sufficient resources, establish one or more scientific panels to review technical documents and reports and to give advice and make recommendations to the commission prior to making decisions requiring scientific expertise and analysis not available to the commission through its staff resources. It is the intent of the Legislature that the commission base any such technical decisions on scientific expertise and advice. The panel or panels may be composed of, but not limited to, persons with expertise and training in marine biology, fisheries, geology, coastal geomorphology, geographic information systems, water quality, hydrology, ocean and coastal engineering, economics, and social sciences.

*Id.*

policies.<sup>166</sup> Environmental justice stakeholders have also suggested that the Commission “undertake a study on access to and quality of coastal lands based on race, economics,” and environmental justice factors.<sup>167</sup>

*D. Civil Rights Laws Require Decision Makers to Consider Discriminatory Impacts*

Federal and state civil rights laws impose additional obligations on the Coastal Commission, ports, cities, counties, and regulators to ensure that state and federally-funded programs and activities are non-discriminatory.<sup>168</sup> This is particularly relevant to coastal permitting authorities in the context of port-adjacent communities, since many of these communities are majority people of color, low-income, immigrant, and/or people with disabilities. Anti-discrimination laws impose a separate and additional obligation on these agencies to examine whether an approval of coastal development (including port expansions) will have disparate impacts on protected populations, such as communities of color, and to adopt alternatives and mitigation measures that would avoid or minimize discriminatory adverse impacts while meeting legitimate purposes. Agencies are also required under civil rights laws to collect demographic data so they can evaluate whether

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166. *Id.* § 30341 (“The commission may prepare and adopt any additional plans and maps and undertake any studies it determines to be necessary and appropriate to better accomplish the purposes, goals, and policies of this division; provided, however, that the plans and maps shall only be adopted after public hearing.”). The Commission has released guidance for local governments requiring them to affirmatively assess coastal access deficiencies and unmet needs to ensure public access for all be maximized. CAL. COASTAL COMM’N, LCP UPDATE 2, 6 (2017), [https://documents.coastal.ca.gov/assets/lcp/LUPUpdate/LUP\\_Guide\\_Update\\_1\\_Public\\_Access\\_updated\\_4.4.17\\_FINAL.pdf](https://documents.coastal.ca.gov/assets/lcp/LUPUpdate/LUP_Guide_Update_1_Public_Access_updated_4.4.17_FINAL.pdf).

167. CAL. ENV’T JUST. ALL., ENVIRONMENTAL JUSTICE AGENCY ASSESSMENT 31 (2018), <https://caleja.org/wp-content/uploads/2019/06/CEJA-Agency-Assessment-FULL-FINAL-Web.pdf>.

168. Under Title VI of the Civil Rights Act of 1964, “[n]o person in the United States shall on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” 42 U.S.C. § 2000d. California’s civil rights statute, Government Code section 11135, provides that “[n]o person in the State of California shall, on the basis of race, national origin, ethnic group identification, religion, age, sex, sexual orientation, color, genetic information, or disability, be unlawfully denied full and equal access to the benefits of, or be unlawfully subjected to discrimination under, any program or activity that is conducted, operated, or administered by the state.” CAL. GOV’T CODE § 11135 (West 2005 & Supp. 2021). For more information on how section 11135 applies to beach access issues, see Garcia, *supra* note 108, at 188-90. Title VIII of the Civil Rights Act of 1968, also known as the Fair Housing Act, also prohibits discrimination in the provision of housing and services, prohibits making housing unavailable, and requires agencies to affirmatively further fair housing. See 42 U.S.C. § 3604.

their existing programs and activities have discriminatory impacts and, if so, take affirmative corrective steps.<sup>169</sup>

#### V. LEVERAGING THE EJ POLICY IN DECISION-MAKING

The authorities described above can be applied by the Commission and other coastal decisionmakers in various venues. This section lays out how environmental justice principles and outcomes can be advanced through three major coastal development processes under the Coastal Act: Coastal Development Permits (CDPs) approvals and permit appeals to the Commission, Port Master Plans, and Local Coastal Programs.

The Coastal Act generally requires that proposed development in the Coastal Zone obtain a CDP.<sup>170</sup> The Coastal Commission has the authority to issue a CDP, unless it has delegated its authority to a local government enforcing a Local Coastal Program (LCP), or a Port District under a Port Master Plan (PMP). After an LCP or PMP is adopted, the Commission retains appeal authority over CDPs granted by local governments or ports in certain circumstances. While the onus is on local governments and ports to ensure that environmental justice is adequately considered in their programs, the Commission—the agency with primary coastal development authority in the state—bears the ultimate responsibility for ensuring that all of these processes advance environmental justice.

When issuing CDPs and considering permits on appeal, the Commission can advance environmental justice by adding conditions and mitigation measures to individual projects, or it can outright deny the permit. Coastal planning documents also provide an opportunity for agencies to take a holistic view of coastal development within a community, consider disparate impacts, and craft overarching policies that will result in robust consideration of environmental justice impacts, benefits to historically marginalized communities, and meaningful public participation.

##### A. *Coastal Development Permits and Appeals*

All coastal land use decisionmakers have the authority described in Section IV to integrate environmental justice when issuing coastal development permits. Where those impacts exist, decisionmakers should engage in a robust analysis of the harms and benefits of the proposed development and whether there are disproportionate or cumulative impacts

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169. See 23 C.F.R. § 200.9(b)(4) (1976); 24 C.F.R. § 5.150 (2020) (affirmatively furthering fair housing).

170. CAL. PUB. RES. CODE § 30600 (West 2018 & Supp. 2021).

on some populations or communities. AB 2616 and the EJ Policy explicitly expanded how coastal permitting decisions should consider environmental justice, which the Commission has begun to implement. For example, the Commission has recommended alternatives and mitigation measures to proposed CDPs after consideration of environmental justice impacts.<sup>171</sup> Nevertheless, there remains room to fully leverage the Commission's authority to advance environmental justice.

The Commission should also consider environmental justice in all CDP appeal decisions,<sup>172</sup> but it must do so where the failure to consider environmental justice in a CDP decision forms the basis of the appeal to the Commission.<sup>173</sup> If the Commission finds a substantial issue as to conformity with Chapter 3 of the Coastal Act, the CDP decision is voided and the Commission will review the permit de novo.<sup>174</sup> The Commission also has

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171. *See, e.g.*, Application of California Department of Transportation (Caltrans) Dist. 1, No. 1-18-1078, at 88 (Cal. Coastal Comm'n Aug. 7, 2019) (Staff Report), <https://documents.coastal.ca.gov/reports/2019/8/W11a/W11a-8-2019-report.pdf> (agency developed a project alternative to avoid traffic impact on EJ community); Recommendation of Appeal of Cal. Am. Water Co., A-3-MRA-19-0034, at 68 (Cal. Coastal Comm'n, Sept. 17, 2020) (Staff Report) 8-9, <https://documents.coastal.ca.gov/reports/2020/9/Th3a&4a/Th3a&4a%20Staff%20Report.pdf> (staff proposed an alternative water project to avoid impacts on EJ communities); Application of Dana Point Harbor Partners, LLC, No. 5-19-0971 (Cal. Coastal Comm'n Sept. 9, 2020) (Staff Report), <https://documents.coastal.ca.gov/reports/2020/9/W13c/W13c-9-2020-report.pdf> (requiring applicant to address EJ impacts by providing an annual education program for underserved youth to address public access and EJ issues); Lindsey Glasgow, *Coastal Commission Gives Final Approval to Dana Point Harbor Marina Rebuild*, THE LOG (Mar. 23, 2021), <https://www.thelog.com/local/coastal-commission-gives-final-approval-to-dana-point-harbor-marina-rebuild/> (describing how the Commission did not allow construction to begin under the Dana Point permit until certain conditions, including the educational program, were met).

172. CAL. PUB. RES. CODE § 30604(h).

173. Coastal Comm'n Env't Just. Pol'y, *supra* note 93, at 7.

Where a local government fails to consider environmental justice when evaluating a proposed development that has the potential to adversely or disproportionately affect a historically disadvantaged group's ability to reach and enjoy the coast, that failure may be the basis for an appeal to the Coastal Commission. Similarly, where a local coastal program includes policies that implement environmental justice principles, a local government's failure to consider those principles may also be the basis of an appeal to the Coastal Commission.

*Id.*

174. CAL. PUB. RES. CODE §§ 30621, 30625. The Commission is guided by the following factors on appeal: (1) Degree of "factual and legal support for the local government's decision that the development" is consistent with the Coastal Act; (2) "extent and scope of development as approved or denied"; (3) "significance of coastal resources affected by the decision"; (4) the "precedential value of the local government's decision for future interpretations of its LCP"; and (5) "Whether the appeal raises local issues or those of regional or statewide significance." While environmental justice was not integrated into Chapter 3 of the Act and there is not a regulatory standard of review, the Commission may still consider environmental justice when making CDP appeal decisions. Application of Marius Markevicius, VDM Limited, LLC, No. A-5-VEN-19-

authority to consider appeals for specific categories of port developments under Chapter 8 of the Act.<sup>175</sup>

The Commission has already begun to integrate EJ principles into its permit appeal analysis, as described in Section III.C above. However, the Commission should be robust in its assessment of environmental justice procedural and substantive impacts. Considering environmental justice impacts in a silo or assuming an environmental justice benefit based on a regional benefit is a misreading of the EJ Policy.<sup>176</sup> Meaningful integration of EJ communities and organizations into decision-making will go a long way to ensure the Commission is fully and accurately assessing the possible environmental justice benefits and burdens. It should take initiative in applying its EJ Policy and undertake bold and affirmative actions to advance environmental justice by proactively considering the environmental justice impacts of every proposal before it, in addition to responding to community concerns.

#### B. Port Master Plans

Port master planning offers a breadth of opportunities for the Commission and ports to directly advance environmental justice for port-adjacent communities that have long been overburdened by the California coastline's industrial sources. Because port master plans set out a long-term vision and comprehensive framework for port development, they present a unique opportunity to holistically address environmental justice goals and principles in the port's future growth. Even when reviewing minor port master plan amendments, the Commission can ensure that adequate alternatives and mitigation measures are considered. Indeed, the Commission's EJ policy commits that it will encourage port master plan amendments to address environmental justice.<sup>177</sup>

The Coastal Act requires certain ports to prepare port master plans (PMP),<sup>178</sup> which must be certified by the Coastal Commission to take

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0022, at 7 (Cal. Coastal Comm'n, June 12, 2019) (Staff Report), <https://documents.coastal.ca.gov/reports/2019/6/W11c/w11c-6-2019-report.pdf>.

175. CAL. PUB. RES. CODE § 30715.

176. In one staff report discussing the environmental justice impacts of a proposed wastewater facility, the Commission responded by highlighting that the facility would bring benefits all city residents and by doing so would further environmental justice. Application of City of Morro Bay, No. 3-19-0463, at 8 (Cal. Coastal Comm'n, July 11, 2019) (Staff Report), <https://documents.coastal.ca.gov/reports/2019/7/Th13a/Th13a-7-2019-report.pdf>.

177. Coastal Comm'n Env't Just. Pol'y, *supra* note 93, at 9, 16.

178. Port master plans are required by the Coastal Act for ports within the Coastal Zone, that have Boards of Harbor Commissioners. CAL. PUB. RES. CODE § 30711. The only ports in

effect.<sup>179</sup> Once a PMP is certified, a port is granted authority to issue Coastal Development Permits (CDP) for projects that are consistent with its PMP.<sup>180</sup> CDPs granted by a port are not appealable to the Coastal Commission, unless issued for a type of appealable development specifically listed in the statute.<sup>181</sup>

PMPs must comply with Chapter 8 of the Coastal Act, which provides that all port-related development shall be designed to “[m]inimize substantial adverse environmental impacts” and “[p]rovide for other beneficial uses consistent with the public trust.”<sup>182</sup> PMPs must contain specific elements, including “[a]n estimate of the effect of development on habitat areas and the marine environment, a review of existing water quality, habitat areas, and quantitative and qualitative biological inventories, and proposals to minimize and mitigate any substantial adverse impact,” and “[p]rovisions for adequate public hearings and public participation in port planning and development decisions.”<sup>183</sup> In authorizing fill activities, the Commission must “balance and consider socioeconomic and environmental factors.”<sup>184</sup> Certain appealable developments must also be sufficiently described in PMPs and must comply with the extensive public access, public participation, and other policies in Chapter 3 of the Coastal Act.<sup>185</sup>

Several PMPs currently in place were adopted around 1980 and have not been comprehensively updated for many years despite dramatic differences in cargo volumes over the last forty years.<sup>186</sup> Since many developments

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California that must prepare port master plans are the Port of Hueneme, Port of Los Angeles, Port of Long Beach, and Port of San Diego. *Id.* § 30700.

179. *Id.* § 30712.

180. *Id.* §§ 30702, 30715.

181. *Id.* § 30715. The listed appealable activities include: (1) developments for storage, transmission, and processing of significant volumes of liquified natural gas and crude oil; (2) waste water treatment facilities; (3) roads or highways not principally for internal port circulation; (4) office, residential buildings, hotels, shopping facilities, commercial fishing facilities, and recreational small craft facilities; (5) oil refineries; (6) petrochemical plants. *Id.*

182. *Id.* § 30708(a), (d).

183. *Id.* § 30711(a)(3), (5); *see also* CAL. CODE REGS. tit. 14, § 13625 (2019) (listing requirements for Coastal Commission certification of a port master plan).

184. CAL. PUB. RES. CODE § 30705(d).

185. *Id.* § 30714(b).

186. The Port of San Diego issued a port master plan in 1981 and is only now doing its first update. PORT OF SAN DIEGO, DRAFT PORT MASTER PLAN: SAN DIEGO UNIFIED PORT DISTRICT (Nov. 2021), <https://pantheonstorage.blob.core.windows.net/waterfront-development/Port-Master-Plan-Update-Draft-November-2021.pdf>. Port of Hueneme adopted a port master plan in 1979, which has not been comprehensively updated. Memorandum from John Ainsworth, Exec. Dir., Cal. Coastal Comm’n, to Cal. Coastal Comm’n and Interested Parties, Executive Director’s Report, March 2018 (Mar. 5, 2018), <https://documents.coastal.ca.gov/reports/2018/3/w6a/w6a-3-2018-report.pdf>. Port of Long Beach updated their plan in 1990. *Port of Long Beach Releases Master Plan Update*, AJOT (Aug. 16,

today do not comply with these outdated plans, ports often must apply for minor PMP amendments to accommodate new projects. Today the Ports of San Diego and Long Beach are on the verge of updating their PMPs, signaling that application of the EJ Policy will soon be tested in the port context. The Coastal Commission has yet to issue guidance to ports on how to incorporate environmental justice throughout the planning process.<sup>187</sup>

Once a port governing body has adopted a draft PMP and certified a final environmental impact report for that plan, it submits the plan to the Commission for final review and certification.<sup>188</sup> The Commission then undertakes a ninety-day review period to determine whether to certify the plan.<sup>189</sup> During this time, Commission staff should meaningfully engage with impacted environmental justice stakeholders, consider their lived experiences, and conduct robust analyses of the environmental justice implications of the PMP update. The Commission has the authority to reject a PMP update in full or in part, but must base a rejection on written findings that the update fails to conform to the Act.<sup>190</sup> However, the Commission may not *modify* a PMP.<sup>191</sup> This provision has been interpreted narrowly to “prohibit[] Commission only from *conditionally approving* a master plan,

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2019, 10:45 AM), <https://www.ajot.com/news/port-of-long-beach-releases-master-plan-update>. While the 2013 update of the Port of Los Angeles’ PMP importantly provided for alignment with current environmental initiatives, including diesel emission reduction strategies under the port’s Clean Air Action Plan, it did not specifically address environmental justice. See PORT OF L.A., PORT MASTER PLAN 2 (2018), [https://kentico.portoflosangeles.org/getmedia/adf788d8-74e3-4fc3-b774-c6090264f8b9/port-master-plan-update-with-no-29\\_9-20-2018](https://kentico.portoflosangeles.org/getmedia/adf788d8-74e3-4fc3-b774-c6090264f8b9/port-master-plan-update-with-no-29_9-20-2018).

187. The Commission’s Environmental Justice Policy generically states that the Commission will strongly encourage local governments to amend their local coastal programs and port master plans to address environmental justice, that staff will work collaboratively with these partner agencies to ensure that all coastal development decisions consider environmental justice, and that it will issue best practices and guidance documents to aid other entities in their coastal decisionmaking. Coastal Comm’n Env’t Just. Pol’y, *supra* note 93, at 7, 15. The Commission’s 2021-2025 Strategic Plan commits to developing guidance for integrating environmental justice considerations into permitting and planning decisions, and making meetings more accessible to reduce barriers to public participation. CAL. COASTAL COMM’N, FINAL STRATEGIC PLAN, 2021-2025, *supra* note 149, at 28-32.

188. CAL. CODE REGS. tit. 14, § 13646 (2019).

189. CAL. PUB. RES. CODE § 30712.

190. If the Coastal Commission finds that the plan or a portion of the plan is consistent with the policies guiding port-related development set forth in Chapter 8 of the Act (set forth below), and that any appealable development projects conform to the policies of Chapter 3 of the Act (also set forth below), the Commission *shall* certify the port master plan. *Id.* § 30714. If the Commission fails to act within 90 days of submittal of a plan, the port master plan will be deemed certified. *Id.* The same public and approval process applies for amendments to port master plans as long as the Commission does not find that the amendment is *de minimis*. *Id.* § 30716(a).

191. *Id.* § 30712.

that is, granting certification subject to a specified modification.”<sup>192</sup> It may still issue specific findings about how an update fails to advance the Act’s policies. The Commission should use this opportunity to reject plans that fail to adequately consider environmental justice, in line with the Coastal Act’s mandates.

The Commission has applied its broad authority to reject a PMP amendment on the basis that the proposed amendment is inconsistent with state coastal policy. In one case, the Commission denied a PMP amendment where the proposed development lacked public access and affordable accommodations.<sup>193</sup> A court reviewing this decision recognized that the “Commission’s broad supervisory role in implementing statewide coastal policy is particularly important when dealing with a port master plan” and emphasized the need for the Commission’s input and expertise to enforce and further coastal policies, including public access and lower-cost visitor facilities, precisely in those instances.<sup>194</sup> While ports are motivated by increasing profits, the Coastal Commission is well-positioned as the overseeing land use agency to consider the environmental and economic interests of the region and state as a whole. In determining whether to certify a PMP, the “Commission is empowered to not only determine whether a master plan amendment conforms with the Act’s policies, but that it carries out those policies.”<sup>195</sup> “It is permitted to tak[e] into account the social and economic needs of the people of the state . . . and ensure that state policies prevail over local concerns.”<sup>196</sup>

The Coastal Commission can also advance environmental justice in the PMP process through the California Environmental Quality Act (CEQA) review process. As a responsible agency, the Commission can advance

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192. *San Diego Unified Port Dist. v. Cal. Coastal Comm’n*, 238 Cal. Rptr. 3d 671, 693 (Ct. App. 2018) (emphasis added); *see also San Diego Navy Broadway Complex Coal. v. Cal. Coastal Comm’n*, 253 Cal. Rptr. 3d 314, 334 (Ct. App. 2019) (upholding Coastal Commission’s ability to communicate with port about changes to draft port master plan up to time of vote on certification).

193. *San Diego Unified Port Dist.*, 238 Cal. Rptr. 3d at 682 (upholding the Commission’s written findings denying certification of a port master plan amendment where the Commission found that the proposed amendment did not further the Act’s public access policies or contain sufficient specificity to comply with the Act’s mandate to provide low-cost visitor facilities).

194. *Id.* at 691-92 (“[The] Commission’s broad supervisory role in implementing statewide coastal policy is particularly important when dealing with a port master plan, the purpose of which is to guide future uses and development within the port district. A master plan is precisely the sort of tool that requires Commission’s input and expertise for enforcing and furthering coastal policies, including those dealing with public access and lower cost visitor facilities.”); *see also id.* at 689 (holding that limitations of the Commission’s authority with respect to local coastal programs—which prohibit the Commission from determining the precise content of a land use plan, creating land use regulations, or drafting coastal plans—do not apply with respect to port master plans).

195. *Id.* at 693.

196. *Id.* at 694 (internal quotation marks omitted).

environmental justice both procedurally through ensuring the CEQA process is open and inclusive of environmental justice stakeholders, and substantively by ensuring environmental justice impacts are fully considered.<sup>197</sup> The Commission may require project changes through the CEQA process that lessen or avoid environmental justice impacts.<sup>198</sup> As such the Commission can work to ensure that alternatives and mitigation measures requested by the community are considered in the process.

### C. Local Coastal Programs

The development of Local Coastal Programs (LCPs) provides a unique opportunity to center community needs while advancing the statewide goals of achieving environmental justice and preserving the coast for all Californians. Local governments within the Coastal Zone must prepare an LCP to guide coastal development.<sup>199</sup> Once the Commission certifies an LCP as consistent with the Act, it delegates its authority to issue CDPs.<sup>200</sup> Both the Commission and local governments must ensure that LCPs center and enforce the goals of the Act, even where there are tensions with local concerns.<sup>201</sup>

The Coastal Act is a floor for local governments, allowing an LCP to go beyond the Act's minimum requirements to protect public health and the

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197. The California Code of Regulations also has specific provisions related to the Coastal Commission's review of environmental documents prepared for a port master plan. Under title 14, section 13645 of the California Code of Regulations, "(b) The executive director shall: (1) Review any Initial Environmental Study sent to him or her for consultation purposes, determine what comments should be made on behalf of the commission, and forward such comments to the port governing body." In addition, "(c) The commission, in its discretion, may hold a public hearing on any environmental document submitted and direct the staff to make whatever comments, or to obtain whatever additional information, the commission deems appropriate." *Id.*

198. See CAL. CODE REGS. tit. 14, § 15041(b) (West 1983) ("When a public agency acts as a responsible agency for a project, the agency shall have more limited authority than a lead agency. The responsible agency may require changes in a project to lessen or avoid only the effects, either direct or indirect, of that part of the project which the agency will be called on to carry out or approve.").

199. CAL. PUB. RES. CODE § 30500(a) (West 2018 & Supp. 2021). LCPs must contain both a Land Use Plan (LUP) and an Implementation Plan (IP). *Id.* § 30511. The Commission retains land use authority over that portion of the Coastal Zone until both the LUP and IPs are certified. See *Mountainlands Conservancy, LLC v. Cal. Coastal Comm'n*, 260 Cal. Rptr. 3d 683, 687 (Ct. App. 2020) *cert. denied*, No. 20-821, 2021 WL 666444 (U.S. Feb. 22, 2021).

200. CAL. PUB. RES. CODE § 30519(a). Certification occurs when the Commission reviews the LCP or LCP amendment and concludes it is consistent with Chapter 3 of the Coastal Act. *Id.* § 30512.2(a); see also *id.* § 30512 (requiring the Commission to make a determination as to whether the proposed LCP raises substantial issue as to conformity).

201. See *Charles A. Pratt Constr. Co., Inc. v. California Coastal Comm'n*, 76 Cal. Rptr. 3d 466, 471 (Ct. App. 2008).

environment.<sup>202</sup> In the context of ports and port-related industrial development, LCPs can play a role in limiting expansion of industrial uses in communities already overburdened by freight impacts. The Act specifically provides local governments with permitting authority over proposed off-port developments within the local government's jurisdiction as long as the LCP has incorporated the PMP.<sup>203</sup> Furthermore, local governments must consider impacts on coastal resources from activities outside of the Coastal Zone in its preparation of an LCP.<sup>204</sup>

The EJ Policy encourages local governments to amend their LCPs to address environmental justice issues,<sup>205</sup> which they can do by developing an EJ Section in their LCP and/or incorporating environmental justice into existing sections, such as the public access, coastal hazards, and energy and industrial development sections. Once the Coastal Commission releases new guidance on how to incorporate environmental justice into LCPs—as the Commission has committed to doing under the EJ Policy<sup>206</sup> and its Strategic Plan<sup>207</sup>—local governments will also be able to rely on those recommendations. However, until that guidance is available, local governments can draw on the guidance and recommendations provided by the Governor's Office of Planning and Research on how to incorporate environmental justice land use goals and elements in General Plans.<sup>208</sup> Local governments should also engage in meaningful public engagement and robust analysis, as discussed in Section IV, to fully understand the impacts and priorities of EJ communities in their jurisdiction and incorporate them into LCP amendments.

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202. See *McAllister v. Cal. Coastal Comm'n.* 87 Cal. Rptr. 3d 365, 372 (Ct. App. 2008); see also *Schneider v. Cal. Coastal Comm'n.* 44 Cal. Rptr. 3d 867, at 874 (Ct. App. 2006); Reineman, *supra* note 107, at 100-01.

203. CAL. PUB RES. CODE § 30519(b).

204. *Id.* § 30200(a) (“All public agencies carrying out or supporting activities outside the coastal zone that could have a direct impact on resources within the coastal zone shall consider the effect of such actions on coastal zone resources in order to assure that these policies are achieved.”).

205. Coastal Comm'n Env't Just. Pol'y, *supra* note 93, at 9.

206. *Id.* at 16. See generally CAL. COASTAL COMM'N, LCP UPDATE GUIDE (2013), <http://www.coastal.ca.gov/rflg/lcp-planning.html>. The Commission should also include a session on how to incorporate environmental justice goals and policies in an LCP as part of its reoccurring Local Government Workshops.

207. CAL. COASTAL COMM'N, FINAL STRATEGIC PLAN, *supra* note 149, at 30.

208. This guidance includes recommendations for how to identify EJ communities, how to analyze impacts on EJ communities, how to engage with EJ communities, and how to develop “EJ goals, policies, and programs that address the unique and compounded health risks in disadvantaged communities and prioritize improvements and programs that meet the needs of disadvantaged communities.” GOVERNOR'S OFF. OF PLAN. AND RSCH., GENERAL PLAN GUIDELINES: 4.8 ENVIRONMENTAL JUSTICE ELEMENT 1 (2020), [http://opr.ca.gov/docs/20200706-GPG\\_Chapter\\_4\\_EJ.pdf](http://opr.ca.gov/docs/20200706-GPG_Chapter_4_EJ.pdf).

Where a proposed LCP amendment does not incorporate environmental justice, the Commission should consider rejecting or modifying the amendment as inconsistent with the Coastal Act.<sup>209</sup> The Commission has already begun to deny LCP amendments based on environmental justice considerations.<sup>210</sup> It should continue to do so, using its existing authority as described above, by robustly studying impacts—including cumulative impacts—on EJ communities, meaningfully engaging impacted EJ communities to fully understand the impacts, and developing mitigation measures and alternatives. As part of its meaningful engagement of the public, the Commission should consider interviewing impacted EJ community members.<sup>211</sup>

As of the time of this writing, multiple near-port LCPs are being updated,<sup>212</sup> providing local governments and the Commission with an opportunity to apply the EJ Policy and incorporate environmental justice goals, analysis, and measures. Local governments should take this opportunity to meaningfully engage residents, especially those who have not historically had access to land use planning and decision-making.<sup>213</sup> While these types of comprehensive amendments do not occur often, the Commission is tasked with reviewing every certified LCP at least once every five years and may proactively submit recommendations on how to

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209. CAL. PUB. RES. CODE § 30001.5 (explaining that the goals of the Coastal Act include protection of coastal environment, conservation of coastal resources in light of the social and economic needs of residents, maximization of public coastal access, to “[a]ssure priority for coastal-dependent” development, and encourage state and local cooperation to implement coordinated planning and development.)

210. Summary of LCP Amendment Request, No. 4-17 pt. D, at 2-4 (Cal. Coastal Comm’n June 27, 2019) (Staff Recommendation), <https://documents.coastal.ca.gov/reports/2019/7/W26a/W26a-7-2019-report.pdf>.

211. For example, in its review of a proposed LCP amendment for Santa Barbara County, while the Commission did determine that providing affordable and farmworker housing was consistent with the EJ Policy, there was no mention of staff’s attempt to engage the farmworker community as part of its decision-making. County of Santa Barbara Local Coastal Program Amendment, No. LCP-4-STB18-0098-3 pt. B, at 2, 11, 16 (Cal. Coastal Comm’n Jan. 23, 2020), <https://documents.coastal.ca.gov/reports/2020/2/Th9a/Th9a-2-2020-report.pdf>.

212. The City of Oxnard is currently undertaking an update and plans to incorporate several studies and existing programs, primarily around sea level rise adaptation, although this announcement occurred before the passing of AB 2616 and the EJ Policy. *What is a Local Coastal Plan?*, CITY OF OXNARD, <https://www.oxnard.org/lcp-faq/> (last visited Feb. 28, 2022). An update to the Barrio Logan Community Plan was approved by the San Diego City Council in December 2021, but will still require certification by the Commission. *Review the Barrio Logan Community Plan*, CITY OF SAN DIEGO, <https://www.planbarrio.org/review-the-2021-draft-plan> (last visited Feb. 28, 2022).

213. At a minimum, local governments must hold at least one public hearing before adopting any LCP amendments. CAL. PUB. RES. CODE § 30510(a) (West 2018 & Supp. 2021). The Commission also considers the proposed LCP amendment at a public meeting. *Id.* § 30514.

effectively implement the Act.<sup>214</sup> If local governments do not take the recommended actions they must lay out their reasons in a report, but the Commission retains authority to recommend legislative action if it continues to believe the corrective actions are necessary.<sup>215</sup> For local governments that do not amend their LCPs to integrate environmental justice, the Commission should submit formal recommendations and elevate their concerns as necessary.

## VI. CONCLUSION

The Coastal Commission's Environmental Justice Policy and AB 2616 are powerful tools that can be used by coastal decision makers to address the serious and long-standing harms caused by industrial port development. Decision makers should join port-adjacent communities in their resistance to being continually sacrificed to allow for port development and partner with these communities to co-design solutions that will allow these communities to thrive and enjoy California's coastal beauty and resources as the Coastal Act intends.

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214. *Id.* § 30519.5(a).

215. *Id.* § 30519.5(b).