

5.2 Organizations

O-1 Communities for a Better Environment et al.

COMMENT

RESPONSE

Dear Mr. Vollmann,

Please find attached a letter requesting an extension of the public comment period for the Draft Environmental Impact Report for the Oakland Waterfront Ballpark District Project (ER18-016), signed by Communities for a Better Environment, Public Advocates, East Bay Alliance for a Sustainable Economy, East Bay Housing Organizations, Faith in Action East Bay, Urban Peace Movement, Causa Justa: Just Cause, Faith Alliance for a Moral Economy, Urban Habitat, Asian Pacific Environmental Network, Communities United for Restorative Youth Justice, Oakland Tenants Union, Sierra Club San Francisco Bay Chapter, Oakland Heritage Alliance, AYPAL: Building API Community Power, Alliance of Californians for Community Empowerment, and the Ella Baker Center for Human Rights.

Please let me know if you have any trouble accessing the attachment.

Sincerely,

Heather Lewis

Clinical Supervising Attorney

Environmental Law Clinic

University of California, Berkeley School of Law

353 Law Building

Berkeley, CA 94720-7200

(510) 642-7875

O-1-1 See Consolidated Response 4.19, *Comment Period Extension*.

O-1

COMMENT

RESPONSE

O-1-2 See Consolidated Response 4.19, *Comment Period Extension*.



March 5, 2021

City of Oakland Bureau of Planning
250 Frank H. Ogawa Plaza, Suite 2214
Oakland, CA 94612
VIA EMAIL
PVollmann@oaklandca.gov

Re: Request for Adequate Time to Comment on the Draft Environmental Impact Report for the Oakland Waterfront Ballpark District Project (ER18-016)

Dear Mr. Vollmann:

Communities for a Better Environment, Public Advocates, East Bay Alliance for a Sustainable Economy, East Bay Housing Organizations, Faith in Action East Bay, Urban Peace Movement, Causa Justa: Just Cause, Faith Alliance for a Moral Economy, Urban Habitat, Asian Pacific Environmental Network, Communities United for Restorative Youth Justice, Oakland Tenants Union, Sierra Club San Francisco Bay Chapter, Oakland Heritage Alliance, AYPAL: Building API Community Power, Alliance of Californians for Community Empowerment, and the Ella Baker Center for Human Rights respectfully request that the City provide adequate time for members of the public to review and comment on the on the Draft Environmental Impact Report (“DEIR”) for the Oakland Waterfront Ballpark District Project (“Project”) at Howard Terminal. For the reasons more fully detailed below and pursuant to CEQA Guidelines section 15105, we request a 90-day comment period for the public to adequately review the DEIR.

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COMMENT

RESPONSE

O-1-3 See Consolidated Response 4.19, *Comment Period Extension*.

Our organizations work with residents, workers, faith leaders, youth, unions, and community organizations in East and West Oakland. These low-income communities and communities of color will likely face significant impacts from the construction and operation of the Project. As the City outlined in its Notice of Preparation, this Project could result in significant environmental impacts on air quality, biological resources, cultural resources, hazards, land use, noise and vibration, population and housing, public services, public utilities, transportation and circulation, hydrology and water quality, and growth inducement.¹ The City must ensure that the scope and extent of these potential harms are adequately understood by the public.

O-1-2

Public participation is at the heart of the CEQA process.² CEQA directs the City to encourage “wide public involvement,”³ and requires that the City provide adequate time for members of the public to review and comment on a draft EIR.⁴ The City is authorized under CEQA to extend the comment period to at least 60 days, and beyond 60 days in unusual circumstances.⁵ The scope and magnitude of this Project warrant a finding of such unusual circumstances.

If constructed as proposed, the Project would result in a major redevelopment of the 55-acre Howard Terminal site, including not only the 35,000-seat stadium, but more than 1.7 million square feet of mixed-use development (presumably drawing thousands of workers), and up to 3,000 residential units⁶—a more than 150% increase in the number of housing units in the area.⁷ In addition, the DEIR and its appendices are more than 6,000 pages long, and will require significant time and resources to not only digest, but also inform and solicit feedback from the residents that our organizations serve. The public must be given sufficient time to study, evaluate and provide comments on the DEIR in its entirety. Given these circumstances, a 90-day comment period is warranted.

O-1-3

Additionally, the City, the Port of Oakland, and the Oakland A’s have committed to developing a comprehensive community benefits package, as required by Assembly Bill (“AB”) 734.⁸ In order to develop such a community benefits agreement, community members and advocates must be given adequate time to review and understand the environmental impacts of the Project. While we appreciate that the City, the Port, and the A’s convened a community benefits process beginning in 2019, and we appreciate all of the work of the stakeholders involved in that process, the release of the DEIR last week is the first time that stakeholders and other members of the public were provided with detailed information about the scope and extent of the environmental impacts of the Project. The City should ensure that these parties have adequate time to review and analyze the environmental impacts in order to inform the development of a robust community benefits agreement. The City has stated that the DEIR was ready for publication in February 2020, but at the A’s request the DEIR was not published in order

¹ Project Notice of Preparation at 4.

² CEQA Guidelines § 15201 (“Public participation is an essential part of the CEQA process.”)

³ CEQA Guidelines § 15201.

⁴ See CEQA Guidelines § 15203.

⁵ CEQA Guidelines § 15105(a).

⁶ DEIR at 2-1.

⁷ The latest US Census Bureau data indicates that the surrounding census tracts contain a total of 1,923 households. See Housing Data for Census Tracts 9820, 9819, 4025, 4026, and 9832, available at <https://geomap.ffiec.gov/FFIECGeocMap/GeocodeMap1.aspx>.

⁸ Cal. Pub. Res. Code § 21168.6.7(3)(A)(v) (this Project must be “subject to a comprehensive package of community benefits approved by the Port of Oakland or City Council of the City of Oakland.”).

O-1

COMMENT

RESPONSE

O-1-4 See Consolidated Response 4.19, *Comment Period Extension*.

to allow more time for the Governor’s review and certification of the Project pursuant to AB 734.⁹ It appears, then, that the City, the Port, and the A’s have had knowledge of the impacts identified in the DEIR for the past year, while the public is expected to review those impacts in only 45 days. These unusual circumstances warrant a longer period of public review.

Finally, AB 734 establishes an expedited *judicial* review process. AB 734 does not expedite the *administrative* and essential environmental review of the Project. In fact, the plain language of AB 734 emphasizes the importance of public participation in environmental review of the Project:

It is therefore in the interest of the state to expedite judicial review of the proposed project, as appropriate, *while protecting the environment and the right of the public to review, comment on*, and, if necessary, seek judicial review of, the adequacy of the environmental review of the project under the California Environmental Quality Act.¹⁰

We appreciate the City of Oakland’s community engagement efforts in the review of this Project. In order to adequately solicit feedback and community input at this critical stage of environmental review, it is imperative that the Bureau of Planning ensure the public has an adequate amount of time to review the DEIR. We request that the Bureau of Planning provide at least 90 days for the public to comment on the DEIR, consistent with the intent of CEQA and AB 734.

Sincerely,

Communities for a Better Environment
Public Advocates
East Bay Alliance for a Sustainable Economy
East Bay Housing Organizations
Faith in Action East Bay
Urban Peace Movement
Causa Justa: Just Cause
Faith Alliance for a Moral Economy
Urban Habitat
Asian Pacific Environmental Network
Communities United for Restorative Youth Justice
Oakland Tenants Union
Sierra Club San Francisco Bay Chapter
Oakland Heritage Alliance
AYPAL: Building API Community Power
Alliance of Californians for Community Empowerment
Ella Baker Center for Human Rights

⁹ Memorandum from Betsy Lake, Deputy City Administrator, to Mayor Schaff and City Council, Feb. 16, 2021, at 2, available at <https://cao-94612.s3.amazonaws.com/documents/Howard-Terminal-info-report-w-attachments.pdf>.

¹⁰ AB 734 Sec. 1(f) (emphasis added).

O-2 Save the Bay

COMMENT

RESPONSE

O-2-1 See Consolidated Response 4.19, *Comment Period Extension*, explaining why the total extended public review period of 60 days was adequate time for the public to provide meaningful comments on the Draft EIR and no further extension was warranted.

From: [David Lewis](#)
To: [Lake, Betty](#)
Cc: [Fernando Bas, Nikki](#); [Kazian, Rebecca](#); [Rah, Dan](#)
Subject: RE: Waterfront Ballpark District Project -- request for comment period extension
Date: Monday, March 8, 2021 8:47:00 AM

[EXTERNAL] This email originated outside of the City of Oakland. Please do not click links or open attachments unless you recognize the sender and expect the message.

March 8, 2021

Elizabeth Lake
Deputy City Administrator of Real Estate & Major Projects
City Hall
1 Frank H. Ogawa Plaza
Oakland, CA 94612

RE: Waterfront Ballpark District Project -- request for comment period extension

Dear Ms. Lake:

Save The Bay hereby requests an extension of the public comment period for the Oakland Waterfront Ballpark District Project Draft Environmental Impact Project to 90 days instead of the 45 days provided in city's February 26, 2021 notice of release for the DEIR. Save The Bay is the largest organization working to protect and restore San Francisco Bay, representing tens of thousands of residents in Oakland and throughout the Bay Area. We are an interested party in this project, and have commented previously on the project EIR Notice of Preparation.

More than two years has passed since the Notice of Preparation for this DEIR was published and comments were submitted. The DEIR and appendices constitute thousands of pages of detailed information that merit significantly more than 45 days of review by the public, especially for a proposal what would have impacts on the city's residents and the surrounding area for many decades.

The Ballpark project has captured the interest and attention of many area residents, and under the expedited procedures currently being contemplated for the project this may be the only opportunity for significant public review and comment. The ultimate project will be significantly improved by robust public scrutiny into the Draft EIR's assessment of impacts and alternatives. With that input, the City can prepare a legally-adequate final Report that accurately characterizes all impacts and alternatives, so that City, State and Federal agency decision-makers have complete information on which to base approval or require modifications and mitigation.

We appreciate your consideration of this request.

O-2-1

O-2

COMMENT

RESPONSE



David Lewis, Executive Director
Save The Bay
300 Frank H. Ogawa Plaza, Suite 280
Oakland, CA 94612
dlewis@saveSFbay.org
c. 510.604.7723

cc: elake@oaklandca.gov
Council President Nikki Fortunato Bas nfbas@oaklandca.gov
Councilmember Rebecca Kaplan rkaplan@oaklandca.gov
Councilmember Dan Kalb dkalb@oaklandca.gov

O-3 San Francisco Baykeeper

COMMENT

RESPONSE

From: [Ben Eichenberg](#)
 To: [Lake, Betty](#)
 Cc: [Fortunato, Pas, Nikki](#); [Kaplan, Rebecca](#); [Kath, Dan](#)
 Subject: Waterfront Ballpark District Project -- request for comment period extension
 Date: Tuesday, March 9, 2021 2:52:48 PM

[[EXTERNAL]] This email originated outside of the City of Oakland. Please do not click links or open attachments unless you recognize the sender and expect the message.

Dear Ms. Lake,

Due to its complex and lengthy nature, San Francisco Baykeeper would like to request an extension of the public comment period for the Draft Environmental Impact Statement (DEIR) for the Oakland Waterfront Ballpark. Baykeeper strongly feels that 90 days, rather than the 45 provided in the City's February 26, 2021 DEIR notice of release, is more appropriate for the importance of this project and the public input and transparency such a project requires.

Baykeeper's mission is to protect San Francisco Bay from the worst threats and to hold polluters accountable. Thus, Baykeeper, along with our more than 5,000 members and supporters, is deeply concerned with multiple aspects of this Project. Toxic remediation, for instance, is one of the biggest threats facing the Bay, especially in the era of climate change and sea level rise. The Project site will require significant remediation for legacy toxics, but our initial review of the DEIR does not show a comprehensive plan for remediation of these toxics. This means that Baykeeper and other concerned members of the public must research the site and the potentially necessary remediation to ensure that the Project does not adversely impact public trust resources, such as San Francisco Bay.

The DEIR and its appendices contain thousands of pages of detailed information, potentially including many more issues such as toxics remediation. These issues will have impacts on the City and its residents, as well as surrounding areas, for many decades to come. This merits significantly more than 45 days of public review.

Also of concern are the expedited procedures being contemplated for this Project. As you know, this Project is of keen interest both to Oakland residents across the City and to the entire Bay Area. Under some expedited procedure proposals, this may be the only opportunity all of these people have to comment and participate meaningfully in this process. As you know, stakeholder participation is vital for project legitimacy, especially in highly visible circumstances such as ballpark construction. Such participation should be as robust as possible, which cannot happen under the constrained timeline initially proposed.

Thank you for your attention to this important matter.

Sincerely,

Ben Eichenberg

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O-3-1

O-3-2

O-3-3

O-3-4

O-3-1 See Consolidated Response 4.19, *Comment Period Extension*.

O-3-2 This is a general comment that includes introductory remarks and a request for an extension of the comment period. See Consolidated Response 4.19, *Comment Period Extension*.

Please see Consolidated Response 4.16, *Remediation Plans, Land Use Covenants, and Human Health and Ecological Risk Assessment*, for a response to comments regarding site remediation.

O-3-3 See Consolidated Response 4.19, *Comment Period Extension*.

O-3-4 See Consolidated Response 4.19, *Comment Period Extension*, regarding the City's determination that adequate time has been provided for the public to review the Draft EIR. See Consolidated Response 4.1, *Project Description*, regarding the circumstances under which there would be opportunities for future comment on the Project pursuant to CEQA.

O-3

COMMENT

RESPONSE



Keeping an eye on the Bay since 1989

Ben Eichenberg, Staff Attorney (He/Him)

San Francisco Baykeeper | 736 Franklin Street, Suite 800 | Oakland, CA 94612
Office: 510-735-9700 x105

baykeeper.org



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O-4 Golden Gate Audubon Society

COMMENT

RESPONSE

From: [Pam Young](mailto:Pam.Young)
To: wgilchrist@oaklandca.gov; pvollmann@oaklandca.gov
Cc: Plaszian@oaklandca.gov; dshib@oaklandca.gov; rfbaa@oaklandca.gov; ctf@oaklandca.gov; Ellen@oaklandca.gov; Maisha@oaklandca.gov; isa@oaklandca.gov; lmia@oaklandca.gov; dake@oaklandca.gov; Laura.Cramis
Subject: Request to Extend Howard Terminal dEIR Comment Period
Date: Monday, March 15, 2021 11:13:00 AM
Attachments: [Howard_Terminal_stadium_comment_period_Mar2021.pdf.pdf](#)

[EXTERNAL] This email originated outside of the City of Oakland. Please do not click links or open attachments unless you recognize the sender and expect the message.

Director Gilchrist and Planner Vollmann,

Please accept our Golden Gate Audubon Society letter respectfully requesting an additional 45 days to comment on the Howard Terminal draft EIR.

Please contact me with questions or concerns.

Kind regards,

Pam Young

--

Pam Young
Executive Director
Golden Gate Audubon Society

O-4

COMMENT

RESPONSE

O-4-1 See Consolidated Response 4.19, *Comment Period Extension*, explaining why the total extended public review period of 60 days was adequate time for the public to provide meaningful comments on the Draft EIR and no further extension was warranted.



*Inspiring people to protect
Bay Area birds since 1917*

William Gilchrist, Director of Planning: wgilchrist@oaklandca.gov
Peterson Vollmann, Project Planner: pvollmann@oaklandca.gov

12Mar2021

re: Request to Extend Comment Period for Howard Terminal DEIR

Dear Oakland Planning Department,

We write to respectfully ask that you extend the 45-day comment period for the Howard Terminal Draft Environmental Impact Report (DEIR) by at least 45 days in the interest of allowing the community an opportunity to fully consider and respond to its findings. The City of Oakland has taken over two years to produce the report, resulting in a detailed and complex document that is over 1,600 pages long, not including the additional 4,000 pages of appendices.

Golden Gate Audubon is concerned the current, short window would prohibit members of the environmental community ample time to read, digest, and respond to the numerous issues addressed within the report. With so much at stake in the project – from air quality issues, to toxic substances exposure, to potential habitat destruction – we believe it is vital that all impacted parties have a more reasonable timeframe in which to comment.

A fair extension of the comment period would allow our organization and any others sufficient time to bring to the attention of the city any deficiencies in the DEIR and the project itself. Thank you for your time and consideration.

Sincerely,

Pam Young
Executive Director

Cc:
City Administrator's Office
Betsy Lake, Deputy City Administrator: elake@oaklandca.gov

Oakland City Council
Council President Rebecca Kaplan: Rkaplan@oaklandca.gov
Councilmember Dan Kalb: dkalb@oaklandca.gov
Councilmember Nikki Fortunato Bas: nibas@oaklandca.gov
Councilmember Carroll Fife: cfife@oaklandca.gov
Councilmember Sheng Thao: Sthao@oaklandca.gov
Councilmember Noel Gallo: Ngallo@oaklandca.gov
Councilmember Loren Taylor: ltaylor@oaklandca.gov
Councilmember Treva Reid: trejd@oaklandca.gov

GOLDEN GATE AUDUBON SOCIETY
2530 San Pablo Avenue, Suite G, Berkeley, CA 94702
phone 510.843.2222 www.goldengateaudubon.org email ggas@goldengateaudubon.org

O-4-1

O-5 International Longshore and Warehouse Union Local 10

COMMENT

RESPONSE

From: Mercedes Perez
To: Plvlmann@oaklandca.gov
Cc: "Melvin Mackay"
Subject: Peterson Volmann, Planner IV.pdf
Date: Tuesday, March 16, 2021 10:48:04 AM
Attachments: [Peterson Volmann, Planner IV.pdf](#)

[EXTERNAL] This email originated outside of the City of Oakland. Please do not click links or open attachments unless you recognize the sender and expect the message.

Good morning:

Please see attached letter.

Thank you,

Mercedes

O-5

COMMENT

RESPONSE



International Longshore and Warehouse Union

Local 10

400 NORTH POINT, SAN FRANCISCO, CA 94133 • (415) 776-8100
Fax: (415) 441-0610

PRESIDENT, **Trent Willis**
VICE PRESIDENT, **Melvin Mackay**

Edward C. Henderson
SECRETARY TREASURER

March 16, 2021

Peterson Vollmann, Planner IV
City of Oakland Bureau of Planning
250 Frank H. Ogawa Plaza, Suite 2214
Oakland, CA 94612

Dear Mr. Vollmann:

The undersigned write to request a 45-day extension of the public comment period for the Draft Environmental Impact Report ("DEIR") for the Oakland Waterfront Ballpark District Project at Howard Terminal ("Howard Terminal Project" or "Project"). The City of Oakland ("City") gave notice of the publication of the DEIR on February 26, 2021, with a 45-day comment period expiring April 12, 2021. We request that the comment period be extended an additional 45 days until May 27, 2021.

The City has taken over two years to produce the Howard Terminal DEIR, resulting in a detailed and complex document over 1,600 pages long. The DEIR also has over 4,460 pages of appendices. In addition, the City's record of proceedings for the DEIR (see Pub. Res. Code § 21168.6.7(g)(2)), contains hundreds of complex and lengthy documents submitted or relied on by the City in the preparation of the DEIR. These documents include Planning Commission staff reports and agendas on the Project, responses to the Notice of Preparation for the DEIR, DEIR references, documents submitted during the AB 734 application process, and voluminous email correspondence regarding the DEIR.

Given this significant volume of documents, we request that the City extend the comment period an additional 45 days in the interest of allowing our community an equitable opportunity to consider and respond to the analysis and findings of the DEIR. It is unreasonable and unfair to expect members of our community to review, analyze, and respond to such lengthy and technical documents within 45 days. In particular, we are concerned that such a short window of time would leave the most vulnerable and underprivileged members of our community, including those who would most feel the negative impacts of the Howard Terminal Project, inadequate time to bring to the attention of the City any deficiencies in the DEIR and/or the Project itself. This Project has the potential to negatively impact Oakland residents in a myriad of ways, including in respect to air quality, water quality, and public health, while also conflicting with the highly industrialized maritime uses in and near the Port of Oakland. There is no reason to rush the public review and comment period in these circumstances.

The California Environmental Quality Act ("CEQA") and the State CEQA Guidelines establish a minimum public comment period of 45 days where the DEIR is submitted to the State Clearinghouse.

O-5-1 This is a general comment that includes introductory remarks and a request for an extension of the comment period. As a result, no specific response is provided here. See Consolidated Response 4.19, *Comment Period Extension*.

O-5-1



O-5

COMMENT

RESPONSE

O-5-2 See Consolidated Response 4.19, *Comment Period Extension*.

Peterson Vollmann, Planner IV
March 16, 2021
Page 2

O-5-2

The public comment period may be extended beyond 60 days in unusual circumstances. Pub. Res. Code § 21091(a); 14 Cal. Code Regs. § 15105(a). The Governor's Office of Planning and Research has stated, "CEQA establishes a floor and not a ceiling for public review and comment periods. Lead and responsible agencies may use their discretion to extend such time periods to allow for additional public review and comments." [1] The combination of (i) the scope and scale of the project and its potential impact on the City's residents and the working waterfront for many decades to come, and (ii) the challenges that the public faces in reviewing, analyzing and commenting on this massive DEIR in the midst of an on-going pandemic that the world has not experienced in more than a 100 years and that continues to impose massive disruptions on residents daily lives and business operations has created unique conditions that are the epitome of "unusual circumstances."

An extension of the minimum 45-day comment period is particularly important here where the City asserts that the Project is proceeding under AB 734, which provides that the lead agency "need not consider written comments submitted after the close of the public comment period," unless the comments address specified issues relating to new information. See Pub. Res. Code § 21168.6.7(f)(6). In light of the serious and complex issues raised by the DEIR, the large volume of documentation produced by the City in the DEIR and accompanying record of proceedings, and AB 734's limitation on consideration of comments after the close of the public comment period, a 45-day extension of the public comment period should be provided.

Sincerely,



Melvin Mackay
Business Agent
ILWU Local #10

opcju29/afl-cio:mp

O-6 League of Women Voters of Oakland

COMMENT

RESPONSE

O-6-1 See Consolidated Response 4.19, *Comment Period Extension*.

From: [Deborah Shefler](mailto:Deborah.Shefler@oaklandca.gov)
To: officeofthemayor@oaklandca.gov; Paulo@oaklandca.gov; nfbas@oaklandca.gov; dialb@oaklandca.gov; stf@oaklandca.gov; stac@oaklandca.gov; Malib@oaklandca.gov; law@oaklandca.gov; trac@oaklandca.gov; stated@oaklandca.gov; walchr@oaklandca.gov; podimand@oaklandca.gov
Cc: [Gail Wallace](mailto:Gail.Wallace@oaklandca.gov); [Mary Beraga](mailto:Mary.Beraga@oaklandca.gov); [Bonnie Hamilton](mailto:Bonnie.Hamilton@oaklandca.gov); [viola](mailto:viola@oaklandca.gov); [Del Kong](mailto:Del.Kong@oaklandca.gov); [Peay Gravell](mailto:Peay.Gravell@oaklandca.gov)
Subject: Extension of Time to Respond to Howard Terminal EIR
Date: Tuesday, March 16, 2021 12:01:20 PM
Attachments: [Letter to CC 3-16-21.docx](#)

[EXTERNAL] This email originated outside of the City of Oakland. Please do not click links or open attachments unless you recognize the sender and expect the message.

To Mayor Schaaf and Members of the Oakland City Council:

Attached is a request from the League of Women Voters of Oakland that you give serious consideration to requests from Oakland citizens and organizations for an extension of the initial 45 day comment period with respect to the Environmental Impact Report (EIR) recently issued on the Oakland Ballpark Waterfront District Project. We are particularly concerned that individuals and groups who will potentially bear the impacts of the project, if it is approved, have adequate time to voice their concerns and participate fully as the EIR is a key component of the approval process. Thank you for your consideration.

Deborah Shefler
President, League of Women Voters of Oakland

O-6-1

O-6

COMMENT

RESPONSE



The League of Women Voters - where hands-on work to safeguard democracy leads to civic improvement

March 16, 2021

Mayor Libby Schaaf
President Nikki Fortunato Bas
Council Member Carroll Fife
Council Member Noel Gallo
Council Member Dan Kalb
Council Member and Vice Mayor Rebecca Kaplan
Council Member Treva Reid
Council Member Loren Taylor
Council Member Sheng Thao
Oakland City Hall
1 Frank H. Ogawa Plaza
Oakland, CA 94612

Re: Extension of Time to Respond to Howard Terminal EIR

Dear Mayor Schaaf and Members of the Oakland City Council:

The League of Women Voters of Oakland requests that you and staff of the Planning Department give serious consideration to requests from Oakland citizens and organizations for an extension of the initial 45 day comment period with respect to the Environmental Impact Report (EIR) recently issued on the Oakland Ballpark Waterfront District Project (the proposed Howard Terminal ballpark development).

The Ballpark Project is unique in its potential impact on the entire Oakland community. It is also the largest such project proposed in many years, as evidenced by the fact that the EIR runs to thousands of pages and has taken several years to complete. It contains dense technical detail, which may require parties seeking to respond to consult with experts in order to interpret and evaluate.

While some parties may have the resources to quickly seek and fund such consultations, other groups and individuals, including League members, need more time to consider and organize their responses. We are particularly concerned that individuals and groups who will potentially bear the impacts of the project, if it is approved, have adequate time to voice their concerns and participate fully as the EIR is a key component of the approval process. Additional time for responses would support more participation in the process. In a project of such magnitude, which could have significant long term consequences for Oakland residents, all voices and viewpoints should have a real opportunity to be heard and considered.

Finally, we note that the city website references an informational webinar workshop that occurred on March 6, 2021. The webinar apparently highlighted important elements of the EIR. We ask, if possible, that the city provide a link to the recording on its website so that those who missed the ontime event can benefit from it in preparing their responses.

P.O. Box 71838 • Oakland, California 94612
Phone & fax: (510) 834-7640 • Email: info@lwvoakland.org
www.lwvoakland.org

O-6-2 This is a general comment that includes introductory remarks and a request for an extension of the comment period. As a result, no specific response is provided here. See Consolidated Response 4.19, *Comment Period Extension*.

O-6-3 A website hyperlink to the recording of the workshop webinar is included in both the Project’s administrative record, available on the City’s website, and in the CEQA Notice of Availability of the Draft EIR.

O-6-2

O-6-3

O-6

COMMENT

RESPONSE

Sincerely,



Deborah Shefler, President
League of Women Voters of Oakland

Cc: Betsy Lake, Deputy City Administrator
William Gilchrist, Director of Planning
Peterson Vollmann, Project Planner

O-7 East Oakland Stadium Alliance

COMMENT

RESPONSE

From: [Emily_kniss](mailto:Emily_kniss@oaklandca.gov)
To: zvolin@oaklandca.gov
Cc: stake@oaklandca.gov; wjchrist@oaklandca.gov; officeofthemaayo@oaklandca.gov; Busplan@oaklandca.gov; Howa.Fortunate.Park@oaklandca.gov; dfe@oaklandca.gov; llyrie@oaklandca.gov; Shao@oaklandca.gov; Nualo@oaklandca.gov; trid@oaklandca.gov
Subject: Request for Extension of the DEIR Comment Period
Date: Tuesday, March 16, 2021 3:00:26 PM
Attachments: [EOGA Extension Letter Signed 3.16.21.pdf](#)

[EXTERNAL] This email originated outside of the City of Oakland. Please do not click links or open attachments unless you recognize the sender and expect the message.

Please see the attached letter from the East Oakland Stadium Alliance requesting an extension of the Howard Terminal Draft EIR comment period. Thank you.

O-7

COMMENT

RESPONSE

O-7-1 This is a general comment that includes introductory remarks and a request for an extension of the comment period. As a result, no specific response is provided here. See Consolidated Response 4.19, *Comment Period Extension*.



March 16, 2021

Peterson Vollmann, Planner IV
City of Oakland Bureau of Planning
250 Frank H. Ogawa Plaza, Suite 2214
Oakland, CA 94612
PVollmann@oaklandca.gov

Submitted Electronically

Re: Request for Extension of Comment Period on Draft EIR for Oakland Waterfront Ballpark District at Howard Terminal (SCH No. 2018112070)

Dear Mr. Vollmann:

The undersigned write to request a 45-day extension of the public comment period for the Draft Environmental Impact Report ("DEIR") for the Oakland Waterfront Ballpark District Project at Howard Terminal ("Howard Terminal Project" or "Project"). The City of Oakland ("City") gave notice of the publication of the DEIR on February 26, 2021, with a 45-day comment period expiring April 12, 2021. We request that the comment period be extended an additional 45 days until May 27, 2021.

4841-8989-5647.v2

O-7-1

O-7

COMMENT

RESPONSE

O-7-2 See Consolidated Response 4.19, *Comment Period Extension*.

O-7-1

The City has taken over two years to produce the Howard Terminal DEIR, resulting in a detailed and complex document over 1,600 pages long. The DEIR also has over 4,460 pages of appendices. In addition, the City's record of proceedings for the DEIR (*see* Pub. Res. Code § 21168.6.7(g)(2)), contains hundreds of complex and lengthy documents submitted or relied on by the City in the preparation of the DEIR. These documents include Planning Commission staff reports and agendas on the Project, responses to the Notice of Preparation for the DEIR, DEIR references, documents submitted during the AB 734 application process, and voluminous email correspondence regarding the DEIR.

Given this significant volume of documents, we request that the City extend the comment period an additional 45 days in the interest of allowing our community an equitable opportunity to consider and respond to the analysis and findings of the DEIR. It is unreasonable and unfair to expect members of our community to review, analyze, and respond to such lengthy and technical documents within 45 days. In particular, we are concerned that such a short window of time would leave the most vulnerable and underprivileged members of our community, including those who would most feel the negative impacts of the Howard Terminal Project, inadequate time to bring to the attention of the City any deficiencies in the DEIR and/or the Project itself. This Project has the potential to negatively impact Oakland residents in a myriad of ways, including in respect to air quality, water quality, and public health, while also conflicting with the highly industrialized maritime uses in and near the Port of Oakland. There is no reason to rush the public review and comment period in these circumstances.

O-7-2

The California Environmental Quality Act ("CEQA") and the State CEQA Guidelines establish a minimum public comment period of 45 days where the DEIR is submitted to the State Clearinghouse. The public comment period may be extended beyond 60 days in unusual circumstances. Pub. Res. Code § 21091(a); 14 Cal. Code Regs. § 15105(a). The Governor's Office of Planning and Research has stated, "CEQA establishes a floor and not a ceiling for public review and comment periods. Lead and responsible agencies may use their discretion to extend such time periods to allow for additional public review and comments."¹ The combination of (i) the scope and scale of the project and its potential impact on the City's residents and the working waterfront for many decades to come, and (ii) the challenges that the public faces in reviewing, analyzing and commenting on this massive DEIR in the midst of an on-going pandemic that the world has not experienced in more than a 100 years and that continues to impose massive disruptions on residents daily lives and business operations has created unique conditions that are the epitome of "unusual circumstances."

An extension of the minimum 45-day comment period is particularly important here where the City asserts that the Project is proceeding under AB 734, which provides that the lead agency "need not consider written comments submitted after the close of the public comment period," unless the comments address specified issues relating to new information. *See* Pub. Res. Code § 21168.6.7(f)(6). In light of the serious and complex issues raised by the DEIR, the large volume of documentation produced by the City in the DEIR and accompanying record of proceedings,

¹ See OPR, "CEQA Document Submission," available at: <https://opr.ca.gov/clearinghouse/ceqa/document-submission.html>.

O-7

COMMENT

RESPONSE

O-7-2

and AB 734's limitation on consideration of comments after the close of the public comment period, a 45-day extension of the public comment period should be provided.

Regards,

Members of the East Oakland Stadium Alliance:

Bayporte Village Neighborhood Watch
California Trucking Association
Customs Brokers & Forwarders Association of Northern California
GSC Logistics
Harbor Trucking Association
Marine Engineers' Beneficial Association
Marine Firemen's Union
Pacific Merchant Shipping Association
Propeller Club of Northern California
Sailors' Union of the Pacific
Schnitzer Steel
SSA Terminals

cc: Betsy Lake, Deputy City Administrator
William Gilchrist, Director of Planning
Mayor Libby Schaaf
Vice Mayor Rebecca Kaplan
Council President Nikki Fortunato Bas
Councilmember Dan Kalb
Councilmember Carroll Fife
Councilmember Sheng Thao
Councilmember Noel Gallo
Councilmember Loren Taylor
Councilmember Treva Reid

O-8 Union Pacific Railroad, by Barg Coffin Lewis & Trapp, LLP

COMMENT

RESPONSE

From: [joan.flaherty](mailto:joan.flaherty@oaklandca.gov)
To: "joan.flaherty@oaklandca.gov"; "stajab@oaklandca.gov"
Subject: Howard Terminal Draft EIR
Date: Wednesday, March 17, 2021 4:12:32 PM
Attachments: [2021.03.17_UFPRR_Letter to City of Oakland re Howard Terminal Draft EIR.pdf](#)

[EXTERNAL] This email originated outside of the City of Oakland. Please do not click links or open attachments unless you recognize the sender and expect the message.

Please see attached correspondence of today's date.

Joan Flaherty | for JOHN F. BARG
BARG COFFIN LEWIS & TRAPP, LLP
600 Montgomery Street, Suite 525
San Francisco, CA 94111
Direct (415) 228-5428
jflaherty@bargcoffin.com | www.bargcoffin.com

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Please note that our e-mail addresses have changed to **@bargcoffin.com**. Please update any contact lists or spam filters as needed

O-8

COMMENT

RESPONSE



Barg Coffin Lewis & Trapp, LLP
600 Montgomery Street, Suite 525
San Francisco, CA 94111
www.bargcoffin.com

March 17, 2021

Via Email

Peterson Vollmann
City of Oakland Bureau of Planning
250 Frank H. Ogawa Plaza
Suite 2214
Oakland, CA 94612
pvollmann@oaklandca.gov

Elizabeth Lake
Deputy City Administrator of Real Estate
And Major Projects
1 Frank H. Ogawa Plaza
Oakland, CA 94612
elake@oaklandca.gov

Re: Howard Terminal Draft EIR—Request for Extension of Time to Provide Comments

Dear Mr. Vollmann and Ms. Lake:

I am counsel to Union Pacific Railroad, writing to request that the 45-day comment period on the lengthy and complex Draft EIR be extended by at least 45 days to allow Union Pacific necessary time to consider fully the traffic, transportation, and safety issues presented by the proposed project and addressed in the DEIR, and to offer Union Pacific's safety concerns over this important proposed project. As you know, Union Pacific operates freight trains serving industry in the project area, and its tracks and right-of-way are used by Amtrak passenger trains as well. Union Pacific's tracks pass through the middle of the project area, and crossing key traffic arteries, including Market Street and Martin Luther King Boulevard. Existing safety concerns for vehicles, cyclists, and pedestrians crossing these tracks at grade will be exacerbated by the proposed project, and require mitigation measures that will assure safe and efficient passage from one side of the tracks to the other. Safety concerns are especially acute during rail car switching operations that block vehicle traffic and pedestrians from reaching the project area until the switching operations are complete. Impatient drivers and pedestrians can be expected to try to cross the blocked intersection, likely resulting in deaths, injuries, and property damage. Union Pacific's critical safety concerns will only grow with the increased traffic and pedestrian flows that can be expected if the project goes forward.

The DEIR consists of thousands of pages of report, appendices, figures, and tables, all of which require careful study and consideration to ensure that Union Pacific's safety goals are achieved. We expect that the City of Oakland shares Union Pacific's deep concern about the safety of the community if the project moves forward without significant safety mitigation measures.

Accordingly, Union Pacific respectfully requests that its deadline for submission of comments on the DEIR be extended no less than 45 days.

4849-6828-1825.v1

- O-8-1 This is a general comment that includes introductory remarks and a request for an extension of the comment period. As a result, no specific response is provided here. See Consolidated Response 4.19, *Comment Period Extension*.
- O-8-2 See Consolidated Response 4.6, *Rail Safety, Grade Crossing, and Grade Separation*, regarding the topics of rail safety, at-grade railroad crossing improvements, and grade separation, and proposed mitigation measures.
- O-8-3 See Consolidated Response 4.19, *Comment Period Extension*.

O-8-1

O-8-2

O-8-3

O-8

COMMENT

RESPONSE

Peterson Vollman
Elizabeth Lake
March 17, 2021
Page 2

We appreciate your consideration of this request. Please let me know if you have questions or need further information.

Very truly yours,



JOHN F. BARG

JFB/jf

4849-6828-1825.v1

O-9 Oakland Heritage Alliance

COMMENT

RESPONSE

From: [Naomi Schiff](#)
To: [Vince Suprus](#) (vince@suprus@gmail.com); [Marcus Johnson](#) (Marcus08@gmail.com); christandrewa@bioglobal.ca;
[Elena Kormorova](#) (Tim.Melville-Factors@nrlu.com)
Cc: [Volimera Petropou](#); [Marcus Betty](#); [Glenora William](#); [Phara Catherine](#)
Subject: Oakland Waterfront District Ballpark EIR 18-016; State Clearinghouse No. 2018112070
Date: Sunday, March 21, 2021 10:58:54 PM
Attachments: [Howard Terminal LPB March 21, 2021.pdf](#)

[EXTERNAL] This email originated outside of the City of Oakland. Please do not click links or open attachments unless you recognize the sender and expect the message.

Dear Landmarks Board members and staff,

Attached are some preliminary comments from Oakland Heritage Alliance about the impacts to cultural resources of the proposed project. We are continuing to review the many sections of the DEIR, so we may submit additional comments.

Thank you!

Naomi Schiff
For Oakland Heritage Alliance

Naomi Schiff
510-835-1819 (land)
510-910-3764 (cell)
238 Oakland Ave.
Oakland, CA 94611
naomi@17th.com

O-9

COMMENT

RESPONSE



March 21, 2021

By electronic transmission

Members of the Landmarks Preservation Advisory Board
Peterson Vollmann, Betty Marvin

Subject: Oakland Waterfront District Ballpark ER18-016; State Clearinghouse No. 2018112070

Dear Landmarks Advisory Board members and staff,

These comments are preliminary responses to the DEIR regarding Howard Terminal. We will submit a more detailed comment once we have reviewed more of the document. We note that the comment deadline has been extended; therefore, if the Landmarks Preservation Advisory Board would like to continue its discussion or get further information, it could be continued to the April 12 meeting.

1. WE GENERALLY AGREE WITH THE ANALYSIS REGARDING THE PEAKER PLANT. We understand the developer's desire to truncate the historic building, and the mitigations that relate to that, and to requiring review of design for replacement walls. The mitigations for partial demolition, however, seem weak. We suggest that an additional mitigation be added, requiring a contribution to the Façade Improvement fund in an amount proportional to the parts of the building being removed. These funds could be used to assist buildings in the impacted areas of the West Waterfront ASI. In addition, the design of the new stadium and related facilities should be required to be compatible with that of the historic building, under the Secretary of the Interior's Standards. (Please see our letter of January 7, 2019, attached.)

2. DO NOT BUILD A GONDOLA OVER OLD OAKLAND. We are extremely concerned about the gondola variants and proposals. These would have an irreversible impact on an irreplaceable API which contains a concentration of many landmark buildings. The CEQA document analyzes the issues under the environmental regulatory framework. But what we would like to emphasize is that these are crucial cultural resources that must be treated with the utmost care. Routing a new shiny thing right along and over Washington Street is completely unacceptable. It is not a positive thing to suggest that it would be an entertainment ride such as at the zoo. This is how an authentic historic district is turned into something that feels fake. Unaddressed is the fact that while the gondola would serve to move a modest percentage of people on game days, the intrusion into Old Oakland and the West Waterfront ASI would be 365 days per year for as long as it remained standing, whether in use or not.

446 17th Street, Suite 301, Oakland, California 94612 • (510) 763-9218 • info@oaklandheritage.org
Web Site: www.oaklandheritage.org

O-9-1

O-9-2

O-9-3

O-9-1

This comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft EIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Project.

O-9-2

See Response to Comment H-1-3 regarding the applicability of the Façade Improvement Program to the Peaker Plant Variant.

Draft EIR Section 4.4, *Cultural and Tribal Resources*, Impact CUL-4, discusses the two historic resources located on the Project site: Crane X-422 and the Peaker Plant (601 Embarcadero West). As described in Response to Comment H-1-4, the baseline Project design would not modify either resource, and all development would occur adjacent to, but would not include, the historic resources, the character-defining features of which would not be altered. Therefore, assessing the design of the new ballpark for compliance with the Secretary of the Interior's Standards is not applicable.

O-9-3

See Response to Comment H-1-5 regarding the Aerial Gondola Variant and impact on the Old Oakland Area of Primary Importance (API). This impact stems from the visual intrusion that would result at 10th Street along the northern boundary of the API, and from the presence of the gondola cars in the airspace along Washington Street above the historic district. The Aerial Gondola Variant is subject to all existing City policies and procedures for development for Category I historic resources, including Oakland Municipal Code Section 17.136.070 (Special Regulations for Designated Landmarks). This would require compliance with the Secretary of the Interior's Standards for the Treatment of Historic Properties. In addition, the Aerial Gondola Variant is subject to Mitigation Measure CUL-7: Convention Center Station Contextual Design Review, which provides for additional consideration of the station design's compatibility with the Old Oakland API.

Comments regarding the Project's merits, a component of the Project, or a Project variant do not raise a significant environmental issue or specific questions about the analyses or information in the Draft EIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Project. See Consolidated Response 4.22, *General Non-CEQA*.

O-9

COMMENT

RESPONSE

O-9-3 Much of Oakland’s 19th century downtown was demolished during the redevelopment era, and the results were only partially successful, having taken more than 50 years to execute, so far. Old Oakland and the West Waterfront ASI and historic train station on Third St. are what survived an era of wholesale destruction. In hindsight, urban planners have commented on the failures of City Center. Let us not now compound them by subjecting our historic districts to ungainly intrusion. We strongly oppose the gondola; but should such a structure be contemplated, its design should be required to be compatible with that of the historic district, under the Secretary of the Interior’s Standards. It should be visually subordinate, and a preservation architect should be included in the team to assist in designing a compatible facility. (Again, please see our letter of January 7, 2019, attached.)

O-9-4 3. CRANES
Oakland Heritage Alliance believes that it is a good idea to maintain some connection with the idea, uses, and feel of a historic waterfront, even though much of it has been changed radically. We understood a year or more ago that the proponents were thinking of keeping all the cranes. In the light of this CEQA document, we have questions: is the intention to only retain the oldest one? For many people in Oakland, regardless of construction date the newer cranes are perhaps thought of as the more iconic. We accept the analysis as presented, and would like to understand more about what is intended. How can Oakland keep some of the flavor of its working waterfront?

O-9-5 4. HISTORIC USES
We note the discussion of the turning basin and future maritime uses of the Port and the area. Oakland was founded in 1852 as a port city, though of course navigation had begun long before that. It would be wise to accommodate future maritime uses as much as possible. Just as people in the 19th century could not foresee container shipping, we do not know what the future will hold, other than sea-level rise.

Thank you for your consideration,

Sincerely,



Mary Harper
President

cc: Oakland Planning Commission
Attachment: OHA letter, 1-7-2019

O-9-4 As explained in Draft EIR Chapter 3, *Project Description*, the Project sponsor intends to retain all four cranes—X-415, X-416, X-417, and X-422—regardless of historic resource status, if retention is feasible. As explained in Draft EIR Chapter 3, *Project Description*, retaining the cranes would depend on whether such retention meets required safety standards for incorporating the cranes in a publicly accessible space. It would also depend on the feasibility of any required retrofitting or other safety measures. Therefore, the Draft EIR’s analysis conservatively assumes that the cranes would be removed, and Draft EIR Section 4.4, *Cultural and Tribal Cultural Resources*, Impact CUL-4, analyzes the potential impacts of the removal of the historic crane. See Response to Comment H-1-19 regarding the retention of cranes and the analysis in the Draft EIR. Also see Response to Comment A-12-54 regarding potential relocation.

O-9-5 Future operations are addressed in the Draft EIR. As discussed in Draft EIR Section 4.10, *Land Use, Plans, and Policies*, Impact LUP-2, the proposed Project would move the boundary between maritime and commercial activities on Port property from its current location at the west end of the Jack London Square District to the west end of Howard Terminal. Maritime uses would remain in operation west of Howard Terminal. With implementation of Mitigation Measures LUP-1a, LUP-1b, LUP-1c, AIR-1b, AIR-1c, AIR-2c, AIR-2d, AIR-2e, AIR-3, AIR-4a, AIR-4b, AIR-2.CU, BIO-1b, NOI-3, TRANS-1a, and TRANS-1b, the proposed Project would not result in a fundamental conflict between proposed uses and maritime activities.

In addition, the Maritime Reservation Scenario described in Section 3.7 of the Draft EIR is an area of the Project site that would be set aside for up to approximately 10 years to allow the Port of Oakland to assess the feasibility of expanding the adjacent turning basin for large ships.

O-9

COMMENT

COMMENT



January 7, 2019
(By electronic transmission)
Peterson Vollmann
City of Oakland
Bureau of Planning/Zoning Division
250 Frank H. Ogawa Plaza, 2nd Floor
Oakland, California 94612

Subject: Notice Of Preparation (NOP) Of A Draft Environmental Impact Report For The Oakland Waterfront Ballpark District Project

Dear Mr. Vollmann,
Following are potential significant project impacts on historic resources that should be addressed in the EIR, along with possible mitigation measures and project alternatives to minimize or avoid these impacts.

1. **IMPACT:** Demolition and/or adverse alteration of all or a portion of Pacific Gas and Electric Company Station C:

Mitigation Measures:

- a. Design the project to preserve all of the historically /architecturally contributing elements within the Station C complex. Note: Although the Notice of Preparation's Project Description suggests that the "existing power plant" will not be included among the buildings to be demolished on the project site, various renderings and other materials presented by the applicant omit at least portions of Station C, notably the Jefferson Street wing. At a meeting with OHA, the applicant appeared unaware that the Jefferson Street portion was a contributing element of Station C.
- b. Require that any modifications to the Station C buildings conform with the Secretary of The Interior Standards for the Treatment Of Historic Properties. Consider restoration of altered portions of the Station C exteriors as part of any adaptive reuse of the Station C buildings.
- c. Require that the design of the new stadium and other buildings are compatible with the Station C architecture, according to the Secretary of the Interior's Standards.
- d. Require that a preservation architect with demonstrated successful experience working with the Secretary of the Interior's Standards and the California Historical Building Code be included in the project design team.

Include the attached California Historic Resources Inventory Form for Station C in the EIR.

2. **IMPACT:** Possible adverse effects of the gondola component on the Old Oakland National Register District.

Project Alternatives: Instead of the gondola, provide alternative transportation improvements to facilitate stadium access from BART, including a dedicated light rail, bus or shuttle connecting the stadium to the West Oakland BART station along Third Street.

446 17th Street, Suite 301, Oakland, California 94612 • (510) 763-9218 • info@oaklandheritage.org
Web Site: www.oaklandheritage.org

Mitigation Measures:

- a. Locate the gondola's 10th Street Station within the Convention Center/Hotel to minimize the station structure within the Washington Street and 10th Street rights of way and to retain the openness of the air space within these rights of way to the greatest extent possible.
- b. As an alternative to Measure (a):
 - i. Position as much of the station structure as possible outside the Washington Street right of way alignment to minimize its visual prominence when looking north within the National Register District's important Washington Street visual corridor. This measure would result in most or all of the station structure to be positioned within the 10th Street right of way outside of the Washington Street right away alignment; and
 - ii. Design the station to minimize its architectural prominence and to be as visually subordinate as possible to the District's contributing buildings. Minimize the height of the station structures and use materials and design treatments that maximize transparency. Refer to the Secretary of the Interior's Standards. Include a preservation architect on the station design team with demonstrated experience successfully working with the Standards. Note: preliminary station renderings presented to OHA by the applicant showed a very modernistic design that contrasted excessively with Old Oakland's contributing buildings with the station positioned at an extremely prominent location relative to the District at the north end of Washington Street in front of the convention center.

Thank you for the opportunity to comment. Please contact Christopher Buckley at (510) 523-0411 or chuckleya@att.net or Naomi Schiff at (510) 835-1819 or Naomi@17th.com if you would like to discuss these comments.

Sincerely,

A handwritten signature in cursive script that reads "Tom Debley".

Tom Debley, President

By electronic transmission:
cc: William Gilchrist, Ed Manasse, Robert Merkamp, Catherine Payne, Betty Marvin, Bureau of Planning/Zoning
City of Oakland Planning Commission
City of Oakland Landmarks Preservation Advisory Board
Neil Rosen
Mayor Libby Schaaf
Members of the Oakland City Council

Attached:

PG&E Station C SHRI Form

O-9

COMMENT

COMMENT

State of California - The Resources Agency
DEPARTMENT OF PARKS AND RECREATION

HISTORIC RESOURCES INVENTORY

Ser. No. _____
HABS _____ HAER _____ NR 3 SHL _____ Loc _____
UTM: A 10/563330/4183260 B 10/563400/4183400
C 10/563460/4183320 D 10/563440/4183250

IDENTIFICATION

1. Common name: Pacific Gas and Electric Company Station C

2. Historic name: Same

3. Street or rural address: Multiple, see Continuation page 3

City _____ Zip _____ County _____

4. Parcel number: 0-410-7 and 1-125-5 (portion)

5. Present Owner: P.G. & E. Co. Address: 1919 Webster St.

City Oakland Zip 94612 Ownership is: Public _____ Private _____ X

6. Present Use: Electric Power Plant Original use: Same

DESCRIPTION

7a. Architectural style: Beaux Arts derivative power station

7b. Briefly describe the present physical description of the site or structure and describe any major alterations from its original condition:

P.G. & E. Co. Station C consists of three buildings of related uses and appearance, constructed in several sections at various periods from 1888 through 1938. Beaux Arts stylistic elements unify the exterior of the whole complex through monumental scale, generously quoined piers, round-headed windows set each in its own panel, and a Classically derived cornice. The thrust of the complex is horizontal because of the large land area (more than a square block) and because most segments are articulated as if they were one story tall under the horizontal of the overhanging cornice. Sanborn maps describe this appearance as "1 (story) = 4," "1 = 2" and "3 = 4," and by heights respectively of 60 ft., 32 ft. and 42 ft. Access to the complex is through a gate in the fence between 50 and 64 Grove Street. The complex's unity has recently been enhanced by painting all the elements in a single color scheme of cream on quoins piers and simple horizontal elements; tan on panels; and dark brown on cornices and openings. Street trees have also been planted along Grove and the south side of Embarcadero West.

(see continuation page 5)

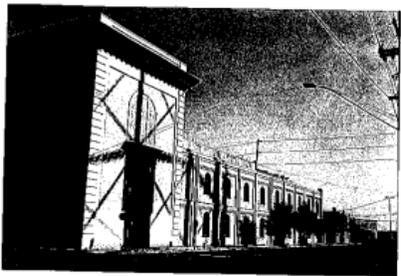
8. Construction date: Estimated _____ Factual 1888-

9. Architect See Continuation Page 3

10. Builder See Continuation Page 3

11. Approx. property size (in feet)
Frontage _____ Depth _____
or approx. acreage 2.10

12. Date(s) of enclosed photograph(s)
219-10 Pacific Gas & Electric Co. Station C (Grove St. south of Embarcadero) 5/82



DPR 523 (Rev. 4/79)

Continuation page 2 of 13

13. Condition: Excellent Good _____ Fair _____ Deteriorated _____ No longer in existence _____

14. Alterations: Various interior removals; large windows on Embarcadero facade infilled; most surfaces painted.

15. Surroundings: (Check more than one if necessary) Open land _____ Scattered buildings _____ Densely built-up _____
Residential _____ Industrial Commercial Other: _____

16. Threats to site: None known Private development _____ Zoning _____ Vandalism _____
Public Works project _____ Other: _____

17. Is the structure: On its original site? Moved? _____ Unknown? _____

18. Related features: None

SIGNIFICANCE

19. Briefly state historical and/or architectural importance (include dates, events, and persons associated with the site)

P.G. & E. Co. Station C is important as a monumental Beaux-Arts-ornamented industrial complex constantly devoted to a single use--the production of electricity--ever since about 1889. Designers involved have included architect Walter J. Mathews, engineer Henry C. Vensano and architect Ivan C. Frickstad. The complex includes the second electrical generating plant ever built in Oakland. Today, according to the Montclarion of 12 Oct. 1982, p.9, it "is capable of producing 165,000 kilowatts of electricity, enough to supply about 40% of Oakland's electric needs." Although the price of such consistent use has been a continual restructuring and updating of technology, the utility company has added to the original structures with only partial demolitions, has kept the same buildings since 1938, and in its most recent reworking--1979 according to the Montclarion--has sensitively refurbished the street facades while removing interior court-side parts of the structures and installing new equipment.

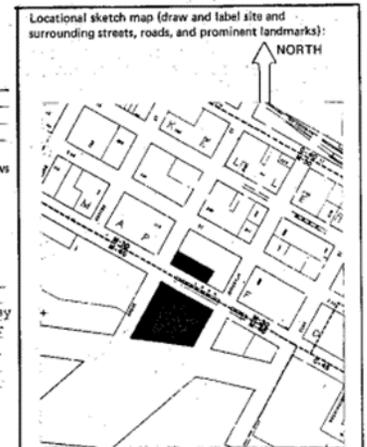
The company began locally as the Oakland Gas Light Company, which according to the Tribune (see continuation page 10)

20. Main theme of the historic resource: (If more than one is checked, number in order of importance.)
Architecture 2 Arts & Leisure _____
Economic/Industrial 1 Exploration/Settlement _____
Government _____ Military _____
Religion _____ Social/Education _____

21. Sources (List books, documents, surveys, personal interviews and their dates). P.G. & E., Properties Owned & Operated, 1911: 168-69.
Pacific Service Magazine, May 1914: 404.
Tribune Yearbook, 1939: 56-57
(see continuation page 13)
January 31, 1985

22. Date form prepared _____
By (name) Staff
Organization Oakland Cultural Heritage Survey
Address: One City Hall Plaza, 6th Floor
City Oakland Zip 94612
Phone: (415) 273-3941

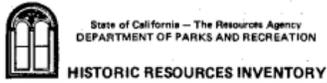
© 1985 City of Oakland



O-9

COMMENT

COMMENT



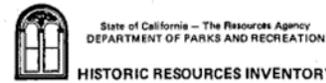
Continuation Page 3 of 13

CP

Street or rural address: Pacific Gas & Electric Co. Station C

Address Historic Name	Date Cost	Architect Builder	Source
601-45 Embarcadero/51 Jefferson St./64 Grove St. Pacific Gas & Electric Co. Station "C" constructed as:	1888-1938 See below	Multiple, see nine components below	Multiple, see nine components below
601 Embarcadero	1928 \$150,000	Ivan C. Frickstad P.G. & E.	Permit #A30632 (includes c.635 Embarcadero & 51 Jefferson)
605 Embarcadero	1920 \$27,000	Henry C. Vensano (E) (attrib.) Cahill & Vensano	Permit #58348
629 Embarcadero	1908 \$35,000	Henry C. Vensano (E) Unknown	Permit #13399
c.635 Embarcadero	1928	See 601 Embarcadero	See 601 Embarcadero
645 Embarcadero	1937-38 \$100,000	Ivan C. Frickstad P.G. & E.	Permit #70575
64 Grove St.*	1889-90	Unknown Unknown	Sanborn map 1889
c.74 Grove St.*	1888-89 \$40,000	Unknown Unknown	Oakland Enquirer, 25 July 1888
51 Jefferson St.	1928	See 601 Embarcadero	See 601 Embarcadero
c.75 Jefferson St.	c.1912-14 Unknown	Unknown Unknown	Hegemann, Report..., 1915; 39
628 Embarcadero/106 Grove St. P.G. & E. Station "C" Switch & Control House	1937 \$80,000	Ivan C. Frickstad (A) A.H. Markwart (E) P.G. & E. (B)	Permit #A67752
50 Grove St. Standard Electric Co. Substation DEM	1899-1900 \$2,544	Walter J. Mathews Unknown	California Architect & Building News, 9-1899; vi

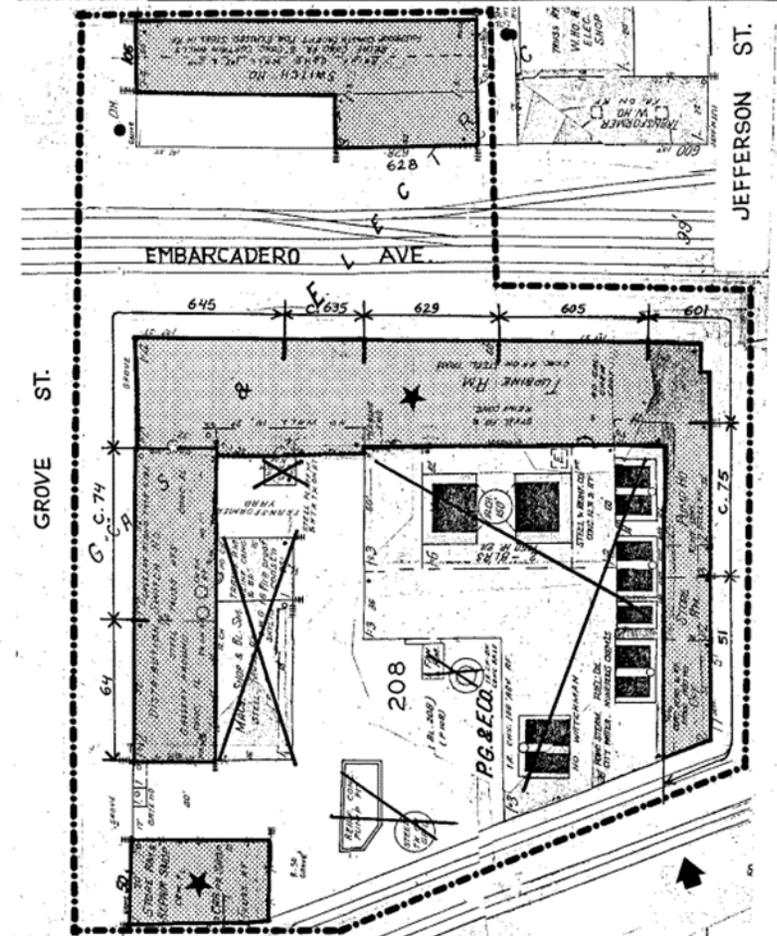
*Historic name: Oakland Gas, Light and Heat Company Electric Light Works.



Continuation Page 4 of 13

CP

Street or rural address: Pacific Gas & Electric Co. Station C



O-9

COMMENT

COMMENT

State of California - The Resources Agency
DEPARTMENT OF PARKS AND RECREATION

Continuation Page 5 of 13

HISTORIC RESOURCES INVENTORY

CP

Street or rural address: Pacific Gas and Electric Company Station C

7b. Description (continued from page 1)

601-45 Embarcadero/51 Jefferson Street/64 Grove Street is a C-plan with each facade a composite of three or four major construction projects. The Grove Street facade is a painted brick structure, the others steel frame reinforced concrete with stucco veneer. The main facade, 601-45 Embarcadero, occupies the whole city blockfront 300 feet long. Monumental in scale and 60 feet high, it is divided into 15 vertical panels each containing a single tall, narrow, round-headed window most of which has recently been stuccoed over, leaving a slit in the center. Panels are paired between quoined piers, except for the single easternmost panel, at Jefferson, which has a rectangular window. Except for this single panel, there are no differences between the five sections constructed in four building campaigns over a 30-year period (see continuation pages 3 and 4). Each successive designer respected and continued the design of his predecessor(s) to create the rhythmically decorated monumental block we see today. The panels rest on an unadorned base into which piers extend. Over all is a boxed cornice of galvanized metal on consoles, surmounted by a paneled parapet that conceals the flat roof. This principal block extends in harmonious returns along the first portion of each cross street. Each return features a Classical bracketed entablature over a giant-scale equipment-and-truck door of metal.

The main building's Grove Street facade begins at the Embarcadero corner with a return of the principal facade and continues with the two oldest sections, c. 74 and 64 Grove Street, which are matched, two-story, 32'-high, gable-ended brick structures with quoins, piers, a corbeled cornice and a corbeled belt course of brick. Quoined piers are at the corners and at the meeting of the two buildings, five bays from the southern end. Each facade is divided into nearly square panels defined by piers, the belt course and the cornice. Within each panel is a pair of round-headed windows, sometimes (originally always) with pairs of arches as the transom tracery. Downstairs windows have deeper reveals than upstairs ones, reflecting the decreasing thickness of the structural brick walls. The gable is decorated with stepped projecting bricks imitating barge boards. The corner piers terminate with a crenelated box above the roof line. The corbeling of cornice and belt course is incised into small segments rather like consoles. This segmented effect, the panels, the quoins and the round-headed windows became themes for the monumental facade on Embarcadero. A photograph published by the Oakland Tribune in 1898 shows these sections going all the way up to Embarcadero, with seven bays north of the joint between 64 and c.74 Grove instead of the present four bays. This original seven-bay building was four bays wide on Embarcadero instead of the present two bays, and the Oakland Tribune Annual of 1890 announced its dimensions as 80' (on Embarcadero) x 120'. Apart from the partial demolitions and changed chimneys, 64 and c.74 Grove retain their original appearance, though the interior is now open from ground to roof.

The Jefferson Street facade is basically a lower structure than the monumental facade on Embarcadero and its return at the corner. Though 32' high, c.75 Jefferson Street appears as a single story, with cornice, parapet and quoined piers matching those on the monumental facade. The center section has three bays with simple panels adjoining the corner bay, then three similar-sized bays with small-paned metal windows in triple banks topped by a single wire glass panel and triple transoms. All are now painted over except the clear transoms. Plain panels, quoins and windows were all rebuilt in 1928, but apparently with little change. 51 Jefferson Street, the 1928 addition to the south, is about half the length of the center section; it has a more complicated rhythm. Most of it extends slightly from the facade plane as a pavilion; its fenestration is more vertical as the mullions separating wider banks of windows extend through the horizontal panel, and there are side lights.

(see continuation page 6)

State of California - The Resources Agency
DEPARTMENT OF PARKS AND RECREATION

Continuation Page 6 of 13

HISTORIC RESOURCES INVENTORY

CP

Street or rural address: Pacific Gas and Electric Company Station C

7b. Description (continued from page 1)

628 Embarcadero/106 Grove St. is a T-plan monumental structure surrounding but not touching the northeast corner of Embarcadero and Grove Street. Flat-roofed, it is constructed of reinforced concrete with form marks visible on the exterior. Nevertheless its ornamentation echoes that of the main block across the street: quoins at all corners, piers separating its sides into vertical panels, substantial but simple base and a Classical entablature emphasizing horizontality. About 42' high, the T-plan's foot is a little less tall than its stem, but the cornice is repeated. The building presents great blank walls, broken by the quoins and paneling, by 2 or 3 tiny square windows and by a small door.

50 Grove Street is a small, 1 1/2-story, gable-ended rectangular brick structure. Like the other buildings of the P.G. & E. complex, it is divided by piers and corner quoins into bays: 2 on the end facing Grove, 4 on the north facade. An incised and corbeled belt course matching those on 64 and c.74 Grove Street divides each bay into an attic section and an almost square, panel-like section containing a round-headed double-casement window rather similar to those at 64 Grove Street. One bay on Grove contains, instead, a large equipment-and-truck entrance with unadorned metal doors. Other differences from 64 and c.74 Grove Street are that the piers are clusters of 3, and the corner piers terminate without crenelated boxes.



217-23 Jefferson St. elevation
P.G. & E. Station C 5/82

O-9

COMMENT

COMMENT

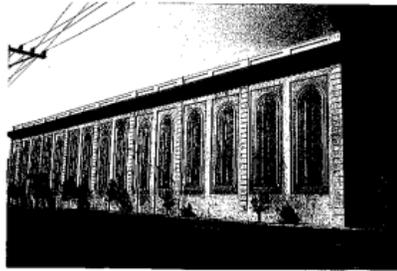
State of California - The Resources Agency
DEPARTMENT OF PARKS AND RECREATION

HISTORIC RESOURCES INVENTORY

Continuation Page 7 of 13

CP

Street or rural address: Pacific Gas and Electric Company Station C



217-15 601-45 Embarcadero
(P.G. & E. Station C) 5/82

State of California - The Resources Agency
DEPARTMENT OF PARKS AND RECREATION

HISTORIC RESOURCES INVENTORY

Continuation Page 8 of 13

CP

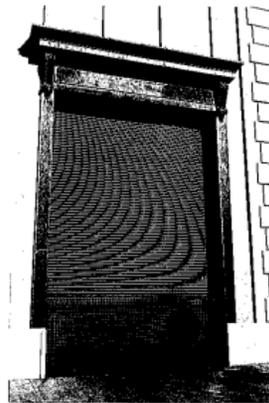
Street or rural address: Pacific Gas and Electric Company Station C



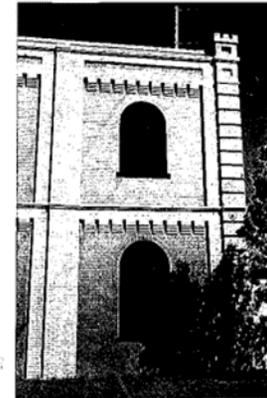
219-13 64 & c.74 Grove St.
(P.G. & E. Station C) 5/82



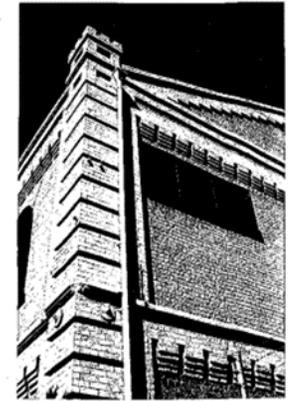
217-24 601 & 605 Embarcadero
(P.G. & E. Station C) 5/82



217-27 Detail, Jefferson at
Embarcadero 5/82



219-17 Bay detail, 64 Grove St.
5/82



219-15 Corner detail, 64 Grove St.
5/82

O-9

COMMENT

COMMENT

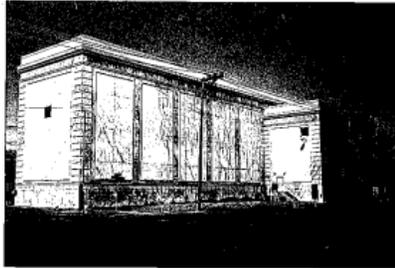


State of California - The Resources Agency
DEPARTMENT OF PARKS AND RECREATION

Continuation Page 9 of 13

CP

Street or rural address: Pacific Gas and Electric Company Station C



219-22 628 Embarcadero/106 Grove St.
(P.G. & E. Station C) 5/82



219-12 50 Grove St.
(P.G. & E. Station C) 5/82



State of California - The Resources Agency
DEPARTMENT OF PARKS AND RECREATION

Continuation Page 10 of 13

CP

Street or rural address: Pacific Gas and Electric Company Station C

19. Historical and/or Architectural Importance (continued from page 2)

Annual of 1890, p.20, was incorporated in 1866 by Anthony Chabot, James Freeborn, H.H. Waight and Joseph G. Eastland. In 1870 it acquired the waterfront marsh land between Castro and Clay Streets, and began the process of reclamation and construction. When electric lighting began to appear in competition with gas light, the company decided to produce both, the first company on the West Coast to do so. Coleman in P.G.&E., p.41, reports that it reincorporated in 1884 as the Oakland Gas Light & Heat Co., which built its first electric plant in 1885. This plant proving inadequate to projected needs, on 25 July 1888 the *Oakland Enquirer*, p.2, noted commencement of a new electric power plant, four bays of whose original 7-bay length exists today as c.74 Grove Street. With a salt-water supplied Hamilton-Corliss steam engine and dynamos costing \$60,000, the new plant was expected to quintuple the company's electric production capacity. The article estimated \$40,000 for building construction.

The 1889 Sanborn map and a photograph published in the *Tribune Annual* of 1898 together indicate that shortly after completion of c.74 Grove Street the Oakland Gas Light & Heat Co. constructed the matching 5-bayed power plant addition known as 64 Grove Street.

The man whom the *Enquirer* noticed in 1888 as the company's secretary was a Bostonian named John A. Britton, who began working for Oakland Gas Light about 1875 (Coleman, p.155-56). Through hard work, night school and marrying boss Van Leer Eastland's step-daughter, he became president of the company in 1900, at the age of 45. Britton played a role in the successive mergers of local and generating enterprises that resulted finally in the Pacific Gas & Electric Company. He was director and vice-president of the closely held California Central Gas & Electric, then general manager of P.G.&E. for its first 20 years.

Meanwhile the small building at 50 Grove Street had been erected in 1899-1900 for the Standard Electric Co., which Coleman (p.147) indicates was mostly a transmission company, though it was also building the Electra hydroelectric power plant on the Mokelumne River. In the Grove Street building it handled power from the Bay Counties Company's Colgate hydroelectric plant via the first high-power cables ever to cross the Carquinez Strait. This power Standard Electric delivered to Oakland Gas Light & Heat's system just a few feet away at 64 Grove Street. No wonder mergers produced the unified P.G.&E.

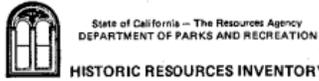
The *California Architect & Building News* for September 1899, p. xiii, stated this "Building, Grove near First" (Embarcadero) for Standard Electric Company, projected to cost \$2544, was by Walter J. Mathews, architect. Mathews (1850-1947) maintained one of the Bay Area's longest-lived architectural practices, beginning in 1874 as junior partner of his father Julius C. Mathews, suspending in 1883 for a year's educational travel in England, Germany and France, and continuing thenceforth on his own well into old age. He built residences, business buildings, government buildings, banks, and department stores--4 miles worth by 1911. He designed structures in San Francisco, Los Angeles, San Luis Obispo, Redondo Beach and on Angel Island, but especially in his home city of Oakland. Here he built the First Unitarian Church (681-85 14th Street, 1890), the Easton or Union Savings Bank Building (1300 Broadway, 1904), the Will Rogers Hotel (371-75 13th Street, 1906), the Metcalf House (1909), and the Central Bank Building (1400-16 Broadway, 1926, in association with George Kelham) (see SHRI forms). He was consulting architect for the Hotel Oakland and the Oakland Auditorium. The Standard Electric plant is one of his very few known industrial buildings.

(see continuation page 11)

O-9

COMMENT

COMMENT



Continuation Page 11 of 13

CP

Street or rural address: Pacific Gas and Electric Company Station C

19. Historical and/or Architectural Importance (continued from page 10)

The next addition to the P.G. & E. complex, 629 Embarcadero, is the subject of Oakland building permit #13399, issued Aug. 1908, for a \$35,000 "one-story steel and corrugated iron power station" designed by Henry C. Vensano, engineer. A photograph published in 1911 by P.G. & E. in *Properties Owned & Operated* shows this building as the earliest section of the present Embarcadero facade. Four bays wide, it has all the design elements characteristic of the whole facade: tall and narrow round-headed windows set in panels, piers with rusticated quoins marking each pair of panels, box cornice with consoles, paneled parapet masking the roof, and the plain base. The permit's "corrugated iron" probably was the side surface material.

Henry Vensano (1881-1960), therefore, created the design of the Embarcadero facade, which his successors copied and expanded. Born in San Francisco of an Italian father and a California-born mother of Maine parentage, he earned a degree in civil engineering from the University of California in 1903 and worked briefly for the Minneapolis Steel & Machinery Company. By the 1908 San Francisco Directory he was civil engineer for the San Francisco Gas & Electric Co., which soon merged into the P.G. & E. In nearly 10 years with the Company he supervised several large power developments, including Oakland's Substation C. Next he went into a partnership with Edward G. Cahill, a business that later developed into the giant Cahill Construction Company, but without Vensano. With Cahill or later alone, Vensano is credited in his obituary (*S.F. Examiner*, 9 Oct. 1960, p. 15/1) with "numerous industrial buildings, 17 dams and three Sacramento River pumping stations." In 1936 he joined the Golden Gate International Exposition (Treasure Island Fair of 1939-40) as chief of construction and assistant works director, becoming director of works in 1940. He was Director of San Francisco's Department of Public Works 1942 to 1950.

Vensano seems also to have designed the second matching section of the Substation's Embarcadero frontage, 605 Embarcadero. Building permit #58348, issued 30 Oct. 1920, calls for a \$27,000 building by Cahill & Vensano. Plans for the 1927 permit (see below) show 8 bays of the facade as pre-existing. So in 1920-21 Cahill & Vensano must have put up a 4-bay addition to the east of Vensano's original 4-bay building of 1908. They matched perfectly.

Before the expansion on Embarcadero, a free-standing P.G. & E. building had been erected at c.75 Jefferson Street. This building appears exactly as at present (though now with some windows painted over) both as pre-existing on the 1927 plans and in a photograph published in 1915 in the Hegemann Report, p.39. No building permit exists; construction must have occurred between the 1911 Sanborn map, where the space is vacant, and the 1915 photo.

On 18 Nov. 1927 building permit #A30632 was approved for \$150,000 for three additions to Station C by I.C. Frickstad. Plans exist, which show the intended work as one bay at the southeast corner of Embarcadero and Jefferson (601 Embarcadero), two bays on Embarcadero west of the previously built 8 bays (c.635 Embarcadero), and the southern section of the Jefferson Street facade (51 Jefferson). Frickstad carefully showed the precise relationships between old and new, with instructions such as "Present quoins to be cut off and rebuilt," or "Dotted lines show existing work (in cornice & parapet)." From these elevations the windows could be restored.

Ivan C. Frickstad appears in San Francisco Directories as a draftsman, independent in 1902, working for Newsom & Newsom in 1903 and for Albert Farr in 1905. He lived

(see continuation page 12)



Continuation Page 12 of 13

CP

Street or rural address: Pacific Gas and Electric Company Station C

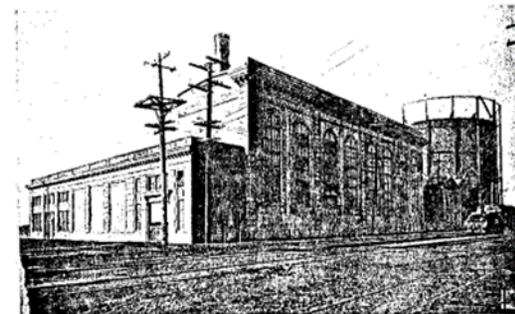
19. Historical and/or Architectural Importance (continued from page 11)

in Oakland and later practiced architecture here. *Splendid Survivors*, p.176, identifies him as a P.G.& E. "company architect who did a number of substations and office buildings based on prototypes by Willis Polk and Frederick Meyer." Indeed, the bracketed entablature over the Jefferson Street truck entry seems derived from Polk's Jessie Street Substation in San Francisco. However Frickstad's own P.G. & E. buildings are highly rated, and his expansion here of the already extant Embarcadero frontage shows an unusual sensitivity in continuing a good design rather than attempting to supersede it.

Frickstad is due even more credit for continuing his sensitive copying as late as 1937-38 in the four-bay section completing the full block facade, 645 Embarcadero. His name appears as the designer of the \$100,000 addition on permit #A70575, approved 1 Dec. 1937. The plans include a detailed profile of the Polk-type bracketed entablature above the truck entry on Grove.

A few months earlier, on 12 May 1937, the City had approved permit #A67752 for an \$80,000 3-story concrete Substation across the street at 628 Embarcadero/106 Grove, also by Frickstad. Here, since he was not continuing an extant facade, he interpreted more freely: without the round-headed windows, the consoles or the stucco veneer. However the monumentality and the rhythm, quoins and cornice all carry over from the Vensano-Frickstad facade of 601-45 Embarcadero.

The complex as a whole and two of its three component buildings as individual structures appear eligible for listing on the National Register of Historic Places. When it is 50 years old, 628 Embarcadero/106 Grove Street should also become eligible for listing.



P.G. & E. Station C, 1916 view;
Source: Pacific Service Magazine

O-9

COMMENT



State of California - The Resources Agency
DEPARTMENT OF PARKS AND RECREATION

Continuation Page 13 of 13

HISTORIC RESOURCES INVENTORY

CP

Street or rural address: Pacific Gas and Electric Company Station C

21. Sources (continued from page 2)

Oakland Enquirer, 25 July 1888: 211.

Montclairion, 12 Oct. 1982: 9.

Illus. Ed. Oak. Trib., 1890: 20.

Hegemann, Werner, Report on a City Plan for the Municipalities of Oakland & Berkeley, 1915: 39-51.

Building Permits & (*)Plans

1908 - #13399, 19 Aug., 1-st. steel & corrug. iron
\$35,000, H.C. Vensano eng'r.

1920 - #58348, 30 Oct., NW Water & Jefferson
\$27,000, Cahill & Vensano

1927*- #A30632, 18 Nov., SW Jefferson & 1st (Embarcadero)
\$150,000, -----

1937/38*- #A70575, finalized 23 Nov. 38, SE 1st & Grove
\$100,000, -----

1937 - #A67752, 12 May, Switch & Control House,
\$80,000, Ivan C. Frickstad

CA & BN XX #9 (20 Sept 1899): xiii .

Coleman, Chas. M., P.G. & E. of Calif., NY 1952, McGraw Hill

Oakland Cultural Heritage Survey, "Walter J. Mathews" file
"Henry C. Vensano" file
"Ivan C. Frickstad" file

Sanborn Maps 1889-1901,, 1902-1911, 1912-1935, 1912-1947

Pacific Service Magazine, July 1916: 51



217-29 51 Jefferson St.
(P.G. & E. Station C) 5/82

O-10 Oakland Chinatown Coalition

COMMENT

RESPONSE

From: [Maybrun, Molly](#)
To: [Jillan Feys-Mosey](#)
Cc: [Vollmann, Peterson](#); [Lake, Betsy](#); [Cummings, Veronica](#)
Subject: Fw: Request to Extend Comment Period for Draft EIR for Howard Terminal Project
Date: Tuesday, March 30, 2021 4:22:18 PM
Attachments: [Request for addl time to Comment on DEIR.pdf](#)

Hi Jill,

Please upload to comment tracker.

Thanks!
Molly

From: Lake, Betsy <ELake@oaklandca.gov>
Sent: Tuesday, March 30, 2021 3:53 PM
To: Maybrun, Molly <MMaybrun@oaklandca.gov>; Cummings, Veronica <VCummings@oaklandca.gov>
Subject: FW: Request to Extend Comment Period for Draft EIR for Howard Terminal Project

FYI

Elizabeth A. Lake
Deputy City Administrator for Real Estate and Major Projects | City of Oakland | City Administrator's Office | One Frank H. Ogawa Plaza, 11th Floor | Oakland, CA 94612 | Phone: (510) 238-6654 | Email: elake@oaklandca.gov

From: Alvina Wong 黃曉茵 <alvina@apen4ej.org>
Sent: Tuesday, March 30, 2021 3:45 PM
To: Fortunato Bas, Nikki <NFortunatoBas@oaklandca.gov>; Schaaf, Libby <LSchaaf@oaklandca.gov>; Kalb, Dan <DKalb@oaklandca.gov>; Thao, Sheng <SThao@Oaklandca.gov>; At Large <atl@oaklandca.gov>; District 6 <District6@oaklandca.gov>; Gallo, Noel <NGallo@oaklandca.gov>; Reid, Treva <TReid@oaklandca.gov>
Cc: Vollmann, Peterson <PVollmann@oaklandca.gov>; Lake, Betsy <ELake@oaklandca.gov>; Gilchrist, William <WGilchrist@oaklandca.gov>; Chen, Miya Saika <MChen@oaklandca.gov>; Jones, Kimberly <KJones3@oaklandca.gov>; Ferran, Pamela <PFerran@oaklandca.gov>
Subject: Request to Extend Comment Period for Draft EIR for Howard Terminal Project

[EXTERNAL] This email originated outside of the City of Oakland. Please do not click links or open attachments unless you recognize the sender and expect the message.

Dear Mayor Schaaf and Members of the Oakland City Council:

Please review our attached request to extend the comment period for the Howard Terminal Project Draft EIR. Outlined in the attached letter are significant concerns and request to grant the allowable full 45-day extension

O-10

COMMENT

RESPONSE

Please see Consolidated Response 4.19, *Comment Period Extension*.

period to fully comment on the DEIR.

We look forward to your response, thank you.

Respectfully,

The Oakland Chinatown Coalition, members of the Oakland United Coalition and other community allies

Alvina Wong, Campaign & Organizing Director | 黃曉茵, 社區組織總監

Gender Pronoun: She/Her/ Hers

Asian Pacific Environmental Network | 亞太環保網絡

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apendej.org e: alvina@apendej.org | Follow us on   

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O-10

COMMENT

RESPONSE

O-10-1 This is a general comment that includes introductory remarks and a request for an extension of the comment period. As a result, no specific response is provided here. See Consolidated Response 4.19, *Comment Period Extension*.

March 30, 2021

Mayor Libby Schaaf
President Nikki Fortunato Bas
Council Member Carroll Fife
Council Member Noel Gallo
Council Member Dan Kalb
Council Member and Vice Mayor Rebecca Kaplan
Council Member Treva Reid
Council Member Loren Taylor
Council Member Sheng Thao

Oakland City Hall
1 Frank H. Ogawa Plaza
Oakland, CA 94612

Re: Extension of Time to Respond to Howard Terminal Draft EIR

Dear Mayor Schaaf and Members of the Oakland City Council:

The Draft Environmental Impact Report (DEIR) for the Oakland Ballpark Waterfront District Project (the proposed Howard Terminal ballpark development, or "Project") was issued on February 26th, 2021, subject to a 45 - day comment period. Following the request for an additional 45 days to comment by seventeen community organizations (CBE et al.) and a separate request by the Oakland League of Women Voters, the comment period was extended, but only by 15 days. Without further action, the public comment period now closes on April 27, 2021.

The Oakland Chinatown Coalition, members of the Oakland United coalition and other community allies respectfully ask the City of Oakland to provide the full 45-day extension requested by CBE and thereby allow the public to read, analyze, and comment on the DEIR until May 27, 2021.

The Howard Terminal Project DEIR demonstrates that the environmental effects of this ambitious project may have significant, far-reaching, and unavoidable impacts on our communities. The DEIR comment process is the only way the public can learn about the potential negative impact of the Project and attempt to protect its interests in response. A total of 90 days is needed to understand the impacts of the Project, review the adequacy of the DEIR's proposed mitigation measures and project alternatives, share the terms of the DEIR with our community members, get their feedback, and submit comments to the City.

The unusual circumstances surrounding the Project constitute grounds for the City to exercise its discretion to accept comments on the DEIR outside the 60-day comment period recommended by the California Environmental Quality Act (CEQA).¹ While there is no case law defining what type of unusual circumstance may justify a longer review period nor any case law limiting the lead agency's exercise of discretion to determine what constitutes "unusual circumstances,"² the circumstances created by the Project are certainly unique, including:

¹ 14 California Code of Regulations Sec 15105(a).

² Continuing Education of the Bar, *Practice Under the California Environmental Quality Act*, Section 9.24.3.

O-10

COMMENT

RESPONSE

O-10-1

- Special legislation providing expedited CEQA review and other benefits to the Project,
- Enabling the city to ignore public comments filed after the close of DEIR comments,
- Extinguishment of public trust protections on Project property,
- Alteration and intensification of land use through general plan and zoning amendments, subdivisions, and planned unit development, and
- Permanent physical, economic, and social impacts on communities that are the backbone of Oakland.

O-10-2

The Project would convert largely vacant land to substantially more intensive use over a period of seven years.³ Briefly, it consists of a "state-of-the-art ballpark and event center that can be used year-round for sporting events, entertainment, and convention purposes with capacity up to 35,000 and a sufficiently dense mixed-use residential/office/commercial/retail/entertainment development." The fact that the final project description was not publicly revealed until the DEIR was published on February 26, 2021 has also raised fresh challenges.⁴ Special legislation grants the Project "fast track" post approval judicial review if and only if the project has met specific requirements that appear intended to benefit the public. This is another dimension of the Project that bears scrutiny.

O-10-4

For the City to gain a full appreciation of the environmental impacts of this complex development, it has undertaken two years of study and produced a DEIR of over 6000 pages.⁵ To evaluate the Project's impacts on the Project environment, including existing infrastructure and conditions, and to identify appropriate mitigation measures, the DEIR refers to pre-existing regulatory protocols, plans, and studies. The application of technical material to a project that is already exceptional in its scope and scale has resulted in a report that simply requires more than 45 days to review. This is particularly true for members of the public who lack the resources and expertise to respond quickly.

O-10-5

In 2018, the Legislature passed AB 734, which provided a fast-track judicial review process for CEQA determinations related to the Project. AB 734 makes a compelling case for the City to provide abundant opportunity for public comment on the DEIR. AB 734 requires the City to warn the public that any comments on the Project made after the DEIR comment period may be ignored by the City. This limitation on public comment is so integral to the fast-track judicial process that it is only fair to allow the public a reasonable amount of time to address the substantive issues in the DEIR.⁶

³ For more detail, see Project Description from Notice of Availability, reprinted in the Attachment to this letter.
A succinct description of the Project and its public review process is available at the state Office of Planning and Research website: <https://ceqanet.cpr.ca.gov/20181120703>
⁴ For example, the Project now includes buildings up to 620 feet tall (DEIR p. 4.1-25); currently, Oakland's tallest building is the 404 foot tall Ordway Building. https://localwiki.org/oakland/Tallest_Building_in_Oakland, and creates winds gusting up to 36 miles per hour (DEIR p. 2-5, Sec. 2.2.1).
⁵ The Notice of Preparation of the DEIR was issued on November 30, 2018,
⁶ Public Resources Code Section 21168.6.7, subsec. (f) states:
(f) (1) The draft and final environmental impact report shall include a notice in not less than 12-point type stating the following:
THIS ENVIRONMENTAL IMPACT REPORT IS SUBJECT TO SECTION 21168.6.7 OF THE PUBLIC RESOURCES CODE, WHICH PROVIDES, AMONG OTHER THINGS, THAT THE LEAD AGENCY NEED NOT CONSIDER CERTAIN COMMENTS FILED AFTER THE CLOSE OF THE PUBLIC COMMENT PERIOD, IF ANY, FOR THE DRAFT ENVIRONMENTAL IMPACT REPORT. ANY JUDICIAL ACTION CHALLENGING THE CERTIFICATION OR ADOPTION OF THE ENVIRONMENTAL IMPACT REPORT OR

O-10-2

The comment is correct that the detailed description of the proposed Project was published on February 26, 2021. The City also released the Notice of Preparation (NOP) of the Draft EIR on November 30, 2018. Pursuant to State CEQA Guidelines Section 15182, and as stated on p. 1 of the NOP, the NOP "includes information describing the project and its potential environmental effects to those who may wish to comment regarding the scope and content of the information to be included in the EIR." The NOP also describes existing conditions relevant to the proposed Project. The proposed Project in the Draft EIR is not substantially different from the preliminary description in the NOP.

O-10-3

Generally, Assembly Bill (AB) 734 provides for streamlined review by the courts in the event a lawsuit is filed challenging the certification or adoption of this EIR or the approval of the Project, provided that the Project complies with certain conditions and is certified by the Governor. The City has complied with the applicable procedural requirements of AB 734 during the administrative process. Such requirements include conducting an informational workshop within 10 days after the release of the Draft EIR to inform the public of the key analyses and conclusions of the Draft EIR, and holding a public hearing to receive testimony on the Draft EIR within 10 days before the close of the public comment period. See Consolidated Response 4.19, *Comment Period Extension*.

O-10-4

See Response to Comment O-10-3 and Consolidated Response 4.19, *Comment Period Extension*.

O-10-5

See Response to Comment O-10-3 and Consolidated Response 4.19, *Comment Period Extension*.

O-10

COMMENT

RESPONSE

O-10-6 See Consolidated Response 4.19, *Comment Period Extension*.

O-10-6

The need for additional time for public comment is driven by equity as well. The Draft EIR determined that the Project would result in significant and unavoidable impacts in the following areas, even with the implementation of feasible mitigation measures: Wind, Air Quality, Cultural Resources, Noise and Vibration, Traffic Safety Hazard, and Consistency with Transportation Plans.⁷ Despite over 6000 pages of analysis, the DEIR found that these impacts on the quality of life could not be abated. Accordingly, the public should have ample opportunity to review these findings and comment on "Whether or not the project should be approved despite significant and unavoidable impacts that would occur if the Project were implemented." (See, DEIR, p. 2-8, "Sec.2.5 Issues to be Resolved.")

As noted above, seventeen organizations representing diverse community members in East and West Oakland requested a total of 90 days to review the DEIR but were turned down.⁸ The Oakland Chinatown Coalition specifically agrees with these organizations that 30 additional days are needed to inform and solicit feedback from individual members of the community whom we serve.

The Oakland League of Women Voters, whose byword is "making democracy work," also sought an extension of time. We agree with the League that, "In a project of such magnitude, which could have significant long term consequences for Oakland residents, all voices and viewpoints should have a real opportunity to be heard and considered." Adding only two weeks to the initial 45-day period fails to provide the public with a real opportunity to be heard and considered.

For all of these reasons, the City should extend the period for public comment on the DEIR by an additional 45 days, which would require comments to be submitted no later than Thursday, May 27th, 2021.

Sincerely,

Oakland Chinatown Coalition signatory members in alphabetical order

Asian Health Services
Asian Pacific Environmental Network
East Bay Asian Local Development Corporation
AYPAL - Building API Community Power
Asian Immigrant Women Advocates
Asian Pacific Islander Legal Outreach
Buddhist Church of Oakland
Chinese American Citizens Alliance - Oakland Lodge
Chinatown Community United Methodist Church
Family Bridges

THE APPROVAL OF THE PROJECT DESCRIBED IN SECTION 21168.6.7 OF THE PUBLIC RESOURCES CODE IS SUBJECT TO THE PROCEDURES SET FORTH IN THAT SECTION. A COPY OF SECTION 21168.6.7 OF THE PUBLIC RESOURCES CODE IS INCLUDED IN THE APPENDIX TO THIS ENVIRONMENTAL IMPACT REPORT.

⁷ DEIR, pp. 2-5 and 2-6, Section 2.2.1, "Significant and Unavoidable Impacts."

⁸ Letter of Communities for a Better Environment, et al., to Peterson Vollman of the City of Oakland Bureau of Planning, dated March 5th 2021.

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COMMENT

COMMENT

Filipino Advocates for Justice
Friends of Lincoln Square
OCA - Asian Pacific American Advocates: East Bay Chapter (OCA-East Bay)
Oakland Asian Cultural Center
Wa Sung Community Service Club
Alan Yee

Oakland United Coalition signatory members and other supporting organizations

Alliance of Californians for Community Empowerment
Causa Justa: Just Cause
East Bay Alliance for Sustainable Economy
East Bay Community Law Center
Oakland Heritage Alliance
Oakland Tenants Union
Sierra Club
Public Advocates
Urban Habitat

Cc: Betsy Lake, Deputy City Administrator
William Gilchrist, Director of Planning
Peterson Vollmann, Project Planner

Attachment
Excerpt from

**COMBINED NOTICE OF AVAILABILITY AND RELEASE OF A
DRAFT ENVIRONMENTAL IMPACT REPORT (EIR) AND
NOTICE OF PUBLIC HEARINGS FOR THE OAKLAND
WATERFRONT BALLPARK DISTRICT PROJECT**

February 26, 2021

DESCRIPTION OF PROJECT: The Oakland Waterfront Ballpark District Project ("Project or
"proposed Project") would construct:

- a new open-air waterfront multi-purpose Major League Baseball (MLB) ballpark with a capacity of up to 35,000-persons ("Ballpark");
- mixed use development including up to 3,000 residential units,
- up to 1.5 million square feet of office (which could include a range of commercial uses, such as general administrative and professional office and life sciences/research), and up to approximately 270,000 square feet of retail uses;
- an approximately 50,000 square-foot indoor performance venue with capacity of up to 3,500 persons;

- up to approximately 280,000 square-feet of hotel space including up to 400 rooms in one or more buildings and supportive conference facilities;
- a network of approximately 18.3 acres of privately-owned, publicly-accessible open spaces; and a maximum of approximately 8,900 total parking spaces at full buildout. Approximately 2,000 parking spaces would be shared by the Ballpark and the performance venue, and the remaining 6,900 parking spaces would serve residential and commercial uses on the Site.

4

5

O-11 Bike East Bay

COMMENT

RESPONSE



DRAFT

Submitted via:
<https://comment-tracker.esassoc.com/oaklandsporseir/index.html#/19/welcome>

March 30, 2021

Peterson Vollmann
Planner IV, City of Oakland Bureau of Planning
250 Frank H. Ogawa Plaza, Suite 2214
Oakland, CA 94612

Re: Comments on Oakland Waterfront Ballpark District Project

Dear Mr. Vollman:

Bike East Bay has reviewed the DEIR for the Oakland Waterfront Ballpark District Project and is generally supportive of the project and its goal of building a major league baseball ballpark in the downtown area, well-accessed by walking, bicycling and transit. The Coliseum location of the current stadium has never been easy to bicycle to and its sole BART station is far too small to handle large crowds. In addition, the current site never has never developed into a vibrant entertainment area, nor has it fostered a successful local game-day economy to support nearby residents. We feel the proposed new ballpark can do all these things.

General Comments

From a high level perspective, the transportation improvements of this Project are a net loss of bikeways to residents of Oakland as compared to the bikeways in approved plans and under development with separate projects. Our goal for the new ballpark is for there to be safe, low-stress bikeways to access the ballpark from all directions and our main concerns are the lack of such high quality bikeways in this plan. We like the proposed new bikeways on 7th Street and MLK Jr. Way south of 8th Street to the ballpark, which will connect West Oakland to the ballpark area. However, the proposed bikeways from Downtown Oakland to the ballpark and from Lake Merritt BART to the ballpark fall short of what a project of this magnitude and importance should achieve.

O-11-1 The comment speaks to the merits of the proposed Project. This comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft EIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the Proposed Project.

O-11-2 This comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft EIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Project.

The Draft EIR identified Mitigation Measures TRANS-2a, TRANS-2b, and TRANS-2c, which would provide the bike facility connections referenced by the commenter and complete the Washington Street corridor with striped bike lanes per the Bike Plan. Implementing Mitigation Measure TRANS-2b would provide protected bike lanes on Martin Luther King Jr. Way and would connect the Project site to 8th Street. In addition Mitigation Measure TRANS-3a would construct a multiuse path on Embarcadero West, along the south side of the railroad tracks between Martin Luther King Jr. Way and Jefferson Street, and between Clay Street and Washington Street and potentially to either Broadway or Oak Street depending on the placement of railroad corridor fencing. The portion of Embarcadero between Jefferson and Clay Streets would retain vehicle access with sidewalk serving the Vistra Power Plant where bicyclists would share the street with motor vehicle traffic.

Separate from the proposed Project, the City is currently in the design phase to install bicycle facilities to connect West Oakland with Lake Merritt through Downtown Oakland via the 14th Street corridor. The City is also designing Class 2 buffer bike lanes north of 8th Street on Martin Luther King Jr. Way that would extend through Downtown to San Pablo Avenue. The Project's mitigation measures would provide protected bike lanes on Martin Luther King Jr. Way from 8th Street to the Project site. Last, the City will be undertaking the design phase to install protected bike lanes on 7th Street from Martin Luther King Jr. Way to the West Oakland BART station. All of these bicycle facilities are consistent with the Bike Plan. When completed, the bike lanes on Martin Luther King Jr. Way would connect the Project site to West Oakland via the 7th Street corridor, to both West Oakland and

O-11-1

O-11-2

O-11 Bike East Bay

COMMENT

RESPONSE

Downtown Oakland via the 14th Street corridor, and through Downtown via Martin Luther King Jr. Way.

The commenter is directed to the Oakland Alameda Access Project (OAAP), which is currently under environmental review, with design expected to start in 2022 and construction complete in 2027. This transportation improvement project is being led by the Alameda County Transportation Commission (Alameda CTC) in collaboration with the Cities of Alameda and Oakland as well as the California Department of Transportation. The OAAP includes two-way protected bike lanes on Oak Street between 3rd Street and the Lake Merritt BART station, as well as two-way protected bike lanes on 6th Street between Oak Street and Washington Street. Upon completion of the OAAP, bicyclists would be able to ride from the Lake Merritt BART station via protected bike lanes on Oak and 6th Streets to Washington Street, where riders would continue to Water Street and the Project site via Class 2 bike lanes consistent with the Bike Plan.

O-11

COMMENT

RESPONSE

O-11-3

There are obviously many pedestrian improvements in this plan and we support all of them, including the many new sidewalks, wider sidewalks, pedestrian bridge and upgraded crosswalks and bulb outs. Similarly, the transit improvements are all good and we like the Transportation Hub on 2nd Street, but we have concerns about who will pay for the new transit services needed to get people to and from the ballpark. The DEIR leaves that to future discussions, but there needs to be a real plan to fund and ramp up transit services for game day crowds.

O-11-4

We also are fans of the smart parking management program and know this program will improve bicycle and pedestrian safety by more efficiently directing drivers to available parking spaces and reduce cars circling and looking a spot. We support expanding this program so that Athletics fans can purchase a parking ticket at the same time they purchase their game tickets.

O-11-5

Much of the success of the transportation plan for this project will depend on the Transportation Management Plan (TMP) and its ongoing implementation. Bike East Bay requests there be a seat on the operational oversight group of the TMP for someone representing the interests of people bicycling in the area. The TMP clearly prioritizes bicycling as a goal of the plan and for this reason should have representation from people who bicycle.

Comments related to bicycling

O-11-6

This major project and its transportation plan should include high-quality, low stress separated bikeways from all directions and it lacks such bikeways from Downtown Oakland and from the Lake Merritt BART Station (and from points southeast). Buffered bike lanes on busy streets, and especially streets before and after ballgames, are not low-stress bikeways, and the door-zone white stripe on 2nd Street is no bikeway at all.

- From West Oakland: we support the new bike lanes on 7th Street in West Oakland, although we note that this project only commits to the buffered bike lane design for these bikeways, not the protected bike lanes called for in the Oakland Bicycle Plan. Thankfully Oakland has received a state grant to upgrade these bike lanes to needed protected bike lanes.
- From Downtown Oakland: there are three potential options here, according to the Oakland Bicycle Plan and Downtown Specific Plan: 1) Franklin St/Broadway, 2) Clay/Washington and 3) MLK Jr. Way. All three of these bikeways connect at their north end to a planned east-west bikeway on 14th Street. Whichever of these three potential bikeway connections is built to support ballpark access, the bike lanes should be separated and protected and connect to 14th Street, which obviously is the needed access point to and from 12th St/City Center BART Station. Fig 4.15-42 in the DEIR shows projected bike trip generation to the ballpark with TMP, and shows twice as many people bicycling from downtown to the ballpark as compared to from West Oakland. We agree with this projection and request that bikeways from Downtown Oakland be upgraded from the plan's buffered lanes to protected, the whole way.

O-11-7

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1

O-11-3

This comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft EIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Project.

O-11-4

This comment expresses support for the Parking Management Plan. This comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft EIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the Proposed Project.

O-11-5

Table 1-1 of the Transportation Management Plan (TMP) outlines key stakeholders that would be involved in implementing the TMP. Bike East Bay is listed as a community group that "may offer consultation and feedback on the project design and operational planning to help ensure a smooth integration into the existing neighborhood."

O-11-6

This comment supports the new bike lanes on 7th Street in West Oakland. The comment correctly notes that although Mitigation Measure TRANS-2a calls for buffered bike lanes, the City received grant funding to implement protected bike lanes on 7th Street, which the commenter supports.

Local Roadway Safety: A Manual for California's Local Road Owners (Caltrans, April 2020) provides crash reduction factors for countermeasures that improve safety. According to the manual, adding bike lanes to a roadway segment could reduce bicycle crashes by up to 35 percent, while adding protected bike lanes could reduce bicycle crashes up to 45 percent. Both the bike lanes and the protected bike lanes would provide a safety benefit for bicyclists, with the protected bike lanes providing a greater benefit than the bike lanes. Bicycle riders from West Oakland would use the 7th Street corridor and the Martin Luther King Jr. Way corridor (Mitigation Measure TRANS-2b) to access the Project site. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the Proposed Project.

O-11-7

Draft EIR Section 4.15, *Transportation and Circulation*, Impact TRANS-2, identifies the Martin Luther King Jr. Way corridor as the primary bicycle

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connection to the Project site. This is one of the three potential options identified by the commenter.

Mitigation Measure TRANS-2b calls for construction of protected bike lanes from 8th Street to the Project site, where protected bike lanes would continue through to the waterfront. The protected bike lanes would connect with buffer bike lanes that would extend north of 8th Street through Downtown to San Pablo Avenue. The buffer bike lanes are funded through an affordable housing grant. Both the protected bike lanes (between the Project site and 8th Street) and the buffer bike lanes (north of 8th Street) would be consistent with the Bike Plan. Bicycle riders from West Oakland would use planned bike facilities on 7th or 14th Street and access the Project site via Martin Luther King Jr. Way. From Downtown, bicycle riders would use the planned bike facilities on 14th Street and access the Project site via Martin Luther King Jr. Way. In addition Mitigation Measure TRANS-3a would construct a multiuse path on Embarcadero West, along the south side of the railroad tracks between Martin Luther King Jr. Way and Jefferson Street, and between Clay Street and Washington Street and potentially to either Broadway or Oak Street depending on the placement of railroad corridor fencing. The portion of Embarcadero between Jefferson and Clay Streets would retain vehicle access with sidewalk serving the Vistra Power Plant where bicyclists would share the street with motor vehicle traffic.

As noted by the comment, should the protected bike lanes on 14th Street be constructed, there would be a short segment of buffer bike lanes on Martin Luther King Jr. Way between 8th Street and 14th Street that would connect the two protected bike lane systems. Response to Comment O-11-6 documents that adding bike lanes to a roadway segment could reduce bicycle crashes up to 35 percent, while adding protected bike lanes could reduce crashes up to 45 percent.

The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the Proposed Project.

O-11

COMMENT

RESPONSE

O-11-8

- o The reason given in the City’s bike plan for proposing buffered bike lanes on MLK Jr. Way above 8th Street is the number of driveways along the street. However, most of these driveways are not utilized and are gated/fenced closed, and thus do not function as driveways. As such, they do not create sight line issues nor any need to remove parking for safety. There are many other streets in Oakland planned for protected bike lanes with similar driveways.

O-11-9

- o For the Clay/Washington bikeway option, the DEIR does not even include a complete bikeway toward downtown due to 8th Street being one-way, but we assume this is an oversight or typo. Either way, existing and planned bikeways on Clay/Washington are not adequate for game day bike access, particularly the narrow door zone bike lanes on Washington Street. In addition, on game days, Washington Street is planned for significantly increased pedestrian activity and may even be closed off to cars, which is great. But as such, Washington Street should be an auxiliary bikeway to the ballpark, particularly for people bicycling to get something to eat or drink along Washington Street before or after a game. Finally, Oakland Police sometimes close off Washington Street due to safety concerns and as long as OPD has this authority, Washington Street cannot be a bikeway priority to the ballpark.

O-11-10

- o For Franklin/Broadway, efforts were (are) underway to plan bikeways on Franklin, but this project’s proposal to stripe bus only lanes on Broadway with no bike lanes precludes this as a planned bike option to the ballpark. We support the bus only lanes on Broadway but do not support removal of Broadway as a planned bikeway. Jack London District has been supportive of bike lanes on Broadway and there have been many discussions about improving Broadway for bicycling in the JLD area that this DEIR does not acknowledge. Either way, on any road where people are allowed to bicycle and there is a side-running bus only lane, such as Broadway, people are going to bicycle in the BRT lane and that is exactly where Bike East Bay is going to tell them to bicycle. Bicycling along the right side of the road is the most intuitive place to ride and it is the safest, from our perspective. For this reason, anytime Oakland plans a side-running BRT lane, they should include protected bike lanes or they should plan on bikes in the BRT lane. On Broadway in the JLD, there is room for both, BRT lanes and protected bike lanes as planned for as part of many planning efforts.

O-11-11

- From Lake Merritt BART and points from the southeast, 3rd Street is the best street for planned protected bike lanes because of its width and direct connectivity. Both the Oakland Bicycle Plan and the Downtown Specific Plan identify protected bike lanes on 3rd Street, as has the Oakland Alameda Access Project. In addition, we have met with the Athletics, from the start of this planning process, and they initially agreed and took it on to begin the discussion of 3rd Street as the planned high-quality east-west bikeway in the JLD to the ballpark. We know the bike plan defers to this project for any bikeway modifications, but it does so for game-day reasons, not for reasons unrelated to ballpark access. The two reasons we have heard to select 2nd Street over

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O-11-8

The comment correctly states the Bike Plan’s designation of buffer bike lanes on Martin Luther King Jr. Way north of 8th Street, and correctly states the City’s position regarding the buffer bike lane designation. As stated in Response to Comment O-11-6, adding bike lanes to a roadway segment could reduce bicycle crashes up to 35 percent, while adding protected bike lanes could reduce crashes up to 45 percent. Both treatments—bike lanes and protected bike lanes—would reduce bicycle crashes, with protected bike lanes having a greater benefit. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the Proposed Project.

O-11-9

Draft EIR Figure 4.15-6 illustrates existing and proposed bicycle access and Draft EIR pp. 4.15-19 through 4.15-23 describe access by existing bicycle facilities.

The Washington Street corridor (10th Street to Embarcadero) with bike lanes would provide a local bike connection between Old Oakland and the Project site via Water Street, but would not serve the broader Downtown. The Martin Luther King Jr. Way corridor would provide a complete north/south connection through Downtown directly to the Project site (see Response to Comment O-11-7). Washington Street would have bike lanes and serve bicycle riders from the Lake Merritt BART station area once the Oakland Alameda Access Project (OAAP) is complete in 2027. The OAAP would construct protected bike lanes on 6th Street and Oak Street so that bicyclists from the Lake Merritt BART station area could use protected bike lanes to Washington Street’s striped bike lanes, connecting to the Project site via Water Street. The ballpark may open before the OAAP is fully constructed; during this interim period, bicycle riders could use 2nd Street from Oak Street to Washington Street, and then use either the multiuse path on Embarcadero or Water Street to access the ballpark. (Mitigation Measure TRANS-3a would construct a multiuse path on Embarcadero West, along the south side of the railroad tracks between Martin Luther King Jr. Way and Jefferson Street, and between Clay Street and Washington Street and potentially to either Broadway or Oak Street depending on the placement of railroad corridor fencing. The portion of Embarcadero between Jefferson and Clay Streets would retain vehicle access with sidewalk serving the Vistra Power Plant where bicyclists would share the street with motor vehicle traffic.) As noted in Response to Comment O-11-6, adding bike lanes to a road segment could reduce bicycle crashes up to 35 percent, while adding protected bike lanes could reduce crashes up to 45

O-11

COMMENT

RESPONSE

percent. Both treatments, bike lanes and protected bike lanes, would reduce bicycle crashes, with protected bike lanes having a greater benefit.

The Draft EIR identified Mitigation Measure TRANS-1b, which calls for implementation of a transportation management plan, or TMP. The TMP would include strategies to manage ballpark event transportation before, during, and after events. These strategies include traffic and/or parking control officers who would be deployed to manage the movement of people through the area to the ballpark. Infrastructure and management strategies that would be deployed along Washington Street are described on Draft EIR pp. 4.15-126 through 4.15-128. Draft EIR Appendix TRA.1 includes a draft TMP, which describes pre- and post-event management in Chapter 11 and illustrates a potential management strategy for large events in Figure 11-4.

The TMP also includes bicycle and micromobility parking at up to 1,000 attended, free, secure bicycle and micromobility parking spaces on game days, depending on the expected attendance. These facilities have been tentatively identified near the pedestrian and bicycle bridge and on the southwest side of the ballpark, adjacent to the two-way protected bikeway that extends from Martin Luther King Jr. Way into and around the site next to the Bay Trail. Other TMP strategies to promote bicycle and micromobility use include rewarding attendees for using the bike and micromobility parking and providing designated spaces for shared mobility devices.

O-11-10 The Broadway corridor transportation improvements are described on Draft EIR p. 4.15-129. These improvements would maintain existing roadway capacity through the 5th and 6th Street intersections and would add a protected left-turn lane at 4th Street to separate left-turning motor vehicle traffic and pedestrian traffic. The Draft EIR concluded on p. 4.15-130 that these design elements would preclude adding protected bike lanes on Broadway. Installing protected bike lanes between 4th and 6th Streets would require narrowing the sidewalk space to accommodate the protected bike lanes, which would then conflict with ballpark event attendees walking between the 12th Street BART station and the Project site. As indicated on Draft EIR p. 4.14-206, Mitigation Measure TRANS-2c would provide similar connections on Washington Street, a less trafficked street one block to the west. For this reason, the impact related to a conflict with the 2019 Oakland Bike Plan would be less than significant.

O-11

COMMENT

RESPONSE

O-11-11 The proposed Project would not preclude the commenter's preference for protected bike lanes on 3rd Street through the Jack London District per the Bike Plan. The commenter points to the Oak Street protected bike lanes and 3rd Street (with protected bike lanes per the Bike Plan) as the preferred bike corridor through the Jack London District. The Oak Street protected bike lanes would be constructed with the Oakland Alameda Access Project (OAAP), which would also construct protected bike lanes on 6th Street, connecting Oak to Washington Street, where bicyclists could continue down Washington Street's striped bike lanes to either the Embarcadero multiuse path or Water Street and the Project site. (Mitigation Measure TRANS-3a would construct a multiuse path on Embarcadero West, along the south side of the railroad tracks between Martin Luther King Jr. Way and Jefferson Street, and between Clay Street and Washington Street and potentially to either Broadway or Oak Street depending on the placement of railroad corridor fencing. The portion of Embarcadero between Jefferson and Clay Streets would retain vehicle access with sidewalk serving the Vistra Power Plant where bicyclists would share the street with motor vehicle traffic.)

O-11

COMMENT

RESPONSE

O-11-11

3rd Street are the Produce Market and the Port of Oakland's over-sized truck route on 3rd Street. Neither of these reasons has to do with game-day access and both are illogical. 2nd Street has more produce market issues than 3rd Street and is planned for a transportation hub and a potential TNC zone, which will preclude bike access during increased activity. West of Market Street, this plan does recognize existing buffered bike lanes on 3rd Street where over-sized Port trucks use the street. The issues are the same east of Market Street as they are west of Market. We believe that design issues can be worked out with the Produce Market and the Port of Oakland to make 3rd Street the best option all the way to Oak Street, where planned protected bike lanes are in the works. Either way, it is not this DEIR's responsibility to redo approved bikeways for reasons unrelated to the EIR. In addition, we met with the Port of Oakland and OakDOT to have these discussions in 2019 about 3rd Street, given the concerns, and agreed then that we were going to actually take a look at truck turning issues on 3rd Street before making any decisions, but there has been no followup on that to date. Let's start that followup and in the meantime, 3rd Street is the preferred protected bikeway.

- We support the protected bike lanes on MLK Jr. Way south of 8th Street, but ask for a couple of improvements. One, the intersections of MLK Jr. Way and 7th Street (and 8th Street) need to be protected intersections given the increased bike traffic this intersection will attract with 7th/MLK Jr. Way being a primary bikeway access to the ballpark from West Oakland. Two, down at the project site, the two-way cycle track onto the property of the project needs to be much wider than proposed, particularly as the cycle track makes a turn to the west. We understand why the roadway was widened and the bikeway constrained at this turn due to fire truck and delivery truck access, but the design here should be first for a wide cycle track that is mountable by fire trucks, not a wide roadway for fire trucks that leaves minimal width for bicycling.

O-11-12

As we previously stated, this Project creates a net loss of bikeways to residents of Oakland as compared to the bikeways in approved plans and under development with separate projects. The plan proposes approved bikeways on 7th Street, MLK Jr Way and one block of Washington, but the project proposes to downgrade or eliminate other bikeways in approved plans and projects. There appears to be only two additional new bikeway improvements proposed by the project over and above bikeways in approved plans--a 3 block cycle track on Embarcadero and the bike-ped bridge at Jefferson Street over the RR tracks. The list of lost or downgraded bike lanes includes: Market Street from protected to buffered, Adeline Street eliminated south of 7th St, Broadway eliminated in JLD, 2nd Street at the Transportation Hub during game day, and 3rd Street not upgraded to protected bike lanes. This is a net loss of bike access from what Oakland residents have been expecting to date. Because of this net loss of expected bikeways, we don't support a limited set of bike improvements but rather have two additional asks of the Project: 1) require the pedestrian bridge over the RR tracks to be designed to potentially join with a planned bike-ped bridge over the Oakland Estuary, should the later bridge prove feasible after its current Project Initiation Document concludes in a

O-11-13

O-11-14

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O-11-12 The comment raises design suggestions to improve comfort for and safety of bicycle riders beyond what is illustrated in the Draft EIR. As a matter of practice, the City of Oakland considers protected intersections when designing streets with protected bike lanes. The comment to consider narrowing the vehicle lane on Martin Luther King Jr. Way to allow for a wider two-way cycletrack through the curve will be considered. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Project. See also Response to Comments O-11-6 and O-11-7.

O-11-13 The comment correctly notes that the bike facilities proposed as part of the Project would create a net loss of bikeways and access, relative to existing, proposed, and planned bikeways within the vicinity of the Project site. Mitigation measures identified in the Draft EIR to provide alternate routes are described below.

The Bike Plan recognizes that the ballpark may alter the bike infrastructure in the vicinity of the ballpark. The Bike Plan states:

The Oakland Athletics are currently proposing to relocate their ballpark to Howard Terminal. This unique nature of this proposed project may necessitate adjustments to this Bike Plan network to balance competing game-day demands on surrounding streets, including but not limited to Broadway, Market Street, Martin Luther King Jr. Way, Embarcadero West, and 3rd Street. While precise street segments on the Bike Network may change to accommodate these demands, high quality bicycle facilities to and from the ballpark will be incorporated in both the Howard Terminal project design and any revisions to the network envisioned herein to ensure safe and sustainable transportation to and from the waterfront.

The Draft EIR documents the net loss in bike facilities. Draft EIR Table 4.15-41 (p. 4.15-206) addresses the loss of Adeline Street striped bike lanes (3rd to 7th Streets) per the Bike Plan. The analysis concludes that the transportation improvements to the Adeline Street corridor would be required to enhance truck access to and from the Seaport and separate Seaport vehicles from vehicles destined to the Jack London District, including the Project site. These improvements would preclude the striped bike lanes per the Bike Plan, and as a result, an alternative route would be required for bicycle riders traveling on Adeline Street to reach the 3rd Street bike lanes.

O-11

COMMENT

RESPONSE

The Draft EIR identified Mitigation Measure TRANS-2a, which would require a striped bike lane on 7th Street that would provide an alternate route for bicycle riders on Adeline Street to reach the 3rd Street corridor. Specifically, bike riders on Adeline Street would transition via 7th Street to either Mandela Parkway or Market Street to reach the 3rd Street corridor. The Bike Plan calls for protected bike lanes on 7th Street; the mitigation measure would not preclude future installation of the 7th Street protected bike lanes.

Draft EIR Table 4.15-41 (p. 4.15-208) addresses the loss of Market Street protected bike lanes per the Bike Plan (Embarcadero West to 3rd Street). The analysis concludes that the transportation improvements in the Market Street corridor would not preclude future installation of protected bike lanes on Market Street except between Embarcadero and 3rd Street, where the street's cross section width is insufficient to incorporate the needed auto and truck access to the Project site and Schnitzer Steel. As a result, bicycle riders on Market Street would not be able to access the Project site without sharing the street with motor vehicle traffic. The Draft EIR identified Mitigation Measure TRANS-2b, which would provide an alternative route for bicycle riders to access the Project site via Martin Luther King Jr. Way consistent with the Bike Plan. Bicycle riders on Market Street could access the Martin Luther King Jr. Way corridor via bicycle facilities on 14th Street, 7th Street, or 3rd Street. The proposed Project would maintain the existing Class 2B buffered bike lanes north of 3rd Street and would not preclude their upgrading to protected bike lanes in the future.

Draft EIR Table 4.15-41 (p. 4.15-206) addresses the loss of striped bike lanes on Broadway per the Bike Plan. The analysis concludes that the transportation improvements to the Broadway corridor are needed to support more reliable and faster bus service along the corridor. These improvements preclude bike lanes per the Bike Plan between 4th and 6th Street without bicycle riders sharing the sidewalk width. The Draft EIR identified Mitigation Measure TRANS-2c, which would provide an alternative route for bicycle riders via bike lanes on Washington Street, consistent with the Bike Plan, one block to the west of Broadway. Like the proposed bike lanes on Broadway, the bike lanes on Washington Street would connect with the 2nd Street bike lanes and the protected bike lanes planned for both the 3rd and 6th Street corridors.

Neither the proposed Project nor the off-site transportation improvements would preclude the future installation of protected bike lanes on 3rd Street. Transportation management for ballpark events through the Transportation Management Plan (Mitigation Measure TRANS-1b) would manage the

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COMMENT

RESPONSE

Transportation Hub on game days and direct bike riders to use the multi-use path along the railroad right-of-way rather than 2nd Street through the Transportation Hub.

O-11-14 This comment expresses a desire for the pedestrian and bicycle bridge (Mitigation Measure TRANS-3b) to be designed to incorporate the future pedestrian and bicycle bridge across the Oakland-Alameda Estuary (Estuary). The bridge over the Estuary is not part of the waterfront project or required as mitigation for the Project. The comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft EIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the Proposed Project.

The comment also expresses a desire for a Bike to the Ballpark event, sponsored by the A's, each May. One of the primary goals of the TMP is to ensure safe and efficient access for all people traveling to and from the site, with a focus on promoting pedestrian, bicycle, and transit access. In consideration of the comment, sponsored events to promote non-automobile travel have been incorporated as a requirement for Mitigation Measure TRANS-1b (see Consolidated Response 4.23, *Transportation and Parking Demand Management Plan and Transportation Management Plan Considerations*). The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Project.

O-11

COMMENT

RESPONSE

O-11-15

year, and 2) require A's to host and promote a Bike to the Ballpark Day, once a year, at a home date in May.
We support the planned 500-1,000 space bike/scooter parking at the ballpark and the cycle track along the interior roadway of the ballpark. The other interior roads should also have bike lanes at build out given the intense development planned.

O-11-16

Over and above what is planned for bike improvements, we know that flexibility and responsiveness will be needed and we support that. For these reasons, we request a seat on the operational oversight group of TMP and ask that this plan have a short list of priority bikeway improvements to be implemented post opening of the ballpark if needed should street conditions be different than forecast. Streets that should be on this short list are 3rd Street, Broadway, MLK Jr. Way and 14th Street. This is important because of the annual TMP surveys to be conducted. If from these attendee surveys, it is learned that more people are needed to bicycle to the ballpark to meet VMT reduction goals, and from the results of the survey we learn that improved bikeways are needed for more fans to bicycle to the ballpark, what exactly would happen next? There needs to be a Plan B for additional bikeway improvements to consider in order to meet VMT goals.

O-11-17

In Fig 4.15-1, Motor Vehicle Influence Area, why are there no intersections east of Broadway studied? In particular, bike travel on Oak Street, and 3rd Street will be impacted by ballpark traffic. Where are these impacts studied? They need to be studied since the DEIR states that the majority of traffic will be coming from these directions.

O-11-18

In Fig 4.15-3, Bicycle Influence Area, the extent of bicycle travel to and from the ballpark (including scooters) needs to extend to the three most adjacent BART Stations: West Oakland, 12th Street/City Center and Lake Merritt, as does Fig 4.15-4, the Pedestrian Influence Area.

O-11-19

Local Roadway Access needs to include Oak Street, 3rd Street and other nearby planned bikeways. There are major NB exits from 880 and SB entrances to 880 in this area and added traffic is going to affect active transportation modes to and from the ballpark. The Alameda County Congestion Management Program requires the Project to study impacts to all modes of travel, including bicycle trips.

O-11-20

Other comments and concerns

1. We do not support 8,900 new parking spaces at build out of both phases of the Project. 1 parking space/new residential unit is way too high. There is no need for such a large quantity of parking when there is a nearby transportation hub and three nearby BART stations, a ferry station and BRT. Oakland a few years ago lowered their off-street parking requirements in the downtown area. This Project should do better still.

O-11-15

The comment expresses a desire for bike lanes on the streets within the Project site. The street network has been designed to achieve speeds of 15 miles per hour (mph) by establishing short (approximately 240-foot) blocks with all-way stop controls at all intersecting streets so that automobiles and bikes can share the road. The two-way cycletrack along Martin Luther King Jr. Way and Market Street would serve the ballpark and the majority of the development blocks. From the cycletrack, bicycle riders would disperse on Street B, Street A, and Martin Luther King Jr. Way to access the remaining blocks. Street B and Street A would carry fewer than 1,000 vehicles per day, while Martin Luther King Jr. Way west of Market Street is expected to carry about 3,000 vehicles per day near Market Street. Minimal bicycle use is expected on Myrtle and Filbert Streets, and on Embarcadero West serving Schnitzer Steel. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the Proposed Project.

O-11-16

Table 1-1 of the TMP outlines key stakeholders that would be involved in implementing the TMP. Bike East Bay is listed as a community group that "may offer consultation and feedback on the project design and operational planning to help ensure a smooth integration into the existing neighborhood." The TMP is a living document and may be amended over time to respond to changing transportation needs or performance deficiencies identified through the TMP monitoring process to assure that the performance standard is met. Any amended changes would be approved by the City of Oakland, with input from the Port of Oakland and other stakeholders.

O-11-17

The City prepared a traffic analysis of the proposed Project for informational purposes, covering many streets east of Broadway. The traffic analysis is provided in Draft EIR Appendix TRA.3 and in the Draft EIR's Additional Transportation Reference Material (*CMP and MTS Analysis*).¹

Two Consolidated Responses provide additional information about how the ballpark's automobile traffic was evaluated. Consolidated Response 4.7, *Parking*, describes how ballpark attendees who drive would be dispersed to the Project site, underutilized parking garages in Downtown Oakland, and the BART overflow parking lots near the West Oakland BART station. Consolidated Response 4.8, *Chinatown*, provides additional information on changes in travel

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¹ Fehr & Peers, 2020. *CMP and MTS Analysis*, December 2020 (Draft EIR Additional Transportation Reference Material).

O-11

COMMENT

RESPONSE

time for drivers traveling on the streets in Chinatown that are referenced by the comment.

As noted on Draft EIR Figure 4.15-18, at opening day, bicycle riders from the Lake Merritt BART station area would use the bike lanes on Oak and Madison Streets to connect to the bike lanes on 2nd Street, where riders would continue to Washington Street and either the multiuse path or Water Street to access the ballpark. As stated in Response to Comment O-11-6, bike lanes on roadway segments are substantially safer than roadway segments without bike lanes (up to 35 percent fewer crashes) and protected bike lanes are even safer (up to 45 percent fewer crashes). Bicycle riders would use the 2nd Street routing between the opening of the ballpark and completion of the Oakland Alameda Access Project (OAAP) in year 2027. At that time, bicycle riders using the 2nd Street corridor would have the option to shift onto the OAAP-constructed two-way protected bike lanes on Oak Street and 6th Street to connect to Washington Street.

O-11-18 Bike travel from the three nearby BART stations was analyzed in the Draft EIR:

- The West Oakland BART station would be connected to the Project site via protected bike lanes on 7th Street (funded with an Active Transportation Program grant) and Martin Luther King Jr. Way (Mitigation Measure TRANS-2b).
- The 12th Street BART station would be connected to the Project site via protected bike lanes on 14th Street (currently under design) and Martin Luther King Jr. Way (Mitigation Measure TRANS-2b). Note that the Martin Luther King Jr. Way bike lanes would be buffer striped between 14th and 8th Streets.
- The Lake Merritt BART station would be connected to the Project site via protected bike lanes on Oak and 6th Streets (OAAP) and Washington Street (Mitigation Measure TRANS-2c) and Water Street. There could be a period of time between the ballpark opening and prior to completion of the OAAP in year 2027 when bicycle riders would use the bike lanes on Oak and Madison Streets to connect to the 2nd Street bike lanes and then to Washington Street.

O-11-19 As required by the Alameda County Congestion Management Program (CMP), the Draft EIR traffic analysis examined a broad list of streets. The freeway and road segment volume-to-capacity ratios are documented in the Draft EIR

O-11

COMMENT

RESPONSE

Additional Transportation Reference Material (Memorandum titled “CMP and MTS Analysis”) and forecasts were generated under 2020 and 2040 No Project and Plus Project scenarios.

See also Consolidated Response 4.7, *Parking*, which documents how ballpark event attendees who drive would be managed and dispersed to underutilized parking garages. The majority of the drivers would park either at the Project site or in Downtown Oakland west of Broadway, which would minimize the quantity of traffic using the Oak Street on- and off-ramps.

Consolidated Response 4.8, *Chinatown*, provides additional information regarding automobile travel times through the Chinatown neighborhood resulting from a ballpark event. In addition, the Oakland Alameda Access Project, or OAAP, would construct protected bike lanes on both Oak and 6th Streets that would separate bicycle riders from motor vehicle traffic. The OAAP is in environmental review, with design expected to start in 2022 and construction complete by 2027. Between the time the ballpark opens and the OAAP is constructed, bicycle riders would use the existing bike lanes on Madison and Oak Streets to the bike lanes on 2nd Street to access the Project site via Washington Street and either the multiuse path or Water Street. This opening-day ballpark route is depicted in Draft EIR Figure 4.15-18.

O-11-20 The 3,500 on-site ballpark parking spaces at opening day would accommodate less than 50 percent of the total parking space demand generated by ballpark attendees (about 7,600 spaces) for a weeknight event. At buildout, when 2,000 on-site parking spaces would be provided, less than 30 percent of the total parking demand would be accommodated on-site.

Draft EIR pp. 4.15-80 through 4.15-82 describe the Project’s non-ballpark parking characteristics. The Project proposes substantially less parking than anticipated demand for office and commercial uses: (a) 2.0 parking spaces per 1,000 square feet for office uses, while the area average is 2.9 spaces; and (b) 2.6 spaces per 1,000 square feet for retail and restaurant uses, when the area average is 2.8 spaces for non-December weekdays and up to 4.7 spaces on weekends and in December. The hotel use parking supply, at 0.5 spaces per unit, is anticipated to be consistent with demand, while the residential parking supply of 1.0 spaces per unit is slightly higher than the expected demand of 0.94 spaces per unit.

O-11

COMMENT

RESPONSE

Consolidated Response 4.23, *Transportation and Parking Demand Management Plan and Transportation Management Plan Considerations*, modifies Mitigation Measure TRANS-1a, which calls for implementation of a transportation demand management (TDM) plan for non-ballpark development, including a residential parking maximum of 0.85 parking spaces per unit, lower than the area average demand of 0.94 spaces. See Consolidated Response 4.7, *Parking*, which describes the parking management strategies for the ballpark.

O-11

COMMENT

RESPONSE

O-11-21

2. We are concerned that there are no/insufficient underpass improvements of 880. More information and details to understand how existing underpasses will be improved for safety and to encourage more people to take BART to games and walk to the ballpark.
3. In analyzing Coliseum site traffic, for comparison VMT purposes, the analysis should use 2018 data, not 2017. The Athletics were 97-65 in 2018 and saw significant attendance increase over 2017 when the A's were 75-87 and in last place. We know with lower attendance a higher percentage of people drive because parking at the stadium becomes more convenient, and vice versa. A well-attended season at the Coliseum should be the baseline for VMT analysis of the new ballpark;
4. How will the queue cutter loop signals function on Market Street at 3rd Street? Will they affect bicycling on either Market Street or 3rd Street? How will the proposed left turn lane on Market Street at 3rd Street effect bicycle circulation? This is not clear in the DEIR.
5. Proposed pedestrian and bicycle access on Washington Street (and potentially other streets) needs to address Oakland Police Headquarters blocking off and closing streets at their discretion, as happened in 2020. We propose giving OakDOT all authority over street closure permits, not just review and input.

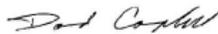
O-11-22

O-11-23

O-11-24

Thank you for considering our input and please let us know if you would like to discuss any of our ideas or concerns.

Sincerely,



Dave Campbell
Advocacy Director
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5

O-11-21 Draft EIR Section 4.15.4, *Transportation Improvements* (pp. 4.15-86 through 4.15-149), describes the off-site transportation improvements and programs to manage the proposed Project's transportation demands. They include corridor improvements on Market Street, Martin Luther King Jr. Way, Washington Street, and Broadway. For each of these corridors, the pedestrian sidewalk improvements under the I-880 overpass would include providing 8 feet of clear space at sidewalk obstacles; maximizing sidewalk waiting areas within 30 feet of intersections; providing pedestrian lighting as necessary; correcting sidewalk tripping hazards; providing 15-foot north/south crosswalks; daylighting intersections and driveways with red curbs per City guidance; and providing pedestrian wayfinding signage to direct patrons to the ballpark. The traffic signal systems at 5th and 6th Streets on each corridor would also be upgraded with pedestrian safety enhancements.

O-11-22 The Notice of Preparation (NOP) for the Draft EIR was published in November 2018 and the StreetLight traffic data for the full year of 2018 were not available. To capture a full year of origin-destination data for Coliseum attendees, 2017 StreetLight data were selected for the Draft EIR in accordance with CEQA standards.

O-11-23 The operating logic for the queue cutter loop signals on Market Street and 3rd Street would be established during design approval with the California Public Utilities Commission, and would involve the signals at both 3rd Street and Embarcadero. When the queue cutter loop determines that a motor vehicle is stopped at the railroad tracks, the signal at 3rd Street would turn green for northbound Market Street traffic leaving the Project site, and it could reduce the amount of green time available to bicycle (and motor vehicle) traffic on 3rd Street. To ensure optimal operations, the northbound left turn from Market Street onto 3rd Street would be prohibited so that northbound drivers would only go straight or turn right. In addition, there would be no bicycle lanes on Market Street between Embarcadero and 3rd Street, so bike riders would share the lane with motor vehicle traffic and would be prohibited from turning left onto 3rd Street.

The preferred route for the Project's bicycle riders, when leaving the Project site, would be to use Martin Luther King Jr. Way because that corridor would have protected bike lanes that would extend through the site and to the waterfront. These protected bike lanes would provide access to most of the non-ballpark development blocks and the site's bicycle riders would use

O-11

COMMENT

RESPONSE

Street B, Street A, or Martin Luther King Jr. Way to access all of the development blocks. Each of these streets is designed for 15 mph speeds with short blocks (about 240 feet) and all-way stop control at all intersections.

O-11-24 The required permits and approvals for the proposed Project are appropriately identified in Draft EIR Table 3-6, pp. 3-72 to 3-73. This comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft EIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the Proposed Project.

O-12 Oakland Chinatown Chamber of Commerce

COMMENT

RESPONSE

This is a cover letter reiterating the comments contained in the attachment. See Responses to Comments O-12-1 and O-12-2, below.

From: [Jessica Chan, CCOO](mailto:jessica.Chan.CCOO@oaklandca.gov)
To: emands@oaklandca.gov; emands@oaklandca.gov; emands@oaklandca.gov; emands@oaklandca.gov; emands@oaklandca.gov; emands@oaklandca.gov; emands@oaklandca.gov; emands@oaklandca.gov; emands@oaklandca.gov; emands@oaklandca.gov
Cc: [Christina Williams](mailto:Christina.Williams@oaklandca.gov); jessica@oaklandca.gov; [Kelly Davis](mailto:Kelly.Davis@oaklandca.gov); [Nikki Fortunato Bas](mailto:Nikki.Fortunato.Bas@oaklandca.gov); [Thao Stanis](mailto:Thao.Stanis@oaklandca.gov); [Noel Taylor Lewis](mailto:Noel.Taylor.Lewis@oaklandca.gov); [Kaelan Babeaux](mailto:Kaelan.Babeaux@oaklandca.gov); [Carroll Fife](mailto:Carroll.Fife@oaklandca.gov); [Rick da Silva](mailto:Rick.da.Silva@oaklandca.gov); [Warren Chu](mailto:Warren.Chu@oaklandca.gov); [Alan Auyeung](mailto:Alan.Auyeung@oaklandca.gov)
Subject: Howard Terminal Project DEIR Extension Request
Date: Saturday, April 3, 2021 8:01:27 AM
Attachments: [Howard Terminal DEIR Extension Date Request Letter 20210402.pdf](#)

[EXTERNAL] This email originated outside of the City of Oakland. Please do not click links or open attachments unless you recognize the sender and expect the message.

Dear City of Oakland Planning Commission,

On behalf of the Oakland Chinatown Chamber of Commerce, I would like to send this letter as a request for an extension of the full 90 days for the comment period regarding the Draft Environmental Impact Report (DEIR) for the Howard Terminal Waterfront Ballpark Project. This project will have a tremendous impact on the Chinatown community along with many other surrounding adjacent communities. If this project is to be the shining jewel of our Oakland waterfront, thorough due diligence is necessary to ensure that it is done properly and that all parties are given a fair opportunity to study and assess the DEIR document that details the many issues.

The Oakland Athletics has been a great partner with working within the community over the last several years and we appreciate the transparency and open line of communications that they have offered during this process. Regardless, once this project is completed there are no opportunities to reverse any negative impacts that would be permanent. Of note are issues regarding traffic and parking mitigations in the area that is backlogged by the waterfront and lacks infrastructure. The infrastructure meant to handle not just 81 sporting events a year, but the overall development of housing, a hotel and the many other multi-use parcels that would bring a tremendous amount of people in and out of the region by one of the most congested pathways of traffic in the Bay Area needs attention. The balance of how this traffic can be of benefit or of consequence to Chinatown is what we are primarily focused on and we hope for solutions that make sense for everyone.

The Oakland Chinatown Chamber of Commerce appreciates the role that you have with this project and we look forward to the continued guidance and direction that you have taken in the best interest of the people that work and live in the city of Oakland.

Best Regards,

Carl Chan
Board President

Rick da Silva, Government Affair Committee Chair
Alan Auyeung, Government Affair Committee
Warren Chu, Government Affair Committee

CC:
Libby Schaaf, Mayor of Oakland
Nikki Fortunato Bas, Council President & Councilmember District 2
Dan Kalb, Councilmember District 1
Carroll Fife, Councilmember District 3

O-12

COMMENT

RESPONSE

Sheng Thao, Councilmember District 4
Noel Gallo, Councilmember District 5
Loren Taylor, Councilmember District 6
Treva Reid, Councilmember District 7
Rebecca Kaplan, Councilmember at Large
Betsy Lake, Deputy City Administrator
William Gilchrist, Director of Planning
Peterson Vollmann, Project Planner

Jessica Chen 陳巧倫
Executive Director | Oakland Chinatown Chamber of Commerce
屋崙華埠商會 | 執行主任
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O-12

COMMENT

RESPONSE

O-12-1 This is a general comment that includes introductory remarks and a request for an extension of the comment period. As a result, no specific response is provided here. See Consolidated Response 4.19, *Comment Period Extension*.

Parts of the comment address the merits of the Project and are provided here for consideration by decision makers before they take action on the Project.

O-12-2 See Consolidated Response 4.8, *Chinatown*.



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FLORA NGAN

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JAMES M. ONG, E.A.

ALBERT WONG

April 2, 2021

The Planning Commission
1 Frank H. Ogawa Plaza, 3rd Floor
Oakland, CA 94612

Dear City of Oakland Planning Commission,

On behalf of the Oakland Chinatown Chamber of Commerce, I would like to send this letter as a request for an extension of the full 90 days for the comment period regarding the Draft Environmental Impact Report (DEIR) for the Howard Terminal Waterfront Ballpark Project. This project will have a tremendous impact on the Chinatown community along with many other surrounding adjacent communities. If this project is to be the shining jewel of our Oakland waterfront, thorough due diligence is necessary to ensure that it is done properly and that all parties are given a fair opportunity to study and assess the DEIR document that details the many issues.

The Oakland Athletics have been great partners with working within the community over the last several years and we appreciate the transparency and open line of communications that they have offered during this process. Regardless, once this project is completed there are no opportunities to reverse any negative impacts that would be permanent. Of note are issues regarding traffic and parking mitigations in the area that is backlogged by the waterfront and lacks infrastructure. The infrastructure meant to handle not just 81 sporting events a year, but the overall development of housing, a hotel and the many other multi-use parcels that would bring a tremendous amount of people in and out of the region by one of the most congested pathways of traffic in the Bay Area needs attention. The balance of how this traffic can be of benefit or of consequence to Chinatown is what we are primarily focused on and we hope for solutions that make sense for everyone.

The Oakland Chinatown Chamber of Commerce appreciates the role that you have with this project and we look forward to the continued guidance and direction that you have taken in the best interest of the people that work and live in the city of Oakland.

Best Regards,


Carl Chan
Board President

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O-12-1

O-12-2

O-12

COMMENT

RESPONSE



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JAMES M. ONG, E.A.

ALBERT WONG

Rick da Silva, Government Affair Committee Chair
Alan Auyeueng, Government Affair Committee
Warren Chu, Government Affair Committee

CC:
Libby Schaaf, Mayor of Oakland
Nikki Fortunato Bas, Council President & Councilmember District 2
Dan Kalb, Councilmember District 1
Carroll Fife, Councilmember District 3
Sheng Thao, Councilmember District 4
Noel Gallo, Councilmember District 5
Loren Taylor, Councilmember District 6
Trevia Reid, Councilmember District 7
Rebecca Kaplan, Councilmember at Large
Betsy Lake, Deputy City Administrator
William Gilchrist, Director of Planning
Peterson Vollmann, Project Planner

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O-13 Oakland Chinatown Coalition

COMMENT

RESPONSE

O-13-1 See Consolidated Response 4.19, *Comment Period Extension*.

From: [Alvina Wong 黃曉茵](#)
To: [Fortunato Bas, III](#); [Mayor Libby Schaaf](#); [dkain@oaklandca.gov](#); [Thao, Sheng](#); [atljags@oaklandca.gov](#); [Dirind@oaklandca.gov](#); [Galia, Neil](#); [travis@oaklandca.gov](#)
Cc: [Johanna, Perazoga](#); [Lela, Betty](#); [Gloria, Wilton](#); [Chen, Mia Selba](#); [Kjornc3@oaklandca.gov](#); [sterran@oaklandca.gov](#); [Cummings, Veronica](#); [Amancia Monchamp](#); [Tom Lison](#); [Jonathan Fleiter](#); [manuelso@gmail.com](#); [NikspdeCFC@gmail.com](#); [SP@raz@CFC@gmail.com](#); [kaylyndh@yahoo.com](#); [lives@oaklandca.gov](#); [AMT@lives@oaklandca.gov](#); [office@themayor@oaklandca.gov](#); [See, Sun Kwong \(Michael\)](#)
Subject: Re: Request to Extend Comment Period for Draft EIR for Howard Terminal Project
Date: Thursday, April 8, 2021 1:03:15 PM
Attachments: [Request for addl time to Comment on DEIR.pdf](#)

[EXTERNAL] This email originated outside of the City of Oakland. Please do not click links or open attachments unless you recognize the sender and expect the message.

Hello, we respectfully ask for a response to our this request by members of the Oakland Chinatown Coalition, the Oakland Chinatown Chamber of Commerce as well as the Oakland United Coalition on March 30th. We urge you to use your authority to extend the comment period beyond the current 15 day extension to the full 45 days extension allowable. This 6000+ page document requires all of us to have more time to review and thoughtfully comment on this project that will have major impacts to our neighborhood and the whole city.

I have reattached our Request for Extension for your reference that outlined why we are making this request.

Looking forward to your response.

Alvina Wong, Campaign & Organizing Director | 黃曉茵, 社區組織總監
 Gender Pronoun: She/Her/Her
 Asian Pacific Environmental Network | 亞太環保網絡
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 s: apendej.org e: alvina@apendej.org | Follow us on   

Support our work! <http://bit.ly/DonateAPEN>

On Tue, Mar 30, 2021 at 3:45 PM Alvina Wong 黃曉茵 <alvina@apendej.org> wrote:
 Dear Mayor Schaaf and Members of the Oakland City Council:

Please review our attached request to extend the comment period for the Howard Terminal Project Draft EIR. Outlined in the attached letter are significant concerns and request to grand the allowable full 45-day extension period to fully comment on the DEIR.

We look forward to your response, thank you.

Respectfully,

The Oakland Chinatown Coalition, members of the Oakland United Coalition and other community allies

Alvina Wong, Campaign & Organizing Director | 黃曉茵, 社區組織總監
 Gender Pronoun: She/Her/Her
 Asian Pacific Environmental Network | 亞太環保網絡

O-13-1

O-13

COMMENT

RESPONSE

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e: apen@sei.org alyina@apen@sei.org | Follow us on   
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O-13

COMMENT

RESPONSE

O-13-2 See Consolidated Response 4.19, *Comment Period Extension*. See also responses to the referenced comment letters received from Communities for a Better Environment et al. (O-1) and the League of Women Voters (O-6) in this chapter.

March 30, 2021

Mayor Libby Schaaf
President Nikki Fortunato Bas
Council Member Carroll Fife
Council Member Noel Gallo
Council Member Dan Kalb
Council Member and Vice Mayor Rebecca Kaplan
Council Member Treva Reid
Council Member Loren Taylor
Council Member Sheng Thao

Oakland City Hall
1 Frank H. Ogawa Plaza
Oakland, CA 94612

Re: Extension of Time to Respond to Howard Terminal Draft EIR

Dear Mayor Schaaf and Members of the Oakland City Council:

The Draft Environmental Impact Report (DEIR) for the Oakland Ballpark Waterfront District Project (the proposed Howard Terminal ballpark development, or "Project") was issued on February 26th, 2021, subject to a 45 - day comment period. Following the request for an additional 45 days to comment by seventeen community organizations (CBE et al.) and a separate request by the Oakland League of Women Voters, the comment period was extended, but only by 15 days. Without further action, the public comment period now closes on April 27, 2021.

The Oakland Chinatown Coalition, members of the Oakland United coalition, Oakland Chinatown Chamber of Commerce and other community allies respectfully ask the City of Oakland to provide the full 45-day extension requested by CBE and thereby allow the public to read, analyze, and comment on the DEIR until May 27-2021.

The Howard Terminal Project DEIR demonstrates that the environmental effects of this ambitious project may have significant, far-reaching, and unavoidable impacts on our communities. The DEIR comment process is the only way the public can learn about the potential negative impact of the Project and attempt to protect its interests in response. A total of 90 days is needed to understand the impacts of the Project, review the adequacy of the DEIR's proposed mitigation measures and project alternatives, share the terms of the DEIR with our community members, get their feedback, and submit comments to the City.

The unusual circumstances surrounding the Project constitute grounds for the City to exercise its discretion to accept comments on the DEIR outside the 60-day comment period recommended by the California Environmental Quality Act (CEQA).¹ While there is no case law defining what type of unusual circumstance may justify a longer review period nor any case law limiting the lead agency's exercise of discretion to determine what constitutes "unusual circumstances,"² the circumstances created by the Project are certainly unique, including:

¹ 14 California Code of Regulations Sec 15105(a).

² Continuing Education of the Bar, Practice Under the California Environmental Quality Act, Section 9.24.3.

O-13-2

O-13

COMMENT

COMMENT

- Special legislation providing expedited CEQA review and other benefits to the Project,
- Enabling the city to ignore public comments filed after the close of DEIR comments,
- Extinguishment of public trust protections on Project property,
- Alteration and intensification of land use through general plan and zoning amendments, subdivisions, and planned unit development, and
- Permanent physical, economic, and social impacts on communities that are the backbone of Oakland.

The Project would convert largely vacant land to substantially more intensive use over a period of seven years.³ Briefly, it consists of a "state-of-the-art ballpark and event center that can be used year-round for sporting events, entertainment, and convention purposes with capacity up to 35,000 and a sufficiently dense mixed-use residential/office/commercial/retail/entertainment development." The fact that the final project description was not publicly revealed until the DEIR was published on February 26, 2021 has also raised fresh challenges.⁴ Special legislation grants the Project "fast track" post approval judicial review if and only if the project has met specific requirements that appear intended to benefit the public. This is another dimension of the Project that bears scrutiny.

For the City to gain a full appreciation of the environmental impacts of this complex development, it has undertaken two years of study and produced a DEIR of over 6000 pages.⁵ To evaluate the Project's impacts on the Project environment, including existing infrastructure and conditions, and to identify appropriate mitigation measures, the DEIR refers to pre-existing regulatory protocols, plans, and studies. The application of technical material to a project that is already exceptional in its scope and scale has resulted in a report that simply requires more than 45 days to review. This is particularly true for members of the public who lack the resources and expertise to respond quickly.

In 2018, the Legislature passed AB 734, which provided a fast-track judicial review process for CEQA determinations related to the Project. AB 734 makes a compelling case for the City to provide abundant opportunity for public comment on the DEIR. AB 734 requires the City to warn the public that any comments on the Project made after the DEIR comment period may be ignored by the City. This limitation on public comment is so integral to the fast-track judicial process that it is only fair to allow the public a reasonable amount of time to address the substantive issues in the DEIR.⁶

³ For more detail, see Project Description from Notice of Availability, reprinted in the Attachment to this letter.

A succinct description of the Project and its public review process is available at the state Office of Planning and Research website: <https://ceqanet.opr.ca.gov/20181120703>

⁴ For example, the Project now includes buildings up to 620 feet tall (DEIR p. 4.1-25); currently, Oakland's tallest building is the 404 foot tall Ordway Building. https://localwiki.org/oakland/Tallest_Building_in_Oakland, and creates winds gusting up to 36 miles per hour (DEIR p. 2-5, Sec. 2.2.1).

⁵ The Notice of Preparation of the DEIR was issued on November 30, 2018,

⁶ Public Resources Code Section 21168.6.7, subsec. (f) states:

(f) (1) The draft and final environmental impact report shall include a notice in not less than 12-point type stating the following:
THIS ENVIRONMENTAL IMPACT REPORT IS SUBJECT TO SECTION 21168.6.7 OF THE PUBLIC RESOURCES CODE, WHICH PROVIDES, AMONG OTHER THINGS, THAT THE LEAD AGENCY NEED NOT CONSIDER CERTAIN COMMENTS FILED AFTER THE CLOSE OF THE PUBLIC COMMENT PERIOD, IF ANY, FOR THE DRAFT ENVIRONMENTAL IMPACT REPORT. ANY JUDICIAL ACTION CHALLENGING THE CERTIFICATION OR ADOPTION OF THE ENVIRONMENTAL IMPACT REPORT OR

O-13-2

The need for additional time for public comment is driven by equity as well. The Draft EIR determined that the Project would result in significant and unavoidable impacts in the following areas, even with the implementation of feasible mitigation measures: Wind, Air Quality, Cultural Resources, Noise and Vibration, Traffic Safety Hazard, and Consistency with Transportation Plans.⁷ Despite over 6000 pages of analysis, the DEIR found that these impacts on the quality of life could not be abated. Accordingly, the public should have ample opportunity to review these findings and comment on "Whether or not the project should be approved despite significant and unavoidable impacts that would occur if the Project were implemented." (See, DEIR, p. 2-8, "Sec.2.5 Issues to be Resolved.")

As noted above, seventeen organizations representing diverse community members in East and West Oakland requested a total of 90 days to review the DEIR but were turned down.⁸ The Oakland Chinatown Coalition specifically agrees with these organizations that 30 additional days are needed to inform and solicit feedback from individual members of the community whom we serve.

The Oakland League of Women Voters, whose byword is "making democracy work," also sought an extension of time. We agree with the League that, "In a project of such magnitude, which could have significant long term consequences for Oakland residents, all voices and viewpoints should have a real opportunity to be heard and considered." Adding only two weeks to the initial 45-day period fails to provide the public with a real opportunity to be heard and considered.

For all of these reasons, the City should extend the period for public comment on the DEIR by an additional 45 days, which would require comments to be submitted no later than Thursday, May 27th, 2021.

Sincerely,

Oakland Chinatown Coalition signatory members in alphabetical order

- Asian Health Services
- Asian Pacific Environmental Network
- East Bay Asian Local Development Corporation
- AYPAL - Building API Community Power
- Asian Immigrant Women Advocates
- Asian Pacific Islander Legal Outreach
- Buddhist Church of Oakland
- Chinese American Citizens Alliance - Oakland Lodge
- Chinatown Community United Methodist Church
- Family Bridges

THE APPROVAL OF THE PROJECT DESCRIBED IN SECTION 21168.6.7 OF THE PUBLIC RESOURCES CODE IS SUBJECT TO THE PROCEDURES SET FORTH IN THAT SECTION. A COPY OF SECTION 21168.6.7 OF THE PUBLIC RESOURCES CODE IS INCLUDED IN THE APPENDIX TO THIS ENVIRONMENTAL IMPACT REPORT.

⁷ DEIR, pp. 2-5 and 2-6, Section 2.2.1, "Significant and Unavoidable Impacts."

⁸ Letter of Communities for a Better Environment, et al., to Peterson Vollman of the City of Oakland Bureau of Planning, dated March 5th 2021.

O-13

COMMENT

COMMENT

Filipino Advocates for Justice
Friends of Lincoln Square
OCA - Asian Pacific American Advocates: East Bay Chapter (OCA-East Bay)
Oakland Asian Cultural Center
Wa Sung Community Service Club
Alan Yee

Oakland Chinatown Chamber of Commerce

Oakland United Coalition signatory members and other supporting organizations

Alliance of Californians for Community Empowerment
Causa Justa: Just Cause
Communities for a Better Environment
East Bay Alliance for Sustainable Economy
East Bay Community Law Center
Oakland Heritage Alliance
Oakland Tenants Union
Sierra Club
Public Advocates
Urban Habitat

Cc: Betsy Lake, Deputy City Administrator
William Gilchrist, Director of Planning
Peterson Vollmann, Project Planner

Attachment
Excerpt from

**COMBINED NOTICE OF AVAILABILITY AND RELEASE OF A
DRAFT ENVIRONMENTAL IMPACT REPORT (EIR) AND
NOTICE OF PUBLIC HEARINGS FOR THE OAKLAND
WATERFRONT BALLPARK DISTRICT PROJECT**

February 26, 2021

DESCRIPTION OF PROJECT: The Oakland Waterfront Ballpark District Project ("Project or "proposed Project") would construct:

- a new open-air waterfront multi-purpose Major League Baseball (MLB) ballpark with a capacity of up to 35,000-persons ("Ballpark");
- mixed use development including up to 3,000 residential units,
- up to 1.5 million square feet of office (which could include a range of commercial uses, such as general administrative and professional office and life sciences/research), and up to approximately 270,000 square feet of retail uses;

- an approximately 50,000 square-foot indoor performance venue with capacity of up to 3,500 persons;
- up to approximately 280,000 square-feet of hotel space including up to 400 rooms in one or more buildings and supportive conference facilities;
- a network of approximately 18.3 acres of privately-owned, publicly-accessible open spaces; and a maximum of approximately 8,900 total parking spaces at full buildout. Approximately 2,000 parking spaces would be shared by the Ballpark and the performance venue, and the remaining 6,900 parking spaces would serve residential and commercial uses on the Site.

O-14 Inlandboatmen's Union of the Pacific

COMMENT

RESPONSE



O-14

COMMENT

RESPONSE

Hello,

My name is Robert Estrada and I am the Regional Director of the Inlandboatmen's Union of the Pacific.

I am writing to express my absolute unvarnished opposition to the Howard Terminal hand-off to the Oakland A's Corporation.

At this point, you have heard from a steady stream of labor and community stakeholders, stating in unison this is a disastrous idea on so many fronts. Please add our name to that official tally.

There is only so much maritime industrial property in existence. This interface of the water and the land, with open sea access, deep water and shoreside transportation infrastructure is as critical and irreplaceable as fertile farmland or the Amazon rain forest. Once it's gone IT'S GONE.

While the existentially important industry of Maritime transportation is a prisoner of geography, and has no option but to operate along the infinitesimal margin of land and water, a baseball stadium has a 3,000-mile inward margin from which to choose a convenient spot.

Just as you might reasonably defer to the experts in any given field, when seeking guidance on questions within that field, I assert the experts in THIS field are those who know the waterfront and the waterfront industry best.

Those with the most knowledge as to what to expect, as far as a functional and economic impact to our Port is concerned, are represented in the East Oakland Stadium Alliance (Image attached).

Please stop the madness of toying with the sabotage of our world class Port. Say no to this proposed, disastrous Port degradation.

Tell the A's to build elsewhere, without causing such irreversible harm.

Thank you,
Robert Estrada

O-14-1 Comments regarding the Project's merits, a Project component, or a variant of the Project do not raise a significant environmental issue or specific questions about the analyses or information in the Draft EIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Project. See Consolidated Response 4.22, *General Non-CEQA*.

See Consolidated Response 4.4, *Port Operations and Land Use Compatibility*. This comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft EIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the Proposed Project.

O-14-1

O-15 International Organization of Masters, Mates & Pilots

COMMENT

RESPONSE

O-15-1 This is a general comment that includes introductory remarks and serves to introduce the more specific comments that are responded to in detail below. As a result, no specific response is provided here. See responses to the following comments in the referenced attachment (Responses to Comments O-15-2 to O-15-7).

From: [Donald Marcus](#)
To: PVollmann@oaklandoa.gov
Cc: [Sly Hunter](#); [Jeremy Hope](#); [Lisa Rosenthal](#); [Lara Turner](#); [Tim Sattler](#)
Subject: Port of Oakland
Date: Tuesday, April 20, 2021 10:47:33 AM
Attachments: [image001.png](#)
[P.Vollmann - Port of Oakland - MMSP 042021.pdf](#)

[EXTERNAL] This email originated outside of the City of Oakland. Please do not click links or open attachments unless you recognize the sender and expect the message.

Dear Mr. Vollmann

On behalf of the 200 merchant mariners from our organization serving aboard vessels of all types working on the Bay, transporting cargo to and from the Port of Oakland and seeking employment through our hiring hall in Oakland, please consider the attached letter urging the preservation of Oakland's priceless industrial waterfront. The economic engine of Oakland's economy must come before a ballpark that can be built elsewhere.

Thank you and best regards,

Don Marcus



Captain Don Marcus, President
International Organization of Masters, Mates & Pilots, AFL-CIO
700 Maritime Blvd, Suite B
Linthicum Heights, MD 21090-1953
Tel: 410-691-8140(office)
Tel: 206-849-2422(cell)

O-15-1

O-15

COMMENT

RESPONSE



International Organization of
Masters, Mates & Pilots

700 Maritime Boulevard, Suite B, Linthicum Heights, MD 21090-1953
Telephone: 410-850-8700 • Fax: 410-850-0973
Internet: www.bridgedeck.org

DONALD J. MARCUS
International President
DONALD F. JOSEBERGER
International Secretary-Treasurer

April 20, 2021

Peterson Vollmann, Planner IV
City of Oakland Bureau of Planning
250 Frank H. Ogawa Plaza, Suite 2214
Oakland, CA 94612
PVollmann@oaklandca.gov

RE: Draft EIR for Oakland Waterfront Ballpark District at Howard Terminal

The Port of Oakland is deeply rooted in Northern California's fabric, encompassing a vibrant seaport, a thriving airport, and an array of commercial buildings and parks. Critical to the success of the port and thousands of seaport users that make it function is Howard Terminal.

O-15-2

The Howard Terminal Draft Environmental Impact Report clearly demonstrates what we already know – the A's proposal to build a stadium and luxury development will cause significant negative impacts to our working waterfront and the West Oakland community, yet the DEIR fails to fully address these issues. Those of us who work in and around the Port of Oakland understand first-hand that this project is not compatible with existing land and sea use and cannot support this flawed proposal.

O-15-3

The A's proposal to reduce the waterfront's dedication to maritime industry threatens the competitiveness of Oakland's top economic driver, the Port of Oakland, which generates \$130 billion annually, and undermines future growth in favor of developers. Danny Wan, the Executive Director of the Port of Oakland, has stated publicly that the City needs to establish an "industrial sanctuary" at the port in order to meet the growth in demand well into the future - yet the A's plan is in complete contradiction to that. Along with many of my colleagues, the port has made significant infrastructure investments - including the recent purchase of the tallest cranes in the United States - if the A's build a stadium at Howard Terminal all of that would become meaningless.

O-15-4

My colleagues and I are also extremely concerned about increasing small passenger boats a stadium at Howard Terminal would likely attract during game days, similar to the Giants McCovey Cove. However, unlike McCovey Cove, Howard Terminal is on the working waterfront and has large shipping vessels constantly making their way through the waterways. The Coast Guard has stated that they cannot keep small passenger boats safe, resulting in significant hazards which could deter ships from coming into port.

INTERNATIONAL ORGANIZATION OF MASTERS, MATES & PILOTS, AFL-CIO

- O-15-2 This is a general comment that includes introductory remarks and serves to introduce the more specific comments that are responded to in detail below. See Consolidated Response 4.4, *Port Operations and Land Use Compatibility*.
- O-15-3 See Consolidated Response 4.22, *General Non-CEQA*, in Section 4.22.1, *Opinions on the Merits of the Project*.
- O-15-4 See Consolidated Response 4.4, *Port Operations and Land Use Compatibility*, regarding recreational watercraft and maritime navigation.

O-15

COMMENT

RESPONSE



Page 2
April 20, 2021
RE: DEIR Engagement Opportunities

O-15-5

The DEIR does not propose concrete and affirmative mitigation measures which guarantee non-interruption to the maritime industry. The best the DEIR does is require the A's and the City to have future discussions about ways in which they might protect navigation. If the A's move to Howard Terminal, they will need to accept full liability for keeping ships and their passengers safe.

O-15-6

Rather than displacing industrial and maritime businesses, it's in the best interest of both the City of Oakland and A's fans for a new, state-of-the-art ballpark to be constructed at the Coliseum complex in East Oakland. The Coliseum site is already approved for ballpark construction, is transit-accessible, and would serve as an economic engine for the surrounding East Oakland neighborhoods.

O-15-7

(Company and its XX employee's), urge you to reject the A's plan to build their new stadium and luxury condos on the working waterfront and condition any sale of the Coliseum property to the A's on building the new ballpark at their existing home. The City can have a win-win here — a world-class sports facility in East Oakland and a world-class port in West Oakland.


Captain Don Marcus
President

- O-15-5 See Consolidated Response 4.4, *Port Operations and Land Use Compatibility*, regarding mitigation measures identified to address maritime operations.
- O-15-6 Comments regarding the Project's merits or alternatives to the Project do not raise a significant environmental issue or specific questions about the analyses or information in the Draft EIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Project. See Consolidated Response 4.22, *General Non-CEQA*. See also Consolidated Response 4.10, *Alternative 2: The Off-Site (Coliseum Area) Alternative*.
- O-15-7 This comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft EIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the Proposed Project.

INTERNATIONAL ORGANIZATION OF MASTERS, MATES & PILOTS, AFL-CIO

O-16 Union Pacific Railroad

COMMENT

RESPONSE

From: Adrian Guerrero <aguerre@up.com>
Sent: Tuesday, April 20, 2021 6:50 PM
To: Vollmann, Peterson <PVollmann@oaklandca.gov>
Subject: Fw: Oakland Planning Commission Meeting 4/21/21 - Union Pacific Comment/ Video

[EXTERNAL] This email originated outside of the City of Oakland. Please do not click links or open attachments unless you recognize the sender and expect the message.

Hoping third time's a charm...

Adrian Guerrero
Union Pacific Railroad
Public Affairs
918-789-6360
aguerre@up.com

----- Forwarded by Adrian Guerrero/UPC on 04/20/2021 06:49 PM -----

From: Adrian Guerrero/UPC
To: pvollmann@oakland.ca.gov
Date: 04/20/2021 06:48 PM
Subject: Fw: Oakland Planning Commission Meeting 4/21/21 - Union Pacific Comment/ Video

Got a bounce back, resending.

Adrian Guerrero
Union Pacific Railroad
Public Affairs
918-789-6360
aguerre@up.com

----- Forwarded by Adrian Guerrero/UPC on 04/20/2021 06:48 PM -----

From: Adrian Guerrero/UPC
To: amandamonchamp@gmail.com, cmanusopo@gmail.com, jlearnopo@gmail.com, iraylynch@yahoo.com, NHedgeOPC@gmail.com, SShiraziOPC@gmail.com, simon.opc@gmail.com
Cc: pvollmann@oakland.ca.gov, Francisco J. Castillo JFVUPC@UP
Date: 04/20/2021 06:38 PM
Subject: Oakland Planning Commission Meeting 4/21/21 - Union Pacific Comment/ Video

O-16

COMMENT

RESPONSE

O-16-1 See Consolidated Response 4.6, *Rail Safety, Grade Crossing, and Grade Separation*.

O-16-1

Good Evening Commissioners,

My name is Adrian Guerrero and I am the General Director of Public Affairs for Union Pacific Railroad. I manage UP Public Affairs for our western state network and will be tuning into tomorrow's Planning Commission Meeting to submit comments on the proposed Waterfront Ballpark District Project.

As part of my comments, I would like to submit the attached animation video for the record:

<https://updrop.upcorp.ad.uprr.com/?ShareToken=C72A12442D33E131B882EAF6F5E0645FC198D3B1>

This video illustrates UP's Oakland terminal facilities, right of way and operations, and also highlights the associated safety concerns that UP has raised with the City, Port of Oakland and Oakland A's leadership since the Howard Terminal discussions began. Safety has been identified as the critical concern with the proposed stadium development and this video will help provide some much needed clarity to the discussion.

I recognize there will likely be time constraints on public comments, but I'd be grateful for any opportunity to share the video during tomorrow's meeting. At the very least, I ask each of you to view the video in preparation for tomorrow's meeting.

If you have any questions or would like to discuss, please don't hesitate to contact me. My cell is 312-405-6635.

Respectfully,
Adrian

Adrian Guerrero
Union Pacific Railroad
Public Affairs
915-789-6360
aguerra@up.com

**

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**

O-16

COMMENT

RESPONSE

OAKLAND UNION PACIFIC VIDEO

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3 **UNION PACIFIC**
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6
7 **HOWARD TERMINAL ANIMATION FULL VIDEO**
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17
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19 **Transcribed by:**
20 **Connie J. Parchman, RPR, CRR, CSR 6137**
21 -----
22 **JAN BROWN & ASSOCIATES**
23 **WORLDWIDE DEPOSITION & VIDEOGRAPHY SERVICES**
24 **701 Battery St., 3rd Floor, San Francisco, CA 94111**
25 **(415) 981-3498 or (800) 522-7096**

1

JAN BROWN & ASSOCIATES (415) 981-3498 (800) 522-7096

O-16

COMMENT

RESPONSE

O-16-2 Existing railroad corridor conditions—crossing volumes, gate down times, and collision history—are described in the Draft EIR on pp. 4.15-39 through 4.15-42. The description supports the commenter’s statement about the variable nature of gate down times at the at-grade railroad crossings at both Market Street and Martin Luther King Jr. Way.

The railroad corridor improvements contemplated by the proposed Project are described on Draft EIR pp. 4.15-93 and 4.15-94. Such improvements include a combination of corridor fencing, at-grade improvements such as quad gates, pedestrian and bicycle gates, and a pedestrian and bicycle grade separation.

The proposed Project's impacts on the railroad corridor are described in Draft EIR Section 4.15, *Transportation and Circulation*, Impact TRANS-3 (pp. 4.15-233 through 4.15-240). The impacts are considered significant and unavoidable, although Mitigation Measures TRANS-3a and TRANS-3b would lessen but not eliminate the impacts. See Consolidated Response 4.6, *Rail Safety, Grade Crossing, and Grade Separation*, for responses to issues raised in the comment. Section 4.6.3 in the Consolidated Response 4.6 describes the gate down times from the Draft EIR, comparing them to additional data provided by UPRR in their comment letter, and describes the implications of the maximum gate down time described in the Draft EIR if it coincided with the end of a ballpark event. Extended gate down times at the Project site generally occur for switching activities at the adjacent rail yard.

OAKLAND UNION PACIFIC VIDEO

1
2 **NARRATOR:** The Oakland A's are proposing to
3 build a 35,000 seat stadium, residential units and retail
4 space on existing industrial property at the Port of
5 Oakland's Howard Terminal site.
6 Howard Terminal is located directly between two
7 major Union Pacific rail yards and a busy passenger rail
8 station. Union Pacific believes developing the Howard
9 Terminal site without removing all rail, vehicle and
10 pedestrian conflicts will exacerbate roadway congestion
11 and create significant safety risks.
12 Here's why.
13 Union Pacific's 32,000 mile rail network across
14 23 states connects Oakland with both national and
15 international markets. Passenger and freight trains
16 across Northern California remove cars and trucks from
17 our already congested highways.
18 Unlike passenger trains, freight trains
19 destined for Oakland have variable schedules. Freight
20 trains are also carrying goods that American consumers
21 rely on every day. And supporting imports and exports at
22 the Port of Oakland.
23 These trains must enter Union Pacific's Oakland
24 rail yard before rail cars can be unloaded or delivered
25 to local customers.

2

JAN BROWN & ASSOCIATES (415) 981-3498 (800) 522-7096

O-16-2

O-16

COMMENT

RESPONSE

OAKLAND UNION PACIFIC VIDEO

1 Many freight trains destined for Oakland must
2 pull through Union Pacific's rail yard, stopping directly
3 in front of Howard Terminal. The train's crew members
4 will then work together to separate the train into three
5 sections, setting rail car brakes to secure the train.
6 And finally placing the remaining train section back into
7 an adjacent rail yard track to clear the area in front of
8 Howard Terminal.

9 This operation, called switching, regularly
10 takes between 10 and 45 minutes to clear the area in
11 front of Howard Terminal. But sometimes longer in unique
12 circumstances.

13 When a switching operation occurs, the only
14 vehicle access points to the proposed Howard Terminal
15 ballpark site will be blocked.

16 Because of the proximity to the Union Pacific
17 rail yards, normal operations will require freight trains
18 to occupy the area in front of Howard Terminal at both
19 Market Street and Martin Luther King on a regular basis.

20 Trains do this today, but because of the
21 industrial nature of the site, this is not problematic.

22 Transportation plans associated with the A's
23 proposal have indicated that Market Street and Martin
24 Luther King will likely remain at grade and in conflict
25 with the railroad. Leaving at-grade access points near

3

JAN BROWN & ASSOCIATES (415) 981-3498 (800) 522-7096

O-16-2

O-16

COMMENT

RESPONSE

O-16-3 See Consolidated Response 4.6, *Rail Safety, Grade Crossing, and Grade Separation.*

OAKLAND UNION PACIFIC VIDEO

O-16-2

1 Howard Terminal will put A's fans, future residents and
2 those accessing the site at risk. These plans should be
3 heavily scrutinized, as they are inadequate, rely on
4 unreliable access to Howard Terminal and are critically
5 unsafe.

6 (Concludes spoken portion of video.)

7 (The following text appears on screen.)

O-16-3

8 THE SAFETY OF OUR EMPLOYEES, CUSTOMERS AND THE
9 COMMUNITIES WE SERVE IS UNION PACIFIC'S NUMBER ONE
10 PRIORITY. PLEASE JOIN US IN REJECTING ANY TRANSPORTATION
11 PLAN THAT DOES NOT FULLY GRADE-SEPARATE ALL VEHICLE AND
12 PEDESTRIAN ACCESS POINTS AT MARKET STREET AND MARTIN
13 LUTHER KING, ELIMINATING THE RAIL CONFLICTS AND MAKING
14 THE HOWARD TERMINAL SITE A SAFE SITE FOR EVERYONE.

15 (Concludes video.)

16 ---o0o---

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JAN BROWN & ASSOCIATES (415) 981-3498 (800) 522-7096

O-16

COMMENT

RESPONSE

OAKLAND UNION PACIFIC VIDEO

1
2 State of California)
3 County of Alameda) ss.
4
5
6 I, Connie J. Parchman, CSR #6137, do hereby
7 certify: That I am a certified shorthand reporter of the
8 State of California; that I was provided access to audio
9 files; that a verbatim record of the proceedings was made
10 by me using machine shorthand which was thereafter
11 transcribed under my direction; further, that the
12 foregoing is an accurate transcription thereof.
13 I further certify that I am neither financially
14 interested in the action nor a relative or employee of
15 any attorney or any of the parties.
16 IN WITNESS WHEREOF, I have subscribed my
17 name.
18
19 Date: May 2, 2021
20
21
22
23 
24 _____
25 Connie J. Parchman, CSR #6137

5

JAN BROWN & ASSOCIATES (415) 981-3498 (800) 522-7096

O-17 AYPAL: Building API Community Power

COMMENT

RESPONSE



BUILDING API COMMUNITY POWER

WWW.AYPAL.ORG | 1238 HARRISON STREET | OAKLAND | CA | 94612

4/22/2021

City of Oakland Bureau of Planning
250 Frank H. Ogawa Plaza, Suite 2214
Oakland, CA 94612
VIA EMAIL
PVollmann@oaklandca.gov

Re: Comments on the Draft Environmental Impact Report for the Oakland Waterfront Ballpark District Project (ER18-016)

Dear Mr. Vollmann:

My Name is Stanley Pun, Co-Director at AYPAL: Building API community power based in Oakland Chinatown. We have a strong investment in how this Stadium project at Howard Terminal and its impacts on not just West Oakland, but also Chinatown downtown as well as the space they are leaving in East Oakland. I am writing to express serious concerns about the Draft Environmental Impact Report (DEIR) for the Oakland Waterfront Ballpark District Project (ER18-016). The DEIR does not provide enough information to inform the public about the potential impacts of the project. I am particularly concerned that the DEIR doesn't specify if affordable housing will be built, doesn't describe how the toxic contamination at the site will be cleaned up, and doesn't provide information on how the project's air pollution impacts will be mitigated. The DEIR does not provide enough information about affordable housing at the project site. This project's potential impacts on housing prices and gentrification in the surrounding community are very worrying, and it is important for the project to include affordable housing. The DEIR mentions an affordable housing program in a footnote, but it doesn't actually describe what the program entails. The DEIR says that the program might include on-site affordable housing. How many of the 3,000 residential units will be set aside for affordable housing? The DEIR says that the program might include off-site affordable housing. Where exactly would this construction take place, and how many units would be built? The DEIR says that the program may just involve paying impact fees. Would the impact fees be used for local affordable housing, and if so when would it be built? The EIR should provide this information, so that the public can understand the full scope of the project and how it will impact the surrounding community. I am also very concerned about toxic contamination at the site, particularly if affordable housing is going to be built on-site. The Howard Terminal site is currently so contaminated with toxic materials that it is illegal to build housing there. The DEIR states that the A's will work with the Department of Toxic Substances Control (DTSC) to clean up the site but does not provide specific information about how the site will be cleaned up, instead promising to create a plan after the City approves the DEIR. The DEIR claims that compliance with DTSC rules and regulations will ensure that the Howard Terminal site is properly cleaned up, but the A's recently sued DTSC for its failure to enforce environmental laws at the Schnitzer Steel facility adjacent to Howard Terminal—and they won that lawsuit. How can the public trust that DTSC's regulation will make the site safe for housing if the A's can't trust DTSC to regulate the neighboring property?

The DEIR states that the project will have significant and unavoidable impacts on air quality and will emit large amounts of greenhouse gases (GHG) but does not provide sufficient information

O-17-1

O-17-2

O-17-3

O-17-4

O-17-1 This is a general comment that includes introductory remarks and serves to introduce the more specific comments that are responded to in detail below. As a result, no specific response is provided here.

O-17-2 See Consolidated Response 4.12, *Affordable Housing*, and Consolidated Response 4.13, *Gentrification and Indirect Housing Displacement*.

O-17-3 See Consolidated Response 4.16, *Remediation Plans, Land Use Covenants, and Human Health and Ecological Risk Assessment*, for further explanation of regulatory agency jurisdictions and responsibilities.

As explained in Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*, the mitigation measures in the Draft EIR would allow the City to ensure that the Project sponsor has complied with regulatory requirements before the issuance of grading, building, or construction permits and certificates of occupancy for new buildings and uses. There is no evidentiary basis to question the effectiveness of regulatory requirements as they would be implemented at the Project site; however, the actions of public agencies are subject to public scrutiny, and to judicial review as provided by law.

O-17-4 Impact AIR-2.CU considers the existing background health risk of West Oakland residents and the contribution of the Project's toxic air contaminant emissions within the context of the poor background air quality conditions. This analysis was conducted in concert with the Bay Area Air Quality Management District and its health risk analysis prepared pursuant to Assembly Bill (AB) 617 through the West Oakland Community Action Plan. Draft EIR pp. 4.2-9 through 4.2-11 discuss the existing air quality setting and the high existing community health risks.

Mitigation Measure AIR-2e identifies a specific performance standard equal to the City's thresholds of significance for criteria pollutant emissions and requires the adoption of certain mitigations and contains a menu of additional measures to meet the performance standard. The Final EIR includes revisions to Mitigation Measure AIR-2e to require many of the measures listed as "recommended" in the Draft EIR. See Chapter 7, *City-Initiated Updates and Errata in the Draft EIR*, for the revised mitigation measure language, including the specific requirement for a number of measures. Although Mitigation Measure AIR-2e does not include a quantitative assessment of each individual

O-17 AYPAL: Building API Community Power

COMMENT

RESPONSE

action's effectiveness in reducing emissions, it does require that emissions be reduced to below the City's thresholds of significance. This approach is permitted by State CEQA Guidelines Section 15126.4(a)(1)(B).

Mitigation Measure GHG-1 includes the preparation of a greenhouse gas (GHG) reduction plan, as the commenter notes, which requires that the Project sponsor achieve "no net additional" GHG emissions as required by AB 734. With implementation of this measure, emissions would be reduced to less-than-significant levels.

See Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*, regarding mitigation measures, use of performance standards, and future plans and further discussion of Mitigation Measures referenced in comment.

See also Responses to Comments O-17-1 through O-17-3 regarding the assertion that the issues raised in those comments prevent members of the public from evaluating the proposed Project's impacts and the City of Oakland from making an informed decision on the Project. The City has prepared the EIR in accordance with CEQA requirements to inform both the public and decision makers of the environmental consequences of implementing the Project. As addressed in Consolidated Response 4.3, *Recirculation of the Draft EIR*, although information has been added to the Draft EIR, no significant new information (e.g., information leading to a new significant impact or a substantial increase in the severity of an impact) has been added since publication of the Draft EIR. Consequently, the Draft EIR need not be recirculated.

See Consolidated Response 4.14, *Environmental Justice*, for a discussion of environmental justice issues and ways in which the Draft EIR considered health risks in the West Oakland community.

O-17

COMMENT

RESPONSE

O-17-4

on how these impacts will be mitigated. West Oakland has historically been and continues to be one of the most polluted areas in California, and residents face serious health challenges, including disproportionately higher rates of hospitalization from asthma and air pollution related diseases including cancer, heart disease, and stroke. The project will bring in even more toxic air pollution, along with significant greenhouse gas emissions. The DEIR plans to mitigate this pollution with a Criteria Pollutant Mitigation Plan and a GHG Reduction Plan, which will not be developed until after the city approves this EIR. The DEIR includes a list of mitigation measures that may be included in those plans, but the DEIR doesn't specify which mitigation measures will be included, nor does it provide information or calculations to demonstrate that those future plans will successfully reduce emissions. Even with the future air pollution mitigation plan, the DEIR says that the impacts on air quality will not be properly mitigated and will have significant impacts on the health of the community. The EIR cannot defer mitigation measures, and the A's must do more to reduce emissions and protect the health of the surrounding community. Given these problems with the DEIR, it is impossible for members of the public to evaluate the impacts of the project, and it is not possible for the City of Oakland to make an informed decision on whether to proceed with this project. The DEIR should be revised and recirculated to provide members of the public and decision makers with accurate and transparent analysis. Thank you for considering these comments.

Sincerely,



Project Director
AYPAL: Building API Community Power

O-18 Oakland Rising

COMMENT

RESPONSE

From: liz_suk
To: Phyllis@oaklandca.gov
Subject: Howard Terminal
Date: Wednesday, April 21, 2021 10:18:09 AM
Attachments: [Howard Terminal Template Comment Letter.docx](#)

[EXTERNAL] This email originated outside of the City of Oakland. Please do not click links or open attachments unless you recognize the sender and expect the message.

Please find attached my letter.

--

liz_suk
Interim Executive Director
Pronouns: she/ her/ hers
510-221-8999

Ways you can support our work:

- 1) Become a [sustainable donor today](#) or [volunteer with us!](#)
- 2) Pay the Shuumi LandTax and support the return of Chochoenyo and Karkin Ohlone lands in the Bay Area to Indigenous Stewardship! If you are non-Indigenous, please consider paying the Shuumi LandTax and make a [voluntary annual financial contribution](#).

O-18

COMMENT

RESPONSE

April 21, 2021

City of Oakland Bureau of Planning
250 Frank H. Ogawa Plaza, Suite 2214
Oakland, CA 94612
[VIA EMAIL](mailto:PVollmann@oaklandca.gov)
PVollmann@oaklandca.gov

Re: Comments on the Draft Environmental Impact Report for the Oakland Waterfront Ballpark District Project (ER18-016)

Dear Mr. Vollmann:

My name is liz suk, Executive Director of Oakland Rising, a collaborative of 9 organizations with a voter support base of 60,000 in the flatlands of East and West Oakland. I am writing to express serious concerns about the Draft Environmental Impact Report (DEIR) for the Oakland Waterfront Ballpark District Project (ER18-016). The DEIR does not provide enough information to inform the public about the potential impacts of the project. I am particularly concerned that the DEIR doesn't specify if affordable housing will be built, doesn't describe how the toxic contamination at the site will be cleaned up, and doesn't provide information on how the project's air pollution impacts will be mitigated

The DEIR does not provide enough information about affordable housing at the project site. This project's potential impacts on housing prices and gentrification in the surrounding community are very worrying, and it is important for the project to include affordable housing. The DEIR mentions an affordable housing program in a footnote, but it doesn't actually describe what the program entails. The DEIR says that the program might include on-site affordable housing. How many of the 3,000 residential units will be set aside for affordable housing? The DEIR says that the program might include off-site affordable housing. Where exactly would this construction take place, and how many units would be built? The DEIR says that the program may just involve paying impact fees. Would the impact fees be used for local affordable housing, and if so when would it be built? The EIR should provide this information, so that the public can understand the full scope of the project and how it will impact the surrounding community.

I am also very concerned about toxic contamination at the site, particularly if affordable housing is going to be built on-site. The Howard Terminal site is currently so contaminated with toxic materials that it is illegal to build housing there. The DEIR states that the A's will work with the Department of Toxic Substances Control (DTSC) to clean up the site but does not provide specific information about how the site will be cleaned up, instead promising to create a plan after the City approves the DEIR. The DEIR claims that compliance with DTSC rules and regulations will ensure that the Howard Terminal site is properly cleaned up, but the A's recently

O-18-1 This is a general comment that includes introductory remarks and serves to introduce the more specific comments that are responded to in detail below. As a result, no specific response is provided here.

O-18-2 See Consolidated Response 4.12, *Affordable Housing*, and Consolidated Response 4.13, *Gentrification and Indirect Housing Displacement*.

O-18-3 Draft EIR Section 4.8, *Hazards and Hazardous Materials*, contains a detailed description of regulatory requirements pertaining to potential environmental and health and safety impacts from hazardous materials on the Project site. These regulatory requirements constitute substantial evidence that potential environmental and health and safety impacts associated with hazardous materials would be less than significant. For further explanation, see Consolidated Response 4.16, *Remediation Plans, Land Use Covenants, and Human Health and Ecological Risk Assessment*.

As explained in Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*, the mitigation measures in the Draft EIR would allow the City to ensure that the Project sponsor has complied with regulatory requirements before the issuance of grading, building, or construction permits and certificates of occupancy for new buildings and uses. There is no evidentiary basis to question the effectiveness of regulatory requirements as they would be implemented at the Project site; however, the actions of public agencies are subject to public scrutiny, and to judicial review as provided by law.

O-18-1

O-18-2

O-18-3

O-18

COMMENT

RESPONSE

sued DTSC for its failure to enforce environmental laws at the Schnitzer Steel facility adjacent to Howard Terminal—and they won that lawsuit. How can the public trust that DTSC’s regulation will make the site safe for housing if the A’s can’t trust DTSC to regulate the neighboring property?

The DEIR states that the project will have significant and unavoidable impacts on air quality and will emit large amounts of greenhouse gases (GHG) but does not provide sufficient information on how these impacts will be mitigated. West Oakland has historically been and continues to be one of the most polluted areas in California, and residents face serious health challenges, including disproportionately higher rates of hospitalization from asthma and air pollution related diseases including cancer, heart disease, and stroke. The project will bring in even more toxic air pollution, along with significant greenhouse gas emissions. The DEIR plans to mitigate this pollution with a Criteria Pollutant Mitigation Plan and a GHG Reduction Plan, which will not be developed until after the city approves this EIR. The DEIR includes a list of mitigation measures that may be included in those plans, but the DEIR doesn’t specify which mitigation measures will be included, nor does it provide information or calculations to demonstrate that those future plans will successfully reduce emissions. Even with the future air pollution mitigation plan, the DEIR says that the impacts on air quality will not be properly mitigated and will have significant impacts on the health of the community. The EIR cannot defer mitigation measures, and the A’s must do more to reduce emissions and protect the health of the surrounding community

Given these problems with the DEIR, it is impossible for members of the public to evaluate the impacts of the project, and it is not possible for the City of Oakland to make an informed decision on whether to proceed with this project. The DEIR should be revised and recirculated to provide members of the public and decision makers with accurate and transparent analysis. Thank you for considering these comments.

Sincerely,

liz suk
Executive Director

O-18-4 See Response to Comment O-17-4 for a discussion of these issues. See Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*, regarding mitigation measures, use of performance standards, and future plans.

O-18-5 See Responses to Comments O-18-1 through O-18-4 regarding the assertion that the issues raised in those comments prevent members of the public from evaluating the proposed Project’s impacts and the City of Oakland from making an informed decision on the Project. The City has prepared the EIR in accordance with CEQA requirements to inform both the public and decision makers of the environmental consequences of implementing the Project. As addressed in Consolidated Response 4.3, *Recirculation of the Draft EIR*, although information has been added to the Draft EIR, no significant new information (e.g., information leading to a new significant impact or a substantial increase in the severity of an impact) has been added since publication of the Draft EIR. Consequently, the Draft EIR need not be recirculated.

See Consolidated Response 4.14, *Environmental Justice*, for a discussion of environmental justice issues and ways in which the Draft EIR considered health risks in the West Oakland community.

O-19 Oakland Heritage Alliance

COMMENT

RESPONSE

From: [Naomi Schiff](#)
To: [Tam Lison](#); [Amarda Monobamp](#); [Jonathan Feam](#); [Clark Manus](#); [Nasht Hegde](#); [SShirazCPO@gmail.com](#); [johly09@gmail.com](#)
Cc: [William Okoroi](#); [Peterson Wolmann](#); [Marvin Betty](#); [Mekama Rubert](#); [Edward Manasse](#); [Catherine Payne](#)
Subject: Howard Terminal and Stadium, today's agenda
Date: Wednesday, April 21, 2021 11:57:50 AM
Attachments: [2021.4.21 - Stadium DEIR, CHA Prelim Comment.pdf](#)

[EXTERNAL] This email originated outside of the City of Oakland. Please do not click links or open attachments unless you recognize the sender and expect the message.

Dear Planning Commissioners and Staff,

Attached please find comments from Oakland Heritage Alliance concerning the DEIR for Howard Terminal and the proposed stadium.

Thank you!

Naomi Schiff
Boardmember, Oakland Heritage Alliance

Naomi Schiff
510-835-1819 (land)
510-910-3764 (cell)
238 Oakland Ave.
Oakland, CA 94611
naomi@17th.com

O-19

COMMENT

RESPONSE



April 21, 2021

By electronic transmission

To:
City of Oakland Planning Commissioners
Planning Staff and Consultants

Re: Development at Howard Terminal

Dear Planning Commissioners, Staff, and Consultants,

Oakland Heritage Alliance is summarizing its comments regarding cultural resources in the below points. We will submit a more extensive document before the deadline.

1. Do not build the gondola

The gondola is not an integral component of this project, but it would have serious effects on one of Oakland's most important historic areas, Old Oakland. While it would only be useful when large events occur at the proposed stadium, fewer than 100 days of the year, its impact would be experienced 365 days, 24/7. Historic Old Oakland has survived an era of downtown demolition, several economic downturns, and a major earthquake. Let's not pressure it more than absolutely necessary. The gondola, as an off-site facility, is not crucial to the project, and would insert an obtrusive structure at the north end of Old Oakland. It would insert an aerial structure above the Victorian buildings, the survivors of Oakland's 19th-century business area. It would present noise, crowding, and night-time disturbance effects upon the residents and businesses at Swan's. It would remove people from the street level, who might otherwise patronize businesses from downtown to the ballpark. The A's should invest in ground level retail and Oakland's cityscape rather than study a way to avoid it. The Detroit People Mover was a failure. The Minneapolis Skyways took people off the street and created equity issues.

Rather than this, expend the large sum of its cost by improving the walking and transit ground-level access to the proposed project. We understand that as a novelty amusement ride, the gondola presents a cute shiny object; but Old Oakland should not suffer the indignity of becoming a kind of theme park. It is real and its authenticity is at risk.

2. Avoid or minimize demolition at the peaker plant, and design its surroundings to compliment it.

As one of the few remaining waterfront structures from Oakland's working past, the peaker plant presents a great opportunity to tie new and old architectural elements together. We recommend reconfiguring the project slightly to minimize demolition of parts of this historic building, and giving much more consideration to designing the surrounding buildings to be compatible with it, and to highlight its visual interest. We support the idea of a creative reuse so that it will contribute to the overall development. Howard Terminal is a very large site and the stadium

446 17th Street, Suite 301, Oakland, California 94612 • (510) 763-9218 • info@oaklandheritage.org
Web Site: www.oaklandheritage.org

O-19-1 As presented in Response to Comment H-1-5, construction and operation of the Aerial Gondola Variant was analyzed to determine whether the Project would "cause a substantial adverse change in the significance" of the resources (State CEQA Guidelines Section 15064.5[b]). This analysis concluded that this threshold was met with regard to construction of the Convention Center Station within the Old Oakland API, and construction and operation of the Aerial Gondola Variant would result in a significant and unavoidable impact on the historic resource even with applied mitigation for additional design review of the station.

The comment correctly points out that the aerial gondola is not part of the proposed Project's baseline design. It is a possible option that, if implemented, would augment public transportation options between the 12th Street BART station and the Project site. These include bus and train transit from nearby stops, as well as pedestrian and bicycle transportation as described in Draft EIR Chapter 5 on pp. 5-132 through 5-133. Also noted in the description for the Aerial Gondola Variant on Draft EIR p. 5-56, the gondola may or may not be included in the proposed Project and its status as part of the Project is dependent on a number of factors, including its proposed location. Should a different location for the Aerial Gondola variant be chosen or a different combination of transportation options be included instead of the gondola, to the extent that final variant design and/or site information substantially differs from what is considered in the Draft EIR, appropriate additional environmental analysis would be conducted as necessary in accordance with CEQA requirements.

Comments regarding the Project's merits, a Project component, or a variant of the Project do not raise a significant environmental issue or specific questions about the analyses or information in the Draft EIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Project. See Consolidated Response 4.22, *General Non-CEQA*.

O-19-2 Retention of the Peaker Plant building is a baseline design element of the proposed Project and is included in all the alternatives presented in the Draft EIR. See Response to Comment H-1-14 regarding the Peaker Plant Variant.

O-19-1

O-19-2

O-19

COMMENT

RESPONSE

should be able to be adjusted to not impact historic resources. The site is a clean canvas—make it work and avoid the demolition.

3. Retain cranes and design the project to relate to context.

We remain confused by the DEIR analysis of the various cranes and their historic values. But the main point is to honor and reflect Oakland's maritime past—its port a major reason for its founding as a modern municipality, in 1852—and urge that the planning and design incorporate the cranes more into the site planning, landscape planning, and architectural plans. They should be retained as monumental found objects and should be part of easily understandable historic interpretive information at the site. These cranes can provide a unique and interesting character for the development.

4. Preserve space for maritime activities and history

As Oakland's key industry, maritime activity should be accommodated and encouraged. We urge the Port, the Athletics, the City, and the business and labor community not to turn away from this inheritance, but rather to ensure that any waterfront development not encroach on our waterfront, but rather design for a symbiosis. Conflict of use should be avoided, rather than built in.

Instead of fighting for every square inch of buildable land, this project would benefit from a more holistic design that respects Oakland's maritime present and past, accommodates the inevitability of sea-level rise, and more realistically deals with the transportation challenges of the site. Other shoreline cities confront these issues by including buffer areas, backing off from the edges where global warming may threaten buildings, and softening edges to deter wave action. We see little of that here.

Thank you for your consideration.

Sincerely,



Mary Harper
President

Cc:
Oakland Planning Commission
William Gilchrist
Ed Manasse
Pete Vollmann
Catherine Payne
Robert Merkamp
Betty Marvin

O-19-3 As explained in Draft EIR Chapter 3, *Project Description*, the baseline design concept for the Project includes retention of all four cranes—X-415, X-416, X-417, and X-422—regardless of historic resource status. See also Responses to Comments A-12-54, O-9-4 and H-1-19 regarding the retention of the cranes.

O-19-4 See Response to Comment O-9-5 regarding the incorporation of continued maritime uses.

O-19-3

O-19-4

O-20 Oakland Asian Cultural Center

COMMENT

RESPONSE

From: Evelyn Lee
To: arac@amocchano@gmail.com; amanusopo@gmail.com; traylorch@yahoo.com; tlm@o.ogo@gmail.com; Ms@o.ogo@gmail.com; ll@amsoo@gmail.com; SS@o.ogo@gmail.com; pyv@imagn@oaklandca.gov
Subject: Howard Terminal Project -- Comments for Planning Commission Meeting April 21, 2021
Date: Wednesday, April 21, 2021 4:27:09 PM
Attachments: [Comments of OACC to Oakland PG 21-04-21.docx](#)

[EXTERNAL] This email originated outside of the City of Oakland. Please do not click links or open attachments unless you recognize the sender and expect the message.

Good afternoon, Commissioners and Staff:

Please accept the attached comments of the Oakland Asian Cultural Center regarding the Howard Terminal Project. (This version supersedes the draft previously sent to Mr. Vollman.)

Thank you,
Evelyn C. Lee

O-20

COMMENT

RESPONSE

Planning Commission of the City of Oakland
250 Frank Ogawa Plaza
Oakland, CA 94612

Re: Howard Terminal Oakland Waterfront Ballpark

Good Afternoon Commissioners and Staff:

My name is Evelyn Lee. I am the president of the Board of the Oakland Asian Cultural Center.

The Oakland Asian Cultural Center (OACC) is a non-profit organization dedicated to presenting art and culture of Asian and Pacific Islander communities to promote cross cultural understanding and social justice. We are actively participating in the development of the Community Benefits Agreement (CBA) required as a condition of the City's approval of the Howard Terminal Project.

O-20-1

We are evaluating the DEIR in our role as stewards of the cultural resources in the historical district of Oakland Chinatown. Our Chinatown is an authentic community of people from China and Eastern Asia that remains intact because businesses, social resources, and residents can thrive in Chinatown. It is supported by people who bring their families and friends to Chinatown to share their cultural heritage. Chinatown is a historic district and resource for helping all Oaklanders to understand the evolution of Chinese in America.

Chinatown will be severely impacted by the Howard Terminal Project as proposed. Today my comments explain how traffic cutting off access to Chinatown threatens to extinguish Oakland Chinatown.

O-20-2

The most egregious impact on Chinatown will occur on ballgame days, or whenever the multi-use stadium is used. People getting to the stadium, whether in their own vehicles or third-party drivers, will create traffic gridlock.

The Draft EIR does not address the gridlock on local roadways created by the traffic plan that provides only 2,000 parking spaces for a 35,000 person capacity ballpark and the expected 32,000 vehicle trips created by the ballpark. The gridlock and traffic created by the dependence on street parking and off-street parking in the surrounding neighborhoods and areas such as Chinatown is not addressed.

O-20-3

Not only will West Oakland neighbors be deprived of their parking, the circulating vehicles will cause traffic jams beyond the immediate neighborhood, reaching into Chinatown. As an example of the spill-over effect, when the Raiders were at the Coliseum, there were traffic jams on the Nimitz, even though there was plenty of parking available.

O-20-1 This is a general comment that includes introductory remarks and serves to introduce the more specific comments that are responded to in detail below. As a result, no specific response is provided here. The City acknowledges the Oakland Asian Cultural Center's stewardship of cultural resources in the Oakland Chinatown area.

O-20-2 See Consolidated Response 4.8, *Chinatown*.

O-20-3 See Consolidated Response 4.8, *Chinatown*, regarding concerns about Chinatown congestion and gridlock and the TMP. See also Consolidated Response 4.7, *Parking*.

O-20

COMMENT

RESPONSE

O-20-4

The Draft EIR does not address the gridlock on City of Alameda commuter traffic attempting to use the Webster and Posey Tubes at peak PM hours. This route goes through Chinatown. Nor does it address the effect of traffic congestion on the 980/880 freeway on ramps/off ramps around Chinatown.

O-20-4 See Consolidated Response 4.8, *Chinatown*, regarding impacts on Chinatown, concerns related to traffic congestion, and impacts at the Posey and Webster Tubes.

O-20-5

The project threatens Chinatown's very existence because it creates traffic that will choke off access to Chinatown by people who would patronize the local businesses and restaurants. When businesses fail, the community will be faced with boarded up buildings, the risk of blight, and insecurity for the people who live and work in Chinatown. We have already seen the effects of the loss of commerce in Chinatown due to COVID-19, and blocking access to Chinatown can only contribute to the downfall of the local community. The City should not tolerate development that would wipe out the authentic neighborhood replace it with gentrification on the heels of the Howard Terminal Project.

O-20-5 See Consolidated Response 4.8, *Chinatown*, regarding traffic, parking and other impacts on Chinatown.

The finding of Less Than Significant after Mitigation is nothing more than wishful thinking and failure to address (or intentional disregard for) the impacts on the surrounding neighborhoods, including Chinatown.

Thank you for your consideration of these comments.

Evelyn Ching Lee
President of the Board
Oakland Asian Cultural Center

O-21 San Francisco Bar Pilots Association

COMMENT

RESPONSE



SAN FRANCISCO BAR PILOTS ASSOCIATION
Pier 9 East End
San Francisco, CA 94111

April 27, 2021

City of Oakland
Peterson Vollman, Planner
Bureau of Planning
250 Frank Ogawa Plaza, Suite 2214
Oakland, CA 94612
Submitted electronically at: <https://comment-tracker.esassoc.com/oaklandsportseir/index.html>

Re: Waterfront Ballpark District at Howard Terminal Draft Environmental Impact Report – Mitigation Measure LUP-1a

Dear Mr. Vollman,

The San Francisco Bar Pilots appreciate the Bureau of Planning's consideration and proposed mitigation measures in response to our comments submitted March 19, 2019. While the future effectiveness of the proposed mitigation measures is difficult to assess until the measures are actually implemented and tested, we are concerned about the proposed process by which the measures would be evaluated and approved.

The DEIR proposes **Mitigation Measure LUP-1a** would establish a safety protocol intended to "minimize conflicts with maritime navigation." The implementation of this protocol provides for the Harbor Safety Committee for the San Francisco Bay to participate in initial protocol development, yet they are not included an "approving party" after initial protocol development.

The San Francisco Bar Pilots submit that it is crucial to maritime safety that the Harbor Safety Committee be included as an "approving party" for all maritime safety protocols that may be developed.

The Harbor Safety Committee is the one regional entity where all maritime stakeholders participate, including the San Francisco Bar Pilots, the US Coast Guard, WETA, commercial tug and ship operators, and recreational boaters. It is the primary forum where maritime safety issues are considered and has a long track record of developing effective guidance. Given the diverse issues presented when considering maritime safety; the development, practical implementation and effectiveness of maritime safety protocols is necessarily complex. Excluding the Harbor Safety Committee from approving final protocols delegates important maritime safety issues to parties who do not have the primary expertise or exposure to their impacts.

We strongly urge you to include the Harbor Safety Committee for the San Francisco Bay as an "approving party" for all maritime safety protocols related to the Waterfront Ballpark District at Howard Terminal.

Sincerely,

Capt. John Carlier
President

O-21-1 As a consulting agency, the Harbor Safety Committee would be involved in protocol development, review, and revision. The text of Mitigation Measure LUP-1a and the role of the Harbor Safety Committee has been clarified. See Consolidated Response 4.4, *Port Operations and Land Use Compatibility*, as well as Final EIR Chapter 7, *City-Initiated Updates and Errata in the Draft EIR*, for the revised mitigation measure language. See also the Harbor Safety Committee's comment letter (A-15 in this document).

O-21-1

O-22 Jack London District Rail Safety Working Group, by Law Offices of Stuart M. Flashman (1)

COMMENT

RESPONSE

The attached comment letter is submitted on behalf of my client, the Jack London District Rail Safety Working Group.

O-22

COMMENT

RESPONSE

Law Offices of
Stuart M. Flashman
5626 Ocean View Drive
Oakland, CA 94618-1533
(510) 652-5373 (voice & FAX)
e-mail: stu@stufash.com
Delivery through electronic web portal

April 22, 21

Attn: Peterson Vollmann, Planner IV
City of Oakland
Planning & Building Department
250 Frank H. Ogawa Plaza, Suite 2114
Oakland, CA 94612

Re: Draft Environment Impact Report for the Waterfront Ballpark District at
Howard Terminal, Oakland. (Project # ER18016)

Dear Pete,

I am writing on behalf of my client, the Jack London District Rail Safety Working Group (RSWG), to comment on the above-referenced Draft Environmental Impact Report (DEIR). The RSWG is composed of a wide range of residents, home and business owners, employees and other interested parties in the Jack London District (the District). The RSWG is enthusiastically supportive of the Waterfront Ballpark District at Howard Terminal (Project) with its anticipated major uplifting impact to the surrounding area, particularly in the District. However, the RSWG believes that the DEIR is deficient in its treatment of Project-associated transportation impacts, and more specifically, impacts on pedestrian safety from Broadway to Oak Street that are excluded from the proposed rail safety zone from Market Street to Broadway.

Under the California Environmental Quality Act (CEQA), an EIR is required to evaluate all significant project impacts, regardless of location. In particular, an EIR may not artificially truncate the geographic scope of its analysis to exclude consideration of potentially significant project impacts. In failing to identify and address the pedestrian safety impacts that the Project will have at the rail crossing east of Broadway, the current DEIR is deficient, as it fails to identify and, if possible, mitigate all significant impacts caused by the Project.

The DEIR identifies potentially significant pedestrian safety impacts along the railroad corridor on Embarcadero Street resulting from increasing numbers of pedestrians heading to and from the Project site, particularly when there are events happening at the Project. The RSWG agrees that there is a potentially significant pedestrian safety issue associated with the Project, and specifically at rail grade crossings that pedestrians would have to negotiate in going to and from the Project site. The DEIR proposes to mitigate those potentially significant impacts by creating a rail safety zone extending from Market Street to Broadway along Embarcadero Street (TRANS-3). The RSWG agrees with the DEIR that these upgrades are needed. However, the RSWG believes, based on its evaluation of pedestrian traffic and the pedestrian traffic estimates provided in the DEIR, that the rail safety zone improvements need to be extended east of Broadway to Oak Street if the Project's significant pedestrian safety impacts at affected rail grade crossings are to be adequately mitigated.

The DEIR includes figures assigning the expected increase in pedestrian traffic to various pedestrian routes when an event occurs at the Project (e.g., an A's baseball game). (See DEIR at p. 4.15-168 and Figure 4.15-46.) According to the DEIR,

O-22-1 See Consolidated Response 4.6, *Rail Safety, Grade Crossing, and Grade Separation*.

O-22-2 See Consolidated Response 4.6, *Rail Safety, Grade Crossing, and Grade Separation*, for a discussion of pedestrian access routes to the ballpark, including routes through Chinatown and along Oak Street. Section 4.6.2 in the consolidated response describes the basis for the pedestrian routing through Chinatown considered in the Draft EIR from the Lake Merritt BART station. The section also notes that several commenters desire for ballpark attendees to walk through Jack London District between the Lake Merritt BART station and the Project site; and the associated rail safety at the at-grade railroad crossings along Embarcadero West at Franklin, Webster, and Oak Streets. In consideration of these comments the consolidated response expanded Mitigation Measure TRANS-3a to include at-grade railroad crossing improvements along the Project's frontage and continuing the improvements through Jack London District to Oak Street.

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O-22-2

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"Pedestrian trips were assigned based on route directness and expected quality of the pedestrian experience." Nothing in the DEIR or its appendices, however, provides any further information about how those assignments were made. Shouldn't the simplicity of the path also influence trip assignment? For example, proceeding directly down Oak Street from the Lake Merritt BART station and then turning right onto Embarcadero West would certainly be the simplest route from Lake Merritt BART to the Project. Shouldn't that path be favored over one involving multiple turns at unsignalized intersections?

To what extent were more "direct" routes presumed to be favored, and by how much? How was the "quality of the pedestrian experience" evaluated? How were these two factors balanced? Would a slightly longer route, but with a "better" pedestrian experience be favored or disfavored, and by how much? For example, for pedestrians arriving at Lake Merritt BART, or returning from the Project to that same BART station, the walking route along Oak Street through the District would pass dozens of restaurants, bars and entertainment venues between Lake Merritt BART and the Project, especially along Water Street (see attached Appendix A). Further, Figure 4.15-46 only identifies pedestrian routes for arrival at the Project. What about trips returning from the project? The two would not necessarily be the same. Does the trip assignment take into account the expected desire of patrons at Project events for after-game food, drinks, or other entertainment? Shouldn't that be taken into account in making trip assignments? The District features more than 10 breweries, taprooms, wineries and tasting rooms that are part of the popular "Oakland Ale Trail." These destinations can be expected to try to capitalize on game day activity by staging, and advertising, post-game promotions. Those promotions will undoubtedly make the route through the District at least as desirable as the route along 8th street indicated in Figure 4.15-4, which features fewer such venues.

The DEIR (p. 4.15-7) identifies that "the study area was expanded beyond the one-half-mile radius along these corridors because pedestrians are expected to use them to walk between the Project site and transit/downtown." However, as highlighted in the figures shown in Appendix A (the ½ mile radius indicated by the dashed circle), areas well within the ½ mile radius, and just beyond, were not included in the pedestrian counts provided in the DEIR and its appendices. Despite not including any pedestrian counting analysis in the area highlighted in Appendix A, the DEIR nevertheless includes estimates of pedestrian traffic through that same area, without any explanation of how those estimates were derived. Its conclusions, unsupported by evidence in the record, must be considered arbitrary and capricious. In fact, the RSWG believes, based on many years of experience with pedestrian preferences traveling to and from special events, that the DEIR's estimates of this pedestrian traffic substantially underestimate the pedestrian traffic likely to opt for a route to/from Lake Merritt BART and nearby parking going through the District. The DEIR does identify certain wayfinding measures intended to direct foot traffic through Chinatown. However, pedestrian attractions along routes through the District can also be expected to take actions to entice pedestrians to travel through the district.¹ Consequently, it should be expected that at least as much of this foot traffic will opt for a route through the District, its waterfront venues and its bars and wineries, as opt to travel by way of Chinatown.

The DEIR's section discussing Impact TRANS-3 includes a table (Table 4.15-42, at p. 4.15-233) showing expected project-related pedestrian rail crossings at five intersections, from Market Street to Broadway, but does not include data for any

¹ For example, bistros could offer special pricing to patrons holding a ticket/ticket stub from that day's game or event.

O-22-3 See Consolidated Response 4.6, *Rail Safety, Grade Crossing, and Grade Separation*, regarding the geographic scope of rail safety improvements and how the pedestrians were assigned in the Draft EIR to the streets between the Lake Merritt BART station and the ballpark. The consolidated response notes several commenters desire for ballpark attendees to walk through Jack London District between the Lake Merritt BART station and the ballpark. In consideration of these comments Mitigation Measure TRANS-3a has been expanded to include at-grade railroad crossing improvements along the Project's frontage and through Jack London District to Oak Street. The implications to safety of expanding the mitigation measure are discussed in Section 4.6.4 of the consolidated response.

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O-22-4 See Consolidated Response 4.6, *Rail Safety, Grade Crossing, and Grade Separation*, regarding the geographic scope of rail safety improvements. The consolidated response notes several commenters desire for ballpark attendees to walk through Jack London District between the Lake Merritt BART station and the ballpark. In consideration of these comments, Mitigation Measure TRANS-3a has been expanded to include at-grade railroad crossing improvements that would extend east of Broadway to Oak Street. These improvements would include fencing along the rail corridor and at-grade railroad crossing improvements at Franklin, Webster, and Oak Street consistent with Quiet Zone elements such as quad gates, gates for pedestrians, and improved crossing surfaces and lighting including ADA upgrades. The specific railroad corridor design elements would be established through the necessary Diagnostic Study coordinated with the City, CPUC and affected railroads and the necessary permits and approvals including a GO-88-B Request (Authorization to Alter Highway Rail Crossings).

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crossing east of Broadway (see also DEIR Appendix TRA Part 1 – Chapter 10 – At-Grade Rail Crossings, also identifying only the crossing at Broadway and those further west for improvement). Further, there is no explanation in the DEIR or any of its appendices of how the number of pedestrians shown in the table was derived. Indeed, based on the lack of any explanation or analysis of the trip assignments, they appear to have been made on a purely subjective basis and appear to be arbitrary and capricious. Without evidence showing what kind of data was collected, when and how, and how it was processed to produce the numbers in the table, those numbers are not supported by any substantial evidence. We note that detailed pedestrian and traffic counts were taken at more than 30 locations which are detailed in Appendix 13 Part 1, page 222 (Section 3.1.1. Data Collection) and Appendix 13 Part 2, pages 1-184, but, at least in the information provided in the DEIR and its accompanying appendices, none were taken at the intersections bound by Broadway and Oak street, and Embarcadero and 4th Streets (the area highlighted in Appendix A to this letter).

Table 4.15-36 (at p. 4.15-185) identifies railroad safety improvements to be implemented at five pedestrian railroad crossings (MM TRANS-3a). These improvements are also discussed in Table 4.15-41 (p. 4.15-220), which discusses their consistency with provisions of the Downtown Oakland Specific Plan. That Plan calls for improvements along the railroad right of way to facilitate establishments of a “Quiet Zone” – i.e., an area where safety improvements allow trains to go through grade crossings without sounding their horns before each crossing. The DEIR concludes that the improvements to the five pedestrian crossings it proposes are consistent with the Downtown Oakland Specific Plan, but does not explain why the crossings at Franklin Street, Webster Street, and Oak Street, also identified in that specific plan, are not also being improved to address the pedestrian safety impacts of the Project.

Appendix 13, App. TRA-Part 2, includes a December 1, 2020 memo re: Howard Terminal – Site Assessment and Construction Assessment (at p. 507 of the pdf file). Section 2.2 of that memo (starting at p. 9 of 18 - p. 515 of the pdf file) addresses rail crossings. At pp. 11-12, the memo discusses all eight of the railroad grade crossings between Market Street and Oak Street, and their characteristics. It identifies one pedestrian fatality at Franklin and one at Webster. Shouldn’t that history of recent pedestrian fatalities at railroad grade crossings be taken into account in evaluating the need for pedestrian safety improvements at the crossings? By contrast, Table 2 of the memo repeats the data shown in Table 4.15.42 of the DEIR. Again, only data for crossings at or west of Broadway are shown. Why were the grade crossings east of Broadway omitted?

The DEIR makes multiple references to a May 31, 2019 study by RSE, Inc., “Oakland A’s Howard Terminal Project Railroad Corridor and Grade Crossing Improvements” (the Railroad Study). The recommendations in TRANS-3 appear to be derived primarily from the recommendations of this study (ref 4.15-93). However, the Railroad Study provides no information about pedestrian access to the Project site involving any railroad grade crossing east of Broadway, and may have even assumed there would be no at-grade crossings east of Broadway: “Assuming only the existing 5 at-grade crossings are retained *without any additional access* to the development site at Full Buildout...” (Railroad Study at p. 4 of the pdf file [emphasis added]). It is as if the areas east of Broadway, including the railroad grade crossings at Franklin, Webster, and Oak Streets, had simply dropped off the face of the earth!

The Railroad Study does not, however, totally ignore the area east of Broadway. The section titled “Proposed Fencing Improvements” (at p. 7 of the pdf file) refers to the open rail corridor, “...from west of Market Street to *Webster Street*.” [emphasis added]. After noting that currently, “striping and signage are designed to restrict certain

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movements,” the study goes on to note that, “physically vehicles, pedestrians, and bikes may freely cross the tracks at any location, not just at the designated grade crossings.”

Of the recommendations made by the Railroad Study, one explicitly calls for adding fencing in this exposed rail area, “To restrict all movements to the signalized at-grade crossings, a fence is proposed to be installed parallel to the UPRR tracks on both the north and south side of the tracks, between the at-grade crossings.” The text of the Railroad Study specifically refers to the need for this fencing between the at-grade crossings at Franklin and Webster, but the accompanying diagrams show the improvement stopping at Broadway. The DEIR includes this mitigation in TRANS-3, but, following the diagrams rather than the text of the Study, ONLY for the section of the exposed rail lines west of Broadway (i.e., between Market Street and Broadway). TRANS-3 excludes the recommended mitigation east of Broadway. The DEIR provides no rationale for restricting this pedestrian safety improvement to the area west of Broadway, and RSWG can see no justification for it.

The following table from the Railroad Study summarizes the pedestrian traffic expected at five of the at-grade crossings with and without the ballpark, but makes no mention of the adjacent three at-grade crossings (Franklin, Webster and Oak Streets). It is hard for RSWG to understand why the consultant preparing the Railroad Study evaluated these five grade crossings (with 5,300 – 11,600 pedestrians estimated at each), but not the three immediately adjacent grade crossings, which could be expected to show as much if not more pedestrian traffic. This is particularly so as the intersections at Franklin, Webster and Oak streets lead directly to the Jack London Square area, with its bars, restaurants, and other attractions.² In short, the RSWG infers that the scope of the RSE study was artificially limited to these five crossings. The three additional crossings east of Broadway should have been studied and the Project’s impacts at those crossing analyzed.

Weekday Daily Crossings

Crossing	Development W/out Ballgame			Baseball Game		
	Pedestrians	Bicycles	Vehicles	Pedestrians	Bicycles	Vehicles
Market Street Crossing	4,100	--	18,200	6,800	--	3,900
Martin Luther King Jr Way Crossing	2,200	2,900	6,200	9,300	900	3,300
Clay Street Crossing	1,400	700	--	5,300	200	--
Washington Street Crossing	4,200	--	--	11,600	--	--
Broadway Crossing	5,900	--	--	9,400	--	--

Table from RSE “Railroad Study” identifying pedestrian volume at 5 of the 8 crossings that provide access to the Project. The crossings at Franklin, Webster and Oak Streets are omitted despite recommendations in the same document to extend the fencing to at least Franklin and Webster streets.

² It should be noted that the table states that it shows total weekday daily crossings, and apparently includes both crossings going to the ballpark and those returning from the ballpark. As explained earlier in this letter, one might expect a significant number of ballpark patrons to return to transit stations, including the Lake Merritt Station and the Oakland Amtrak Station, using crossings east of Broadway. Those numbers and resulting impacts are improperly omitted from the DEIR.

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O-22-5 See Consolidated Response 4.6, *Rail Safety, Grade Crossing, and Grade Separation*, regarding the geographic scope of rail safety improvements. The consolidated response notes several commenters desire for ballpark attendees to walk through Jack London District between the Lake Merritt BART station and the ballpark. In consideration of these comments, Mitigation Measure TRANS-3a has been expanded to include at-grade railroad crossing improvements that would extend east of Broadway to Oak Street. These improvements would include fencing along the rail corridor and at-grade railroad crossing improvements at Franklin, Webster, and Oak Street consistent with Quiet Zone elements such as quad gates, gates for pedestrians, and improved crossing surfaces and lighting including ADA upgrades. The specific railroad corridor design elements would be established through the necessary Diagnostic Study coordinated with the City, CPUC and affected railroads and the necessary permits and approvals including a GO-88-B Request (Authorization to Alter Highway Rail Crossings).

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O-22-5 In Appendix TRA Part 2 (at p. 15 of 18, page 521 of the pdf file), the December 1, 2020 memo recommends that the applicant prepare and submit for City review a Diagnostic Review evaluating potential impacts at all at-grade crossings to determine whether there would be project-associated pedestrian safety impacts, and implement mitigation for any significant impacts identified. The RSWG believes that, rather than wait for such a post-approval study, which would violate CEQA (See, e.g., *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 306 [mitigation measures based on post-approval studies are not acceptable mitigation for potential project impacts]), the EIR should now study the three additional grade crossings east of Broadway and if, as expected, those crossings also show significant pedestrian safety impacts, propose mitigating crossing improvements at all the railroad grade crossings between the Project site and Oak Street.

CONCLUSION

The RSWG agrees with the DEIR that the Project could potentially result in significant rail-crossing related pedestrian safety impacts, and that making improvement to the current pedestrian grade crossing of the Amtrak/UP rail tracks, along with related pedestrian safety improvements, would help mitigate those impacts. However, RSWG questions the DEIR's decision to limit those improvements to five current rail crossings. An additional three crossings, located east of those the DEIR identified for improvement, can also be expected to generate significant additional amounts of pedestrian traffic related to the Project. They would therefore also generate potentially significant pedestrian safety impacts and therefore would also warrant the same improvements to those grade crossings.

We look forward to seeing our comments responded to in the Final EIR for this important project. Please keep me informed of any further information on the Project or its environmental review.

Most sincerely


Stuart M. Flashman

O-23 Jack London District Rail Safety Working Group, by Law Offices of Stuart M. Flashman (2)

COMMENT

RESPONSE

O-23-1 See Consolidated Response 4.6, *Rail Safety, Grade Crossing, and Grade Separation*, regarding the topics of rail safety, grade crossings, and grade separation and the geographic scope of rail safety improvements.

Comments raised within the included attachment are responded to under submission O-22, see Responses to Comments O-22-1 through O-22-5.

From: [Stuart Flashman](#)
To: [Veltmann, Peterson](#)
Subject: comment on A's Waterfront Stadium EIR
Date: Friday, April 23, 2021 1:47:20 PM
Attachments: [PublicComment1.png](#)
[BSWSG comment letter - for electronic delivery.pdf](#)

[EXTERNAL] This email originated outside of the City of Oakland. Please do not click links or open attachments unless you recognize the sender and expect the message.

Hi Pete,

I just submitted the attached comment letter through the website portal, but also wanted to send you a copy directly. As the letter indicates, my client enthusiastically supports the Project, but is concerned about the pedestrian safety impacts that would accompany increased use of the various railroad grade crossings along Embarcadero. While the DEIR proposes mitigation for the impacts at crossings at Broadway and west, it ignores impacts at crossings east of Broadway. My client doesn't feel the DEIR needs to be recirculated if the impact is identified in the response to comments and, at the same time, the mitigation measures for the rail line and crossings west of Broadway are simply extended to the additional area along the rail line (including three crossings) east of Broadway.



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COMMENT

COMMENT

Law Offices of
Stuart M. Flashman
5626 Ocean View Drive
Oakland, CA 94618-1533
(510) 652-5373 (voice & FAX)
e-mail: stu@stufash.com

Delivery through electronic web portal

April 22, 21

Attn: Peterson Vollmann, Planner IV
City of Oakland
Planning & Building Department
250 Frank H. Ogawa Plaza, Suite 2114
Oakland, CA 94612

Re: Draft Environment Impact Report for the Waterfront Ballpark District at
Howard Terminal, Oakland. (Project # ER18016)

Dear Pete,

I am writing on behalf of my client, the Jack London District Rail Safety Working Group (RSWG), to comment on the above-referenced Draft Environmental Impact Report (DEIR). The RSWG is composed of a wide range of residents, home and business owners, employees and other interested parties in the Jack London District (the District). The RSWG is enthusiastically supportive of the Waterfront Ballpark District at Howard Terminal (Project) with its anticipated major uplifting impact to the surrounding area, particularly in the District. However, the RSWG believes that the DEIR is deficient in its treatment of Project-associated transportation impacts, and more specifically, impacts on pedestrian safety from Broadway to Oak Street that are excluded from the proposed rail safety zone from Market Street to Broadway.

Under the California Environmental Quality Act (CEQA), an EIR is required to evaluate all significant project impacts, regardless of location. In particular, an EIR may not artificially truncate the geographic scope of its analysis to exclude consideration of potentially significant project impacts. In failing to identify and address the pedestrian safety impacts that the Project will have at the rail crossing east of Broadway, the current DEIR is deficient, as it fails to identify and, if possible, mitigate all significant impacts caused by the Project.

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"Pedestrian trips were assigned based on route directness and expected quality of the pedestrian experience." Nothing in the DEIR or its appendices, however, provides any further information about how those assignments were made. Shouldn't the simplicity of the path also influence trip assignment? For example, proceeding directly down Oak Street from the Lake Merritt BART station and then turning right onto Embarcadero West would certainly be the simplest route from Lake Merritt BART to the Project. Shouldn't that path be favored over one involving multiple turns at unsignalized intersections?

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In Appendix TRA Part 2 (at p. 15 of 18, page 521 of the pdf file), the December 1, 2020 memo recommends that the applicant prepare and submit for City review a Diagnostic Review evaluating potential impacts at all at-grade crossings to determine whether there would be project-associated pedestrian safety impacts, and implement mitigation for any significant impacts identified. The RSWG believes that, rather than wait for such a post-approval study, which would violate CEQA (See, e.g., *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 306 [mitigation measures based on post-approval studies are not acceptable mitigation for potential project impacts]), the EIR should now study the three additional grade crossings east of Broadway and if, as expected, those crossings also show significant pedestrian safety impacts, propose mitigating crossing improvements at all the railroad grade crossings between the Project site and Oak Street.

CONCLUSION

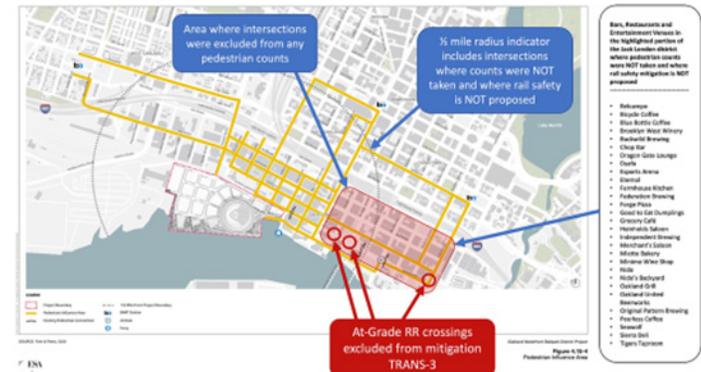
The RSWG agrees with the DEIR that the Project could potentially result in significant rail-crossing related pedestrian safety impacts, and that making improvement to the current pedestrian grade crossing of the Amtrak/UP rail tracks, along with related pedestrian safety improvements, would help mitigate those impacts. However, RSWG questions the DEIR's decision to limit those improvements to five current rail crossings. An additional three crossings, located east of those the DEIR identified for improvement, can also be expected to generate significant additional amounts of pedestrian traffic related to the Project. They would therefore also generate potentially significant pedestrian safety impacts and therefore would also warrant the same improvements to those grade crossings.

We look forward to seeing our comments responded to in the Final EIR for this important project. Please keep me informed of any further information on the Project or its environmental review.

Most sincerely

Stuart M. Flashman
Stuart M. Flashman

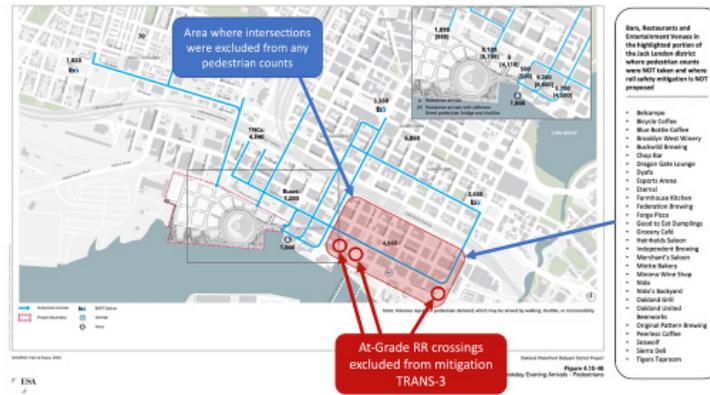
Appendix A



O-23

COMMENT

Mr. Peterson Vollmann – A's Stadium Project DEIR
4/22/21
Page 7



O-24 Restaurant Opportunities Center of The Bay

COMMENT

RESPONSE

From: [Maria Moreno](#)
To: PVollman@oaklandca.gov
Subject: Comment Letter Howard Terminal
Date: Friday, April 23, 2021 5:33:31 PM
Attachments: [ROC The Bay Howard Terminal Letter.docx.pdf](#)

[[EXTERNAL]] This email originated outside of the City of Oakland. Please do not click links or open attachments unless you recognize the sender and expect the message.

Good Evening Mr. Vollman,

I, Maria Moreno, a ROC The Bay organizer, am writing to you to submit a comment letter on our position regarding the DEIR A's development for Howard Terminal. I work as a representative of this community organization with hundreds of members in Oakland. Find attached our letter.

Have a blessed weekend,
Maria Moreno (she, her, hers)
Community Organizer and
Program Coordinator at [ROC The Bay](#)
1419 34th Avenue Ste 104, Oakland, CA 94601
510-781-7822

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O-24

COMMENT

RESPONSE



April 23, 2021

City of Oakland Bureau of Planning
250 Frank H. Ogawa Plaza, Suite 2214
Oakland, CA 94612

Re: Comments on the Draft Environmental Impact Report for the Oakland Waterfront Ballpark District Project (ER18-016)

Dear Mr. Vollmann:

My name is Maria and I am the Lead Organizer for the Restaurant Opportunities Center of The Bay. This past year of organizing restaurant workers has been one of the most challenging, so it required the deepest tuning into our communities needs. Our community, mostly based in Oakland, needs housing, they need a place to live where they can thrive economically and physically. With that in mind, I ask you, how is this answering to those needs?

O-24-1

I am writing to express serious concerns about the Draft Environmental Impact Report (DEIR) for the Oakland Waterfront Ballpark District Project (ER18-016). The DEIR does not provide enough information to inform the public about the potential impacts of the project. I am particularly concerned that the DEIR doesn't specify if affordable housing will be built, doesn't describe how the toxic contamination at the site will be cleaned up, and doesn't provide information on how the project's air pollution impacts will be mitigated

O-24-2

The DEIR does not provide enough information about affordable housing at the project site. This project's potential impacts on housing prices and gentrification in the surrounding community are very worrying, and it is important for the project to include affordable housing. The DEIR mentions an affordable housing program in a footnote, but it doesn't actually describe what the program entails. The DEIR says that the program might include on-site affordable housing. How many of the 3,000 residential units will be set aside for affordable housing? The DEIR says that the program might include off-site affordable housing. Where exactly would this construction take place, and how many units would be built? The DEIR says that the program may just involve paying impact fees. Would the impact fees be used for local affordable housing, and if so when would it be built? The EIR should provide this information, so that the public can understand the full scope of the project and how it will impact the surrounding community.

O-24-3

I am also very concerned about toxic contamination at the site, particularly if affordable housing is going to be built on-site. The Howard Terminal site is currently so contaminated with toxic materials that it is illegal to build housing there. The DEIR states that the A's will work with the Department of Toxic Substances Control (DTSC) to clean up the site but does not provide

- O-24-1 This is a general comment that includes introductory remarks and serves to introduce the more specific comments that are responded to in detail below. As a result, no specific response is provided here.
- O-24-2 See Consolidated Response 4.12, *Affordable Housing*, and Consolidated Response 4.13, *Gentrification and Indirect Housing Displacement*.
- O-24-3 See Response to Comment O-18-3.

O-24

COMMENT

RESPONSE



O-24-3

specific information about how the site will be cleaned up, instead promising to create a plan after the City approves the DEIR. The DEIR claims that compliance with DTSC rules and regulations will ensure that the Howard Terminal site is properly cleaned up, but the A's recently sued DTSC for its failure to enforce environmental laws at the Schnitzer Steel facility adjacent to Howard Terminal—and they won that lawsuit. How can the public trust that DTSC's regulation will make the site safe for housing if the A's can't trust DTSC to regulate the neighboring property?

O-24-4

The DEIR states that the project will have significant and unavoidable impacts on air quality and will emit large amounts of greenhouse gases (GHG) but does not provide sufficient information on how these impacts will be mitigated. West Oakland has historically been and continues to be one of the most polluted areas in California, and residents face serious health challenges, including disproportionately higher rates of hospitalization from asthma and air pollution related diseases including cancer, heart disease, and stroke. The project will bring in even more toxic air pollution, along with significant greenhouse gas emissions. The DEIR plans to mitigate this pollution with a Criteria Pollutant Mitigation Plan and a GHG Reduction Plan, which will not be developed until after the city approves this EIR. The DEIR includes a list of mitigation measures that may be included in those plans, but the DEIR doesn't specify which mitigation measures will be included, nor does it provide information or calculations to demonstrate that those future plans will successfully reduce emissions. Even with the future air pollution mitigation plan, the DEIR says that the impacts on air quality will not be properly mitigated and will have significant impacts on the health of the community. The EIR cannot defer mitigation measures, and the A's must do more to reduce emissions and protect the health of the surrounding community

O-24-5

Given these problems with the DEIR, it is impossible for members of the public to evaluate the impacts of the project, and it is not possible for the City of Oakland to make an informed decision on whether to proceed with this project. The DEIR should be revised and recirculated to provide members of the public and decision makers with accurate and transparent analysis. Thank you for considering these comments.

Sincerely,
[Your Name]

O-24-4 See Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*, regarding mitigation measures, use of performance standards, and future plans.

O-24-5 See Responses to Comments O-18-1 through O-18-4 regarding the assertion that the issues raised in those comments prevent members of the public from evaluating the proposed Project's impacts and the City of Oakland from making an informed decision on the Project. The City has prepared the EIR in accordance with CEQA requirements to inform both the public and decision makers of the environmental consequences of implementing the Project. As addressed in Consolidated Response 4.3, *Recirculation of the Draft EIR*, although information has been added to the Draft EIR, no significant new information (e.g., information leading to a new significant impact or a substantial increase in the severity of an impact) has been added since publication of the Draft EIR. Consequently, the Draft EIR need not be recirculated.

See Consolidated Response 4.14, *Environmental Justice*, for a discussion of environmental justice issues and ways in which the Draft EIR considered health risks in the West Oakland community.

O-25 Northern California District Council of the International Longshore and Warehouse Union

COMMENT

RESPONSE

- O-25-1 See Consolidated Response 4.4, *Port Operations and Land Use Compatibility*, regarding maritime operations and the turning basin.
- O-25-2 See Consolidated Response 4.18, *Effects of Light and Glare on Maritime Operations and Safety*.
- O-25-3 See Consolidated Response 4.4, *Port Operations and Land Use Compatibility*, which updates Mitigation Measure LUP-1a such that the protocol requirements include evaluations of procedures for the imposition of safety zones, security zones (including navigational security needs under all Maritime Security levels), and restricted navigational areas.
- O-25-4 See Consolidated Response 4.7, *Parking*, Consolidated Response 4.19, *Comment Period Extension*, and Consolidated Response 4.10, *Alternative 2: The Off-Site (Coliseum Area) Alternative*.

NORTHERN CALIFORNIA DISTRICT COUNCIL – ILWU

1188 FRANKLIN STREET • SAN FRANCISCO, CALIFORNIA 94109 • (415) 775-0953

AFFILIATED
ILWU LOCAL UNIONS:

April 25, 2021

Local 6 Warehousemen:
San Francisco
Stockton
Oakland
Redwood City-San Jose
Crockett-Richmond
Salinas

Via Email: pvollmann@oaklandca.gov

Peterson Vollmann, Planner IV
City of Oakland Bureau of Planning
250 Frank H. Ogawa Plaza, Suite 2214
Oakland, CA 94612

Dear Mr. Vollmann,

Local 10 Longshore
San Francisco

The Northern Ca. District Council of the International Longshore and Warehouse Union (ILWU), representing 12 local unions in northern Ca, continues to be troubled that the draft EIR concerning the Oakland A's proposed development at the Port's Howard Terminal marine facility skips over or does not adequately address all the maritime issues concerning safety and controlled navigation in the turning basin.

Local 14 Longshore
Eureka

Local 17 Warehouse
Broderick

Local 18 Longshore
West Sacramento

Local 34 Shipclerks
San Francisco

Local 54 Longshore
Stockton

Local 75 Watchmen
San Francisco

Local 91 Walking Bosses
San Francisco

IBU Marine Division
San Francisco



We fail to see adequate language minimizing recreation vessel activity opposite the ballpark in the turning basin in the Oakland - Alameda estuary navigational channel. Impact from stadium lights during vessel operations. Lighting, which is a safety issue, has the possibility of impacting the ferry terminal which is located next door to the proposed ballpark. Tug boats and their crews, which provide vessel assist in the turning basin, will also be affected.

There are additional maritime concerns not included in the EIR. Safety and security zones for cargo and ferry vessels include Marsec level 2 and 3 events. Safe maneuvering must include consideration for congestion, weather, and fire.

Land based issues are glaring. The Howard Terminal Development is much more than a ballpark. It also includes three thousand housing units, two million square feet of retail, office and entertainment space, and a 400 room hotel. With the currently available two thousand space city parking garage, where are the twenty to thirty thousand people that show up for a ball game going to park? Will they be parking in the adjacent residential and commercial business zones? Has the proper time been given to inform those members of the public who will be impacted by this development? The current ballpark site at the coliseum is a better spot for a new ballpark.

Thank you,

Melvin Mackay
NCDC President

akj/Cwa 39521

O-26 Propeller Club of Northern California

COMMENT

RESPONSE

O-26-1 City of Oakland City Council 1 Frank H Ogawa Plaza 2nd Floor Oakland, CA 94612 April 26, 2021 Dear City Council Members: The Propeller Club of Northern California (PCNC) wishes to support the concerns of maritime stake holders who oppose the proposed Howard Terminal ballpark and condominium complex as it poses a serious threat to maritime operations at the Port of Oakland and will result in the loss of thousands of jobs. Maritime operations at the Port support 520,328 jobs in the State of California, according to a 2019 economic impact report. The PCNC has concerns that not only has the loss of maritime operations not been taken into account in the City EIR, but also that the liquefaction risk has been underestimated. Liquefaction Threat There are serious questions as to whether the Howard Terminal site is prone to liquefaction and whether authors of the ENGEO geological report produced for the City's EIR, paid for by the Oakland A's, deliberately suppressed information about the 1989 liquefaction event that caused 11.8 inches of land sinking at Howard Terminal. The liquefaction threat posed at Howard Terminal could make the site unsafe and problematic to bond. At the very least, more research needs to be done to assess the liquefaction threat. We request that the City commission a second geological study, not paid for by the A's, to assess the threat and explain proposed remediation. The EIR's geological analysis produced by ENGEO is suspect for the following reasons:

O-26-2 * The report's authors suppressed mention of the 1989 liquefaction event as a result of the Loma Prieta earthquake

* The authors failed to source the U.S. Geological Survey report which referenced the 1989 Howard Terminal liquefaction event in the report's bibliography.

* The report failed to disclose that the 1989 event caused land to sink by 11.8 inches at Howard Terminal. The Howard Terminal site covers an area of contamination that is currently capped by the existing pavement, according to ENGEO. There is concern that sea level rise will cause contaminants located below Howard Terminal to leak into the Oakland Estuary and into the San Francisco Bay. Please refer to the following for more information: <https://ajot.com/insights/full/ai-ground-under-proposed-oakland-as-ballpark-site-on-howard-terminal-liquefied-in-1989-earthquake>

O-26-3 Threat to Oakland International Container Terminal The Port of Oakland is an active port that generates good-paying, skilled, union and full-time jobs. We are particularly concerned about the threat to the Oakland International Container Terminal (OICT), the biggest terminal at the Port. The new ZPMC cranes at OICT enhances the terminal's ability to handle 18,000 twenty-foot container unit (TEU) vessels. This makes the Port the third megacontainer ship terminal on the Pacific Coast along with the ports of Los Angeles and Long Beach. Mixing recreational activities in the Oakland Estuary with the arrivals and departures of megacontainer ships and ancillary vessels (e.g., tug boats) create potential safety hazards and legal liabilities for ocean carriers sailing to and from the Port of Oakland. These carriers could leave Oakland for the Ports of Los Angeles and Long Beach if ballpark and condominium traffic disrupt vessel operations. For example, Stevedoring Services of America (SSA), the operator of OICT, has reported that ocean carriers are now reluctant to sign long-term contracts for unloading and loading vessels with SSA based on concerns that traffic, navigational hazards and recreational boaters attending ballgames may create maritime safety issues that could disrupt vessel operations. The Oakland A's condominium and ballpark complex will undermine these operations just as the Port of Oakland is doing more export business for U.S. exporters and facilitating more imports to Northern California warehouses and retailers. As ocean carriers leave, jobs at the ballpark and at the complex will not compensate for the loss of the current good paying maritime jobs at the Port along with the 520,328 California jobs that are

O-26-1 Comments regarding the Project's merits, a Project component, or a variant of the Project do not raise a significant environmental issue or specific questions about the analyses or information in the Draft EIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Project. See Consolidated Response 4.22, *General Non-CEQA*.

With respect to the EIR's analysis of maritime operations, see Consolidated Response 4.4, *Port Operations and Land Use Compatibility*.

O-26-2 A liquefaction analysis is presented in Draft EIR Section 4.6, *Geology, Soils, and Paleontological Resources*, Impact GEO-1. The preliminary geotechnical analysis provided preliminary recommendations to address liquefaction, and relies on recent investigative work conducted in accordance with all current standards. Upon completion of the CEQA documentation, the Project would be required by the California Building Code (i.e., Chapter 18A, *Soils and Foundations*), and by the City of Oakland Building Code and Grading Regulations (i.e., Section 1802B.6, *Site Map and Grading Plan*), to conduct a final geotechnical investigation that would further inform the final Project design and provide recommendations to address all identified geotechnical issues, including liquefaction. Additionally, the Liquefaction Information memorandum prepared by ENGEO on July 7, 2021 (ENGEO, 2021) provides further explanation and analysis of the effects of liquefaction.²

The materials prepared by ENGEO constitute substantial evidence supporting the conclusions in the Draft EIR with respect to liquefaction. (Public Resources Code, Section 21082.2(c) [substantial evidence includes "facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts"].) Regarding the comment that the City should commission a new study not funded by the Project applicant, this is not required under CEQA. CEQA allows a consultant retained by the project applicant to prepare any or all of the materials that inform the decision making process. (Public Resources Code, Section 21082.1; *Gentry v. City of Murrieta* (1995) 36 Cal.App.4th 1359, 1397; *San Franciscans Upholding the Downtown Plan v. City & County of San Francisco* (2002) 102 Cal.App.4th 656, 764-765 [recognizing that courts have

² ENGEO, 2021. Liquefaction Information, Howard Terminal Redevelopment, Oakland, California, July 7, 2021.

O-26 Propeller Club of Northern California

COMMENT

RESPONSE

repeatedly rejected the contention that a report prepared by applicant's expert should be disregarded as presumptively tainted].)

O-26-3

See Consolidated Response 4.4, *Port Operations and Land Use Compatibility*. With respect to the comment regarding interference with operations at the Oakland International Container Terminal, Mitigation Measure LUP-1a requires, among other things, the Project sponsor to, at a minimum, fund water-based patrols by OPD during and reasonably before and after all baseball games, concerts, and other large events at the ballpark or the Waterfront Park, sufficient to remove any boating and water recreation activity that is not in compliance with applicable laws, regulations, and rules governing navigation in the shipping channel or in the turning basin, and to ensure that no such boating or water recreation activity loiters, anchors, or otherwise impedes maritime navigation.

With respect to the economic impacts of the Project, see Consolidated Response 4.22, *General Non-CEQA*.

O-26 Propeller Club of Northern California

COMMENT

RESPONSE

O-26-4 See Response to Comment O-26-2.

O-26-5 See Response to Comment O-26-3 and Consolidated Response 4.4, *Port Operations and Land Use Compatibility*. With regard to U.S. agricultural exports, CEQA does not require an analysis of economic issues, except to the extent that these issues may result in secondary environmental impacts. The Draft EIR has identified and mitigated potential impacts related to a fundamental conflict with Port-related uses as discussed under Impact LUP-2 in the Draft EIR and as clarified in Consolidated Response 4.4.

O-26-3 supported by Port of Oakland maritime operations. Please see additional information here:
<https://sjot.com/insights/full/ai-oaklands-proposed-new-ballpark-and-condo-complex-long-term-threat-to-port>
 O-26-4 Conclusion To build a ballpark and complex without investigating the liquefaction risk seems a serious omission. The Howard Terminal ballpark and condominium proposal does not justify undermining Port of Oakland maritime operations and placing at risk the 520,328 California jobs of longshore workers, truckers, warehouse workers, freight forwarders, customs brokers and others. The project also poses a threat to the ability of U.S. agricultural exporters to ship their products to Asia in an economical and timely manner. Respectfully yours, Stas Margaronis Propeller Club of Northern California
 O-26-5

O-27 East Oakland Stadium Alliance

COMMENT

RESPONSE



Pillsbury Winthrop Shaw Pittman LLP
Four Embarcadero Center, 22nd Floor | San Francisco, CA 94111-5998 | tel 415.983.1000 | fax 415.983.1200

Ronald E. Van Buskirk
tel: 415.983.1496
ronald.vanbuskirk@pillsburylaw.com

April 26, 2021

Peterson Vollmann, Planner IV
City of Oakland Bureau of Planning
250 Frank H. Ogawa Plaza, Suite 2214
Oakland, CA 94612
PVollmann@oaklandca.gov

Submitted electronically at <https://comment-tracker.esassoc.com/oaklandsportseir/index.html>.

Re: Comment Letter on Draft EIR for Oakland Waterfront Ballpark District Project (Case File No. ER18-016; State Clearinghouse No. 2018112070)

Dear Mr. Vollmann:

These comments are submitted on behalf of the East Oakland Stadium Alliance and its members ("EOSA") regarding the draft Environmental Impact Report ("DEIR") for the proposed Oakland Waterfront Ballpark District Project at the Charles P. Howard Terminal ("Howard Terminal") and adjacent parcels at the Port of Oakland ("HT Project" or "Project"), published by the City of Oakland ("City") on February 26, 2021. In these comments, reference is made to a number of technical reports¹ also being submitted on behalf of EOSA that are directed to numerous deficiencies identified in the DEIR under the California Environmental Quality Act ("CEQA").²

I. INTRODUCTION.

The Howard Terminal plays a vital role in the operations of the Port of Oakland ("Port") and the maritime industry that is of critical importance to the Port, the City, and the region at large. The EOSA and its member organizations have direct and immediate interests in preserving and expanding that maritime-related role at the Howard Terminal through careful and balanced planning in the City and Port, as well as protecting the physical environment and historical uses in West Oakland from adverse development impacts.

¹ Review of Draft Environmental Impact Report for the Waterfront Ballpark District at Howard Terminal (AES, April 26, 2021) ("AES Report"), and appendices thereto.

² Public Resources Code § 21000, *et seq.*. CEQA is implemented through the State CEQA Guidelines ("CEQA Guidelines"), 14 Cal. Code Regs. § 15000, *et seq.*

O-27-1 This is a general comment that includes introductory remarks and serves to introduce the more specific comments that are responded to in detail below. As a result, no specific response is provided here.

References to the comments submitted are acknowledged and are included in the submittals categorized as O-29, O29-1, and O29-2 in this document.

O-27-2 See Consolidated Response 4.4, *Port Operations and Land Use Compatibility*.

O-27-1

O-27-2

O-27

COMMENT

RESPONSE

Comments re DEIR (ER18-016)
April 26, 2021

O-27-5
O-27-6

major visual alterations and blockage of the Oakland waterfront skyline in a manner out of proportion with the existing environment, as well as fostering increased gentrification in West Oakland and threatening job loss for historic waterfront-related employment and land uses.

O-27-7

As outlined in the accompanying AES Report, the DEIR falls far short of analyzing the potential impacts of the HT Project as necessary to comply with CEQA, including the following deficiencies:

- **Individual Impact Areas.** The DEIR fails to sufficiently address potentially significant environmental impacts of the Project in many areas, including impacts related to air quality, biological resources, greenhouse gas (“GHG”) emissions, exposure to hazardous materials, public safety including at-grade railroad crossings, hydrology and water quality, land use, transportation and circulation, and others.

O-27-8

- **Deferred Study and Mitigation.** As a systemic problem, the DEIR relies on improperly deferred study and mitigation in many areas, including mitigation related to traffic/transportation effects and management, potential exposure to hazardous materials and toxic air contaminants, waterfront safety protocols, and the effect of displacing all current activities at the Howard Terminal. Instead of full and current analysis of these subjects, the DEIR opts for “future study” and an impermissible “plan to plan” approach that deprives the public and public agencies of required information needed at this time to be fully informed on the environmental risks of the Project.

O-27-9

- **Alternatives.** The DEIR’s analysis of alternatives to the Project is legally deficient, especially in respect to the comparative impacts of the Off-Site Coliseum Area Alternative (Alternative 2), thereby mis-informing the public regarding the significant environmental (and other) benefits of developing the Project at the Coliseum site, rather than at Howard Terminal.

O-27-10

- **Project Description.** The DEIR’s project description violates CEQA in a number of respects, including by improperly piecemealing environmental review of the HT Project from the Project Sponsor’s related Coliseum redevelopment in East Oakland.

O-27-11

- **Howard Terminal Displacement.** The DEIR fails to accurately describe current uses at the Howard Terminal or address the ramifications of displacing all such uses, in terms of impacts from relocating trucking, container storage and other activities on air quality and transportation, as well as other negative effects in the Port area and surrounding communities.

O-27-12

- **Cumulative Impacts.** The DEIR fails to sufficiently address the cumulative impacts of the Project and its growth-inducing effects, especially in relation to the projected growth and impacts from reasonably foreseeable development under the proposed Downtown Oakland Specific Plan (“DTOSP”), as well as at the Coliseum site under the Coliseum Area Specific Plan (“CASP”).

O-27-6 See Consolidated Response 4.13, *Gentrification and Indirect Housing Displacement*. In conformance with CEQA requirements, Section 4.12 of the Draft EIR contains an analysis of the potential for displacement, focusing on whether displacement would necessitate the construction of housing elsewhere.

The remainder of the comment raises an economic issue, not an environmental issue, and is not subject to CEQA. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Project.

O-27-7 This is a general comment that serves to introduce the more specific comments that are responded to in detail below. As a result, no specific response is provided here.

O-27-8 See Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*.

O-27-9 See Consolidated Response 4.10, *Alternative 2: The Off-Site (Coliseum Area) Alternative*.

O-27-10 See Consolidated Response 4.1, *Project Description*.

O-27-11 See Consolidated Response 4.5, *Truck Relocation*, regarding the description of current uses at Howard Terminal and truck relocation.

For information on the Project’s impacts on land use compatibility with the Port, see Consolidated Response 4.4, *Port Operations and Land Use Compatibility*.

O-27-12 See Response to Comment O-29-113 regarding the comment’s assertions that the Draft EIR’s evaluation of cumulative impacts and growth inducement does not sufficiently address the Downtown Oakland Specific Plan (DOSPP) or the Coliseum Area Specific Plan (CASP).

O-27

COMMENT

RESPONSE

Comments re DEIR (ER18-016)
April 26, 2021

O-27-13

In light of these deficiencies, the DEIR fails to fulfill its fundamental purpose and duty as a public informational document. See CEQA Guidelines § 15151 (an EIR must include “a sufficient degree of analysis to provide decisionmakers with information which enables them to make a decision which intelligently takes account of environmental consequences”). To address the problems outlined in these comments and the AES Report, and to comply with CEQA and the CEQA Guidelines, the City must revise and recirculate the DEIR before considering General Plan amendments or any other approval action for the Project. See CEQA § 21092.1; CEQA Guidelines § 15088.5.

II. INTERESTS OF COMMENTING PARTIES.

The EOISA is comprised of a large and diverse group of organizations and members⁵ with significant interests in ensuring the continued success and vitality of the Port’s maritime-related industrial uses, including transportation and union-related interests. Many of the members, in connection with their work and facilities at the Oakland Seaport, contribute significantly to the economy and institutions in the City in a myriad of ways. These members include the majority of the transportation providers necessary to facilitate the movement of goods and who play a vital role in preserving the local, regional and State-wide economic importance of the Port’s industrial and transportation-related operations. The economic impacts of their activities are critical to the overall success of the Port and are well documented.⁶

O-27-14

“In 2017, the Seaport supported 520,328 jobs in the state of California. Of these jobs, 11,393 jobs are directly created by Seaport activities, while another 10,507 induced jobs, are generated in the Bay Area as a result of local purchases made by those directly employed due to Seaport activity. There are 5,831 indirect jobs supported in the Bay Area as the result of \$546 million of local purchases made by directly dependent firms. In addition, the cargo moving via the Seaport supports 492,597 related jobs throughout the state of California.”⁷

The Seaport is a “major economic driver for the Bay Area,” generating over “\$2.2 billion annually in business revenue and \$281 million in State and local taxes.” DEIR at 4.10-5. The total “economic output” associated with Seaport operations is estimated at over “\$60 billion.” *Id.*

O-27-15

The importance of this activity, and continued access to the Port for maritime-related

⁵ See <https://www.eastoaklandstadiumalliance.com> for additional information on the EOISA and a list of its members.

⁶ See *Impacts of the A’s Proposed Howard Terminal Stadium on the Operation and Economics of the Oakland Seaport* (September 2019), available at: https://d3n8a8pro7v1mxx.cloudfront.net/oaklandstadiumalliance/pages/12/attachments/original/1570821793/EPS_Howard_Terminal_Report_09_30_19_-_FINAL.pdf?1570821793.

⁷ “2017 Economic Impact of the Port of Oakland Seaport: Executive Summary” Port of Oakland (January 2019), at ES-3, available at <https://www.portofoakland.com/wp-content/uploads/Economic-Impact-Report-2019-EXECUTIVE-SUMMARY.pdf>.

O-27-13 This comment is predicated on other comments in this submittal; see Responses to Comments O-27-1 through O-27-12. As the designated lead agency under CEQA, the City has endeavored to prepare and circulate the Draft EIR to meet or exceed CEQA requirements, including (for example) requirements related to writing, emphasis, degree of specificity, technical detail, and discussion of environmental impacts (State CEQA Guidelines Sections 15140, 15143, 15146, 15147, and 15126 through 15127). As addressed in Consolidated Response 4.3, although information has been added to the Draft EIR, no significant new information (e.g., information leading to a new significant impact or a substantial increase in the severity of an impact) has been added since publication of the Draft EIR. Consequently, the Draft EIR need not be recirculated. See Consolidated Response 4.3, *Recirculation of the Draft EIR*, for more information.

O-27-14 The comment raises an economic issue, not an environmental issue, which is not subject to CEQA. This comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft EIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the Proposed Project.

O-27-15 See Consolidated Response 4.5, *Truck Relocation*, regarding Howard Terminal and truck relocation.

For information on the Project’s impacts on land use compatibility with the Port, see Consolidated Response 4.4, *Port Operations and Land Use Compatibility*.

Regarding the importance of activity at the Port, the comment raises an economic issue, not an environmental issue, which is not subject to CEQA. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Project.

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commerce, heavy industrial uses and transportation-related purposes, cannot be overstated. For example, the DEIR estimates that as of October 2018, approximately 3,000 drayage trucks are in daily operation, making one or more trips to and from the Seaport. DEIR at 4.15-45. However, the Project would remove all access to the Howard Terminal for trucks to park, plan efficient trips, store containers, and avoid queuing and idling on local streets and freeways. These uses cannot feasibly be relocated without significant impacts; rather, displacement of the transportation-related uses from the designated and busy transportation hub at Howard Terminal would cause significant environmental effects that the DEIR fails to disclose or study, much less mitigate.

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In addition, members of the EOSA have important interests at stake regarding the selection of the Coliseum Area Alternative, rather than the Howard Terminal site, for the proposed new ballpark and related development. Redevelopment of the Coliseum site, including an MLB stadium, has long been planned under the CASP⁸ and would revitalize this area of East Oakland for the betterment of the local communities and the entire City. For purposes of the DEIR analysis, the Coliseum Area Alternative would reduce or avoid significant environmental and other impacts of the HT Project, which the DEIR fails to correctly assess and explain.

III. LEGAL REQUIREMENTS FOR AN EIR.

O-27-17

The purpose of an EIR is to “provide public agencies and the public in general with detailed information about the effect [that] a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project.” (Pub. Resources Code § 21061...)” *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 511-512. An EIR is a document of accountability, and public disclosures made in a properly-prepared EIR serve to protect both the environment and informed self-government. *Id.* at 512. Thus, an EIR must include sufficient detail “to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.” *Laurel Heights Improvement Ass’n v. Regents of Univ. of California* (1988) 47 Cal.3d 376, 405; *Sierra Club v. County of Fresno, supra*, 6 Cal.5th at 516; see CEQA Guidelines § 15151. Simply acknowledging that an impact would be significant and unavoidable, even with mitigation measures, is insufficient. See *Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal.App.4th 1109, 1123 (EIR’s acknowledgement that an impact would be significant and unavoidable, even with mitigation measures, was inadequate and a more detailed analysis of the magnitude of the adverse impact was required). An EIR’s description of the environmental setting must not be “inaccurate, incomplete [or] misleading.” *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 729.⁹

⁸ See Coliseum Area Specific Plan, adopted by the Oakland City Council on April 21, 2015.

⁹ “[A] prejudicial abuse of discretion occurs if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the goals of the EIR process.” *Association*

O-27-16 Comments regarding the Project’s merits, a Project component, or a variant of the Project do not raise a significant environmental issue or specific questions about the analyses or information in the Draft EIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Project. See Consolidated Response 4.22, *General Non-CEQA*.

Regarding the analysis of environmental impacts of the alternatives, see Consolidated Response 4.10, *Alternative 2: The Off-Site (Coliseum Area) Alternative*.

O-27-17 This comment is a summary of CEQA provisions and case law. This comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft EIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Project.

This comment is predicated in part on other comments in this submittal; see Responses to Comments O-27-2 through O-27-85. As addressed in Consolidated Response 4.3, no significant new information (e.g., information leading to a new significant impact or a substantial increase in the severity of an impact) has been added since publication of the Draft EIR, and consequently, the Draft EIR need not be recirculated. See Consolidated Response 4.3, *Recirculation of the Draft EIR*, for more information.

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The DEIR for the HT Project fails to carry out these basic principles and informational duties. Because of the DEIR’s deficiencies, the City must revise and recirculate the DEIR for additional public review and comment. See CEQA § 21092.1; CEQA Guidelines § 15088.5; see also *Clover Valley Foundation v. City of Rocklin* (2011) 197 Cal.App.4th 200.

IV. SEVERAL DEIR DEFICIENCIES CUT ACROSS MULTIPLE ENVIRONMENTAL IMPACT AREAS.

While the DEIR has specific deficiencies in many individual impact chapters, as discussed in the AES Report and attachments thereto, there are broader problems with the DEIR’s overall approach that cut across multiple impact areas and compound the inadequacy of the DEIR as a public disclosure document.

A. Systemic Deferral of Analysis and Mitigation.

In numerous instances, mitigation measures and the associated quantification of reducing impacts is deferred until other public agencies provide or approve future plans, reports, findings and/or permits. However, CEQA Guidelines § 15126.4(a)(1)(B) allows specific details of a mitigation measure to be developed after project approval only when it is impractical or infeasible to include those details in the EIR,¹⁰ and then only if the lead agency (1) commits itself to the mitigation, (2) adopts specific performance standards that the mitigation measure will achieve, and (3) identifies types of potential actions that can feasibly achieve that performance standard.¹¹ Presenting both performance standards and identified types of candidate actions in a DEIR is essential to demonstrate that, while the precise form of mitigation remains to be selected, feasible mitigation is available and reasonably likely to be effective. An agency “goes too far when it simply requires a project applicant to obtain a [] report and then comply with any recommendations that may be made in the report.” *Endangered Habitats League Inc. v. County of Orange* (2005) 131 Cal.App.4th 777, 793. The DEIR falls far short of these requirements.

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For example, regarding Hazardous Materials, the DEIR states that substantive requirements of current regulatory documents would be replaced and that the new requirements “would be similar to those in the existing governing documents” and that they “would be specifically tailored to ensure protections appropriate for the Project’s anticipated construction activity and anticipated land uses.” DEIR at 4.8-38. However, there is no assurance that the regulatory agencies will provide such documents nor certainty as to what the documents

O-27-19

of Irrigated Residents v. County of Madera (2003) 107 Cal.App.4th 1383, 1391. Such error is deemed prejudicial “regardless whether a different outcome would have resulted if the public agency had complied with the disclosure requirements.” *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1198.

¹⁰ There has been sufficient time for the DEIR to have included such additional analysis and mitigation measures, rather than defer them, since the DEIR was actually prepared over a year ago, but issuance was delayed due to AB 734 certification issues.

¹¹ See *Communities for a Better Environment v. City of Richmond* (2010) 184 Cal.App.4th 70, 94 (deferral of mitigation proper only where mitigation is known to be feasible and the agency “commit[s] itself” to measures that will “satisfy specific performance criteria articulated at the time of project approval.”).

O-27-18 This comment is a summary of CEQA provisions and case law. This comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft EIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Project.

Regarding the comment on deferral of mitigation, see Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*.

O-27-19 The commenter is correct that the Draft EIR describes substantive regulatory requirements that would apply to the site. As explained in Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*, the mitigation measures in the Draft EIR—Mitigation Measures HAZ-1a through HAZ-1d in Section 4.8, *Hazards and Hazardous Materials*—would ensure that regulatory requirements have been met and the required plans reviewed and approved by the California Department of Toxic Substances Control (DTSC) before the issuance of grading, building, or construction permits, and certificates of occupancy or similar operating permits for new buildings and uses. In compliance with state law, the DTSC is the agency with jurisdiction. DTSC would be responsible for reviewing and approving the remediation plan and related documents to ensure that they adequately address risks identified in the approved risk assessment and that redevelopment and use of the Project site occurs in a manner that is protective of construction workers, the public, future users and residents of the Project site, and the environment. DTSC will determine to appropriate approach and will approve the required remedy selection document after certification of the Final EIR. These documents cannot be approved until the EIR is certified and would be specifically developed to address risks identified in the risk assessment that has already been approved by DTSC. This is not an improper deferral of mitigation. See Consolidated Response 4.16, *Human Health and Ecological Risk Assessment, Land Use Covenants, and Site Remediation*, regarding overall risk assessment approach and methodology, and see Response to Comment O-62-53 for additional discussion of DTSC’s role as a responsible agency and relevant analyses in the Draft EIR.

The remainder of this comment is a summary of CEQA provisions and case law. This comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft EIR that would

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require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Project.

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would require. In addition, there is no analysis of how those proposed actions would mitigate impacts. CEQA and case law require that “[f]or each significant effect, the EIR must identify specific mitigation measures; where several potential mitigation measures are available, each should be discussed separately, and the reasons for choosing one over the others should be stated.” *Lotus v. Department of Transportation* (2014) 223 Cal.App.4th 645, 653 (citations omitted). By deferring mitigation to future regulatory actions in this manner, the DEIR is “compressing the analysis of impacts and mitigation measures into a single issue” and thus “the EIR disregards the requirements of CEQA.” *Id* at 656.

Examples of deferred analysis and mitigation in the DEIR include the following:

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- **Hazardous Materials.** The DEIR recognizes that the Howard Terminal site is heavily contaminated. DEIR at 4.8-9 to 4.8-17. The DEIR states that the site is currently subject to three separate Land Use Covenants (“LUCs”) as a capped hazardous substance site; that residential uses are prohibited under a current LUC issued by the Department of Toxic Substances Control (“DTSC”); and that a new LUC and Removal Action Workplan (“RAW”) are proposed but not completed. DEIR at 4.8-49. At the outset, there is a fundamental problem with the Project Sponsor’s plan to address the complexities of the extensively contaminated Project site through a simple RAW, rather than undertaking a full Feasibility Study and developing a Remedial Action Plan (“RAP”) as will likely be required (*see* Section VI.B, *infra*). But even putting that problem aside, the proposed LUC and the RAW do not exist today for any public review and comment. Instead, the DEIR states that the DTSC will develop a LUC and RAW by relying on the certified EIR (DEIR at 4.8-38) – which in turn refers back to the (non-existent) RAW.¹² It is impossible for the public or public agencies to evaluate the scope of work that would be required to implement such yet-unprepared documents and, consequently, the associated risk to public health or level of mitigation required to deal with the toxic contamination on the site. In the DEIR, there are no quantifiable mitigation measures to reduce such impacts. This “deferred analysis/deferred mitigation approach” deprives the public of vital information that is both needed and required during the EIR process, not afterwards, and before any public agency considers any project approval action. This shortcoming also applies to the handling of the heavily contaminated property during construction, as well as risks to groundwater, air quality and public safety following construction.¹³

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- **Hydrology and Water Quality.** Potentially significant water quality impacts will result from disturbance of the hazardous materials currently under the existing cap on the

¹² Circular reasoning is not mitigation. CEQA Guidelines § 15126.2(a) states, in pertinent part: “The EIR shall also analyze any significant environmental effects the project might cause by bringing development and people into the area affected...” The California Supreme Court upheld this provision and required that the effects of environmental conditions upon a project’s future residents or users be considered where the project may exacerbate existing environmental hazards. *See California Building Industry Assoc. v. Bay Area Air Quality Management District* (2015) 62 Cal.4th 369.

¹³ As discussed herein, this defer-to-the-future approach is especially problematic where depth to groundwater is very shallow—5 to 12 feet—and “likely fluctuates several feet daily with tidal action.” DEIR at 3-8.

O-27-20 As discussed in Draft EIR Section 4.8.2, *Regulatory Setting*, under *Land Use Covenants*, and further explained in Consolidated Response 4.16, *Remediation Plans, Land Use Covenants, and Human Health and Ecological Risk Assessment*, the Project site is subject to existing land use covenants (LUCs), operations and maintenance agreements, soil and groundwater management plans, and risk management plans, all enforced by DTSC, the regulatory agency with jurisdiction. These LUCs and their associated plans would be replaced and consolidated and require approval by DTSC before commencement of construction to account for the changes to the Project site. The substantive requirements of these replacement documents would be similar to those in the existing documents, but would be specifically tailored to ensure protections appropriate for the type of anticipated construction activity and the type of anticipated uses, including allowing residential use (which is currently prohibited) under specified conditions. Similar to the existing plans, the workplans to be prepared under the requirements of the existing LUCs and the mitigation measures discussed in Draft EIR Section 4.8, *Hazards and Hazardous Materials*, Impact HAZ-2, include performance standards for the remediation and include maintaining a cap over the Project site.

As explained in Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*, the mitigation measures provided in the Draft EIR would ensure that regulatory requirements have been met before the issuance of grading, building, or construction permits, and certificates of occupancy or similar operating permits for new buildings and uses. In compliance with state law, DTSC is the agency with jurisdiction and would be responsible for reviewing and approving the remediation plan and related documents to ensure that they adequately address risks identified in the approved risk assessment. DTSC will determine to appropriate approach and will approve the required remedy selection document after certification of the Final EIR. These documents cannot be approved until the EIR is certified and would be specifically developed to address risks identified in the risk assessment that has already been approved by DTSC. and eliminate This is not an improper deferral of mitigation. See Consolidated Response 4.16, *Remediation Plans, Land Use Covenants, and Human Health and Ecological Risk Assessment* and Response to Comment O-62-53 for a discussion of DTSC’s role as a responsible agency.

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O-27-21 See Response to Comment O-27-20 regarding the DTSC process and Response to Comment A-12-43 regarding water quality. Land use covenants (LUCs) and associated plans would be reviewed and approved by DTSC and would include a cover on the Project site to prevent hazardous materials from leaving the Project site. The proposed Project would collect all stormwater in an on-site collection system that would be monitored to meet State water quality standards for discharge into the Estuary. Also see Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*, regarding regulatory measures and mitigation measure enforcement. This is not an improper deferral of mitigation.

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- O-27-21 | Howard Terminal site. However, again, mitigation for this disturbance is relegated to a future RAW by the DTSC and is thus unknown. DEIR at 4.9-21.
- O-27-22 | • Geology/Soils. The DEIR cites to and relies on the (future) LUC, as well as Operation & Maintenance (“O&M”) Agreements (and the RAW and Soil Gas Management Plan (“SGMP”)) for the Project. See DEIR at 4.6-20 to 4.6-23 (referencing discussion in Section 4.8, *Hazards and Hazardous Materials*). The difficulty is that none of these documents exists today.
- O-27-23 | • Transportation. Measures in the Transportation Management Plan (“TMP”) (for the new ballpark) and Transportation Demand Management Plan (“TDMP”) (for residential and commercial uses) are vague and without adequate performance standards. The TMP, in particular, is set up as a “plan to plan” that crosses the line into impermissible deferred mitigation. See DEIR at 4.15-137.
- O-27-24 | • Waterfront Protocols. Similarly, the DEIR provides for a waterfront safety protocol to be developed in the future between the Project Sponsor, the City and the Port. DEIR at 2-61 to 62. Risks to navigational safety posed by the Project are especially problematic given the large number of ball games and other events that are expected to create glare and other impediments to safe navigation and to draw recreational watercraft into the Oakland Inner Harbor, an active shipping lane.
- O-27-25 | • Future Ordinances. The DEIR provides that the City and Port will at some point “cooperate” to establish a “shared regulatory framework” so that the Oakland Municipal Code (“OMC”) would apply to the Project. See DEIR at 3-11, 3-58. However, that framework should have been provided with the DEIR so that the public and agencies can understand the new framework, the standards that would be applicable to the HT Project, and the potential for land use inconsistency and conflicts with existing uses in the area, especially taking into account the nearby development that would be permitted under the proposed DTOSP. Environmental review must be undertaken and impacts should be analyzed based on whether the OMC will or will not apply.
- O-27-26 | The real problem is that the DEIR does not involve just a single instance of deferred analysis of potential impacts and mitigation for future plans, although that alone could be grounds for revision and recirculation. Here, the “deferral approach” taken by the City in the DEIR is systemic and renders the DEIR lacking under CEQA on a broad scale as an informational document.
- O-27-27 | **B. Insufficient Treatment of Howard Terminal Displacement Impacts.**
The Howard Terminal is a water-dependent use that serves important maritime, heavy industrial and transportation-related purposes within the Port of Oakland. See DEIR at

O-27-22 As discussed in the Draft EIR in Section 4.8.2, *Regulatory Setting*, under *Land Use Covenants*, and further explained in Consolidated Response 4.16, *Remediation Plans, Land Use Covenants, and Human Health and Ecological Risk Assessment*, the Project site is subject to existing land use covenants (LUCs), operations and maintenance agreements, soil and groundwater management plans, and risk management plans, all enforced by DTSC, the regulatory agency with jurisdiction. These LUCs and their associated plans would be replaced and consolidated and require approval by DTSC before commencement of construction to account for the changes to the Project site. The substantive requirements of these replacement documents would be similar to those in the existing documents, but would be specifically tailored to ensure protections appropriate for the type of anticipated construction activity and the type of anticipated uses, including allowing residential use (which is currently prohibited) under specified conditions. Similar to the existing plans, the workplans to be prepared under the requirements of the existing LUCs and the mitigation measures discussed in Draft EIR Section 4.8, *Hazards and Hazardous Materials*, Impact HAZ-2, would provide further description of the remediation steps, which would include maintaining a cap over the Project site.

As explained in Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*, the mitigation measures provided in the Draft EIR are actions that would be enforced by the City of Oakland Bureau of Building. Grading, building, or construction permits, and certificates of occupancy or similar operating permits for new buildings and uses would not be issued until DTSC and the City of Oakland Bureau of Building have approved the various actions required by the mitigation measures. See also Response to Comment O-27-20 regarding the DTSC process. This is not an improper deferral of mitigation.

O-27-23 See Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*. Mitigation Measures TRANS-1a and TRANS-1b provide mechanisms for the City to monitor compliance with provisions of Assembly Bill (AB) 734 and would achieve the 20 percent vehicle trip reduction (performance standard) contained in that law. Consolidated Response 4.23, *Transportation and Parking Demand Management Plan and Transportation Management Plan Considerations*, shows the expected effectiveness and feasibility of the identified measures to achieve the 20 percent performance standard. This is not an improper deferral of mitigation.

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O-27-24 See Consolidated Response 4.4, *Port Operations and Land Use Compatibility*, regarding recreational watercraft, light and glare, and maritime navigation, which includes a discussion of Mitigation Measure LUP-1a, *Boating and Recreational Water Safety Plan and Requirements*. See Consolidated Response 4.2, *Formulation, Effectiveness and Enforceability of Mitigation Measures*, regarding deferred mitigation, which explains that this is not an improper deferral of mitigation.

O-27-25 As provided on p. 3-11 of the Draft EIR, the Port's land use regulations and the City's General Plan both apply to the Project site. The Port and City, without waiving any of their respective authorities and jurisdiction over lands within the Port Area and consistent with Article VII of the Charter, have entered into a nonbinding Memorandum of Understanding (MOU) which describes a contemplated shared regulatory framework that, if ultimately approved, would apply to the Project. The MOU, if ultimately approved, would, among other things, apply relevant provisions of the Oakland Planning Code, Title 17 of the Oakland Municipal Code, to the Project. Pursuant to that framework, it is anticipated that the City and the Port will closely consult and confer with one another regarding the content of the proposed General Plan amendment and zoning regulations that will govern future development of the proposed Project, both of which will be presented to the City Council for its discretionary review and approval (Draft EIR p. 3-58). This MOU is included in the administrative record and can be accessed on the City's website: <https://cao-94612.s3.amazonaws.com/documents/City-Port-MOU-2020-02-26.pdf>. Section 3.19.1 of the Draft EIR outlines the anticipated public agencies approvals required for the Project, identifying which approvals would be by the City and which by the Board of Harbor Commissioners, per this contemplated shared regulatory framework. CEQA does not require the shared framework to be approved and released at the same time as the Draft EIR.

Moreover, the Draft EIR presents the proposed Project's potential land use consistency analysis in Section 4.10, *Land Use, Plans and Policies*, of that document, including the cumulative analysis that considers potential reasonably foreseeable land uses proposed in the Draft Downtown Oakland Specific Plan (DOSP). Specifically, Draft EIR Impact LUP-8 on p. 4.10-63 demonstrates that the impact of the proposed Project's proposed amendments to the Planning Code and Zoning Map, to which the City and

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Port's shared regulatory framework would apply, would be less than significant. The shared regulatory framework would not have direct bearing on the Project's physical land use consistency impacts. The Draft EIR includes a full and adequate environmental analysis of the proposed Project's potential effects on land use compatibility and consistency with the Oakland Municipal Code. This is not an improper deferral of mitigation.

O-27-26 See Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*.

O-27-27 See Consolidated Response 4.4, *Port Operations and Land Use Compatibility*. With regard to the Seaport Plan, as discussed in the Draft EIR, AB 1191 establishes a deadline for the San Francisco Bay Conservation and Development Commission (BCDC) to determine whether to remove the proposed Project site from the Seaport Plan's port priority use designation and make conforming changes to the San Francisco Bay Plan. With such removal from the Seaport Plan's port priority use designation and changes to the Bay Plan, the Project's potential conflicts with the Seaport Plan and corresponding Bay Plan policies could be resolved. With respect to the portion of the proposed Project site subject to BCDC jurisdiction, the Port and City would require as conditions of their approvals that the Project sponsor obtain the necessary Seaport Plan and Bay Plan amendments. With those amendments, the proposed Project would not conflict with BCDC regulations governing shoreline use and the impact would be less than significant. As described in Draft EIR p. 4.10-56, in the absence of such amendments, the proposed Project could not proceed.

BCDC's responsibilities under the McAteer-Petris Act and related laws are separate and distinct from the requirements of CEQA. The fact that BCDC is required to make certain findings with respect to the Project does not alter the required analyses under CEQA or mandate that information be included in the EIR.

See also Responses to Comments A-12-1, A-12-2, A-12-4, and A-12-5 regarding BCDC's authority and jurisdiction.

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3-3. The DEIR recognizes that the Howard Terminal served as a functioning inner-harbor Marine Terminal with four large working ship-to-shore container gantry cranes until 2014. DEIR at 3-5, 4.10-2. Although current uses do not include use of the ship-to-shore cranes, the site continues to be used by vessels and trucks to serve maritime needs consistent with the Port Priority Use designation in the San Francisco Bay Area Seaport Plan (“Seaport Plan”) as approved by the Bay Conservation and Development Commission (“BCDC”). DEIR at 4.10-13 to 14 (land protected for marine terminals and ancillary services). Preserving the Port Priority Use designation for Howard Terminal is necessary to provide important flexibility for the Port and the region in terms of serving projected future needs for expanded Port of Oakland operations, including at the Howard Terminal. Thus, under the Seaport Plan, other uses may “not significantly impair the efficient utilization of the port area.” *Id.*

O-27-28 See Response to Comment O-27-27 regarding the Port Priority Use under the Seaport Plan, and Consolidated Response 4.5, *Truck Relocation*, regarding existing uses of Howard Terminal and relocation of truck-related activities.

Regarding the nature and importance of the current activities at Howard Terminal to Port operations, this comment raises an economic issue, which is not subject to CEQA. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Project.

See Responses to Comments O29-1-1 through O29-1-43 for specific responses to comments raised in the Foulweather report cited in this comment.

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Currently, the Howard Terminal serves as a “hub” for a variety of marine-support activities, including heavy truck parking and layover, container storage and drayage, relief space to avoid queuing and impacts of heavy trucks on local street systems, and others. The berths at Howard Terminal are also still in regular use by ocean-going vessels for lay-berthing. The Project Sponsor seeks agency approvals to remove the protection of the Port Priority Use designation and to displace all Port-related support functions currently occurring at the Howard Terminal in favor of the ballpark and mixed-used development described in the DEIR—none of which are water-dependent uses—without clearly identifying where those displaced activities would go and the environmental and other impacts of that displacement.

O-27-29 See Consolidated Response 4.5, *Truck Relocation*, regarding Howard Terminal and additional analysis related to relocating the trucks.

For information on the Project’s impacts on land use compatibility with the Port, see Consolidated Response 4.4, *Port Operations and Land Use Compatibility*.

To begin with, the DEIR does not adequately describe the nature and importance of the current activities at the Howard Terminal.¹⁴ Nor does it sufficiently analyze the impacts of relocating all such existing uses away from Howard Terminal to other locations – in some instances identifying no location and avoiding any impact analysis at all.

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For example, the DEIR fails to analyze any impact of displacement and Project-related increase in trucking activity in the vicinity of West Oakland, claiming the area is “already mostly occupied by existing trucking parking” and therefore “the impacts of truck parking on sensitive uses are part of the existing conditions in this area.” DEIR at 3-62. The DEIR improperly equates the increase in truck parking and associated impacts on sensitive receptors with existing baseline conditions. This is insufficient under CEQA and highlights the deficiencies in the DEIR analysis, which fails to identify any location where trucks that will continue to “bring goods to and from the Port of Oakland” can feasibly park. *Id.* Impacts to the surrounding “Seaport, the City, or the region” would be increased, including the “trip ends associated with use of parking at Howard Terminal [that] would occur elsewhere.” *Id.* While the Project would interfere with existing transportation of goods to and from the Port, resulting in potentially significant impacts of increased “trip ends” and queuing on regional freeways and local streets, the DEIR also fails to disclose what the resulting air quality and other impacts would be from such displacement.

¹⁴ The DEIR fails to present an accurate and complete picture of the current Howard Terminal activities. See *Comments on Draft Environmental Impact Report for the Oakland Waterfront Ballpark District project at Howard Terminal (Case File No. ER18-016) (State Clearinghouse No. 2018112070) (Foulweather Consulting, April 26, 2021) (“Foulweather Report”)*, attached as Appendix 2 to the AES Report, at p. 21.

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The DEIR does recognize that implementation of the Project will require total displacement – that current users of the Howard Terminal would have to relocate all truck parking and other operations. DEIR at 3-61. The DEIR states that as part of the Oakland Army Base redevelopment, the City and Port are each required to provide 15 acres of truck parking and ancillary maritime services. DEIR at 3-61 to 3-62. The Port has designated the Roundhouse area as meeting this requirement, but a prior approved CEQA document (Negative Declaration - SCH Number 2015052062) for the Roundhouse area designated 15 acres of the 37-acre Roundhouse property (which also had been used for truck parking) for a new UP railcar-to-ship transloading facility for grain and other agricultural commodities, with an additional 5.9 acres leased to UP for dedicated parking. That effectively left only 15.2 acres of the 37-acre property still (potentially) available for non-UP related truck parking and other activities.¹⁵ Further, current information suggests that there is little to no available space at the Roundhouse for an assured transfer of activities from the Howard Terminal.¹⁶ Fundamentally, there are conflicting uses designated for the Roundhouse site which indicate that there is not nearly enough required space there for parking and other activities to mitigate impacts of the 100% displacement from Howard Terminal.

O-27-30 See Consolidated Response 4.5, *Truck Relocation*, regarding Howard Terminal and additional analysis related to relocating the trucks. See Responses to Comments O29-1-1 through O29-1-43 for specific responses to comments raised in the Foulweather report cited in this comment.

O-27-31

The Roundhouse property aside, the DEIR states that Howard Terminal uses will simply be spread elsewhere within the Port or the region, without specifying where such relocation would occur or the associated impacts. *See, e.g.*, DEIR at 3-61 (“existing tenants and users of Howard Terminal *are assumed to move* to other locations within the Seaport..., the City, or the region where their uses are permitted” (emphasis added)). The DEIR reflects no explanation of any reasonable effort to identify and analyze competing sites for such relocation. This means that the multiple potential adverse impacts from moving this heavy industrial activity somewhere else in the region received no analysis based on an unfounded premise that the impacts would “still occur somewhere.” This is insufficient for purposes of CEQA analysis since the re-location destinations can vary significantly in their baseline circumstances (e.g., air quality, hazardous exposure risk to nearby receptors, transportation facilities, public safety, and others) for purposes of adding to that existing baseline in that location a large number of new heavy truck movements and parking, and related activities that do not occur there today, potentially worsening those localized and even regional conditions.

O-27-31 See Consolidated Response 4.5, *Truck Relocation*, regarding Howard Terminal and additional analysis related to relocating the trucks.

O-27-32

While declining to quantify the effects of displacing the Howard Terminal operations elsewhere, the DEIR nonetheless gives credit to the Project in its health risk assessment for reducing activities at the Howard Terminal itself:

O-27-32 See Consolidated Response 4.5, *Truck Relocation*, regarding Howard Terminal, truck VMT issues and the analysis of air quality impacts.

¹⁵ Ironically, the truck parking eliminated on 20.9 acres of the Roundhouse property was to be relocated “on an interim basis” to the Howard Terminal, “while the Port identifies a more permanent location.” Roundhouse Negative Declaration, p. 2-10. The Negative Declaration also noted that, as of the 2014 baseline year, the Roundhouse property was already “at full capacity” for truck parking and that “[w]ith the planned lease of a portion of the site to UP, some of the truck parking is being moved to the Howard Terminal at 1 Market Street, as of April 2015.” *Id.* at. 2-9 (emphasis added). The DEIR ignores this information.

¹⁶ Foulweather Report, at 9.

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“The Project would replace truck parking, loaded and empty container storage and staging, and longshore training facilities at the existing Howard Terminal site; however, as these emissions may still occur within the general region, no reduction in emissions is quantified for the A’s Related Existing CAP and GHG inventory. The reduction is only considered for the health risk assessment of localized impacts, as discussed in Section 3.” DEIR, Appendix AIR.1 (emphasis added).

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The relocation of existing truck and storage activity from Howard Terminal to the Roundhouse (potentially displacing existing parking and activities at the Roundhouse) necessarily results in an increase in vehicle miles traveled (“VMT”) somewhere; but the DEIR indicates those impacts have not been quantified because exactly where those impacts will occur is not known. Whether or not that is true, the DEIR cannot ignore those adverse impacts altogether, while at the same time taking credit for reducing existing activity at Howard Terminal. The DEIR’s characterization of increased emissions at the Roundhouse does not reflect the increased VMT associated with this relocation; and the DEIR’s assumption that this increase in VMT will fall outside the Project’s “zone of influence” is unsupported by any evidence.

V. THE DEIR’S PROJECT DESCRIPTION IS DEFICIENT.

An “accurate, stable, [and] finite” project description is an essential element of an informative and legally sufficient EIR. *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 193. A project description “that gives conflicting signals to decision makers and the public about the nature of the project is fundamentally inadequate and misleading.” *South of Market Community Action Network v. City and County of San Francisco* (2019) 33 Cal.App.5th 321, 332. The DEIR fails to meet this standard.

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The DEIR’s project description suffers from several defects. First, it impermissibly “piecemeals” the Project Sponsor’s proposed development at the Oakland Coliseum site from the overall Project, treating the Oakland Coliseum development as separate project and an “alternative,” rather than as a component essential for the HT Project itself. Second, the project objectives in the DEIR are too narrowly tailored such that they prevent proper consideration of off-site alternatives. Third, the project description is inconsistent and uncertain as to the true scope of activity proposed to be undertaken. Each of these deficiencies is discussed below.

A. The DEIR Improperly “Piecemeals” the Waterfront Ballpark District Project and the Oakland Coliseum Redevelopment.

The project description in the DEIR improperly segments environmental review of the HT Project from the Project Sponsor’s proposed Coliseum site redevelopment in East Oakland. Despite a conceptual and financial link between the two activities, as described in public

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O-27-33 This comment is a summary of CEQA provisions and case law. This comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft EIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Project.

For the EIR’s compliance with CEQA’s project description requirements, see Consolidated Response 4.1, *Project Description*.

O-27-34 This comment is a summary of CEQA provisions and case law. This comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft EIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Project.

For the EIR’s compliance with CEQA’s project description requirements, see Consolidated Response 4.1, *Project Description*. See also Consolidated Response 4.10, *Alternative 2: The Off-Site (Coliseum Area) Alternative*.

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statements by the City and the Project Sponsor,¹⁷ the DEIR omits any project-level discussion of the reasonably foreseeable environmental impacts of the Coliseum redevelopment.

An agency may not avoid the requirements of CEQA by “chopping a large project into many little ones—each with a minimal potential impact on the environment—which cumulatively may have disastrous consequences.” *Aptos Council v. County of Santa Cruz* (2017) 10 Cal.App.5th 266, 277-278 (quoting *Laurel Heights, supra*, 47 Cal.3d at 396). Instead, the agency must consider “the whole of an action” which has a potential for resulting in an environmental impact. CEQA Guidelines § 15378.

Two related activities are considered part of a single “project” under CEQA where the second activity is a “reasonably foreseeable consequence” of the first activity; where the second activity is a “future expansion” of the first activity that will change the scope of the first activity’s impacts; or where both activities are “integral parts of the same project.” *Laurel Heights*, 47 Cal.3d at 396; *Sierra Club v. West Side Irrigation Dist.* (2005) 128 Cal.App.4th 690, 698. Improper piecemealing also occurs where “the purpose of the reviewed project is to be the first step toward future development,” or when the reviewed project “legally compels or practically presumes completion of another action.” *Banning Ranch Conservancy v. City of Newport Beach* (2012) 211 Cal.App.4th 1209, 1223. CEQA projects may also be improperly piecemealed where the proposed activity is a crucial element of another project such that, without it, that project could not proceed. *See Tuolumne County Citizens for Responsible Growth, Inc. v. City of Sonora* (2007) 155 Cal.App.4th 1214.

Here, redevelopment of the Coliseum site is a reasonably foreseeable effect of the HT Project, since the existing baseball activity and stadium at the Coliseum would be relocated to the Howard Terminal, leaving the Coliseum primed for redevelopment as the Project Sponsor itself proposes.¹⁸ But the DEIR’s project description focuses its project-level analysis solely on the Howard Terminal site, and does not describe the related proposed redevelopment of the Coliseum Complex if baseball operations are relocated away from there.

The City’s failure to include analysis of the Coliseum redevelopment in the DEIR is also inconsistent with the Project Sponsor’s public statements since November 2018 indicating that the Coliseum redevelopment is absolutely essential to funding the move of the ballclub to Howard Terminal; and that without the revenues generated by the Coliseum redevelopment, the HT Project could not proceed.¹⁹ The DEIR thus erred in not treating the “entire project”

¹⁷ These statements conflict with and undermine the purported conclusion in the DEIR that any redevelopment at the Oakland Coliseum “is not part of or the Project sponsor’s application nor a prerequisite for development of the proposed Project, and no physical changes are proposed at the Oakland Coliseum site as part of the Project.” DEIR at 3.16.

¹⁸ Indeed, the Project Sponsor has contracted with Alameda County to purchase the County’s one-half stake in the Coliseum site, and is now negotiating with the City to acquire the other half, although the City has declined to release any details of that purported purchase.

¹⁹ For example, the Project Sponsor has publicly stated that the team’s control of both Howard Terminal and the Coliseum site is “essential” if the team was to deliver on its promise of a “100-percent privately built ballpark.”

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for CEQA purposes as both the Howard Terminal and Coliseum developments for purposes of project-level analysis.

B. The Project Objectives are too Narrowly Drawn to Meet CEQA Requirements.

An EIR must include a “statement of the objectives sought by the proposed project,” including the “underlying purpose of the project.” CEQA Guidelines § 15124(b). This statement of objectives provides the touchstone for an agency’s selection of alternatives. An EIR “shall describe a range of reasonable alternatives to the project, or to the location of the project, *which would feasibly attain most of the basic objectives* of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives.” CEQA Guidelines § 15126.6(a) (emphasis added).

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While an alternative must implement “most” project objectives, it need not implement all of them. *See California native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 991 (“[T]here is no legal requirement that the alternatives selected must satisfy *every key objective* of the project.”) (emphasis original). Moreover, an EIR may not define project objectives so narrowly as to preclude consideration of a reasonable range of alternatives. *See Kostka & Zisehke, Practice under the California Environmental Quality Act*, § 15.8 (“A lead agency should not... adopt artificially narrow project objectives that would preclude consideration of reasonable alternatives for achieving the project’s underlying purpose.”)²⁰

The Athletics have played baseball at the Coliseum site for over 50 years. They will continue to do so at least until 2024. Yet the DEIR defines the project objectives as necessarily requiring a “waterfront” project at the Port of Oakland with connection to Jack London Square, precluding adequate consideration of the Off-Site Coliseum Area Alternative or other alternatives. The project description lists 11 project objectives, many of which require proximity to the waterfront and Jack London Square such that, in effect, only the Howard

²⁰ See Matier & Ross, “A’s Propose ‘Jewel Box’ Ballpark for Waterfront, Coliseum Development,” *San Francisco Chronicle*, November 28, 2018 (available at: [A’s propose ‘jewel box’ ballpark for waterfront, Coliseum redevelopment \(sfchronicle.com\)](https://www.sfchronicle.com/bayarea/article/A-s-propose-jewel-box-ballpark-for-waterfront-coliseum-redevelopment-sfchronicle-com).) It has also stated that “obtaining the Coliseum makes the odds of Howard Terminal better.” *Id.* According to news reports, the Project Sponsor has also stated that the Coliseum project is essential to financing the Howard Terminal Project. *See, e.g.,* Matier, Phil, “Confusion in Oakland Over who Gets Coliseum Site—the City or the A’s,” *San Francisco Chronicle*, Oct. 9, 2019 (“The A’s say developing the Coliseum site is vital to privately financing their 34,000-seat [sic] waterfront ballpark at the Port of Oakland’s Howard Terminal.”) (available at: <https://www.sfchronicle.com/bayarea/philmatier/article/Confusion-in-Oakland-over-who-gets-Coliseum-site-14502201.php>); Matier, Phil, “City of Oakland Says Not so Fast to Sale of Half the Coliseum Site to the A’s,” *San Francisco Chronicle*, August 4, 2019 (“The A’s have said that the revenues earned from developing the Coliseum site, where the team now plays, is a key component to financing the ballpark at the Port of Oakland’s Howard Terminal.”) (available at: <https://www.sfchronicle.com/bayarea/philmatier/article/City-of-Oakland-says-not-so-fast-to-sale-of-half-14277040.php>).

²⁰ See also *North Coast Rivers Alliance v Kawamura* (2015) 243 Cal.App.4th 647, 669 (EIR on program to protect plants from invasive insects failed to consider pest control as alternative to eradication); *County of Inyo v City of Los Angeles, supra*, 71 Cal.App.3d at 203 (EIR for expansion of groundwater extraction program failed to consider water conservation as alternative to increased groundwater extraction).

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This comment is a summary of CEQA provisions and case law. This comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft EIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Project.

With respect to the comment that the Project objectives are too narrowly drawn, the Project objectives comply with CEQA. Of the 11 objectives included in Section 3.4 of the Draft EIR, five refer to the desire for a waterfront location, one is about minimizing interference with the Port of Oakland, and five do not refer to a waterfront location in any way. These Project objectives are not “artificially narrow” such that they preclude informed decision making or consideration of a reasonable range of project alternatives as required by CEQA. (State CEQA Guidelines, Section 15126.6(a).) To the contrary and consistent with the requirements of CEQA, detailed project objectives describe the underlying purpose of the project and aid the lead agency in developing a reasonable range of alternatives to evaluate in the EIR and thus provide more exact information to the decision-makers and public. (State CEQA Guidelines, Section 15124(b).) While a lead agency may not make a project’s purpose “artificially narrow,” it is permissible to establish reasonable goals and objectives for a project. A lead agency would not be required to analyze inland locations for an oceanfront hotel or waterfront aquarium. (*In re Bay-Delta Programmatic Env’tl. Impact Report Coordinated Proceedings* (2008) 43 Cal.4th 1143, 1166.) The agency’s alternatives analysis will be upheld as long as there is a reasonable basis for the choices it has made. (*City of Maywood v. Los Angeles Unified School Dist.* (2012) 208 Cal.App.4th 362, 414, 416.)

With respect to the comment that there is no necessary nexus between the ballpark and the waterfront, that it is not the purpose of the alternatives analysis or the objectives. A public agency is permitted to express a preference for a location without undermining its EIR process. (See State CEQA Guidelines Section 15004(b)(2)(A).) To the extent the comment refers to the BCDC process, the EIR is not required under CEQA to include a range of alternatives that satisfies the McAteer-Petris Act or otherwise informs BCDC’s findings under that statute. The EIR is required to include a range of alternatives that would avoid or lessen significant effects of the project analyzed in the EIR. In doing so, the Draft EIR includes an analysis of a No

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Project Alternative, an Off-Site (Coliseum Area) Alternative, a Project with Vehicular Grade Separation Alternative, and a Reduced Development Alternative. All are analyzed in Chapter 6 of the Draft EIR in accordance with CEQA requirements. The EIR is required to include a range of alternatives.

See Consolidated Responses 4.9, Alternative 3: The Proposed Project with Grade Separation Alternative and 4.10, *Alternative 2: The Off-Site (Coliseum Area) Alternative*, for further discussion of the range of alternatives selected for analysis, the level of detail required, and analysis of the Coliseum Area alternative specifically.

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Terminal site could meet them. *See, e.g.*, Objective 2 (provide waterfront destination that is active year round and complements the waterfront ballpark); Objective 3 (construct a new ballpark on Oakland’s waterfront); Objective 4 (create continuous waterfront district with strong connections to Jack London Square); Objective 8 (design a project that minimizes interference with the Port of Oakland operations); Objective 9 (increase public use through a waterfront park and waterfront promenade extending access to the Oakland waterfront from Jack London Square, and taking advantage of the project site’s unique proximity to Jack London Square, the waterfront and downtown). DEIR at 3-15 to 3-16 (emphasis added). Yet, unlike the basic maritime-related function of Howard Terminal, none of the proposed Project components – a ballpark, condos and apartments, hotels, retail shops, and offices – depend in any way on a necessary nexus to the waterfront. Although the City’s narrow set of project objectives did not entirely preclude discussion of one off-site alternative, Alternative 2, they resulted in a less-than-robust comparison of alternatives, especially with respect to consideration of the Coliseum Area Alternative (*see* Section VII.A., *infra*).

C. The Project Description is Inconsistent and Uncertain.

“[A]n accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR.” *County of Inyo v. City of Los Angeles, supra*, 71 Cal.App.3d at 199. “A curtailed, enigmatic or unstable project description draws a red herring across the path of public input.” *Id.* at 197-198. Only through an accurate view of the project “may the public and interested parties and public agencies balance the proposed project’s benefits against its environmental cost, consider appropriate mitigation measures, assess the advantages of terminating the proposal and properly weigh other alternatives.” *City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438, 1454.

The DEIR’s Project Description is confusing and uncertain as to the nature and variety of actions that will be taken for the Project. The description contains numerous “possible” elements, leaving the reader to speculate as to exactly what will be undertaken:

- That large-scale existing shipping container cranes may (or may not) be retained depending on a “later assessment” of safety that has been improperly deferred. DEIR at 2-2, 3-16, 3-31.
- That a potential future Turning Basin project involving an approximately 10-acre portion of the Project site, located generally in the southwestern corner, may (or may not) be developed; and this, along with and any necessary Project reconfiguration and impacts on associated financing, might be unknown for 10 years. DEIR at 2-3, 3-37.
- That the nearby Peaker Power Plant may (or may not) be converted to battery power storage, especially as it relates to GHG emissions and other issues. DEIR at 2-4, 3-16.

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O-27-36 This comment is a summary of CEQA provisions and case law. This comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft EIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Project.

With respect to the comment on various items included and not included in the Project Description, see Consolidated Response 4.1, *Project Description*. See also Consolidated Response 4.12, *Affordable Housing*, and Consolidated Response 4.23, *Transportation and Parking Demand Management Plan and Transportation Management Plan Considerations*. With respect to the comment on project financing and business terms being negotiated, see Consolidated Response 4.22, *General Non-CEQA*.

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O-27-37 See Responses to Comments O29-1-4 and O29-1-5.

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- That an Aerial Gondola system for transporting visitors over and above Interstate 880, the UPR railroad tracks, and other areas may (or may not) be included or built. DEIR at 2-4.²¹
- That Fire Station 2 on the Project site may (or may not) be renovated or demolished which would affect emergency response times. DEIR at 2-2, 3-16.
- That the Project may (or may not include) on-site or off-site affordable housing units and the analysis of associated environmental impacts is deferred. DEIR at 3-26.
- That the fate of off-site transportation improvements “identified” or “recommended” to “increase connectivity for transit” and to “implement” vehicle trip reductions and “to manage vehicle travel and parking” (DEIR at 3-40) is uncertain and not guaranteed.
- That the plot plan (DEIR Fig. 3-10) shows maximum heights for various parcels north of the stadium, but the conceptual rendering of the site (Fig. 3-11) shows differing heights of buildings in different locations.

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Although these items are mentioned in the DEIR, the cumulative effect created by the many uncertainties involved, when coupled with the other project description issues identified above, make the scope and description of the Project insufficient for purposes of CEQA analysis, and require revision and re-circulation of the Project Description chapter to address these issues. The revisions should also include sufficient information and analysis regarding the financing details and the plans for construction and operation of on-site and off-site infrastructure improvements under the Terms Sheet newly released by the Project Sponsor, so that the environmental and other effects of those improvements can be assessed by the public in the context of the DEIR.

VI. THE DEIR FAILS TO SUFFICIENTLY ANALYZE MANY IMPACT AREAS.

As described in the AES Report and the supporting technical reports, the DEIR’s analysis of individual impact areas is deficient in a number of important respects.

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A. Air Quality and GHG Emissions.

The AES and Foulweather Reports explain that the DEIR’s air quality and GHG analyses suffer from numerous deficiencies, leading the DEIR to significantly understate the Project’s impacts in these areas. Some of the key deficiencies are the following:

²¹ See also Letter from AC Transit, dated April 16, 2021, p. 2, stating: “We are skeptical that the gondola can be built in this complex environment and will be able to provide a substantial number of trips to a 35,000-seat ballpark.”

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- Baseline. The DEIR relies on an inappropriate baseline for the assessment of “net” Project impacts related to air quality and public health risks. Foulweather Report at 3-5.

O-27-38

- Rooftop Generators. The DEIR’s analysis of air quality and public health impacts related to the Project’s emergency rooftop generators does not reflect the current Best Available Control Technology, and modeling of emissions also suffers from numerous deficiencies, leading the DEIR to underpredict diesel particulate matter emissions from emergency generators. Foulweather Report at 5-7.

O-27-39

- Howard Terminal Displacement. The DEIR fails to address reasonably foreseeable air quality impacts resulting from the relocation of all existing operations at Howard Terminal. Foulweather Report at 8-9.

O-27-40

- Fugitive Dust Emissions. The DEIR fails to evaluate or quantify the air quality and public health impacts associated with fugitive emissions of PM₁₀, PM_{2.5} and related toxic air contaminants (“TACs”) during construction and remediation. Foulweather Report at 9-11.

O-27-41

- GHG Credits for Electric Vehicle Charging Infrastructure. The DEIR’s quantification of GHG benefits associated with the installation of electric vehicle (“EV”) charging infrastructure is logically flawed, and unjustifiably takes credit for GHG reductions attributable to actions by others. Foulweather Report at 11-15.

O-27-42

- Inadequate Health Risk Assessment. The DEIR’s health risk assessment suffers from numerous flaws and was not performed in accordance with Bay Area Air Quality Management District (“BAAQMD”) and State guidelines. Foulweather Report at 15-17.

O-27-43

- Emission Offset Credits. Mitigation Measure AIR-2e(c) (“Emissions Offsets”) is impermissibly vague and indeterminate, and mitigation fees should be set equal to BAAQMD excess emission fees calculated based on the remainder of 30-year project life at the time the shortfall begins. Foulweather Report at 17-18.

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The DEIR also suffers from numerous other deficiencies with respect to air quality and GHG impact analyses, including failure to use meteorological data from the Oakland Sewage Treatment Plant used in the West Oakland Community Action Plan; failure to compare unmitigated or mitigated project air quality impacts with ambient air quality standards and to describe the magnitude of ambient air quality exceedances to which the Project could potentially contribute; and the use of out-of-date emission factor models.

B. Hazards and Hazardous Materials.

O-27-45

The DEIR’s analysis of hazards and hazardous materials suffers from substantial deficiencies

O-27-38 See Responses to Comments O29-1-6 through O29-1-12.

O-27-39 See Consolidated Response 4.5, *Truck Relocation*, regarding Howard Terminal and the analysis of air quality impacts.

O-27-40 See Responses to Comments O29-1-13, O29-1-18, O29-1-19, and O29-1-20.

O-27-41 See Responses to Comments O29-1-22 through O29-1-28.

O-27-42 See Responses to Comments O29-1-29 through O29-1-32.

O-27-43 See Responses to Comments O29-1-33 and O29-1-34.

O-27-44 See Response to Comment O29-1-13 regarding meteorological data used in the health risk assessment; Response to Comment O29-1-21 regarding ambient air quality standards and exceedances; and Response to Comment O29-1-35 regarding emission factor models.

O-27-45 The Draft EIR discusses the analysis of the risks associated with the contaminated materials currently contained beneath the existing hardscape cap over the Project site in Section 4.8, *Hazards and Hazardous Materials*. Section 4.8.1, *Environmental Setting*, provides a description of the nature and extent of contamination that includes identifying the chemicals of potential concern, describing the extent of those chemicals present at concentrations above screening levels, and presenting figures that visually depict the extent of contamination at concentrations above screening levels. As further explained in Consolidated Response 4.16, *Human Health and Ecological Risk Assessment, Land Use Covenants, and Site Remediation*, Engeo conducted a data gaps analysis that evaluated the completeness and adequacy of the data collected through April 2020, as discussed in Section 4.0 of the 2020 Site Investigation Report cited in the Draft EIR (Engeo 2020a). Based on that data gaps analysis, Engeo collected and analyzed additional soil, soil gas, and groundwater samples to fill those data gaps, as documented in the Human Health and Ecological Risk Assessment (HHERA), and resulting in a data set that is adequate to support the HHERA and inform decisions regarding risks at the Project site (Engeo 2020b and provided in the Administrative Record).

As explained in Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*, the mitigation measures provided in

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the Draft EIR, including HAZ-1a-HAZ-1d in Section 4.8, *Hazards and Hazardous Materials*, would ensure that regulatory requirements have been met and the required plans reviewed and approved by the California Department of Toxic Substances Control (DTSC) before the issuance of grading, building, or construction permits, and certificates of occupancy or similar operating permits for new buildings and uses. DTSC is the agency with jurisdiction. DTSC would be responsible for reviewing and approving the remediation plan and related documents to ensure that they adequately address risks identified in the approved risk assessment and that redevelopment and use of the Project site occurs in a manner that is protective of construction workers, the public, future users and residents of the Project site, and the environment. These documents cannot be approved until the EIR is certified and would be specifically developed to address risks identified in the risk assessment that has already been approved by DTSC. See also Consolidated Response 4.16, *Human Health and Ecological Risk Assessment, Land Use Covenants, and Site Remediation*.

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as described in the Terraphase Engineering technical review²² and outlined briefly below:

- O-27-45 • Insufficient Analysis of Impacts and Improperly Deferred Mitigation for Subsurface Contamination. The DEIR’s analysis and mitigation of subsurface contamination in soil, soil gas, and groundwater rely on speculative plans and unreasonable assumptions that understate the extent and significance of environmental impacts.
- O-27-46 • Reliance on a Removal Action Workplan is Not Appropriate. It is unlikely that the DTSC will approve a Removal Action Workplan (“RAW”) as the proper means to address contamination at the Project Site. Given the scope and nature of the contamination, the complex hydrogeology of the site, its proximity to sensitive human and ecological receptors, the planned encapsulation of significant contamination, and the anticipated cost of the remediation (likely close to \$50 million for soil excavation and disposal alone), DTSC would typically require preparation of a comprehensive Remedial Action Plan (“RAP”) based on a Feasibility Study that evaluates the full range of remedial alternatives. Additional investigation may be required in order to prepare an adequate Feasibility Study.²³ The DEIR should evaluate the impacts associated with removal of all soil contamination that exceeds accurately derived human health-based risk levels as would be required under a properly developed RAP. Terraphase Report at 5.
- O-27-47 • Deferred Study. The engineering, technical and logistical parameters of the remedial action, and impacts to groundwater quality, cannot be evaluated because they are deferred to as-yet nonexistent studies and evaluations. Terraphase Report at 5.
- O-27-48 • Failure to Consider All Contaminants. The DEIR entirely fails to consider certain contaminants and their impacts, including petroleum metabolites (hydrocarbon oxidation products) in groundwater and their potential to migrate to the Bay. Terraphase Report at 5-6.
- O-27-49 • Human Health and Ecological Risk Assessment. The Human Health and Ecological Risk Assessment (“HHERA”) relied on in the DEIR (DEIR at 4.8-15) does not include a current ecological risk assessment or calculate target levels based on ecological receptors, relying instead on outdated information. Terraphase Report at 6-7.

²² See *Review of Selected Sections of the Draft Environmental Impact Report for the Waterfront Ballpark District at Howard Terminal, Oakland, California (Case File No. ER18-016) (State Clearinghouse No. 2018112070)* (Terraphase Engineering Inc., April 26, 2021) (“Terraphase Report”), Appendix 3 to the AES Report.
²³ A RAW is used at smaller, less contaminated sites where all, or substantially all of the contamination that exceeds action levels, is being excavated and taken away. At more contaminated sites, such as Howard Terminal, where significant contamination may remain in place, it is essential to have a more comprehensive understanding of what is being left behind, what risks it poses (both during construction and post-construction), and how those risks can be effectively managed going forward, as is performed with a RAP. The DEIR should contain a complete analysis of all hazardous materials that are present at the site today, and the risks associated with disturbing those materials, especially given the site’s location relative to the community and the Inner Harbor.

O-27-46 See Consolidated Response 4.16, *Remediation Plans, Land Use Covenants, and Human Health and Ecological Risk Assessment*, regarding regulatory agency jurisdiction and responsibilities. Also note that as explained in Consolidated Response 4.16, *Human Health and Ecological Risk Assessment, Land Use Covenants, and Site Remediation*, after publication of the Draft EIR, the Project sponsor elected to take a more conservative approach by preparing a Remedial Action Plan (RAP) instead of a RAW.

O-27-47 The Draft EIR contains a thorough description of the environmental setting, existing regulatory restrictions existing on the Project site, and the regulations that would govern site cleanup and reuse. As explained in Consolidated Response 4.16, *Human Health and Ecological Risk Assessment, Land Use Covenants, and Site Remediation*, DTSC as the agency with jurisdiction would review the remediation plan and associated documents to ensure that they meet regulatory requirements and address the risks identified in the approved risk assessment. The remediation plan cannot be approved until after the EIR is certified and DTSC has an established process for public review. (See Response to Comment O-62-53.)

As explained in Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*, the mitigation measures provided in the Draft EIR would ensure that these regulatory requirements are met prior to issuance of grading, building, or construction permits, and prior to issuance of certificates of occupancy or similar operating permits for new buildings and uses.

O-27-48 The Draft EIR discusses the analysis of the risks associated with the contaminated materials currently contained beneath the existing hardscape cap over the Project site in Section 4.8, *Hazards and Hazardous Materials*. Section 4.8.1, *Environmental Setting*, provides a description of the nature and extent of contamination that includes identifying the chemicals of potential concern, describing the extent of those chemicals present at concentrations above screening levels, and presenting figures that visually depict the extent of contamination at concentrations above screening levels. See Consolidated Response 4.16, *Human Health and Ecological Risk Assessment, Land Use Covenants, and Site Remediation*, for further explanation regarding the data gaps analysis, the additional soil, soil gas, and groundwater samples to collected and analyzed fill those data gaps, and hydrocarbon oxidation products (petroleum metabolites).

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- O-27-49 Given that the existing site uses and conditions at Howard Terminal have not changed since the 2002 ecological risk assessment was conducted, there is no information to suggest that the level of ecological risk has changed. See Consolidated Response 4.16, *Remediation Plans, Land Use Covenants, and Human Health and Ecological Risk Assessment*, for further explanation regarding the risk assessment.

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- **Cancer Risk and Non-Cancer Hazards.** The HHERA is fundamentally flawed because the cancer risk and noncancer hazard associated with several chemicals of potential concern (“COPCs”) were not considered in deriving target cleanup levels; a cancer toxicity value, a noncancer toxicity value, or both, were omitted for 41% of the COPCs considered in the HHERA; there is no characterization of potential risks from exposure to nonaqueous-phase liquid; and the exposure to lead in soil should be characterized and discussed. Terraphase Report at 6-8.²⁴

O-27-51

- **Inadequate Risk Characterization.** The HHERA lacks quantitative estimates of site-related cumulative cancer and noncancer risks for each receptor, and a comparison of those risks with risk management thresholds. Terraphase Report at 6-7.

O-27-52

- **Inadequate Indoor Air Quality/Vapor Intrusion Factors.** Soil-gas-to-indoor air attenuation factors for new residential and commercial construction are less conservative than the attenuation factors recommended by DTSC and the Regional Water Quality Control Board for screening-level assessments, and the HHERA provides no justification for this deviation. Terraphase Report at 7.

O-27-53

- **Inadequate Sampling.** The HHERA does not demonstrate that adequate sampling has occurred. Terraphase Report at 8.

O-27-54

- **Potential Fuel Pipeline Hazards.** The DEIR also fails to analyze the potential hazards associated with construction or long-term operations near active high-pressure fuel pipelines. See Terraphase Report at 9.

C. Geology and Soils.

The DEIR’s analysis relating to geology and soils has substantial flaws as described in the Terraphase Engineering technical review and noted briefly below:

O-27-55

- **Deferral of Study.** The DEIR’s analysis of Impact GEO-1 and adoption of Mitigation Measure GEO-1 require only a future site-specific geotechnical report, and on that basis finds impacts to be less than significant (DEIR at 2-42), thus failing to identify significant impacts in the first instance or establish that mitigation measures are feasible or would reduce impacts to a less-than- significant level.

O-27-56

- **Liquefaction Impacts.** The DEIR significantly understates the potential for liquefaction and other impacts at the Project site and surrounding area, and improperly defers analysis and mitigation of liquefaction impacts to a future undefined process. DEIR at 4.6-17; see Terraphase Report at 3-4. The DEIR also does not identify appropriate Risk Categories established by the American Society of Civil Engineers indicating that a level III or IV category is necessary; and also fails to adequately

²⁴ Among other things, the HHERA omits the oral cancer slope factors (9 COPCs), inhalation unit risks (three COPCs), noncancer chronic oral reference doses (12 COPCs), and noncancer inhalation reference concentrations (8 COPCs). Terraphase Report at 6.

O-27-50

See Consolidated Response 4.16, *Human Health and Ecological Risk Assessment, Land Use Covenants, and Site Remediation*, for further explanation of relevant toxicity data, screening levels, and which chemicals are relevant to the HHERA

O-27-51

As further explained in Consolidated Response 4.16, *Human Health and Ecological Risk Assessment, Land Use Covenants, and Site Remediation*, isolated outlier concentrations were detected for several individual constituents, such as antimony, mercury, and nickel; however, these concentrations did not exceed respective residential screening levels, which indicates that these outlier detections would not contribute to cumulative risk. Dermal contact with groundwater is a potential complete exposure pathway, which contains certain COPCs above respective screening levels. However, the calculation of a cumulative risk using constituents based on the maximum value noted from infrequent, isolated concentrations is not considered representative of site conditions. The HHERA accounts for over 95 percent of site risk based on maximum risk of COPCs.

O-27-52

As further explained in Consolidated Response 4.16, *Human Health and Ecological Risk Assessment, Land Use Covenants, and Site Remediation*, Sections 7.3 and 11.3 of the HHERA explain that site-specific attenuation factors were developed taking into account the proposed Project component that include the addition of new certified fill on top of the existing fill and the addition of foundations for buildings. These site-specific considerations were discussed between the Project sponsor and DTSC, the regulatory agency with jurisdiction over investigation and cleanup at the Project site. DTSC concurred that generating site-specific attenuation factors would be appropriate for the proposed Project. For additional discussion of this topic, see Consolidated Response 4.16, *Human Health and Ecological Risk Assessment, Land Use Covenants, and Site Remediation*.

O-27-53

As further explained in Consolidated Response 4.16, *Human Health and Ecological Risk Assessment, Land Use Covenants, and Site Remediation*, numerous investigations and cleanup actions have been conducted at the Project site and have included the sampling and analysis of hundreds of soil, soil gas, and groundwater samples throughout the Project site. Further details regarding previous investigation results are detailed in the Site Investigation Report (April 22, 2020), which includes an appendix that tabulates all of the sample results collected through April 2020, numbering in the hundreds.

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Engeo conducted a data gaps analysis that identified certain data gaps, discussed in Section 4.0 of the 2020 Site Investigation Report. Based on that data gaps analysis, Engeo then collected and analyzed additional soil, soil gas, and groundwater samples to fill those data gaps, as documented in the HHERA, and resulting in a data set that is adequate to support the HHERA.

O-27-54 As discussed in Draft EIR Section 4.8.2, *Regulatory Setting*, under *Land Use Covenants*, the Project site is subject to existing land use covenants (LUCs), operations and maintenance agreements, soil and groundwater management plans, and risk management plans, all enforced by DTSC, the regulatory agency with jurisdiction. See Consolidated Response 4.16, Remediation Plans, Land Use Covenants, and Human Health and Ecological Risk Assessment, for further explanation regarding LUCs and their associated plans, including remediation workplans to be prepared under the requirements of the LUCs and the mitigation measures discussed in Draft EIR Section 4.8, *Hazards and Hazardous Materials*, Impact HAZ-2, that would include the protection of existing utility lines and fuel pipelines.

O-27-55 See Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*, for explanation regarding future studies. Regarding geotechnical studies and potential geotechnical impacts, as discussed in Draft EIR Section 4.6, *Geology, Soils, and Paleontological Resources*, p. 4.6, a preliminary geotechnical study has already been completed and is provided in Draft EIR Appendix GEO. The preliminary geotechnical study describes site conditions, identifies geotechnical conditions that would require ground improvements, and provides preliminary geotechnical recommendations to address those conditions. For example, Draft EIR pp. 4.6-8 and 4.6-9 state that the Project site is underlain by materials susceptible to liquefaction. Impact GEO-1 on Draft EIR pp. 4.6-16 through 4.6-18 explains that seismic shaking could induce liquefaction and settlement, which would be a significant impact. To address this potential impact, the preliminary geotechnical study provided recommendations for ground improvements. The preliminary geotechnical study informs both preliminary design and the EIR. As required by the Oakland Building Code and the California Building Code (i.e., Chapter 18A, *Soils and Foundations*), a final geotechnical study will be required to inform the final design of the project. To further emphasize this requirement, Mitigation Measure GEO-1 would require the preparation of the, a final geotechnical report, to be approved by the City, which would include geotechnical recommendations to mitigate site conditions. Finally, the Liquefaction

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Information memorandum prepared by ENGEO on July 7, 2021 (ENGEO, 2021) provides additional explanation and analysis of the effects of liquefaction, along with recommendations to address liquefaction and other geotechnical conditions.³ This memo is included in the Administrative Record.

O-27-56 See Response to Comment O-26-2 and O-27-55. The Liquefaction Information memorandum prepared by ENGEO on July 7, 2021 (ENGEO, 2021) also provides recommendations to manage the potential impacts associated with consolidation and settlement of the Young Bay Mud unit, liquefaction-induced settlement in the existing fill, and strong ground shaking.⁴ The memorandum concludes that, while ground surface vibration impacts are noticeable at distances over 100 feet, the Project site improvements only extends approximately 5 to 10 feet from the ground improvement point. Measurable settlement or liquefaction would not occur off-site with these ground improvement methods. The Liquefaction Information memorandum also explains that the loading to the Project site from the placement of fill and the drilling of borings for support piles would not affect adjacent properties.

³ ENGEO, 2021. Liquefaction Information, Howard Terminal Redevelopment, Oakland, California, July 7, 2021.

⁴ ENGEO, 2021. Liquefaction Information, Howard Terminal Redevelopment, Oakland, California, July 7, 2021.

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analyze (i) the potential for structural failure, including lateral failure of subsurface structures such as the Quay Wall and Rock Dike, which could occur regardless of ground improvement measures, (ii) the potentially significant impact of additional loading caused by soil fill placed to mitigate sea level rise, and (iii) the potential for on-site and nearby liquefaction to disrupt soil caps. Terraphase Report at 3.

O-27-57

- **Addition of Fill.** The DEIR’s conclusion that the addition of fill would “further isolate” underlying contaminants (DEIR at 4.6-22) is unsupported and contradicted by the potential for liquefaction and sea level rise as acknowledged in the DEIR, which will cause groundwater elevations to rise and saturate the soil higher up the soil column with contaminated groundwater. Terraphase Report at 3-4.

O-27-58

- **Cumulative Impacts.** The DEIR fails to provide sufficient information concerning the cumulative impact of earthquake-induced liquefaction on site access, emergency response, utilities, structures, regional access, differential settlement (including substantial differential elevation changes between the Project Site in a seismic event and the unmodified surroundings), and flooding. Terraphase Report at 3-4.

D. Hydrology and Water Quality.

The DEIR’s analysis relating to hydrology and water quality has substantial deficiencies as described in the Terraphase Report and noted below:

O-27-59

- **Surface Water and Stormwater.** The DEIR fails to provide a site-specific pollutant source assessment or to adequately describe the range of contaminants and concentrations that have been monitored/detected in stormwater or surface water at the Project site that represent baseline conditions and site-specific contaminants of concern. See Terraphase Report at 9. The DEIR contains additional deficiencies in relation to surface water impacts, including that mitigation measure HYD-1a includes best management practices (“BMPs”) that have no application to the Project site (DEIR at 4.9-22 to 4.9-24); the failure to disclose how the Project could be designed to reduce the amount of impervious surface to comply with mitigation measure HYD-1a; the failure to analyze or mitigate flooding potential in light of sea level rise projections, storm surge events, or extreme high-tide events; the failure to develop engineering assessments regarding how proposed grading may affect floodplain mapping; and the lack of a site-specific hydrodynamic surface water model to evaluate stormwater outfall elevation to support the DEIR assessment. See Terraphase Report at 11.

O-27-60

- **Groundwater.** The DEIR fails to identify the range of groundwater contaminants that would require continuous monitoring, sampling, and treatment, or to analyze potential vertical migration of contaminants associated with sea level rise. Terraphase Report at 9, 12. A comprehensive dewatering plan and treatment system design should be prepared for public review to address groundwater and commingled stormwater, especially because depth to groundwater at the site is estimated at only 5 to 12 feet and “likely fluctuates several feet daily with tidal action.” DEIR at 3-8, 4.9-4. The DEIR

O-27-57

As discussed in the Draft EIR Section 4.8.2, *Regulatory Setting*, under *Land Use Covenants*, the Project site is subject to existing land use covenants (LUCs), operations and maintenance agreements, soil and groundwater management plans, and risk management plans, all enforced by DTSC, the regulatory agency with jurisdiction. These LUCs and their associated plans would be replaced and consolidated and require approval by DTSC before commencement of construction to account for the changes to the Project site. See Consolidated Response 4.16, *Remediation Plans, Land Use Covenants, and Human Health and Ecological Risk Assessment*, for further explanation regarding the content and requirements of these replacement documents. The potential for liquefaction would be mitigated through implementing geotechnical recommendations, as explained in the responses to Comments O-26-2, O-27-55 and O-27-56.

As explained in Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*, the mitigation measures provided in the Draft EIR are actions that would be enforced by the City’s Building Official. Grading, building, or construction permits, and certificate of occupancy or similar operating permit for new buildings and uses would not be issued until DTSC and the City of Oakland Bureau of Building have approved of the various actions required by the mitigation measures.

O-27-58

This comment refers to a number of general issues that are more or less focused on geotechnical site conditions, all as related to cumulative impacts. The potential for liquefaction, as well as other ground stability conditions, would be mitigated through implementing geotechnical recommendations, as explained in the responses to Comments O-26-2, O-27-55 and O-27-56. Similar to the proposed Project, cumulative projects would also be required by the City of Oakland Building Code ((i.e., Section 1802B.6, *Site Map and Grading Plan*) and the California Building Code (i.e., Chapter 18A, *Soils and Foundations*) to conduct geotechnical analysis to identify liquefaction and other ground stability conditions that require addressing and provide recommendations to address those ground conditions, as needed.

Because the primary vehicle and utility entrances to the site are from the north, where liquefaction risk is low, the on-site liquefaction hazard would be mitigated through ground improvements. Additionally, regional transportation and utility disruptions during and maximum considered earthquake (MCE)–level earthquake due to liquefaction; however, those

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issues would be regional in nature and not an impact of the Project, would affect large portions of the Bay Area population, and cannot be mitigated on-site.

O-27-59 The comment refers to a comment in an attachment (Terraphase Report) to the comment letter, designated Comment O-29-1. Regarding the topic of hydrology and water quality, including sea level rise, because many of the comments made in the Terraphase Report first occur under Comment O-29, they are responded to in this Final EIR under Response to Comment O-29 to avoid redundant responses.

See Draft EIR pp. 4.9-1 through 4.9-4 in Section 4.9, *Hydrology and Water Quality*, for regional and local water quality settings describing pollutants identified by the Water Board in the *Water Quality Control Plan (Basin Plan) for the San Francisco Bay Basin*. In addition, see Draft EIR Section 4.8, *Hazards and Hazardous Materials*, for a description of the current environmental and regulatory setting for onsite contamination monitoring. See Responses to Comments A-12-43 and A-12-47 on water quality impacts related to existing on-site hazardous materials. As described on Draft EIR p. 4.9-4, the current stormwater collection system serves the Port of Oakland's (Port) stormwater drainage basin and, therefore, stormwater from the entire drainage basin discharges into the Estuary at the two existing stormwater outfalls. Draft EIR Section 4.9, *Hydrology and Water Quality* (pp. 4.9-11 through 4.9-13 and 4.9-14 through 4.9-16), provides details on the regulatory requirements for stormwater water quality that apply to the Port and City. The Port is required to monitor the water quality in the two existing discharges to meet its National Pollutant Discharge Elimination System (NPDES) non-traditional municipal separate storm sewer systems (MS4s). Currently, the Port meets its stormwater quality discharge requirements under the MS4 permit and the Water Board reports no violations of the Port's NPDES MS4 permit.⁵ Therefore, under current conditions, stormwater quality meets regulatory thresholds and no further quantification of specific pollutants is required for the baseline setting used in the impact analysis on Draft EIR pp. 4.9-19 through 4.9-25.

⁵ Water Boards, 2021. Water Boards Storm Water Multiple Application & Report Tracking System. Website: CA Storm water Multiple Applications and Report Tracking System - Ver 2015.11 Bld: 10.28.2015.8.40. Accessed September 15, 2021.

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Further, the proposed Project would be designed to collect stormwater only from within the Project site boundaries into a new collection and conveyance system and discharged through one existing and one relocated stormwater outfall as described on Draft EIR pp. 3-51 through 3-53. The elevation of the stormwater outfalls would be designed to incorporate future increases in water surface elevations in the Estuary due to sea level rise as documented in the stormwater drainage study prepared by BKF Engineers for the Project sponsor.⁶ As described on Draft EIR pp. 4.9-21 through 4.9-25, the proposed Project would be required to meet state, Port, and City regulations for meeting stormwater quality criteria, including implementation of Mitigation Measures HYD-1a and HYD-1b. Both mitigation measures prescribe a number of requirements that would reduce pollutants in stormwater runoff. As stated on Draft EIR p. 4.9-20, the Estuary is considered a waterway under the City's Creek Protection Ordinance, components of which were used to develop Mitigation Measure HYD-1a to protect water quality in the Estuary during and after Project construction with implementation of BMPs and monitoring of effectiveness of BMPs. The BMPs identified in Mitigation Measure HYD-1a are standard for projects requiring a Creek Protection Plan in the City to protect the applicable waterway with regard to the City's Creek Protection Ordinance. The proposed Project would be designed with 13 percent less impervious surfaces compared to current conditions as documented in Draft EIR Table 4.16-2 in Section 4.16, *Utilities and Service Systems*. See Response to Comment I307-2-11, which describes how the proposed Project would reduce stormwater runoff by 25 percent from existing conditions.

Impacts of the proposed Project on sea level rise related to stormwater flooding were analyzed on Draft EIR pp. 4.9-30 through 4.9-36. Impacts were found to be less than significant with Mitigation Measure HYD-3. Impacts related to the proposed Project's changes in site elevation on the Flood Emergency Management Agency (FEMA) flood map zones and on impeding or redirecting flood flows were analyzed on Draft EIR p. 4.9-29. The Draft EIR concluded that with implementation of Mitigation Measure HYD-2, impacts would be less than significant. In addition, the only area of the Project site within a FEMA-identified Special Flood Hazard Area (SFHA) is a small portion at the northeast corner of the Project site. This area of the Project site is isolated and would be removed from the SFHA by elevating the interior portion of the Project site and would not impede from the Estuary to flood

⁶ BKF Engineers, 2021. Howard Terminal – Preliminary Storm Drainage Study, August 5, 2021.

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adjacent areas that with current elevations well above the SFHA criteria for the 100-year flood. Therefore, the proposed Project would not impede or redirect flows inland to areas surrounding the Project site.

O-27-60 The Draft EIR documented the existing setting for the regional groundwater basin and groundwater quality at the Project site on Draft EIR pp. 4.9-3 and 4.9-4 in Section 4.9, *Hydrology and Water Quality*, respectively. In addition, the groundwater quality is also described, and impacts related to contaminated groundwater handling during construction and operation of the proposed Project, are addressed in Section 4.8, *Hazards and Hazardous Materials*. Specifically, an extensive description of the environmental setting for contaminants within the Project site and adjacent areas is provided on Draft EIR pp. 4.8-1 through 4.8-23, including information on groundwater quality, monitoring, and remediation activities. References and technical studies used in preparation of the Draft EIR for specific contaminant concentrations and reporting are provided on Draft EIR p. 4.8-60. The existing and future site-specific regulatory framework and governing documents described on pp. 4.8-32 through 4.8-38 include information on regulatory documents approved and monitored by the DTSC for the continued remediation through a remediation plans, LUCs, dewatering groundwater management, groundwater monitoring program, and other documents to maintain the containment of on-site contamination and prevent release of contaminants to the environment. Further, Draft EIR pp. 4.8-40 through 4.8-45 provide information on the approach to the analyses of hazards and hazardous materials, including for the remediation and mitigation of contaminated materials and groundwater management of dewatering during construction and operation of the proposed Project. The effects of groundwater dewatering during and after construction of the proposed Project were found to be less than significant with mitigation on groundwater quantity and quality, as documented on Draft EIR pp. 4.8-48 through 4.8-53 related to dewatering of contaminated groundwater for construction and remediation purposes. The effects of groundwater dewatering on an as-needed basis during construction or operation would not result in a net deficit in the groundwater aquifer, as described on Draft EIR pp. 4.9-25 through 4.9-27 and 4.9-37.

See also Responses to Comments A-12-43 and A-12-47 regarding sea level rise adaptation and groundwater and contaminated conditions.

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also fails to analyze the potential remobilization of groundwater and soil contaminants or potentially commingled contaminated groundwater and stormwater due to sea level rise; and fails to provide a dewatering plan clearly describing the extent and duration of proposed dewatering, or a groundwater model that accounts for the substantial dewatering required for the Project which could adversely impact local groundwater flow dynamics, recharge rates (and local surface water quality). Terraphase Report at 10

O-27-61

- **Cutoff Wall.** The DEIR states that a “cutoff wall” could be installed to control groundwater inflow into the ballpark area (DEIR at 4.9-21), but it does not discuss impacts to flow direction or impacts associated with construction of the wall itself. Terraphase Report at 10.

O-27-62

- **Beneficial Uses.** The DEIR fails to analyze all beneficial uses of groundwater beneath the Project site. DEIR at 4.9-26, HYD-2. De-designation of beneficial uses requires an amendment to the Water Quality Control Plan for the San Francisco Bay Area which has not occurred.

O-27-63

- **Tidal Zone.** Project construction and associated in-water work would result in temporary and potential long-term significant impacts to the near-shore tidal zone, water quality, and marine life in adjacent waters that are not adequately mitigated. The DEIR relies on the future preparation of a Creek Protection Plan (HYD-1a), but this reference is unclear because the DEIR notes the absence of any creeks at or adjacent to the Project site, and it is impossible to evaluate the significance of any future proposed mitigation measures because the Plan does not now exist.

E. Inconsistency with Land Use, Plans and Policies.

O-27-64

As discussed in the AES Report, the DEIR’s analysis of potential land use incompatibility is insufficient. The DEIR identifies numerous potential land and water-based use conflicts that could arise due to introduction of new residential and office/commercial uses on the Project site adjacent to Port, as well as industrial and railroad uses, but then concludes that the Project would not result in a fundamental conflict with nearby land uses and impacts would be less than significant with mitigation. DEIR at 4.10-33 to 4.10-44. This conclusion is unwarranted and unsupported for a number of reasons:

- **Land Use Conflicts.** The DEIR identifies numerous potential land and water-based use conflicts that could arise due to the Project, including: (1) increased vehicular/pedestrian/bike traffic that could mix with Seaport traffic, (2) increased cut-through traffic, (3) additional traffic at at-grade rail crossings, and (4) exposure of new residents to noise and diesel exhaust emissions and other contaminants (DEIR at 4.10-33- 44), but fails to adequately analyze and disclose the significance of these impacts.

O-27-65

- **Seaport Compatibility Measures.** The DEIR improperly defers mitigation to future potential “Seaport Compatibility Measures” to ensure that the Project does not impact or interfere with the Port’s use or operations. DEIR at 4.10-33. The DEIR does not

O-27-61 See Response to Comment O-27-60 regarding dewatering of groundwater. As discussed on Draft EIR pp. 4.9-26 and 4.9-38 in Section 4.9, *Hydrology and Water Quality*, construction of a cutoff wall would largely isolate groundwater beneath the ballpark, but it would be anticipated that some groundwater would seep through or under the cutoff wall. Further, the quantity of groundwater dewatered on an as-needed basis during the operation and maintenance of the cutoff wall drain water collection system would not be substantial relative to the volume of the adjacent Inner Harbor, the daily tidal fluctuation-effects on groundwater levels within the Project site and surrounding properties, and the volume and flow of the greater East Bay Groundwater Basin toward the Inner Harbor. Therefore, the proposed Project would not result in a net deficit in the groundwater aquifer or alteration in the groundwater flow dynamics in the area of the Project site. As stated on Draft EIR pp. 4.16-25 and 4.16-26 in Section 4.16, *Utilities and Service Systems*, analysis of effects of Project construction as a whole (e.g., air quality and noise impacts from trenching for pipeline routes, grading, use of construction equipment, etc.) occur throughout the other technical sections in the Draft EIR. Further, impacts of construction on hydrology and water quality, in particular the effects of constructing stormwater management infrastructure, were provided on Draft EIR pp. 4.9-19 through 4.9-39 in Section 4.9, *Hydrology and Water Quality*. Also see Responses to Comments A-7-47 and A-12-48.

O-27-62 As described on Draft EIR p. 4.8-32 in Section 4.8, *Hazards and Hazardous Materials*, groundwater beneath the proposed Project site is under the jurisdiction of the DTSC due to the contamination levels. Current LUCs in place prohibit the use of groundwater beneath the Project site for use other than dewatering for construction or remediation purposes into the long-term future. The proposed Project does not propose to de-designate beneficial uses of groundwater. Further, the Water Board has not specifically designated beneficial uses of groundwater beneath the Project site. As described on p. 4.16-25 in Draft EIR Section 4.16, *Utilities and Service Systems*, and throughout the Draft EIR, physical impacts of earthwork and construction and operation of the proposed Project are analyzed in all of the technical sections in Chapter 4, *Environmental Setting, Impacts, and Mitigation Measures*.

O-27-63 See Response to Comment O-27-59 regarding Mitigation Measure HYD-1a. See also Draft EIR Section 4.3, *Biological Resources*, for more information, analysis, mitigation, and permitting related to in-water work effects on marine

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and estuarine biological resources and water quality in the near-shore tidal zone. See Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*, regarding use of performance standards and future plans.

- O-27-64 See Consolidated Response 4.4, *Port Operations and Land Use Compatibility* regarding land use conflicts and Port operations, and Response to Comment A-12-26 regarding land use conflicts and air quality. As discussed on Draft EIR p. 4.10-45, with the inclusion of Mitigation Measure NOI-3, the proposed Project would not expose Project residents to existing noise levels in excess of the City’s Land Use Compatibility Guidelines such that a fundamental land use conflict would occur. While potential land and water-based use conflicts could arise due to the introduction of new residential and office/commercial uses on the Project site adjacent to Port, industrial, and railroad uses, there is no evidence to suggest that the Project would result in a significant fundamental land use conflict after the implementation of mitigation measures described under Impact LUP-2. The Draft EIR concludes on p. 4.10-51 that with the inclusion of Mitigation Measures LUP-1a, LUP-1b, LUP-1c, AIR-1b, AIR-1c, AIR-2c, AIR-2d, AIR-2e, AIR-3, AIR-4a, AIR-4b, AIR-2.CU, BIO-1b, NOI-3, TRANS-1a, and TRANS-1b, the proposed Project would not result in a fundamental conflict with nearby uses and impacts would be less than significant. See also Response to Comment A-12-26.
- O-27-65 The Seaport Compatibility Measures are required under the Term Sheet for the real estate transaction between the Port and the Project sponsor, and continue to be negotiated as part of the business terms of that transaction. This is not an improper deferral of mitigation. The Draft EIR already accounts for and analyzes certain anticipated Seaport Compatibility Measures, and the Seaport Compatibility Measures will include certain mitigation measures identified in the Draft EIR. See Consolidated Responses 4.1, *Project Description*, and 4.4, *Port Operations and Land Use Compatibility*, relating to Seaport Compatibility Measures.

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analyze how that could be feasible or even possible, and this impact should be determined significant and unavoidable.

O-27-66

- Downtown Oakland Specific Plan. The DEIR fails to account for cumulative impacts of the Project taken together with reasonably foreseeable development under the DTOSP with regard to conflict with existing land uses, addressing the DTOSP in just two paragraphs and failing to account for significant cumulative traffic impacts, among others. See DEIR at 4.10-68.; see also AES Report and Appendix 1 (Comment Letter on Draft EIR for Downtown Oakland Specific Plan, submitted by Pacific Merchant Shipping Association et. al., November 8, 2019).

F. The Transportation and Circulation Analysis is Deficient.

O-27-67

The DEIR’s transportation analysis fails to account for the Project’s potentially significant impacts to traffic and circulation and resulting impacts on existing Port operations. Specific deficiencies in the DEIR’s transportation analysis are noted below and supplemental comments regarding transportation are provided in the Kittelson Report.²⁵

O-27-68

- Increased VMT Due to Relocation of Truck Operations. The DEIR acknowledges that VMT associated with truck travel is likely to change due to trucks being relocated from Howard Terminal, but erroneously concludes that estimating the change in truck VMT would be speculative and therefore no estimate was completed. Kittelson Report at 1, 9.

O-27-69

- Inconsistent Significance Criteria for VMT. The DEIR establishes significance criteria for VMT that are inconsistent with the City of Oakland Transportation Impact Review Guidelines (“TIRG”), dated April 2017. Kittelson Report at 1-2, 10.

O-27-70

- Potentially Significant VMT Impacts for the Retail Component. The DEIR fails to disclose a significant impact due to a net increase in VMT per service population. Kittelson Report at 2, 10.
- Transportation Demand Management Plan for the Performance Venue. The DEIR does not support the claim that the transportation demand management (“TDM”) plan for the performance venue will reduce VMT to a level constituting a less-than-significant impact. Kittelson Report at 2, 6.

O-27-71

- Impacts of Train Blockages. The DEIR fails to sufficiently analyze how the higher volume of vehicular and pedestrian traffic created by the Project would increase congestion and hazards at the at-grade rail crossings at Market Street, Martin Luther

²⁵ See Kittelson & Associates Technical Memorandum, *Waterfront Ballpark District at Howard Terminal DEIR (Case File No. ER18-016) (State Clearinghouse No. 2018112070)* (Kittelson & Associates, April 21, 2021) (“Kittelson Report”), attached as Appendix 4 to the AES Report.

O-27-66

Both the cumulative forecast and a project list were used to establish the cumulative development, pursuant to State CEQA Guidelines Section 15130(b)(1). Adjustments and assumptions for cumulative development setting is discussed starting on Draft EIR p. 4.0-9. See Response to Comment A-7-45, which describes the formulation and content of the overall cumulative setting established for the cumulative analysis in the Draft EIR.

As part of the cumulative setting development, EIR preparers made manual adjustments to the land use assumptions in the regional forecast/projections and models specifically to ensure that projects on the City of Oakland’s “major projects list” and the Draft Downtown Oakland Specific Plan (DOSP) in particular were accounted for. Moreover, as stated on Draft EIR p. 4.15-243, the proposed Project was assumed to not be included in the forecast model used to present a more conservative analysis. Planned and approved transportation improvements are also factored into the Draft EIR cumulative analysis and are listed on p. 4.0-12 of and in Section 4.15, *Transportation and Circulation*.

The cumulative baseline was confirmed to reflect growth anticipated from adopted specific plans near the Project site (i.e., West Oakland Specific Plan, Lake Merritt Station Area Plan), recently approved and proposed development projects within these plan areas, as well as other individual development projects identified by City staff and the Port of Oakland’s annual operating capacity assumed to occur by 2040. Because the Coliseum Area Specific Plan (CASP) and EIR have been approved by the City, the redevelopment that could occur under that Specific Plan is included as a cumulative project (p. 4.0-11 of the Draft EIR). The cumulative analysis of health risks due to emissions of air pollutants also factored in analysis from the West Oakland Community Action Plan (WOCAP) (p. 4.15-243 of the Draft EIR).

The cumulative analysis considering the proposed Project, the Maritime Reservation Scenario (MRS), and each of the proposed Project variants (separately and combined) in combination of cumulative development is conducted for each environmental topic in Chapters 4 and 5 of the Draft EIR. Overall, the cumulative analysis appropriately describes a geographic scope tailored to the relevant topic, address each significance criteria (combined where appropriate), assesses whether a cumulative impact would result without the proposed Project or MRS, and if so, if the incremental effect of the proposed Project or MRS (with and without either of the Project variants)

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is cumulatively considerable when combined with cumulative development. The cumulative analysis in the Draft EIR is consistent with State CEQA Guidelines Section 15130 and discloses the information required for decision makers to consider prior to deciding to take action on the proposed Project.

O-27-67 This is a general comment that includes introductory remarks and serves to introduce the more specific comments that are responded to in detail below. As a result, no specific response is provided here.

Section 4.10 of the Draft EIR contains a discussion of Seaport road and rail access in considering whether the proposed Project would conflict with adjacent or nearby land or water-based uses. See Consolidated Response 4.4, *Port Operations and Land Use Compatibility*, and Consolidated Response 4.5, *Truck Relocation*.

O-27-68 See Consolidated Response 4.5, *Truck Relocation*, regarding Howard Terminal and vehicle miles traveled (VMT).

O-27-69 See Response to Comment O29-2-2 and Response to Comment O29-2-4.

O-27-70 See Response to Comment O29-2-5.

O-27-71 See Consolidated Response 4.6, *Rail Safety, Grade Crossing, and Grade Separation*, for responses to issues raised in the comment.

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King Way, and Clay Street, including blockages of emergency service vehicles, Project access, and Port operations. Kittelson Report at 2-3.²⁶

O-27-72

- Deferred Mitigation. The Transportation Management Plan (“TMP”) and the Transportation Demand Management Plan (“TDMP”) include measures that are too vague and lack adequate performance standards to qualify as permissible deferred mitigation. Kittelson Report at 8.

O-27-73

In addition to the above, the Kittelson Report identifies numerous additional problems with the DEIR’s transportation and circulation impacts analysis, including flaws in the DEIR’s trip generation assumptions, inadequate street capacity to meet Project traffic demands (Kittelson Report at 5), inadequate sidewalk capacity for pedestrian demand (*id.* at 11), lack of sufficient parking supply (*id.* at 3), and others. While some impacts such as parking may not be categorized as transportation effects for CEQA purposes, they still contribute to overall degradation of the Project area’s transportation elements and system if added to today’s transportation baseline.

G. Additional Deficiencies in the DEIR.

O-27-74

In addition to the foregoing, the DEIR is deficient in a number of other important ways outlined briefly below and discussed in more detail in the AES Report and the attached technical reports, incorporated herein. These include the DEIR’s treatment of energy; aesthetics, shadow, wind and glare; cultural resources; noise and vibration; population and housing; public services; recreation; utilities and service systems; cumulative effects; and indirect growth-inducing effects.

O-27-75

For example, regarding aesthetics, shadow and wind, the HT Project would construct the tallest buildings in Oakland. The tallest building in Oakland today is the Ordway Building downtown at 404 feet, while Project plans would construct two 600-foot luxury condo towers, along with three other 400-foot towers, and two 350-foot towers. Massing and height of this kind are unprecedented anywhere in Oakland, much less on the industrial waterfront, and would present significant aesthetic and planning issues for the City and its residents, especially because the Project would be in a highly visible and sensitive waterfront location where no buildings in the immediate vicinity currently exceed four stories. The DEIR’s conclusion that the visual effects of the Project would be less than significant is plainly not

²⁶ As the DEIR acknowledges, the Union Pacific Railroad tracks border the eastern boundary of the Project, and are used 24/7 by UPRR, Capitol Corridor, San Joaquin, and Amtrak Long Distance trains. See also comments of Adrian Guerrero, General Director of Public Affairs for Union Pacific Railroad, submitted for April 21, 2021 meeting of the Oakland Planning Commission, on the proposed Waterfront Ballpark District Project, with video illustrating UPRR’s Oakland terminal facilities, and rights of way and operations, highlighting the associated safety concerns with the HT Project, available at: <https://updrop.upcorp.ad.uprr.com/?ShareToken=C72A12442D33E131B882EAF6F5E0645FC198D3B1>.

A second video graphically demonstrating the potential impacts and safety risks involved without full and adequate above-grade separation for pedestrian, cycling and vehicle crossings is found at the following link: <https://www.sandiegouniontribune.com/sdut-padres-fans-warned-about-railroad-safety-2010sep08-htmlstory.html>.

- O-27-72 This is not an improper deferral of mitigation. A draft TMP is provided in Draft EIR Appendix TRA.1. The TDM Plan and TMP effectiveness memorandum included in Draft EIR Appendix TRA.2 demonstrates that the mitigation measures (Mitigation Measures TRANS-1a and TRANS-1b) would be effective if sufficient strategies and programs are applied. As explained in Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*, because the effectiveness of various vehicle trip reduction strategies is likely to change over time as there are changes in transit services, parking supplies, travel behavior, and advances in technology, it would be impractical to lock-in place a list of discrete actions at the time the Project is approved, and is therefore appropriate to require approval of a TDM plan for each building prior to occupancy and approval of the TMP prior to building permits for the ballpark. See Consolidated Response 4.23, *Transportation and Parking Demand Management Plan and Transportation Management Plan Considerations*, for additional information regarding this issues raised in this comment.
- O-27-73 Traffic congestion or measures of vehicular delay are not an environmental impact under CEQA per State CEQA Guidelines Section 15064.3. Traffic congestion, parking, and sidewalk impacts are not a CEQA significance criterion per the City of Oakland Transportation Impact Review Guidelines Chapter 5, *CEQA Analysis*. See Response to Comment O-29-2-19 regarding street capacity and Response to Comment O-29-2-20 regarding trip generation. See Response to Comment O29-2-48 for additional information related to sidewalk congestion.
- O-27-74 This is a general comment that includes introductory remarks and serves to introduce the more specific comments, including those within attachments, that are responded to in detail below. As a result, no specific response is provided here.
- O-27-75 As explained on Draft EIR p. 4.1-1, in accordance with CEQA Section 21099(d), added by Senate Bill 743 (2103), aesthetic impacts of a mixed-use project that includes residential uses and is on an infill site within a transit priority area “shall not be considered significant impacts on the environment.” Accordingly, aesthetics is not considered in identifying the Project’s significant environmental effects because it meets the applicable criteria in Section 20199(d). Thus, the Draft EIR does not consider aesthetics in determining the significance of Project impacts under CEQA. Nevertheless, the Draft EIR includes information about aesthetics for informational purposes. The Draft

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EIR acknowledges on p. 4.1-39 that proposed Project buildings “would become a visually prominent feature of the visual landscape that would result in the loss of open skyline when viewing the proposed Project site from nearby areas [and] would also partially affect scenic vistas of San Francisco Bay, the downtown Oakland skyline, and the Oakland Hills.” However, the proposed Project also would enhance access to—and views of—the waterfront and historic resources in the Project vicinity and would provide new waterfront and elevated publicly accessible scenic viewpoints from which scenic resources and scenic vistas can be viewed. The Draft EIR determines that proposed Project effects on scenic resources and scenic vistas would be less than significant, were the Project subject to a review of aesthetics under CEQA. Likewise, with respect to visual character and quality, the Draft EIR acknowledges on p. 4.1-41 that the proposed Project “would substantially alter the visual character of the area.” However, because the existing visual setting is diverse and relatively non cohesive, the proposed Project would not introduce a new visual element that is inconsistent with established cohesive visual patterns. Nevertheless, as stated on Draft EIR p. 4.1-41, “some observers could be more keenly aware of any increase in building height or overall density, and these observers could find these changes substantially disruptive. On the other hand, it is likely that some observers would not consider the changes to the visual setting to be substantial, while still others would see a benefit in certain alterations of the built environment.” Therefore, the Draft EIR concludes that the proposed Project would be generally consistent with the City’s policies regarding visual character and quality.

Additionally, the City and the Port of Oakland are cooperating to establish a shared regulatory framework that would, among other things, impose design review criteria to which the Project would conform. For these reasons, the overall impact of proposed Project related to visual character would not be adverse, and this impact would be less than significant if the proposed Project was subject to a review of aesthetics under CEQA.

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O-27-75

supportable – the changes to views and architectural style will be extreme and significant to the residents in West Oakland and the public in general and would permanently scar the historic visual character of the area as a seaport.²⁷

O-27-76

As another example, the DEIR fails to assess the impacts of the Project, including its nature, density and massing, that would negatively affect historic resources in the vicinity of the Project, including the Southern Pacific Railroad Corridor (“SPRC”), the Remillard Brick Company, the *USS Potomac* and *Lightship Relief*, the Muller Brothers Pickle Factory, the Wempe Brothers-Western Paper Box Company, and the proposed Jack London Maker District located just two blocks north of the SPRC along 3rd Street between Brush and Clay Streets. Numerous buildings in the area retain historic character and appearance recognizable as historical resources, indicating that a larger National Register Landscape District could be established in the area. Significant aesthetic impacts to all these cultural resources would result from construction of a large-scale baseball stadium and residential, entertainment, office, hotel, and retail uses, ranging from 50 to 600 feet high, that would dwarf all other structures or buildings in the area and permanently alter the visual character of the maritime industrial complex in and around the Howard Terminal and the Port. However, the DEIR improperly omits this analysis.

O-27-77

Finally, as described in the AES Report, the DEIR’s assessment of both cumulative impacts and growth-inducing impacts is clearly insufficient, given the DEIR’s failure sufficiently to address reasonably foreseeable levels of development under both the DTOSP and the CASP.²⁸

VII. THE DEIR’S ANALYSIS OF ALTERNATIVES IS DEFICIENT.

A. The Analysis of the Coliseum Area Alternative is Insufficient.

O-27-78

An EIR must “include sufficient information about each alternative to allow *meaningful* evaluation, analysis, and comparison with the proposed project.” CEQA Guidelines § 15126.6(d) (emphasis added). Here, the DEIR includes a cursory and misleading analysis of the Off-site Coliseum Area Alternative (Alternative 2) and its environmental effects. In many cases the discussion of impacts is just a few paragraphs. For most of the impact areas, the DEIR summarily concludes that impacts would be “similar” to those of the proposed Project, without providing a full analysis of Alternative 2’s potential impacts (and in some cases without an accurate statement of Project-related impacts), including its potential advantages over the Project. The DEIR’s analysis of Alternative 2 relies mostly on outdated

²⁷ The buildings would also present unmitigated impacts due to glare for safe navigation. Mitigation Measure BIO-1b, which would incorporate specific design elements into the Project to avoid or minimize avian collisions, applies only for first 60 feet above the ground “or to the height of existing adjacent landscape or the height of the proposed landscape.” DEIR at 4.3-37 to 4.3-38.

²⁸ The Project Sponsor’s recently-released Development Agreement Terms Sheet forecasts gross and unexplained numbers for Project and financing district revenues to be directed at a variety of infrastructure improvements and other purposes, such as affordable housing. Clearly, these could potentially be growth-inducing and contribute to cumulative impacts; and the full ramifications of such proposals should have been revealed and discussed in detail in the DEIR, and the analysis made available for public review and comment.

O-27-76 Of the resources listed by the comment, the Southern Pacific Railroad Industrial Landscape API, the *USS Potomac*, and the *Lightship Relief* fall within the Project study area and are included in the Draft EIR. The Muller Brothers Pickle Factory API, Wempe-Western Paper Box Company (1155 5th Street), and proposed Jack London Maker District and are located outside of the study area. The Remillard Brick Company (590-592 2nd Street) is no longer considered a historic resource due to considerable alterations and the Oakland Iron Works Machine and Blacksmith shop has been demolished.⁷ See Response to Comment H-1-11 regarding the consideration of adjacent historic resources under CEQA.

The documentation for the historic resources in the area does not support a shared, unified historical context or period of significance for the broader area. This documentation includes the Oakland Cultural Heritage Survey forms, surveys and evaluations conducted for this project for resources within the study area, as well as the survey conducted for the Draft Downtown Oakland Specific Plan (DOSP). Without a shared context and period of significance, an evaluation of integrity with respects to a potential historic district is not applicable. Appearance and relative construction dates alone are insufficient to conclude that the area qualifies as a historic resource for the purpose of CEQA.

The proposed Project would permanently alter the visual character of the area. Consideration of this alteration of setting with regard to historic resources is subject to the CEQA significance thresholds. To be considered an impact on historic resources, the change in visual character must be demonstrated to “materially impair” the resource.

For those resources within the proposed Project study area, none would be “materially impaired” by the Project, nor do any derive their significance from their proximity to or characteristics of the Howard Terminal site. Impacts associated with development of the general area are discussed in the DOSP Draft EIR and are outside the scope of the CEQA required considerations for historic resources associated with the proposed Project.

⁷ <https://oakgis.maps.arcgis.com/apps/webappviewer/index.html?id=3676148ea4924fc7b75e7350903c7224>

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O-27-77 See Response to Comment O-29-113 regarding the Draft EIR's evaluation of cumulative impacts and growth inducement related to the Downtown Oakland Specific Plan (DOSP) or the Coliseum Area Specific Plan (CASP).

O-27-78 This comment is a summary of CEQA provisions and case law. This comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft EIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Project.

With respect to the comment on the level of detail of the EIR's analysis of Alternative 2: The Off-Site (Coliseum Area) Alternative, alternatives do not need to be described or analyzed at the same level of detail as the proposed project. (State CEQA Guidelines Section 15126.6(d)). Alternatives only need to be described in enough detail to allow a comparative analysis of the alternatives against the proposed project. (*Residents Ad Hoc Stadium Committee v. Board of Trustees* (1979) 89 Cal.App.3d 274.) See Consolidated Response 4.10, *Alternative 2: The Off-Site (Coliseum Area) Alternative*.

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analysis of Alternative 2C from the Coliseum Area Specific Plan EIR.²⁹ Such conclusory analysis precludes “meaningful evaluation” of Alternative 2’s impacts and prevents decisionmakers and the public from meaningfully comparing the impacts of Alternative 2 to those of the proposed Project, and from understanding which is superior from an environmental viewpoint.

O-27-79 See Consolidated Response 4.10, *Alternative 2: The Off-Site (Coliseum Area) Alternative*.

O-27-80 See Consolidated Response 4.10, *Alternative 2: The Off-Site (Coliseum Area) Alternative*.

O-27-81 See Consolidated Response 4.10, *Alternative 2: The Off-Site (Coliseum Area) Alternative*.

O-27-79

For example, the DEIR concludes that “impacts related to hazards and hazardous materials under Alternative 2 would be . . . similar to the proposed Project with mitigation.” DEIR at 6-18. This is clearly not the case. Subsurface contamination at Howard Terminal is substantially more extensive laterally, and more pervasive, than contamination at the Coliseum site. See Terraphase Report at 12. Regardless of whether impacts at both locations could possibly be mitigated to an insignificant level, that does not make them equal or comparable; and it does not excuse the DEIR from addressing in more detail the order-of-magnitude differences in the nature and extent of the contamination and the different steps necessary to remediate the competing sites in order to mitigate the potential human health and ecological risk.

O-27-82 See Consolidated Response 4.10, *Alternative 2: The Off-Site (Coliseum Area) Alternative*.

O-27-80

As discussed in more detail in the AES Report, other environmental impacts would plainly be more severe at the Howard Terminal site than at the Coliseum, including effects associated with land use conflicts and transportation/circulation issues. For example, unlike the Howard Terminal, the Coliseum site is well-connected to local and regional roadways and freeways, and to public transportation systems such as BART and the Oakland Airport. The proposed Project, if located at the Coliseum site, would not require consideration of overly expensive and unlikely improvements such as an aerial gondola system to cross highways and railroad tracks; an above-grade separation for vehicles to cross railroad tracks; and possible interference with marine improvements such as the turning basin expansion for Port vessel traffic. At a minimum, more meaningful comparison of the Project and Alternative 2 should include not only those key points, but also the following:

O-27-81

- Impacts to historic resources would be greater under the proposed Project. The DEIR states that demolition of the Coliseum would not occur under the Proposed Project. See DEIR at 6-16. However, the DEIR acknowledges that demolition of the Coliseum and redevelopment would occur under either scenario. See DEIR at 7-11 (noting that the CASP “support[s] redevelopment of the site and surrounding area” and that the CASP EIR “considered several redevelopment scenarios for the site, all of which anticipated demolition of the Oakland Coliseum.”).

O-27-82

- Population and housing impacts (DEIR at 6-19) would be similar in terms of number of units, but Alternative 2 would involve fewer environmental and other impacts.

²⁹ The DEIR states that Alternative 2C is “similar but not identical to the Off-Site Alternative evaluated here” and therefore “the analysis in this section estimates impacts that vary somewhat from those identified in the CASP EIR.” DEIR 6-13. See Table 6-1, comparing development under Alternative 2 and CASP EIR Alternative 2C. There are several differences; for example, the ballpark under CASP Alternative 2C would have a 39,000-seat capacity, vs. the 35,000-seat capacity under Alternative 2, and Alternative 2C would have 4,000 dwelling units, vs. the 3,000 units under Alternative 2.

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O-27-83

- Noise and vibration impacts at the Howard Terminal site would remain significant and unavoidable. Noise-sensitive land uses would be exposed to train horn activity and 24-hour noise sources that cannot limit hours of operation. DEIR at 4.11-18. The proposed Project also would remove the buffer area between industrial and residential land uses, DEIR at 4.11-1, 4.11-60. On the other hand, operational noise from the Coliseum Alternative would not violate City of Oakland Standard Conditions of Approval. See CASP at 4.10-24.

B. The DEIR Fails to Analyze a Reasonable Range of Alternatives.

O-27-84

As noted above, the DEIR defines project objectives in an overly restrictive manner that precludes adequate consideration of reasonably feasible off-site alternatives. Most objectives reference a “waterfront” project at the Port and/or in proximity to Jack London Square (DEIR at 3-15 to 3-16), which basically encompasses only the Howard Terminal. See Section V.B., *supra*. However, an EIR must “describe a range of reasonable alternatives to the project, *or to the location of the project*, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives.” CEQA Guidelines § 15126.6(a) (emphasis added). The DEIR’s focus solely on a “waterfront” location near Jack London Square resulted in an insufficient and cursory analysis of the Coliseum Alternative and potential variants at that site.

O-27-85

For example, the DEIR fails to consider any “reduced development” alternative at the Coliseum site, or other feasible alternatives at the Coliseum site altogether. Alternative 2 simply “transplants” the proposed development designed specifically for the Howard Terminal to the Coliseum site. But CEQA requires a better effort than that when a proposed project, such as the HT Project, will have many significant and unavoidable impacts. A lead agency must consider a “reasonable range of potentially feasible alternatives that will foster informed decision making and public participation.” CEQA Guidelines § 15126.6(a). “The range of alternatives required in an EIR is governed by a ‘rule of reason’ that requires the EIR to set forth only those alternatives necessary to permit a reasoned choice... The range of feasible alternatives shall be selected and discussed in a manner to foster meaningful public participation and informed decisionmaking.” *Id.*, subd. (f).

Here, the DEIR should have studied additional Coliseum alternatives, such as a “reduced development” alternative requiring lower densities of commercial or residential development and/or lower building heights or a different configuration. The Coliseum site does not have anywhere near the site constraints presented at the Howard Terminal site, and there is no reason the project design could not be adjusted or improved for that alternative location, even if provisions of the CASP might need to be amended for such purposes. The DEIR’s failure to consider a lower-density alternative for the Coliseum site precludes meaningful evaluation of the benefits of that site as compared to the Project at the Howard Terminal location.

Please ensure that these comments, along with the AES Report and all appendices thereto, are

O-27-83 See Consolidated Response 4.10, *Alternative 2: The Off-Site (Coliseum Area) Alternative*.

O-27-84 State CEQA Guidelines Section 15126.6(a) requires that an EIR describe a range of reasonable alternatives that would feasibly attain most, but not all of the basic objectives of the Project. Thus, a single Project objective regarding a waterfront location cannot and did not improperly constrain the selection of alternatives for analysis in the Draft EIR. As required by CEQA, the City as Lead Agency selected four alternatives for analysis in Chapter 6 of the Draft EIR, including the required no project alternative, the off-site (Coliseum area) alternative, a reduced development alternative, and an alternative with a vehicular grade separation. Draft EIR Chapter 6 also describes other alternatives that were considered and rejected for a variety of reasons that are clearly explained. Importantly, Section 15126.6(a) of the State CEQA Guidelines indicates that an EIR “need not consider every conceivable alternative to a project” but only those necessary to permit a reasoned choice. See also Response to Comment O-27-35 and Consolidated Response 4.10, *Alternative 2: The Off-Site (Coliseum Area) Alternative*.

O-27-85 The City elected to analyze an off-site alternative at the Coliseum site that would closely resemble the proposed Project so that alternative could “feasibly attain most of the basic objectives of the project” as called for in State CEQA Guidelines Section 15126.6(f). The “rule of reason” requires analysis of only those alternatives necessary to permit a reasoned choice and State CEQA Guidelines Section 15126(b) states that the discussion of alternatives shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project. Variations of the same alternative are also not required; “what is required is the production of information sufficient to permit a reasonable choice of alternatives so far as environmental aspects are concerned.” (*Residents Ad Hoc Stadium Comm. v. Board of Trustees* (1979) 89 Cal.App.3d 274, 286; see also *Cherry Valley Pass Acres & Neighbors v. City of Beaumont* (2010) 190 Cal.App.4th 316, 355-56 [rejecting need to analyze every variation on the alternative continuum for housing project].) In this case, the Draft EIR includes a reduced development alternative and an off-site alternative, allowing decision makers and the public to understand how the impacts of each would compare to the proposed Project. For these reasons, including a reduced alternative at the Coliseum site is not needed to permit a reasoned choice. For information regarding the impacts of other possible alternatives at

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the Coliseum site, see the CASP EIR, which is cited in the Draft EIR and available to reviewers in the administrative record.

See Consolidated Response 4.10, *Alternative 2: The Off-Site (Coliseum Area) Alternative*.

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Please see attached comment letter.

Comments re DEIR (ER18-016)
April 26, 2021

entered into the record for the HT Project.

Sincerely,


Ronald E. Van Buskirk

O-28 The Potomac Association

COMMENT

COMMENT

From: [Vollmann, Peterson](#)
To: [Jillan Feys-Mcney](#)
Subject: Fw: Attached Comments on DEIR for the Oakland Waterfront Ballpark District-
Date: Tuesday, April 27, 2021 11:07:16 AM
Attachments: [William Gilchrist Oakland a DEIR on stationary 4-26.pdf](#)

Jill-

I'm forwarding this e-mail comment letter that was sent to Bill Gilchrist.

Peterson Z. Vollmann | Planner IV | City of Oakland | Bureau of Planning | 250 Frank H. Ogawa, Suite 2114 | Oakland, CA 94612 | Office Phone: (510)238-6167 | Cell Phone: (510)507-4765 | Email: pvollmann@oaklandca.gov | Website: <https://www.oaklandca.gov/>

From: hansonsteven@gmail.com <hansonsteven@gmail.com>
Sent: Monday, April 26, 2021 5:50 PM
To: Gilchrist, William <WGilchrist@oaklandca.gov>; Manasse, Edward <EManasse@oaklandca.gov>
Cc: Vollmann, Peterson <PVollmann@oaklandca.gov>; info@samschwartz.com <info@samschwartz.com>; Pkershaw@portoakland.com <Pkershaw@portoakland.com>; rsinkoff@portoakland.com <rsinkoff@portoakland.com>; jblomberg@esassoc.com <jblomberg@esassoc.com>; bboxer@esassoc.com <bboxer@esassoc.com>; Hgitelman@esassoc.com <Hgitelman@esassoc.com>; 'Walter Abernathy' <walter.abernathy@gmail.com>; 'Dennis Rayer' <drayer@mac.com>; 'Tracy Craig' <tracy@craig-communications.com>
Subject: Attached Comments on DEIR for the Oakland Waterfront Ballpark District-

Dear Mr. Gilchrist,

Our Organization is submitting the attached letter via this email with respect to the DEIR for the Oakland Waterfront Ballpark District. In doing so we are complying with the deadline by submitting our comments before the end of the day, April 27, 2021 as provided in the notice published by the City entitled as follows:

NOTICE OF EXTENSION OF THE COMMENT PERIOD FOR THE WATERFRONT BALLPARK DISTRICT PROJECT DRAFT ENVIRONMENTAL IMPACT REPORT(EIR) AND RESCHEDULED PUBLIC HEARING -- Issued March 19, 2021.

Please note that our interest will be to continue operations in our present location with no more restrictions than presently exist unless agreeable mitigations can be negotiated. We appreciate the opportunity to comment per the attached letter.

If there are any questions. Please contact the undersigned, either of the letter or this email. Thank you for your consideration.

Steve Hanson, Board Member, Potomac Association

THANKS

Steven E. Hanson
hansonsteven@gmail.com
(415)314-0172
My website:

<http://sites.google.com/site/hansonstevenwork/>

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RESPONSE

Presidential Yacht
POTOMAC
F.D.R.'S "Floating White House"



April 26, 2021

William Gilchrist
Director
City of Oakland
Planning & Building Department
250 Frank H. Ogawa Plaza, Suite 3315
Oakland, California 94612

Sent via Email

Subject: Draft Environmental Impact Report (DEIR) for the Oakland Waterfront Ballpark District

The Association for the Preservation of the Presidential Yacht Potomac is headquartered at 540 Water Street in Oakland, and it owns and operates the USS Potomac which is described briefly in the DEIR under 4.4 Cultural and Tribal Cultural Resources. As stated in the DEIR, the vessel has been designated as a National Historic Landmark in 1990.

Historic Significance

While the DEIR states that the designation is not based on the current setting in which the ship is currently berthed, we would argue that the Presidential term of Franklin Delano Roosevelt has had significant impact on the nation, that historical era, and the Bay Area, including Oakland's development and history. The vessel commemorates a period of time that provides a historical perspective to children and adults in the east bay and the Bay Area.

Strategic Location / Facility Support

The vessel's current location is strategic and deliberate. The vessel is operational so it must be located in a centralized location and on navigable waters. In addition, the vessel must be associated with a support center/ interpretive center as well as an area that supports its maintenance and operations. This is a seagoing historic former US Coast Guard vessel which requires constant upkeep and services, including shoreside support, water, sewer and electrical hookups, public ADA access, a floating dock to mitigate for the tides and the like. As well it requires an outside storage yard within reasonable proximity of the vessel for its on-going maintenance and service. The vessel acts as a stationary operating museum which both shore-side visitation as well as operational navigational waterborne tours. All of these services are presently being accommodated at this location.

One of the reasons the Potomac is located in its present location, other than as an historic asset that supports the education of east bay children and adults, is the ease of access; located near the foot of Broadway, where there is significant public transportation infrastructure, adjacent to the Oakland Ferry terminal, and near substantial and available public parking. These are assets that cannot be mitigated except to provide equal and comparable services. In addition, the berthing facilities the Potomac uses which includes the access pier and dock, were constructed with public funds provided by the State of California under Caltrans TEA (Transportation Enhancement Grant) program. This program funds improvements to sites or assets that are of regional significance and the Potomac Pier and dock improvements qualified for significant public investment to make the Potomac accessible to Californians.

The Potomac Association • 540 Water Street Oakland, CA 94607 • 510-627-1215

501(c)(3) Federal tax identification #93-0830589.

O-28-1 The Draft EIR references the National Register nomination for the USS *Potomac* which states that the vessel is significant under both Criteria A (Events) and B (People) for its “association with critical events in the history of the United States during the crisis years of the Depression and the Second World War. Presidential briefings, meetings, and decisions were made on board *Potomac*, and *Potomac* played an integral part in establishing the crucial agreement between the United States and Great Britain prior to America's entry in the war, the Atlantic Charter. Finally, the vessel's significance is enhanced by her brief role in suppressing illegal trade in alcohol after Prohibition as a patrol vessel cruising for ‘rum runners.’” (National Register Nomination, 1991)⁸ Under Criterion B, the USS *Potomac* is recognized for its association with “Franklin Delano Roosevelt (1882-1945), 32nd President of the United States, between 1936 and 1945. While President Roosevelt also used the yacht *Sequoia* (from 1933 to 1936), *Potomac* was the principal vessel associated with the President during the majority of his 13-year tenure in office. *Potomac* is of exceptional national significance because of her major association with the social and official life of the President. During his term of office, *Potomac* was a major symbol of Roosevelt's presidency.” (National Register Nomination, 1991) In 1990, the USS *Potomac* was recognized as a National Historic Landmark because of its exceptional, national historical significance. Since 1995, it has been docked at FDR Pier at the foot of Clay Street.

While FDR's terms in office influenced development throughout the United States, including the Bay Area and Oakland, the significance of the USS *Potomac* is not attributed or related to its current location in the Oakland estuary at the foot of Clay Street. For CEQA, impacts on historic resources must determine if the proposed Project would “cause a substantial adverse change in the significance of an historical resource...” (State CEQA Guidelines Section 15064.5). In this case, the significance as presented in the National Register nomination serves as the basis for an analysis of impacts. Because the current location is not related to the resource's reason for significance as part of the FDR presidency or directly related to the period of significance (1936-1945), changes to that location and its setting as a result of the proposed Project would not result in “substantial adverse changes” to the significance of the USS *Potomac*.

⁸ National Register Nomination, 1991. NFS Form Maritime Heritage of The United States NHL Theme Study—Large Vessels Potomac (Presidential Yacht), October 9, 1991.

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- O-28-2 As noted in Response to Comment O-28-1, the historical significance of maritime resources is not dependent on the current location of these vessels. To protect the resources from physical and operational impacts as a result of the project, Mitigation Measure CUL-1: Maritime Resources Treatment Plan would maintain establish protocols to address construction activities in the vicinity of the resources and maintain access for maintenance and educational programs. Mitigation Measure TRANS-4: Construction Management Plan would require the Project sponsor and general contractor to prepare a plan for review by the City, to minimize potential construction impacts, including impacts to cultural resources such as the USS *Potomac* and Lightship *Relief*. Implementation of this mitigation measure would allow for minimal disruption to and continued operation of maritime resources adjacent to the Project site.

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Non-Profit Public Benefit Corporation

O-28-3 As a non-profit public benefit corporation, the Potomac Association’s primary goal is to maintain and operate the historic former presidential Yacht Potomac for the purpose of preserving this vessel as an historic landmark (American Artifact) for current and future generations and make it available for the purpose of educating all of those who are interested. We rely on tax deductible donations and fundraising efforts as well as fees from visitors and public and private cruises on the vessel. It is imperative that during any and all activities proposed for the former Howard Terminal that these activities not be constrained or compromised, either during construction or during whatever future operations/developments are contemplated. Significant disruptions to our activities will put our non-profit venture at risk as funds generated from our activities could be compromised. We simply want to assure that we can operate as we have been (pre-pandemic) without disruptions to our facilities or significant inconvenience to our clientele.

Mitigations Required

During Construction

O-28-4

- Continued access to this public facility is required to be maintain.
- If necessary, temporary storage locations can be relocated within reasonable areas, but all costs should be borne by developer.
- Parking access for patrons and staff should be maintained.
- Vessel ingress and egress to its berthing facilities should be maintained at all times.
- Potential operational or facility disruptions – Compensation consideration.

Post Construction – Ballpark Operations – Other Development

- Traffic/Parking Mitigation such to permit access to our facilities should be considered and addressed.

Conclusion

O-28-5 In addition to the facilities and location, the Association received a \$2.5 million federal grant which complemented local fundraising efforts to aid with the vessel’s restoration. The vessel was restored in Oakland, by local volunteers and craft workers, as well, it provided job training to local organizations like Civcorps during restoration. The Potomac Association looks forward to working with the City, the Port and the Developer (the Oakland A’s) in making sure we can mutually work through issues that may arise. Additional activity in the area may be beneficial to our efforts to continue to promote our historically significant exhibits and we look forward to collaboration as required.

Sincerely,



Walter A. Abernathy
President

cc: Edward Manasse, Senior Planner, City of Oakland
Peterson Vollmann, Planner IV
Sam Schwartz Engineering
Richard Sinkoff, Director of Environmental Programs and Planning, Port of Oakland
Pam Kershaw, Director, Commercial Real Estate
Brian Boxer, AICP, ESA
Hillary Gitelman, Project Director, ESA

O-28-3 This is a general comment that includes introductory remarks and serves to introduce the more specific comments that are responded to in detail below. To protect the resources from physical and operational impacts as a result of the project, Mitigation Measure CUL-1: Maritime Resources Treatment Plan would maintain establish protocols to address construction activities in the vicinity of the resources and maintain access for maintenance and educational programs. With respect to the *USS Potomac*, Mitigation Measure TRANS-4: Construction Management Plan would require the Project sponsor and general contractor to prepare a plan for review by the City, to minimize potential construction impacts, including impacts to cultural resources such as the *USS Potomac* and *Lightship Relief*. Implementation of this mitigation measure would reduce impacts to a less-than-significant level and would allow for minimal disruption to and continued operation of maritime resources adjacent to the Project site.

O-28-4 Continued access to the *USS Potomac* during construction and operation of the proposed Project site is a baseline assumption for Project design. The Draft EIR identified two mitigation measures to address impacts to the maritime resources. Mitigation Measure CUL-1: Maritime Resources Treatment Plan would maintain establish protocols to address construction activities in the vicinity of the resources and maintain access for maintenance and educational programs. Mitigation Measure TRANS-4: Construction Management Plan, which would require the Project sponsor and general contractor to develop, submit for approval, and carry out a plan to limit proposed Project-related disruptions to the maintenance and operation of The Potomac Association and *USS Potomac*, including at the foot of Clay Street where access to the *USS Potomac* is available to the public. No disruptions to parking in the adjacent parking structures are planned, nor would blockage of ingress and egress to berthing facilities be allowed under this plan. Implementation of this mitigation measure would reduce potential construction transportation related Project impacts to a less-than-significant level. Therefore, no further mitigation is required under CEQA.

O-28-5 This comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft EIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the Proposed Project.

O-29 East Oakland Stadium Alliance, by Analytical Environmental Services (AES)

COMMENT

RESPONSE



April 26, 2021

Peterson Vollmann, Planner IV
City of Oakland Bureau of Planning
250 Frank H. Ogawa Plaza, Suite 2214
Oakland, CA 94612
PVollmann@oaklandca.gov

Re: Review of Draft Environmental Impact Report for the Waterfront Ballpark District at Howard Terminal

Dear Mr. Vollman,

On behalf of the East Oakland Stadium Alliance and its members ("EOSA"), Analytical Environmental Services ("AES") has completed a technical peer review of the Draft Environmental Impact Report ("HT DEIR" or "DEIR") for the Waterfront Ballpark District at Howard Terminal Project ("Project"). As part of our review, we have engaged in-house experts, as well as specialty subject matter experts, to review and evaluate key issues.

The findings of our analysis are summarized in the following letter and are supported in part by the attached technical reports. The following attachments to our letter should be considered an integral part of our comments on the DEIR analysis, and individually considered and addressed in accordance with California Environmental Quality Act ("CEQA") Guidelines section 15088.¹

- **Attachment 1 - Comments on the Draft Environmental Impact Report for the Oakland Waterfront Ballpark District Project at Howard Terminal.** Foulweather Consulting, April 22, 2021. Foulweather Consulting conducted an in depth review of the HT DEIR's analysis of impacts associated with Air Quality (Section 4.2) and Greenhouse Gas Emissions (Section 4.7) and alternatives as they relate to those topics.
- **Attachment 2 - Review of Selected Sections of the Draft Environmental Impact Report for the Waterfront Ballpark District at Howard Terminal, Oakland, California.** Terraphase Engineering Inc., April 26, 2021. Terraphase Engineering conducted an in depth review of the HT DEIR's analysis of impacts associated with Geology and Soils (Section 4.6), Hazards and Hazardous Materials (Section 4.8), Hydrology and Water Quality (Section 4.9), and alternatives as they relate to those topics.
- **Attachment 3 - Technical Memorandum - Waterfront Ballpark District at Howard Terminal DEIR.** Kittelson & Associates, Inc., April 21, 2021. Kittelson & Associates conducted an in depth review of the HT DEIR's analysis of impacts associated with Transportation and Circulation (Section 4.15) and alternatives as they relate to those topics.
- **Attachment 4 - DEIR Comments - Cultural Resources.** C. Gross, AES Senior Archaeologist, March 19, 2021. AES conducted an in depth review of the HT DEIR's analysis of impacts associated with Cultural and Tribal Cultural Resources (Section 4.4) and alternatives as they relate to those

¹ State CEQA Guidelines ("CEQA Guidelines"), 14 Cal. Code Regs. § 15000, et seq. implement the California Environmental Quality Act ("CEQA"), Public Resources Code § 21000, et seq.

- O-29-1 This is a general comment that includes introductory remarks and serves to introduce the more specific comments, including those in attachments, that are responded to in detail below. As a result, no specific response is provided here.
- O-29-2 Attachment 1 to this comment letter is acknowledged. See Responses to Comments O29-1-1 through O29-1-43 for specific responses to comments raised.
- O-29-3 Attachment 2 to this comment letter is acknowledged. See Responses to Comments O29-1-44 through O29-1-80 for responses to specific comments raised.
- O-29-4 Attachment 3 to this comment letter is acknowledged. See Responses to Comments O29-2-1 through O29-2-49 for responses to specific comments raised.
- O-29-5 Attachment 4 to this comment letter is acknowledged. See Responses to Comments O29-2-50 through O29-2-58 for responses to specific comments raised.

O-29-1

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topics.

O-29-6

- **Attachment 5 - Peer Review: A's Urban Decay Consideration - ESA File D17044.00; October 11, 2019. Analytical Environmental Services, March 8, 2021.** AES conducted an in depth review of the HT DEIR's analysis of impacts associated with Urban Decay (Section 7.3.2).

O-29-7

- **Attachment 6 - Comment Letter on Draft EIR for Downtown Oakland Specific Plan. Pacific Merchant Shipping Association et. al., November 8, 2019.** The Pacific Merchant Shipping Association submitted the attached comment letter on the Draft EIR for the Downtown Oakland Specific Plan, with many of the comments relevant to the HT DEIR's impact analysis.

O-29-8

As a result of our review and reports by subject matter technical experts, we have found that the HT DEIR fails to adequately disclose, analyze and mitigate the Project's potentially significant impacts on air quality and greenhouse gas (GHG) emissions, geology and soils, hazards and hazardous materials, hydrology and water quality, transportation and traffic, and cultural resources, among other impacts. We have also found that the HT DEIR has improperly deferred analysis on a number of significant impact areas and has not provided clear and effective mitigation. Further, the HT DEIR appears to have not properly analyzed alternatives to the Proposed Project that would avoid identified effects. For these reasons, detailed below, we recommend that the HT DEIR be revised to better analyze and avoid the Project's significant environmental impacts, and recirculated for public review.

GENERAL COMMENTS ON APPROACH TO ENVIRONMENTAL ANALYSIS

As addressed in greater detail in the Pillsbury Winthrop Shaw Pittman LLP letter ("Pillsbury Letter") sent on behalf of the EOSA, the HT DEIR contains multiple significant legal deficiencies in its approach to the environmental analysis as a whole, briefly listed below:

O-29-9

- **Project Description.** The project description provided in the HT DEIR is impermissibly vague and incomplete as to details that would provide the reader with a clear understanding of what the Project proposes. These deficiencies result in incomplete or insufficient analysis of certain environmental impacts.

O-29-10

- **Piecemealing.** The project description in the DEIR improperly segments environmental review of the HT Project from the Athletics' proposed Coliseum redevelopment in East Oakland.

O-29-11

- **Displacement/Relocation of Existing Uses at Howard Terminal.** The DEIR does not adequately describe the nature and importance of existing uses at the Howard Terminal, nor does it sufficiently analyze the impacts of relocating all such uses from Howard Terminal to other locations, in some instances identifying no location and avoiding any impact analysis at all.

O-29-12

- **Deferral of Analysis and Mitigation.** In numerous instances, environmental analysis and the identification of mitigation measures is improperly deferred until other public agencies provide future reports, findings and/or permits.

AES' comments are focused on how these fundamental flaws in the HT DEIR's scope and methodology have translated into errors in its conclusions and insufficient mitigation measures for specific environmental impacts.

O-29-6

Attachment 5 to this comment letter is acknowledged. See Responses to Comments O29-2-59 through O29-2-77 for responses to specific comments raised.

O-29-7

Attachment 6 containing PMSA's comment letter on the Draft EIR for the Downtown Oakland Specific Plan is noted. This comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft EIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Project.

O-29-8

This is a general comment that serves to introduce the more specific comments that are responded to in detail below. As a result, no specific response is provided here. See also Consolidated Response 4.3, *Recirculation of the Draft EIR*.

O-29-9

See Consolidated Response 4.1, *Project Description*.

O-29-10

See Consolidated Response 4.1, *Project Description*.

O-29-11

See Consolidated Response 4.5, *Truck Relocation*.

O-29-12

See Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*.

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SPECIFIC ISSUE AREA COMMENTS

Air Quality / GHG Emissions

The HT DEIR's analysis of potential impacts related to air quality and GHG emissions fails to meet CEQA requirements related to sufficient assessment of the existing environment, adequate disclosure of potentially significant impacts, and discussion of all feasible mitigation measures.

O-29-13

The analysis of air quality and GHG emissions presented in the HT DEIR contains numerous incorrect assumptions, internal inconsistencies, and omissions. A technical review of the air quality and GHG chapters of the HT DEIR, prepared by Foulweather Consulting (**Attachment 1**), found that the HT DEIR failed to sufficiently describe and assess the baseline emissions at the Howard Terminal, and failed to disclose the severity of Project impacts to both regional and local air quality conditions, and failed to identify commensurate mitigation to offset these effects.

O-29-14

Of importance, the mitigated Project emissions appear to fall short of the "net zero increase in GHG emissions" required by AB 734. Contrary to the conclusions in the HT DEIR, the Proposed Project would result in a net *increase* in GHG emissions above baseline conditions as a result of inadequate transportation planning and infrastructure and other deficiencies.

Inappropriate Baseline - Air Quality and Health Risk Impacts.

As described in **Attachment 1**, the HT DEIR uses an inappropriate baseline for the assessment of net Project impacts related to air quality and public health risks. The DEIR calculates the Project's reductions in "baseline" emissions associated with elimination of existing activities at Howard Terminal and the Oakland Coliseum based on historical baseline emissions in calendar year 2018, rather than a future baseline when the Project's construction and operational impacts would be felt. By that time, substantial emissions reductions would have occurred in any event due to increased use of cleaner cars and trucks, and not as a result of the Project. In effect, the DEIR takes credit for those emissions reductions that would have occurred regardless of the Project, and thus understates the Project's real net air quality impacts in future years 2024 and 2028. See *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439, 445 (an agency may utilize a "future conditions" baseline when the use of a historical conditions baseline would mislead the public, and has discretion to use a "projected future conditions" baseline where "an analysis based on existing conditions would tend to be misleading or without informational value to EIR users."). Here, use of the 2018 baseline is misleading. As a result, the HT DEIR understates the true Project impacts in future years and provides a misleading comparison with the chosen significance levels. This defect can only be cured through a recalculation of the baseline and net Project impacts for each future project year evaluated to disclose the Project's accurate emissions increases. The recalculated net project impacts should then be compared with relevant significance thresholds.

O-29-15

Emergency Generators.

The HT DEIR's assessment of the air quality and public health impacts attributable to the Project's numerous emergency generators was not evaluated in accordance with guidance from the Bay Area Air Quality Management District ("BAAQMD") regarding reasonably foreseeable operations. As described further in **Attachment 1**, potential impacts from the Project's emergency generators are understated given that the HT DEIR fails to incorporate BAAQMD guidance related to the current Best Available Control Technology ("BACT") and methodology for estimating reasonably foreseeable generator

O-29-16

O-29-13 See Responses to Comments O29-1-5 through O29-1-43 for a discussion of the issues raised in this comment.

O-29-14 The proposed Project would reduce vehicle trips through the Transportation Management Plan (TMP) and Transportation Demand Management (TDM) program, as required by AB 734 and Mitigation Measures TRANS-1a and TRANS-2b (see Draft EIR pp. 4.15-183 and 4.15-193). The Draft EIR identified several additional transportation mitigation measures in Section 4.15, *Transportation and Circulation*, to reduce impacts, including Mitigation Measures TRANS-1c, TRANS-1d, TRANS-1e, TRANS-2a, TRANS-2b, TRANS-2c, TRANS-3a, and TRANS-3b.

Mitigation Measure GHG-1 would require that the proposed Project meet the "no net additional" requirement through the preparation and implementation of a Greenhouse Gas Reduction Plan. As noted on Draft EIR p. 4.7-66, after implementation of Mitigation Measure GHG-1, the impact would be less than significant. Further, CARB approved the proposed Projects' AB 734 application, which documents the methods in which the Project can achieve the "no net additional" requirement.

See also Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*.

O-29-15 The commenter is correct that the Draft EIR uses 2018 conditions at the Coliseum and at Howard Terminal as the CEQA baseline against which project air quality impacts are determined. This is the standard CEQA practice for all resources areas, including air quality. This approach is consistent with State CEQA Guidelines and with the BAAQMD's CEQA Guidelines for analyzing a project's air quality impacts, as discussed in greater detail below.

State CEQA Guidelines Section 15125(a) states, "An EIR must include a description of the physical environmental conditions in the vicinity of the project. This environmental setting will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant." The Draft EIR complies with the State CEQA Guidelines by selecting 2018 as the baseline. See Chapter 4, *Environmental Setting, Impacts, and Mitigation Measures*, for additional discussion.

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The use of a sole future baseline for determining impacts is not normally appropriate for CEQA evaluations, and may only be allowed when using an existing conditions baseline would be misleading or without informational value. State CEQA Guidelines Section 15125(b) states, “A lead agency may use projected future conditions (beyond the date of project operations) baseline as the sole baseline for analysis only if it demonstrates with substantial evidence that use of existing conditions would be either misleading or without informative value to decision-makers and the public. Use of projected future conditions as the only baseline must be supported by reliable projections based on substantial evidence in the record.” The Draft EIR uses a 2018 baseline for air quality impacts based on historical activities at the Coliseum and Howard Terminal, and not a speculative future baseline, consistent with the State CEQA Guidelines. This baseline is appropriate for the Project as discussed below.

As discussed on Draft EIR p. 4.2-49, existing conditions represent operations at the existing 47,170-attendee capacity ballpark at the Oakland–Alameda County Coliseum as the home field of the Oakland A’s for the year 2018. Upon the A’s departure from the existing stadium (the Coliseum), a permanent reduction in A’s-related emissions potential at the Coliseum is anticipated. For purposes of estimating emissions from existing ballpark-related activities at the Coliseum, the 30-year average annual attendance of 22,671 was used. This is lower than the maximum attendance value assumed for Project-related emissions of 35,000 attendees per game. Ballpark attendance is highly unlikely to be 35,000 for every single one of the 82 games per season, so the Project’s ballpark-related emissions are likely overestimated and highly conservative. It should also be noted that only the A’s-related portion of activities and associated emissions at the Coliseum was used to determine air quality impacts, because other activities at the Coliseum may continue in Oakland or elsewhere. Choosing a future baseline would require estimating future ballpark attendance at the Coliseum, which would be speculative and not supported by substantial evidence as required by State CEQA Guidelines Section 15125(b).

For additional discussion of the Draft EIR’s baseline, see p. 4.0-1 through 4.0-2.

The BAAQMD CEQA Air Quality Guidelines were used to calculate emissions and determine Air Quality impacts associated with the Project (see Draft EIR p.

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4.2-20 through 4.2-21 and 4.2-34 through 4.2-60). According to the BAAQMD guidelines (BAAQMD, 2017 pp. 4-2 and 4-5), for a project which removes an existing emissions source, the baseline should constitute existing emissions sources at the time of the NOP:

If a proposed project involves the removal of existing emission sources, BAAQMD recommends subtracting the existing emissions levels from the emissions levels estimated for the new proposed land use. This net calculation is permissible only if the existing emission sources were operational at the time that the Notice of Preparation (NOP) for the CEQA project was circulated or in the absence of an NOP when environmental analysis begins, and would continue if the proposed redevelopment project is not approved. This net calculation is not permitted for emission sources that ceased to operate, or the land uses were vacated and/or demolished, prior to circulation of the NOP or the commencement of environmental analysis. This approach is consistent with the definition of baseline conditions pursuant to CEQA.

The Draft EIR's approach to use existing conditions as its CEQA baseline is consistent with these guidelines.

The commenter also cites *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439, 445 (referred to as *Neighbors for Smart Rail* henceforth) as case law supporting the use of a future baseline in an EIR. That case does not mandate that a future baseline must be used; rather, in *Neighbors for Smart Rail*, the California Supreme Court held that there is no "uniform, inflexible rule for determination of the existing conditions baseline," and that an agency may exercise its discretion, if supported by substantial evidence, to adjust as appropriate. (57 Cal.4th at 452-453.) Furthermore, contrary to the commenter's interpretation of this case, the majority actually found the EIR *deficient* for exclusively using year-2030 conditions as the baseline and for failing to provide an existing conditions analysis. The lead agency in the case, the Exposition Metro Authority, claimed that because the project is located in an area of rapid change, projections of traffic and air quality in the future year of 2030 (when the rail line would reach maximum ridership) represented a more accurate baseline than existing conditions. The court disagreed with this claim, stating that "[t]he expectation of change may make it important for the agency to also examine impacts under future conditions (whether in the significant

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impacts analysis, the cumulative impacts analysis, or the discussion of the no project alternative), but it does not constitute substantial evidence supporting a determination that an existing conditions analysis would be uninformative or misleading.” The Court considered ridership as “a characteristic of the project in operation, not a characteristic of the environmental baseline against which project impacts are measured.”

The commenter claims that because future changes in the vehicle fleet through increased use of cleaner cars and trucks would reduce emissions from these sources independent of the project, the use of an existing conditions baseline in the Draft EIR is misleading. This is in direct conflict with the court’s ruling in *Neighbors for Smart Rail*, which states that a future expectation of this nature does not represent substantial evidence that an existing conditions analysis would be misleading (as cited above).

In addition, the court found:

- “[T]hat existing conditions is the normal baseline under CEQA, but that factual circumstances can justify an agency departing from that norm when necessary to prevent misinforming or misleading the public and decisionmakers.” [emphasis added]
- “Projected future conditions may be used as the sole baseline for impacts analysis if their use in place of measured existing conditions—a departure from the norm stated in Guidelines section 15125(a)—is justified by unusual aspects of the project or the surrounding conditions. That the future conditions analysis would be informative is insufficient, but an agency does have discretion to completely omit an analysis of impacts on existing conditions when inclusion of such an analysis would detract from an EIR’s effectiveness as an informational document, either because an analysis based on existing conditions would be uninformative or because it would be misleading to decision makers and the public.” [emphasis added]
- “[I]n appropriate circumstances an existing conditions analysis may take account of environmental conditions that will exist when the project begins operations; the agency is not strictly limited to those prevailing during the period of EIR preparation. An agency may, where appropriate, adjust its existing conditions baseline to account for a major change in

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environmental conditions that is expected to occur before project implementation.”

- “Even when a project is intended and expected to improve conditions in the long term—20 or 30 years after an EIR is prepared—decision makers and members of the public are entitled under CEQA to know the short- and medium-term environmental costs of achieving that desirable improvement... An EIR stating that in 20 or 30 years the project will improve the environment, but neglecting, without justification, to provide any evaluation of the project’s impacts in the meantime, does not “giv[e] due consideration to both the short-term and long-term effects” of the project (Cal. Code Regs., tit. 14, § 15126.2, subd. (a)) and does not serve CEQA’s informational purpose well.” [emphasis added]

Therefore, the Draft EIR’s use of existing conditions as its baseline is consistent with the court’s ruling in *Neighbors for Smart Rail*.

For a new project, courts have required that the baseline reflect actual existing physical conditions at the start of environmental review. In *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, which addressed ConocoPhillips’s application to modify a petroleum refinery to expand operations emitting nitrogen oxides, the California Supreme Court concluded the baseline for CEQA analysis must be the existing physical conditions in the affected area, rather than hypothetical baseline conditions.

In *Wal-Mart Stores, Inc. v. City of Turlock* (2006) 138 Cal.App.4th 273, the court ruled that the existing physical conditions must be compared to the physical conditions that are predicted to occur because of a project:

Fundamentally, a physical change is identified by comparing existing physical conditions with the physical conditions that are predicted to exist at a later point in time, after the proposed activity has been implemented. (*City of Carmel-by-the-Sea v. Board of Supervisors, supra*, 183 Cal.App.3d at pp. 246-247 [effects of rezoning are evaluated against existing physical conditions, not against hypothetical conditions permitted by land use plan].)ix The difference between these two sets of physical conditions is the relevant physical change.

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The Court used the idea of “photographic snapshots” which are taken when the environmental review begins to represent existing conditions; an array of future snapshots are then taken to create a picture of the reasonably foreseeable future. The baseline snapshots should then be compared to the array of future snapshots to determine the project’s impacts.

See Responses to Comments O29-1-4 and O29-1-5 for additional discussion.

O-29-16 See Responses to Comments O29-1-6 through O29-1-12 for a discussion of the issues raised by the commenter here.

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O-29-16

emissions. Additionally, inconsistencies in the dispersion modeling analysis for rooftop emergency generators indicates that all potential residential receptor locations in the proposed buildings have not been evaluated. As a result, potential health risks from the operation of the generators have not been adequately analyzed.

Fugitive Dust Emissions During Construction.

O-29-17

The HT DEIR does not evaluate the air quality and public health impacts associated with fugitive dust from project construction. As described further in **Attachment 1**, emissions of toxic air pollutants associated with site remediation activities are not evaluated, and the potential air quality and public health impacts of those emissions are not quantified. The HT DEIR claims that fugitive emissions of PM₁₀ and PM_{2.5} (and related emissions of toxic air contaminants (“TACs”)) during construction will be mitigated; however, there is no justification provided for the assumption that the mitigation will be 100% effective. Therefore, there is no reasonable basis for failing to disclose the impacts remaining after mitigation.

Inappropriate Calculation of GHG Credits for EV Charging Infrastructure.

O-29-18

The HT DEIR improperly ascribes to the Project certain air quality and GHG benefits associated with the installation of EV charging infrastructure at the Project site. The DEIR states that Project parking will be equipped with EV chargers at 10% of the total number of parking spaces, and that this “will encourage the use of EVs at the Project site and discourage the use of gasoline and diesel passenger vehicles, thus reducing mobile source emissions associated with vehicle travel to and from the Project site.” See, e.g., DEIR at 4.2-38; 4.7-38 to 39. However, the DEIR contains no analysis to support the claim that the mere existence of EV charging stations on the Project site would discourage the use of gasoline and diesel passenger vehicles. As described further in **Attachment 1**, the methodology used in the HT DEIR to calculate this benefit is inappropriate as the benefits calculated are attributable to activities by the California Air Resources Board (“CARB”) and other governmental entities that would occur whether or not the Project is developed. Therefore, the emissions reductions associated with installation of EV charging infrastructure at the Project site are overstated, and the HT DEIR fails to adequately disclose the severity of related Project impacts.

Issues Related to the Health Risk Assessment.

O-29-19

The health risk assessment reflected in the HT DEIR was not performed in accordance with BAAQMD and State guidelines. As described further in **Attachment 1**, the HT DEIR did not evaluate potential cumulative impacts at the location of the maximally exposed individual receptor (“MEIR”). Additionally, the DEIR fails to include potential, foreseeable future residences under the Downtown Oakland Specific Plan (“DOSP”) that are within 100 feet of the Project site as existing off-site sensitive receptors. As a result, the potential health effects related to the Project are severely understated and inadequate.

Roundhouse Parking.

O-29-20

The air quality issues related to the HT DEIR’s treatment of the movement of truck activities from Howard Terminal to the Roundhouse property or other locations inside or outside the Port is inadequate for a number of reasons. As described further in **Attachment 1**, the HT DEIR fails to address the reasonably foreseeable impacts of the Project’s elimination of existing activities at Howard Terminal and, potentially, the displacement and relocation of existing port-related activities at the Roundhouse area. The relocation of existing truck activity from Howard Terminal to the Roundhouse and/or Oakland

O-29-17 The Draft EIR evaluates the air quality impacts from fugitive dust generated by project construction. Fugitive dust related to project constructions is discussed on Draft EIR pp. 4.2-61 through 4.2-62. Project-related demolition, excavation, grading, and other construction activities may cause wind-blown dust that could contribute particulate matter into the local atmosphere. Additionally, Draft EIR concludes in Impact AIR-1 that fugitive emissions of PM₁₀ and PM_{2.5} during construction would be mitigated to less-than-significant levels through implementation of Mitigation Measure AIR-1a: Dust Controls. See Response to Comment A-11-3 and O29-1-18 for an additional discussion related to mitigation and fugitive dust control during project construction.

The Draft EIR also evaluated emissions of toxic air pollutants associated with site remediation activities and potential of remediation activities to release hazardous materials in Section 4.2, *Air Quality*, and Section 4.8 *Hazards and Hazardous Materials*. As discussed on Draft EIR p. 4.8-46, construction activities would be required to comply with numerous hazardous materials regulations designed to ensure the proper transportation, use, storage, and disposal of hazardous materials in a safe manner to protect worker safety and the environment, including encountering hazardous building materials and hazardous waste. See Response to Comment O29-1-19 for additional discussion related to toxic air pollutants associated with site remediation.

O-29-18 See Responses to Comments O29-1-22 through O29-1-28.

O-29-19 See Responses to Comments O29-1-29 and O29-1-30.

O-29-20 See Consolidated Response 4.5, *Truck Relocation*, regarding Howard Terminal and truck relocation.

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O-29-20

Army Base would result in an increase in vehicle miles traveled (“VMT”) and associated emissions. The HT DEIR’s characterization of increased emissions at the Roundhouse does not reflect the increased VMT associated with this relocation, and the HT DEIR’s assumption that this increase in VMT will fall outside the Project’s “zone of influence” is unsupported by factual evidence. By failing to recognize the increase in VMT and associated environmental consequences as a result of relocating crucial port infrastructure and facilities, the DEIR has failed to disclose and account for the full scope of the project related impacts, specifically as they relate to GHG emissions, particulate matter emissions and related health effects, noise, congestion, and land use compatibility.

Emissions Offset Credits.

O-29-21

Mitigation Measure AIR-2e(c) (“Emissions Offsets”) would allow for the purchase of offset credits, the development of new off-site mitigation projects, or payment of mitigation fees, to address future shortfalls in anticipated mitigation benefits. The provisions regarding payment of mitigation offset fees provide: “The fee will be determined by the City, the Project Sponsor, and the Air District or other governmental entity, and be based on the type of projects available at the time of the payment.” (DEIR at 4.2-80). As described further in Attachment 1, this mitigation measure is impermissibly vague and indeterminate. In place of this vague standard, mitigation fees should be set equal to BAAQMD excess emission fees calculated based on remainder of 30-year project life at the time the shortfall begins.

Geology/Soils

O-29-22

As described in further detail in Attachment 2 (Terraphase Engineering Technical Memorandum), the HT DEIR does not adequately analyze impacts from liquefaction and does not fully address impacts from the Gondola variant.

Liquefaction.

O-29-23

1. The HT DEIR lacks sufficient information and detail on the cumulative impact of earthquake-induced liquefaction on site access, utilities, structures, regional access, and differential settlement. Assessment of liquefaction impacts does not address future conditions due to groundwater rise associated with sea level rise (“SLR”). Deferring to the California Building Code requirements for mitigation of liquefaction conditions does not assess potential impacts of the Project on site conditions and cumulative impacts to adjacent areas (DEIR at 4.6-15). The HT DEIR understates and foregoes an accurate assessment of such effects and risk by deferring to the Final Geotechnical Report (DEIR 4.6-17, GEO-1).

O-29-24

2. The HT DEIR presents only one, generalized geologic cross section (Figure 4.6-2) that schematically notes the weak and liquefiable fills and sediments that underlay the Project site. The HT DEIR makes no mention of subsurface conditions for lands that immediately surround the Project Site even though liquefaction is highly likely to occur regionally during a moderate or greater earthquake. The HT DEIR identifies existing artificial fill as being highly variable with abrupt and unpredictable distribution, but understates the potentially significant impacts of the Project in the event of an earthquake. Consolidation settlement combined with soil strength failure and settlement through earthquake-induced liquefaction will substantially affect the surrounding area and infrastructure, leaving the Project site isolated and essentially an island without safe transport corridors, with broken utilities, and dependent on emergency power generation. The HT DEIR should incorporate the worst-case scenario of regional damage isolating the Project site and the onsite population and identify necessary mitigation measures. Consideration of these environmental effects should take

- O-29-21 See Responses to Comments O29-1-33 and O29-1-34 for a discussion of emissions offset credit fees. Also see Responses to Comments A-11-6 and A-11-8 for additional discussion of the offsets program as it relates to the BAAQMD’s jurisdiction. In response to the BAAQMD’s comments in letter A-11, The Final EIR has revised Mitigation Measure AIR-2e as shown in Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*, and in Chapter 7, *City-Initiated Updates and Errata in the Draft EIR*, for the revised mitigation measure language.
- O-29-22 See Response to Comment O-26-2, O-27-55, and O-27-56.
- O-29-23 See Response to Comment O-26-2, O-27-55, and O-27-56. See Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*, regarding the use of regulatory measures and timing of mitigation.
- O-29-24 See Response to Comment O-29-23, which explains that measurable settlement or liquefaction would not occur off-site with these ground improvement methods.

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O-29-24 | place before the decision to allow special events and residential uses on the project site, especially given that it appears that impacts associated with loss and human life are significant.

O-29-25 | 3. Impact GEO-1 only presents the future "Site-Specific Final Geotechnical Report" (DEIR at 4.6-17) as a mitigation measure for ground failure and intense shaking. The HT DEIR should present further detail and analysis for each ground stability hazard now and then identify in detail the steps required to address all aspects of the hazard.

O-29-26 | 4. Previous Port of Oakland hazard assessments for the Howard Terminal² concluded that structural failure due to seismically-induced liquefaction was very likely. The previous assessments also concluded that lateral failure of subsurface structures such as the Quay Wall and Rock Dike were likely. Failure and displacement of either structure could occur regardless of Project-related ground improvement measures. This failure potential and possible effects on the Project site should be evaluated in the HT DEIR, not deferred to the future Final Geotechnical Report after Project approval.

O-29-27 | 5. The Preliminary Geotechnical Exploration Report by ENGEO (2019)³ recommended the use of ground improvement and deep foundations to address the potential for seismically-induced settlement. However, ground improvements are only being discussed for the Project site footprint. When combined with the additional loading of additional soil fill placed on the Project site as a mitigation for SLR, the differential elevation changes between the Project Site in a seismic event and the unmodified surroundings will be quite substantial. The HT DEIR does not discuss this issue or analyze potential environmental effects.

O-29-28 | 6. On-site and nearby liquefaction would disrupt existing soil caps (which are required by the current, and presumably future, land use covenants ("LUCs") and control features that limit the migration of contaminated groundwater. With SLR, groundwater elevations will rise and saturate higher up the soil column. This condition is not addressed in the HT DEIR and is incorrectly dismissed on page 4.6-22 ("The addition of addition (sic) fill would further isolate the underlying contaminants from the public and environment"). The addition of fill will not mitigate soils and geology impacts.

O-29-29 | Paleontological Resources.
No sources are referenced in the HT DEIR when indicating that no paleontological resources are on the Project site (Section 4.6.1), nor is there mention of the local area (Attachment 2, 4). This might indicate that no paleontological databases were checked. Also, no reference is given why Young Bay Mud would not have paleontological resources or the "Geological units" below it (section 4.6.2). The DEIR also improperly omits federal or state regulations for paleontological resources (Section 4.6.2).

O-29-30 | Gondola Variant.
The HT DEIR states that "Site-specific information not fully available for the gondola corridor pertains to soil, utilities, and other subsurface conditions." (sic) (DEIR at 5-73). The DEIR failed to conduct a site-specific study or analysis. Soils impacts are not quantified or mitigated notwithstanding the presence

O-29-25 | The topics of deferral of mitigation measures and the reliance on future documents in the analysis is addressed in Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*. Regarding the liquefaction analysis and other geotechnical issues, see Response to Comment O-26-2, O-27-55, and O-27-56.

O-29-26 | See Response to Comment O-26-2, O-27-55, and O-27-56. The Liquefaction Information Memorandum prepared by ENGEO on July 7, 2021 (ENGEO, 2021) provides a discussion of the effects of the 1989 Loma Prieta earthquake, which noted that although pavement was damaged at the edges of the wharves and in the inboard container yards, there was no apparent damage to piles or adverse movements of the crane rails.⁹

O-29-27 | See Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*, regarding the use of performance standards and future studies.

O-29-27 | A geotechnical analysis is presented in Draft EIR Section 4.6, *Geology, Soils, and Paleontological Resources*, Impact GEO-1. The geotechnical analysis provided preliminary recommendations to address geotechnical conditions including liquefaction and settlement. Also see response to Comment O-27-58.

O-29-28 | See Response to Comment O-26-2, O-27-55, and O-27-56. The elevation of the project site would be raised by the addition of fill to levels above the anticipated level of sea level rise. This fill would consist of properly sized fill (i.e., not all sand grains) and properly compacted. Consequently, the additional fill and the loading from its weight would not be susceptible to liquefaction or settlement. Therefore, the ground improvements and placement of properly compact fill will mitigate geotechnical impacts. In addition, as the commenter notes, the Project site would be subject to LUCs, which would include requirements to maintain a cap over the project site. See Consolidated Response 4.16, *Remediation Plans, Land Use Covenants, and Human Health and Ecological Risk Assessment*, for further explanation of LUCs.

² The Loma Prieta, California, Earthquake of October 17, 1989-Liquefaction. USGS Paper 1551-B, 1998, pp. B69-B70, available at <https://pubs.usgs.gov/pp/pp1551/pp1551b/>

³ ENGEO Incorporated (ENGEO), 2019. Preliminary Geotechnical Exploration Report; Oakland Athletics Ballpark Development, Howard Terminal, Oakland, California. Project No. 14682.000.000. April 19, 2019. (Appendix GEO of the HT DEIR)

⁹ ENGEO, 2021. Liquefaction Information, Howard Terminal Redevelopment, Oakland, California, July 7, 2021.

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O-29-29 The following text will be added to the regulatory setting of Section 4.6, *Geology, Soils, and Paleontological Resources* as part of changes to the Draft EIR in response to this comment:

Paleontological resources are the fossilized remains or impressions of plants and animals, including vertebrates, invertebrates, and microscopic plants and animals (microfossils). They are valuable, non-renewable, scientific resources used to document the existence of extinct life forms and to reconstruct the environments in which they lived. The age, abundance, and distribution of fossils depend on the geologic formation in which they occur.

The standard practice in analyzing paleontological resources includes using guidance from the Society of Vertebrate Paleontology (SVP). Although not a law or regulation in the legal sense, these guidelines have become the standard in the industry (SVP, 2010).

The SVP defines the level of potential as one of four sensitivity categories for sedimentary rocks: high, undetermined, low, and no potential as listed below.

- **High Potential.** Rock units from which vertebrate or significant invertebrate, plant, or trace fossils have been recovered are considered to have a high potential for containing additional significant paleontological resources.
- **Low Potential.** Rock units that are poorly represented by fossil specimens in institutional collections or, based on general scientific consensus, only preserve fossils in rare circumstances and the presence of fossils is the exception not the rule.
- **Undetermined Potential.** Rock units for which little information is available concerning their paleontological content, geologic age, and depositional environment are considered to have undetermined potential.
- **No Potential.** Rock units such as high-grade metamorphic rocks and plutonic rocks that will not preserve fossil resources.

Geologic mapping by Graymer and the geotechnical investigation performed by ENGEO indicates that historic artificial fill is present

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beneath the Project site ranging in depth from 5 to 40 feet, and below that is approximately 0 to 30 feet of Holocene-age Bay Mud. The Holocene to Pleistocene-age Merritt Sand deposits are present beneath the Bay Mud ranging from 10 to 40 feet in thickness, with the San Antonio Formation present beneath the Merritt Sand (ENGEO, 2019).

The University of California Museum of Paleontology (UCMP) online fossil locality database indicates 63 previously recorded fossil localities in Alameda County in which Pleistocene-age fossils were recovered (UCMP, 2021). Additionally, several invertebrate and plant fossil localities have been recovered from Holocene and Pleistocene deposits in Alameda County (UCMP, 2021). While the exact locations are not provided by the UCMP records search, approximate locations can be inferred from the localities names. Based on the localities names provided by the UCMP, some of these fossil sites are in proximity to the Project site (e.g., Harrison Street Tunnel, Oakland Coliseum), but none appear to occur within the Project site.

The artificial fill has no potential to contain significant paleontological resources, as it is man-made, not native soil, and is too young.

Generally, Holocene-age sedimentary deposits have low paleontological sensitivity due to the recent age of these deposits. However, the deeper, older layers of Holocene-age deposits increase in paleontological potential; therefore, deeper layers of these deposits have a high potential to contain significant paleontological resources. As such, the Holocene-age Bay Mud is too young to contain fossilized remains and has a low potential to contain significant paleontological resources, per SVP guidelines (SVP, 2010).

In general, Pleistocene-age sedimentary deposits have a high potential to contain significant paleontological resources, as is evident by the numerous fossil discoveries made within Pleistocene-age deposits throughout Alameda County (UCMP, 2021). The age of the Merritt Sand deposits ranges between late Holocene and middle Pleistocene, which would indicate low to high potential to contain paleontological resources depending on the depth of the deposits; the late Holocene deposits have a low potential to contain paleontological resources, but potential increases to high as the deposits transition into Pleistocene-age deposits. Underlying the Merritt Sand deposits is the Pleistocene-age San Antonio

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Formation, which may be present between 10 and 40 feet below ground surface (bgs). Although the Merritt Sand and San Antonio Formation are not specially named within the UCMP database results, any Pleistocene-age deposits in Alameda County should be considered to have a high potential to contain significant paleontological resources.

This text addition to the Draft EIR Geology, Soils, and Paleontological Resources section does not affect or alter the analysis of impacts or identification of mitigation measures in the Draft EIR.

O-29-30 A site-specific geotechnical analysis will be conducted and require approval by the City for this Project Variant prior to construction as more Project details become available, as required by the California Building Code. The geotechnical study would analyze all the issues presented in this comment.

Draft EIR Chapter 5, *Project Variants*, discusses the geology and soils setting and potential impacts for the Aerial Gondola Variant (starting on Draft EIR p. 5-119). As explained there, the environmental setting is based on information obtained from available published sources, and reasonable assumptions are made that overall seismic and geologic conditions along the gondola corridor would be similar to those discussed for the proposed Project area (e.g., located in the same recognized seismically active region and proximity to the nearest active fault). However, the level of liquefaction susceptibility is different for the area of the gondola compared to the area of the proposed Project area.

The conceptual design of the number and scale of foundation areas to support the gondola stations and towers detailed in the *Oakland A's Ball Park Access Gondola, Conceptual Design Summary* report considered site characteristic known to date.¹⁰ Other potential site-specific soil conditions and geologic features of the gondola site are addressed by appropriate mitigation measures (Mitigation Measure GEO-1, Site-Specific Final Geotechnical Report; and Mitigation Measure GEO-2, Inadvertent Discovery of Paleontological Resources During Construction) and regulatory requirements that would apply to the Aerial Gondola Variant. Also see Consolidated Response 4.1, *Project Description*, which discusses how the Draft EIR include adequate environmental analyses for all components of the proposed Project, including Project options, such as the Aerial Gondola Variant Gondola Variant, for which all site-specific conditions are not yet detailed.

¹⁰ SCJ Alliance, 2019. *Oakland A's Ball Park Access Gondola, Conceptual Design Summary*, December 12, 2019.

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O-29-30 construction of "...36–64 drilled concrete piles approximately 30 inches in diameter." *Id.* Nor is there analysis of below grade pile caps and interconnecting concrete beams (*ibid*). This magnitude of construction would require its own EIR if it were a stand-alone project (**Attachment 2**) and sufficient environmental review must be undertaken now.

O-29-31 Topics Considered and Determined to Have No Impact.
The HT DEIR indicates that wastewater services would connect to existing infrastructure. But much of the existing underground infrastructure would be demolished and replaced as part of the Project. Specifically, the Project description (DEIR section 3.12.1) says that "The Project would install sealed and impervious wastewater pipelines to convey wastewater and would comply with required regulations to prevent inflow and infiltration from entering the system." However, impacts of demolition and removal are not specifically analyzed in the HT DEIR (**Attachment 2**). This analysis should be completed and circulated for public review and comment.

O-29-32 Hazardous Materials
As described in further detail in **Attachment 2** (Terraphase Engineering Technical Memorandum), the HT DEIR does not adequately analyze potential hazard related impacts resulting from the Project, nor does it include appropriate mitigation measures.

O-29-33 Mitigation Measures.
Mitigation measures associated with hazardous materials in the HT DEIR are not specific or quantified and are improperly deferred. The site is under three separate LUCs as a capped hazardous substance site. The HT DEIR acknowledges that residential uses are prohibited under the current LUCs issued by the DTSC and that a new LUC and Remedial Action Workplan ("RAW") are proposed but not completed (DEIR at 4.8-49). The DEIR states that it is expected that a LUC and RAW will be developed that allow proposed residential uses. But that is not certain, and it is highly likely that a Remedial Action Plan procedure will apply instead. . The HT DEIR states that the DTSC will approve a RAW relying on the certified EIR (DEIR at 4.8-38). The HT DEIR relies on the anticipated RAW, LUC, Operation & Maintenance ("O&M") Agreements and the Soil Gas Management Plan ("SGMP") for the Project – but none of these documents exists. Therefore, with this circular reasoning, it is impossible to evaluate the scope of work that would be required to implement these documents, and, consequently, the associated risk or mitigation required (**Attachment 2**). There are no quantifiable mitigation measures to reduce impacts and the DEIR fails to analyze the effects of environmental conditions on the Project's future residents or users. See CEQA Guidelines § 15126.2(a) ("The EIR shall also analyze any significant environmental effects the project might cause by bringing development and people into the area affected"); *California Building Industry Assoc. v. Bay Area Air Quality Management District* (2015) 62 Cal.4th 369 (effects of environmental conditions upon a project's future residents or users must be considered where the project may exacerbate existing environmental hazards).

O-29-34 Gas Pipelines.
According to Section 4.8 of the HT DEIR, an "active 24-inch-diameter high-pressure aboveground gas transmission pipeline" transects the northern portion of the Site and serves the greater Oakland metropolitan area (DEIR at 4.8-6). There are also "several fuel pipelines" on the Peaker Power Plant site (DEIR at 4.8-7). The HT DEIR does not analyze the potential impacts associated with construction or long-term operations near these pipelines (**Attachment 2**).

O-29-31 As described on p. 4.16-25 in Section 4.16, *Utilities and Service Systems*, and throughout the Draft EIR, physical impacts of earthwork and construction and operation of the Proposed project are analyzed in all of the technical sections in Chapter 4, *Environmental Setting, Impacts, and Mitigation Measures*.

O-29-32 The is a general comment regarding the hazard-related impacts analyzed in the Draft EIR and the mitigation measures developed to reduce the impacts to less than significant. The commenter provides specific comments in subsequent comments, which are addressed below.

O-29-33 The Draft EIR analyzes the risks associated with the contaminated materials currently contained beneath the existing hardscape cap over the Project site in Section 4.8, *Hazards and Hazardous Materials*. Section 4.8.1, *Environmental Setting*, provides a description of the nature and extent of contamination that includes identifying the chemicals of potential concern, describing the extent of those chemicals present at concentrations above screening levels, and presenting figures that visually depict the extent of contamination at concentrations above screening levels. As further explained in Consolidated Response 4.16, *Human Health and Ecological Risk Assessment, Land Use Covenants, and Site Remediation*, Engeo conducted a data gaps analysis that evaluated the completeness and adequacy of the data collected through April 2020, as discussed in Section 4.0 of the 2020 Site Investigation Report cited in the Draft EIR.¹¹ Based on that data gaps analysis, Engeo collected and analyzed additional soil, soil gas, and groundwater samples to fill those data gaps, as documented in the HHERA, and resulting in a data set that is adequate to support the HHERA and inform decisions regarding risks at the Project site.¹²

Based on the results of the various investigations conducted to date, including the HHERA approved by DTSC in its letter dated October 22, 2020, the Draft EIR identified the mitigation measures listed below to manage the existing contamination upon development of the Project site. Note that as explained in Consolidated Response 4.16, *Remediation Plans, Land Use Covenants, and Human Health and Ecological Risk Assessment*, after publication of the Draft EIR, the Project sponsor elected to take a more conservative approach by

¹¹ ENGENO, 2020a. *Athletics Ballpark Development, Howard Terminal Site, Oakland, California, Site Investigation Report*, revised April 22, 2020.

¹² ENGENO 2020b. *Athletics Ballpark Development Howard Terminal Site, Oakland, California Human Health and Ecological Risk Assessment*, revised August 24, 2020.

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preparing a Remedial Action Plan (RAP) instead of the RAW cited in the mitigation measures identified below.

- Mitigation Measure HAZ-1a: Preparation and Approval of Consolidated RAW, LUCs, and Associated Plans describes the plans and land use covenants that would be required to mitigate the contamination at the Project site. The DTSC would review these plans and LUCs for compliance with all applicable federal, state, and local regulations. The proposed Project may not proceed until the DTSC has provided their approval of the documents. In the event that the DTSC is not satisfied with the plans, then the proposed Project would not be approved and would not be constructed.
- Mitigation Measure HAZ-1b: Compliance with Approved RAW, LUCs, and Associated Plans would require that documentation of DTSC approval of the plans and LUCs be provided to the City of Oakland building official prior to the issuance of grading, building, or construction permits, and certificate of occupancy or similar operating permit for new buildings and uses. This specifically includes DTSC approval and documentation of successful implementation of protective measures to ensure protections appropriate for the type of anticipated uses, including allowing residential use under specified conditions, in the form of a certificate of completion, finding of suitability for the propose Project's intended use, or similar documentation issued by the DTSC.
- Mitigation Measure HAZ-1c: Health and Safety Plan (HASP) would require the Project sponsor and its contractors prepare and implement HASPs for the protection of workers, the public, and the environment consistent with customary protocols and applicable regulations, including, but not limited to Title 8 of the California Code of Regulations.

Deferral of Mitigation Measures and DTSC Approval

As discussed in the Draft EIR in Section 4.8.2, *Regulatory Setting*, under *Land Use Covenants*, the Project site is subject to existing land use covenants (LUCs), operations and maintenance agreements, soil and groundwater management plans, and risk management plans, all enforced by the California Department of Toxic Substances Control (DTSC), the regulatory agency with jurisdiction. These LUCs and their associated plans would be replaced and consolidated and require approval by DTSC before commencement of construction to account

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for the changes to the Project site. The substantive requirements of these replacement documents would be similar to those in the existing documents, but would be specifically tailored to ensure protections appropriate for the type of anticipated construction activity and the type of anticipated uses, including allowing residential use (which is currently prohibited) under specified conditions. Similar to the existing plans, the workplans to be prepared under the requirements of the existing LUCs and the mitigation measures discussed in Draft EIR Section 4.8, *Hazards and Hazardous Materials*, Impact HAZ-2, would provide further description of the remediation steps, which will include maintaining a cap over the Project site.

As explained in Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*, the mitigation measures provided in the Draft EIR are actions that would be enforced by the City of Oakland building official. Grading, building, or construction permits, and certificate of occupancy or similar operating permit for new buildings and uses will not be issued until the DTSC and the building official have approved of the various actions required by the mitigation measures.

Title of Remediation Documents

As the regulatory agency with jurisdiction, the DTSC would be the regulatory agency that will dictate types of documents to be prepared. Regardless of the title of the documents, the DTSC would ultimately require that the remedial action be protective of construction workers, the public and the environment.

O-29-34 As discussed in the Draft EIR in Section 4.8.2, *Regulatory Setting*, under *Land Use Covenants*, the Project site is subject to existing land use covenants (LUCs), operations and maintenance agreements, soil and groundwater management plans, and risk management plans, all enforced by the California Department of Toxic Substances Control (DTSC), the regulatory agency with jurisdiction. These LUCs and their associated plans would be replaced and consolidated and require by DTSC before commencement of construction to account for the changes to the Project site. See Consolidated Response 4.16, *Remediation Plans, Land Use Covenants, and Human Health and Ecological Risk Assessment*, for further explanation regarding LUCs and their associated plans.

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Hydrocarbon Oxidation Products ("HOP").

The HT DEIR does not consider impacts associated with petroleum metabolites, aka hydrocarbon oxidation products ("HOPs"), in groundwater (**Attachment 2**). The 2018 Five-Year Review Report⁴ recognized HOPs as a contaminant of concern and stated that HOPs should be analyzed during future sampling events. HOPs were analyzed during the 2019 ENGEO investigation⁵ and exceeded Water Board screening levels⁶ (human health risk levels and aquatic habitat goal levels).

The 2020 Human Health and Ecological Risk Assessment (HHERA) Report⁷ and the 2002 Ecological Risk Assessment⁸ (ERA) did not consider risk due to HOPs. Additionally, the impacts of the Project on the migration of HOPs to surface water were not evaluated in the HT DEIR (**Attachment 2**). Each of these deficiencies should be corrected and impacts fully analyzed and disclosed in the DEIR.

Approach Inconsistencies.

Under "Approach to Analysis," the HT DEIR states that construction activities *may* require dewatering activities, yet in the Project description and other sections (including hazardous materials and water resources), the DEIR states that dewatering *will* be done. Furthermore, the Approach to Analysis section mentions that "Long-term operational groundwater treatment may be necessary if a cutoff wall and underdrain system are installed for the ballpark" (DEIR at 4.8-44). These inconsistencies and unstable descriptions should be corrected and environmental effects fully studied and disclosed, including the extent of dewatering, impacts to the groundwater table, whether the cutoff wall will be built or not, and operational effects (**Attachment 2**).

No Impact Analysis.

For "Topics Considered and Determined to Have No Impact", the HT DEIR does not examine Acutely Hazardous Materials because construction and operation of the HT Project would not use "P-listed wastes in the federal waste classification system" (DEIR at 4.8-45). But this may not be accurate because the Peaker Power Plant uses jet fuel electric turbines. Continued use of the Power Plant would include jet fuel, and the fuel tank would be removed under the Peak Power Plant Variant, requiring permits and mitigation (**Attachment 2**). The DEIR should be corrected to accurately reflect jet fuel usage at the Peaker Power Plant.

Deficiencies in Human Health and Ecological Risk Assessment ("HHERA"), Underestimated Human Health Impacts.

The HT DEIR relies on the HHERA Report in its consideration of human-health risks. However, the HHERA

⁴ Baseline Environmental Consulting. 2018. Final Third Five-Year Review Report. Charles P. Howard Terminal. Oakland, California. January.

⁵ ENGEO Incorporated. 2019. Site Investigation Report. Athletics Ballpark Development Howard Terminal Site. Oakland, California. July 1.

⁶ San Francisco Bay Regional Water Quality Control Board, Environmental Screening Levels, January 2019.

⁷ ENGEO Incorporated. 2020. Human Health and Ecological Risk Assessment, dated August 24, 2020.

California Department of Toxic Substances Control (DTSC), 2020. Letter Approving Human Health and Ecological Risk Assessment dated August 26, 2020. October 22.

⁸ Baseline Environmental Consulting. 2002. Final Removal Action Workplan, Howard Marine Terminal Site, Oakland, California, February. Appendix A

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O-29-35 The Draft EIR analyzes the risks associated with the contaminated materials currently contained beneath the existing hardscape cap over the Project site in Section 4.8, *Hazards and Hazardous Materials*. Section 4.8.1, *Environmental Setting*, provides a description of the nature and extent of contamination that includes identifying the chemicals of potential concern, describing the extent of those chemicals present at concentrations above screening levels, and presenting figures that visually depict the extent of contamination at concentrations above screening levels. As further explained in Consolidated Response 4.16, *Human Health and Ecological Risk Assessment, Land Use Covenants, and Site Remediation*, Engeo conducted a data gaps analysis that evaluated the completeness and adequacy of the data collected through April 2020, as discussed in Section 4.0 of the 2020 Site Investigation Report cited in the Draft EIR.¹³ Based on that data gaps analysis, Engeo collected and analyzed additional soil, soil gas, and groundwater samples to fill those data gaps, as documented in the HHERA, and resulting in a data set that is adequate to support the HHERA and inform decisions regarding risks at the Project site.¹⁴ As further explained in Engeo's *Human Health and Ecological Risk Assessment Information* letter (Engeo 2021) and in Consolidated Response 4.16, *Human Health and Ecological Risk Assessment, Land Use Covenants, and Site Remediation*, potential exposure from hydrocarbon oxidation products (petroleum metabolites) is evaluated by the inclusion of total petroleum hydrocarbons (TPH)-gasoline-range, diesel-range, motor oil-range, and constituents of these mixtures, including benzene and naphthalene, in the HHERA.¹⁵

O-29-36 See Response to Comment O-27-60. Text changes have been made on p. 4.8-44 of the Draft EIR to be consistent with the description of the cutoff wall in Chapter 3, *Project Description*, and in Section 4.9, *Hydrology and Water Quality*, and Section 4.16, *Utilities and Service Systems*.

Text at the beginning of Draft EIR p. 4.8-44 is revised to read:

Long-term operational groundwater treatment ~~may~~ **would** be necessary ~~if~~ **and** a cutoff wall and underdrain system ~~are~~ **would be** installed for the ballpark. As described in Chapter 3, *Project Description*, a cutoff wall and

¹³ ENGEO, 2020a. *Athletics Ballpark Development, Howard Terminal Site, Oakland, California, Site Investigation Report*, revised April 22, 2020.

¹⁴ ENGEO 2020b. *Athletics Ballpark Development Howard Terminal Site, Oakland, California Human Health and Ecological Risk Assessment*, revised August 24, 2020.

¹⁵ ENGEO, 2021. *Human Health and Ecological Risk Assessment Information*. July 9, 2021.

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drainage system would be installed beneath the ballpark. Seasonal rainwater would be collected in a shallow drainage system that would route the rainwater to the storm drain system. While the cutoff wall would largely isolate groundwater beneath the ballpark, it is anticipated that some groundwater may seep through or under the cutoff wall. The groundwater levels within the area of the cutoff wall would be monitored and dewatering would occur on an as-needed basis. The dewatering effluent would be tested to assess the appropriate treatment and disposal method, as discussed above.

~~In the event Groundwater treatment would be required for short- and/or long-term groundwater extraction operations are required for the ballpark or elsewhere at on the Project site, groundwater treatment would be required~~ due to TPH and available cyanide. These materials ~~can~~ would be treated and removed with common dewatering treatment technologies, including sand filtration and GAC prior to discharge.

This text addition to Draft EIR Section 4.8, *Hazards and Hazardous Materials*, does not affect or alter the analysis of impacts or identification of mitigation measures in the Draft EIR.

- O-29-37 The continued operation of the Peaker Power Plant is not a part of this proposed Project and would not be a changed condition.
- O-29-38 As explained in Consolidated Response 4.16, *Human Health and Ecological Risk Assessment, Land Use Covenants, and Site Remediation*, relevant toxicity data for those chemicals with a complete and significant exposure scenario were incorporated for the analyses (for complete exposure pathways by chemical, see Table 7). A complete and significant exposure scenario requires a source (i.e., the contaminated material), a receptor (i.e., a person), and a complete exposure pathway (i.e., a way for the contaminated material to reach and expose a person to hazardous levels of the contamination).
- As further explained in the HHERA information technical memorandum (ENGEO 2021), Tables 8 and 9 of the HHERA show toxicity data used to evaluate risks for exposure scenarios considered to be complete and significant.¹⁶ Toxicity data that were not needed for the HHERA have not been

¹⁶ ENGEO, 2021. *Human Health and Ecological Risk Assessment Information*. July 9, 2021.

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included in Tables 8 and 9. For example, barium is a chemical of potential concern (COPC) for groundwater, but is not a COPC for soil or soil gas. It is assumed that construction/utility workers may have dermal contact with barium in groundwater in an excavation, and oral toxicity data relevant for estimating risk associated with this exposure pathway are included in Table 8. Barium is not a volatile chemical and construction/utility workers are unlikely to have inhalation exposures to barium in groundwater. Therefore, the inhalation toxicity value, such as the chronic inhalation reference concentration, is not needed for barium and was not included in Table 8. In summary, Tables 8 and 9 include toxicity values needed and used in the HHERA.

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is deficient, as follows (Attachment 2):

O-29-38

1. The HHERA Report does not consider several chemicals of potential concern (“COPCs”) because it omits their toxicity values. The HHERA failed to include oral cancer slope factors for nine COPCs, inhalation unit risks for three COPCs, noncancer chronic oral reference doses for 12 COPCs, and noncancer inhalation reference concentrations for eight COPCs. As a result, the cancer risk and noncancer hazard associated with several COPCs has not been considered in the derivation of the target cleanup levels, which the HHERA used in place of calculating cumulative cancer risks and noncancer hazard indices (“HQs”). Of the 51 COPCs considered in the HHERA, 21 COPCs (41%) were missing a cancer toxicity value, a noncancer toxicity value, or both.

O-29-39

2. As discussed in Section 5.0 of the HHERA, metals (notably lead) impacts “are present in various locations across the Site.” Lead was historically detected in soil at concentrations as high as 32,000 mg/kg at the site. In more recent soil sampling, lead was detected in soil at concentrations as high as 3,180 mg/kg. Potential exposure to lead should be evaluated separately from the assessment for other contaminants because USEPA (2003)⁹ and CalEPA DTSC (2020)¹⁰ evaluate the significance of lead exposures using blood-lead level as an index of exposure, rather than in terms of cancer risk or noncancer HQ. Although the HHERA utilizes generic screening levels used by CalEPA, DTSC, and USEPA for initially assessing potential human exposure to lead in soil at sites, the potential significance of human exposure to lead in soil at the site should be characterized and discussed in the risk characterization.

O-29-40

3. The HHERA Report does not include characterization of potential risks from exposure to non-aqueous-phase liquid (“NAPL”), which is present at several locations at the site. The HHERA does not consider or evaluate potential human exposure to site-related COPCs in NAPL.

O-29-41

Collectively, these are major omissions that could result in significant underestimation of potential cancer risk and noncancer hazards from human exposure to COPCs in environmental media at the site. These omissions significantly impair the usability of the HHERA and its conclusions. The HHERA Report does not provide a proper risk characterization for each of the receptors and receptor specific exposure scenarios. Therefore, it does not provide the information necessary to support decisions that will ensure protection of human health during and following redevelopment (DEIR at 4.8-9). The HHERA should not be used to support risk management decisions and fails to provide sufficient public disclosure of potential impacts.

O-29-42

Underestimated Extent of Contaminants Above Target Cleanup Levels.

The HT DEIR cites site-specific target cleanup levels for Howard Terminal that were developed in the HHERA Report. As stated above, the HHERA Report underestimates risk and, consequently, likely overestimates target cleanup levels. Therefore, the extent of contaminants above cleanup levels protective of human receptors is likely underestimated and should be revised.

O-29-43

Hazardous Materials Handling.

As stated above, the DEIR assumes that DTSC’s existing LUCs and associated plans would be replaced

⁹ United States Environmental Protection Agency (USEPA). 2003. Recommendations of the Technical Review Workgroup for Lead for an Approach to Assessing Risks Associated with Adult Exposure to Lead in Soil. OSWER #9285.7-54. January.

¹⁰ California Environmental Protection Agency (CalEPA) Department of Toxic Substances Control (DTSC). 2020. Human Health Risk Assessment (HHRA) Note Number 3, DTSC-modified Screening Levels. June.

O-29-39 As explained in Consolidated Response 4.16, *Human Health and Ecological Risk Assessment, Land Use Covenants, and Site Remediation*, conservative DTSC risk-based screening levels were applied to the proposed Project to evaluate potential exposure. Screening-level risk evaluations are often used to guide risk management because they are conservative (over-estimate risks) and typically require fewer resources than more complicated risk assessments. In the case of lead, the conservative risk-based levels using Environmental Screening Levels (ESLs) are calculated using blood level models, as explained in the 2019 San Francisco Bay Regional Water Quality Control Board’s *User’s Guide: Derivation and Application of Environmental Screening Levels*, available from the water Board at: https://www.waterboards.ca.gov/sanfranciscobay/water_issues/programs/esl.html

O-29-40 As explained in Consolidated Response 4.16, *Human Health and Ecological Risk Assessment, Land Use Covenants, and Site Remediation*, human health risks associated with potential exposure to NAPL are rarely quantified in a risk assessment. The only complete pathway to the NAPLs floating on groundwater is dermal contact during construction. Exposure during construction would be mitigated by the implementation of the following mitigation measures provided in Section 4.8, *Hazards and Hazardous Materials*, in the Draft EIR: Mitigation Measure HAZ-1a: Preparation and Approval of Remediation Plans, LUCs, and Associated Plans; Mitigation Measure HAZ-1b: Compliance with Approved Remediation Plans, LUCs, and Associated Plans; and Mitigation Measure HAZ-1c: Health and Safety Plan. Collectively, these mitigation measures would provide procedures and training for the management of contaminated materials, including the use of personal protective equipment. Human health risk estimates for NAPL are not needed for making risk assessment decisions nor are they used in decision-making. DTSC approved the HHERA in its October 22, 2020, letter. Also note that as explained in Consolidated Response 4.16, *Human Health and Ecological Risk Assessment, Land Use Covenants, and Site Remediation*, after publication of the Draft EIR, the Project sponsor elected to take a more conservative approach by preparing a Remedial Action Plan (RAP) instead of a RAW.

O-29-41 This comment is a summary paragraph that refers to previously addressed comments in Comment Letter O-29.

O-29-42 This comment is a summary paragraph that refers to previously addressed comments in Comment Letter O-29.

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O-29-43 **Reliance on Future Documents**

As explained in Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*, the Draft EIR complies with CEQA requirements regarding the contents and timing of mitigation, and how mitigation enforcement and monitoring would occur.

Landfill Capacities

As shown in Draft EIR Table 4.8.3, *Estimated Soil Volumes for Removal during Remediation Activities*, approximately 200,000 cubic yards of soil would be sent to landfills for offsite disposal. The Waste Management Altamont Landfill has a permitted capacity of in excess of 40 million tons (one cubic yard of soil weighs about 1.5 tons).¹⁷ The Clean Harbors Buttonwillow Landfill has a permitted landfill capacity of in excess of 10 million cubic yards. These landfills have sufficient capacity to accept the waste.

Quantifiable Mitigation Measures

Based on the results of the various investigations conducted to date, including the HHERA approved by DTSC in its letter dated October 22, 2020, the Draft EIR identified the mitigation measures listed below to manage the existing contamination upon development of the Project site. Note that as explained in Consolidated Response 4.16, *Human Health and Ecological Risk Assessment, Land Use Covenants, and Site Remediation*, after publication of the Draft EIR, the Project sponsor elected to take a more conservative approach by preparing a Remedial Action Plan (RAP) instead of a RAW.

- Mitigation Measure HAZ-1a: Preparation and Approval of Consolidated RAW, LUCs, and Associated Plans describes the plans and land use covenants that would be required to mitigate the contamination at the Project site. The DTSC would review these plans and LUCs for compliance with all applicable federal, state, and local regulations. The project may not proceed until the DTSC has provided their approval of the documents. In the event that the DTSC is not satisfied with the plans, then the proposed Project would not be approved and would not be constructed. The plans would use the Target Cleanup Levels developed in the HHERA,

¹⁷ Alameda County Waste Management Authority (ACWMA), 2017. *Integrated Waste Management Plan Countywide Element, Countywide Siting Element, Countywide Summary Plan*. Adopted February 26, 2003, Amended March 22, 2017.

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resulting in remediation conducted to quantifiable numeric cleanup standards.

- Mitigation Measure HAZ-1b: Compliance with Approved RAW, LUCs, and Associated Plans requires that documentation of DTSC approval of the plans and LUCs be provided to the City of Oakland building official prior to the issuance of grading, building, or construction permits, and certificate of occupancy or similar operating permit for new buildings and uses. This specifically includes DTSC approval and documentation of successful implementation of protective measures to ensure protections appropriate for the type of anticipated uses, including allowing residential use under specified conditions, in the form of a certificate of completion, finding of suitability for the Project's intended use, or similar documentation issued by the DTSC.
- Mitigation Measure HAZ-1c: Health and Safety Plan (HASP) which requires the Project sponsor and its contractors prepare and implement HASPs for the protection of workers, the public, and the environment consistent with customary protocols and applicable regulations, including, but not limited to Title 8 of the California Code of Regulations. The HASPs would include quantifiable numeric worker protection levels, including Permissible Exposure Limits mandated by OSHA for the chemicals known to be present at the Project site.

As explained in Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*, the Draft EIR complies with CEQA requirements regarding the contents and timing of mitigation, and how mitigation enforcement and monitoring would occur.

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O-29-48

4. Range of Contaminants/Baseline - The Environmental Setting section (Section 4.9.1) should present and discuss the specific range of contaminants and contaminant concentrations that have been monitored/detected in stormwater or surface water at the Project site based on previous monitoring/sampling data. This is needed to characterize baseline conditions and site-specific contaminants of concern (site-specific pollutant source assessment). By not characterizing the stormwater contaminants the HT DEIR fails to adequately assess potential impacts from construction and operational phases of the Project.

O-29-48 See Responses to Comments O-27-59 and O-27-60 regarding baseline characterization of surface water conditions.

O-29-49

Groundwater Supplies and Recharge.

1. Groundwater Model/Dewatering Plan – Substantial groundwater dewatering required for the Project (up to 10,000 gallons per day) could adversely impact local groundwater flow dynamics, recharge rates, and local surface water quality impacts (DEIR at 4.9-11). A groundwater model is needed to demonstrate a less-than-significant impact. (As stated above, a dewatering plan is also needed to address groundwater and commingled stormwater and associated water quality impacts.)

O-29-49 See Responses to Comments O-27-60 and A-12-48 regarding groundwater dewatering. Also see Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*.

O-29-50

2. Cut-off Wall - The HT DEIR states that a “cutoff wall would likely also be installed around the boundaries of the ballpark to control groundwater inflow into the ballpark area” (DEIR at 4.9-21). The HT DEIR does not discuss the impact of a cutoff wall on groundwater flow direction. There would likely be deflection of groundwater flow to the east and west, potentially causing the migration of contaminated groundwater towards neighboring properties. This impact should be analyzed in the HT DEIR.

O-29-50 See Responses to Comments O-27-61, O-29-36, and A-7-32 regarding the proposed cut-off wall’s potential effect on groundwater and directional flow.

O-29-51

3. Impacts of Dewatering - The HT DEIR states that “dewatering . . . would not affect the surrounding groundwater levels” (DEIR at 4.9-26) because of the presence of a cutoff wall. If it were true that dewatering will only affect groundwater within the cutoff wall, then the dewatering would only need to be done once and would not need to continue during construction. That is not accurate. Groundwater will re-enter the area due to a lowered head. In fact, the HT DEIR states as much on page 4.9-21. The HT DEIR needs to clearly describe the impacts of dewatering on groundwater flow, both on-site and off-site.

O-29-51 See Response to Comment O-29-50.

O-29-52

4. Construction Impacts - The HT DEIR states that “groundwater beneath the Project site is brackish due to proximity to the Inner Harbor and therefore is not designated by the RWQCB as a drinking water beneficial use” (DEIR at 4.9-26; HYD-2). The HT DEIR should cite the Basin Plan, and/or other documents, to support this claim. To the best of our knowledge, the RWQCB has not de-designated this water. All beneficial uses cited in the Basin Plan apply, even if the water is not of drinking-water quality. Groundwater would need to be protected during construction; e.g., excavation should be planned and executed in such a way that prevents contaminants from being spread, especially to non-contaminated or less-contaminated areas. By failing to analyze effects to groundwater the HT DEIR fails to assess all foreseeable impacts.

O-29-52 See Response to Comment O-27-62 regarding beneficial use. Also see Responses to Comments O-27-59 and O-27-60 regarding dewatering effects during construction.

O-29-53

Flooding.

1. Conceptual Design - The HT DEIR states that “compliance with the numerous laws and regulations (discussed in Section 4.9.2) and Mitigation Measure HYD-1a (Creek Protection Plan) would limit the potential impacts from construction on stormwater runoff to less than significant” (HYD-3; DEIR at 4.9-28). The design, extent, and type of stormwater control measures will determine the quantity in expected runoff volume reductions. It is too early in the conceptual design process to assume that significant volume reductions would occur to support this conclusion. Unknown and unspecified

O-29-53 See Response to Comment O-27-59 and A-12-43 regarding construction stormwater runoff. Also see Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*.

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O-29-53

requirements are not sufficient mitigation measures.

O-29-54

2. **Sea Level Rise Projections** – The proposed finished floor elevation of 6.0 feet does not address SLR projections (DEIR at 4.9-29). Mitigation Measure HYD-2 also does not account for SLR projections. Designing the Project grading plan relative to the current Federal Emergency Management Agency (“FEMA”) Base Flood Elevation, as discussed under HYD-4 (DEIR at 4.9-29), does not provide an adequate level of protection or mitigation. The full Project is not designed to accommodate the California Ocean Protection Council’s (“OPC”) medium-high risk aversion SLR projection and does not adequately consider storm surge events and extreme high tide events.

O-29-55

Stormwater Outfalls.

Stormwater outfalls are proposed at the same elevation as existing outfalls. However, they would be subject to increased hydraulic head associated with SLR and would restrict site drainage capacity (DEIR at 4.9-34). A site-specific hydrodynamic surface water model is needed to adequately assess this issue (Attachment 2).

O-29-56

Migration of Groundwater Contaminants.

The proposed hardscape site cover is not sufficient to address the migration of groundwater contaminants because vertical migration of groundwater contaminants should be expected in association with SLR (Attachment 2). Groundwater under the site is very close to the surface. SLR will result in an increase in groundwater level, which will likely result in the contamination of fill soil. This issue requires detailed evaluation currently lacking in the HT DEIR.

Land Use, Plans, Policies, Conflicts/Compatibility

The HT DEIR does not fully analyze, disclose, or mitigate conflicts with existing land uses and applicable plans as they relate to the proposed Project.

Conflicts with Existing Plans.

O-29-57

1. **San Francisco Bay Conservation and Development Commission Seaport Plan (BCDC Plan)** – The BCDC Plan prevents redevelopment of port priority use areas for non-port priority uses. The Plan specifies certain areas as “Port Priority Use Areas” reserved for regional maritime port use only (BCDC Plan p. 8.2). These areas are reserved for marine terminals and “directly related ancillary activities such as container freight stations, transit sheds and other temporary storage, ship repairing, support transportation uses including trucking and railroad yards, freight forwarders, government offices related to the port activity, chandlers and marine services.” (*Ibid.*) The proposed Project conflicts with these uses and the Project site’s designation as a Port Priority Use Area (BCDC Plan p. 4, fig. 4). The HT DEIR states that BCDC is considering an application by the Oakland A’s to remove Howard Terminal’s Priority Use Area designation. The HT DEIR analyzes the direct impacts to the region’s cargo capacity and lists the conflict with the BCDC Plan as “less than significant” (DEIR at 4.10-53) assuming BCDC’s approval of the requested amendments. However, the HT DEIR fails to analyze the indirect physical environmental impacts of amending the Priority Use Area designation for the Project, including displacing existing uses (see discussion, *supra*).

O-29-58

Additionally, Impact LUP-2 states that “The Project, with its proposed ballpark and residential and office/commercial uses, could result in a fundamental conflict with adjacent Seaport uses if the Project substantially affects the functioning or viability of the uses.” (DEIR at 4.10-33.) The HT DEIR

O-29-54

FEMA’s BFE corresponds to the 1 percent annual chance event, and thereby includes the effects of storm surge and extreme high tide. So using the current BFE of 3.9 feet COD is a suitable reference elevation for designing the site. Most of the site would be elevated to 10 feet COD or higher, which is at least six feet above the current BFE. The projected 2100 sea level rise for the Ocean Protection Council’s medium-high risk aversion scenario ranges from 5.7 feet to 6.9 feet (Draft EIR, Table 4.9-1). Therefore, much of the Project area would remain above the BFE for at least the lower part of the medium-high risk aversion sea level rise range.

In the event that sea level rise causes the BFE to exceed the finished floor elevations, adaptation strategies from Mitigation Measure HYD-3: Sea Level Rise Final Adaptive Management and Contingency Plan, would be implemented to continue to provide protection from the BFE. The adaptive management plan would use a similar approach for the portions of the Project area that are lower, such as the portions of the Project area with finished floor elevation of 6.0 feet COD. This elevation is approximately two feet above the current BFE, therefore adaptation measures are not anticipated until 2050 or later.

Mitigation Measure HYD-2 is intended to address the potential for impacts for the existing flood hazard considered as part of Draft EIR Impact HYD-4. Impacts related to flooding from sea level rise are analyzed as part of Impact HYD-5, which identifies Mitigation Measure HYD-3: Sea Level Rise Final Adaptive Management and Contingency Plan, to account for sea level rise. In the event that sea level rise causes the base flood elevation (BFE) to exceed the finished floor elevations, adaptation strategies from Mitigation Measure HYD-3 would be implemented to continue to provide protection from the BFE, including the portions of the Project area that are lower, such as the portions of the Project area with finished floor elevation of 6.0 feet COD. This elevation is approximately 2 feet above the current BFE; therefore, adaptation measures are not anticipated until 2050 or later.

Also see Responses to Comments A-7-33 and A-12-37 regarding sea level rise projections.

O-29-55

See Response to Comment O-27-59 regarding stormwater outfalls.

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- O-29-56 See Responses to Comments O-27-60 and A-12-47 regarding the potential for the migration of groundwater contaminants.
- O-29-57 This comment summarizes the laws and plans implemented by BCDC. BCDC's responsibilities under the McAteer-Petris Act and related laws are separate and distinct from the requirements of CEQA. The fact that BCDC is required to make certain findings with respect to the Project does not alter the required analyses under CEQA or mandate that information be included in the EIR. See also Response to Comment A-12-11 regarding removal of the port priority use designation.
- See Response to Comment O-51-21 and Consolidated Response 4.5, *Truck Relocation*, regarding truck relocation and Howard Terminal.
- See also Consolidated Response 4.4, *Port Operations and Land Use Compatibility*.
- O-29-58 Potential effects of the environment on a project are generally not required to be analyzed or mitigated under CEQA standards (see *California Building Industry Association v. Bay Area Air Quality Management District* (2015) 62 Cal.4th 369). Thus, as described on Draft EIR p. 4.10-32, the land use compatibility focuses on whether a fundamental land use conflict would occur such that the character of activities associated with one land use is in fundamental conflict with the uses of adjacent land, or the characteristics of one land use disrupts or degrades adjacent land uses to such a degree that the functional use of the adjacent land for its existing or planned purpose is imperiled. As discussed in the Draft EIR, based on the Port's experience with nearby users and residents, complaints from new uses regarding Port operations and operations at the adjacent Schnitzer Steel facility are likely to occur. To address this issue, the Exclusive Negotiation Term Sheet with the Project sponsor, approved by the Board of Port Commissioners, states that the future users, owners, lessees, and residents of and in the Project shall be notified of potential impacts of Port maritime and marine operations on their use and waive rights to claims arising therefrom. While not required to address such an impact under CEQA, Improvement Measure LUP-1, Statement of Disclosure is identified in the Draft EIR and would be included as a condition of approval for the proposed Project. Any other actions to address these complaints and any physical impacts of the complaints are not reasonably foreseeable but rather speculative; as such, any environmental

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impacts of any resulting actions are outside the scope of this Draft EIR as stated on pp. 4.10-50 and 4.10-51.

The quote from the DOSP Draft EIR was taken from the land use compatibility discussion of the Jack London District within the DOSP Area. The DOSP Draft EIR goes on to state that, "Industrial uses can experience greater regulatory controls over their activities and, despite a facility's location in an industrial zone, complaints may force the facility to change its operations."¹⁸ This was also discussed in the Draft EIR for the proposed Project as noted above, and while not required to address an impact under CEQA, Improvement Measure LUP-1 described above would be included as a condition of approval for the proposed Project. Additionally, the Draft DOSP notes that the General Plan contains substantial policy requirements pertaining to compatibility of land uses that must be implemented throughout all the City's neighborhoods, including the Jack London District.

See also Consolidated Response 4.4, *Port Operations and Land Use Compatibility*.

¹⁸ City of Oakland, 2019. *Downtown Oakland Specific Plan Draft Environmental Impact Report*, August 2019.

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O-29-58

understates these impacts and fails to analyze the inverse: a project could also result in a fundamental conflict if the existing adjacent seaport uses affect the functionality or viability of the proposed new uses on the Project site. Introducing residents to an industrial area would result in a fundamental conflict. As supported by the DOSP, "land use compatibility is an important component of the well-being of communities, especially in urban areas where densities are higher, and a mixture of differing land uses can generate conflicts. Residential uses adjacent or in close proximity to heavy industrial uses can be difficult to harmonize. People living near industries may experience higher levels of noise, pollution, and truck traffic, and less visually attractive conditions." (DOSP at 137). The DEIR understates each of these impacts.

O-29-59

2. West Oakland Truck Management Plan – Truck parking on city streets has been a major concern for the City.¹¹ One recent study of truck parking issues in the City concluded that, "The truck parking studies support the community concern that there is a substantial number of unattached trailers parked in West Oakland" and there is broad agreement that unattached trailers should not be stored on city streets but at storage locations at the Port of Oakland marine terminals (Kittelson, 2019 p. 2). Removing existing truck parking at Howard Terminal will exacerbate the City's already serious truck parking problems. The DEIR fails to analyze or mitigate this significant impact.

O-29-60

Land use conflicts/conflicts with Seaport Operations.

The HT DEIR notes numerous potential land and water-based use conflicts that could arise due to introduction of new residential and office/commercial uses on the Project site adjacent to Port uses, including: (1) increased vehicular/pedestrian/bike traffic that could mix and interfere with Seaport traffic; (2) increased cut-through traffic; (3) additional traffic at at-grade rail crossings; (4) exposure of new residents to noise and diesel exhaust emissions and other TACs. (DEIR at 4.10-33- 44). The HT DEIR fails to adequately analyze and disclose the significance of these impacts.

O-29-61

1. Seaport Compatibility Measures – The HT DEIR indicates that the Project Sponsor and Board of Port Commissioners will negotiate Seaport Compatibility Measures to ensure that the Project does not impact or interfere with the Port's use or operations (DEIR at 4.10-33). However, while a best faith attempt to negotiate Seaport Compatibility Measures may be made, it is not reasonable to assume that all potentially significant impacts would be lowered to a less-than-significant level based on such negotiation without providing details or performance standards for the negotiation outcomes. For example, the HT DEIR states that transportation delays may result in a significant disruption to Seaport operations to the extent that they would "imperil Seaport functioning" (DEIR at 4.10-33). At-grade crossings could delay rail access to the Seaport (DEIR at 4.10-34) and the DEIR fails to provide adequate mitigation. (See TRANS-3b (overcrossing) subject to CPUC approval and might not be feasible.)

Further, CEQA requires a lead agency to evaluate the environmental impacts of a plan or program that has multiple components or actions that are related either geographically, through application of rules or regulations, or as logical parts of a long-term plan. The development of the Seaport Compatibility measures that would be established between the Project Sponsor and the Board of Port Commissioners has the potential to result in indirect and cumulative environmental impacts which should be explicitly described in the HT DEIR. Neglecting to include a draft of the proposed

O-29-59 See Consolidated Response 4.5, *Truck Relocation*, regarding Howard Terminal and truck relocation, which explains that the City's West Oakland Truck Management Plan was approved in May 2019 to address concerns and conditions like those cited in this comment.

O-29-60 See Consolidated Response 4.4, *Port Operations and Land Use Compatibility*. As discussed in the Draft EIR under Impact LUP-2, while potential land and water-based use conflicts could arise due to the introduction of new residential and office/commercial uses on the Project site adjacent to Port, industrial, and railroad uses, with the implementation of Mitigation Measures LUP-1a, LUP-1b, LUP-1c, AIR 1b, AIR-1c, AIR-2c, AIR-2d, AIR-2e, AIR-3, AIR-4a, AIR-4b, AIR-2.CU, BIO-1b, NOI-3, TRANS 1a, and TRANS-1b, the proposed Project would not result in a fundamental conflict with nearby uses and impacts would be less than significant for the purposes of CEQA (Draft EIR p. 4.10-51). The comment does not provide substantial evidence to support the claim that the Draft EIR does not adequately analyze and disclose the significance of these impacts.

O-29-61 See Consolidated Response 4.4, *Port Operations and Land Use Compatibility*, and Consolidated Response 4.1, *Project Description*, regarding Seaport Compatibility Measures. See also Response to Comments O-27-65 and O-51-29.

¹¹ Oakland commission studies in 2015, 2016, 2017 and 2019 (West Oakland Truck Management Plan, <https://www.oaklandca.gov/resources/west-oakland-truck-management-plan-tmp>)

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O-29-61

measures in the HT DEIR is in direct conflict with CEQA's public review process, which requires that the public be provided the opportunity to review any proposed program amendments and assist in identifying any unintended environmental consequences and appropriate means of mitigation. The HT DEIR's analysis of this proposed program is inadequate.

O-29-62

2. Roadway improvements – The Project description is unclear as to what improvements will be completed by the Project and what will be completed by other projects. The Project description references Table 4.15-41 in the Transportation and Circulation chapter. However, these improvements are called for by other plans, mitigation measures identified in the DEIR, or non-CEQA recommendations. Therefore, the operations analysis presented may not be realistic if the Project is not required to make the improvements, especially if they are only recommendations or rely on other projects within the City of Oakland to complete.

O-29-63

3. Cut-through traffic -- The HT DEIR does not demonstrate that it is feasible or effective to collaborate with navigation application providers to remove streets from navigation instructions (DEIR at 4.10-34.) While a good faith effort could be made to coordinate with navigation application providers to remove specific streets from navigation direction defaults, cooperation of navigation application providers cannot be guaranteed and thus it cannot be assumed that this action would mitigate cut-through traffic. Further, many local residents who are familiar with the region will continue to use such streets, as residents are less likely to rely on navigation applications.

O-29-64

4. Enforcement – The DEIR (at 4.10-37) states that coordination with various agencies, including the U.S. Coast Guard and the Oakland Police Department, would result in the development of a boating and recreation water safety protocol to reduce conflicts between recreational watercraft and ships in the Inner Harbor Channel. The HT DEIR does not provide confirmation that these agencies are willing to cooperate to develop such a plan, nor does the HT DEIR demonstrate that resources are available for regular enforcement by these agencies. This is another example of plan deferral rather than current analysis.

O-29-65

5. Cumulative impacts – The HT DEIR fails to account for cumulative impacts of the Project and development under the DOSP, including cumulative impacts of DOSP development and the Project development on Port operations (increased traffic conflicts, etc.) (DEIR at 4.10-68 and *supra*). Refer to further discussion under the heading of "cumulative impacts".

Transportation

O-29-66

The HT DEIR's analysis of potential impacts related to transportation fails to meet CEQA requirements related to sufficient assessment of the existing environment, adequate disclosure of potentially significant impacts, and discussion of all feasible mitigation measures. The analysis of transportation impacts contains numerous mistaken assumptions, internal inconsistencies, and omissions. A technical review of the transportation chapter of the HT DEIR, prepared by Kittelson & Associates (**Attachment 3**), found that the HT DEIR failed to disclose the severity of Project impacts to transportation conditions and to identify commensurate mitigation to offset these effects.

VMT Associated with Truck Travel

O-29-67

The HT DEIR acknowledges that the Vehicle Miles Traveled ("VMT") associated with truck travel is likely to change due to trucks being relocated from the Howard Terminal to the Roundhouse property or other locations. However, the HT DEIR concludes that estimating the change in truck VMT would be speculative and no study or evaluation of this impact was conducted (DEIR at 4.15-86.) As described

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The operations analysis is reasonable and realistic, based on substantial evidence. The third column in Draft EIR Table 4.15-41 identifies transportation improvements that are part of the Project and will be required either as mitigation measures or as improvements that the City will require as non-CEQA conditions of approval. The following mitigation measures in the Draft EIR include mandatory transportation infrastructure improvements and are required per CEQA:

1. Mitigation Measure TRANS-1a (pp. 4.15-183 to 4.15-189) includes a Transportation Demand Management (TDM) Plan for the non-ballpark development with a performance metric to reduce vehicle trips 20 percent from a baseline condition without a TDM program.
2. Mitigation Measure TRANS-1b (pp. 4.15-193 to 4.15-197) includes a Transportation Management Plan (TMP) for the ballpark events with a performance metric to reduce vehicle trips 20 percent from a baseline condition without a TMP. A draft TMP is provided in Appendix TRA.1 and includes the nearby transit providers i.e., AC Transit, BART, Capitol Corridor, and WETA as a key stakeholder in coordinating ballpark events.
3. Mitigation Measure TRANS-1c (p. 4.15-197) would construct a transportation hub adjacent to the Project that would serve at least three bus routes (12 AC Transit buses per hour) to support non-automobile travel to and from Project with the ability to expand the hub on ballpark event days to handle up to six shuttle bus stops and each shuttle stop could handle up to 12 shuttles per hour.
4. Mitigation Measure TRANS-1d (p. 4.15-198) would implement bus-only lanes on Broadway between Embarcadero West and 11th Street by converting one motor vehicle lane in each direction to a bus-only lane. There are existing bus-only lanes north of 11th Street to 20th Street on Broadway.
5. Mitigation Measure TRANS-1e (pp. 4.15-198 to 4.15-200) would implement pedestrian improvements such as sidewalk widening and repair, pedestrian lighting, and intersection and driveway safety measures to promote first and last mile connections to BART and AC Transit bus stops as well as walking connections serving neighborhoods in Downtown via Martin Luther King Jr. Way, Washington Street, and Broadway; Chinatown via 8th Street; and West Oakland via 7th and Market Streets.

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- 6. Mitigation Measures TRANS-2a, TRANS-2b, and TRANS-2c (p. 4.15-230) would implement bicycle improvements in alignment with Oakland's Bike Plan that connect the Project to Oakland's bike network.
- 7. Mitigation Measures TRANS-3a and TRANS-3b (pp. 4.15-235 to 4.15-239) would implement railroad corridor improvements (subject to CPUC approval) including fencing along the corridor and at-grade crossing improvements such as quad gates as well as gates for pedestrians and bicycles and a pedestrian and bicycle bridge over the railroad tracks connecting the transportation hub on 2nd Street at Jefferson Street to the Project.

The commenter also notes the existing deficient Broadway and Jackson Street on- and off-ramps to I-880. There is no nexus between the Waterfront Ballpark and these on- and off-ramps to I-880. Alameda CTC is separately addressing these existing deficiencies through the Oakland Alameda Access Project (OAAP) which is currently under environmental review with final design expected to start in 2022 and construction to occur between 2024 and 2027. The OAAP includes two-way cycletracks, i.e., protected bike lanes on Oak Street between Lake Merritt BART station and 3rd Street and on 6th Street between Oak Street and Washington Street. These bike facilities would provide a comfortable bike network connecting the Lake Merritt BART station and the Project via Washington and Water Streets.

O-29-63 Mitigation Measure TRANS-1b Implementation of a Transportation Management Plan (TMP) outlines infrastructure improvements and operational strategies to optimize access to and from the ballpark within the constraints inherent to a large public event, while minimizing disruption to existing land uses and communities. The draft TMP (Draft EIR Appendix TRA.1) contains about 60 operational strategies of which one is coordinating with navigation application providers. These operational strategies provide a menu of options to manage ballpark events and as such it is appropriate and necessary to identify collaboration with navigation application providers just as it is necessary and appropriate to collaborate with the many other transportation service providers in the area. The TMP also requires a Parking Management Plan (PMP) that will include an off-street parking management reservation system to disperse drivers to underutilized parking garages within one to 1.5 miles of the Project (see Consolidated Response 4.7, *Parking*), thereby reducing traffic congestion in the area. Because the underutilized parking garages are located adjacent to multiple freeway on- and off-ramps to

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I-880 and I-980, cut-through traffic will be minimized. Seaport cut-through traffic implications are described on Draft EIR pp. 4.15-155 and 4.15-157 and it was determined that the Project’s traffic volumes cutting through the Seaport would be low. The TMP also requires traffic control officers who would apply management strategies to protect neighborhoods and be deployed where needed to minimize the ballpark event on transportation. As noted in the TMP (Chapter 11) pre- and post-event management includes traffic control officers at the West Oakland BART station to direct ballpark attendees down 7th Street to Market Street and the Project site. Traffic control officers would also be provided on Adeline Street to ensure Seaport access priorities. For events with more than about 17,500 attendees a local traffic only boundary would be provided extending from Broadway to west of Market Street including Adeline and 3rd Streets. Variable message signs and game day turn prohibitions would also be used to direct drivers to and from the ballpark. The local traffic only boundary enforced with traffic control officers and the turn prohibitions would deter drivers from using navigation applications to travel to the ballpark event.

The TMP considers the travel characteristics of Ballpark attendees, workers, and all other visitors to the ballpark site. Its primary goal is to ensure safe and efficient access for all people traveling to and from the site, with a focus on promoting pedestrian, bicycle, and transit access, thereby reducing vehicular impacts to the site and surrounding land uses including the Port of Oakland. As a key stakeholder, the Port would be involved with developing, implementing, monitoring, and adjusting the TMP to address transportation management before, during, and after ballgames and other events. As a living document, the TMP strategies would be updated (with City approval) to be responsive to the changing needs of nearby neighborhoods as transportation service demands change over time and to assure that performance standards are met.

O-29-64 See Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*, regarding mitigation enforcement. See also Consolidated Response 4.4, *Port Operations and Land Use Compatibility*, which contains revisions to Mitigation Measure LUP-1a that clarify the U.S. Coast Guard’s role as a “Consulting Agency” for the boating and recreational water safety protocol. Note that the additional water-based patrols required by the protocol would be implemented by OPD and funded by the Project sponsor.

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O-29-65 As discussed in the Draft EIR, cumulative residential development in proximity to Port and industrial operations, including under the Downtown Oakland Specific Plan and the West Oakland BART Redevelopment Project, in combination with the proposed Project, could result in potential conflicts with nearby Port and industrial-related uses if they collectively impede road and rail access to the Port or result in other physical impacts that collectively impair the Port’s operation. A fundamental land use conflict would occur if the characteristics of one land use disrupts or degrades adjacent land uses to such a degree that the functional use of the adjacent land for its existing or planned purpose is imperiled. As discussed under Impact LUP-2 on Draft EIR p. 4.10-68, with Mitigation Measures LUP-1a, LUP-1b, LUP-1c, AIR 1b, AIR-1c, AIR-2c, AIR-2d, AIR-2e, AIR-3, AIR-4a, AIR-4b, AIR-2.CU, BIO-1b, NOI-3, TRANS-1a, and TRANS-1b, the proposed Project would not result in a fundamental conflict with adjacent or nearby land or water-based uses, including Port and industrial operations.

With regard to traffic-related land use conflicts, the Project’s TDM and TMP would incorporate traffic management strategies to minimize Project traffic impacts on neighboring communities, including the Seaport, that may include traffic and/or parking control officers or other personnel acceptable to the City to manage traffic at key intersections. With implementation of Mitigation Measures TRANS-1a and TRANS-1b, which include monitoring and enforceability mechanisms for the TDM and TMP, the Project would not result in a fundamental land use conflict with Seaport road operations and rail access (see Draft EIR pp. 4.10-33-35). It is also noted that the Downtown Oakland Specific Plan Draft EIR found that no significant land use impacts related to land use incompatibility would occur as a result of the adoption and development under the Specific Plan with implementation of General Plan and Draft Specific Plan policies (Draft EIR p. 4.10-68). Therefore, while cumulative development would occur in the vicinity of the Port, there is no substantial evidence that the Project would contribute to a cumulative impact with regard to a fundamental land use conflict that would imperil the functional use of adjacent uses.

O-29-66 The comment serves as an introduction to the comments that follow. See Responses to Comments O-29-22, O-29-23, O-29-25, O-29-28, O-29-29, O-29-38, O-29-39, O-29-45, O-29-47, O-29-48, O-29-49, O-29-68, and O-29-70.

O-29-67 See Consolidated Response 4.5, *Truck Relocation*.

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further in **Attachment 3**, the primary method of assessing environmental impacts related to transportation is to quantify how the Project affects VMT. The HT DEIR has not sufficiently quantified the full effect that the Project will have on VMT nor has it developed a reasonable methodology to assess how the closure of Howard Terminal will affect VMT. This omission represents a clear example of how the HT DEIR has failed to disclose all reasonably foreseeable impacts of the Project.

Inappropriate VMT Significance Criteria

The HT DEIR has established two significance criteria that are inconsistent with the City of Oakland Transportation Impact Review Guidelines (“TIRG”). As described further in **Attachment 3**, the HT DEIR states that the significance criteria for retail greater than 80,000 square feet is a net increase in the VMT per service population. However, the TIRG states that a retail project would cause a significant impact if the project exceeds the existing regional VMT per employee minus 15%. (DEIR at 4.15-157) The HT DEIR claims that the VMT per service population metric was used because it is consistent with Office of Planning and Research (“OPR”) guidelines on VMT. However, this is inconsistent with OPR guidance, which recommends analyzing the net change in total VMT for retail projects, with no control for service population, residents, or employees. Additionally, the HT DEIR uses a VMT threshold for the ballpark and performance venue that states “a project would cause substantial additional VMT if it exceeds existing VMT per attendee minus 15 percent where existing VMT per attendee *is measured from existing uses at the Coliseum.*” (DEIR at 4:15-157, emphasis added). However, the correct metric and impact threshold for event centers and regional-serving entertainment venues, according to the TIRG, is “a project would cause substantial additional VMT if it exceeds the existing regional VMT per retail employee minus 15 percent.” Therefore, the HT DEIR has failed to disclose potential impacts consistent with the City of Oakland’s guidelines for transportation assessments.

Failure to Disclose a Significant VMT Impact

As described further in **Attachment 3**, the evidence presented in the HT DEIR indicates that the Project’s retail component VMT per service population in 2020 increases from 17.29 to 17.30 and from 17.13 to 17.14 in 2040. However, the HT DEIR only reports one decimal point for the with and without Project VMT and incorrectly concludes there is no change in VMT per service population and therefore, no impact. Since the significance criteria established in the HT DEIR for retail greater than 80,000 square feet is no net change in VMT per service population, the HT DEIR has failed to disclose a significant impact.

Improper VMT Reduction

The HT DEIR has not presented sufficient analysis to support the claim that the transportation demand management (“TDM”) plan for the performance venue will reduce VMT to a level constituting a less-than-significant impact. As described further in **Attachment 3**, the HT DEIR states that the TDM plan would result in a VMT reduction of 17 percent for the performance venue, and therefore the impact would be less than significant (DEIR at 4.15-182). Earlier on the same page, however, the HT DEIR states that a TDM Plan required to reduce the impacts of the Project’s performance venue has not been defined with specificity. No analysis is presented to support the findings that the proposed TDM elements would reduce VMT by the amounts indicated. Therefore, the impact cannot be found to be less than significant.

Project Access

The HT DEIR presents insufficient analysis regarding the potential impacts of train blockages on Project access. As described further in **Attachment 3**, there is little analysis or discussion of access to the Project

O-29-68 See Response to Comment O29-2-2.

O-29-69 See Response to Comment O29-2-4.

O-29-70 See Response to Comment O29-2-5.

O-29-71 See Consolidated Response 4.6, *Rail Safety, Grade Crossing, and Grade Separation.*

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when a train blocks the rail crossings. The data collection presented in the HT DEIR showed an average of 42 trains per day over a data collection period of one week, with one train blocking the rail crossings at the Project entrances for 87 minutes (DEIR at 4.15-39). The HT DEIR should provide additional analyses and discussion related to vehicular (and other, pedestrian, bicycle, emergency vehicle, etc.) access and train blockages. Additionally, the HT DEIR does not analyze or discuss what would happen if the railroad gates were down for a similar duration when an on-site event concludes or during event arrival times. As has been reported in the San Diego Tribune¹², patrons of the San Diego's Petco Park can regularly be seen climbing over and under parked train cars that temporarily block pedestrian crossings in the vicinity of the downtown stadium. The single pedestrian bridge proposed at the site is unlikely to be sufficient to accommodate the pedestrian demand. Additionally, residents living in the area would be delayed for more than an hour before they could exit the Project Area. Train blockages could result in potentially significant impacts to walkability, site access, and emergency services. The omission of this analysis represents another clear example of how the HT DEIR has failed to disclose all reasonably foreseeable impacts of the Project.

Deferred Mitigation

The Transportation Management Plan ("TMP") and the TDM Plan, which address ballpark transportation management and other proposed Project development, include measures that are too vague and lack adequate performance standards to qualify as permissible deferred mitigation. For example, the DEIR states that "The TMP is intended to be a living document and would be amended periodically by the Oakland A's, in coordination with Port of Oakland and City of Oakland. The TMP, as a living document, would also be updated over time as travel patterns change because of development and changes to transportation infrastructure and operations." (DEIR at 4.15-137; 4.15-193). The TMP includes several vague goals, including:

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- Minimize auto mode share and reduce vehicle trips and parking demand generated by the project to the maximum extent practicable.
- Facilitate and promote safe use of non-automobile transportation by people attending and supporting ball games and other events as well as other uses on-site.
- Highlight and optimize the use of transit by attendees and employees to ball games and other events.
- Facilitate and maximize bicycle use by attendees and employees to ball games and other events.

The Draft TMP also states: "As a living document, this TMP may also be updated to reflect plans, policies, and strategies defined in future, yet-to-be-determined studies that may occur over the lifetime of the Ballpark." (Appendix TRA, at p. 118). These measures include no standards for enforceability or measuring their success and are impermissibly vague and constitute improperly deferred mitigation under CEQA Guidelines § 15126.4(a)(1)(B).

¹² Video shows Padres fans make risky railroad track crossings. September 8, 2010. Debbie Baker. The San Diego Union Tribune. <https://www.sandiegouniontribune.com/sdut-padres-fans-warned-about-railroad-safety-2010sep08-htlstory.html>

O-29-72 See Response to Comment O-27-72 and Consolidated Response 4.23, *Transportation and Parking Demand Management Plan and Transportation Management Plan Considerations.*

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O-29-73 See Response to Comment O-27-75.



Other CEQA Impact Areas

Aesthetics and Wind Impacts

Construction of the proposed Project would result in the highest buildings in Oakland, impeding and significant altering views from the City of the bay and the historic port uses. Presently, the tallest building in Oakland is the Ordway Building in downtown at 404'. The Project would not only introduce similarly high buildings with three 400' towers and two 350' towers but would also significantly surpass the Ordway Building by approximately 30% by erecting two 600' towers. Massing and height are significant aesthetic and planning issues, especially since the Project would be in a highly visible waterfront location where no buildings in the vicinity of the Howard Terminal site currently exceed four stories in height. Figures 4.1-11 through 4.1-20 in the HT DEIR exemplify the drastic contrast in building heights in the vicinity of the Howard Terminal site between the existing setting and existing setting with Full Buildout of the proposed Project. The proposed Project would obstruct views of the historical industrial waterfront (Figures 4.1-11, 4.1-12, 4.1-13, 4.1-14 [shipping cranes]) and the Oakland Hills along with disrupting the urban skyline (Figures 4.1-15, 4.1-16, 4.1-19, 4.1-20 [most drastic changes in view, mountains and skyline obstructed]). In the most drastic instance of obstructing a scenic resource, as seen in Figures 4.1-19 to 4.1-20, the proposed Project would almost entirely impede the view of the Oakland Hills and seriously disrupt the Oakland skyline when viewing the Howard Terminal site from the south/west. Under the Oakland General Plan Policy OS-10-1, both the Oakland Hills and shoreline are considered visual resources (DEIR at 4.1-15) while urban skyline, mountain ranges and large bodies of water are considered scenic resources under CEQA (DEIR at 4.1-3). Despite these sharp contrasts of the existing setting compared to the Full Buildout of the proposed Project in terms of building heights and the subsequent obstruction of visual resources considered significant under CEQA and the Oakland General Plan, the HT DEIR concludes that these massive and substantial impacts to scenic resources are "less than significant, but not a CEQA consideration" (DEIR at 4.1-23).

The HT DEIR conclusion that the visual effects of the Project would be less than significant is implausible and unsupported. As described above, the changes to views will obviously be extreme and significant to the residents living in West Oakland and the public in general and will permanently alter the historic visual character of the area as a seaport. Despite this, the HT DEIR improperly assesses this impact or, in some instances, does not even acknowledge it. For example, on p. 4.1-29 of the HT DEIR, under the analysis for Key Viewpoint 2, the proposed Project would clearly obstruct motorists' and pedestrians' upcoming view of the Oakland Inner Harbor shoreline and iconic shipping cranes when traveling south on Martin Luther King Jr. Way towards the Howard Terminal site. However, while the HT DEIR acknowledges the importance of the shipping cranes, nothing is mentioned of the proposed Project's obstruction of the Oakland Inner Harbor shoreline (Figure 4.1-13 of the HT DEIR), and ultimately no impact is determined for these resources despite the clear obstruction. Similarly, an impact is under-emphasized on p. 4.1-39 under Key Viewpoint 5.

While the HT DEIR acknowledges the substantial alteration of the views the Oakland Hills and Oakland skyline, both important visual resources under the Oakland General Plan, with implementation of the Proposed Project (see Figure 4.1-20 of the HT DEIR), the HT DEIR merely states that, "these resources would continue to be visible from other nearby locations..." (DEIR at 4.1-39) and thus completely circumvents the proposed Project's clearly significant impact that would require mitigation to reduce. Appropriate mitigation measures to reduce the impact to the Oakland Hills and Oakland skyline would be to reduce the building heights of the proposed Project to diminish the vertical obstruction and

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therefore impact to these resources. Another method to reduce this impact would be to implement Alternative 2, the Coliseum Site, instead of the proposed Project, Howard Terminal site. This would avoid the significant impact to the view of the Oakland hills and Oakland skyline at the Howard Terminal site.

O-29-74

In addition, significant and unavoidable impacts from wind are not addressed with any quantifiable mitigation. The HT DEIR acknowledges that wind generated by the new buildings will create a significant impact. However, the only mitigation measures identified are to submit building plans to the City for approval before construction, again improperly deferring analysis and mitigation.

Cultural and Tribal Resources.

The HT DEIR finds the Project would have significant and unavoidable impacts on historic/cultural resources but understates those impacts and fails to address appropriate mitigation or the superiority of Alternative 2 (Coliseum site) that would avoid all such impacts. The HT DEIR fails to assess historic resources in the vicinity of the Project, including the Southern Pacific Railroad Corridor (“SPRC”), the Remillard Brick Company, the *USS Potomac* and *Lightship Relief*, the Muller Brothers Pickle Factory, the Wempe Brothers-Western Paper Box Company, and the proposed Jack London Maker District located just two blocks north of the SPRC along 3rd Street between Brush and Clay Streets.

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The Jack London Maker District contains three National Register of Historic Places (“NRHP”)-listed properties - the Union Iron Works, the Waterfront Warehouse Historic District, and the Wholesale Produce Market. In addition, five Areas of Secondary Interest (“ASI”) are located nearby: Brett Harte Boardwalk, West Waterfront, Lower Broadway, 4th and Webster (one parcel); and the Jackson Warehouse. The Draft EIR for the DOSP warns that the proposed Jack London Maker District appears to be subject to the most potential conflict and impairment or loss of designated historic resources due to the amount of proposed intensity increases, as well as the development opportunities identified for the area including the HT Project. (DOSP EIR at pp. 136, 352)

The hallmark of many of these resources is visual continuity, and the built environment exemplifies Oakland’s historic early use as an important shipping port. The cultural resources identified within the HT property and the immediate vicinity retain qualities of integrity (location, design, setting, materials, workmanship, feeling, and association) recognized under the NRHP. Under CEQA, these resources retain enough of historic character and appearance to be recognizable as historical resources, indicating that a larger National Register Landscape District could be established in the area. The establishment of such a district would be in keeping with the Historic Preservation Element of the Oakland General Plan, DOSP, and other local ordinances. Significant aesthetic impacts to all these cultural resources (which are not exempt from review under CEQA § 21099) would result from construction of a new baseball stadium and residential, entertainment, office, hotel, and retail uses, ranging from 50 to 600 feet high, that would dwarf all other structures or buildings in the area and entirely alter the visual character of the maritime industrial complex in and around the Howard Terminal site. A more thorough analysis of changes generated by the proposed Project should be conducted. Please refer to additional discussion in **Attachment 4**.

Energy

O-29-76

The HT DEIR fails to show how any mitigation measures would reduce Project energy usage during construction. Impact ENE-1 of the HT DEIR (p. 4.5-28) states that construction of the Project would not result in a potentially significant environmental impact due to the wasteful, inefficient, and/or

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As explained on Draft EIR p. 4.1-68, the wind analysis, like the visual simulations and shadow analysis, “was based on a simple massing plan of the proposed Project and not on actual building designs,” which are not yet available. “In particular, the model includes generally rectilinear building forms (except for the proposed ballpark) without setbacks, podiums, or building articulation that would reduce pedestrian-level wind speeds. Therefore, the analysis presents a conservative evaluation of potential Project wind effects and likely overstates the changes in wind speeds that would result from the Project.” Nevertheless, based on the wind tunnel testing conducted for the proposed Project, the Draft EIR appropriately determined that wind impacts would be significant. Accordingly, mitigation would be required, and as described further below, the mitigation measures are implemented when building designs are available as part of the permitting process.

Draft EIR Mitigation Measure AES-1: Wind Impact Analysis and Mitigation for Buildings 100 Feet or Greater in Height on Draft EIR p. 4.1-69, would require that each individual building undergo wind tunnel testing based on the actual detailed building design. The Draft EIR analysis is based on a conservative test based only on simple rectilinear massing models. AAs stated in Mitigation Measure AES-1, each building would be tested under the existing conditions that exist at the time the building comes forward for approval, as well as under proposed Project buildout conditions, as they may be modified from time to time based on ongoing Project design and development. Together, the use of detailed building plans and a setting condition that is current would ensure the greatest accuracy in the results for each succeeding wind test and thereby would allow consideration of appropriate building design features that could reduce pedestrian-level winds, if necessary. Nevertheless, because it cannot be stated with certainty at this time that no such localized wind hazard exceedances would result from one or more buildings developed pursuant to the proposed Project, the Draft EIR appropriately determined that the impact on pedestrian winds would be significant and unavoidable.

As stated on Draft EIR p. 4.1-69, Mitigation Measure AES-1 is quantifiable and expressly aimed at “preventing to the extent feasible a net increase in the number of hazardous wind exceedance locations, compared to existing conditions.” Hazardous wind exceedance locations are based on pedestrian wind speeds exceeding the Draft EIR’s threshold of 36 mph for one full hour of the year.

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O-29-75 The Draft EIR concludes there would be three significant and unavoidable impacts to cultural resources - Impact CUL-4: Crane X-422; Impact CUL 8: Peaker Plant Variant; and Impact CUL-10: Aerial Gondola Variant - and three cumulative impacts to citywide historic resources - Impact CUL-1.CU (Project only), Impact CUL-3.CU (Project plus Peaker Plant Variant), and CUL-4.CU (Project plus Aerial Gondola Variant). Each of these impacts includes mitigation measures that may lessen but would not eliminate the impacts. State CEQA Guidelines Section 15370 states that mitigation includes:

- (a) Avoiding the impact altogether by not taking a certain action or parts of an action;
- (b) Minimizing impacts by limiting the degree or magnitude of the action and its implementation;
- (c) Rectifying the impact by repairing, rehabilitating, or restoring the impacted environment;
- (d) Reducing or eliminating the impact over time by preservation and maintenance operations during the life of the action, or
- (e) Compensating for the impact by replacing or providing substitute resources or environments, including through permanent protection of such resources in the form of conservation easements.

The range of mitigation provided include feasible measures to mitigate these significant adverse changes in the historical significance of these resources as is required by CEQA (State CEQA Guidelines Section 15064.5(b)(4)). These mitigation measures were identified to reduce impacts to the greatest degree possible, however the Draft EIR concludes that impacts would not be reduced to a less-than-significant level. This is the basis for concluding classification of these impacts to historic resources as *significant and unavoidable*.

See Consolidated Response 4.10, *Alternative 2: The Off-Site (Coliseum Area) Alternative*.

See Responses to Comments H-1-11 and O-27-76 for a discussion of Southern Pacific Railroad Industrial Landscape API, the Remillard Brick Company, the USS *Potomac*, the Lightship *Relief*, the Muller Brother Pickle Factory API, the Wempe-Brothers – Western Paper Box Company, the proposed Jack London Maker District and their relationship to the analysis in the draft EIR.

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See Response to Comment O-27-76 for a discussion of consideration of a larger historic district within the CEQA analysis for the proposed Project.

O-29-76 The commenter is correct that the implementation of mitigation measures would increase construction-related energy use. As explained in footnote “a” of Table 4.5-3, and as noted by the commenter, this is because mitigated energy usage includes usage associated with construction of a pedestrian and bicycle overcrossing and other off-site construction associated with transportation improvements, which are required as mitigation in the Transportation section (see Section 4.15, *Transportation and Circulation*).

The commenter is incorrect that the Draft EIR is deficient because it does not provide mitigation measures to reduce construction energy use. Because Impact ENE-1 is less than significant, no mitigation is required to reduce impacts. Therefore, the Draft EIR does not need to identify any mitigation measures to reduce energy use.

The Draft EIR presents the Project’s energy use after all required mitigation measures for other resource areas, such as air quality, greenhouse gas emissions, and transportation (see Tables 4.5-3 and 4.5-4 and Appendix ENE). Tables 4.5-3 and 4.5-4 do show both unmitigated and mitigated energy use, contrary to the commenter’s claim. Mitigation energy use is what the determination for Impact ENE-1 is based on.

A number of mitigation measures have been updated for air quality and greenhouse gas emissions; these would also affect the project’s energy use. The total energy use by the project would decrease as a result of these mitigation measures because they reduce energy and fuel use at the project site. See CEQA Air Quality Technical Addendum (Ramboll, 2021) for additional discussion.¹⁹

¹⁹ Ramboll, 2021. CEQA Air Quality Technical Addendum, November 2021.

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unnecessary use of energy after the implementation of mitigation measures. However, as shown in Table 4.5-3 of the HT DEIR, Project estimated construction energy consumption actually increases after implementation of all proposed mitigation measures. The HT DEIR claims that this increase is “due to a number of transportation improvements, required as mitigation measures in the Transportation section, that call for construction of off-site facilities that may also generate construction emissions” (DEIR at 4.5-28). However, the HT DEIR fails to provide any analysis showing that baseline energy consumption would be reduced through implementation of the proposed construction energy mitigation measures. Additionally, Appendix ENE of the HT DEIR, Tables 2 through 5, fails to show baseline/unmitigated energy consumption from construction of the Project. Without quantification of both unmitigated and mitigated energy consumption, a valid determination of whether the Project could result in a wasteful, inefficient, and/or unnecessary use of energy cannot be made. In contrast, the Coliseum Site Alternative would presumably reduce energy waste during construction by repurposing existing materials and infrastructure systems.

O-29-77

In addition, as described in the air quality section above and explained further in Attachment 1, the HT DEIR improperly applies emissions reductions associated with the installation of EV charging infrastructure at the Project site to the Project. Similarly, the DEIR attributes energy reductions to the Project that are actually attributable to activities by CARB and other governmental entities that would occur whether or not the Project is developed. Therefore, the energy reductions associated with installation of EV charging infrastructure at the Project site are overstated, and the HT DEIR fails to adequately disclose the severity of related project impacts.

Noise and Vibration.

O-29-78

The HT DEIR does not adequately consider impacts from operational noise. The HT DEIR determined that potential noise impacts from fireworks displays are not significant and no mitigation is required (DEIR at 4.11-52). The HT DEIR justifies this claim by stating that: fireworks displays also take place at the Coliseum, the displays may exceed the instantaneous performance standard for residents but are no more than normal arterial road noise levels, and the City is authorized to issue permits for fireworks displays. However, this analysis is faulty because it does not consider the substantive differences between the Project site and the Coliseum area. There is no mention of the Coliseum being far removed from residences and surrounded by industrial uses, as compared to the HT site. The HT DEIR analysis also assumes that fireworks will have a limited effect equivalent to the narrow impact area of living next to an arterial roadway. However, noise impacts from fireworks displays would be universally experienced by all residents within a wide area around the HT site at levels comparable to living alongside an arterial roadway. The HT DEIR also assumes relatively few instances of fireworks activities. However, the HT Project stadium could, in a worst-case scenario, use firework displays for all 81 of the scheduled regular season home games, and other non-baseball events¹³. The HT DEIR did not evaluate the reasonably foreseeable impacts of single-event noise from fireworks, including the potential for sleep disruption.

A single event is an individual distinct loud activity, such as a train passage. Because most noise policies are specified in terms of 24-hour-averaged descriptors, such as Ldn or CNEL, the potential for annoyance or sleep disturbance associated with individual loud events can be masked by the averaging process.

¹³<https://mktg.mlbstatic.com/athletics/documents/2021-Athletics-Regular-Season-Schedule-v5.pdf>

O-29-77 See Responses to Comments O29-1-22 through O29-1-28. See Electric Vehicle Assumptions for the Oakland Waterfront Ballpark District Project (Ramboll, 2021) for a detailed technical analysis that supports the link between EV charging infrastructure and EV travel, additional detail on emission reduction calculation methods, new data and information on CARB’s 2021 Mobile Source Strategy VISION modeling update, and an evaluation of the optimal number of EV charging spaces for the proposed Project.²⁰

O-29-78 The less-than-significant impact conclusion for noise from fireworks is based on the limited frequency of the events. The significance of a noise impact is determined not only by the magnitude of the noise level associated with an event but also with the frequency of that noise level. Fireworks events would generally be performed after ballgames, but occasionally may be performed after concerts. As an example, Oracle Park in San Francisco had three scheduled firework events for 2021 (<https://www.mlb.com/giants/tickets/specials/fireworks-nights>) and four scheduled firework events are scheduled for 2022 at the Coliseum in Oakland (<https://www.mlb.com/athletics/tickets/promotions/themes/fireworks>). As discussed in the Draft EIR, there would be approximately seven fireworks shows a year, each lasting approximately 15 minutes in duration (Draft EIR p. 4.1-50).

With respect to the sound exposure level (SEL) noise metric, this metric normalized the entirety of the sound energy associated with a given event into a single second. Because the duration of a single detonation would be on the order of a single second and the duration of an entirety of a fireworks display would be approximately 15 minutes, this metric does not lend itself to the assessment of noise from fireworks. Further, neither the City of Oakland noise ordinance nor the General Plan Noise Element establish any noise standards in terms of the SEL metric.

With respect to use of the Lmax metric, it is presented in the analysis as it is a metric that the noise ordinance identifies as a standard. However, the severity of noise impacts is assessed not just in terms of the noise level generated but also the duration and frequency of such exceedances.

²⁰ Ramboll, 2021. Electric Vehicle Assumptions for the Oakland Waterfront Ballpark District Project, November 3, 2021.

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O-29-78

Extensive studies have been conducted regarding the effects of single-event noise on sleep disturbance, with the Sound Exposure Level (SEL) metric being the most common used for such assessments. SEL represents the entire sound energy of a given event normalized into a one-second period regardless of event duration. As a result, the single-number SEL metric contains information pertaining to both event duration and intensity. Another descriptor utilized to assess single-event noise is the maximum, or Lmax, noise level associated with the event. A problem with utilizing Lmax to assess single events is that the duration of the event is not considered, which could be substantial in the case of fireworks displays.

While the DEIR acknowledges that the fireworks displays would exceed the City's Lmax standards for residential sensitive receptors (80 dBA Lmax per Table 4.11-8), it does not identify this as a significant effect, nor does it describe the consequences of this significant impact, including the potential for adverse health effects associated with sleep disturbance.

Population and Housing.

The HT DEIR does not use correct data in determining population generation rates or gentrification potential for the Project:

O-29-79

1. Residential rate -- The projected residential generation rate for all phases of Project buildout assumes 2 persons per household. However, data from the California Department of Finance cited in the HT DEIR (Table 4.12-2, p. 4.12-3) indicates households in the Oakland and Bay Area Region as between 2.49 and 2.60 persons. Thus, the estimated generation rate presented in Table 4.12-7 underestimates population increases by about 20 percent. These generation numbers also drive the estimated utilities demand and potential traffic and air quality effects, each of which should be revised.

O-29-80

2. Loss of Employment -- The HT DEIR analyzes the net new employment at the stadium, but it does not appear to address the loss of employment at the Port from closure or reduced operations at Port businesses (partially attributed to the reduced truck parking/staging capacity as a result of conversion of the site, and increased restrictions on Port activities as a result of increased pedestrian activity). Impacts to employment are not inherently required to be analyzed under CEQA, but loss of employment could lead to adverse physical impacts in a cumulative context, as discussed further under Indirect Effects: Urban Blight.

O-29-81

3. Gentrification -- Impact POP-4 discusses that gentrification could potentially be a concern, but then states that it is not reasonable to assume that any gentrification that were to occur would be as a direct result of the proposed Project. However, to assume without any study that the development of a Major League Ballpark, 3,000 new upscale residential units with commercial, office and entertainment facilities would not drive area property values and housing prices up is unreasonable (DEIR at 3-20, Table 3-1), especially if coupled with nearby maximal build-out under the proposed DTSOP. The HT DEIR dismisses the possibility of gentrification without evidence and states that CEQA does not require analysis of the impacts at all (DEIR at 4.12-18); yet still finds the possibility as "Less than Significant". This conclusion is unsupported.

Public Services.

O-29-82

Mitigation for water safety impacts is improperly deferred. MM LUP-1a (Boating and Recreational Water Safety Plan) is another plan to plan. The HT DEIR states funding for increased OPD Marine unit patrols will be provided "as and if needed" during games and other events (DEIR at 4.13-33-34). It is unclear how that will be determined and there is no financial guaranty.

O-29-79 As indicated on Draft EIR pp. 4.12-12 and 4.12-13, the ratio of 2.0 persons per housing unit used for the proposed Project relies on project- and location-specific factors as well as the Metropolitan Transit District's Plan Bay Area 2040 Priority-Development-Area (PDA) level projections. Projections used in Plan Bay Area 2040 for the Oakland Downtown & Jack London Square PDA estimate there will be a ratio of 1.87 persons per household. Project- and location-specific factors influencing the resident ratio assumed for the Project included the average size of the proposed housing units (800 square feet), which is smaller than existing single-family homes citywide, and the resident ratios of other nearby area plans including the Lake Merritt Specific Plan (2.0 persons per housing unit), the Draft DOSP (1.9 persons per housing unit), and the Coliseum Area Plan (1.84 persons per housing unit). For these reasons, the ratio of 2.0 persons per housing unit is anticipated to generate a more accurate estimate of the residential population associated with this Project at the proposed location than the City- or Bay Area-wide estimates (based on data from the California Department of Finance) presented in Table 4.12-1.

O-29-80 See Consolidated Response 4.4, *Port Operations and Land Use Compatibility*, and Consolidated Response 4.5, *Truck Relocation*.

O-29-81 See Consolidated Response 4.13, *Gentrification and Indirect Housing Displacement*.

O-29-82 See Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*, and Consolidated Response 4.4, *Port Operations and Land Use Compatibility*, for concerns related to Mitigation Measure LUP-1a.

As noted in Chapter 3, *Project Description*, Fire Station 2 is proposed to remain in place as part of the proposed Project and would be incorporated into the Project design; however, as described on Draft EIR p. 3-16, the impacts of demolition of Fire Station 2 are analyzed and disclosed in the Draft EIR in case the demolition is desired or necessary in the future. As described in the Draft EIR, response time data does not include responses from Fire Station 2, which reopened in 2020. Given the location of Fire Station 2, the response times to the proposed Project site and the Jack London waterfront area would be less when the Station is operating (Draft EIR p. 4.13-5). Therefore, the response times used to inform the analysis in the Draft EIR analysis without Fire Station 2 represent a conservative scenario where Fire Station 2 is not in operation.

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O-29-82

Fire Station 2 also is treated inconsistently--proposed to remain in place as part of the Project (DEIR at 4.13-2) or to be utilized "as a temporary fire station" during remodels and construction projects on other stations (*id.* at 4.13-8). The discussion is unclear including as to emergency response times without Fire Station 2.

O-29-83

Recreation.

Under Impact REC-1 (Section 4.14), the HT DEIR concludes that the potential increase in recreational water users "would not substantially increase or accelerate the physical deterioration or degradation" of public boat docks that are currently used for rental purposes (DEIR at 4.14-14 - 4.14-15), but this conclusion is unconvincing because the Proposed Project would add approximately 6,000 residents in addition to hotel guests (*e.g.*, Table 4.16-5, p. 4.16-35) within walking distance of the existing facilities. It is highly probable that these new residents and hotel guests would utilize boating rental facilities, especially given the anticipated renovations and expansions of the Estuary Park that will increase recreational boating opportunities (DEIR at 4.14-14). Because of these factors, an increase in use of these existing boating rental facilities should be anticipated as a result of the proposed Project, and the DEIR should study the increased rate of deterioration or degradation of these facilities.

Utilities and Service Systems.

The HT DEIR briefly mentions various infrastructure improvements proposed as part of the Project. However, adequate descriptions of the nature of such improvements and appropriate analysis of the associated environmental impacts is not provided. Specifically, Chapter 4.16 fails to provide evidence to support the impact findings for the significance criteria presented in Section 4.16.3. The chapter is deficient in its analysis of the impacts associated with wastewater, stormwater conveyance, water supply, and other various utility infrastructure, as follows:

O-29-84

1. Wastewater: Impact UTIL-1 -- The HT DEIR estimates Project wastewater generation without providing a clear wastewater generation rate or outlining the anticipated number of employees/visitors. Table 4.16-1 includes some of this information, but there are no table references in the analysis and the tables themselves do not include references. Table 4.16-1 also does not discuss wet weather treatment capacity, which is typically significantly more limited. Instead, the analysis states that the Proposed Project would install sealed and impervious wastewater pipelines to convey wastewater and not add to wet weather flows. The physical impacts of the addition of these pipelines is not clearly analyzed. Additionally, impact UTIL-1 states that "The Project sponsor would be required to pay the Sanitary Sewer Impact Fee in accordance with the City's Master Fee Schedule for funding improvements to the sanitary sewer system if the increase in post-Project flows indicates that the net increase in wastewater flow exceeds City-projected increases in wastewater flow in the sanitary sewer system. Furthermore, although the Project would install sealed and impervious wastewater pipelines to convey wastewater and not add to wet weather flows, compliance with the required EBMUD Private Sewer Lateral Ordinance would require the Project to test and meet the requirement of preventing I/I from entering the wastewater pipelines."

O-29-85

This language suggests that the proposed Project has the potential to result in various wastewater infrastructure upgrades which are not specifically identified in the HT DEIR, and it is not reasonable to assume that EBMUD's Private Lateral Ordinance would be met without first providing conceptual-level design details of such pipes. Impacts associated with wastewater infrastructure improvements

O-29-83

As described on Draft EIR p. 4.14-6, two public boat docks are located at the foot of Broadway and Franklin Street. Private kayak, canoe, and paddleboard rentals are also available from a local business in Jack London Square that can be used in the Estuary, which utilizes the public docks to launch rentals. Although the proposed Project would cause an increase in residential and hotel visitor population, there is no evidence to suggest the potential increase in recreational water users would substantially increase or accelerate the physical deterioration or degradation of the public boat docks in Jack London Square. No additional boat docks are proposed as part of the Project. A limited number of proposed Project residents and hotel visitors would be expected to use these specialized recreational resources, as participation in water sports varies between age groups, and overall participation in water sports for individuals in the U.S. has been estimated at approximately 14 percent.²¹ Additionally, the new residential population could possibly partake in the City's existing youth and adult sailing and kayaking courses hosted at the Jack London Aquatic Center within Estuary Park. As discussed on Draft EIR p. 4.14-4, Estuary Park, including the Jack London Aquatic Center, is planned to be renovated and expanded beginning in 2022, including a kayak drop-off in the parking lot, a relocated dock, a pebble beach to launch small watercraft, and increased boat which would also accommodate a portion of the resident's demand apart from the public boat docks at Broadway and Franklin Street. Therefore, proposed Project impacts related to the accelerated substantial physical deterioration related to parks and recreation resources would remain less than significant. Finally, as noted on Draft EIR p. 4.14-14, the proposed Project would contribute its fair share to the City of Oakland Landscaping and Lighting Assessment District, which funds operation and maintenance for park and recreation facilities, through payment of parcel taxes that would be assessed based on changes in land use.

O-29-84

The Draft EIR describes in detail and analyzes the preliminary design, construction, and operation of the proposed Project utilities and services systems described on pp. 3-50 through 3-58 in Chapter 3, *Project Description*, and in Section 4.8, *Hazards and Hazardous Materials*, Section 4.9, *Hydrology and Water Quality*, and Section 4.16, *Utilities and Service Systems*. Section 4.16 contains figures showing the pre- and post-project water, stormwater, and wastewater utilities analyzed in the Draft EIR. As described on p. 4.16-25 in Section 4.16, *Utilities and Service Systems*, and throughout the Draft EIR,

²¹ Physical Activity Council, 2019. *2019 Physical Activity Council's Overview Report on U.S. Participation*.

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physical impacts of earthwork and construction and operation of the proposed Project are analyzed in all of the technical sections in Chapter 4, *Environmental Setting, Impacts, and Mitigation Measures*. See Responses to Comments O-29-85 through O-29-87 for more details.

- O-29-85 All tables in Section 4.16, *Utilities and Service Systems*, have references at the bottom of the tables or in text preceding the tables. In addition, references are listed under the *References* subheading at the end of Section 4.16. All wastewater generation rates were provided in Table 4.16-1 and in the May 14, 2019 BKF *Technical Memorandum, Howard Terminal – Preliminary Sanitary Sewer Analysis* (see p. 4.16-50). As described on p. 4.16-25 in Section 4.16, *Utilities and Service Systems*, and elsewhere in the Draft EIR, physical impacts of earthwork and construction and operation of the Proposed project are analyzed in all of the technical sections in Chapter 4, *Environmental Setting, Impacts, and Mitigation Measures*, including for the construction of new on-site wastewater conveyance system. See Response to Comment O-29-84 regarding preliminary designs. See also Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*.

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O-29-85

are expected to vary in severity according to the nature of a proposed improvement, including factors such as location, trenching depth and width, complexity, and timing. Improvements to wastewater conveyance infrastructure have the potential to result in temporary and permanent impacts to various issue areas including, but not limited to, biological resources, cultural and tribal resources, geology, soils, and mineral resources, hydrology and water quality, noise, and transportation. Therefore, preliminary design plans should be included and the physical environmental effects of those improvements should be analyzed in the HT DEIR prior to approval of the proposed Project.

Mitigation Measure UTIL-1 requires the preparation of a sanitary sewer impact analysis to the City, deferring mitigation, as the analysis should be done prior to approval of the project (DEIR at 4.16-36) so that the full extent of infrastructure improvements and associated impacts can be described. The physical consequences of infrastructure development should be evaluated in the HT DEIR.

2. **Stormwater Conveyance** -- Mitigation Measure UTIL-2 requires preparation and approval of storm drainage systems plans, but mitigation is deferred to agreements with City Planning after approval of the Project. It is impossible to determine if impacts would occur as a result of potential future improvements to the stormwater conveyance system without a description of the types of improvements that may occur (DEIR at 4.16-38). Impacts associated with stormwater conveyance infrastructure improvements are expected to vary in severity according to the nature of a proposed improvement, including factors such as location, volume of excavation needed or depth of trenching, complexity, and timing.

O-29-86

Improvements to stormwater conveyance infrastructure have the potential to result in temporary and permanent impacts to various issue areas including, but not limited to, biological resources, cultural and tribal resources, geology, soils, and mineral resources, hydrology and water quality, noise, and transportation. Therefore, preliminary design plans should be included and analyzed in the HT DEIR prior to approval of the Proposed Project.

3. **Water Supply Impact UTIL 3 – Operation** – The DEIR mentions new water pipelines in Market Street and Martin Luther King Jr. Way, but does not discuss the construction impacts of these pipelines. It is impossible to determine if impacts would occur as a result of potential future improvements to the water supply system without a description of the types of improvements that may occur.

O-29-87

Impacts associated with water supply infrastructure improvements are expected to vary in severity according to the nature of a proposed improvement, including factors such as location, volume of excavation needed or depth of trenching, complexity, and timing. As stated above, improvements to water supply infrastructure have the potential to result in temporary and permanent impacts to various issue areas including, but not limited to, biological resources, cultural and tribal resources, geology, soils, and mineral resources, hydrology and water quality, noise, and transportation. Therefore, preliminary design plans need to be included and thoroughly analyzed in the HT DEIR prior to approval of the Proposed Project.

4. **UPRR Tracks** -- The HT DEIR briefly states that utility lines beneath and/or adjacent to UPRR tracks “may be replaced, relocated, or otherwise improved.” (DEIR at 4.16-13.) Lines include high-pressure petroleum lines, sewer, and gas lines. It is unclear if these potential replacements, locations, and other improvements are planned by Union Pacific Railroad separate from the proposed Project analyzed in the HT DEIR, or if they have the potential to occur as a component of the proposed Project. his language should be clarified, and if the modifications have the potential to occur as a

O-29-88

O-29-86 As described on p. 4.16-25 in Section 4.16, *Utilities and Service Systems*, and elsewhere in the Draft EIR, physical impacts of earthwork and construction and operation of the proposed Project are analyzed in all of the technical sections in Chapter 4, *Environmental Setting, Impacts, and Mitigation Measures*. See Response to Comment O-29-84 regarding preliminary designs. See also Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*.

O-29-87 As described on p. 4.16-25 in Section 4.16, *Utilities and Service Systems*, and elsewhere in the Draft EIR, physical impacts of earthwork and construction and operation of the proposed Project are analyzed in all of the technical sections in Chapter 4, *Environmental Setting, Impacts, and Mitigation Measures*. See Response to Comment O-29-84 regarding preliminary design. See also Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*.

O-29-88 Existing utilities on or adjacent to the Project site are initially described and illustrated in Chapter 3, *Project Description*, of the Draft EIR (p. 3-9 and Figure 3-4, Existing Site Constraints, Quay Wall and Wharf). Specifically, the utility lines that are located beneath and/or adjacent to the UPRR tracks (and sometimes described as “under Embarcadero West” which aligns the tracks, as shown in Figure 3-4) are also discussed in Section 4.16, *Utilities and Service Systems*, of the Draft EIR. Information is provided in the Project Description of the Draft EIR that specifies what utility infrastructure alterations are proposed as part of the Project. For example,

“Additionally, 24-inch high pressure underground petroleum transmission pipelines run along Embarcadero West and serve the Peaker Power Plant. The Project development does not plan to impact these existing petroleum transmission pipelines, and would consider their locations and operations in future utility and infrastructure designs.” (p. 3-11 of the Draft EIR)

“Gas service would need to be extended to the site from the local distribution mains, and some existing below grade infrastructure is planned to remain. The Project development would not impact the existing high pressure gas lines that exist under Embarcadero West.” (p. 3-54 of the Draft EIR)

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The Draft EIR, p. 3-50, is revised to summarize proposed utility infrastructure alterations:

3.12 Utility Infrastructure and Service

The Project would generate increased utility demands and provide infrastructure to serve the proposed development. Proposed on-site characteristics for each major utility are summarized below. More detail and estimated demands for each service utility are provided in Section 4.5, *Energy*, Section 4.9, *Hydrology and Water Quality*, and Section 4.16, *Utilities and Service Systems*, in Chapter 4 of this Draft EIR. Exhibits of the proposed Project utility infrastructure for water, wastewater and stormwater, highlighting major changes in alignment, are also presented in Section 4.16.

Overall, the Project proposes the following utility infrastructure work, all of which are described in more detail below and in the impact analysis of the aforementioned sections of the Draft EIR:

- For water service, the Project proposes to replace and upgrade the size of certain existing pipelines to connect to the existing EBMUD system;
- For wastewater service, the Project proposes to install new wastewater pipelines;
- For stormwater drainage, the Project proposes to install a new stormwater drainage system, including the relocation and construction of new outfall facilities;
- For gas and electricity, the Project proposes to abandon or remove certain existing gas transmission lines, excepting existing high pressure gas lines, and install new and/or extend existing gas distribution lines; and
- For communications, the Project proposes to extend phone and cable/fiber optics facilities to the site.

This text insert is for clarification only and does not suggest that there are inadequacies in the analysis in the Draft EIR or change the conclusions presented in the Draft EIR.

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All construction activities associated with the proposed Project, including changes to existing pipeline infrastructure, are fully analyzed in the Draft EIR. As stated starting on p. 4.16-25 of the Draft EIR:

The physical impacts of earthwork and construction involved with removing, relocating or installing new pipeline are therefore subsumed in the analysis of impacts of constructing the Project. Mitigation measures are identified to reduce construction-related impacts to air quality, biological resources, cultural resources, geology, soils, and paleontological resources, hazards and hazardous materials, hydrology and water quality, noise, and transportation to the extent feasible. These include Mitigation Measures AIR-1a (Dust Controls); AIR-1b (Criteria Air Pollutant Controls); AIR-1c (Diesel Particulate Matter Controls); AIR-1d (Super Compliant-VOC Architectural Coatings during Construction); BIO-1a (Disturbance of Birds during Nesting Season); BIO-2 (Pre-Construction Assessments and Protection Measures for Bats); BIO-3 (Management of Pile Driving in the Water Column for Protection of Fish and Marine Mammals); BIO-4 (Compensation for Fill of Jurisdictional Waters); CUL-1a (Maritime Resources Treatment Plan); CUL-1b (Vibration Analysis for Historic Structures); CUL-2a (Archaeological Resources and Tribal Cultural Resources – Discovery During Construction); CUL-2b (Archaeologically Sensitive Areas – Pre-Construction Measures); CUL-3 (Human Remains – Discovery During Construction); GEO-1 (Site-Specific Final Geotechnical Report); GEO-2 (Inadvertent Discovery of Paleontological Resources During Construction); HAZ-1a (Preparation and Approval of Consolidated RAW, LUCs, and Associated Plans); HAZ-1b (Compliance with Approved RAW, LUCs, and Associated Plans); HAZ-1c (Health and Safety Plan); HAZ-1d (Hazardous Building Materials); HYD-1a (Creek Protection Plan); NOI-1a (Construction Days/Hours); NOI-1b (Construction Noise Reduction); NOI-1c (Extreme Construction Noise Measures); NOI-1d (Project-Specific Construction Noise Reduction Measures); NOI-1e (Construction Noise Complaints); NOI-1f (Physical Improvements or Off-site Accommodations for Substantially Affected Receptors); and TRANS-4 (Construction Management Plan).

(Note that as explained in Consolidated Response 4.16, *Human Health and Ecological Risk Assessment, Land Use Covenants, and Site Remediation*, after publication of the Draft EIR, the Project sponsor elected to take a more

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conservative approach by preparing a Remedial Action Plan [RAP] instead of the RAW mentioned in Mitigation Measures HAZ-1a and HAZ-1b.)

Overall, all environmental impacts that could potentially result from the Project's proposal to remove, replace, relocate, or otherwise improve pipeline infrastructure, including consideration of these activities with cumulative development, is fully analyzed throughout the Draft EIR. No further modifications are warranted to the Draft EIR.

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O-29-88

component of the proposed Project, all associated environmental impacts should be analyzed throughout the DEIR.

Alternatives & Variants

O-29-89

As addressed in the Pillsbury Letter, the DEIR’s analysis of Project Alternatives is deficient and inaccurately portrays the impacts associated with the Coliseum Alternative 2 when compared with the environmental effects of the Project at the Howard Terminal site, precluding any meaningful consideration of feasible alternatives.

O-29-90

The HT DEIR defines overly-narrow project objectives that preclude adequate consideration of another Project location. Of the 11 stated Project objectives, most reference a “waterfront” project at the Port and/or in proximity to Jack London Square. See HT DEIR at 3-15 to 3-16. However, an EIR may not define project objectives so narrowly as to preclude consideration of a reasonable range of alternatives.¹⁴ CEQA Guidelines § 15126.6(a). Here, the City’s narrowly-defined Project objectives resulted in a cursory analysis of the Coliseum Alternative.

O-29-91

Moreover, the alternatives analysis fails to compare and contrast the real-world scenarios under consideration by the City and responsible agencies, which are either: (i) proposed Project - construct a new ballpark at HT site and redevelop the Coliseum site with mixed uses, or (ii) reconstruct the ballpark at the Coliseum site. In almost all cases, the comparison of these real-world alternatives would have shown that environmental impacts would be reduced or eliminated under Alternative 2 due to the reduced overall amount of development proposed, elimination of land use conflicts, and use of existing infrastructure. However, even with the assumption that the Coliseum site would remain un-changed under the proposed Project, the DEIR fails in several instances to acknowledge the reduced environmental consequences that would occur under Alternative 2, the Coliseum Site Alternative.

O-29-92

As more fully set forth in the Pillsbury Letter, the DEIR fails to “include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project.” CEQA Guidelines § 15126.6(d). Here, the HT DEIR includes only a cursory analysis of Alternative 2’s environmental effects and inaccurately concludes that impacts would be “similar” to those of the proposed Project, without providing a full analysis. To the contrary, the DEIR overstated Project-related impacts in comparison to impacts that would occur under Alternative 2 – the Coliseum location alternative, including as to impacts to cultural resources (demolition of the Coliseum, DEIR at 6-16, is a reasonably foreseeable impact of relocated the ballpark to the HT site), energy usage (where increases at the Coliseum site would be due to other incremental development), population and housing, air quality, hazardous materials, and noise. For example, of Alternative 2’s potential impacts, including its potential advantages over the Project. Such conclusory analysis arguably precludes “meaningful evaluation” of Alternative 2’s impacts analysis and prevents decisionmakers and the public from meaningfully comparing the impacts of Alternative 2 to those of the proposed Project. Meaningful comparison of the Project and Alternative 2 should include:

O-29-93

1. Cultural Impact of demolishing Coliseum, p. 6-16 – The HT DEIR states that demolition of the Coliseum site under Alternative 2 is SU impact that would not occur under the Proposed Project. As noted in other places in the HT DEIR, demolition of the Coliseum and redevelopment is actually a reasonably foreseeable impact of relocating the ballpark to the HT site. Attributing this impact to

¹⁴ See *North Coast Rivers Alliance v Kawamura* (2015) 243 Cal.App.4th 647, 669; see also *In re Bay-Delta Programmatic Env’t. Impact Report Coordinated Proceedings* (2008) 43 Cal.4th 1143, 1166.

O-29-89

See Consolidated Response 4.10, *Alternative 2: The Off-Site (Coliseum Area) Alternative*. See also Responses to Comments O-27-78 through O-27-85 in the Pillsbury letter referenced in this comment.

O-29-90

CEQA does not restrict an agency’s discretion to identify and pursue a particular project designed to meet a particular set of objectives (*San Diego Citizenry Group v. County of San Diego* 219 Cal. App. 4th 1, 13–15 (2013)). The thorough and appropriate consideration given to select the reasonable range of alternatives studied in the Draft EIR is described in Section 6.1, *Factors Considered in Selection of Alternative*, and Section 6.4, *Alternatives Considered but Not Analyzed in Detail*, in the EIR, and is further explained in Consolidated Response 4.9, *Alternative 3: The Proposed Project with Grade Separation Alternative*. See also Consolidated Response 4.10, *Alternative 2: The Off-Site (Coliseum Area) Alternative*, regarding the level of analysis provided for the alternatives presented in the Draft EIR. As explained in Consolidated Responses 4.9 and 4.10, the selected alternatives foster meaningful public participation and informed decision making (State CEQA Guidelines Section 15126.6(f)).

See also Response to Comment O-27-78 in the Pillsbury letter.

O-29-91

See Consolidated Response 4.10, *Alternative 2: The Off-Site (Coliseum Area) Alternative*, which discusses the selection of alternatives and the impacts of Alternative 2 in comparison to the Project and to the Reduced Development Alternative.

With respect to “real world scenarios,” CEQA does not require that the lead agency to define a proposed Project as including sites and actions that are outside the scope of the proposal being analyzed. Impacts associated with redevelopment of the Coliseum site were considered in a separate EIR when the CASP was adopted to guide that redevelopment, and changes at the Coliseum site are not considered part of the Project for reasons explained on p. 1-2 of the Draft EIR. Alternative 2, the Off Site (Coliseum Area) Alternative was defined as including mixed-use development in addition to a new ballpark because this is a more likely development scenario and in keeping with CEQA’s requirement to include alternatives that would reduce or avoid impacts of the Project and feasibly attain most of the basic objectives of the project. Finally, variations of the same alternative are also not required; “what is required is the production of information sufficient to permit a reasonable

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choice of alternatives so far as environmental aspects are concerned.”
(*Residents Ad Hoc Stadium Comm. v. Board of Trustees* (1979) 89 Cal.App.3d 274, 286; see also *Cherry Valley Pass Acres & Neighbors v. City of Beaumont* (2010) 190 Cal.App.4th 316, 355-56 [rejecting need to analyze every variation on the alternative continuum for housing project].)

As discussed in Section 6.4.1 of the Draft EIR, the currently proposed ballpark site at Howard Terminal was identified after prior sites were removed from consideration, including sites at Laney College and Victory Court.²²

O-29-92 See Consolidated Response 4.10, *Alternative 2: The Off-Site (Coliseum Area) Alternative*. As explained on p. 1-2 of the Draft EIR, no site improvements would occur with the proposed Project at Howard Terminal, and thus demolition of the Coliseum building would not occur under the proposed Project. In contrast, Alternative 2 would construct a new ballpark and remove the existing Coliseum building, making way for the mixed-use development shown in Table 6-1 of the Draft EIR.

O-29-93 See Consolidated Response 4.10, *Alternative 2: The Off-Site (Coliseum Area) Alternative*.

²² Kimberly Veklerov, *Laney College Board Halts Ballpark Plans, Leaving Oakland A's Shocked*, SFGATE, December 6, 2017. See <https://www.sfgate.com/bayarea/article/College-board-orders-chancellor-to-halt-Laney-12409978.php>

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O-29-93

Alternative 2, but not the proposed Project is illogical. Impacts to historic resources are clearly greater under the Proposed Project as a result of direct impacts to the Peaker Power Plant, historic cranes, and the visual character of the historic seaport area in general.

O-29-94

2. Energy Usage, p. 6-16 – The HT DEIR claims there would be greater energy usage at the Coliseum, due to “additional intensity” of other site uses (e.g. the existing arena and its associated parking). This is misleading and not an apples-to-apples comparison. Their proposed development program transplanted should be all that is compared, and that likely will have an equivalent energy usage. It is only the incremental development, driven by a larger parcel, and of course, demand, that would lead to greater energy usage.

O-29-95

3. Air Quality Analysis – The HT DEIR states that criteria pollutant emissions associated with Alternative 2 would be similar to those associated with the Project at Howard Terminal (DEIR at 6-14). However, the HT DEIR fails to provide the requisite analysis to support this claim.

O-29-96

a. Appendix AIR, p. 56 - Ramboll anticipates reductions in criteria pollutant and GHG emissions from the gondola (reduced VMT) and the Peaker variant (reduced consumption of fossil fuels to produce electricity). The gondola variant will add three new emergency generators.

O-29-97

b. Appendix AIR, p. 57 - Between 2% and 13% of non-delivery vehicle trips would be replaced by gondola trips. But how do the gondola riders get from their homes to the gondola station? If by bus or BART, then there is no VMT reduction. If they drive, VMT reduction is minimal (just the distance between the gondola station and the stadium).

O-29-98

c. Appendix AIR, p. 57 – The Project takes credits for displacing all fossil fuel generation at the existing Peaker Power Plant; however, the HT DEIR fails to provide justification for the assumption that the fossil-fuel Peaker Power Plant would continue to operate at historical levels but for the Project. The HT DEIR appears to assume that 100% of the 360 MWhr/day capacity of the BESS would be used for the Project in lieu of operation of the existing fossil-fueled Peaker Power Plant.

O-29-99

d. Appendix AIR, p. 63 - Ramboll concludes that grade separation is not expected to increase traffic volumes even though it would facilitate vehicle access to the Project site. This assumption is inconsistent with the HT DEIR’s other assumption that the mode shift can be induced by factors such as the installation of EV charging infrastructure (DEIR at 4.7-38).

O-29-100

e. In Chapter 6 (Alternatives), Table 6-5, the HT DEIR presents air emission impacts from the “No Project Alternative” and appears to use the “existing conditions” emission rates - but there is no basis for the NOx values of 20.7 lbs/day and 3.8 tons/year. In Table 6-5, the HT DEIR presents emissions for future project years for both the proposed project and all alternatives EXCEPT for the No Project Alternative. There is no justification presented for this presentation.

O-29-101

4. Hazardous Materials – Subsurface contamination at the Howard Terminal site is substantially more laterally extensive than at the Coliseum site. Furthermore, most of the land at the Howard Terminal site is contaminated, as compared with less than 5% of the Coliseum site; therefore, effects associated with hazardous materials should be considered reduced under Alternative 2.

O-29-102

a. Howard Terminal Project Site (55 acres)
i. As stated in Section 4.8-11 of the HT DEIR regarding COCs, “almost all of the Project site has soil gas that exceeds one or more screening level,” and “most of the Project site has soil that exceeds one or more screening levels” for COCs. Shallow groundwater also

O-29-94 See Consolidated Response 4.10, *Alternative 2: The Off-Site (Coliseum Area) Alternative*.

O-29-95 See Consolidated Response 4.10, *Alternative 2: The Off-Site (Coliseum Area) Alternative*.

O-29-96 The comment is correct that the Aerial Gondola Variant and the Peaker Power Plant Variant are expected to result in lower criteria pollutant and GHG emissions than the proposed Project without the variants. It is also correct that the Peaker Power Plant Variant would involve three additional emergency generators, emissions from which were included in the analysis (see Draft EIR pp. 5-24 through 5-31). The alternatives are compared to the project with and without each of the project variants to illustrate the expected differences in emissions. No additional response to this comment is needed.

O-29-97 The comment is correct that under the Aerial Gondola Variant, between 2 percent and 13 percent of non-delivery vehicle trips would be replaced by gondola trips. This information was provided by Fehr & Peers in a 2020 memo, which is contained in Appendix B to Appendix AIR.1 (see p. 19, Table 17). The alternatives are compared to the project with and without each of the project variants to illustrate the expected differences in emissions.

The reduction in VMT is due to a number of factors. The gondola would provide a faster travel time by up to 10 minutes compared to walking, thereby attracting users to BART and the gondola who might otherwise drive and walk to ballpark events. See Consolidated Response 4.7, *Parking*, which explains how drivers would disperse throughout Downtown and then walk to the ballpark. For travel associated with ballpark events, the gondola would either replace vehicle trips associated with BART shuttles transporting attendees from BART stations to the Project site, or vehicle trips associated with bus, taxi, or TNC vehicle trips transporting attendees from BART stations to the Project site. For travel associated with non-ballpark development, the presence of the Gondola would encourage people to take BART to 12th Street and take the Gondola from BART station to the Project site, instead of using other modes of transportation to arrive at the Project site. These modes include bus, taxi, TNC vehicles, or single-occupancy vehicles.

Table 17 in the Fehr & Peers memorandum shows that for travel associated with ballpark events, compared to the scenario with BART shuttles

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transporting ballpark attendees from BART stations to the Project site, the Aerial Gondola Variant is anticipated to reduce VMT by 2–3 percent; compared to the scenario without BART shuttles transporting ballpark attendees from BART stations to the Project site, the Aerial Gondola Variant is anticipated to reduce VMT by 3-6 percent. Table 17 also shows that for travel associated with non-ballpark development, both Phase 1 and Full Buildout under the Aerial Gondola Variant is anticipated to reduce VMT by 13 percent.

O-29-98 As explained on Draft EIR pp. 6-33 through 6-34, the addition of a vehicular grade separation would not substantially induce automobile travel or result in a mode shift because the Project site would be developed with the same uses (generating the same trips) and is effectively a "dead end" so there would be no new pass through trips. In addition, constraints posed by the local street network would remain.

For a discussion of the transportation-related impacts of Alternative 3: The Proposed Project with Grade Separation Alternative, see Draft EIR Chapter 6, *Alternatives*. According to the transportation analysis of Alternative 3, vehicle traffic could be somewhat altered (Draft EIR p. 6-33):

The presence of a grade-separated crossing for vehicles under Alternative 3 could somewhat redistribute vehicular travel to and from the site, with more vehicles choosing to use the new grade-separated crossing. The Brush Street alignment would also increase the capacity of local roadways accessing the site, adding two new lanes in each direction if Market Street is maintained as an at-grade vehicular crossing.

However, the analysis finds that vehicle traffic would not change substantially (Draft EIR p. 6-34):

This increase in local roadway capacity and the potential reduction in delay associated with a new grade-separated crossing would not substantially induce additional automobile travel or result in a mode-shift for several reasons. First, the Project site is effectively a "dead end," and the grade separation would only provide access to the site and adjacent Schnitzer Steel property. Second, with Alternative 3, the site would be developed with the same mix of uses and the same amount of on-site parking as with the proposed Project, so it would generate the same number of vehicle trips as the proposed Project. In addition, traffic

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changes would be localized on the site and in the vicinity and would not remove the vehicle capacity constraint provided by the local street network between 3rd and 7th Streets. Traffic transitions between Brush, Castro, Market, and Martin Luther King (MLK) Jr. Way as well as to/from I-880 within these few blocks, as well as the turning movements required for drivers to navigate through the area, effectively comprise a constraint on roadway capacity that would remain in place with Alternative 3, just as with the proposed Project.

Regarding the effects of EV charging on mobile source emissions, the Draft EIR does not claim that EV charging will change mode shift, number or trips, or VMT. Instead, the Draft EIR concludes that EV charging will affect vehicle tailpipe emissions as more people are incentivized to use EVs and the battery-electric mode of PHEVs (see Draft EIR. p. 4.2-45, Appendix AIR.1 p. 22-26, and Appendix F *EV Charging Calculation Details*). For a discussion of the effects of EV charging on mobile source emissions, see Responses to Comments O29-1-22 through O29-1-28.

O-29-99 Table 6-5 in Chapter 6, *Alternatives*, presents operational emissions associated with Alternative 1, the No Project Alternative; emissions of NO_x are 20.7 pounds per day and 3.8 tons per year associated with existing uses at Howard Terminal. These values are from Table 130 of Appendix AIR.1 (p. 290). Emissions are based on 2018 emission factors because this represents emissions currently occurring at the Project site. If future emission factors were to be used, such as for 2023 or 2027, emissions associated with Alternative 1 would be lower than shown in Table 6-5 and the impacts associated with Alternative 1 would be the same as those presented in Table 6-4.

O-29-100 See Consolidated Response 4.10, *Alternative 2: The Off-Site (Coliseum Area) Alternative*.

O-29-101 See Consolidated Response 4.10, *Alternative 2: The Off-Site (Coliseum Area) Alternative*, for a discussion of hazardous materials impacts under this alternative compared to the Project. See also Response to Comment O-27-78 regarding the level of detail required for the analysis of alternatives.

O-29-102 See Response to Comment O29-1-45 and O29-1-80.

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exceeds at least one screening level over most of the Project site. "Several areas of significant impact have been observed" including free-phase hydrocarbons in three to four areas. These impacted soils "would likely require removal ...or active remediation." (p. 4.8-42)

- ii. ENGeo's 2019 *Consideration of Remedial and Mitigation Alternatives*¹⁵ estimated "an area of 18 acres ... of significant impact impacts." This is equivalent to approximately one-third of the Project Site area. The ENGeo study estimated that the Project will generate over 290,000 cubic yards (over 500,000 tons) of waste soil (>26,000 truckloads), of which half will be Class I Hazardous Waste.

b. Coliseum Alternative Site (220 acres)

- i. The Coliseum Draft EIR¹⁶ identified 17 Cortese List sites within the project area boundary (CASP Figure 4.7-1). Nearly all of these are small UST sites, and only six are known to be open sites. There is only one open contaminated site within the footprint of the current Oakland Coliseum property (the Malibu Grand Prix site, 8000 S. Coliseum Way), which has approximately 4 acres of contaminated shallow fill soil and approximately 0.2 acres of contaminated groundwater.
- ii. As stated in the Coliseum Draft EIR, the proposed new stadium site "does not contain any Cortese List properties" (CASP 4.7-6).
- iii. The Coliseum Draft EIR states "the proposed project may encounter contaminated fill material during construction activities." (CASP 4.7-5). The Coliseum EIR does not quantify the area, volume, or mass of contaminated soil that would be excavated. However, based on current data, it appears to be substantially less than estimated for Howard Terminal, both in terms of total acreage and the relative percentage of the site area. The areal extent of contaminated soil in the open sites that are within the 220-acre Coliseum Alternative Site appears to be approximately 7 acres, or less than 5% of the Coliseum Alternative Site area.

- 5. Noise. Significant and unavoidable noise and vibration impacts from operation of the project will result in violation of the City of Oakland Noise Ordinance.¹⁷ After all feasible mitigation measures have been proposed/evaluated, the HT Project operations noise levels are still in violation (4.11-45). By contrast, operational noise from the Coliseum Alternative would not violate City of Oakland Standard Conditions of Approval (CASP 4.10-24).

Indirect Effects

Urban Blight.

Urban Decay in and around the Coliseum -- Under CEQA urban decay is defined as "physical

¹⁷ The HT site would expose noise-sensitive land uses to train horn activity, 24-hour noise sources that cannot limit hours of operation (DEIR at 4.11-18) and remove buffer area between industrial and residential land uses (*id.* at 4.11-1, 4.11-60).

O-29-103 See Consolidated Response 4.10, *Alternative 2: The Off-Site (Coliseum Area) Alternative*.

O-29-104 See Consolidated Response 4.15, *Urban Decay*.

O-29-102

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deterioration of properties or structures that is so prevalent, substantial, and lasting a significant period of time that it impairs the proper utilization of the properties and structures, and the health, safety, and welfare of the surrounding community.”¹⁸ The HT DEIR concludes that “it is unlikely that the Oakland Coliseum or the nearby area would experience physical deterioration at a level to constitute urban decay” as a result of the Project (DEIR at 7-11). However, the DEIR relies on pre-COVID growth projections and interviews with local business owners as to the likelihood of closures as a result of the A’s potential move to Howard Terminal that are not based upon sufficient or “substantial evidence.”¹⁹

The HT DEIR’s analysis of potential urban decay relies almost entirely on a 2019 survey of Coliseum area businesses and survey data.²⁰ However, the survey data is incomplete, and the conclusions are not reliable for the following reasons (see Attachment 5: Peer Review: A’s Urban Decay Consideration - ESA File D17044.00; October 11, 2019. Analytical Environmental Services, March 8, 2021):

O-29-105

i. Survey participants were not specified – The documentation was not specific regarding which businesses were interviewed and why or the methodology used. The survey states that “[a] number of businesses” were contacted. We do not know how many businesses, their locations, any economic or other factors, the process used, questions asked or other protocols. This type of anecdotal survey is useless as a true measure of impacts.

O-29-106

ii. Few retail businesses were included in survey - Businesses that answered that their business would not be impacted were “primarily in the industrial category.” (Report at p. 6.) It should be noted that the primary socioeconomic impacts of the departure of the A’s from the existing Coliseum would likely fall on surrounding retail businesses as customers would no longer be drawn to the area for games.

O-29-107

iii. Cumulative impacts – The 2019 Memo states that it evaluates cumulative effects of the departure of all three sports teams (Raiders, Warriors and Oakland A’s) from the existing Coliseum / Oakland Arena site. However, in most of the text of the 2019 Memo and related business survey, the relocation of the A’s is repeatedly mentioned. Neither the relocation of the Raiders or Warriors is substantively analyzed in either the memo or the related business survey.

O-29-108

iv. No quantification – The 2019 Memo includes no quantifiable analysis of any type. For this reason alone, the 2019 Memo does not properly analyze impacts on local businesses or urban decay. It assumes, without support, that any decrease in business would not be severe enough to cause closures.

O-29-109

Coliseum Area Specific Plan (CASP) - Regarding the CASP, the 2019 Memo states, “The greatest potential cumulative urban decay-related risk involves the disposition of the Coliseum itself and [the] Oakland Arena. If the buildings become difficult to support in the absence of sporting events, then a potential result could include facility closure.” (Report at p. 1.) The 2019 Memo goes on to cite the CASP as the remedy for potential urban decay. However, the Memo mischaracterizes the CASP and its effects on local businesses. The CASP is not a specific or even a general development proposal. Rather, the CASP is a planning document developed by the City of Oakland to facilitate the orderly development of the area. Indeed, the timing of the CASP anticipates a 20 to 25-year window, under the assumption that the planning process commences in earnest in the near future and does not support the Memo conclusions.

¹⁸ *Placerville Historic Preservation League v. Judicial Council of California* (2017) 16 Cal. App. 5th 187

¹⁹ *Ibid.*

²⁰ *A’s Urban Decay Consideration, ESA, October 2019 Memorandum (“2019 Memo”).*

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O-29-110

Cumulative Impacts Were Not Analyzed, Nor Quantified - The 2019 Memo does not address cumulative impacts to local businesses. Both the Raiders and the Warriors have vacated the existing Coliseum / Oakland Arena site in the past three years. Environmental impacts should be analyzed in relation to a “baseline” that includes the presence of both the Raiders and Warriors at the existing Coliseum / Oakland Arena site because urban decay occurs over time, and not immediately upon the occurrence of a single event such as the A’s relocation. Thus, the environmental effects at the existing Coliseum / Oakland Arena site, should have been considered in a cumulative fashion. The 2019 Memo is insufficient to show that urban decay would not occur. A rigorous survey should be performed using established methods and means.²¹

O-29-111

Growth Inducement.

The HT DEIR fails to analyze the ways in which the Project could directly or indirectly foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment (CEQA Guidelines § 15126.2(d)). The HT DEIR concludes that the Project would not be growth inducing (Section 7.3.1 at 7-9); however, in direct contradiction to this conclusion, it also acknowledges in the urban decay section (Section 7.3.2 at 7-11) that the Project would enable certain development scenarios evaluated in the Coliseum Area Specific Plan (“CASP”) to move forward and could involve development of off-site affordable housing units (unstudied in the DEIR). Additionally, the HT DEIR fails to address potential growth inducing impacts associated with the buildout scenarios proposed under the DOSP.

O-29-112

Coliseum Area Specific Plan (“CASP”).

The HT DEIR has not adequately assessed growth inducement as it relates to the Oakland Athletics vacating the Coliseum Area. Development alternatives under the CASP include 4,000 residential units, 850 hotel rooms, 1.5 million square feet of science and tech space, 190,000 square feet of neighborhood retail, and 225,000 square feet of regional retail. Given the region’s current demand and low vacancy rates for housing, and because the site has substantial advantages, such as access to BART, the freeway, and the airport, its redevelopment for these or similar uses would be likely to proceed after the A’s departure. At a minimum, the HT DEIR should acknowledge that the Project would indirectly induce the level of growth anticipated under Alternative #2E of the CASP EIR, if not greater, and describe the potential reasonably foreseeable environmental consequences. Given that the CASP only includes a qualitative assessment of Alt #2E, further environmental analysis should be conducted.

O-29-113

Downtown Oakland Specific Plan (“DOSP”).

Additionally, as described in the DOSP DEIR, in the event that the City approves the Project, the DOSP includes the option to amend the General Plan Land Use designations in proximity to the Howard Terminal to support more intense development. Specifically, under the DOSP Howard Terminal Option, “the intensity of development in the surrounding blocks would be adjusted so that there would be increased intensity for the area between Brush, Clay, 2nd, and 4th streets adjacent to Howard Terminal.”²² Section 7.3.1 of the HT DEIR fails to address or even acknowledge how development of the Project could result in potential growth inducing effects from the increased development intensity proposed by the DOSP Howard Terminal Option.

²¹ Typical for this kind of analysis is use of a “gravity” model. This yields the revenue or patronage “loss” that would occur from the proposed Project. This is the standard method of quantifying a project’s impacts on local businesses.

²² DOSP EIR pg. 57

O-29-110 See Consolidated Response 4.15, *Urban Decay*.

O-29-111 Chapter 7 of the Draft EIR analyzes whether implementation of the Project would induce growth pursuant to State CEQA Guidelines Section 15126.2(e). In accordance with CEQA, growth per se is not assumed to be necessarily beneficial, detrimental, or of little significance to the environment; it is the secondary, or indirect, effects of growth that can cause adverse changes to the physical environment. The focus of the growth inducement evaluation presented in the Draft EIR is on whether the proposed Project could induce *unplanned* growth, which in turn could generate adverse effects on the physical environment that have not been evaluated and disclosed. With regard to the Coliseum Area Specific Plan, the Draft EIR acknowledges that the CASP will be implemented in the future. As indicated on Draft EIR p. 4.0-11:

Because the Coliseum Area Specific Plan and EIR have been approved by the City, the Oakland Coliseum redevelopment under the Specific Plan is included as a cumulative project in this EIR. The Coliseum Area Specific Plan EIR analyzes the impacts of various scenarios of redevelopment of the Oakland Coliseum site, including an alternative with no sports facilities. Therefore, the impacts of redevelopment of the Oakland Coliseum site . . . in combination with the Project are disclosed and analyzed for all impact areas as part of the EIR’s cumulative analysis.

Implementation of the CASP is planned growth that is expected to be implemented in some form whether or not the proposed Project is implemented. Implementation of the proposed Project would change how redevelopment occurs at the Coliseum site, but a scenario involving the departure of the A’s was evaluated in the Coliseum Area Plan EIR.

Regarding the off-site affordable housing units, as discussed in Consolidated Response 4.12, Affordable Housing, and indicated in text changes to Draft EIR p. 3-26 in Chapter 7, *City-Initiated Updated and Errata to the Draft EIR*, the Project will have an affordable housing program, which ~~“would may include 450 on-site or off-site affordable housing units and/or the payment of impact fees. a financial commitment of 50 million dollars to support a combination of new (off-site) units, preservation and/or renovation of existing units, and/or down payment assistance. The Project would also provide anti-displacement tenant services. Should the Project satisfy its affordable housing component via~~ The location of any off-site development resulting from this commitment is

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~~currently unknown and at as yet unidentified sites~~, that development would require separate environmental review and entitlement. Also, any off-site units that are constructed would fall within the overall cumulative growth forecast used in the analyses contained in this EIR.

In other words, the growth associated with the affordable housing units is evaluated in the Draft EIR's analysis of cumulative impacts. Regarding the Downtown Oakland Specific Plan, see Response to Comment O-29-113.

- O-29-112 See Response to Comment O-29-111 regarding evaluation of the CASP in the Draft EIR and adequacy of the Draft EIR's growth inducement evaluation.
- O-29-113 The commenter is correct that the Downtown Oakland Specific Plan (DOSP) Draft EIR, published in August 2019, indicated that if the City were to approve the Waterfront Ballpark District at Howard Terminal Project (Project), the designation of blocks north of Howard Terminal (referred to in the Draft DOSP as "Transformational Opportunity Area #3") could be changed to "Mixed Use Flex" and allow mixed use development (p. 45). This is referred to in the DOSP Draft EIR as the Howard Terminal Option. Adoption of the DOSP with the Howard Terminal Option, should it occur, would be a separate discretionary decision (i.e. separate from any decision to proceed with the proposed Project at Howard Terminal). This separate decision would result in zoning changes and facilitate mixed-use development in the area north of Howard Terminal, and these zoning changes would not occur if the DOSP is not adopted or if the DOSP is adopted without the Howard Terminal Option. In this way, it would be the City's separate decision regarding the DOSP – and not the project at Howard Terminal – that would result in additional growth. Also, under this option, the additional growth that would occur in this area would be "planned" because it would result from adoption of the DOSP, which is a plan. Nonetheless, subsequent to publication of the DOSP Draft EIR, and in response to community input, the City announced they will no longer be considering the Howard Terminal Option (or Transformational Opportunity Area #3), which will be removed from the Final DOSP (DOSP Update website, www.oaklandca.gov).²³ Also see Responses O-51-14 and O-41-6 for additional discussion of the Draft EIR's analysis of growth inducement and the Project's relationship to the proposed DOSP.

²³ City of Oakland, 2021. Downtown Oakland Specific Plan Update, Date Posted: February 21, 2021, Last Updated: September 22, 2021. Available at: <https://www.oaklandca.gov/news/2021/downtown-oakland-specific-plan-update>.

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As described further in Attachment 6, the DOSP Howard Terminal Option would allow significant new residential and mixed-use development into a critical buffer zone area which currently serves to protect both Port-related industrial activities and sensitive receptors by separating residential land uses from Port industrial uses that are permitted and encouraged under long-standing plans and policies. The HT DEIR fails to evaluate reasonably foreseeable impacts from the DOSP Howard Terminal Option, including potential significant impacts to the form and character of the historic area west of Jack London Square²³, and potential significant impacts related to transportation, air quality, and others.

The DOSP Howard Terminal Option would greatly exacerbate potential impacts related to conflicting uses under buildout of the DOSP. The DOSP Howard Terminal Option would introduce additional conflicts with existing industrial operations, such as residential uses and an overall significant increase in visitors and traffic. The HT DEIR should assess the likely direct and indirect consequences to industrial operations and businesses in the Port, and the inevitable associated environmental effects.

O-29-114

Cumulative Effects

The HT DEIR fails to adequately evaluate cumulative effects. An EIR must discuss cumulative impacts of a project if the project's incremental effects are cumulatively significant, that is, if the project's effects are significant when considered together with related effects of past, current, and probable future projects. Proper cumulative impacts analysis is essential "because the full environmental impact of a proposed project cannot be gauged in a vacuum. [Fn. omitted]."²⁴

Proposed Downtown Oakland Specific Plan ("DOSP")

The HT DEIR fails to sufficiently analyze the cumulative impacts of development under both the proposed DOSP and the HT Project, including increased traffic that may impede Port trucking and rail operations. The HT DEIR's analysis of cumulative land use impacts related to the DOSP is cursory, totaling only two paragraphs. The HT DEIR notes that cumulative residential development in proximity to Port and industrial operations under the DOSP, in combination with the proposed Project, "could result in potential conflicts with nearby Port and industrial-related uses if they collectively impede road and rail access to the Port or result in other physical impacts that collectively impair the Port's operation" but concludes that, with mitigation, "the Project would not result in a fundamental conflict with adjacent or nearby land or water-based uses, including Port and industrial operations," and therefore "the Project would not contribute to a cumulative impact in this regard." (DEIR at 4.10-68.) However, no evidence or analysis is provided to support this conclusion. This cursory review of cumulative land use impacts related to potential future development under both the HT Project and DOSP, including significant increases in traffic near the Port, does not meet CEQA standards for disclosure and mitigation.

O-29-115

The DEIR states that residential growth related to the Project would be relatively small in comparison to the number of new households anticipated for the City by Plan Bay Area. However, current forecast projections used in Plan Bay Area do not account for the drastic increase in growth currently proposed by the DOSP. Recent analysis of the proposed DOSP, indicates that new development in the planning area could result in almost 31,000 new residents.²⁵ The HT DEIR references the analysis in the DOSP EIR

²³ DOSP EIR pg. 45

²⁴ *Communities for Better Environment v. California Resources Agency* (2002) 103 Cal.App.4th 98, 114.

²⁵ Attachment 6 – PMSA, et al. Comment Letter on DOSP.

O-29-114 See Response to Comment O-27-66.

O-29-115 See Response to Comment O-29-113 and Response to Comment O-27-66 regarding the cumulative analysis, including the appropriate consideration of growth from the proposed DOSP.

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in several places to describe the potential for cumulative effects (DEIR at 4.10-1; 4.12-13; 4.12-19; 4.15-74; 4.15-220; 5-19; 5-43; 5-56; 5-116; 5-137; 6-4; 6-6). However, the HT DEIR cumulative impacts analysis fails to account for additional growth and the associated cumulative impacts that may occur under buildout of the DOSP and the Project. Further it should be noted that the DOSP Draft EIR itself appears to have underestimated the amount of potential growth resulting from that plan. Therefore, the HT DEIR should not rely on the analysis in DOSP Draft EIR to account for the full amount of cumulative growth that can be expected in the planning area. (See Attachment 6, page 4, regarding inaccurate analysis of population growth resulting from the DOSP.)

O-29-116

Turning Basin Expansion Project

Cumulative effects analysis in each affected impact area addresses the Turning Basin Expansion, but does not provide adequate impact data or mitigation measures. It is practical and reasonable for a Lead Agency to include, in the cumulative analysis, projects under environmental review - even if the projects "had not yet surmounted all the regulatory hurdles".²⁶ The Turning Basin is just such a project, and the cumulative impacts of the Turning Basin together with the proposed Project should be addressed cumulatively in the HT DEIR.

O-29-116 See Response to Comment O-27-66 regarding the cumulative setting and analysis, including the appropriate consideration of the Maritime Reservation Scenario. See also Consolidated Response 4.1, *Project Description*, and Consolidated Response 4.4, *Port Operations and Land Use Compatibility*.

Respectfully submitted,

Ryan Sawyer, Vice President, AES

Attachments:

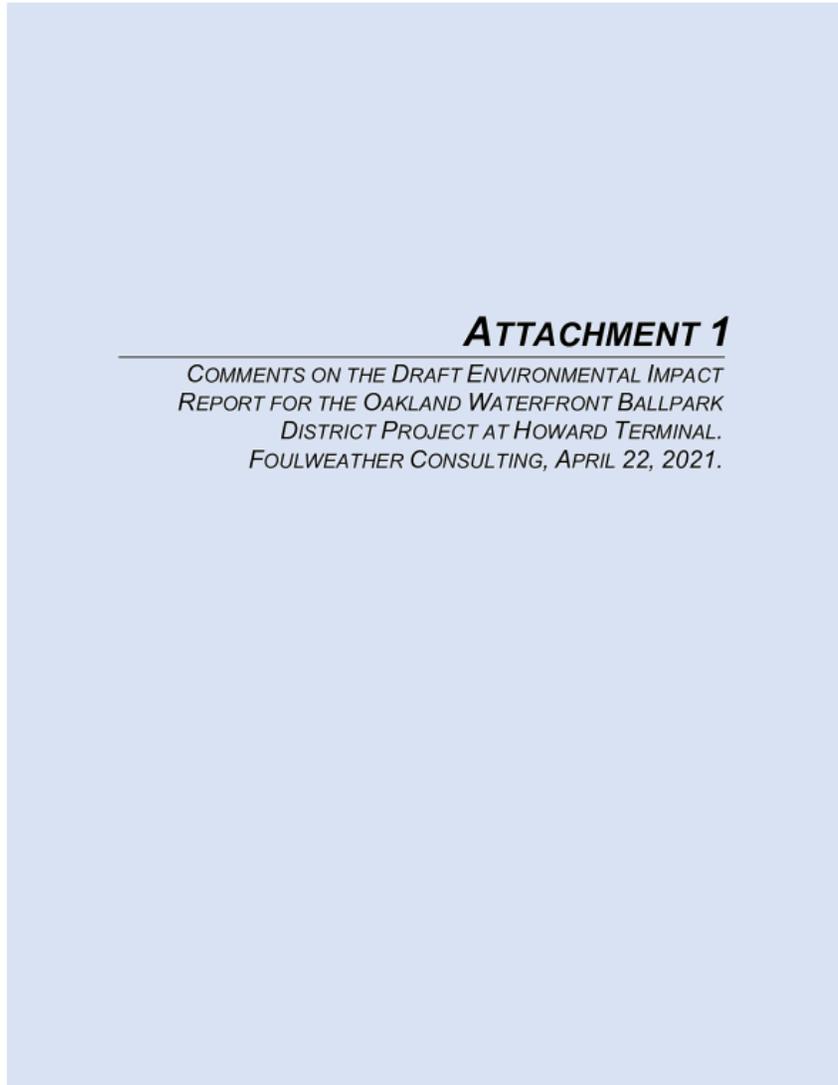
- Attachment 1 Comments on the Draft Environmental Impact Report for the Oakland Waterfront Ballpark District Project at Howard Terminal. Foulweather Consulting, April 22, 2021.
- Attachment 2 Review of Selected Sections of the Draft Environmental Impact Report for the Waterfront Ballpark District at Howard Terminal, Oakland, California. Terraphase Engineering Inc., April 26, 2021.
- Attachment 3 Technical Memorandum - Waterfront Ballpark District at Howard Terminal DEIR. Kittelson & Associates, Inc., April 21, 2021.
- Attachment 4 DEIR Comments - Cultural Resources. C. Gross, AES Senior Archaeologist, March 19, 2021.
- Attachment 5 Peer Review: A's Urban Decay Consideration - ESA File D17044.00; October 11, 2019. Analytical Environmental Services, March 8, 2021.
- Attachment 6 Comment Letter on Draft EIR for Downtown Oakland Specific Plan. Pacific Merchant Shipping Association et. al., November 8, 2019.

²⁶ *San Franciscans for Reasonable Growth v. City and County of San Francisco*, 151 Cal. App. 3d 61, 72.

O29-1 East Oakland Stadium Alliance, by AES (Part 2)

COMMENT

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O29-1-1 This is a general comment that serves to introduce the more specific comments that are responded to in detail below. As a result, no specific response is provided here.



April 22, 2021

To: Ryan Sawyer, Vice President
Analytical Environmental Services, Inc.

From: Gary Rubenstein 
Principal, Foulweather Consulting

Subject: Comments on the Draft Environmental Impact Report for the Oakland Waterfront Ballpark District Project at Howard Terminal (Case File No. ER18-016) (State Clearinghouse No. 2018112070)

This report provides a technical review of the air quality and greenhouse gas (GHG) chapters and related portions of the Draft Environmental Impact Report (DEIR) for the Oakland Waterfront Ballpark District Project (Project) proposed at the Howard Terminal site in the Port of Oakland.

For the reasons outlined below, we find that there are serious deficiencies in both the air quality and GHG analyses in the DEIR.

1. Waterfront Ballpark District Project.

The Project as described in the DEIR would involve displacement of existing Port maritime-related uses at the Howard Terminal site, as well as some additional adjacent property (totaling approximately 55 acres) for purposes of redevelopment with a 35,000 seat baseball stadium/event venue, along with up to 3,000 new residential units, up to 1.5 million square feet of commercial uses, up to 270,000 square feet of retail uses, a 50,000 square foot indoor performance venue, and up to 400 hotel room and conference spaces in one or more buildings. DEIR 1-1 to 1-2.¹

Under the California Environmental Quality Act ("CEQA"),² with respect to potential air quality and GHG emissions, the DEIR is required to sufficiently describe and assess the existing environment at Howard Terminal, along with the immediate vicinity and the regional setting (the "baseline"); determine whether any changes from the baseline emissions and emissions-related effects would occur due to the Project and whether those changes would be significant under applicable CEQA criteria; and discuss feasible

¹ The DEIR also describes a Maritime Reservation Scenario associated with a turning basin expansion that would reduce the size of the Project, and two Project Variants for (i) potential conversion of an existing peaker power plant to battery storage and (ii) an aerial gondola to access the site from across Interstate 880 and over the Union Pacific Railroad tracks that run along Embarcadero Road north and east of the Howard Terminal site. DEIR 1-2 to 1-3.
² Public Resources Code § 21000 et seq.

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Ryan Sawyer

April 22, 2021

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mitigation measures or alternatives that could reduce or avoid any significant emissions-related impacts to an insignificant level. This report finds that the DEIR fails to meet these requirements in a number of important respects.

2. Executive Summary.

The following summarizes the most critical deficiencies with the air quality and GHG analyses in the DEIR:

- The DEIR uses an inappropriate baseline for the assessment of net project impacts related to air quality and public health.
- The DEIR's assessment of the air quality and public health impacts attributable to the Project's numerous emergency generators was not evaluated in accordance with guidance from the Bay Area Air Quality Management District (BAAQMD) regarding reasonably foreseeable operations.
- The DEIR does not evaluate the air quality and public health impacts associated with fugitive dust from project construction. Emissions of toxic air pollutants associated with site remediation activities are not evaluated, nor are the potential air quality and public health impacts of those emissions quantified.
- The DEIR improperly ascribes to the Project certain air quality and GHG benefits associated with the installation of electric vehicle (EV) charging infrastructure at the Project site. The methodology used in the DEIR to calculate this benefit is inappropriate; the benefits calculated in the DEIR are actually attributable to activities by the California Air Resources Board (CARB) and other governmental entities that would occur whether the Project is built or not.
- The health risk assessment reflected in the DEIR was not performed in accordance with BAAQMD and State guidelines; in particular, the DEIR did not evaluate potential cumulative impacts at the location of the maximally-exposed individual residential receptor (MEIR).
- The DEIR's treatment of the movement of truck activities from Howard Terminal to the Roundhouse property or other locations inside or outside the Port is inadequate for a number of reasons. In particular, the DEIR fails to disclose the significant decrease in available near-Port truck, trailer and container parking spaces for both long-term and short-term (daily) users, and fails to disclose the lack of sufficient capacity at the Roundhouse to accommodate the proposed displacement. As a consequence, the DEIR fails to quantify the increase in vehicle miles traveled, and associated increases in emissions of air pollutants and GHGs, that would inevitably result from this displacement.

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O29-1-2 For responses addressing the following topics, see the following responses:

- The Draft EIR's baseline (bullet #1)—Responses to Comments O29-1-4 and O29-1-5.
- The analysis of emergency generators (bullet #2)—Responses to Comments O29-1-6 through O29-1-12.
- The Draft EIR's analysis of fugitive dust (bullet #3)—Responses to Comments O29-1-13, O29-1-18, O29-1-19, and O29-1-20.
- The analysis of electric vehicle (EV) charging stations (bullet #4)—Responses to Comments O29-1-22 through O29-1-28.
- The Draft EIR's health risk assessment approach (bullet #5)—Responses to Comments O29-1-29 through O29-1-32.
- The relocation of truck activities at Howard Terminal (bullet #6)—Consolidated Response 4.5, *Truck Relocation*.

O29-1-3 See Response to Comment O29-1-2.

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3. Inappropriate Baseline for Air Quality/Health Risk Impacts.

The calculation of net project impacts reflects reductions in baseline emissions associated with elimination of existing activities at Howard Terminal and the Oakland Coliseum.³ In most cases, these emission reductions are calculated based on calendar year 2018 emission factors. However, net project impacts should be calculated based on future-year emission factors for baseline activities, since those activities would continue into the future but for the project – and those continuing activities would result in lower future emissions due to reasonably foreseeable decreases in emission rates. The calculation approach used in the DEIR credits the project with business as usual (BAU) reductions that would occur in any event as a result of increased use of cleaner cars and trucks between the baseline year and the future project years.

The DEIR justifies this by quoting a recent California Supreme Court decision:

“While an agency has the discretion under some circumstances to omit environmental analysis of impacts on existing conditions and instead use only a baseline of projected future conditions, existing conditions “will normally constitute the baseline physical conditions by which a lead agency determines whether an impact is significant.” (Cal. Code Regs., tit. 14, § 15125, subd. (a).) A departure from this norm can be justified by substantial evidence that an analysis based on existing conditions would tend to be misleading or without informational value to EIR users.”⁴

In the case of the Howard Terminal DEIR, the use of historical baseline emissions in calendar year 2018 to calculate “credits” that are used to reduce the net project emissions calculated for calendar years 2024 (Year 4) and 2028 (Year 8) is misleading and has the effect of overstating the reductions in baseline emissions. As a result, the DEIR understates the true net project impacts in those future years and provides a misleading comparison with the chosen significance levels. This defect can only be cured through a recalculation of the baseline and net project impacts for each future project year evaluated – as has been done for greenhouse gas emissions⁵. The recalculated net project impacts should then be compared with relevant significance thresholds. At a minimum, this correction should be applied to the following tables:

- DEIR Tables 4.2-6, 4.2-7, 4.2-9, 4.2-10, 4.2-11
- Appendix AIR.1 Tables 42, 43

While the DEIR may include a historical baseline for informational purposes, in this instance the omission of the “apples-to-apples” future baseline comparisons is misleading. An example cited by the Court in *Neighbors for Smart Rail* is particularly relevant to the instant case:

³ See, e.g., DEIR Tables 4.2-6, 4.2-7, 4.2-9, 4.2-10, 4.2-11; Appendix AIR.1 Tables 42, 43, among others.

⁴ *Neighbors for Smart Rail v LACMTA et al.*, at 2.

⁵ See, e.g., DEIR Appendix AIR.1, Table 54.

O29-1-4 The commenter is correct that the Draft EIR uses 2018 conditions at the Coliseum and at Howard Terminal as the CEQA baseline against which Project impacts are determined, and that 2018 emission factors are also used for the analysis of air quality impacts. The use of future conditions and future emission factors for the CEQA baseline is not consistent with State CEQA Guidelines and recent case law, as discussed further in Response to Comments O-29-15 above and O29-1-5 below.

O29-1-5 The commenter cites *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439, 445 (henceforth referred to as *Neighbors for Smart Rail*) as a specific example of how an existing-conditions baseline may “mask” or underestimate a project’s environmental impacts.

Note that this is a hypothetical example and not an opinion of the court. The court makes no conclusions as to the validity of this hypothetical example under CEQA. Therefore, it is not precedent-setting and does not apply to the proposed Project. Also see Response to Comment O-29-15.

Nevertheless, the future reduction in emissions for the hypothetical industrial facility would be due to “regulations already adopted and to turnover in the facility’s vehicle fleet” as cited by the commenter. The industrial facility is a single use under the control of the facility owners/operators and is not comparable to a stadium like the Coliseum. Whereas the industrial facility owners could reasonably predict vehicle turnover and the effect of regulatory action on the facility’s stationary-source emissions because they have full control over these emissions-generating activities, the Project sponsor has no control over turnover of ballpark attendees’ vehicles, or of vendor delivery vehicles or other area-source emissions associated with its operations. Therefore, the hypothetical industrial facility example cited by the commenter is not a reasonable analogy to the Project’s baseline.

The commenter also cites *Neighbors for Smart Rail* regarding the no project alternative and its relationship to the CEQA baseline. In this citation, the court states that normally a project’s baseline is not the same as the no project alternative, where the no project alternative would account for future changes in the environment reasonably expected to occur if the project is not approved. This citation does not support the commenter’s assertion that the Project’s baseline should represent future conditions without the Project. To

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the contrary, *this citation supports the Draft EIR's selection of an existing-conditions baseline* that does not account for future conditions.

The commenter also cites Appendix AIR.1 regarding declining on-road vehicle emission factors due to improved vehicle efficiency and declining off-road construction equipment emission factors due to cleaner equipment. Both citations refer to the construction schedule analyzed in the Draft EIR, which is conservative because it is an accelerated phasing schedule that would not account for future reductions in vehicle emission factors if the schedule would take longer. The Draft EIR's assessment of construction-related impacts does not include comparison to a baseline because all construction emissions for the project are new, so no "credit" is taken when assessing the project's construction emissions impacts.

Finally, the commenter points to the Draft EIR's analysis of greenhouse gas emissions impacts, which uses future emission factors from 2020 through 2050 for mobile sources to estimate "existing emissions" associated with A's-related activities at the Coliseum. As discussed on Draft EIR p. 4.7-41, this approach relies on 2018 activity data and accounts for emission factor changes over time:

For the purposes of determining impacts of the Project based on net additional GHG emissions, current (2018) activity levels for existing conditions were used as the basis for estimating future "existing" emissions over time as emission factors decrease (see sections below for additional discussion on changing emission factors). For example, the Project's emissions in any future year were compared to existing emissions adjusted to reflect emission factors applicable that year in order to determine net additional Project emissions. This approach is conservative relative to using a static 2018 accounting of emissions from existing conditions because fewer emissions are subtracted from the Project's total emissions to arrive at the "net additional" figure.

As stated above, this is a conservative approach to determining the Project's greenhouse gas (GHG) emissions impact and for calculating emission reductions necessary to achieve the "no net additional" standard mandated by Assembly Bill (AB) 734 (which is also a requirement of Mitigation Measure GHG-1).

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It is important to note that the California Air Resources Board's (CARB's) AB 734 Determination for the AB 734 Oakland Waterfront Ballpark District Project (henceforth referred to as the CARB Determination) identifies current existing conditions at the Coliseum and Howard Terminal as the baseline against which the project's new emissions should be compared.²⁴ The CARB Determination also uses 2020 emission factors for the baseline. The following text is taken from the CARB Determination (emphasis added).

The AB 734 analysis of no net additional emissions of GHGs accounts for the change in emissions between existing baseline and Proposed Project conditions, such that the difference in emissions between these two conditions represents the net emissions associated with the Proposed Project that the Applicant must reduce to meet AB 734 requirements:

Net GHG Emissions = New Project Emissions – Existing Baseline Emissions

This is because, if the Proposed Project were not implemented, these existing baseline emissions would continue to operate in the future. However, with the implementation of the Proposed Project, the existing baseline emissions are essentially removed and replaced by those from the Proposed Project as the Applicant's baseball games are relocated from the Coliseum in the existing baseline to the new ballpark at the Howard Terminal location. Consequently, the existing baseline emissions are applied as a "credit" to the Proposed Project emissions, thereby reducing the amount of GHG emissions the Applicant must reduce pursuant to AB 734.

Baseline conditions represent currently operational offsite land uses and activities that will be relocated by the Proposed Project to the Howard Terminal location. These include the MLB games played by the Applicant at the existing Coliseum, as well as the Athletics' team headquarters located at Jack London Square. The Application uses year 2020 to represent baseline conditions for operational activities and associated emissions using the historical Coliseum attendance of 35,000 visitors and 2020 emission factors. GHG emissions were quantified for mobile sources, energy consumption (i.e., electricity, natural gas), and emissions from area sources (e.g., landscaping activities), solid waste, water, and

²⁴ CARB, 2020. *CARB Determination for the AB 734 Oakland Waterfront Ballpark District Project*, letter dated August 25, 2020 to Scott Morgan, Chief Deputy Director, Office of Planning and Research.

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wastewater sources. As summarized in Table 3, GHG emissions associated with Proposed Project baseline conditions are estimated as 10,600 MT CO₂e annually for a lifetime total of 317,998 MT CO₂e, and these emissions are treated as a “credit” for the Proposed Project.

As noted above, the Draft EIR differs in its analysis of baseline emissions to represent a conservative assessment of the project’s “net new” GHG emissions and impacts. As discussed in Response to Comment O-29-15 above, the use of such a future baseline is not required by CEQA. Using an existing conditions baseline for GHG impacts consistent with CARB determination would have been a permissible approach under CEQA. However, using an existing conditions baseline for GHG impacts would ignore the anticipated effect of State regulations that reduce GHG emissions, and it would have also resulted in a smaller GHG emission reduction obligation by the Applicant to achieve the CEQA threshold of “no net additional” emissions (because existing emissions are higher, the difference between the project and the baseline would be smaller).

In addition, the “no net additional” CEQA threshold and requirement of Mitigation Measure GHG-1 is based on the project’s potential to emit over its entire 30-year lifetime past the full buildout Year 7 through Year 37. The emission reduction obligation of the project sponsor is to mitigate total cumulative GHG emissions over these 37 years. Using a static baseline for all 37 years would underestimate the project’s “net new” cumulative emissions over this long time period. MM GHG-1 also requires that any GHG offset credits used to achieve the “no net additional” performance standard over this 37-year period must be purchased *upfront* for both construction emissions (prior to issuance of the first grading and/or construction permit or prior to issuance of the building permit for each building’s construction) and operational emissions (prior to issuance of a Temporary Certificate of Occupancy for each building) (Draft EIR p. 4.7-64). In addition, GHG emissions have long atmospheric lifetimes of 100 years or more, and the atmospheric warming impact of GHG emissions produced in a one year persists for many years into the future.²⁵ This is unlike criteria pollutant emissions of ROG, NO_x, and PM, which have short atmospheric lifetimes of hours to weeks and do not persist in the atmosphere for years (National Oceanic and Atmospheric

²⁵ Intergovernmental Panel on Climate Change, 2007. Changes in Atmospheric Constituents and in Radiative Forcing. In: Climate Change 2007: The Physical Science Basis. Contribution of Working Group I to the Fourth Assessment Report of the Intergovernmental Panel on Climate Change.

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Administration, n.d.). This is why the impact of the project's criteria pollutant emissions is only assessed for Phase 1 operations (Year 4) and full buildout operations (Year 7) (see Impacts AIR-1, AIR-2, and AIR-3).

The Draft EIR's choice to use future emission factors to establish a more conservative (future) baseline for its analysis of GHG emissions does not necessitate the same approach for air quality. For additional discussion of the baseline used for the air quality analysis, see Response to Comment O-29-15.

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“Amicus curiae South Coast Air Quality Management District provides a hypothetical example of factual conditions in which use of an existing conditions baseline would arguably mask potentially significant project impacts that would be revealed by using a future conditions baseline. In this illustration, an existing industrial facility currently emits an air pollutant in the amount of 1,000 pounds per day. By the year 2020, if no new project is undertaken at the facility, emissions of the pollutant are projected to fall to 500 pounds per day due to enforcement of regulations already adopted and to turnover in the facility’s vehicle fleet. The operator proposes to use the facility for a new project that will emit 750 pounds per day of the pollutant upon implementation and through at least 2020. An analysis comparing the project’s emissions to existing emissions would conclude the project would reduce pollution and thus have no significant adverse impact, while an analysis using a baseline of projected year 2020 conditions would show the project is likely to increase emissions by 250 pounds per day, a (presumably significant) 50 percent increase over baseline conditions.”⁶ (emphasis added)

“Moreover, the Guidelines explain that “[t]he no project alternative analysis is not the baseline for determining whether the proposed project’s environmental impacts may be significant, unless it is identical to the existing environmental setting analysis which does establish that baseline (see Section 15125).” (Cal. Code Regs., tit. 14, § 15126.6, subd. (e)(1).) While the latter regulation does not absolutely prohibit the use of a future conditions baseline where appropriate, it makes clear that normally the baseline for determining a project’s significant adverse impacts is *not* the same as the no project alternative, which takes into account future changes in the environment reasonably expected to occur if the project is not approved.”⁷ (emphasis in original)

The analysis in the DEIR evaluated “A’s-related existing conditions”⁸ in the 2018 base year and took credit for those emissions against projected future year project emissions. However, the supporting analysis in Appendix AIR.1 acknowledges:

- “emission factors are anticipated to be lower in later years with improved on-road vehicle efficiency ...; therefore, overall emissions and health impacts would be lower if the schedule was extended [to later years].”⁹
- ... “[vehicle] emission factors are anticipated to be lower in later years with improved on-road vehicle efficiency and cleaner off-road construction

⁶ *Neighbors for Smart Rail* at 14 (fn 5)

⁷ *Neighbors for Smart Rail* at 15-16.

⁸ The phrase “A’s-related existing conditions” is used in the DEIR to refer to existing (or baseline) activities that would be modified, replaced or eliminated as a result of the Project. See, e.g., Table 4.2-7.

⁹ Appendix AIR.1, p. 5.

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equipment; therefore, overall emissions and health impacts would be lower if the schedule was extended.”¹⁰

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In Appendix AIR.1 at Tables 54-56, the DEIR presents year-by-year emission factors for GHG emissions for mobile sources from calendar year 2020 through 2050. These declining emission factors were used for various purposes in the GHG analysis in the DEIR. There is no defensible reason why the same analytical approach should not have been used to develop year-by-year emissions for criteria air pollutants and toxic air contaminants for use in the air quality impact assessment and health risk assessment. To be consistent with both California court decisions and other analyses in the DEIR, the A’s-related baseline emissions of criteria air pollutants and toxic air contaminants should be revised to reflect future year improvements in vehicle efficiency and emissions before the analysis takes credit for them.

4. Emergency generators

The dispersion modeling analysis in the DEIR takes credit for rooftop installation of generators (and hence rooftop exhaust with lower ground-level impacts), and for the installation of high-efficiency air filtration systems in new residences; however, the modeling approach raises many questions.

The DEIR states:

“Unmitigated generator emissions assume Tier 2 generators and the maximum allowed maintenance and testing time (50 hours per year) under the ATCM for Stationary Compression Ignition Engines (17 CCR 93115).”¹¹

O29-1-6

In addition, in Appendix AIR.1, the DEIR presents unmitigated emissions for Diesel generators based on Tier 2 emission factors.¹²

However, guidance issued by the Bay Area Air Quality Management District (BAAQMD) for diesel generators rated at 1000 hp or more indicates that current Best Available Control Technology (BACT) for these engines is Tier 4.¹³ Unmitigated emissions calculations for backup emergency generators throughout the DEIR should reflect current BACT.

O29-1-7

Further, pursuant to BAAQMD policy, estimates of generator emissions should reflect at least 100 hours per year for reasonably foreseeable backup operations – such as Public Safety Power Shutoffs (PSPS) and other power outages - in addition to the operating hours estimated for maintenance and testing. The DEIR should be

¹⁰ Appendix AIR.1, p. 32

¹¹ Appendix AIR.1, p. 22

¹² Appendix AIR.1, Tables 35, 36 and 37 - Generator Emission Factors for Diesel Engines;

Unmitigated/Mitigated Generator Emissions from Existing Conditions and Project Operations.

¹³ <https://www.baaqmd.gov/permits/apply-for-a-permit/engine-permits>

O29-1-6 The analysis of generator emissions was prepared in February 2020. At the time the analysis was prepared, the project generators’ assumed emissions were consistent with Best Available Control Technology (BACT) guidance issued by the Bay Area Air Quality Management District (BAAQMD). The commenter is correct that the Draft EIR assumed that all emergency backup diesel generators have Tier 2 engines in the unmitigated emissions scenario. The commenter is also correct that in March 2021 the BAAQMD’s BACT requirements for diesel generators was updated to require that diesel backup generators greater than 1,000 horsepower must meet Tier 4 engine standards.²⁶ Since the unmitigated Project scenario assumed Airborne Toxics Control Measure (ATCM) control on all generators, the incorporation of the new BACT guidance will reduce unmitigated emissions. The mitigated Project scenario assumed all generators are Tier 4, regardless of size. Therefore, the new BACT guidance will result in emissions that fall between the originally analyzed unmitigated and mitigated Project scenarios but will not change mitigated Project emissions results because those results assumed that all generators (and not merely those with greater than 1,000 horsepower) would be Tier 4. Generator mitigation touches on two separate air quality impacts—operational emissions and health risk—with different results as detailed below.

Impact AIR-2 (operational emissions) includes emissions associated with diesel generators, assuming they meet Tier 2 standards. This impact determined that emissions would exceed BAAQMD’s thresholds of significance and mitigation would be required. Mitigation Measure AIR-2c requires that all emergency backup diesel generators meet Tier 4 engine emissions standards. This requirement was incorporated into the mitigated emissions scenario as presented in Table 4.2-9 (Draft EIR p. 4.2-87). Therefore, Tier 4 generators were already incorporated into the analysis. After mitigation, the impact would be significant and unavoidable. Making the Tier 4 requirement a condition of the project prior to mitigation would not change the impact finding.

Impact AIR-4 (health risks) evaluates exposure to Tier 2 generator exhaust exposure. This impact determined that health risks would exceed BAAQMD’s thresholds of significance and mitigation would be required. Health risks resulting from Tier 4 generators (required through Mitigation Measure AIR-2c)

²⁶ BAAQMD, 2020. BAAQMD Letter Re BACT Determination For Diesel Back-up Engines Greater Than or Equal to 1,000 Brake Horsepower, December 22, 2020.

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are presented in Table 4.2-11 (Draft EIR p. 4.2-107). Therefore, Tier 4 generators were already incorporated into the analysis. After mitigation, the impact would be less than significant. Making the Tier 4 requirement a condition of the project prior to mitigation would not change the impact finding. See CEQA Air Quality Technical Addendum (Ramboll, 2021) for additional discussion along with a table of revised health risk results for the unmitigated Project scenario, where all generators greater than 1,000 horsepower have been upgraded to Tier 4 engines.²⁷

O29-1-7 The commenter cites a BAAQMD Potential to Emit policy for generators. The policy states, “When determining the Potential to Emit (PTE) for an emergency backup power generator, the District shall include emissions resulting from emergency operation of 100 hours per year, in addition to the permitted limit for reliability-related and testing operation”.²⁸ Requirements to calculate potential to emit are not the same as requirements to calculate generator emissions under CEQA. Potential to emit represents the total maximum possible emissions associated with a permitted source, while CEQA requires an assessment of emissions which occur on an annual basis. The policy itself makes this distinction:

This assumption of 100 hours per year of emergency operation will be used to determine the applicability of District permitting regulations, such as New Source Review and Title V Major Facility Review. It will not be used to determine the amount of emissions offsets required for a project that triggers New Source Review. Emissions offsets represent ongoing emission reductions that continue every year, year after year, in perpetuity. As such, offsets are intended to counterbalance emissions that will occur every year, year after year, on a regular and predictable basis, to ensure Reasonable Further Progress towards attainment of the applicable ambient air quality standards. Accordingly, the PTE that a facility needs to offset is only its potential for such regular and predictable emissions—not any emissions that will only occur infrequently when emergency conditions arise. (underline added for emphasis)

²⁷ Ramboll, 2021. CEQA Air Quality Technical Addendum, November 2021.

²⁸ BAAQMD, 2019. Calculating Potential to Emit for Emergency Backup Power Generators, June 3, 2019.

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As such, the potential to emit policy does not apply to the Project's emergency generator operations for CEQA analysis purposes, contrary to the commenter's claim. The annual hours of operation used in the Draft EIR are based on reasonably foreseeable future hours of operations, not on the hypothetical maximum hours of operation used for permit regulatory purposes that is used for PTE.

In addition, Public Safety Power Shutoffs occur in areas of high wildfire risk during emergency events.²⁹ The California Public Utilities Commission (CPUC) developed a statewide map that is designed specifically for the purpose of identifying areas where there is an increased risk for utility-associated wildfires. This is called the CPUC Fire-Threat Map. According to this map, neither West Oakland nor the Project site are a high fire risk area.^{30,31} The nearest fire risk area is to the east of Piedmont, nearly four miles from the project site. Pacific Gas and Electric Company (PG&E), the electric utility serving the Project site, uses the CPUC Fire-Threat Map to assess the need for Public Safety Power Shutoffs:³²

High temperatures, extreme dryness and record-high winds have increased fire risks across the areas that PG&E serves in Northern and Central California. Nearly one third of the electric lines that provide our customers with power are now located in High Fire-Threat District (HFTD) areas, as designated by the California Public Utilities Commission (CPUC).

²⁹ Pacific Gas and Electric Company, 2020. Public Safety Power Shutoff Policies and Procedures, August 2020.

³⁰ CPUC, 2018. CPUC Fire – Threat Map, adopted by CPUC January 19, 2018.

³¹ CPUC, 2021. CPUC Fire – Threat Map, online viewer, July 8, 2021.

³² Pacific Gas and Electric Company, 2020. Public Safety Power Shutoff Policies and Procedures, August 2020.

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O29-1-7 updated to reflect this BAAQMD policy published in June 2019.¹⁴ (It should be noted that USEPA policy for calculating potential to emit for emergency generators requires that emergency engine operation be evaluated at 500 hours per year.¹⁵)

O29-1-8 Similarly, at p. 4.5-27 in the DEIR, the calculation of energy use for emergency generators is based on 50 hours/year for maintenance and testing. For the reasons discussed above, this calculation should reflect an additional 100 hours/year for reasonably foreseeable emergency use, such as for Public Safety Power Shutoffs.

O29-1-9 At pp. 4.2-76-77 (Mitigation Measure AIR-2c), the DEIR indicates that the operators of facilities where emergency generators will be located should be required to maintain "records of the testing schedule for each diesel backup generator for the life of that diesel backup generator". However, MM AIR-2c should require that records of ALL operation of emergency generators (not just testing) should be maintained, and should further require that if that operation exceeds the assumptions in the DEIR for any generator, an updated HRA must be prepared (consistent with the requirements of Section 4 of MM AIR-2c) by the project sponsor, with penalties imposed if risk levels exceed those estimated in the DEIR.

Modeling of emergency generators on rooftops

O29-1-10 The DEIR presents a table of dispersion modeling parameters showing that the modeling analysis used a stack height of 3.66 meters (m) (12 ft), a stack diameter of 0.18 m (7 in), and a stack exit velocity of 45 meters per second (m/s).¹⁶ These same parameters were used for generators that ranged in size from 335 hp to 2012 hp. While these assumptions may be reasonable for a generic, regional dispersion modeling analysis, they are too simplified, and clearly inaccurate, when applied to a specific project where the sizes have been estimated and locations specified for 17 generators with a total rating of over 15,000 hp. The dispersion modeling analysis should be updated to reflect reasonable stack parameters for the generator sizes estimated and included in the DEIR based on readily available data from engine manufacturers.

O29-1-11 There is not enough information in the DEIR or the appendices to evaluate how the sources and structures were characterized for the modeling of the emergency generators on rooftops (i.e., building dimensions, whether emissions points are flush with the rooftop or elevated, etc). Particularly unclear is whether the modeling analyses assumed that Diesel generators placed on rooftops would have a 12-foot exhaust stack, as indicated in Table 62 of Appendix AIR.1. Appendix AIR.1 indicates

O29-1-8 The commenter is correct that the calculation of energy use (along with criteria pollutant, toxic air contaminant [TAC], and GHG emissions) associated with the use of emergency backup diesel generators is based on 50 hours per year of testing and maintenance, which is the maximum duration allowed by the CARB Airborne Toxics Control Measure (ATCM) for Stationary Compression Ignition Engines (17 CCR 93115) (see Draft EIR p. 4.2-84).³³ An additional 100 hours of generator operation per year is not a reasonably foreseeable future annual condition, as discussed in Response to Comment O29-1-7.

O29-1-9 Item #5 in Mitigation Measure AIR-2c requires records of the testing schedule for each diesel backup generator be maintained for the life of that diesel backup generator. The Final EIR requires the Project sponsor to maintain records of all other non-testing operations. See Response to Comment A-11-11 for the changes to Mitigation Measure AIR-2c.

Regarding the requirement to prepare an updated HRA to reflect future actual emergency generator operations, this is not something that CEQA mandates. The HRA in the Draft EIR evaluates the potential health risk impacts of the proposed Project based on reasonably foreseeable future conditions created by the Project, current accepted modeling protocols, current regulatory requirements for emergency generators and other TAC emission sources, best available emission factors and engine technology, anticipated meteorological and terrain conditions, and other information known at the time the Draft EIR is prepared. Based on this analysis, and through implementation of all feasible mitigation measures to reduce project-level health risk impacts to less-than-significant levels; which is what the Draft EIR determines for Impact AIR-4 and AIR-5; the requirements of CEQA are met. For every emissions source modeled for any CEQA project, there are uncertainties inherent in the models themselves and the data and assumptions that go into the models. The mere fact that actual future conditions for any given project won't perfectly reflect modeled conditions in a project's CEQA document does not necessitate redoing the CEQA analysis and remodeling all emissions sources (for example, the modeling of construction emissions is based on estimates of construction activity prepared before construction actually begins; actual construction equipment fleet, hours of operation, and engine technologies that will exist at the project site 5-10 years from now during actual project construction will be

¹⁴ Calculating Potential to Emit for Emergency Backup Power Generators. BAAQMD. June 2019. While the BAAQMD policy does not impose this modeling requirement for certain regulatory purposes, there is no exclusion for analyses required to comply with CEQA. Furthermore, the District policy states: "In implementing this policy, the Air District will not allow an on owner/operator to accept a permit condition to limit emergency operation to less than 100 hours per year to reduce a source's [Potential to Emit]." Because these PSPS operations are clearly foreseeable, they should be reflected in the DEIR.

¹⁵ *Ibid.* p.3.

¹⁶ DEIR Appendix AIR.1, Table 62.

³³ CARB, 2011. Final Regulation Order Amendments to the Airborne Toxic Control Measure for Stationary Compression Ignition Engines, May 19, 2011.

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different from what was modeled; however, this is not a reason under CEQA to redo the modeling in the future). The Draft EIR requires all emergency generators at the project site to achieve Tier 4 Final engine emissions standards through implementation of Mitigation Measure AIR-2c. This will ensure that health risks from Project generators will not create a significant impact (see Draft EIR Table 4.2-11 and 4.2-13 for the contribution of emergency generators to Project health risks).

See Chapter 7, *City-Initiated Updates and Errata in the Draft EIR*, for the revised mitigation measure language.

O29-1-10 Modeling parameters used in the Draft EIR for emergency generators; including stack heights, stack diameters, and stack exit velocity; are consistent with the default parameters presented in a technical memorandum from Sonoma Technology, Inc. to the BAAQMD, prepared specifically to assist with CEQA evaluations.³⁴ The default parameters are also consistent with those used in the WOCAP Environmental Impact Report (EIR).³⁵ In addition, BAAQMD used these default parameters for their citywide modeling in San Francisco and recommends using default values when specific parameters are not known.³⁶ In this case, default parameters were used because specific generator stack parameters and exact locations for the project's future generators are unknown.

O29-1-11 Rooftop generator heights were calculated as the sum of the building height and the assumed stack height above the rooftop. Building heights are provided in Chapter 3, *Project Description*. A 12-foot exhaust stack (height above rooftop) was assumed for all rooftop diesel generators. This is consistent with the WOCAP EIR.

With sources on top of buildings (i.e., generators) and receptors below, receptors are necessarily below the base elevations of the sources. The American Meteorological Society/Environmental Protection Agency regulatory air dispersion model (AERMOD) Implementation Guide states the following: "For cases in which receptor elevations are lower than the base

³⁴ BAAQMD, 2011. Recommended Methods for Screening and Modeling Local Risks and Hazards, May 2011.

³⁵ BAAQMD and WOEIP, 2019. *Final Environmental Impact Report: The West Oakland Community Action Plan*, September 2019, Appendix C: AB 617 Owning Our Air: The West Oakland Community Action Plan Technical Support Document Base Year Emissions Inventory and Air Pollutant Dispersion Modeling.

³⁶ San Francisco Department of Public Health and Ramboll, 2020. San Francisco Citywide Health Risk Assessment: Technical Support Documentation, September 2020.

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elevation of the source, AERMOD will predict concentrations that are less than what would be estimated from an otherwise identical flat terrain situation. While this is appropriate and realistic in most cases, for cases of down-sloping terrain where expert judgement suggests that the plume is terrain-following (e.g., down-slope gravity/drainage flow), AERMOD will tend to underestimate concentrations when terrain effects are taken into account.³⁷ In this case, the Project generator modeling setup will not be impacted by down-slope gravity/drainage flow due to terrain or terrain-following plumes because the generator emissions plumes have thermal and momentum rise. The generator modeling accounts for plume downwash based on project buildings; this will serve, on a wind direction-specific basis, to account for recirculation and reduce plume height. Using AERMOD to model emissions from sources which are elevated above ground level, such as generators on rooftops, is standard practice in industrial and urban environments such as where the Project is located. This practice will not adversely affect results or impacts.

³⁷ U.S. EPA, 2021. AERMOD Implementation Guide, July 2021.

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that building downwash was considered in the dispersion modeling analysis,¹⁷ and that receptors were placed at various elevations on buildings.¹⁸ With sources on top of buildings and receptors below, receptors are necessarily below the base elevations of the sources. However, footnote 78 (p. 38) of the Appendix AIR.1 notes:

“From the AERMOD Implementation Guide (2018), “For cases in which receptor elevations are lower than the base elevation of the source (i.e., receptors that are down-slope of the source), *AERMOD will predict concentrations that are less than what would be estimated from an otherwise identical flat terrain situation.*” [emphasis added]

Therefore, it appears that the modeled concentrations of DPM from the emergency generators used for the HRA may be underpredicted.

At p. 4.2-109, the DEIR states:

“New on-site receptors were modeled at heights consistent with the number of floors of the building (starting at a height of 1.8 meters, with additional receptors at 3-meter intervals to represent each floor of the building (4.8 m, 7.8 m, etc.) through 103.8 meters. *It was assumed that residential or daycare receptors could be present anywhere at the site in any building;* therefore, all on-site receptors were assumed to be residential.”¹⁹ [emphasis added]

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However, DEIR Figure 3-8 indicates that the project buildings may be up to 600 feet tall.²⁰ This height is equivalent to 182.9 meters, well above the 103.8-meter elevation of the highest receptor cited in the DEIR. This inconsistency suggests that all potential residential receptor locations in the proposed buildings have not been evaluated and, as a result, potential health risks from the operation of the generators have not been adequately analyzed.

Given the significance of the contribution of the emergency generators in the project health risk assessment, particularly after correcting the errors noted above, the DEIR should consider a wind tunnel study because of the difficulties AERMOD has in handling complex site plans and multiple tall buildings with receptors located below the base elevation of the emission sources. At a minimum, the health risk assessment should be revised to address the deficiencies noted above.

5. Meteorological data.

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In the air quality analyses and health risk assessments, the DEIR uses meteorological data from Oakland Airport.²¹ In contrast, the BAAQMD’s West Oakland Community Action Plan (WOCAP), which is frequently cited in the DEIR, used meteorological data

¹⁷ DEIR, Appendix AIR.1, Health Risk Assessment, p. 40.
¹⁸ DEIR, Appendix AIR.1, Health Risk Assessment, pp. 39-40.
¹⁹ DEIR p. 4.2-109.
²⁰ DEIR Figure 3-8.
²¹ DEIR p. 4.2-20.

O29-1-12 The commenter is correct that Appendix AIR.1 section 3.1.2.6, and Draft EIR p. 4.2-109 states that onsite receptors were modeled at heights consistent with the number of floors of the building starting at a height of 1.8 meters, with additional receptors at 3-meter intervals to represent each floor of the building (4.8 m, 7.8 m, etc.) through 103.8 meters. This is a typographical error in the text. Onsite receptors were modeled up to the tallest proposed building heights. The Draft EIR on p. 4.2-109 has been revised as follows (new text is underlined; deleted text is shown in ~~strikethrough~~):

New on-site receptors were modeled at heights consistent with the number of floors of the building (starting at a height of 1.8 meters, with additional receptors at 3-meter intervals to represent each floor of the building (4.8 m, 7.8 m, etc.) through ~~103.8~~ 181.8 meters.

In addition, upon review of the generator modeling setup, the City identified an error in the release height of the Parcel 18 generator. The maximum building height of Parcel 18 is 83.82 meters, but the generator release height was set to 34.14 meters. As stated in Appendix AIR.1, the generator release height should be equal to the building height plus the 12-foot stack height. Building heights are provided in Chapter 3, *Project Description*. The City re-modeled the Parcel 18 generator to incorporate the corrected generator release height. Increasing the Parcel 18 generator release height to the building height plus the 12-foot stack height decreased cancer risk at the on-site MEIR and had a negligible impact at the off-site MEIR. Updated cancer risk, chronic HI, and PM_{2.5} concentration results are shown in CEQA Air Quality Technical Addendum (Ramboll, 2021) Tables 8, 9, and 10.³⁸

O29-1-13 As discussed in the Draft EIR, the health risk assessment uses meteorological data from the Oakland Airport, while the BAAQMD West Oakland Community Action Plan (WOCAP) uses one year of meteorological data from the Oakland Sewage Treatment Plant (STP). Locations of the Oakland Airport Met Station and Oakland STP Met Station are shown in **Figure 5.2-1**.

The selected meteorological data are an important component of the dispersion modeling analysis because they characterize the transport and dispersion of modeled emissions. Therefore, the credibility of predicted air quality impacts is reliant on the quality of the meteorological data used in the

³⁸ Ramboll, 2021. CEQA Air Quality Technical Addendum, November 2021.

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analysis. For this reason, meteorological data in compliance with federal requirements must meet specific data capture metrics, be collected from equipment sited properly so that measurements are not affected by nearby obstacles, and be routinely calibrated and maintained.



Figure 5.2-1: Locations of the Oakland Airport and Oakland STP Met Stations relative to the Project.

According to United States Environmental Protection Agency (USEPA) Guidelines for Air Dispersion modeling (known as “Appendix W”), because site-specific data are not available, the analysis must consider nearby meteorological datasets to determine which site may be considered “adequately representative” on the basis of spatial and climatological (temporal) representativeness for use in the dispersion modeling analysis.³⁹ The representativeness of a site considers several factors, including but not limited to:

1. The proximity of the meteorological site to the project area;

³⁹ U.S. EPA, 2017. 40 CFR Part 51 Appendix W.

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2. The complexity of the terrain;
3. The exposure of the meteorological monitoring site; and
4. The period of time during which the data are collected.

These factors, with the exception of terrain, are discussed below for both the Oakland Airport and Oakland STP met stations in context of the Project.⁴⁰

- **Proximity:** Both met stations are relatively proximate to the Project site: the Oakland Airport site is located six miles to the southeast, and the STP site is located two miles to the northwest, as shown in Figure 5.2-1 above. Both sites have a water-land interface that is similar to the Project site and have similar surrounding geophysical data (e.g., land use).
- **Period of time:** According to EPA guidelines, 5 years of representative meteorological data must be used if site-specific data are unavailable.⁴¹ Because neither the STP nor Oakland Airport are site-specific data for the Project site, a 5-year meteorological dataset must be used in the dispersion modeling analysis. The data capture at the Oakland Airport is sufficient to meet the 5-year data requirement (2014-2018), while the data capture at the STP is not sufficient (only 2014 had adequate data capture).⁴² According to the WOCAP, “subsequent years had significant periods of missing data” for the STP sensors, which may indicate inadequate equipment maintenance. In addition, the Oakland airport dataset already includes 2014, which is the only year available from the STP. The length of the meteorological period of record is an important part of the analysis, so that the “worst-case meteorological conditions are adequately represented in the model results”.⁴³ The longer period of record available from the Oakland Airport ensures that slight variations in wind direction and other uncertainties between potential meteorological datasets (i.e., the STP and Oakland Airport) are addressed.
- **Exposure:** The Automated Surface Observing Systems (ASOS) sensors at an airport are purposefully sited to ensure good exposure (i.e., no nearby obstacles or features that could affect the wind flow, temperature, humidity, etc.), which provides a robust description of the mean wind flow

⁴⁰ The maximum project impacts occur very close to the project emission sources in flat terrain, therefore complex terrain is not a significant consideration.

⁴¹ U.S. EPA, 2017. 40 CFR Part 51 Appendix W.

⁴² BAAQMD and WOEIP, 2019. *Owning Our Air: The West Oakland Community Action Plan – Volume 1: The Plan*, October 2019.

⁴³ Ibid.

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over a large area. Ramboll has reviewed aerial imagery and Google Street View of the STP to see if the anemometer was visible. Based on this review, it is possible that a sonic anemometer is visible and is used to capture the wind data. The equipment appears to be behind a tall, brick building, with the sensor extending above the building. Assuming this is the anemometer, its distance from the building is unknown, but based on available information and EPA siting guidance, some further analysis is possible. EPA guidance recommends that wind instruments be located in open terrain that is “at least ten times the height” of a nearby obstruction.⁴⁴ In this case, the obstruction appears to be the brick building that is measured to be 34 feet tall. Following EPA guidance, the wind equipment should not be sited within 340 feet of the building, which is a large footprint on the STP site. In addition, the EPA guidance states that wind flow can be affected up to 2.5 times the height of the building vertically. In this case, wind flow could be obstructed up to 85 feet in the vertical. The WOCAP report describes the selection of the STP data as being based on siting criteria and that wind sensors were installed higher than recommended (16.3 m or 54 feet) to compensate for the heights of nearby structures. Based on the above, it is possible that the wind equipment is not sited with sufficient “open terrain” or high enough since the equipment is 54 feet but the flow can be obstructed up to 85 feet. According to EPA, in these complex environments, the selected siting should be documented and based on evaluations, e.g., wind tunnels or smoke tracers. The above analysis is only based on the single brick building that appears to be close to the anemometer. However, there are other large structures onsite, such as tanks and other buildings that could also affect the wind flow.

- **Data Analysis:** Analysis of the windroses used in WOCAP and Draft EIR health risk modeling analyses from the two sites (shown in Figure 5.2-2) indicates a predominate flow from the west and west-northwest at both sites. However, the western flow from the STP is more predominant (~15 percent of the time) compared to Oakland Airport (~8.5 percent of the time). Further review of available information from prior Bay Area Air Quality Management District (BAAQMD) Air Monitoring Network Reports show significantly different frequency of winds from the west at the STP, e.g.,

⁴⁴ U.S. EPA, 2000. Meteorological Monitoring Guidance for Regulatory Modeling Applications. 2000. https://www.epa.gov/sites/default/files/2020-10/documents/mmgrma_0.pdf

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- winds from the west just under 30 percent of the time in 2011;
- winds from the west just under 30 percent of the time in 2012; and
- winds from the west approximately 15 percent of the time in 2014.

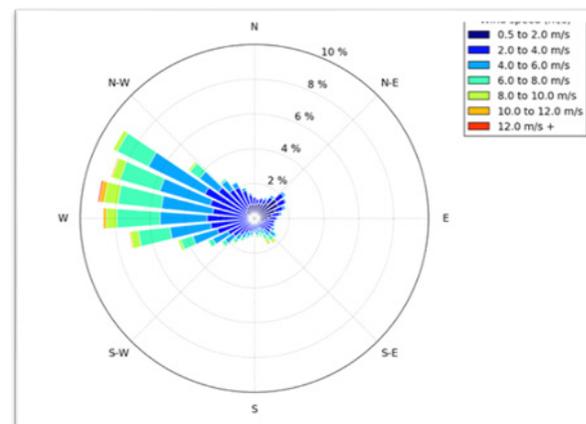
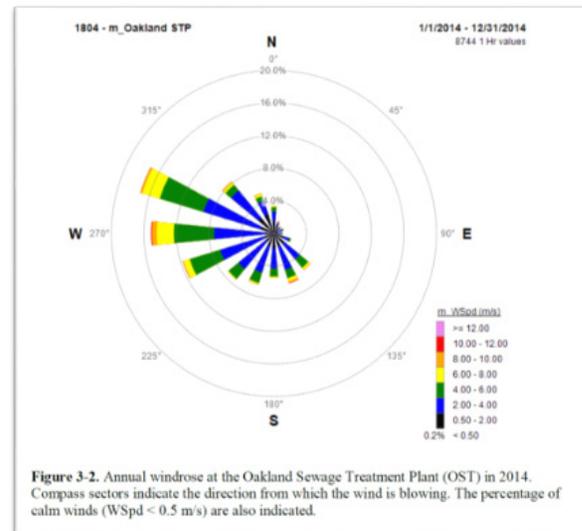
For comparison, windroses for the same years (2011, 2012, and 2014) for the Oakland Airport show much lower interannual variability of western winds. During this time period wind from the west varies between 15 percent and 30 percent at the STP, while it only varies between 7 percent and 8 percent at the Oakland Airport during the same timeframe. Comparisons of windroses between the two sites for years 2011, 2012, and 2014 are shown in Figures 5.2-3, 5.2-4, and 5.2-5, respectively. From a meteorological and climatological perspective, the variability for a given wind direction is not expected to change by 15 percent between years. This high variability of the Oakland STP data indicates potential siting or equipment anomalies, which decreases the data accuracy and any analyses that depend on it. In addition, since only a single meteorological year for the STP was used in the WOCAP, and given the high interannual variability, the temporal representativeness of that year is likely to be limited. By contrast, the windrose data from the Oakland Airport is more consistent from year to year, indicating higher quality data that is more representative of actual meteorological conditions at the site.

Based on the above, the Draft EIR modeling conducted with the Oakland Airport data should be considered comprehensive and robust based on it being adequately representative of the Project site in terms of proximity (within 6 miles); no intervening complex terrain; sufficient quality, and sufficient length of available data to capture worst-case impacts. The use of a single year of data from the STP for the Draft EIR (especially with year 2014 already in the Oakland airport dataset), with an uncertain temporal representativeness, would yield less accurate modeling results based on the factors note above in Ramboll's professional judgement and expertise.

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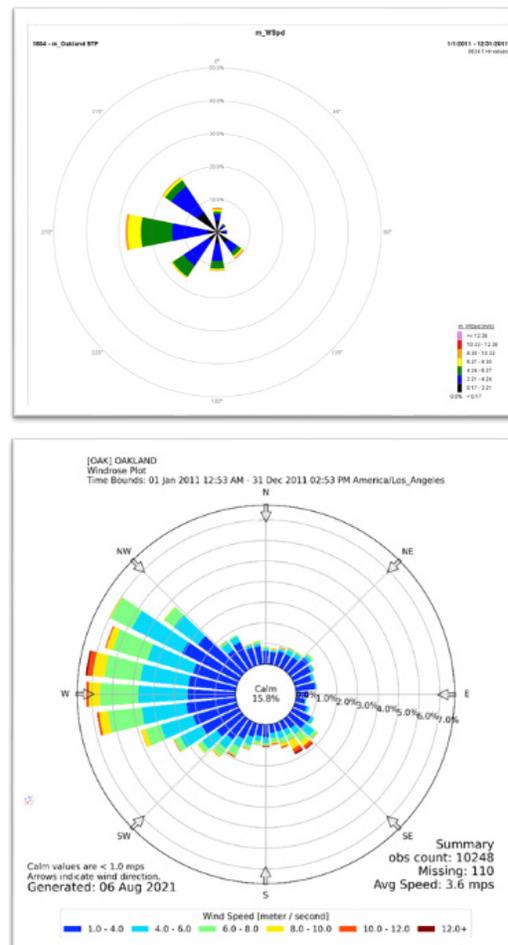


Figure 5.2-3: Wind rose from the Oakland Sewage Treatment Plan for 2011 (top) (BAAQMD, 2012).⁴⁵ Wind rose from Oakland Airport for 2011 (bottom) (Iowa State University, n.d.).⁴⁶

⁴⁵ BAAQMD, 2012. Network_Plan.ashx, Figure 20. https://www.baaqmd.gov/~media/Files/Technical%20Services/2012_

⁴⁶ Iowa State University, n.d. https://mesonet.agron.iastate.edu/sites/site.php?station=OAK&network=CA_ASOS

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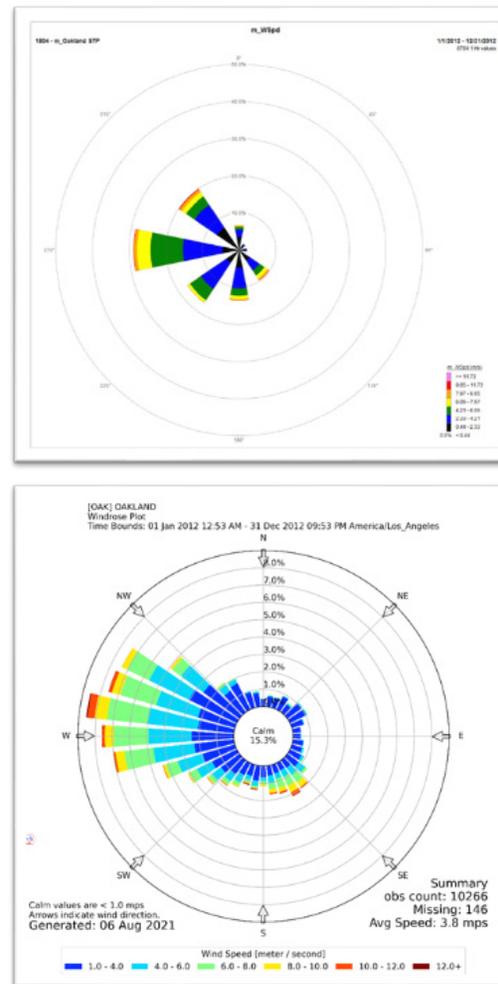


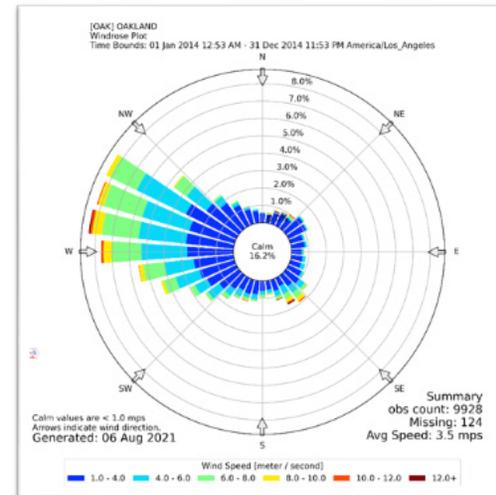
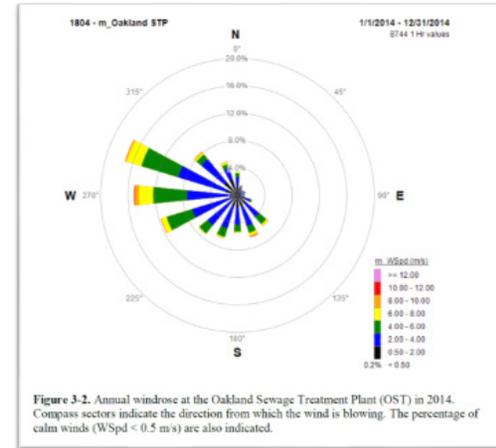
Figure 5.2-4: Wind rose from the Oakland Sewage Treatment Plan for 2012 (top) (BAAQMD, 2013).⁴⁷ Wind rose from Oakland Airport for 2012 (bottom) (Iowa State University, n.d.).

⁴⁷ BAAQMD, 2013. Figure 20, https://www.baaqmd.gov/~media/Files/Technical%20Services/2012_Network_Plan.ashx.

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⁴⁸ BAAQMD and WOEIP, 2019. The West Oakland Community Action Plan —Volume 2: Appendices, October 2019. <https://www.baaqmd.gov/~/media/files/ab617-community-health/west-oakland/100219-files/final-plan-vol-2-100219-pdf.pdf?la=en>.

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O29-1-14 See Consolidated Response 4.5, *Truck Relocation*.

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from the Oakland Sewage Treatment Plant (STP),²² which is closer to the project site. Slight variations in wind directions (such as could be found in differences between these two meteorological (met) data sets) can result in significant differences in modeled ambient concentrations and health risks at different locations. In Appendix AIR.1, Ramboll states that they used the Oakland Airport met data because they had five years of data; only one year of data was available for the Oakland STP.²³ Given the extensive modeling analysis performed by the BAAQMD for the WOCAP using Oakland STP data for essentially the same geographic area, this same data should be used for the DEIR. If there is uncertainty as to which is more representative, the analysis should be performed with both met data sets to better inform the public regarding the uncertainty in the conclusions.

6. Roundhouse parking.

The DEIR states:

“The Project would replace truck parking, loaded and empty container storage and staging, and longshore training facilities at the existing Howard Terminal site; however, as these emissions may still occur within the general region, no reduction in emissions is quantified for the A’s Related Existing CAP and GHG inventory. The reduction is only considered for the health risk assessment of localized impacts, as discussed in Section 3.”²⁴ (emphasis added)

As noted in the DEIR:

“Currently the Howard Terminal supports 23 acres of truck parking and 4 acres of drayage truck yards for a total of 27 acres. With implementation of the project, the exact location for the relocation of existing truck activity is not known definitively. However, the Port of Oakland (“Port”) has indicated that 15 acres of the nearby “Roundhouse” area could be used for relocated truck parking. The City of Oakland (“City”) has indicated that 15 acres of truck parking will be available on the Oakland Army Base.²⁵

O29-1-14

The DEIR contains no explanation as to how 27 acres of existing parking at Howard Terminal can be accommodated within 15 acres at the Roundhouse. To the extent that the DEIR is relying on a combination of 15 acres at the Roundhouse plus 15 acres at the Oakland Army Base, the DEIR fails to disclose the location to which the existing activities at both the Roundhouse and Oakland Army Basis would be moved, and the extent to which those relocations – which would be a direct result of the proposed Project – would increase both vehicle miles traveled (VMT) and emissions.

²² DEIR p. 4.2-20.
²³ DEIR, Appendix AIR.1, p. 49.
²⁴ DEIR, Appendix AIR.1, p. 8.
²⁵ DEIR, Appendix AIR.5, p. 1.

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O29-1-15 See Consolidated Response 4.5, *Truck Relocation*.

O29-1-16 See Consolidated Response 4.5, *Truck Relocation*.

O29-1-17 See Consolidated Response 4.5, *Truck Relocation*.

O29-1-15

However, a review of acreage at these locations does not present a complete picture. Howard Terminal currently contains 225 25' parking stalls, and 874 40' parking stalls, along with 125 short-term (daily) parking stalls, for a total of 1,224 parking stalls. In contrast, the Roundhouse contains 228 25' parking stalls, 417 40' parking stalls, and 70 short-term (daily) parking stalls, for a total of 715 parking stalls.²⁶ At present, 76% of the long-term parking stalls at Howard Terminal are reserved on a month-to-month basis, and 82% of the long-term parking stalls at the Roundhouse are reserved on a month-to-month basis.²⁷ The DEIR fails to disclose the impact of the loss of 42% of the current total parking stalls through the proposed relocation of existing activities at Howard Terminal to the Roundhouse. Similarly, the DEIR fails to disclose the impact of the fact that there would be over 800 displaced long-term users at Howard Terminal, with less than 120 available long-term parking stalls at the Roundhouse. With respect to daily (short-term) parking, the number of available parking stalls would be reduced from the current level of 195 stalls to 70 stalls – a reduction of approximately 65%.

O29-1-16

The existing use of Howard Terminal is intended to facilitate traffic flow management for trucks arriving or departing the Port of Oakland, and minimize queuing; the DEIR fails to discuss the adverse impacts – emissions associated with additional truck travel and/or queuing – associated with the loss of Port-related acreage for the activities currently carried out at Howard Terminal. To the extent that the use of more distant locations (from the Port) increases travel time and VMT, this relocation could inhibit the use of electric dray trucks to serve the Port due to range limitations.

O29-1-17

The relocation of existing truck activity from Howard Terminal to the Roundhouse and/or Oakland Army Base (potentially displacing existing parking/activities at both locations) will necessarily result in an increase in VMT somewhere; the DEIR indicates those impacts are not quantified because their exact location is unknown. While that may be true, the DEIR may not simply ignore those adverse impacts while, at the same time, taking credit for the reduction in existing activity at Howard Terminal in the DEIR (e.g., in the health risk assessment). The DEIR's characterization of increased emissions at the Roundhouse does not reflect the increased VMT associated with this relocation, or any other potential impacts (e.g., public safety, increased risk of accidents with passenger vehicles, etc.); the DEIR's assumption that this increase in VMT will fall outside the Project's "zone of influence" is unsupported by factual evidence.

These reasonably foreseeable impacts of the Project's elimination of existing activities at Howard Terminal and, potentially, the displacement and relocation of existing port-related activities at the Roundhouse, need to be addressed in the DEIR.

²⁶ Harbor Trucking Association.

²⁷ Harbor Trucking Association. As of April 19, 2021. None of the stalls are occupied under a lease agreement and the truckers do not have "possession" of any stall, only rights to access a stall under the terms of a month-to-month Parking Use Agreement.

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7. Fugitive Dust Emissions During Construction.

The DEIR does not evaluate fugitive emissions of PM₁₀ and PM_{2.5} (and related emissions of toxic air contaminants (TACs)) during construction because those activities will be mitigated; however, that is not an adequate basis for failing to disclose these impacts. This is particularly important with respect to the toxic air contaminants that will be released when the existing cap at the Howard Terminal site is removed and excavation and/or remediation of the underlying heavily contaminated soils occurs.

The DEIR states:

“Only exhaust emissions of PM₁₀ and PM_{2.5} emissions are shown, because fugitive dust emissions are addressed through best management practices as required by Mitigation Measure AIR-1a. (Dust Controls).”²⁸

This is not a reasonable basis for failing to disclose the impacts remaining after mitigation because fugitive emissions will not be zero after mitigation. For example, the BAAQMD CEQA guidelines state:

“BAAQMD recommends that for *Site Grading Soil Disturbance Mitigation* select (turn on) the soil stabilizing measure titled *Equipment loading/unloading*. To account for the implementation of the *Additional Construction Mitigation Measures* 1 through 8, alter the default percent reduction to 63 percent, which would result in a total reduction of 75 percent in fugitive PM dust emissions.”²⁹

The analysis can take credit for the mitigation measures, but there is no justification provided for the assumption that the mitigation will be 100% effective.

Also, brake and tire wear emissions associated with construction trips are not addressed. No rationale is provided for ignoring these emissions which, for some vehicle categories, exceed exhaust PM₁₀ emissions.

Furthermore, emissions of TACs released during soil excavation, on-site consolidation or relocation activities, and/or removal from the site are not quantified, and the potential health risks associated with these emissions are not assessed in the DEIR. Although mitigation measures may help to reduce these emissions, there is no justification for assuming these emissions will be eliminated. Techniques have been developed for quantifying these emissions by numerous local, state and federal agencies, including the BAAQMD³⁰.

²⁸ DEIR, Tables 4.2-4, 4.2-10 and 4.2-11, fn c in each.

²⁹ Bay Area Air Quality Management District CEQA Guidelines, May 2017, P. B-12.

³⁰ See, e.g., https://www.sparetheair.org/-/media/files/engineering/public-notices/2017/28187/e3674_nsr_28187_eval_101117-pdf.pdf?h=en

O29-1-18 In Impact AIR-1 (construction criteria pollutants), the Draft EIR concludes that fugitive emissions of PM₁₀ and PM_{2.5} during construction would be mitigated to less-than-significant levels through implementation of the BAAQMD’s required and recommended Best Management Practices (BMPs), which are required through implementation of Mitigation Measure AIR-1a. As discussed on Draft EIR pp. 4.2-42 and 4.2-61, the BAAQMD considers implementation of the BMPs for fugitive dust sufficient to ensure that construction-related fugitive dust is reduced to a less-than-significant level, and thus does not have quantitative significance thresholds for fugitive dust from construction activities. See Response to Comment A-11-3 for additional discussion of this approach.

The commenter’s citation from the BAAQMD CEQA Guidelines describing how to quantify dust-related emissions from construction activities using the URBEMIS model. This is provided in Appendix B, which provides modeling guidance. The modeling guidance in Appendix B is not a requirement of the State CEQA Guidelines. BAAQMD’s own CEQA thresholds for construction dust, provided in Table 2-1 and p. 2-2 of the BAAQMD CEQA Guidelines, state: “PM₁₀/PM_{2.5} (fugitive dust): Best Management Practices”.⁴⁹ As such, the BMPs are sufficient to mitigate construction-related fugitive dust emissions to less-than-significant levels and no modeling is required. See Response to Comment A-11-3 for additional discussion of this approach.

The commenter is incorrect that construction-related fugitive emissions of PM₁₀ and PM_{2.5} are not evaluated in the health risk assessment. In Impact AIR-4 (construction and operational health risks), the Draft EIR evaluates annual average concentrations of PM_{2.5} associated with fugitive emissions from on-road construction vehicles, including tire wear, brake wear, and road dust (Draft EIR p. 4.2-97):

Construction sources considered in the HRA include emissions from off-road construction equipment and on-road heavy-duty diesel trucks. Operational sources considered in the HRA include operational traffic generated by the proposed development and travel associated with the ballpark, TRU emissions from ballpark deliveries, and emergency generators.[1] Under California regulatory guidelines, DPM is used as a surrogate measure of carcinogen exposure for the mixture of chemicals

⁴⁹ BAAQMD, 2017. *California Environmental Quality Act Air Quality Guidelines*, May 2017.

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that make up diesel exhaust as a whole (BAAQMD, 2016c). Therefore, DPM was the only TAC included in the cancer risk analysis for construction and operational emissions exposure. Annual average PM2.5 concentrations include exhaust from all fuel combustion sources from both construction and operational activities along with road dust, tire wear, and brake wear from operational mobile sources. [emphasis added]

In addition, Appendix AIR.1 states on p. 33 that the construction HRA includes “PM2.5 emissions include engine exhaust, brakewear and tirewear, and entrained dust.”

Resulting PM2.5 concentrations are compared to the City’s (and the BAAQMD’s) significance thresholds for health risks. See Impacts AIR-4 and AIR-5.

O29-1-19 The potential of remediation activities to release hazardous materials is evaluated in Draft EIR Section 4.8, *Hazards and Hazardous Materials*. The Air Quality section does not evaluate hazardous materials, and addresses construction emissions in a manner that is consistent with the BAAQMD CEQA Guidelines, providing recommended mitigation for fugitive dust (Mitigation Measure AIR-1a), as well as analysis and mitigation for criteria pollutants and health risks.

As discussed in Draft EIR Impact HAZ-1, construction activities would be required to comply with numerous hazardous materials regulations designed to ensure the proper transportation, use, storage, and disposal of hazardous materials in a safe manner to protect worker safety and the environment, including encountering hazardous building materials and hazardous waste.

Implementation of Mitigation Measure HAZ-1c: Health and Safety Plan would ensure that construction activities comply with applicable regulations, and indicates that the required Health and Safety Plan shall include “procedures for the management of impacted soil; use of personal protective equipment; management, use and or treatment of water associated with construction activities; and dust mitigation.” Thus, the regulatory requirement for a Health and Safety Plan, together with implementation of Mitigation Measure HAZ-1c, which would allow the City to confirm the Health and Safety Plan’s timely preparation and contents, would ensure that construction activities—including potential dust generation—are conducted appropriately to avoid impacts on construction workers, the public, or the environment.

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Finally, the DEIR states:

“Road dust emissions are calculated using ARB methodology. The on-road entrained dust *emission factor derivation* is shown in Table 10.

O29-1-20

Emissions for each year of construction are estimated based on the overall construction duration for each activity in a year.”³¹ (emphasis added)

Road dust emission factors are shown in the cited table, but there are no calculations of the actual on-road (or on-site) PM₁₀/PM_{2.5} fugitive dust emissions shown so a reader is unable to verify the calculations. Supporting calculations should be included in the DEIR to enable a review of the methodology underlying the DEIR’s conclusions.

8. Comparison with Ambient Air Quality Standards (AAQS).

O29-1-21

The DEIR does not compare either unmitigated or mitigated project air quality impacts with ambient air quality standards. Of particular concern in the Bay Area AQMD, particularly for impacts related to construction and operation traffic and operation of emergency generators, are the 1-hour NO₂ AAQS and the 24-hour PM₁₀ and PM_{2.5} AAQS. The DEIR correctly indicates that contributing to an exceedance of an AAQS may not be a significant impact under CEQA, and it compares project emissions impacts with significance thresholds;³² however, this does not obviate the need to disclose resulting impacts on ambient air quality as well as potential AAQS exceedances to which project impacts would contribute, and the magnitude of those exceedances.

9. Inappropriate Calculation of GHG Credits for Installation of Electric Vehicle (EV) Charging Infrastructure.

O29-1-22

Installation of EV charging infrastructure is key to the A’s AB 734 approval by CARB, and many pages in the AIR appendix are dedicated to the calculation of GHG emission reductions attributable to installation of the chargers. However, the DEIR’s quantification of the GHG benefits associated with the installation of EV charging infrastructure is logically flawed, and results in the Project claiming credit for GHG emission reductions that would occur whether or not the Project is developed.

At p. 4.5-22, the DEIR states:

“The Project sponsor anticipates that the electric vehicle charging stations would achieve a similar or better functionality as a Level 2 charging station. This would encourage the use of EVs at the Project site and discourage the use of gasoline and diesel passenger vehicles, thus reducing mobile source fuel consumption associated with vehicle travel to and from the Project site.”

³¹ DEIR, Appendix AIR.1, p. 11.
³² DEIR, p. 4.2-35.

O29-1-20 Per Table 2-4 of BAAQMD’s CEQA Air Quality Guidelines, the thresholds of significance for construction-related Respirable Particulate Matter Less than 10 Micrometers in Aerodynamic Diameter (PM₁₀) and Fine Particulate Matter Less than 2.5 Micrometers in Aerodynamic Diameter (PM_{2.5}) emissions are applicable to exhaust emissions only.⁵⁰ As such, non-exhaust emissions, such as entrained dust, are excluded from the unmitigated and mitigated construction emissions summary tables (AQTR Tables 14 and 15) and comparison to thresholds.

Although non-exhaust emissions are excluded from the comparison to CEQA construction emissions thresholds, non-exhaust PM_{2.5} emissions must be included in the health risk assessment and thus emission factors are presented in support of these calculations. Emission factors for entrained road dust calculations are presented in Appendix AIR.1 Table 10 and emission factors for tire-wear and brake-wear particulate matter (EMFAC processes PMTW and PMBW) are presented in Appendix AIR.1 Table 9.

O29-1-21 The Draft EIR analyzes air quality impacts of criteria air pollutants from Project construction and operation in accordance with guidance in the most recent

⁵⁰ BAAQMD, 2017. *California Environmental Quality Act Air Quality Guidelines*, May 2017.

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version of the BAAQMD CEQA Guidelines.⁵¹ The BAAQMD is regulatory agency responsible for air quality planning in the San Francisco Bay Area Air Basin (SFBAAB) to ensure that the region attains and maintains the attainment status with respect state and federal ambient air quality standards. In determining whether a project may have a significant effect on the environment, State CEQA Guidelines Section 15064.7 provides that lead agencies may adopt and/or apply “thresholds of significance.” A threshold of significance is “an identifiable quantitative, qualitative or performance level of a particular environmental effect, non-compliance with which means the effect will normally be determined to be significant by the agency and compliance with which means the effect normally will be determined to be less than significant” (State CEQA Guidelines Section 15064.7).

The BAAQMD has adopted significance thresholds for criteria air pollutants for project-level impacts from construction and operation, which are expressed as daily and annual mass emissions thresholds. Environmental impacts for air quality are based on the thresholds of significance presented in Table 2-1 of the BAAQMD CEQA Guidelines (BAAQMD, 2017). The BAAQMD, in its 2010 report justifying its CEQA significance thresholds, explains that these thresholds represent the levels above which a project’s individual emissions would result in a considerable contribution (i.e., significant) to the SFBAAB’s existing non-attainment air quality conditions and thus establish a nexus to regional air quality impacts that satisfies CEQA requirements for evidence-based determinations of significant impacts. These thresholds are designed to ensure that the California Ambient Air Quality Standards (CAAQS) would not be exceeded (BAAQMD, 2017):

The SFBAAB is currently designated as a nonattainment area for state and national ozone standards and national particulate matter ambient air quality standards. SFBAAB’s nonattainment status is attributed to the region’s development history. Past, present and future development projects contribute to the region’s adverse air quality impacts on a cumulative basis. By its very nature, air pollution is largely a cumulative impact. No single project is sufficient in size to, by itself, result in nonattainment of ambient air quality standards. Instead, a project’s individual emissions contribute to existing cumulatively significant adverse air quality impacts. If a project’s contribution to the cumulative

⁵¹ BAAQMD, 2017. *California Environmental Quality Act Air Quality Guidelines*, May 2017.

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impact is considerable, then the project's impact on air quality would be considered significant.

In developing thresholds of significance for air pollutants, BAAQMD considered the emission levels for which a project's individual emissions would be cumulatively considerable. If a project exceeds the identified significance thresholds, its emissions would be cumulatively considerable, resulting in significant adverse air quality impacts to the region's existing air quality conditions. Therefore, additional analysis to assess cumulative impacts is unnecessary. The analysis to assess project-level air quality impacts should be as comprehensive and rigorous as possible. [emphasis added]

Therefore, if a project generates emissions less than the significance thresholds, it would not lead to violations of the ambient air quality standards. Consequently, a comparison of air pollutant concentrations resulting from the project's criteria air pollutants to the current ambient air quality concentrations in the project area is not required for the analysis of air quality impacts.

However, the Draft EIR includes a Health Impact Assessment, which correlates mass emissions of criteria air pollutants to health effects in accordance with the recent California Supreme Court decision in *Sierra Club v. County of Fresno*. Photochemical grid modeling was performed as part of the Health Impact Assessment to predict increases in ozone and PM_{2.5} concentrations with the unmitigated project emissions as compared to the base case emissions. The Draft EIR maps the modeled concentrations of PM_{2.5} (Figure 2-1 of Draft EIR Appendix AIR.4) and ozone (Figures 2-3 and 2-4 of Draft EIR Appendix AIR.4) for the base case and increase in concentration due to the project. The resulting concentrations are presented on Draft EIR pp. 4.2-88 through 4.2-91.

O29-1-22 This comment suggests that the Draft EIR improperly takes credit for emission reductions associated with the electric vehicle (EV) charging stations that the project would install on-site, stating that the charging stations themselves won't induce future project residents, tenants, and workers to buy and drive EVs in place of gasoline or diesel vehicles. The comment refers to emission reductions of greenhouse gases (GHG) identified in the EIR that are associated with the installation of the EV charging stations at the Project. The comment

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claims that the Draft EIR fails to provide substantial evidence that the installation of EV charging stations will discourage the use of gasoline and diesel vehicles in favor of EVs.

Contrary to the commenter's claim, the Draft EIR includes a detailed discussion of the link between EV charging infrastructure and EV usage in Appendix AIR.1 p. 22-26 (also see Appendix F *EV Charging Calculation Details*). As discussed in Appendix AIR.1, EV charging infrastructure is essential to support EV market growth and use. For example, Appendix AIR.1 states the following:

A recent National Renewable Energy Laboratory (NREL) assessment for the California Energy Commission (CEC) estimates that over 200,000 EV chargers will be needed in California by 2025 to meet its short-term EV goals, and many more chargers will be needed to meet more ambitious 2030 and later targets. This figure includes destination chargers (workplace and public locations), fast chargers, and chargers at multifamily residences; it excludes the additional charger needs at single family homes.³⁵ The availability and accessibility of a plug at home increases a person's propensity to buy an electric vehicle.³⁶ NREL's earlier assessment for the CEC found that home charging is the predominant location for charging, followed by workplace/retail charging, then public charging.³⁷ In the near term, the CEC believes that "can't miss" locations are homes and multi-unit dwellings, followed by workplaces.³⁸ The International Council on Clean Transportation (ICCT) reports that "[c]harging infrastructure is critical to support electric vehicle market growth...Even as most charging occurs at home, greater electric vehicle market shares are typical where there is greater availability of public regular, public fast, and workplace charging infrastructure."³⁹

In addition, research shows that access to charging infrastructure at home plays an important role in decisions regarding purchase of EVs. A 2013 study conducted by the Institute of Transportation Studies at University of California, Davis explored the characteristics of 1,200 households who purchased a new plug-in vehicle in California during 2011-2012, with the overall target population of the survey being new plug-in electric vehicle (PEV) owners in California.⁴⁰ This study reveals that purchasing a PEV is associated in most cases with the installation of electric vehicle supply equipment (EVSE) at home and the ability to plug

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the car to the power for charging.⁴¹ Another study revealed that when asked about the critical factors that may influence their decision, the highest percentage (63 percent) of respondents cited the ability to charge at home [other factors included battery range, total operating cost, government subsidy].⁴² A 2018 study concluded that EV charging infrastructure investments likely result in a “multiplying effect” on EV adoption.⁴³

The Plug-in Electric Vehicle Owner Survey, managed by the Center for Sustainable Energy, further highlighted the importance of subsidized or discounted chargers.⁴⁴ Of those with an installed Level 2 charger at home, 64 percent received a free or subsidized charger and 80 percent of them found the importance of the subsidy to install a Level 2 charger influential. Thus, a home with an already installed (free) charger might influence residents to purchase a PHEV. Another study reveals that 83.1 percent of the participants of a consumer survey on plug-in hybrid electric vehicles stated that it would increase their comfort in purchasing or leasing a PHEV by “a lot” or would be “a deciding factor” if they have recharge facilities at home for easy overnight recharge.⁴⁵ This evidence suggests that investment in a charging infrastructure could result in an increased probability of a household purchasing an EV.

In the Draft EIR, the Project proposes to install Level 2 EV charging stations in 10 percent of parking spaces, resulting in a total of 891 spaces at full buildout (Draft EIR p. 4.2-38 and 4.7-38). Since EV technology and adoption is changing rapidly and varies by geographic location and place type, there is not a simple single reference to use to project EV charging uptake per parking space. However, a body of recent studies and projections shows that EV use is increasing faster than predicted and supports the assumptions used for the Project CEQA GHG quantification prepared in February 2020. Many of these studies and a similar set of assumptions were reviewed by the California Air Resources Board (CARB) for the Newhall Ranch Resource Management and Development Plan and Spineflower Conservation Plan (RMDP/SCP) and determined to be supported by “an adequate technical basis”.⁵²

More recent data and targets set after the Draft EIR analyses were performed suggest even higher EV penetration and charger use and therefore lower GHG,

⁵² CARB, 2016. Appendix 1: Air Resources Board Letter to Chuck Bonham, November 3, 2016.

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criteria air pollutant, and toxic air contaminant emissions may occur. The Project is committing to measures above-and-beyond those assumed by CARB or the Office of Planning and Research (OPR) in their reference scenarios for EV penetration, and therefore should be able to take credit for the benefits associated with electrified Project traffic above the reference scenario assumptions. This section also describes how the Project might support higher EV charging needs in future years through targeted installation of additional chargers over time and the installation of electric panel capacity and inaccessible conduit to support EV chargers. By committing to implement measures that will accelerate the use of EVs, above and beyond CARB and OPR reference scenarios, the Project will help the City of Oakland reach its long-term goals for reducing GHG emissions.

Senate Bill (SB) 32 requires California to reduce statewide GHG emissions to 40 percent below 1990 levels by 2030 and 80 percent below 1990 levels by 2050. More recently Executive Order (EO) B-55-18 requires that the state achieve net carbon neutrality by 2045. In the transportation sector, EO B-48-18 calls for five million zero emission vehicles (ZEVs) in California by 2030. N-79-20 goes further and calls for the elimination of new internal combustion engine (ICE) passenger vehicles by 2035, ICE medium- and heavy-duty vehicles by 2045, and ICE off-road vehicles and equipment by 2035.

Achieving increased EV penetration will require more EV charging infrastructure. Availability of Level 2 EV charging infrastructure has a statistically significant link with electric vehicle uptake, according to a global study by The International Council of Clean Transportation (ICCT).⁵³ AB 2127 required the California Energy Commission (CEC) to conduct an Electric Vehicle Charging Infrastructure Assessment. The assessment indicates that to meet the EV target of five million ZEVs by 2030 set by EO B-48-18, 700,000 public and shared private chargers would be needed statewide by 2030.⁵⁴ To meet the new target set by EO N-79-20, that number jumps to 1.2 million chargers needed for light-duty vehicles: "Modeling results in this report project that the state will need over 1.5 million public and shared private chargers in 2030 to support the number of light-duty vehicles needed to achieve the goals of the Executive Order N-79-20." There are currently over 70,000 chargers available in California and 123,000 chargers planned through

⁵³ ICCT, 2017. Emerging Best Practices for Electric Vehicle Charging Infrastructure, October 2017.

⁵⁴ CEC, 2021. Assembly Bill 2127 Electric Vehicle Charging Infrastructure Assessment (Revised Staff Report), May 28, 2021.

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state grants, approved utility investments, and settlement agreements. This indicates a large gap of almost one million chargers (968,000) by 2030 that needs to be filled through a combination of private and public investments to meet the aspirational goal. The CEC notes that “[c]harging infrastructure needs are affected by broader trends in the ZEV market, like those described above, and can affect ZEV adoption rates. However, insufficient charging infrastructure continues to be a significant barrier to accelerated adoption”.⁵⁵ Further, the CEC concludes: “Continued growth in the PEV market will depend on driver confidence in charging infrastructure. Widely available charging will reduce range anxiety and give consumers confidence that PEVs are as convenient to fuel as conventional vehicles. The state must continue to invest in charging infrastructure in order to achieve its ZEV goals.”

In another report prepared pursuant to AB 2127, NREL and the CEC estimate “consumers’ willingness to pay for public charging infrastructure based solely on the associated tangible value to current and potential PEV owners utility maximization” and conclude that “simulation studies provide functional relationships that measure the ability of charging infrastructure to enable additional miles of electrified travel”.⁵⁶ The report makes the following primary findings:

- Public charging infrastructure increases the value of PEVs to current and potential PEV owners by offsetting the effects of limited range and longer recharging times.
- Public charging can substantially increase PHEV use of electricity at the expense of gasoline use.
- For battery-electric vehicles (BEVs), increased public fast charging has been shown to enable more BEV travel, fitted reasonably well by a logarithmic function of the station counts, implying that the marginal value of a station decreases with the inverse of the number of stations.
- Also, the BEV electric miles enabled by public charging increases with the logarithm of the vehicle range. Therefore, the benefit of charging infrastructure decreases with increasing vehicle range.

⁵⁵ Ibid.

⁵⁶ NREL and CEC, 2020. Quantifying the Tangible Value of Public Electric Vehicle Charging Infrastructure, July 22, 2020.

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- The electric miles of travel enabled by additional charging infrastructure can be translated into consumers' willingness to pay for those additional miles, leveraging econometric studies of the value of vehicle range.
- Willingness-to-pay functions are developed for different PHEV and BEV adopters (income levels) based on vehicle range, charging infrastructure availability, and power levels.
- Consistent with direct econometric estimates, public chargers can be worth thousands of dollars per BEV.
- For potential PEV purchasers, the value added by public charging infrastructure appears to be able to offset a large fraction of the perceived cost of the limited range and long recharging time of the BEV, thereby increasing the likelihood of purchase.
- A case study for a BEV with a range of 100 miles located in the Sacramento Area Council of Governments (SACOG) region is provided showing that the value of the existing public direct-current, fast-charging infrastructure to the purchaser of a new BEV in California amounts to thousands of dollars and is similar in magnitude to the value of existing federal and state incentives for BEV purchasers.

Based on reports prepared by CARB, CEC, NREL, ICCT, and others, EV charging infrastructure is essential for the state to meet its EV vehicle fleet targets. Additionally, there is a direct causal link between EV charging infrastructure and EV usage. Consequently, the Draft EIR's approach of taking emission reductions "credit" for installing EV charging infrastructure is supported by the research in the field.

See Electric Vehicle Assumptions for the Oakland Waterfront Ballpark District Project (Ramboll, 2021) for a detailed technical analysis that supports the link between EV charging infrastructure and EV travel, additional detail on emission reduction calculation methods, new data and information on CARB's 2021 Mobile Source Strategy VISION modeling update, an evaluation of the optimal number of EV charging spaces for the proposed Project, and the emission reduction potential of medium- and heavy-duty EV charging infrastructure.⁵⁷

⁵⁷ Ramboll, 2021. Electric Vehicle Assumptions for the Oakland Waterfront Ballpark District Project, November 3, 2021.

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Ryan Sawyer

April 22, 2021

O29-1-22

At p. 4.5-29, the DEIR estimates EV charger use based on the assumption that by providing more EV chargers at the Project site they will induce the use of EVs for events beyond the EV penetration rate forecast in EMFAC2017.

However, the DEIR contains no analysis to support the claim that the mere existence of EV charging stations on the Project site would either encourage use of EVs or discourage the use of gasoline and diesel passenger vehicles. It is just as, if not more, plausible to assume that individuals who already own EVs would charge them elsewhere (e.g., at home) before travelling to the ballpark and that individuals who do not own EVs would continue to drive vehicles fueled with gasoline or Diesel. There is no analysis in the DEIR to support an assumption that the presence of EV charging stations at the Project site will induce more people to purchase EVs, which is the primary consideration in any mobile source GHG analysis.

O29-1-23

At p. 4.7-38-39, the DEIR again states:

“The Project sponsor anticipates that the electric vehicle charging stations will achieve a similar or better functionality as a Level 2 charging station. This will encourage the use of EVs at the Project site and discourage the use of gasoline and diesel passenger vehicles, thus reducing mobile source GHG emissions associated with vehicle travel to and from the Project site and requiring analysis of indirect emissions related to the source of electricity.”

Again, there is no factual support in the DEIR for the Project sponsor’s “anticipation”, nor that the presence of EV chargers will “encourage” or “discourage” different forms of self-propelled transportation to or from the Project site.⁵⁸

O29-1-24

More detail regarding the basis for the GHG benefits attributed to the installation of EV charging infrastructure is found at DEIR p. 4.7-48, and in Appendix AIR.1 at p. 26. Here the DEIR indicates that the net credit for EV charging infrastructure is calculated by comparing the EV penetration rate under CARB’s Vision Reference Scenario and CARB’s Vision Cleaner Technologies and Fuels (CTF) scenario, and attributing all of the increased EV penetration in the CTF scenario to the Project’s EV charging infrastructure.

⁵⁸ In fact, at p. 63 of Appendix AIR.1, the DEIR states “According to the transportation engineers, changes in local traffic circulation with this [grade separation] alternative would not result in a mode shift and the same vehicle trip reduction measures would apply to this alternative; therefore, VMT of the Grade Separation Alternative would be very similar to the Project.” Thus, the DEIR suggests that the addition of grade separation would not induce more vehicle traffic to the Project site by facilitating access, while at the same time claiming the installation of EV charging infrastructure would induce a change both in vehicle purchase habits (buying more EVs) and mode shift (use of EVs when traveling to the Project site). This logical inconsistency reveals the weakness of the DEIR’s analysis.

O29-1-23 See Response to Comment O29-1-22. Also see Electric Vehicle Assumptions for the Oakland Waterfront Ballpark District Project (Ramboll, 2021) for a detailed technical analysis that supports the link between EV charging infrastructure and EV travel, additional detail on emission reduction calculation methods, new data and information on CARB’s 2021 Mobile Source Strategy VISION modeling update, an evaluation of the optimal number of EV charging spaces for the proposed Project, and the emission reduction potential of medium- and heavy-duty EV charging infrastructure.⁵⁸

O29-1-24 See Response to Comment O29-1-22 regarding the link between EV charging infrastructure, EV travel, and reduced mobile emissions. In order to achieve the EV sales targets set by CARB and cited by the commenter, substantial additional EV charging infrastructure is needed throughout the state. As discussed in Response to Comment O29-1-22, CARB itself has made this abundantly clear, and there is a statistically significant link between the availability of Level 2 EV charging infrastructure and electric vehicle uptake.⁵⁹

Regarding CARB’s Vision Cleaner Technologies and Fuels (CTF) scenario, CARB is currently preparing its 2020 Mobile Source Strategy (MSS) using a new version of VISION to “take an integrated planning approach to identify the level of transition to cleaner mobile source technologies needed to achieve all of California’s targets” including the aspirational target identified in EO N-79-20. The City conducted a new analysis of the MSS VISION modeling to understand CARB’s new fleet projections under both their new “reference” and MSS scenarios. See Electric Vehicle Assumptions for the Oakland Waterfront Ballpark District Project (Ramboll, 2021) for this analysis, along with additional information on EV charging assumptions and modeling.⁶⁰

⁵⁸ Ramboll, 2021. Electric Vehicle Assumptions for the Oakland Waterfront Ballpark District Project, November 3, 2021.

⁵⁹ ICCT, 2017. Emerging Best Practices for Electric Vehicle Charging Infrastructure, October 2017.

⁶⁰ Ramboll, 2021. Electric Vehicle Assumptions for the Oakland Waterfront Ballpark District Project, November 3, 2021.

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CARB's CTF Scenario in the Vision model reflects the following assumptions as compared with the Reference Scenario:

- Extension of LDA/LDT2 ZEV/PHEV sales beyond 2030 to 100% by 2050.
- Extension of MDV ZEV/PHEV sales to 50% by 2050.
- Continued fuel efficiency gain (~2.9% per year) between 2035 and 2050 for gasoline vehicles.
- Extended electric range for PHEVs after 2025 up to 60% eVMT by 2050.
- VMT reductions for LDA/LDT/MDV between 2020 and 2050 (15% reduction by 2050).³⁴

O29-1-24

The three underlined elements in the above list are those that have the potential to result in a projection of increased electric vehicle penetration in California. However, the installation of EV charging infrastructure at the Project (whether for residences or ballgames and other events at the stadium) will do nothing to mandate increased electric vehicle sales (bullets 1 and 2 above) or to extend the electric range for PHEVs (bullet 4 above). While the installation of EV charging infrastructure will serve the EVs (and PHEVs) that park at the Project (if the driver elects to utilize a charger in the first instance, which is a highly questionable assumption), it is CARB's EV sales mandates that drive the sales of electric vehicles and the engineering advances by PHEV manufacturers to extend all-electric driving range that may induce the purchase of more PHEVs. Neither the sales mandate nor the battery engineering advances are a Project feature.

O29-1-25

Consequently, the DEIR's assertion that the inclusion of EV chargers will induce additional purchase and use of EVs is not supported by evidence in the DEIR. The studies referenced in the DEIR at Appendix AIR.1, pp. 22-26 are general in nature, and are inappropriately applied to an individual project or development. The logic used in the DEIR would suggest that the state's goals for EV penetration could not be met but for the installation of EV chargers at the Project. There is no support for such a conclusion. The installation of EV charging infrastructure is a key element of the State's GHG emission reduction goals; allowing the Project to take credit for installation of EV chargers is akin to having the Project take credit for reducing emissions from fossil-fueled vehicles over the Project's nominal 30-year life due to declining vehicle emission rates. The installation of EV chargers and the reduction in emission rates from fossil-fueled vehicles both result from existing State regulatory programs and initiatives. Assessments of unmitigated Project impacts should reflect the benefits of those programs and initiatives in terms of reduced emission rates – and the DEIR does, in fact, take those reduced emission rates into account. However, there is no justification for taking additional credit for efforts to help the State achieve those same objectives – such as for the installation of EV charging at the Project. This is simply double-counting.

³⁴ [Vision Scenario Planning | California Air Resources Board](#). Vision Model, Dashboard, Scenario Generator tab. Acronyms refer to vehicle categories used by CARB for regulatory and emission inventories. For example, "LDA" means Light Duty Auto; "ZEV" means Zero Emission Vehicle; "PHEV" means Plug-in Hybrid Electric Vehicle.

O29-1-25 See Response to Comment O29-1-22 regarding the link between EV charging infrastructure, EV travel, and reduced mobile emissions.

Quantification of emissions reductions due to EV chargers performed in the DEIR were reasonable and supported by substantial evidence. The quantification methodology was developed through extensive consultation with CARB, by adapting a more refined approach to analyses performed for other large projects including Newhall Ranch. The calculations shown in the DEIR estimate the GHG and criteria air pollutant emissions reductions from replacing conventional gasoline or diesel light-duty vehicles with electric vehicles and solely take credit for benefits that occur for Project-related VMT.

Regarding the claim that the Project shouldn't take credit for reducing vehicle emissions achieved through declining vehicle emission rates mandated by state regulatory programs and initiatives (along with average vehicle turnover), the Project already does "take credit" for declining vehicle emission rates already through the use of CARB's EMFAC model. This appears to be acknowledged by the commenter. As discussed on Draft EIR p. 4.2-45, 4.7-48, and Appendix AIR.1 section 2.4.10, vehicle emission rates from EMFAC for future years were used to estimate the Project's emissions; these rates incorporate state regulatory programs and vehicle turnover. This is the standard approach for modeling mobile source emissions in CEQA documents. This is not a valid argument for why the Project should not take emission reductions credit for installing EV chargers.

Regarding the claim that taking emission reductions credit for installing EV chargers is "double-counting," the EMFAC2017 model, which was used to generate vehicle emission rates in the Draft EIR, does not account for either CARB's "reference" or "MSS" scenario modeling. The EV charging emission reductions credited to the Project carefully account for the existing EV penetration present in the EMFAC2017 model. To avoid any possibility of double-counting emissions reductions between the unmitigated emissions inventory and the benefits of mitigation, the Draft EIR subtracts out any benefit from EVs that would be expected to already exist in the State's reference scenario. The State reference scenario assumes the level of EV penetration that will occur due to current regulations and projections incorporated into CARB's 2016 Mobile Source Strategy. The DEIR takes credit only for emission reductions that are expected to occur that are in excess of this scenario. Therefore, no double-counting occurs. See Appendix AIR.1

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(Appendix F) and Electric Vehicle Assumptions for the Oakland Waterfront Ballpark District Project (Ramboll, 2021) for additional modeling details.⁶¹

Also see Electric Vehicle Assumptions for the Oakland Waterfront Ballpark District Project (Ramboll, 2021) for a detailed technical analysis that supports the link between EV charging infrastructure and EV travel, additional detail on emission reduction calculation methods, new data and information on CARB's 2021 Mobile Source Strategy VISION modeling update, an evaluation of the optimal number of EV charging spaces for the proposed Project, and the emission reduction potential of medium- and heavy-duty EV charging infrastructure.⁶²

⁶¹ Ramboll, 2021. Electric Vehicle Assumptions for the Oakland Waterfront Ballpark District Project, November 3, 2021.

⁶² Ramboll, 2021. Electric Vehicle Assumptions for the Oakland Waterfront Ballpark District Project, November 3, 2021.

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April 22, 2021

At p. 4.7-49, the DEIR states:

“The fossil fuel emissions from conventional vehicles displaced by the EVs using the Project’s EV chargers were estimated using the total EV driving range (eVMT) provided by the EV chargers, multiplied by the appropriate vehicle fleet emission factor from EMFAC2017 for each operational year.”

O29-1-26

Since the DEIR assumes that the charge rate is equivalent to 25 miles of driving range for each hour of charge, and three hours of charging will occur at each ballgame,⁶³ the DEIR assumes that each charger will displace fossil-fuel vehicle emissions with EV emissions for 75 miles for each ballgame. This would only be attributable to the project if (1) in the absence of EV chargers, attendees used a fossil-fueled vehicle to drive to and from the stadium, and (2) the round-trip distance from the attendee’s starting point (typically home) to the stadium is 75 miles or more.⁶⁴ Neither assumption is supported by information in the DEIR.

At p. 4.7-48, the DEIR states:

“The Project’s use of EV chargers results in indirect GHG emissions from electricity use, while displacing tailpipe GHG emissions that would otherwise occur from conventional fossil-fueled vehicles.”

O29-1-27

That statement is not correct. If the EVs didn’t charge at the Project site, they would charge elsewhere. There should be no accounting for indirect emissions from charging, and there should be no credit for displaced fossil-fueled vehicle emissions associated with that charging. Only indirect emissions from EVs for VMT added by the project should be accounted for.

Finally, the calculated GHG benefits for installing GHG charging infrastructure at the ballpark is based on an improbable assumption. The DEIR states:

“For example, at 3-hour ball games, each of the 200 available chargers could feasibly charge 6 vehicles each for 30 minutes (12.5 miles/charge x 6 vehicles = 75 miles of EV range), or equivalent scenarios such as 3 vehicles each for 60 minutes (25 miles/charge x 3 vehicles = 75 miles of EV range), resulting in a maximum of 75 x 200 = 15,000 miles of EV range and around 1,200 cars to charge per ballgame in total. With EV VMT of over 15,000 miles and over 1,800 EV trips per ballgame in 2027, on average (as shown in Table 38), the ballgame chargers are thus fully utilized.”⁶⁵

O29-1-28

The assumption that an attendee at an A’s baseball game would leave after 30 (or 60) minutes to move their EV from a charger parking spot to another parking spot, and that

⁶³ DEIR p. 4.7-49.

⁶⁴ Or is in excess of 25 miles, based on the DEIR’s assumption that for each EV charger, three EV owners would leave the stands over the course of a game to share a single charger for one hour each.

⁶⁵ DEIR, Appendix AIR.1, p. 25.

O29-1-26 As discussed in Response to Comment O29-1-25 and Electric Vehicle Assumptions for the Oakland Waterfront Ballpark District Project (Ramboll, 2021), quantification of emissions reductions due to EV chargers performed in the DEIR were reasonable and supported by substantial evidence. The Project is not responsible for singlehandedly bringing the State from a business-as-usual scenario to achieving its ambitious targets, but neither is the Project claiming emissions reductions from all the annual miles driven by ballpark-goers with EVs; rather, the DEIR calculates the benefits for EVs used for trips to and from the ballpark and other Project land uses and assumes that without the availability of EV chargers, attendees would most likely instead drive a fossil fuel vehicle to and from the stadium.⁶³

See Response to Comment O29-1-27 and Electric Vehicle Assumptions for the Oakland Waterfront Ballpark District Project (Ramboll, 2021) for additional discussion of ballpark EV charging assumptions.⁶⁴

O29-1-27 See Responses to Comments O29-1-20 through O29-1-26 and O29-1-28. Also see Electric Vehicle Assumptions for the Oakland Waterfront Ballpark District Project (Ramboll, 2021) for additional discussion.⁶⁵

O29-1-28 The modeled scenario of ballpark chargers being used for up to 3 hours per event day is reasonable. There are many possible scenarios that result in the need for and ability for the chargers to provide 75 miles of range (3 hours of charging). Similar to how drivers do not refuel with gasoline every time they drive, drivers may not charge their EV every time they drive; if they realize there is an opportunity to charge to regain a large amount of range while at a ball game, they may let the battery be partially depleted from a few commutes then plug in to regain 75 miles. In addition, some users with longer commutes or those who lack dedicated charging stations at home might arrive at the ballpark with batteries that are depleted and therefore charge for longer than would be needed to simply recoup the miles driven to and from the event. It is estimated that approximately 30 percent of battery electric vehicle (BEV) owners do not charge their vehicles every day, furthering the point that many EVs will be depleted beyond the single trip to the ballpark,

⁶³ Ramboll, 2021. Electric Vehicle Assumptions for the Oakland Waterfront Ballpark District Project, November 3, 2021.

⁶⁴ Ramboll, 2021. Electric Vehicle Assumptions for the Oakland Waterfront Ballpark District Project, November 3, 2021.

⁶⁵ Ramboll, 2021. Electric Vehicle Assumptions for the Oakland Waterfront Ballpark District Project, November 3, 2021.

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providing the chargers the ability to supply additional VMT. While not all charging sessions would replenish 75 miles of range, some would.

Demand for chargers is expected to be high based on the ever-increasing projections of EV penetration described in Electric Vehicle Assumptions for the Oakland Waterfront Ballpark District Project (Ramboll, 2021) Sections 4 and 5.⁶⁶ The San Francisco Bay Area already represents the market with the highest percent of EVs in California. Of the 9 counties that represent the San Francisco Bay Area, 8 of them rank in the top 10 of counties in California for electric vehicle ownership per capita. If demand for chargers is high, there could be a valet to move EVs from charger to non-charger parking spaces (or move the charger cable from one EV to another) during a ballgame to accommodate use of the charger for multiple cars; this approach has already been implemented successfully at several technology company offices in the Bay Area. Evidence also shows the habitual charging patterns of EV owners vary considerably, where average energy charged per session can range from to 1.2 to 26.3 kWh depending on the charger and vehicle types and the length of the session. For level 2 chargers, the mean charging durations ranged from 2 to three hours, backing the assumption of 3 hours of usage per day in the ballpark. Such evidence demonstrates the broad range of charging needs that the project's chargers will be able to fulfill. Even without any sort of valet or charge management system, it is straightforward to envision chargers that are within reach of several cars; many chargers have long cords that can reach multiple parking spaces, or charging pedestals can be installed near a vertex of four parking spots. Overall, as described further below, the ballpark chargers are expected to be in high demand, as the ballpark represents a charger-limited and not an EV-limited land use; there are expected to be more than enough EVs to demand use of all the chargers during events.

See Electric Vehicle Assumptions for the Oakland Waterfront Ballpark District Project (Ramboll, 2021) for additional discussion of ballpark EV charging assumptions.⁶⁷

⁶⁶ Ramboll, 2021. Electric Vehicle Assumptions for the Oakland Waterfront Ballpark District Project, November 3, 2021.

⁶⁷ Ramboll, 2021. Electric Vehicle Assumptions for the Oakland Waterfront Ballpark District Project, November 3, 2021.

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a different EV owner would leave the ballgame at the same time because this owner somehow knew that an EV charger would become available at that time, is utterly without basis. The assumption that an EV would be able to absorb 75 VMT worth of electricity (and hence generate “credits” for displacing 75 VMT of fossil-fueled vehicle operation) is unsupported. It is possible, and may even be more likely, that an EV owner would occupy an EV charger slot for three hours and only “top off” their vehicle charge based on the distance traveled from their home (or other origin) to the Stadium. The DEIR’s assumed 100% capacity utilization for the chargers during ballgames, and assumed credits for such utilization, are not supported by information presented in the DEIR.

10. Issues Related to the Health Risk Assessment.

a. Location of receptors in the cumulative analysis.

At p. 4.2-60, the DEIR states:

“It should be noted that the MEIRs evaluated in the cumulative analysis do not reflect the highest impact from the Project and cumulative sources combined, but rather the MEIRs selected from Project impacts only.”

Similarly, at Appendix AIR.1, p. 49, the DEIR states:

“The MEIRs shown in the cumulative analysis represent the scenario that included mitigation for offsite and onsite residents. These MEIRs do not reflect the highest impact from the Project and cumulative sources combined, but rather the MEIRs selected from Project impacts only, consistent with BAAQMD CEQA Guidelines.”

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To support this statement, the DEIR cites, generally, to the May 2017 BAAQMD CEQA Guidelines, but not to any particular page or section within that Guideline. A review of that Guideline does not indicate any recommendations consistent with the DEIR’s approach. Rather, the BAAQMD Guidelines suggest that the MEIR for the cumulative impacts analysis should have been selected as the MEIR with the highest impact from the Project and cumulative sources combined located within the Project’s zone of influence.

“For assessing community risks and hazards, a 1,000 foot radius is recommended around the project property boundary. BAAQMD recommends that any proposed project that includes the siting of a new source or receptor assess associated impacts within 1,000 feet, taking into account both individual and nearby cumulative sources (i.e., proposed project plus existing and foreseeable future projects). Cumulative sources represent the combined total risk values of each individual source within the 1,000-foot evaluation zone. A lead agency should enlarge the 1,000-foot radius on a case-by-case basis if an unusually large

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O29-1-29 The commenter is correct that the Draft EIR presents the cumulative health risks at the Maximally Exposed Individual Receptors (MEIRs) selected from Project impacts and does not present the MEIR locations with the highest combined cumulative health risks. In accordance with the BAAQMD CEQA Guidelines, the Draft EIR includes a cumulative Health Risk Assessment (HRA) for both offsite sensitive receptors and new onsite sensitive receptors created by the Project. The cumulative HRA included in the Draft EIR evaluates health impacts for the mitigated Project MEIR locations only, which means that background risks were added to Project risks at the Project MEIR. This is consistent with standard CEQA methodology and with statements made by the BAAQMD during workshops held while developing their current CEQA guidance. The Draft EIR also quantifies cumulative impacts at the “background MEIR”, whose location is determined by the maximum cumulative background risks. Project risks are then added to background risks at the background MEIR location. This cumulative HRA was completed using background health risk results from the West Oakland Final EIR, published October 2, 2019. This approach is consistent with standard CEQA methodology and with statements made by the BAAQMD during workshops held while developing their current CEQA guidance.

Contrary to the commenter’s claim, this approach is consistent with the BAAQMD CEQA Guidelines. As stated on p. 5-15 of the BAAQMD CEQA Guidelines, “A Lead Agency’s analysis shall determine whether TAC and/or PM2.5 emissions generated as part of a proposed project would expose off-site receptors to risk levels that exceed BAAQMD’s applicable Thresholds of Significance for determining cumulative impacts”.⁶⁸ The Draft EIR satisfied this requirement in Impacts AIR-4 and AIR-2.CU.

According to p. 5-16 of the BAAQMD CEQA Guidelines, “BAAQMD recommends that cumulative impacts of new sources and new receptors be evaluated as described in Section 5.2, and include the impacts of all individual sources (stationary and roadways) within the 1,000 foot radius.” Section 5.2 directs the lead agency to identify the project’s maximum impact for project-generated TAC sources and new sited receptors (BAAQMD CEQA Guidelines p. 5-3):

⁶⁸ BAAQMD, 2017. *California Environmental Quality Act Air Quality Guidelines*, May 2017.

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The Lead Agency shall determine whether operational-related TAC and PM2.5 emissions generated as part of a proposed project siting a new source or receptor would expose existing or new receptors to levels that exceed BAAQMD's applicable Thresholds of Significance...

The BAAQMD CEQA Guidelines also state, "A Lead Agency should identify the maximally exposed existing or reasonably foreseeable future receptor" (p. 5-5). The Draft EIR does this, as noted by the commenter.

In addition, Appendix D to the BAAQMD CEQA Guidelines, *Thresholds of Significance Justification*, describes the rationale behind the development of the thresholds of significance. These thresholds are based on the project-level Maximally Exposed Individual (MEI), which is synonymous with the project-level MEIR evaluated in the Draft EIR. The justification for the cumulative cancer risk threshold is partially cited below for context (BAAQMD CEQA Guidelines p. D-43).

Increased Cancer Risk to Maximally Exposed Individual (MEI)

Emissions from a new source or emissions affecting a new receptor would be considered significant where ground-level concentrations of carcinogenic TACs from any source result in an increased cancer risk greater than 100.0 in one million.

The significance threshold of 100 in a million increased excess cancer risk would be applied to the cumulative emissions. The 100 in a million threshold is based on EPA guidance for conducting air toxics analyses and making risk management decisions at the facility and community-scale level. In protecting public health with an ample margin of safety, EPA strives to provide maximum feasible protection against risks to health from hazardous air pollutants (HAPs) by limiting risk to a level no higher than the one in ten thousand (100 in a million) estimated risk that a person living near a source would be exposed to at the maximum pollutant concentrations for 70 years (NESHAP 54 *Federal Register* 38044, September 14, 1989; CAA section 112(f)). One hundred in a million excess cancer cases is also consistent with the ambient cancer risk in the most pristine portions of the Bay Area based on the District's recent regional modeling analysis.

As identified above, the thresholds are designed for the MEI location.

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As presented in Table 2-1 of the BAAQMD CEQA Guidelines and on Draft EIR p. 4.2-32, the cumulative thresholds of significance are the exposure of either existing or new sensitive receptors to substantial levels of TACs resulting in (a) a cancer risk level greater than 100 in a million, (b) a non-cancer risk (chronic or acute) hazard index greater than 10.0, or (c) annual average PM_{2.5} concentration of greater than 0.8 micrograms per cubic meter ($\mu\text{g}/\text{m}^3$). Impact AIR-2.CU identifies the exposure of both off-site and on-site receptors that exceed these thresholds, in conformance with the BAAQMD CEQA Guidelines. The existing background risk already exceeds these thresholds, as discussed on Draft EIR p. 4.2-11:

Based on modeling data provided by the BAAQMD, as part of the health risk analysis conducted for the West Oakland Community Action Plan (WOCAP), background cancer risk values for on-site receptor locations at the Project range from 263 to 399 in 1 million, with background values ranging from 55 to 2,492 (on-site at Schnitzer Steel) in 1 million within 2,000 feet of the site. Background PM_{2.5} concentrations range from 1.7 to 3.2 $\mu\text{g}/\text{m}^3$ on the Project site, with background values varying between 1.1 to 64 $\mu\text{g}/\text{m}^3$ (on-site at Schnitzer Steel) within 2,000 feet of the site.

The Draft EIR concludes that because the existing background cumulative risk already exceeds the cumulative thresholds of significance, any additional risk from the Project would be cumulatively considerable, and Impact AIR-2.CU is therefore significant and unavoidable (Draft EIR p. 4.2-140). Disclosing any additional locations in the cumulative health risk assessment would not result in any new impacts than already identified in the Draft EIR.

The commenter's citation from the BAAQMD CEQA Guidelines merely indicates what cumulative sources represent: combined total risk values from each individual source within 1,000 feet. The citation does not require (or even recommend) that a project's cumulative health risk assessment must identify the highest impact from the Project and cumulative sources combined. The Draft EIR's cumulative HRA is fully consistent with the BAAQMD CEQA Guidelines because it identifies all cumulative sources within 1,000 feet of the MEIR locations.

Further, the Draft EIR's cumulative HRA exceeds the BAAQMD CEQA Guidelines because it identifies all localized health risks to sensitive receptors from sources included in the BAAQMD's health risk modeling for the WOCAP

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plus the Project’s sources. This analysis also enlarges the “zone of influence” to 2,000 feet (see Draft EIR p. 4.2-60).

Figure 4.10-8a and 8b in the DEIR showed an isopleth map of the cumulative cancer risk in 2024 across the Project Site. The City has provided a revised version of this figure with an updated scale in order to show a greater level of differentiation of risk between various areas on the map. The data and methodology used in the revised figure has not changed from the original shown in the Draft EIR.

Although it is not required by standard CEQA practice nor with BAAQMD guidance, the City has quantified cumulative impacts at the “background MEIR” in response to this comment. The location of the “background MEIR” is determined by the maximum background risks regardless of the contribution from the Project. Project risks are then added to background risks at the background MEIR location. Cumulative health risk results at the background MEIR are shown in CEQA Air Quality Technical Addendum (Ramboll, 2021) Tables 2 and 3.⁶⁹ In addition, Figure 5.2-2 presents an isopleth map of existing background cumulative cancer risk values at the project site in 2024 and includes an updated scale in order to show a greater level of differentiation of risk between various areas on the map (this figure represents a revised version of Figures 4.10-8a and 4.10-8b in Chapter 4.10 *Land Use, Plans, and Policies*; see CEQA Air Quality Technical Addendum (Ramboll, 2021) Figure 8).⁷⁰ The on-site cancer risk MEIR is located on the southwest corner of the Project site, closest to the Oakland Inner Harbor and Schnitzer Steel. The UTM-X and UTM-Y coordinates for the on-site cancer risk MEIR are 10S 562760 m E 4183400 m N. Maximum background risk at the on-site MEIR comes from harbor craft (122 in a million), followed by Schnitzer stationary sources (89 in a million). The total cancer risk at the on-site MEIR is 400 in a million, and the Project contribution is 0.16 in a million. The off-site cancer risk MEIR is located to the northwest of the Project site, near Highway 880 and the UPRR railyard. The UTMx and UTMy coordinates for the off-site cancer risk MEIR are 10S 561350 m E 4184450 m N. Maximum background risk at the off-site MEIR comes from the railyard (210 in a million), followed by rail lines and harbor craft (both 47 in a million). The total cancer risk at the off-site MEIR is 483 in a million, and the Project contribution is 1.8 in a million. Project

⁶⁹ Ramboll, 2021. CEQA Air Quality Technical Addendum, November 2021.

⁷⁰ Ramboll, 2021. CEQA Air Quality Technical Addendum, November 2021.

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contributions are added to the maximum background impacts at the onsite and offsite MEIR locations.

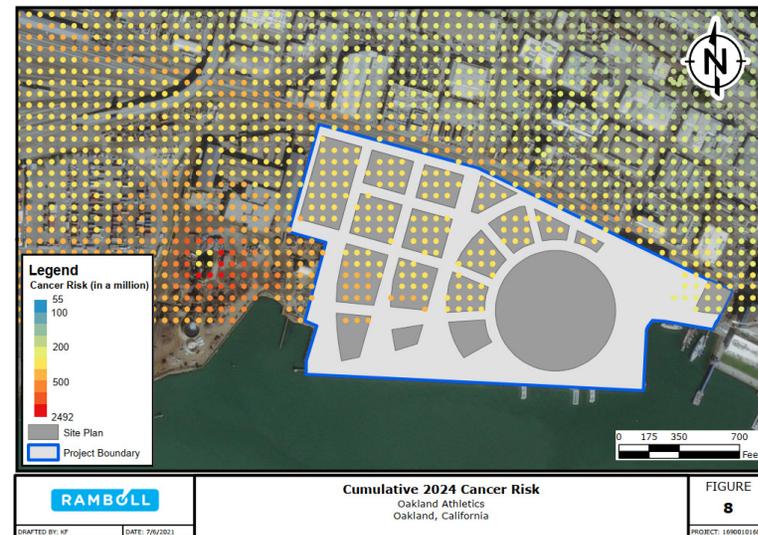


Figure 5.2-2: Cumulative 2024 Cancer Risk.

The Draft EIR includes a mitigation measure (LUP-1c) stating that onsite residential land uses are prohibited west of Myrtle Street. This measure would place residential uses over 1,000 feet from the UPRR railyard to the northwest of the Project site, which is consistent with the guidance contained in California Air Resource Board’s (CARB’s) land use handbook. Ramboll incorporated this mitigation measure into the cumulative HRA that quantifies impacts at the “background MEIR,” shown in CEQA Air Quality Technical Addendum (Ramboll, 2021) Tables 4 and 5.⁷¹ For this reason, onsite residential receptors west of Myrtle Street have been excluded from the analysis, since those uses would be precluded by Mitigation Measure LUP-1c. The UTM-X and UTM-Y coordinates for the on-site cancer risk “background MEIR” are 10S 562840 m E 4183440 m N. The offsite background MEIR is not impacted by Mitigation Measure LUP-1c.

⁷¹ Ramboll, 2021. CEQA Air Quality Technical Addendum, November 2021.

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source or sources of risk or hazard emissions that may affect a proposed project is beyond the recommended radius.”³⁸ (emphasis added)

To be consistent with BAAQMD risk assessment and CEQA guidelines, the DEIR must evaluate and disclose potential cumulative health risks at the MEIR for cumulative impacts, and not just the MEIR for project-only impacts.

b. Impacts on Existing Sensitive Receptors.

At p. 4.2-99, the DEIR states:

“The Downtown Oakland Specific Plan (DOSP) Preliminary Draft Plan indicates that there could be new downtown residential sensitive receptors across Embarcadero West approximately 100 feet north of the Project site, which is the same distance from the Project site as the current existing off-site sensitive receptors located at Phoenix Lofts (City of Oakland, 2019). *The DOSP would not place sensitive receptors any closer to the project site than those located at Phoenix Lofts, which was considered in the analysis. Therefore, the health risks at any future potential DOSP receptor location would likely not exceed those included in this EIR.* However, because the exact location of new future residential sensitive receptors is currently not known (and when those future receptors would be present and exposed to the Project’s TAC emissions), this Draft EIR does not include these potential future locations as existing off-site sensitive receptors for analyzing the impacts of the Project.” [emphasis added]

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The justification for this omission from the DEIR’s analysis, particularly for the cumulative impacts assessment, is not accurate. The magnitude of cumulative impacts depends on meteorology and dispersion characteristics of the various sources contributing to the cumulative impacts assessment, in addition to the distance from these sources. These new residences approximately 100 feet north of the Project site are reasonably foreseeable and should be included in the assessment of potential health risks from the Project.

c. Inclusion of risk assessment results from the West Oakland Community Action Plan (WOCAP).

In Appendix AIR.1, at p. 49, the DEIR states:

“The BAAQMD provided Ramboll with modeled 2024 background cancer risk and PM_{2.5} concentration results for all of West Oakland. Ramboll extracted these results at individual Project receptor locations to

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³⁸ Bay Area Air Quality Management District CEQA Guidelines, May 2017, pp. 5-2 to 5-3. The DEIR appropriate increased the size of the evaluation zone to a radius of 2,000 feet for the Project.

O29-1-30 The commenter is correct that the magnitude of the project’s health risk impacts on specific receptors does depend on meteorology and dispersion characteristics of each project-level TAC source, and the cumulative source TAC contributions, and not just location. However, the location of the potential Downtown Oakland Specific Plan (DOSP) receptor is relatively close to the existing off-site sensitive receptors located at Phoenix Lofts at 737 2nd street (Draft EIR pp. 4.2-102, 4.2-103, and 4.2-108). In addition, the City of Oakland Building Code and standard conditions of approval, along with Title 24 building standards, would require that any new residential buildings constructed as part of the DOSP install MERV13 or better air filtration systems. This would reduce the total exposure and health risks for these future sensitive receptors below what was calculated for the Phoenix Lofts receptors that do not have MERV13 filtration.

More importantly, the M-30 (General Industrial) zoning of the area immediately north of Howard Terminal currently prohibits construction of residential buildings. In addition, the since circulation of the draft DOSP, the City has determined that the final plan will not propose residential receptors immediately north of Howard Terminal as discussed in the Draft EIR on p. 4.2-145 (See Response to Comment O-29-113.) Therefore, future DOSP receptors are not reasonably foreseeable, and as such, need not be evaluated in the Draft EIR.

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As discussed in Response to Comment O29-1-13, the Draft EIR uses meteorological data from the Oakland Airport because it includes five years of representative meteorological data as recommended by the U.S. EPA for air dispersion modeling (U.S. Environmental Protection Agency, 2017). The Draft EIR modeling conducted with the Oakland Airport data should be considered comprehensive and robust based on it being adequately representative of the project site in terms of proximity (within 6 miles); no intervening complex terrain; sufficient quality, and sufficient length of available data to capture worst-case impacts.

The WOCAP health risk data were prepared by BAAQMD using one year of meteorological data from the Oakland Sewage Treatment Plant (STP). The City does not have the ability to re-run the BAAQMD’s model using a different meteorological dataset. Because the Oakland Airport meteorological data are better than the STP data for the project-level HRA as discussed above, two

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separate datasets were used in the cumulative HRA. Although this is not ideal, there is no requirement in CEQA or in the BAAQMD CEQA Guidelines to conduct cumulative HRAs using the same meteorological data. In fact, the BAAQMD's cumulative HRA screening tools often don't use the same meteorological data as project-level CEQA documents do in their HRAs.

In addition, the cumulative HRA, as presented in Impact AIR-2.CU, was performed using two methods. *Method 1: Standard BAAQMD Approach*, follows the guidance from the BAAQMD CEQA Guidelines.⁷² *Method 2: Detailed WOCAP Modeling Approach* takes into account the cumulative contribution of localized health risks to sensitive receptors from sources included in the BAAQMD's health risk modeling for the WOCAP plus the Project's sources. Method 1 was performed in conformance with the BAAQMD CEQA Guidelines. Therefore, Method 2 is not actually required by the BAAQMD CEQA Guidelines and was prepared for informational purposes only. Changing the modeling under Method 2 by using different meteorological data are therefore not required.

Finally, Impact AIR-2.CU was determined to be significant and unavoidable, due to the already high level of background air pollution and health risk as modeled by BAAQMD for the WOCAP. Changing the meteorological data for either the background modeling or the project-level modeling would not change this impact.

⁷² BAAQMD, 2017. *California Environmental Quality Act Air Quality Guidelines*, May 2017.

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determine the cumulative cancer risks and PM_{2.5} concentrations associated with background West Oakland sources at the Project MEIRs.”

As noted above in Section 3, the air quality analyses and health risk assessments in the DEIR uses meteorological data from Oakland Airport, while the BAAQMD’s West Oakland Community Action Plan used meteorological data from the closer Oakland Sewage Treatment Plant. It is inappropriate to present the results of a modeling analysis or risk assessment in which one set of emission sources (the Project) is evaluated using one met data set (Oakland Airport) and a second set of emission sources (non-Project sources evaluated in the WOCAP) are evaluated using a different met data set (Oakland STP). The cumulative impacts analysis should be prepared using a single met data set, with emission rates appropriate to the calendar year being evaluated. If there are questions as to whether the Oakland Airport or Oakland STP met data better represent impacts within the Project’s zone of influence, the analysis should be prepared, and results presented, using both data sets to better inform the public regarding the uncertainty in the conclusions.

d. At p. 4.2-102 the DEIR states:

“For the purpose of protecting human health, the BAAQMD will not issue a permit for a new generator that results in an operational cancer risk greater than 10 in 1 million.”

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This statement is not correct in the context of a CEQA document. The risk assessment required by BAAQMD Rule 2-5 that underlies the statement in the DEIR explicitly excludes reasonably foreseeable emergency operations, such as those related to Public Safety Power Shutoffs, that should be evaluated in a CEQA assessment. Thus, an emergency generator that results in a health risk greater than 10 in 1 million in a CEQA analysis might still receive a permit from the BAAQMD if it meets the requirements of BAAQMD rules, including Rule 2-5. This is a potentially significant impact that must be addressed in the DEIR.

11. Use of Emission Offset Credits to Meet Project Mitigation Commitments.

Mitigation Measure AIR-2e (Criteria Pollutant Mitigation Plan) includes Element 2.c (Emission Offsets) that would allow the Project sponsor to create or purchase emission offsets “to achieve the equivalent of annual tons-per-year reduction equal to the total estimated operational ROG, NOX, and PM10 emissions offsets required to reduce the Project’s criteria pollutants below City’s significance thresholds.”⁷³ The measure should clarify whether the Project sponsor could purchase emission reduction credit (ERC) certificates issued by the BAAQMD to comply with this mitigation requirement. If the purchase of BAAQMD ERC certificates is allowed, the EIR should clearly establish criteria for the acceptability of ERC certificates in terms of the nature and location of the project that created the emission reductions, and

⁷³ DEIR, p. 4.2-80.

O29-1-32 The statement in the Draft EIR is factually correct; the BAAQMD will not issue a permit for a new generator that results in an operational cancer risk greater than 10 in 1 million. BAAQMD’s current Permit Handbook states the following:⁷³

Regulation 2-5 dictates that the cancer risk is acceptable if it is below one in a million, or if TBACT is applied and the cancer risk is below 10 in a million; the non-cancer risk is acceptable if the chronic hazard index is less than or equal to 0.2, or if TBACT is applied and the chronic hazard index is less than or equal to 1.0, and the acute hazard index is less than or equal to 1.0. The District permit evaluator should summarize the risk assessment in the evaluation report. Unless the cancer and non-cancer risks are acceptable in accordance with Regulation 2-5, a permit application cannot be approved. [emphasis added]

In addition, Regulation 2-5-302 states the following:

Project Risk Requirement:

The APCO shall deny an Authority to Construct or Permit to Operate for any new or modified source of TACs if the project risk exceeds any of the following project risk limits:

- 302.1 A cancer risk of 10.0 in one million (10-5).
- 302.2 A chronic hazard index of 1.0.
- 302.3 An acute hazard index of 1.0.

As discussed in Response to Comment O29-1-7, Public Safety Power Shutoffs are not reasonably foreseeable for the project site and would therefore be speculative. Consequently, CEQA does not require that the Draft EIR evaluate speculative generator operations associated with Public Safety Power Shutoffs.

O29-1-33 Mitigation Measure AIR-2e has been revised in Response to Comment A-11-6 to clarify that BAAQMD does not currently have a fee program in place for offsetting regional criteria pollutant emissions. See Chapter 7, *City-Initiated Updates and Errata in the Draft EIR*, for the revised mitigation measure language.

⁷³ BAAQMD, 2018. Permit Handbook, October 23, 2018.

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Mitigation Measure AIR-2e would permit the use of emission reduction credit (ERC) certificates issued by BAAQMD to comply with the measure's requirements. Item 2.c.i requires the Project sponsor to "Directly fund or implement a specific offset project within the City of Oakland," which could include a project creating ERC certificates. If ERC certificates were used to meet this requirement, the ERC certificates must meet the specific criteria outlined in Mitigation Measure AIR-2e, including that "the specific emissions offset project must result in emission reductions within the San Francisco Bay Area Air Basin that would not otherwise be achieved through compliance with existing regulatory requirements." Item 2.c.ii requires the Project sponsor to pay mitigation offset fees to an independent third party approved by the City, such as BAAQMD's Bay Area Clean Air Foundation, or another governmental entity, which shall fund one or more emissions reduction projects within the San Francisco Bay Area Air Basin. The offset fee payment could be made to purchase ERC certificates, provided that the ERC certificates meet the specific requirements of Mitigation Measure AIR-2e and would "fund emissions reduction projects to achieve annual reductions of ROG, NOX, and PM10 equal to the amount required to reduce emissions below significance levels after implementation of other identified mitigation measures as currently calculated and implemented through the CPM Plan." No additional edits to Mitigation Measure AIR-2e are needed.

Projects that follow CARB's Moyer Program Guidelines, as cited by the commenter, could be used to satisfy the requirements of Mitigation Measure AIR-2e. However, this is only one project type that could be used. The commenter's cited guidelines only pertain to mobile-source emission reduction projects, and Mitigation Measure AIR-2e does not limit projects to this specific type. As such, compliance with these specific guidelines is not a requirement of the measure.

BAAQMD's Rule 2-4 (Emissions Banking) provides a mechanism for sources to obtain offsets under the New Source Review regulations contained in Regulation 2, Rule 2, and is not intended to recognize any preexisting vested right to emit air pollutants. These rules apply to single sources banking their own emission reductions credits, which are not available for purchase for other entities to meet their own emission reduction requirements (such as the proposed project). Projects that follow Rule 2-4 could also be used to satisfy the requirements of Mitigation Measure AIR-2e. However, not all projects used to satisfy the requirements of Mitigation Measure AIR-2e would be required to comply with Rule 2-4.

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demonstrate how such credits would in fact mitigate the significant impacts identified in the DEIR.

With respect to new mitigation projects intended to satisfy this Mitigation Measure, these projects should be evaluated, and emission benefits calculated, consistent with the methodologies applicable to CARB's Moyer Program Guidelines⁴⁰ for mitigation projects involving mobile sources of air pollution, and with the BAAQMD's Rule 2-4 (Emissions Banking).

Mitigation Measure 2e also provides an option for the payment of mitigation fees as an alternative to implementation of mitigation projects.⁴¹ The measure specifies that fees shall be determined as follows:

"The fee will be determined by the City, the Project Sponsor, and the Air District or other governmental entity, and be based on the type of projects available at the time of the payment."⁴²

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This is impermissibly vague, particularly considering the fact that the payment of fees could end up providing the vast majority of mitigation for the Project. If the payment of mitigation fees for the emission of criteria air pollutants and toxic air contaminants remains an option, the fees should be calculated based on the Schedule of Excess Emission Fees contained in BAAQMD Regulation 3, Schedule A, Attachment I, Table I. The version of Table I in effect at the time the mitigation fees are due to be paid should be used to calculate the emission fee rate, and fees should be calculated based on excess emissions for the remainder of 30-year project life at the time the shortfall begins.

12. Emission Factor Models Used Are Out of Date.

In Appendix AIR.1 at p. 6, the DEIR states:

"To more accurately assess the mobile GHG emission inventories, EMFAC2017 was incorporated into the analysis."

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EMFAC2021 was released to the public on January 29, 2021 and includes many changes when compared with EMFAC2017.⁴³ As noted by Ramboll in their March 2, 2021 "Review of the South Coast AQMD's Preliminary Draft Staff Report for Proposed Rule 2305 and Proposed Rule 316" submitted to the SCAQMD, a Project Sponsor "should either use EMFAC2021, or confirm that these changes do not materially change the findings" in the DEIR.

⁴⁰ THE CARL MOYER PROGRAM GUIDELINES 2017 Revision Volume I

⁴¹ DEIR p. 4.2-81.

⁴² DEIR p. 4.2-81.

⁴³ Availability of CARB's EMFAC2021 (v1.0.0) Model (govdelivery.com)

O29-1-34 Mitigation Measure AIR-2e cannot provide specific fees because the emissions reduction project(s) would be conducted by an independent third party approved by the City, such as BAAQMD's Bay Area Clean Air Foundation, or another government entity, and the specific projects are not known at this time. In addition, these projects are outside the jurisdiction and control of the City and not fully within the control of the Project sponsor. Therefore, it would be speculative and uninformative to identify a specific fee in the Draft EIR.

In addition, Mitigation Measure AIR-2e already makes specific requirements of the offset fees:

When paying a mitigation offset fee under paragraph (c)(ii), the Project sponsor shall enter into a memorandum of understanding (MOU) with the Air District Clean Air Foundation or other governmental entity. The MOU shall include details regarding the funds to be paid, the administrative fee, and the timing of the emissions reductions project. Acceptance of this fee by the air district shall serve as acknowledgment and a commitment to (1) implement an emissions reduction project(s) within a time frame to be determined, based on the type of project(s) selected, after receipt of the mitigation fee to achieve the emissions reduction objectives specified above and (2) provide documentation to the Planning Department and the Project sponsor describing the project(s) funded by the mitigation fee, including the amount of emissions of ROG, NOX, and PM10 reduced (tons per year) within the San Francisco Bay Area Air Basin from the emissions reduction project(s). To qualify under this mitigation measure, the specific emissions reduction project must result in emission reductions within the air basin that are real, surplus, quantifiable, and enforceable and would not otherwise be achieved through compliance with existing regulatory requirements or any other legal requirement. The requirement to pay such mitigation offset fee shall terminate if the Project sponsor is able to demonstrate that the Project's emissions upon the: (a) full buildout or (b) termination of the Development Agreement if it is later than full buildout are less than the 10-ton-per-year thresholds for ROG and NOX and the 15-ton-per-year threshold for PM10.

BAAQMD Regulation 3, Schedule A, Attachment I, Table I fees represent excess emissions fees and do not represent the cost of mitigating or reducing the excess emissions emitted. Therefore, these fees are irrelevant for

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determining fees associated with emission reduction offsets projects required under Mitigation Measure AIR-2e. The offset fees are likely to be higher than Table I. For example, the Faria Preserve Residential Development and Vesting Tentative Map 9342 project recently entered into a contract with the BAAQMD through the Bay Area Clean Air Foundation to reduce annual emissions of reactive organic gases (ROG) and nitrogen oxides (NO_x) by 13.64 tons by paying \$472,262.70, including administrative fees (Bay Area Clean Air Foundation, 2016). This equates to a fee of \$34,623.37 per ton, which compares to Table I fees of \$4.05 per pound of criteria pollutant emissions, which equals \$8,100 per ton.

Finally, the BAAQMD has indicated in comment letter A-11 that it does not currently have an offset fee program in place: "Please be aware the Air District does not currently have a fee program for offsetting regional criteria pollutant emissions. Offsets are occasionally provided by the Air District's support foundation, the Bay Area Clean Air Foundation, on a case-by-case basis, depending on project availability." Therefore, identifying specific fees in Mitigation Measure AIR-2e is not feasible at this time.

O29-1-35 As discussed on Draft EIR p. 4.2-42, emissions factors from CARB's OFFROAD 2011 model were used in the analysis, along with on-road construction emissions estimated using the emission factors from Emission Factors 2017 (EMFAC2017) model.

EMFAC2017 was the current version of the model when the analysis for the Draft EIR was prepared. EMFAC2021 was released in January 2021, one month before the Draft EIR was published. CEQA does not require lead agencies to update their analyses with modeling software released after the analyses were prepared and according to State CEQA Guidelines Section 15064.4, a lead agency has discretion to select a model or method to calculate GHG emissions that it considers "most appropriate to enable decision makers to intelligently take into account the project's incremental contribution to climate change," provided that this selection is supported with substantial evidence and that the limitations of the model or method are disclosed. The City chose the EMFAC2017 emissions model and other modeling protocols to assess the Project's air quality impacts, and no evidence has been provided to call the model or protocols into question. Further, it is not expected that using EMFAC2021 would change the impact conclusions in the Draft EIR. EMFAC2021 differs from EMFAC2017 primarily through updated vehicle

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registration data and expanded heavy-duty vehicle categories, updates for light-duty vehicle emission rates, new emissions testing data for medium- and heavy-duty trucks, new vehicle activity data, updated VMT forecasting data, and incorporation of new regulations and policies.⁷⁴ Based on a screening-level comparison of mobile source emissions for the proposed Project using Alameda County vehicle fleet emission rates from EMFAC2017 and EMFAC2021, it is estimated that the use of EMFAC2021 emission rates would result in full buildout mobile emissions that are higher for ROG and lower for NOX, PM10, and PM2.5. Thus use of EMFAC2021 emission rates would therefore potentially result in lower criteria pollutant emission impacts (Impacts AIR-1, AIR-2, AIR-1.CU) and lower health risk impacts (Impacts AIR-4, AIR-5, and AIR-2.CU). However, Impacts AIR-1, AIR-2, AIR-1.CU, and AIR-2.CU would remain significant and unavoidable, and Impacts AIR-3, AIR-4, AIR-5, and AIR-6 would remain less than significant with mitigation.

The commenter also cites Ramboll's March 2, 2021, letter to the South Coast Air Quality Management District (SCAQMD) regarding proposed Rule 2305 and 316, which recommends that SCAQMD use the EMFAC2021 model in developing the rule. The proposed rule was released for public comment on May 7, 2021, approximately four months *after* the EMFAC2021 model was released. Therefore, the EMFAC2021 model does not appear to be the latest version of the model available to SCAQMD staff when they were preparing the draft rule. Note that rule development is subject to different requirements than CEQA mandates for projects. Additionally, Ramboll's comment letter is a recommendation, not a requirement.

Regarding the OFFROAD2011 model and its relationship to ORION2017, Draft EIR Appendix AIR.1 p. 9, footnote 11, explains why ORION2017 is not usable for the air quality analysis:

CalEEMod® 2016.3.2 emission factors are based on ARB's OFFROAD2011 database. CARB has released an online database with off-road equipment emission factors called ORION2017, however, it does not include updated emission factors for construction equipment in a usable format. Therefore, default OFFROAD2011 emission factors are used when appropriate.

⁷⁴ CARB, 2021. Email Re: OFFROAD – Orion 2017, February 17, 2021.

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In addition, via email correspondence, CARB has confirmed that both OFFROAD2011 and ORION2017 use the same construction inventory (CARB, 2021).

Consequently, no model updates are needed.

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At page 4.2-43, the DEIR indicates that off-road construction equipment emissions were estimated using CARB's OFFROAD 2011 model. The OFFROAD 2011 model was replaced by CARB in March 2020 with the ORION 2017 web-based model.

Ramboll's comments to the SCAQMD are equally applicable to the Howard Terminal DEIR, and the DEIR's emission estimates should be updated to reflect the most recent CARB models for both on-road vehicle and off-road equipment.

13. Miscellaneous Comments.

O29-1-36

a. At p. 4.2-9, the DEIR refers to a 2014 BAAQMD TAC inventory as "most recently updated". This statement is not correct. The most recent BAAQMD TAC inventory is for calendar year 2017 and was released on May 18, 2020.⁴⁴ This most recent inventory should be used in the DEIR.

b. At pp. 4.2-16-17, the DEIR states:

"Although these emissions standards are focused on reducing GHG emissions, they will also reduce criteria pollutant emissions; [sic] including ROG, NOX, PM, and ozone because increased fuel efficiency will result in fewer combustion emissions associated with gasoline and diesel fuel use."

O29-1-37

This statement is not correct. Vehicle emission standards are expressed in units of grams per vehicle mile or grams per brake-horsepower hour. Thus, vehicle emissions related to exhaust, brake wear, and tire wear are related to the number of vehicle miles traveled (VMT) or, for heavy-duty engines, the amount of work performed (horsepower hours). Improvements in fuel efficiency (and associated reductions in greenhouse gas emissions) are not correlated on a causal basis, directly or indirectly, with reductions in emissions of ROG, NOx or PM. Motor vehicles do not generate ozone emissions.

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c. At p. 4.2-45, the DEIR states that "[e]missions were also calculated for Port truck idling associated with additional traffic delays on weekdays due to ballgames and ancillary land uses, based on information in the traffic study." Similarly, at Appendix AIR.1, p. 26, the DEIR states that "Port truck delays are assumed to occur only on weekdays. Even if similar delays occurred on the weekend, based on the results of the weekday analysis, overall emissions from port truck delays would be very low."

No basis is provided in the DEIR for the assumption that port truck delays would only occur on weekdays. Although the incremental emissions increase of adding weekend delays to the analysis may be small, this small increase, in combination with other increases related to responses to comments on the DEIR, may be sufficient to change conclusions regarding the significance of project air

⁴⁴ https://www.baaqmd.gov/-/media/files/engineering/air-toxics-annual-report/2017/2017_toxic_annual_report-slsx.xlsx?la=en

O29-1-36 The text from the Draft EIR quoted by the commenter is referring to the BAAQMD's Google Earth-based inventory tool for stationary-source risks and hazards. The commenter is referring to the SFBAAB-wide TAC inventory of all sources; the Draft EIR was not referring to this TAC inventory on p. 4.2-9. Therefore, the TAC inventory cited by the commenter has no bearing on the air quality analysis performed in the Draft EIR.

At the time the Draft EIR was prepared, the latest version of the BAAQMD's Google Earth-based inventory tool had been updated in 2014. This version of the tool was used to conduct the cumulative health risk analysis under *Method 1: Standard BAAQMD Approach*, as recommended by the BAAQMD CEQA Guidelines (BAAQMD, 2017) (see Draft EIR p. 4.2-59 and Appendix AIR.1 p. 48). As discussed in Response to Comment O29-1-35, because CEQA does not require lead agencies to update their analyses with modeling software released after the analysis was conducted, the Draft EIR does not need to update the screening tool used for this analysis (see Draft EIR p. 4.2-60 and Appendix AIR.1 p. 49-50).

In addition, a cumulative health risk analysis was performed using *Method 2: Detailed WOCAP Modeling Approach*, which takes into account the cumulative contribution of localized health risks to sensitive receptors from sources included in the BAAQMD's health risk modeling for the West Oakland Community Action Plan (WOCAP) plus the Project's sources. This second method incorporates all stationary-source TAC emissions data available from the BAAQMD when the Draft EIR was prepared and uses the same health risk modeling data prepared by the BAAQMD for the WOCAP. The WOCAP also used 2017 TAC Inventory data for permitted stationary sources (BAAQMD and WOEIP, 2019; p. A.I-18)⁷⁵; therefore, the Draft EIR's cumulative health risk analysis, under Method 2, also uses the 2017 stationary source TAC inventory. No change to the Draft EIR is warranted.

O29-1-37 The commenter is right that on-road vehicle *emissions* standards are expressed as grams per vehicle mile and off-road equipment emissions standards are generally expressed as grams per brake-horsepower hour. However, the citation included in the comment above from Draft EIR p. 4.2-16 refers to the Corporate Average Fuel Economy (CAFE) standards, which include *both* emission standards for on-road vehicles, expressed in grams per

⁷⁵ BAAQMD and WOEIP, 2019. *Owning Our Air: The West Oakland Community Action Plan – Volume 1: The Plan*, October 2019.

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vehicle mile, *and* fuel economy standards, expressed in miles per gallon. Both standards are presented on p. 4.2-16.

The implementation of fuel economy standards will reduce the quantity of fuel consumed per mile of travel, and therefore combustion emissions (including ROG, NO_x, and particulate matter [PM]) associated with each mile traveled. The commenter is correct that on-road vehicle exhaust, brake wear, and tire wear emissions are related to vehicle miles traveled (VMT). However, for exhaust emissions, VMT is a proxy for determining emissions; emissions actually occur through the combustion of fuel. For example, an electric vehicle travels the same mile as a fossil fuel vehicle but emits no tailpipe emissions because it combusts no fuel. Therefore, because improved fuel efficiency means less fuel is combusted to travel the same distance, not only is increased fuel efficiency correlated with reduced vehicle emissions of GHGs, ROG, NO_x, and PM, but it *causes* these reductions.

Consequently, the statement on Draft EIR p. 4.2-16 is accurate. The commenter is incorrect in stating that improvements in fuel efficiency are not correlated with reductions in emissions of ROG, NO_x, or PM.

The commenter is correct that motor vehicles do not generate ozone; vehicles emit ozone *precursors* such as ROG, NO_x, and PM. Ozone is formed in the atmosphere after the precursors are emitted, through complex chemical interactions and the presence of sunlight. Therefore, a reduction in ozone precursors will indirectly produce a reduction in ozone. Consequently, fuel efficiency improvements will result in reduced ozone. No changes to the Draft EIR are required to address this issue.

O29-1-38 As discussed on Draft EIR p. 4.2-110 and Appendix AIR.1 p. 26, the HRA analyzes traffic delays to Port trucks during weekdays (see Appendix AIR.1 Table 41). Based on information from Fehr & Peers, Port activity is assumed to be operational only on weekdays, and Ballpark delays are assumed to occur only during weekday ballgames (Appendix AIR.1 Appendix B). To confirm weekend truck traffic from the Port is in fact minimal, the City received a summary of Port of Oakland Maritime Terminal Operators gate events with weekday and weekend truck data from Fehr & Peers. This data confirmed weekend gate transactions are significantly lower than weekday gate transactions, with weekend counts ranging from 0.7 percent to 2.4 percent of weekday counts. Therefore, weekend truck trips to the Port are only a fraction

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of those during the week and therefore, health impacts from Port trucks delayed on the weekends due to Project traffic would be negligible. In addition, negligible weekend traffic at the Port would result in minimal idling emissions that would not result in a significant impact.

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quality impacts. The analysis should be updated to reflect weekend delays in Port traffic. Any justification for excluding an assessment of weekend delays should reflect the fact that the Port of Oakland is active 7 days per week.

d. At p. 4.2-48, fn 20, the DEIR states:

“Similarly, while the analysis includes idling emissions from trucks traveling to and from the Port of Oakland delayed in traffic due to the Project the HRA does not include exposure of sensitive receptors to these emissions. These idling emissions represent only 1.3 percent of all DPM emissions from mitigated Project operations, and would be spread out around the many intersections analyzed rather than concentrated in the vicinity of the MEIR, resulting in a minimal effect on on-site or off-site receptors included in the HRA analysis.” (emphasis added)

O29-1-39

The idling emissions attributable to delays in truck traffic attributable to the Project are not more diffuse than the traffic emissions already characterized in the HRA. The relatively small contribution of this one activity is not a valid justification for failing to disclose the magnitude of these emissions and include them in the HRA. A similar justification for the many “small” emission sources that comprise the project could lead to a significant underestimation of project impacts.

O29-1-40

e. In Appendix AIR.1, Tables 42 and 43 present pounds per day emissions; however, these values are calculated incorrectly if they are the emission rates used in the air quality modeling analysis or HRA. Footnote 2 to these tables indicates that “Total construction emissions are divided by 260 work days to get pounds per day. Total operational emissions are divided by 365 days per year to get pounds per day.” However, this does not account for worst-case days – generators, which only operate 20 hrs/yr (and are likely to operate over 100 days per year, and perhaps 24 hours per day), are an extreme example of this. This approach grossly underestimates worst case daily PM emissions and consequently worst case 24-hour average PM_{2.5} concentrations.

O29-1-41

f. In Appendix AIR.1, p. 26, the DEIR states that “Unloading time was assumed to be two minutes based on City of Oakland commercial unloading and loading time restrictions.” This assumption (which carries forward to the estimated time that transport refrigeration units (TRUs) are operated on the Project site), appears to be unrealistic and unfounded. The DEIR should be revised to include a citation to an Oakland code that limits truck deliveries at loading docks to not more than two minutes, or should be updated to reflect a realistic estimate of TRU operation at Project loading docks during deliveries.

O29-1-42

g. At p. 57 of Appendix AIR.1, the DEIR states:

“The Peaker Power Plant variant avoided CAP and GHG emissions would be associated with the discontinuation of fuel combustion for

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O29-1-39 As discussed in Section 4.2.3 of the Draft EIR and Section 2.4.12 of Appendix AIR.1, trucks traveling to and from the Port of Oakland (also referred to here as “the Port”) may experience additional traffic delays on ballgame and other event days due to Project-generated traffic. Based on emission factors from EMFAC and idle delay times provided in the traffic study (see Appendix TRA), emissions due to truck idling delays were calculated for both existing Howard Terminal operations and the Project in order to determine the net increase attributable to the Project-related changes in delays, as shown in Table 41 of Appendix AIR.1. Based on the very small increase in emissions calculated, the Draft EIR qualitatively determined that truck idling emissions from traffic delays would not have a significant impact on on-site or off-site receptors, and thus emissions were excluded from the HRA. In response to this comment, the City has now built upon this initial analysis by conducting a full health risk assessment to include the minimal additional TAC emissions associated with potential truck idling associated with delays. This health risk assessment verifies the initial hypothesis that truck idling emissions do not generate any significant health impacts. The health risk assessment methods are discussed below.

Truck idling diesel particulate matter (DPM) and PM_{2.5} emission rates were calculated from emissions by intersection (as determined by Fehr & Peers) following the methods presented in Appendix AIR.1 Table 41. See Table 6 of CEQA Air Quality Technical Addendum (Ramboll, 2021) for the emission rates used in this updated analysis. For simplicity, the net change in emissions relative to existing conditions at Howard Terminal was calculated for Phase 1 and Full Buildout.⁷⁶ Thus, the risk calculated in the HRA is a net risk relative to existing conditions. Dispersion factors were generated using AERMOD per methods described in Section 3.1 of Appendix AIR.1. Each intersection was modeled as a single volume source located at the centroid of the intersection. Source parameters were derived from U.S. Environmental Protection Agency Haul Road Guidance, consistent with the modeling approach for Project on-road traffic (modeled as adjacent volume sources).⁷⁷ Source locations and parameters for each intersection are presented in Table 7 of CEQA Air Quality Technical Addendum (Ramboll, 2021).⁷⁸ The health risk assessment was conducted following the methods described in Section 3.2 of Appendix AIR.1.

⁷⁶ Ramboll, 2021. CEQA Air Quality Technical Addendum, November 2021.

⁷⁷ U.S. EPA, 2012. Haul Road Workgroup Final Report Submission to EPA-OAQPS, March 2, 2012.

⁷⁸ Ramboll, 2021. CEQA Air Quality Technical Addendum, November 2021.

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As shown in Tables 8-10 of CEQA Air Quality Technical Addendum (Ramboll, 2021), the net risk contribution of truck idling at intersections is minimal.⁷⁹ The change in cancer, chronic hazard index (HI), and annual average PM_{2.5} concentrations at Project MEIR locations fall between -1.1 percent and +0.82 percent relative to original impacts disclosed in the Draft EIR (Project impacts are shown in Draft EIR Tables 4.2-10 through 4.2-13 and Appendix AIR.1 Tables 69-71). Decreases in health risk values are seen for all intersections other than the Martin Luther King Jr. and 3rd Street intersection. Decreases indicate there was an overall improvement or reduction in traffic delay times. According to Fehr & Peers, these decreases are generally due to geometric and traffic control changes due to the Project, such as additional lanes, signalization, turn restrictions, and signal optimization. In addition, negligible weekend traffic at the Port would result in minimal idling emissions that would not result in a significant impact.

This new analysis does not change any of the Draft EIR's impacts or findings.

O29-1-40 In Draft EIR Appendix AIR.1, Table 42 summarizes the unmitigated total annual (tons per year) and average daily (pounds per day) emissions from Project operation; Table 42 summarizes mitigated operational emissions. Table 44 presents unmitigated net new overlapping construction and operational total annual and average daily emissions; Table 44 presents mitigated net new overlapping construction and operational emissions.

As the commenter notes, average daily operational emissions were calculated by taking total annual operational emissions for each pollutant (in tons) and dividing by 365 days per year. Average daily construction emissions were calculated by taking total annual construction emissions for each pollutant (in tons) and dividing by 260 workdays per year.

The City's thresholds of significance, which are the same as the BAAQMD CEQA Guidelines' thresholds of significance, are for average daily emissions (see Draft EIR p. 4.7-34). These thresholds are based on the maximum annual emissions that projects could emit to not result in a considerable contribution (i.e., significant) to the SFBAAB's existing non-attainment air quality conditions.⁸⁰ For example, the annual operational threshold for PM_{2.5} is

⁷⁹ Ramboll, 2021. CEQA Air Quality Technical Addendum, November 2021.

⁸⁰ BAAQMD, 2017. *California Environmental Quality Act Air Quality Guidelines*, May 2017.

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10 tons per year. This is equivalent to 54 pounds per day (calculation: 15 tons * 2,000 pounds per ton ÷ 365 days per year = 54.8 average pounds per day). the BAAQMD CEQA Guidelines explain these thresholds in Appendix D:

Despite non-attainment area for state PM10 and pending nonattainment for federal PM2.5, the federal NSR Significant Emission Rate annual limits of 15 and 10 tons per year, respectively, are the thresholds as BAAQMD has not established an Offset Requirement limit for PM2.5 and the existing limit of 100 tons per year is much less stringent and would not be appropriate in light of our pending nonattainment designation for the federal 24-hour PM2.5 standard. These thresholds represent the emission levels above which a project's individual emissions would result in a cumulatively considerable contribution to the SFBAAB's existing air quality conditions. (BAAQMD CEQA Guidelines p. D-47)

Neither the City nor BAAQMD have thresholds of significance for worst-case or maximum daily emissions, either for construction or operations. Therefore, maximum daily emissions are not evaluated under CEQA to determine air quality impacts of the project.

The health risk assessment calculates lifetime excess cancer risk and annual average PM_{2.5} concentrations and compares the results to the City's thresholds of significance for health risks (these are also the same as the BAAQMD CEQA Guidelines thresholds of significance). The cancer risk threshold is a cancer risk level greater than 10 in a million; this is calculated based on *annual* exposure to TAC emissions, in conformance with health risk assessment protocol. The PM_{2.5} threshold is an increase of annual average PM_{2.5} concentration of greater than 0.3 micrograms per cubic meter (mg/m³). As such, maximum daily emissions and 24-hour average PM_{2.5} concentrations are not evaluated to determine air quality impacts.

See Draft EIR p. 4.2-34 for the significance criteria, pp. 4.2-42 through 4.2-47 for the methods for analysis of impacts associated with criteria pollutant emissions, and pp. 4.2-47 through 4.2-53 for the methods for analysis of impacts associated with TAC emissions exposure and health risks.

Finally, emergency generators would be limited to 20 hours per year of testing operations pursuant to Mitigation Measure AIR-2c. The commenter claims that generators are likely to operate more than 100 hours per year, and

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possibly 24 hours per day, but provides no evidence to support this claim. As discussed in Response to Comment O29-1-7, estimating precise emergency use of generators would be speculative and not reasonably foreseeable. The annual hours of operation used in the Draft EIR are based on reasonably foreseeable future hours of operations based on generator testing limits, not on the hypothetical maximum hours of operation used for under emergency circumstances or for permit regulatory purposes. There is no reliable means for estimating future emergency generator operation beyond testing limits because there is no method for anticipating emergencies that would not be speculative.

O29-1-41 As shown in Table 40 of Draft EIR Appendix AIR.1, the unloading time for each transport refrigeration unit (TRU) is assumed to be 30 minutes, consistent with the City’s commercial unloading and loading time restrictions specified in Section 10.40.020 of the Municipal Code. The statement on Draft EIR Appendix AIR.1 p. 26 is incorrect and will be revised as follows:

Unloading time was assumed to be 230 minutes based on City of Oakland commercial unloading and loading time restrictions.

The 30-minute unloading time was used to calculate emissions associated with TRUs. Therefore, no changes to the emissions modeling or impacts are needed.

O29-1-42 Contrary to the commenter’s claim, Draft EIR Chapter 5, *Project Variants*, provides a detailed explanation of the Peaker Power Plant Variant and the relationship of the Project to the potential shutdown of the jet-fueled Peaker Power Plant and the construction of the battery energy storage system (BESS). The Project would result in the direct reduction in emissions of criteria air pollutants and greenhouse gases associated with displacing all of the fossil-fuel generation at the existing peaker plant. As stated on Draft EIR p. 5-5:

The Peaker Power Plant Variant involves the planned conversion of the existing Peaker Power Plant to a battery energy storage system (referred to throughout as “battery storage”); physical changes to the existing buildings, as described below; removal of the jet fuel tank; and construction of buildings on the jet fuel tank site.

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The plan for the Peaker Power Plant site is considered a variant to the proposed Project in this EIR because the Oakland A's have not entered into a final agreement with Vistra Energy to give the A's an interest in and control over the property to implement the proposed activities under this variant. At this time, Vistra Energy, as the landowner, has the authority to decide what activities occur on the site, including when and whether the Peaker Power Plant would shut down or continue to operate and whether to implement battery storage.

Because the final agreements have not been made at the time of the Draft EIR's preparation and the dates when the peaker plant would be decommissioned and replaced with the BESS were unknown, the Draft EIR does not make a final determination of the emission reductions which would occur under the Peaker Power Plant Variant (Draft EIR p. 5-6):

No final agreements have been reached at the time of preparation of this Draft EIR, and the dates when the above events would occur – either under the agreement or otherwise – are not known. Therefore, this document cannot make a final determination of the amount of any credit for reductions in emissions of criteria pollutants or greenhouse gases (GHG) at the Peaker Power Plant Variant site allocated to the A's proposed ballpark Project. Such a determination would need to be based on when certain actions and events would occur and whether those actions or events could be attributable to the A's under the actual terms of the agreement and other facts that were not known when this Draft EIR was prepared.

However, for evaluating the potential air quality and greenhouse impacts of the Peaker Power Plant Variant, the direct reduction in criteria pollutant and greenhouse gas emissions occurring through implementation of the Peaker Power Plant Variant were estimated and provided for informational purposes (Draft EIR p. 5-6):

However, based on the information provided by the Project sponsor, it was assumed that the burning of jet fuel at the Peaker Power Plant site would terminate, and direct emissions of criteria pollutants and GHGs associated with fuel combustion for electricity would no longer occur. Although the exact direct emissions reductions are currently not known, and the final direct emissions reduction credit would need to be

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reevaluated in the future once more detail is available, these direct emissions reductions are assumed in the analysis presented below. Further, the indirect emissions reductions associated with the battery storage are more uncertain than the direct emissions reductions, and therefore were not included in the analysis.

Draft EIR pp. 5-24 through 5-26 present the operational air quality impacts of the Peaker Power Plant Variant. Emission reductions are based on the cessation of jet fuel consumption at the site. However, due to the uncertainties expressed above, these emission reductions are merely estimates and would need to be reevaluated once more information is available:

Note that these emissions reductions are based on multiple assumptions regarding the removal of the jet fuel turbines at the site, and the exact characteristics of the decommissioning are currently not known. These emissions reductions are estimates based on information known at the time of this EIR's preparation. The actual emissions reduction resulting from the Peaker Power Plant Variant would need to be reevaluated in the future once more detail is available.

Therefore, based on information known at the time the Draft EIR was prepared, the Peaker Power Plant Variant would result in direct reductions of criteria pollutant emissions. Further, even if these exact emission reductions were realized, Impact AIR-2 would remain significant and unavoidable with mitigation, as identified for the Project without this variant.

Draft EIR pp. 5-47 through 5-49 present the operational greenhouse gas impacts of the Peaker Power Plant Variant. Direct GHG emissions reductions would occur through the cessation of fossil fuel combustion at the plant. Indirect GHG emissions reductions across the grid would also occur "because the battery energy storage system would help maintain grid reliability, promote the transition to more renewably sourced electricity, and eliminate the need for additional Peaker Power Plant operation using fossil fuels." As for air pollutant emissions, the GHG emissions reductions are only presented for informational purposes, given the uncertainties associated with the Peaker Power Plant Variant (Draft EIR p. 5-48):

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However, as discussed above in Section 5.1, the calculation of the amount of the indirect GHG emissions reduction credit that would be allocated to the A's Project is based on future agreements and actions for to the Peaker Power Plant site and cannot be determined at this time. In addition, several factors make this credit less certain. These factors, which are not known at this time, include but are not limited to the following:

- (1) The indirect GHG emissions from the source of the power being stored by the batteries; and
- (2) The extent to which the A's use the battery storage power to replace an energy source for the Project that has higher criteria pollutant emissions.

As such, these indirect GHG emission reductions are presented for informational purposes only and are not attributed to the Peaker Power Plant Variant.

Therefore, based on information known at the time the Draft EIR was prepared, the Peaker Power Plant Variant would result in direct GHG emissions reductions. Further, regardless of the exact emissions reductions that are realized, Impact GHG-1 would remain less than significant with mitigation due to the "no net additional" performance standard under MM GHG-1, as identified for the Project without this variant.

Finally, the commenter's claim that the Draft EIR assumes that the Project would use 100 percent of the BESS capacity in lieu of operation of the existing fossil-fueled peaker plant is incorrect. As stated above, only direct emissions reductions associated with the decommissioning of the Peaker Power Plant and replacing it with the BESS were included in the analysis of the Peaker Power Plant Variant's impacts. GHG emission benefits from this Variant would exist as long as the BESS continues to supply electricity to the grid in lieu of the fossil-fueled peaker-plant, regardless of whether the power is supplied to the Project or other end uses. Indirect emissions reductions associated with the operation of the BESS (e.g., increased storage capacity for renewables that would otherwise have been curtailed) were not included in the Draft EIR analysis (e.g., increased storage capacity for renewables that would otherwise have been curtailed), and the Draft EIR does not take any credit for reductions in indirect emissions of either criteria pollutants or GHGs for the operation of the BESS. This is contrary to the commenter's claim.

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power generation and the installation of battery storage. The direct avoided emissions were calculated based on the average annual Peaker Power Plant electricity generation and fuel consumption for 2010 to 2018 [internal footnote omitted] and the difference in GHG intensity between the Peaker Power Plant (2010-2018 average) and the GHG intensity of the energy mix that is replacing it. Based on conversations with ARB and updated information from Vistra, the Peaker Power Plant operator, we understand that the energy supplied to the battery energy storage system (BESS) is from the grid. For this calculation, it is assumed that the carbon intensity of the electricity replacement is equal to the grid-averaged carbon intensity of electricity in the operating year, as calculated in Table 21.”

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The DEIR fails to provide any explanation as to why the Project should be credited with the reduction in emissions of criteria air pollutants and greenhouse gases associated with displacing all of the fossil-fuel generation at the existing peaker plant. The DEIR appears to assume, without substantiation, that the existing fossil-fuel peaker would continue to operate at historical levels but for the Project. The DEIR further appears to assume, without substantiation, that 100% of the 360 MWhr/day capacity of the battery energy storage system (BESS) would be used for the Project in lieu of operation of the existing fossil-fueled peaker. At present, the peaker operates on a limited basis, and only when no other generating resources are available. If the Project contracts for power supplied from the BESS under the variant, the indirect emissions associated with power generated to supply the BESS would be no different than the indirect emissions associated with power supplied directly to the Project. No credit for reductions in emissions of either GHGs or criteria pollutants should be shown for the BESS variant.

O29-1-43

h. In Chapter 6 (Alternatives), Table 6-5, the DEIR presents air emission impacts from the “No Project Alternative” showing, for example, NOx values of 20.7 lbs/day and 3.8 tons/year. At p. 6-14, the DEIR states “The criteria pollutant emissions and mitigation associated with Alternative 2 would be similar to those with the Project at Howard Terminal given the same development program...” However, the values of 20.7 lbs/day and 3.8 tons/year for NOx do not appear to match the values presented in Chapter 2 (Air Quality) for the Project. The DEIR should fully disclose the basis for the emission calculations presented for the No Project Alternative.

O29-1-43 The commenter incorrectly compares operational emissions from Alternative 2 (The Off-Site [Coliseum Area] Alternative) to the proposed Project by using emissions estimates presented for the No Project Alternative in Draft EIR Table 6-5. As detailed in Draft EIR *Chapter 6, Alternatives*, under Alternative 2, Howard Terminal would remain in its current use and the Oakland A’s would construct a new ballpark and its proposed mixed-use development at the site of the Oakland Coliseum (see Draft EIR p. 6-11). Under Alternative 2, no physical changes would occur at Howard Terminal, which would remain in use by the Port of Oakland for maritime uses. The discussion on Draft EIR p. 6-14 compares emissions from Alternative 2 to those of the proposed Project, and as shown in Tables 6-4 and 6-5, impacts from Alternative 2 would be similar to those of the proposed Project.

In addition, the values presented in Draft EIR Table 6-5 are from Table 130 of Draft EIR Appendix AIR.1 (p. 290). The basis for these calculations is further explained in Appendix AIR.1 (also see Table 131 and p. 8).

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COMMENT

COMMENT



Gary S. Rubenstein
Foulweather Consulting

Education

1973, B.S., Engineering, California Institute of Technology

Professional Experience

8/2017 to Present Principal
Foulweather Consulting

8/1981 to 8/2017 Senior
Partner
Sierra
Research

As one of the founding partners of Sierra Research, responsibilities included project management and technical and strategy analysis in all aspects of air quality planning and strategy development; project licensing and impact analysis; emission control system design and evaluation; rulemaking development and analysis; vehicle inspection and maintenance program design and analysis; and automotive emission control design, from the initial design of control systems to the development of methods to assess their performance in customer service. As the Partner principally responsible for Sierra Research's activities related to stationary sources, he supervised the preparation of control technology assessments, environmental impact reports and permit applications for numerous industrial and other development projects.

While with Sierra, Mr. Rubenstein managed and worked on numerous projects, including preparation of nonattainment plans; preparation and review of emission inventories and control strategies; preparation of the air quality portions of environmental review documents for controversial transportation, energy, mineral industry and landfill projects; preparation of screening health risk assessments and supporting analyses; and the development of air quality mitigation programs. Mr. Rubenstein managed the preparation of air quality licensing applications for over 16,000 megawatts of generating capacity before the California Energy Commission, and managed air quality analyses for over 28,000 megawatts of generating capacity in a variety of jurisdictions.

Mr. Rubenstein has followed literature related to climate change and the control of greenhouse gas emissions since the early 1990s. Sierra's work focused on understanding the scientific, legal and regulatory basis for the regulation of greenhouse emissions by various jurisdictions in the United States, and on the evaluation of the costs and environmental impacts of alternative regulatory approaches for controlling greenhouse gas emissions.

Mr. Rubenstein has presented testimony and served as a technical expert witness before numerous state and local regulatory agencies, including the U.S. Environmental Protection Agency, California State Legislative Committees, the California Air Resources Board, the California Energy Commission, the California Public Utilities Commission, numerous California air pollution control districts, the Connecticut Department of Environmental Protection, the Hawaii Department of Health, and the Alabama Department of Environmental Management. Mr. Rubenstein has also served as a technical expert on behalf of the California Attorney General and Alaska Department of Law, and has provided expert witness testimony in a variety of administrative and judicial proceedings.

6/1979 to 7/1981 Deputy Executive Officer
California Air Resources Board

Responsibilities included policy management and oversight of the technical work of ARB divisions employing over 200 professional engineers and specialists; final review of technical reports and correspondence prepared by all ARB divisions prior to publication, covering such diverse areas as motor vehicle emission standards and test procedures, motor vehicle inspection and maintenance, and air pollution control techniques for sources such as oil refineries, power plants, gasoline service stations and dry cleaners; review of program budget and planning efforts of all technical divisions at ARB; policy-level negotiations with officials from other government agencies and private industry regarding technical, legal, and legislative issues before the Board; representing the California Air Resources Board in public meetings and hearings before the California State Legislature, the California Energy Commission, the California Public Utilities Commission, the Environmental Protection Agency, numerous local government agencies, and the news media on a broad range of technical and policy issues; and assisting in the supervision of over 500 full-time employees through the use of standard principles of personnel management and motivation, organization, and problem solving.

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7/1978 – 7/1979 Chief, Energy Project Evaluation Branch
Stationary Source Control Division
California Air Resources Board

Responsibilities included supervision of ten professional engineers and specialists, including the use of personnel management and motivation techniques; preparation of a major overhaul of ARB's industrial source siting policy; conduct of negotiations with local officials and project proponents on requirements and conditions for siting such diverse projects as offshore oil production platforms, coal-fired power plants, marine terminal facilities, and almond-hull burning boilers.

During this period, Mr. Rubenstein was responsible for the successful negotiation of California's first air pollution permit agreements governing a liquefied natural gas terminal, coal-fired power plant, and several offshore oil production facilities.

10/1973 to 7/1978 Staff Engineer
Vehicle Emissions Control Division
California Air Resources Board

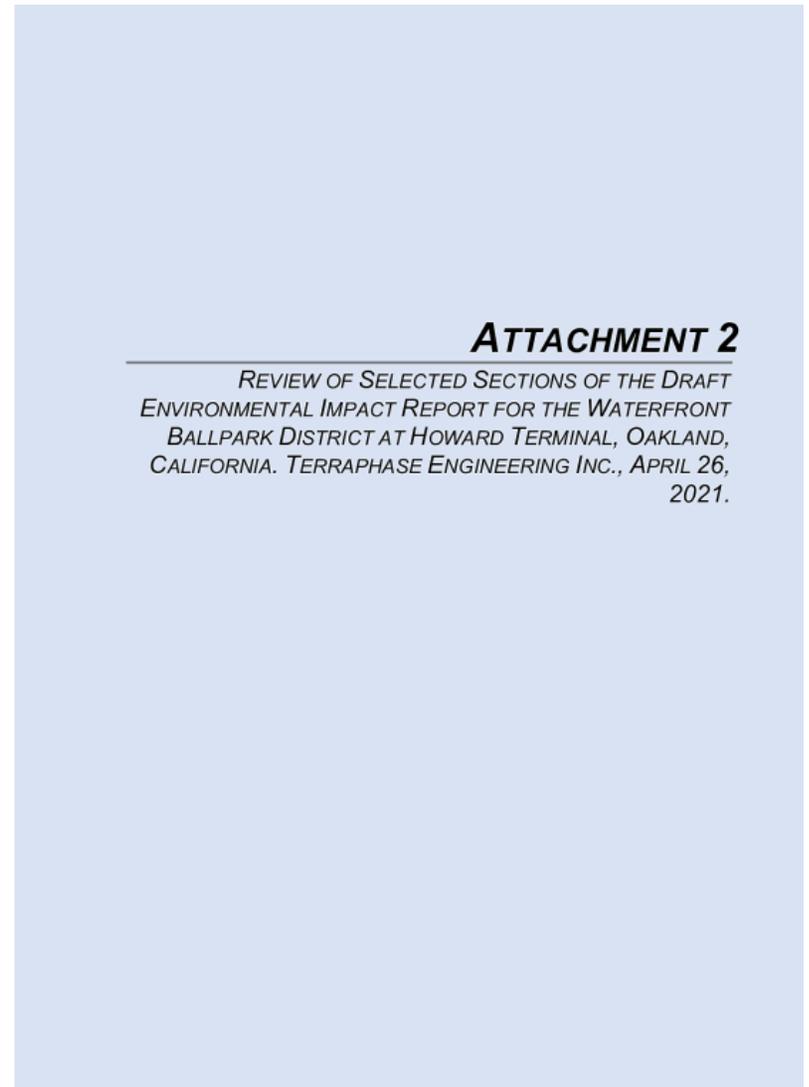
Responsibilities included design and execution of test programs to evaluate the deterioration of emissions on new and low-mileage vehicles; detailed analysis of the effect of California emission standards on model availability and fuel economy; analysis of proposed federal emission control regulations and California legislation; evaluation of the cost-effectiveness of vehicle emission control strategies; evaluation of vehicle inspection and maintenance programs, and preparation of associated legislation, regulations and budgets; and preparation of detailed legal and technical regulations regarding all aspects of motor vehicle pollution control. Further duties included preparation and presentation of testimony before the California Legislature and the U.S. Environmental Protection Agency; preparation of division and project budgets; and creation and supervision of the Special Projects Section, a small group of highly trained and motivated individuals responsible for policy proposals and support in both technical and administrative areas (May 1976 to July 1978).

Credentials and Memberships

Air & Waste Management Association (Past Chair, Board of Directors, Golden West Section; Past Chair, Board of Directors, Mother Lode Chapter)

American Society of Mechanical Engineers

Qualified Environmental Professional, Institute of Professional Environmental Practice, 1994



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O29-1-44 This is a general comment that includes introductory remarks and serves to introduce the more specific comments that are responded to in detail below. As a result, no specific response is provided here.



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Technical Memorandum

To: Ryan Sawyer, Vice President
Analytical Environmental Services, Inc.

From: Peter Zawislanski, PG, CHG
Christopher Alger, PG, CHG, CEG
Lucas Paz, PhD, CPESC, QSD, QJSP
Kevin Long
Linda Logan, PhD
Terraphase Engineering Inc.

cc:

Date: April 26, 2021 Project No.: 0055.001.048

Subject: Review of Selected Sections of the Draft Environmental Impact Report for the Waterfront Ballpark District at Howard Terminal, Oakland, California (Case File No. ER18-016) (State Clearinghouse No. 2018112070)

Terraphase Engineering Inc. (Terraphase) has reviewed selected sections of the *Waterfront Ballpark District at Howard Terminal, Draft Environmental Impact Report* (DEIR), issued by the City of Oakland, to analyze potential environmental impacts of the Oakland Waterfront Ballpark District Project (the Project) proposed for the Howard Terminal (the Site) in the Port of Oakland.

Terraphase reviewed the following sections of the DEIR:

- Section 4.6 – Geology, Soils, and Paleontological Resources¹
- Section 4.8 – Hazards and Hazardous Materials
- Section 4.9 – Hydrology and Water Quality
- Section 6 – Alternatives

Based on our review, we have determined that there are substantial deficiencies in the DEIR's analysis of the proposed Project's impacts and proposed mitigation regarding site geology, soil, hazards and hazardous materials, hydrology, and water quality. We also identified deficiencies in the analysis of alternatives to the Project.

¹ Terraphase reviewed those portions of Section 4.6 that pertain to geology and soil; we did not review portions pertaining to paleontological resources.

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April 26, 2021
Ryan Sawyer, Vice President
Analytical Environmental Services, Inc.
Review of Selected Sections of the Draft Environmental Impact Report for the
Waterfront Ballpark District at Howard Terminal, Oakland, California (Case File No.
ER18-016) (State Clearinghouse No. 2018112070)

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Key Findings

Our review indicates that the DEIR:

- Understates the potential for impact of liquefaction and defers the analysis and mitigation of liquefaction impacts to a future geotechnical report.
- Relies on several key documents, all subject to future public review and comment and approval by the Department of Toxic Substances Control (DTSC), related to site remediation, land-use controls, and future management of subsurface contaminated media. None of these documents exist or at least are not included in the DEIR. Therefore, it is impossible to evaluate the scope of work that would be required to implement these documents, and, consequently, the associated risk or mitigation required.
- Relies on the 2020 Human Health and Ecological Risk Assessment (HHERA) Report² in its consideration of human-health risks. However, the HHERA is fundamentally flawed because it underestimates risk in several important ways and should not be used to support risk management decisions.
- Underestimates environmental impacts associated with construction and operation of the proposed Project and the extent of existing contaminants at concentrations above levels protective of human receptors, for several reasons, including incomplete identification of contaminants, missing toxicity values, and deficient risk characterization given the flawed HHERA.
- Incorrectly concludes that soil caps would isolate the underlying soil and groundwater contaminants from the public and environment because it does not consider the impacts of upward migration of contaminants in groundwater due to sea-level rise (SLR).
- Does not provide sufficiently specific discussion of mitigation with respect to surface-water and groundwater quality protection, as related to construction-related impacts and construction dewatering. The DEIR does not clearly describe the proposed site dewatering plan or the impacts of dewatering on on-site and off-site groundwater flow.
- Does not adequately consider flooding potential or mitigation of site flooding impacts, especially as related to storm surge events and extreme high-tide events combined with SLR.
- Incorrectly presents the level of contamination and required mitigation at the Coliseum Alternative site as being equivalent to that at the Project Site, whereas the extent and volume of contaminated soil, and the relative percentage of contaminated areas to total area, are far greater at the proposed Project Site as compared with the Coliseum Alternative site.

² ENGeo Incorporated. 2020. *Human Health and Ecological Risk Assessment*. August 24.
California Department of Toxic Substances Control (DTSC). 2020. *Letter Approving Human Health and Ecological Risk Assessment*. October 22.



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O29-1-45 This comment has several parts and makes a number of general comments without providing information to support the stated concerns. Given that the comments are general, the response is organized by general topic below.

Liquefaction

As explained in Draft EIR Section 4.6, *Geology, Soils, and Paleontological Resources*, Section 4.6.3, *Significance Criteria*, under *Approach to Analyses*, upon completion of the CEQA documentation, the Project would be required by the California Building Code, and by the City of Oakland Building Code and Grading Regulations, to conduct a final geotechnical investigation that would inform the final Project design and provide recommendations to address all identified geotechnical issues, which would include liquefaction.

Future Documents and Deferral of Mitigation

As discussed in Draft EIR Section 4.8.2, *Regulatory Setting*, under *Land Use Covenants*, the Project site is subject to existing land use covenants (LUCs), operations and maintenance agreements, soil and groundwater management plans, and risk management plans, all enforced by the California Department of Toxic Substances Control (DTSC), the regulatory agency with jurisdiction. These LUCs and their associated plans would be replaced and consolidated before commencement of construction to account for the changes to the project site. The substantive requirements of these replacement documents would be similar to those in the existing documents, but would be specifically tailored to ensure protections appropriate for the type of anticipated construction activity and the type of anticipated uses, including allowing residential use (which is currently prohibited) under specified conditions. Similar to the existing plans, the workplans to be prepared under the requirements of the existing LUCs and the mitigation measures discussed in Draft EIR Section 4.8, *Hazards and Hazardous Materials*, Impact HAZ-2, would provide further description of the remediation steps, which would include maintaining a cap over the project site.

As explained in Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*, the mitigation measures in the Draft EIR would ensure that the Project sponsor has complied with regulatory requirements to the satisfaction of DTSC at each phase of development. Grading, building, or construction permits, and certificates of occupancy or similar operating permits for new buildings and uses, would not be issued

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until the City of Oakland building official confirms completion of required actions.

Human Health and Ecological Risk Assessment

The comment claims that the HHERA is flawed but provides no information to support the claim. For additional discussion of the HHERA, see Consolidated Response 4.16, *Human Health and Ecological Risk Assessment, Land Use Covenants, and Site Remediation*, which explains the following: The overall approach and methodology of the HHERA is in accordance with current risk assessment practice; only chemicals with available and applicable toxicity values were evaluated; the assessment of risk from isolated chemical outliers (detections), non-aqueous phase liquids, and hydrocarbon oxidation products is unnecessary; the use of site-specific attenuation factors takes into account the Project design; and the HHERA analyzed the data set and verified that the data are adequate to characterize the nature and extent of contamination at the project site and support the HHERA.

Sea Level Rise

For a discussion of sea level rise scenarios and effects on the Project site under the proposed Project, see Response to Comment O-27-59, A-7-6 and A-7-8.

Dewatering

The management of dewatering effluent is discussed in Draft EIR Section 4.8, *Hazards and Hazardous Materials, Section 4.8.2, Regulatory Setting*, under *Land Use Covenants, Dewatered Groundwater Management*, which describes minimization efforts, containment, rainy season requirements, and off-site disposal. Mitigation Measure HAZ-1a: Preparation and Approval of Consolidated RAW, LUCs, and Associated Plans includes a provision requiring the workplan to describe dewatering management procedures. Note that as explained in Consolidated Response 4.16, *Human Health and Ecological Risk Assessment, Land Use Covenants, and Site Remediation*, after publication of the Draft EIR, the Project sponsor elected to take a more conservative approach by preparing a Remedial Action Plan (RAP) instead of a RAW.

As explained in Draft EIR Section 4.9, *Hydrology and Water Quality*, Impact HYD-2, dewatering operations would be temporary and short term, and would be limited to the construction of underground infrastructure only. The

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groundwater removed during construction of underground infrastructure would be replenished with groundwater infiltration from the Inner Harbor to the west and the greater East Bay Groundwater Basin to the east. The quantity of groundwater dewatered during the construction of underground infrastructure would not be substantial relative to the volume of the adjacent Inner Harbor and would not result in a net deficit in the groundwater aquifer. Groundwater within the cutoff wall area would be physically separated from the surrounding groundwater. The dewatering within this area during construction would not affect the surrounding groundwater levels.

Also see Responses to Comments O-27-59 and A-12-48 regarding dewatering effects during construction.

The Off-Site (Coliseum Area) Alternative

The commenter refers to Alternative 2, the Off-Site (Coliseum Area) Alternative, noting that the level of contamination at the location of this alternative is not as "voluminous" as at the Project site. Additional discussion of the purpose of including the Coliseum as an alternative is provided in Consolidated Response 4.10, *Alternative 2: The Off-Site (Coliseum Area) Alternative*.

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April 26, 2021
Ryan Sawyer, Vice President
Analytical Environmental Services, Inc.
Review of Selected Sections of the Draft Environmental Impact Report for the
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Review of Section 4.6 - Geology and Soils

Liquefaction

In general, the DEIR understates the potential for liquefaction impact. Analysis and mitigation of this issue are deferred to some undefined point and process in the future. The DEIR does not provide sufficiently detailed information on, or analysis of, the cumulative impact of earthquake-induced liquefaction on site access, utilities, structures, regional access, differential settlement, and flooding. Assessment of liquefaction impacts does not address future conditions due to groundwater rise associated with SLR. Deferring to California Building Code requirements for mitigation of future liquefaction conditions does not assess potential impacts of the Project on site conditions and cumulative impacts to adjacent areas (pg. 4.6-15). The DEIR diminishes the level of risk by deferring to the future Final Geotechnical Report (pg. 4.6-17, GEO-1).

The DEIR presents only one, generalized geologic cross-section (Figure 4.6-2) that schematically notes the weak and liquefiable fills and sediments that underlay the Site. The DEIR makes no mention of subsurface conditions for lands that immediately surround the Project Site. Liquefaction is highly likely to occur regionally during a moderate or greater earthquake. The DEIR identifies the artificial fill as being highly variable with abrupt and unpredictable distribution. Consolidation settlement combined with soil strength failure and settlement through earthquake-induced liquefaction will substantially affect the surrounding area and infrastructure, leaving the Project Site isolated and essentially an island without safe transport corridors, with broken utilities, and dependent on emergency power generation. The DEIR should incorporate the worst-case scenario of regional damage isolating the Project Site and the on-site population and should identify necessary mitigation measures.

Impact GEO-1 only presents the future "Site-Specific Final Geotechnical Report" (pg. 4.6-17) as a mitigation measure for ground failure and intense shaking. The DEIR should present further detail and analysis for each ground stability hazard and then identify, in detail, the steps required to address all aspects of the hazard. Only when clearly presented in the DEIR can the reviewer analyze whether the proposed development might cause, or risk exacerbating, any potentially significant direct, indirect, or cumulative environmental impacts by locating the development and bringing people into the area susceptible to hazardous conditions (e.g., liquefaction) (State CEQA Guidelines § 15126.2).

The DEIR should select the American Society of Civil Engineers (ASCE) 7 Risk Category³ for proposed buildings and structures now for design earthquake loads so that the appropriate requirements for life safety during and following earthquakes are assured. The DEIR is silent on the selection of Risk Categories; however, at least a level III or IV is necessary to protect human life in the event of failure.

³ American Society of Civil Engineers. 2017. Minimum Design Loads and Associated Criteria for Buildings and Other Structures (ASCE/SEI 7-16).



O29-1-46 See Response to Comment O-26-2, O-27-55, and O-27-56.

The topics of deferral of mitigation measures and the reliance on future documents in the analysis are addressed in Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*. See Chapter 4 for this discussion.

O29-1-47 See Response to Comment O-26-2, O-27-55, and O-27-56.

O29-1-48 See Response to Comment O-26-2, O-27-55, and O-27-56. The topics of deferral of mitigation measures and the reliance on future documents in the analysis are addressed in Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*. See Chapter 4 for this discussion.

O29-1-49 See Response to Comment O-26-2, O-27-55, and O-27-56.

The 2019 ENGEO geotechnical report prepared in accordance with ASTM standards with is provided in Appendix GEO. The geotechnical report does provide further details regarding the site class (Level D), and various seismic parameters (e.g., site coefficients, spectral responses, and peak ground acceleration) that would be used to inform the design of structures. Note that risk categories would be assigned during the final design and be dependent on the specific use of the structure.

The topics of deferral of mitigation measures and the reliance on future documents in the analysis are addressed in Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*. See Chapter 4 for this discussion.

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Previous Port of Oakland hazard assessments for the Howard Terminal concluded that structural failure due to seismically induced liquefaction was very likely⁴. The previous assessment also identified the potential for lateral failure of subsurface structures, such as the Quay Wall and Rock Dike. Failure and displacement of either structure could occur regardless of ground improvement measures. This failure potential and possible effects on the Project Site should be evaluated in the DEIR, not deferred to the future Final Geotechnical Report.

O29-1-50

The Preliminary Geotechnical Exploration Report by ENGEO (2019)⁵ recommended the use of ground improvement and deep foundations to address the potential for seismically induced settlement. However, ground improvements are only being discussed for the Project Site footprint. When combined with the additional loading of additional soil fill placed on the Project Site as a mitigation for sea level rise, the differential elevation changes between the Project Site in a seismic event and the unmodified surroundings could be quite substantial. The DEIR does not discuss this issue.

O29-1-51

Onsite and nearby liquefaction could disrupt existing caps, which are required by the current, and presumably future, land use covenants (LUCs), and control features that limit the migration of contaminated groundwater. With SLR, groundwater elevations will rise and saturate higher up the soil column. This condition is not addressed in the DEIR and is incorrectly dismissed on page 4.6-22 ("The addition of addition [sic] fill would further isolate the underlying contaminants from the public and environment").

Review of Section 4.8 - Hazards and Hazardous Materials

Insufficient Analysis of Impacts and Deferred Mitigation for Subsurface Contamination

O29-1-52

The analysis of impacts related to subsurface contamination in soil, soil gas, and groundwater relies on documents that have not been prepared or approved; therefore, analysis and mitigation are deferred. Specifically, the DEIR relies on several key documents related to site remediation, land-use controls, and future management of subsurface contaminated media that must be prepared in accordance with work plans reviewed and approved by the DTSC. The proposed remedial alternatives are subject to review and comment by the public and must ultimately be approved by DTSC. The cited documents include a Removal Action Workplan (RAW), an LUC, Operations & Maintenance (O&M) Agreements, and a Soil and Groundwater Management Plan (SGMP). *None of these documents exists or at least they are not provided in the DEIR.* Therefore, it is not possible at this point to evaluate the scope of work that would be required to implement these documents, and, consequently, the associated risk or mitigation

O29-1-50 See Response to Comment O-26-2, O-27-55, and O-27-56.

O29-1-51 See Response to Comment O-26-2, O-27-55, and O-27-56.

O29-1-52 As discussed in Draft EIR Section 4.8.2, *Regulatory Setting, Land Use Covenants*, the Project site is subject to existing land use covenants (LUCs), operations and maintenance agreements, soil and groundwater management plans, and risk management plans, all enforced by the California Department of Toxic Substances Control (DTSC), the regulatory agency with jurisdiction. These LUCs and their associated plans would be replaced and consolidated before commencement of construction to account for the changes to the project site. The substantive requirements of these replacement documents would be similar to those in the existing documents, but would be specifically tailored to ensure protections appropriate for the type of anticipated construction activity and the type of anticipated uses, including allowing residential use (which is currently prohibited) under specified conditions. Similar to the existing plans, the workplans to be prepared under the requirements of the existing LUCs and the mitigation measures discussed in Draft EIR Section 4.8, *Hazards and Hazardous Materials*, Impact HAZ-2, would provide further description of the remediation steps, which would include maintaining a cap over the Project site.

As explained in Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*, the mitigation measures provided in the Draft EIR are actions that would be enforced by the DTSC and the City of Oakland Building Official. Grading, building, or construction permits, and certificates of occupancy or similar operating permits for new buildings and uses would not be issued until the DTSC and the Building Official have approved of the various actions required by the mitigation measures.

The Draft EIR does include mitigation measures to mitigate hazardous materials, as provided in Section 4.8, *Hazards and Hazardous Materials*, and listed below. Note that as explained in Consolidated Response 4.16, *Human Health and Ecological Risk Assessment, Land Use Covenants, and Site Remediation*, after publication of the Draft EIR, the Project sponsor elected to take a more conservative approach by preparing a Remedial Action Plan (RAP) instead of a RAW.

⁴ Oral communication. San Francisco Bay Conservation and Development Commission, Engineering Review Board, Oakland Athletics Initial Pre-Application Briefing, March 25, 2021.

⁵ ENGEO Incorporated (ENGEO). 2019. *Preliminary Geotechnical Exploration Report; Oakland Athletics Ballpark Development, Howard Terminal, Oakland, California. Project No. 14682.000.000. April 19.* (Appendix GEO of the DEIR).



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- Mitigation Measure HAZ-1a: Preparation and Approval of Consolidated RAW, LUCs, and Associated Plans, which describes the plans and land use covenants that would be required to mitigate the contamination at the project site. The DTSC would review these plans and LUCs for compliance with all applicable federal, state, and local regulations. The Project may not proceed until the DTSC has provided its approval of the documents. In the event that the DTSC is not satisfied with the plans, then the Project would not be approved and would not be constructed.
- Mitigation Measure HAZ-1b: Compliance with Approved RAW, LUCs and Associated Plans, which requires that documentation of DTSC approval of the plans and LUCs be provided to the City of Oakland building official prior to the issuance of grading, building, or construction permits, and certificates of occupancy or similar operating permits for new buildings and uses. This specifically includes DTSC approval and documentation of successful implementation of protective measures to ensure protections appropriate for the type of anticipated uses, including allowing residential use under specified conditions, in the form of a certificate of completion, finding of suitability for the project's intended use, or similar documentation issued by the DTSC.
- Mitigation Measure HAZ-1c: Health and Safety Plan (HASP), which requires the Project sponsor and its contractors to prepare and implement HASPs for the protection of workers, the public, and the environment consistent with customary protocols and applicable regulations, including, but not limited to Title 8 of the California Code of Regulations.

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April 26, 2021
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required. Consequently, there are no quantifiable or project-specific mitigation measures to reduce potential impacts. The DEIR states that mitigation will be provided through the anticipated RAW to be approved by DTSC) (pg. 4.8-49), but DTSC's approval of a RAW cannot be guaranteed.

O29-1-53

Furthermore, DTSC could require the preparation of a more comprehensive Remedial Action Plan (RAP), especially given the anticipated cost of the remediation that will be required at the Project site. The preparation of a RAW, instead of a Remedial Action Plan (RAP), for a project of this magnitude is inconsistent with the California Health and Safety Code (HSC). Section 25356 of the HSC states that the requirement to prepare a RAP can be waived if the "total cost of the removal action is less than two million dollars (\$2,000,000)." The soil excavation and disposal scope alone will cost *substantially* more than \$2 million (likely on the order of \$50 million). RAWs are typically reserved for limited excavations of contaminated soils and are not appropriate for cleanup of extensive areas of contamination, with multiple affected media and complex hydrogeology, and planned encapsulation of contamination. Whether DTSC determines ultimately to require a RAW or RAP for the site, neither can be approved until the Final Environmental Impact Report is certified (pg. 4.8-41).

O29-1-54

The scope of soil remediation presented in the DEIR is vague. The DEIR estimates that "12 acres for hotspots or areas of significant impact would require excavation and removal." The DEIR estimates the total volume of soil to be removed to be 200,000 cubic yards (approximately 360,000 tons⁶), of which 50% would be hazardous waste. These quantities are 30% lower than the quantities estimated in ENGE's 2019 *Consideration of Remedial and Mitigation Alternatives*, which estimated a total of 522,700 tons of waste soil from an area of 18 acres. The DEIR does not provide an explanation for the substantial discrepancy between these two estimates. Moreover, the excavation of between 360,000 and 522,700 tons of contaminated soil, over an area of 12 to 18 acres, major dewatering, and groundwater treatment (both during construction, and likely in perpetuity) represent a *major* engineering and construction project that will have significant technical and logistical challenges and impacts to groundwater quality. These issues cannot be currently fully evaluated because they are deferred to as-yet non-existing studies and evaluations, feasibility analyses, more refined or updated risk analyses, and consideration of remedial alternatives.

O29-1-55

As noted above, remedial decision documents (RAW, RAP) are subject to public review. The public, including the local community, may demand a more comprehensive cleanup than is currently envisioned. Therefore, it is not possible to predict the scope of remediation, including the volume of soil excavation, that may be required, or the mitigation measures needed. The DEIR should therefore evaluate the impacts associated with a worst-case scenario that would require removal of *all* soil contamination that exceeds accurately derived human health-based risk levels.

⁶ Calculated using a conversion factor of 1.8 tons per cubic yard, consistent with the ENGE 2019 *Consideration of Remedial and Mitigation Alternatives*.



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O29-1-53 As explained in Consolidated Response 4.22, *General Non-CEQA*, Section 4.22.2, *Financial Considerations, Community Benefits, and Other Miscellaneous Opinions*, analysis of financial impacts of a project is outside of the purview of CEQA.

As explained in Consolidated Response 4.16, *Remediation Plans, Land Use Covenants, and Human Health and Ecological Risk Assessment*, after publication of the Draft EIR, the Project sponsor elected to take a more conservative approach by preparing a Remedial Action Plan (RAP) instead of a RAW.

O29-1-54 The comment covers two topics, with responses organized below.

Estimated Volume of Excavated Materials

As discussed in Draft EIR Section 4.8, *Hazards and Hazardous Materials*, Section 4.8.1, *Environmental Setting*, under *Current Nature and Extent of Onsite Contamination*, an additional investigation was conducted subsequent to the 2019 report to which the commenter refers. The HHERA published in 2020, as cited in the Draft EIR and provided in the Administrative Record, was conducted subsequent to the 2019 report and developed Target Cleanup Levels that incorporated the new data and updated the lateral extent and mass of the impacted soil. The extent and mass cited in Draft EIR Section 4.8, *Hazards and Hazardous Materials*, Section 4.8.3, *Significance Criteria*, under *Approach to Analysis, Remediation and Mitigation of Contaminated Materials*, is based on the updated information.

Future Documents and Deferral of Mitigation

As discussed in Draft EIR Section 4.8.2, *Regulatory Setting*, under *Land Use Covenants*, the Project site is subject to existing land use covenants (LUCs), operations and maintenance agreements, soil and groundwater management plans, and risk management plans, all enforced by the California Department of Toxic Substances Control (DTSC), the regulatory agency with jurisdiction. These LUCs and their associated plans would be replaced and consolidated and require approval by DTSC before commencement of construction to account for the changes to the project site. The substantive requirements of these replacement documents would be similar to those in the existing documents, but would be specifically tailored to ensure protections appropriate for the type of anticipated construction activity and the type of anticipated uses, including allowing residential use (which is currently

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prohibited) under specified conditions. Similar to the existing plans, the workplans to be prepared under the requirements of the existing LUCs and the mitigation measures discussed in Draft EIR Section 4.8, *Hazards and Hazardous Materials*, Impact HAZ-2, would provide further description of the remediation steps, which would include maintaining a cap over the Project site.

As explained in Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*, the mitigation measures provided in the Draft EIR are actions that would be enforced by the City of Oakland Building Official. Grading, building, or construction permits, and certificates of occupancy or similar operating permits for new buildings and uses would not be issued until the DTSC and the Building Official have approved of the various actions required by the mitigation measures.

See also, Consolidated Response 4.16, *Remediation Plans, Land Use Covenants, and Human Health and Ecological Risk Assessment*.

O29-1-55 As further explained in Consolidated Response 4.16, *Remediation Plans, Land Use Covenants, and Human Health and Ecological Risk Assessment*, in compliance with state law, the California Department of Toxic Substances Control (DTSC) is the agency with jurisdiction and would be responsible for reviewing and approving the remediation plan and related documents to ensure that they adequately address risks identified in the approved risk assessment. DTSC will determine to appropriate approach and will approve the required remedy selection document after certification of the Final EIR. These documents cannot be approved until the EIR is certified and would be specifically developed to address risks identified in the risk assessment that has already been approved by DTSC. The remediation plan would use the Target Cleanup Levels developed in the HERA that would ensure the remediation prevents risks to people and the environment. The DTSC would review the plans and the project cannot move forward without DTSC approval.

The commenter's suggestion of removing all contaminated materials with chemical concentrations above the Target Cleanup Levels developed in the HHERA is not considered a practical alternative. Such an action would require the installation of shoring next to adjacent properties, the installation of which could affect those adjacent properties. Excavating the entire project

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site would result in the removal of about 1.4 million cubic yards of materials (assuming the entire Project site is excavated down to 15 feet), which could be rejected by landfills as exceeding their permitted capacities. The excavated materials would have to be transported through the residential areas next to the Project site, which could increase levels of traffic. In summary, excavating the entire Project site is not a practical alternative. The DTSC would not approve of such an approach.

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Incomplete Identification of Contaminants

Some contaminants are not considered in the DEIR, and their impacts are not analyzed. Specifically, the DEIR does not consider petroleum metabolites, also known as hydrocarbon oxidation products (HOPs), in groundwater. The 2018 Five-Year Review Report⁷ recognized HOPs as a contaminant of concern and stated that HOPs should be analyzed during future sampling events. HOPs were analyzed during the 2019 ENGEO investigation⁸ and their concentrations exceeded San Francisco Bay Regional Water Quality Control Board (RWQCB) screening levels⁹ (human health risk levels and aquatic habitat goal levels). Other industrial sites in the vicinity of the Project Site are currently being required to investigate HOPs and their potential to migrate to the Bay. The HHERA and the 2002 Ecological Risk Assessment (ERA)¹⁰ did not consider risk due to HOPs, and the impact of the Project on the migration of HOPs to surface water was not evaluated in the DEIR. The 2002 Ecological Risk Assessment is also outdated and cannot be relied upon as a basis for evaluating current impacts to ecological receptors.

Flawed Human Health and Ecological Risk Assessment

The DEIR relies on the HHERA Report in its consideration of human-health risks. However, the HHERA is fundamentally flawed for the reasons discussed below.

Missing Cancer and Noncancer Toxicity Values – The HHERA Report does not consider several chemicals of potential concern (COPCs) because it omits their toxicity values. The HHERA Report states that the California Environmental Protection Agency (CalEPA) DTSC's (2019) HHERA Note 10 list of noncancer and cancer toxicity values were used to compile the toxicity values used in the risk assessment (pg. 30). Tables 8 and 9 of the HHERA Report present the noncancer toxicity values and the cancer toxicity values, respectively. The HHERA failed to include oral cancer slope factors for nine COPCs, inhalation unit risks for three COPCs, noncancer chronic oral reference doses for 12 COPCs, and noncancer inhalation reference concentrations (RfCs) for eight COPCs. As a result, the cancer risk and noncancer hazard associated with several COPCs were not considered in the derivation of the target cleanup levels, which were used in place of calculating cumulative cancer risks and noncancer hazard indices. Of the 51 COPCs considered in the HHERA, 21 COPCs (41%) were missing a cancer toxicity value, a noncancer toxicity value, or both. This is a major omission and could result in the significant underestimation of potential cancer risk and noncancer hazard from human exposure to COPCs in environmental media at the Site. Overall, these omissions prevent reliance on the conclusions of the HHERA Report and it should not be used to support risk management decisions for the Site.

⁷ Baseline Environmental Consulting. (January 2018). *Final Third Five-Year Review Report*. Charles P. Howard Terminal. Oakland, California. .

⁸ ENGEO Incorporated. 2020. *Site Investigation Report: Athletics Ballpark Development Howard Terminal Site*. Oakland, California. July 1. Revised April 22, 2020.

⁹ San Francisco Bay Regional Water Quality Control Board (RWQCB). *Environmental Screening Levels*. January 2019.

¹⁰ Baseline Environmental Consulting. 2002. *Final Removal Action Workplan, Howard Marine Terminal Site, Oakland, California*. February. Appendix A.



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O29-1-56 The Draft EIR discusses the analysis of the risks associated with the contaminated materials currently contained beneath the existing hardscape cap over the project site in Section 4.8, *Hazards and Hazardous Materials*. Section 4.8.1, *Environmental Setting*, provides a description of the nature and extent of contamination that includes identifying the chemicals of potential concern, describing the extent of those chemicals present at concentrations above screening levels, and presenting figures that visually depict the extent of contamination at concentrations above screening levels.

As further explained in Consolidated Response 4.16, *Human Health and Ecological Risk Assessment, Land Use Covenants, and Site Remediation*, Engco conducted a data gaps analysis that evaluated the completeness and adequacy of the data collected through April 2020, as discussed in Section 4.0 of the 2020 Site Investigation Report cited in the Draft EIR (Engco 2020a). Based on that data gaps analysis, Engco collected and analyzed additional soil, soil gas, and groundwater samples to fill those data gaps, as documented in the HHERA, and resulting in a data set that is adequate to support the HHERA and inform decisions regarding risks at the project site (Engco 2020b). As explained in Engco's *Human Health and Ecological Risk Assessment Information* letter (Engco 2021), potential exposure from hydrocarbon oxidation products (petroleum metabolites) is evaluated by the inclusion of total petroleum hydrocarbons (TPH)-gasoline-range, diesel-range, motor oil-range, and constituents of these mixtures, including benzene and naphthalene, in the HHERA.⁸¹ Finally, as further explained in Consolidated Response 4.16, *Remediation Plans, Land Use Covenants, and Human Health and Ecological Risk Assessment*, given that the existing site uses and conditions at Howard Terminal have not changed since the ecological risk assessment was conducted, there is no information to suggest that the level of ecological risk has changed.

O29-1-57 The concerns expressed in this comment regarding chemicals of potential cancer and the toxicity values used in the HHERA are addressed in Consolidated Response 4.16, *Human Health and Ecological Risk Assessment, Land Use Covenants, and Site Remediation*. As explained in the Consolidated Response, the HHERA uses toxicity values where available and applicable, not all chemicals of potential concern have toxicity values, and not all chemicals of potential concern have complete exposure pathways.

⁸¹ ENGEO, 2021. *Human Health and Ecological Risk Assessment Information*, Athletics Ballpark Development – Howard Terminal Site, Oakland, California, July 9, 2021.

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Risk Assessment Missing Adequate Risk Characterization – The HHERA does not provide a proper risk characterization for each of the receptors and receptor-specific exposure scenarios. The risk characterization is the final step in a risk assessment and involves integrating the toxicity and exposure assessments into quantitative and qualitative expressions of risk. It is the link between the risk assessment and the risk management decisions and provides the information necessary to understand what risks warrant control and for what reasons. The HHERA is missing the calculation and presentation of cumulative cancer risk and noncancer hazard indices for each receptor/exposure scenario, and a comparison of these quantitative estimates of risk to the regulatory risk management thresholds (e.g., incremental cumulative cancer risk and noncancer hazard index) that would warrant action. This deficiency was also identified by DTSC in its September 18, 2019, comments on the draft HHERA; the DTSC approved the Final HHERA despite this deficiency. Because the HHERA lacks a proper risk characterization presenting quantitative estimates of site-related cumulative cancer and noncancer risk for each receptor, and also a discussion of how those risks compare to the risk management thresholds used to support risk management decision making for sites in California, the HHERA does not provide the information necessary to support decisions that will ensure protection of human health during and following redevelopment of the Site for the proposed Project.

O29-1-59

No Risk Characterization for Potential Exposure to Nonaqueous Phase Liquid (NAPL) – The HHERA does not include any characterization of potential risks from exposure to NAPL. Section 4.0 notes the identification of NAPL in areas of the Site. The HHERA does not consider or evaluate potential human exposure to site-related COPCs in NAPL. Potential human and ecological exposure should be adequately characterized to support risk management decisions for the Site. This should include characterization of the risk of receptor exposure to COPCs in each environmental media, including NAPL.

O29-1-60

No Ecological Risk Assessment or Characterization – The HHERA does not include an ecological risk assessment, nor does it calculate target levels based on ecological receptors. Therefore, the concluding statement in Section 13 of the HHERA that the "Risk Assessment has evaluated potential exposure pathways, identified COPCs, and assessed both human health and ecological risks..." is incorrect. The lack of an ecological risk assessment appears to be based on the findings of the outdated 2002 Ecological Risk Assessment. These findings are re-iterated in the 2018 Five-Year Review Report (Baseline 2018) which has been approved by DTSC. Neither the HHERA, nor the 2018 Five-Year Review Report, provide the basis for the findings reached in the 2002 risk assessment. Because an adequate ecological risk assessment has not been presented, the HHERA does not provide the information necessary to support decisions that will ensure protection of the environment during and following redevelopment.

O29-1-61

No Justification for Proposed Attenuation Factors used to Model Future Vapor Intrusion Exposure – Soil gas concentrations exceeding screening levels have been documented across nearly the entire Project site (Figure 4.8-2). The HHERA uses soil gas attenuation factors to model potential indoor air concentrations in residential and commercial buildings following site redevelopment. This approach to modeling future indoor air concentrations from vapor intrusion is then used to derive risk-based target cleanup levels for COPCs. The soil gas-to-indoor air attenuation factor proposed by ENGEO for new residential construction is 0.001 and for new commercial construction is 0.0005. Both attenuation



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O29-1-58 The concerns expressed in this comment regarding cumulative cancer risk and non-cancer hazard indices for exposure/receptor scenarios evaluated in the HHERA are addressed in Consolidated Response 4.16, *Human Health and Ecological Risk Assessment, Land Use Covenants, and Site Remediation*. As explained in the Consolidated Response and acknowledged by the commenter, the DTSC approved the HHERA, as documented in the October 22, 2020, DTSC approval letter, which verifies that the DTSC is satisfied that cumulative risk has been adequately addressed. The Consolidated Response provides further discussion regarding cumulative risk, explaining that the assessment of isolated outlier concentrations for several individual constituents is not needed because these constituents did not exceed respective residential screening levels, which indicates that these outlier detections would not contribute to cumulative risk and are not considered representative of site conditions.

O29-1-59 As explained in Consolidated Response 4.16, *Human Health and Ecological Risk Assessment, Land Use Covenants, and Site Remediation*, human health risks associated with potential exposure to non-aqueous phase liquid (NAPL) are rarely quantified in a risk assessment. The only complete pathway to the NAPLs floating on groundwater is dermal contact during construction. Exposure during construction would be mitigated by implementation of the following mitigation measures provided in Draft EIR Section 4.8, *Hazards and Hazardous Materials*: Mitigation Measure HAZ-1a: Preparation and Approval of Consolidated RAW, LUCs and Associated Plans; Mitigation Measure HAZ-1b: Compliance with Approved RAW, LUCs and Associated Plans; and Mitigation Measure HAZ-1c: Health and Safety Plan. Note that as explained in Consolidated Response 4.16, *Human Health and Ecological Risk Assessment, Land Use Covenants, and Site Remediation*, after publication of the Draft EIR, the Project sponsor elected to take a more conservative approach by preparing a Remedial Action Plan (RAP) instead of a RAW. Collectively, these mitigation measures would provide procedures and training for the management of contaminated materials, including the use of personal protective equipment. Human health risk estimates for NAPL are not needed for making risk assessment decisions, nor are they used in decision-making.

O29-1-60 As noted in the comment, the commenter acknowledges that an ecological risk assessment was conducted in 2002 and that the DTSC approved of the ecological risk assessment. The commenter believes that the 2002 ecological risk assessment is outdated and inadequate. However, the commenter does

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not identify any particular inadequacies to support their conclusion. Given that the existing site uses and conditions at Howard Terminal have not changed since the ecological risk assessment was conducted, there is no information to suggest that the level of ecological risk has changed. In addition, and as explained in Consolidated Response 4.16, *Human Health and Ecological Risk Assessment, Land Use Covenants, and Site Remediation*, Pacific Gas and Electric Company (PG&E) conducted a removal action for a former gas plant within Howard Terminal and remediation of the Peaker Power Plant operated by Dynergy adjacent to the southern edge of Howard Terminal. The testing results indicated that neither parcel had unacceptable risks to ecological receptors. Therefore, groundwater target levels were not calculated for ecological receptors at the Project site because they are not needed to guide risk management decisions.

O29-1-61 As noted in the HHERA on p. 27, the default indoor air attenuation factor recommended by DTSC is 0.03, which is calculated as an upper-bound estimate across all structures based on the EPA vapor intrusion database. As explained in Consolidated Response 4.16, *Human Health and Ecological Risk Assessment, Land Use Covenants, and Site Remediation*, site-specific attenuation factors were developed taking into account the proposed Project component that include the addition of fill on top of the existing fill and the addition of foundations for buildings. These site-specific considerations were discussed with the DTSC, the regulatory agency with jurisdiction over investigation and cleanup at the project site. The DTSC concurred that it is appropriate to generate site-specific attenuation factors.

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factors are less conservative than the generic attenuation factor currently recommended by DTSC and the RWQCB for screening level assessments. The HHERA provides no justification or support for these proposed attenuation factors.

O29-1-62

No Indication of Adequacy of Sampling to Support Risk Assessment – The data characterization summary in Section 5.0 of the HHERA Report does not provide a discussion regarding the adequacy of site characterization sampling to support either a human health or ecological risk assessment. Our review of the HHERA Report and other supporting documentation (e.g., the 2020 Site Investigation Report¹¹), indicates that there are results which suggest that adequate sampling has not been performed to support a risk assessment that could be used to determine the need for, and extent of risk management action, prior to site redevelopment. For example, Figure 14 of the 2020 Site Investigation Report shows the potential for available cyanide in groundwater to migrate to the Inner Harbor. Despite this, the Risk Assessment concluded there are no unacceptable risks to ecological receptors. The Risk Assessment should discuss whether (and provide justification for why) adequate sampling has been performed to support a risk assessment and risk management decision-making to ensure no unacceptable risk to human health or the environment during or after site redevelopment.

O29-1-63

Missing Lead Exposure Assessment – As discussed in Section 5.0 of the HHERA, metals (notably lead) impacts “are present in various locations across the Site.” Lead was historically detected in soil at concentrations as high as 32,000 milligrams per kilogram (mg/kg) at the Site. In more recent soil sampling, lead was detected in soil at concentrations as high as 3,180 mg/kg. Potential exposure to lead should be evaluated separately from the assessment for other contaminants because USEPA (2003)¹² and DTSC (2020)¹³ evaluate the significance of lead exposures using blood-lead level as an index of exposure, rather than in terms of cancer risk or noncancer hazard quotient. Although the HHERA utilizes generic screening levels used by DTSC and USEPA for initially assessing potential human exposure to lead in soil at sites, the potential significance of human exposure to lead in soil at the Site should be characterized and discussed in the risk characterization.

Underestimation of Environmental Impacts

O29-1-64

The extent and severity of soil, soil gas, and groundwater impacts is underestimated in the DEIR, for the following reasons:

¹¹ ENGEO Incorporated. 2020. *Site Investigation Report. Athletics Ballpark Development Howard Terminal Site. Oakland, California. July 1. Revised April 22, 2020.*

¹² United States Environmental Protection Agency (USEPA). 2003. *Recommendations of the Technical Review Workgroup for Lead for an Approach to Assessing Risks Associated with Adult Exposure to Lead in Soil. OSWER #9285.7-54. January.*

¹³ Department of Toxic Substances Control (DTSC). 2020. *Human Health Risk Assessment (HHRA) Note Number 3, DTSC-modified Screening Levels. June.*



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O29-1-62 As explained in Consolidated Response 4.16, *Human Health and Ecological Risk Assessment, Land Use Covenants, and Site Remediation*, Section 4.0 of the HHERA noted that numerous investigations and cleanup actions have been conducted at the Project site. These investigations have included the sampling and analysis of numerous soil, soil gas, and groundwater samples throughout the Project site. Further details regarding previous investigation results are detailed in the Site Investigation Report (April 22, 2020), which includes an appendix that tabulates all of the sample results collected through April 2020, numbering in the hundreds. Engeo conducted a data gaps analysis that identified certain data gaps, discussed in Section 4.0 of the 2020 Site Investigation Report. Based on that data gaps analysis, Engeo then collected and analyzed additional soil, soil gas, and groundwater samples to fill those data gaps, as documented in the HHERA, and resulting in a data set that is adequate to support the HHERA.

O29-1-63 The commenter acknowledges that the HHERA utilizes generic screening levels used by DTSC and the U.S. Environmental Protection Agency (EPA) for initially assessing potential human exposure to lead in soil at sites. As explained in Consolidated Response 4.16, *Human Health and Ecological Risk Assessment, Land Use Covenants, and Site Remediation*, conservative DTSC risk-based screening levels were applied to evaluate potential exposure. Screening-level risk evaluations are often used to guide risk management because they are conservative (overestimate risks) and typically require fewer resources than more complicated risk assessments. Consequently, additional characterization of human health risks associated with potential exposure to lead in soil is not necessary.

O29-1-64 As discussed in Draft EIR Section 4.8, *Hazards and Hazardous Materials*, Section 4.8.1, *Environmental Setting*, under *Current Nature and Extent of Onsite Contamination*, an additional investigation was conducted subsequent to the 2019 report to which the commenter refers. The HHERA was conducted subsequent to the 2019 report and developed Target Cleanup Levels that incorporated the new data and updated the lateral extent and mass of the impacted soil. The extent and mass cited in Draft EIR Section 4.8, *Hazards and Hazardous Materials*, Section 4.8.3, *Significance Criteria*, under *Approach to Analysis, Remediation and Mitigation of Contaminated Materials*, is based on the updated information. See Consolidated Response 4.16, *Remediation Plans, Land Use Covenants, and Human Health and Ecological Risk Assessment*, for further explanation of the completeness of the investigations.

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- O29-1-64 • Estimates of the lateral extent and mass of impacted soil presented in the DEIR are approximately 30% lower than was estimated in ENGeo's 2019 *Consideration of Remedial and Mitigation Alternatives*⁸⁴. The reason for this discrepancy is not provided in the DEIR.
 - O29-1-65 • The extent of HOPs contamination in groundwater is far greater than the extent of total estimated impacted groundwater in the DEIR.
 - O29-1-66 • The DEIR cites site-specific target cleanup levels for the Site that were developed in the HHERA Report. As discussed above, the HHERA Report underestimates risk and, consequently, likely overestimates target cleanup levels. Therefore, the extent of contaminants above cleanup levels protective of human receptors is likely underestimated.
- Potential Hazards Associated with Gas and Fuel Pipelines Not Analyzed**
- The DEIR identifies an "active 24-inch-diameter high-pressure aboveground gas transmission pipeline" that transects the northern portion of the Site and serves the greater Oakland metropolitan area. There are also "several fuel pipelines" on the Peaker Power Plant site. The DEIR does not analyze the potential hazards associated with construction or long-term operations near these fuel pipelines.
- Review of Section 4.9 - Hydrology and Water Quality**
- Insufficient Discussion of Impacts and Mitigation - Surface Water and Groundwater Quality**
- The DEIR does not provide sufficiently specific discussion of mitigation with respect to surface-water quality protection. Construction activities, construction dewatering, and long-term operations associated with the proposed Project would pose a significant impact to water quality in receiving waters, i.e., San Francisco Bay. Several of the best management practices (BMPs) included in the HYD-1a mitigation measure (pp 4.9-22 to 4.9-24) do not appear applicable to the Site; for example, the Site does not contain any areas with notable slope and, according to the Site description, there are no creeks on or adjacent to the Site, or riparian corridors. The description of BMPs should be project-specific, not generic. The DEIR should acknowledge the wide range of contaminants anticipated in groundwater that would require continuous monitoring, sampling, and treatment to provide confidence that the discharged water meets all applicable water quality standards. A comprehensive dewatering plan and treatment system design will be needed for the Project to address groundwater and commingled stormwater.
- The Environmental Setting section (Section 4.9.1) should present and discuss the specific range of contaminants and contaminant concentrations that have been monitored/detected in stormwater or

O29-1-65 The Draft EIR discusses the analysis of the risks associated with the contaminated materials currently contained beneath the existing hardscape cap over the project site in Section 4.8, *Hazards and Hazardous Materials*. Section 4.8.1, *Environmental Setting*, provides a description of the nature and extent of contamination that includes identifying the chemicals of potential concern, describing the extent of those chemicals present at concentrations above screening levels, and presenting figures that visually depict the extent of contamination at concentrations above screening levels.

As further explained in Consolidated Response 4.16, *Human Health and Ecological Risk Assessment, Land Use Covenants, and Site Remediation*, Engeo conducted a data gaps analysis that evaluated the completeness and adequacy of the data collected through April 2020, as discussed in Section 4.0 of the 2020 Site Investigation Report cited in the Draft EIR.⁸² Based on that data gaps analysis, Engeo collected and analyzed additional soil, soil gas, and groundwater samples to fill those data gaps, as documented in the HHERA, and resulting in a data set that is adequate to support the HHERA and inform decisions regarding risks at the project site.⁸³ As explained in Engeo's *Human Health and Ecological Risk Assessment Information* letter (Engeo 2021), potential exposure from hydrocarbon oxidation products (petroleum metabolites) is evaluated by the inclusion of TPH-gasoline-range, diesel-range, motor oil-range, and constituents of these mixtures, including benzene and naphthalene, in the HHERA.⁸⁴

The commenter claims that the extent of "HOPS" (hydrocarbon oxidation products or petroleum metabolites) "is far greater than the extent of total estimated impacted groundwater." The commenter provides no information in support of this claim. Given that HOPs is a subset of the previously listed petroleum hydrocarbons, this claim is not supported by the available data.

O29-1-66 This comment expresses general concern regarding the HHERA risk estimation and Target Cleanup Levels. Additional discussion regarding the HHERA is provided in Consolidated Response 4.16, *Human Health and Ecological Risk Assessment, Land Use Covenants, and Site Remediation*, and includes a discussion of the estimated risk and Target Cleanup Levels. Specific concerns

⁸⁴ ENGeo. 2019. *Oakland Athletics Ballpark Development, Oakland, California, Considerations of Remediation and Mitigation Alternatives*. Revised July 31.



⁸² ENGeo, 2020a. *Athletics Ballpark Development, Howard Terminal Site, Oakland, California, Site Investigation Report*, revised April 22, 2020.

⁸³ ENGeo 2020b. *Athletics Ballpark Development Howard Terminal Site, Oakland, California Human Health and Ecological Risk Assessment*, revised August 24, 2020

⁸⁴ ENGeo, 2021. *Human Health and Ecological Risk Assessment Information, Athletics Ballpark Development – Howard Terminal Site, Oakland, California, July 9, 2021*.

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provided in this comment letter are addressed in the responses to more specific comments in this same comment letter.

- O29-1-67 As discussed in the Draft EIR in Section 4.8.2, *Regulatory Setting, Land Use Covenants*, the Project site is subject to existing land use covenants (LUCs), operations and maintenance agreements, soil and groundwater management plans, and risk management plans, all enforced by the California Department of Toxic Substances Control (DTSC), the regulatory agency with jurisdiction. These LUCs and their associated plans would be replaced and consolidated before commencement of construction to account for the changes to the project site. See Consolidated Response 4.16, *Remediation Plans, Land Use Covenants, and Human Health and Ecological Risk Assessment*, for further explanation regarding the workplans to be prepared under the requirements of the LUCs and their associated plans. In addition, the mitigation measures discussed in Draft EIR Section 4.8, *Hazards and Hazardous Materials*, Impact HAZ-2, would provide further description of the remediation steps, which would include the protection of existing utility lines.
- O29-1-68 See Response to Comment O-27-59 regarding surface-water quality. See Responses to Comments O-27-59 and A-12-48 regarding dewatering effects during construction, in addition the specificities of BMPs. See Responses to Comments O-27-60, O-27-61, O-27-62, as well as A-12-43 and A-12-47 regarding groundwater contaminants and its effects on stormwater. See Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*, regarding the preparation of future project-specific mitigation plans.
- O29-1-69 See Responses to Comments O-27-59 and O-27-60 regarding baseline characterization of surface water conditions.

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surface water at the Site to characterize baseline conditions and site-specific contaminants of concern (i.e., a site-specific pollutant source assessment).

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Temporary and potential long-term impacts to the near-shore tidal zone that would be associated with the construction of this Project and associated in-water work would impact water quality and marine life in adjacent waters. The DEIR cites the future preparation of a Creek Protection Plan as sufficient mitigation (HYD-1a). This reference is unclear because the DEIR notes the absence of any creeks at or adjacent to the Project site, and it is impossible to evaluate the significance of any future proposed mitigation measures because the Plan does not now exist. At a minimum, an additional project-specific mitigation measure section targeted to address all aquatic impacts is needed.

O29-1-71

The DEIR does not specify how the proposed Project design will reduce the amount of impervious surface on the Site to comply with the mitigation measure HYD-1a requirement.

O29-1-72

Concerns associated with the remobilization of groundwater and soil contaminants due to sea level rise are not addressed in the impact analysis or proposed mitigation measures. As stated in the DEIR, groundwater levels beneath the Project Site are between 5 and 9 feet below the ground surface (pg. 4.9-4). Given the presence of shallow groundwater and future SLR projections, the future site drainage system would need to address potentially commingled contaminated groundwater in addition to stormwater. This issue is not evaluated in the DEIR.

Insufficient Discussion of Impacts and Mitigation - Groundwater Supplies and Recharge

O29-1-73

Substantial groundwater dewatering required for the Project (up to 10,000 gallons per day) could adversely impact local groundwater flow dynamics, recharge rates, and local surface water quality impacts (pg. 4.9-11). A groundwater model is needed to demonstrate a less-than-significant impact. A dewatering plan is needed to address groundwater and commingled stormwater and their associated water quality impacts.

O29-1-74

The DEIR states that a "cutoff wall would likely also be installed around the boundaries of the ballpark to control groundwater inflow into the ballpark area" (p. 4.9-21). The DEIR does not discuss the impact of a cutoff wall on groundwater flow direction, or the impacts associated with the construction of the wall. There would likely be deflection of groundwater flow to the east and west, potentially causing the migration of contaminated groundwater towards neighboring properties. The DEIR also states that "dewatering ...would not affect the surrounding groundwater levels" (p. 4.9-26) because of the presence of a cutoff wall. If it were true that dewatering will only affect groundwater within the cutoff wall, then the dewatering would only need to be done once and would not need to continue during the construction. This is clearly not the case. Groundwater will re-enter the area due to a lowered head. In fact, the DEIR states as much on page 4.9-21. The DEIR needs to clearly describe the extent and duration of the proposed dewatering and the associated impacts of dewatering on on-site and off-site groundwater flow.

O29-1-70 See Response to Comment O-29-45.

O29-1-71 The design of the proposed Project meets the City's Bureau of Engineering & Construction Storm Drainage Design Standards, the Municipal Regional Stormwater Permit, and the Clean Water Program of Alameda County to reduce the flow and volume of stormwater entering the City's stormwater collection system by incorporating on-site bioretention landscaping in addition to reducing on-site impervious surfaces from 100 percent to 13 percent. See p. 4.16-38 and 4.16-39 in Draft EIR Section 4.16, *Utilities and Service Systems*, for the analysis of stormwater collection and conveyance and for Mitigation Measure UTIL-2, which would ensure stormwater runoff would be reduced by at least 25 percent, to the maximum extent practicable, compared to current conditions.

O29-1-72 See Response to Comment O-29-56.

O29-1-73 See Response to Comment O-29-49.

O29-1-74 See Response to Comment O-29-50.



O29-1

COMMENT

RESPONSE

April 26, 2021
 Ryan Sawyer, Vice President
 Analytical Environmental Services, Inc.
 Review of Selected Sections of the Draft Environmental Impact Report for the
 Waterfront Ballpark District at Howard Terminal, Oakland, California (Case File No.
 ER18-016) (State Clearinghouse No. 2018112070)

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O29-1-75

The DEIR states that "groundwater beneath the Project site is brackish due to proximity to the Inner Harbor and therefore is not designated by the RWQCB as a drinking water beneficial use" (p. 4.9-26; HYD-2). The DEIR should cite the Basin Plan, and/or other documents, to support this claim. To the best of our knowledge, the RWQCB has not de-designated this water and all beneficial uses cited in the Basin Plan apply, even if the water is not of drinking-water quality. De-designation of beneficial uses requires an amendment to the Water Quality Control Plan for the San Francisco Bay Area Region, which has not occurred. Groundwater would need to be protected during construction, e.g., excavation should be planned and executed in such a way that prevents contaminants from being spread, especially to non-contaminated or less contaminated areas.

O29-1-75 See Response to Comment O-29-52

O29-1-76 See Responses to Comment O-29-53.

O29-1-76

Incomplete Evaluation of Flooding Potential

The DEIR states that "compliance with the numerous laws and regulations (discussed in Section 4.9.2) and Mitigation Measure HYD-1a (Creek Protection Plan) would limit the potential impacts from construction on stormwater runoff to less than significant" (HYD-3; p. 4.9-28). The design, extent, and type of stormwater control measures will determine the quantity in expected runoff volume reductions. It is too early in the conceptual design process to assume that significant volume reductions would occur to support this conclusion.

O29-1-77 See Response to Comment O-29-54. In addition, to address proposed grading below the BFE, none of the Project's proposed grading would lower the ground surface elevation below the BFE. Therefore, the existing FEMA floodplain mapping would not be affected by the Project, and additional engineering assessments of the floodplain mapping are not required.

O29-1-78 See Response to Comment O-27-59 regarding stormwater outfalls.

O29-1-77

The proposed finished floor elevation of 6.0 feet for a portion of the Project development area does not address SLR projections (pg. 4.9-29). Mitigation Measure HYD-2 does not account for SLR projections. Designing the Project grading plan relative to the current Federal Emergency Management Agency Base Flood Elevation (BFE), as discussed under HYD-4 (p. 4.9-29), does not provide an adequate level of protection. The full Project is not designed to accommodate Ocean Protection Council's medium-high risk aversion SLR projection and does not adequately consider storm surge events and extreme high-tide events in combination with SLR. In addition, engineering assessments regarding how proposed grading below the BFE may affect floodplain mapping should be developed to support the DEIR assessment.

O29-1-79 See Response to Comment O-29-56.

O29-1-78

Modeling Needed to Evaluate Stormwater Outfall Elevation

The DEIR proposes stormwater outfalls that would be at the same elevation as existing outfalls. These outfalls would be subject to increased hydraulic head associated with SLR, which will result in restricted site drainage capacity (pg. 4.9-34). A site-specific hydrodynamic surface water model is needed to adequately assess this issue.

O29-1-79

Vertical Migration of Contaminants Not Assessed

Shallow groundwater under the Site is very close to the ground surface. The proposed hardscape site cover is not sufficient to address the migration of groundwater contaminants because vertical migration of groundwater contaminants should be expected in association with SLR. SLR will result in an increase in groundwater level, which will result in the contamination of clean fill soil. This issue requires detailed evaluation currently lacking in the DEIR.



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O29-1-80 See Consolidated Response 4.10, *Alternative 2: The Off-Site (Coliseum Area) Alternative*.

April 26, 2021
Ryan Sawyer, Vice President
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Review of Chapter 6 - Alternatives

The DEIR considered four Project alternatives:

- Alternative 1: The No Project Alternative
- Alternative 2: The Off-Site (Coliseum Area) Alternative
- Alternative 3: The Proposed Project with Grade Separation Alternative
- Alternative 4: The Reduced Project Alternative

Based on the outcome of the comparative analysis, the DEIR concluded that "impacts related to hazards and hazardous materials under Alternative 2 would be less than significant, similar to the proposed Project with mitigation" (pg. 6-18). However, our analysis indicates that subsurface contamination at Howard Terminal is substantially more laterally extensive, and more pervasive, than at the Coliseum site, as discussed below.

The Project Site area is approximately 55 acres. The DEIR recognizes the widespread nature of contaminants of concern (COCs) at the Project Site, stating that "almost all of the Project site has soil gas that exceeds one or more screening level," and "most of the Project site has soil that exceeds one or more screening levels" for COCs (pg. 4.8-11). Shallow groundwater also exceeds at least one screening level over most of the Project Site. The DEIR also notes that "several areas of significant impact have been observed" including free-phase hydrocarbons in three to four areas. These impacted soils "would likely require removal ...or active remediation" (p. 4.8-42). ENGEO's 2019 *Consideration of Remedial and Mitigation Alternatives* estimated "an area of 18 acres ... of significant impact." This is equivalent to approximately one-third of the Project Site area. ENGEO estimated that the Project will generate 290,400 cubic yards (522,700 tons) of waste soil (over 26,000 truckloads), of which half will be Class I Hazardous Waste.

The area of the Coliseum Alternative Site is 220 acres. The Coliseum Draft EIR¹⁵ identified 17 Cortese List sites within the Coliseum Alternative site boundary (Coliseum Draft EIR Figure 4.7-1). Nearly all of these are small underground storage tank sites, and only six of them are known to be open sites. There is only one open contaminated site within the footprint of the current Oakland Coliseum property (the Malibu Grand Prix site, 8000 S. Coliseum Way), which has approximately 4 acres of contaminated shallow fill soil and approximately 0.2 acres of contaminated groundwater. As stated in the Coliseum Draft EIR, the proposed new stadium site "does not contain any Cortese List properties" (Coliseum Draft EIR pg. 4.7-6). The Coliseum Draft EIR states that "the proposed project may encounter contaminated fill material during construction activities" (Coliseum Draft EIR pg. 4.7-5). The Coliseum EIR does not quantify the area, volume, or mass of contaminated soil that would be excavated. However, based on available data, it appears to be substantially less than estimated for the Project Site, both in terms of total acreage and the relative percentage of the site area. The areal extent of contaminated soil in the open sites that are

¹⁵ City of Oakland. 2014. *Coliseum Area Specific Plan, Draft Environmental Impact Report, Volume I and II, August 2014*.



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April 26, 2021
Ryan Sawyer, Vice President
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within the 220-acre Coliseum Alternative Site appears to be approximately 7 acres, or less than 5% of the Coliseum Alternative Site area.

In summary, the extent and volume of contaminated soil, and the relative percentage of contaminated areas to total area, are far higher at the proposed Project Site as compared with the Coliseum Alternative Site. Furthermore, there are no known subsurface impacts in the main, central area of the Coliseum Alternative Site, corresponding to the current location of the stadium and the surrounding parking areas.



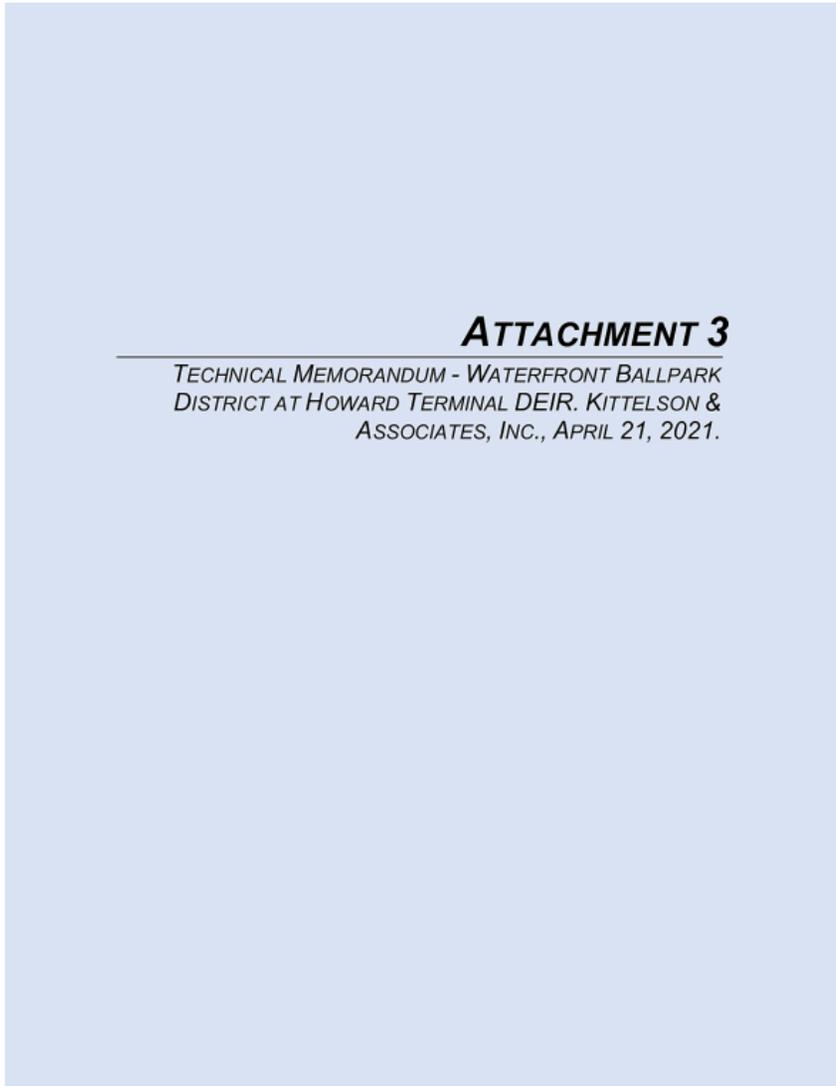
Attachment TERRA

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O29-2 East Oakland Stadium Alliance, by AES (Part 3)

COMMENT

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O29-2-1 See Consolidated Response 4.5, *Truck Relocation*.

O29-2-2 The comment is incorrect that the Draft EIR’s significance criteria for the retail and ballpark components of the Project are inconsistent with the City of Oakland’s TIRG and/or OPR Guidelines. Oakland’s TIRG is not prescriptive across all project types. The Oakland TIRG introduction states that the guidelines within the TIRG “are only guidelines....the Guidelines provide a broad overview of analysis procedures, while a tailored scope of work is required to match the size and complexity of transportation issues associated with a particular project. Individual project scopes of work supersede the Guidelines, and must be prepared and approved under the direction of City staff” (Oakland TIRG, 1). The same is true of the OPR guidelines which are intended to “provide advice and recommendations, which agencies and other entities may use at their discretion” however “does not alter lead agency discretion in preparing environmental documents subject to CEQA” (OPR Technical Advisory on Evaluating Transportation Impacts in CEQA, 1).

As stated in the comment, the TIRG states that a retail project “would cause substantial additional VMT if it exceeds the existing regional VMT per worker minus 15 percent” (Oakland TIRG 5.2). The Draft EIR shows that the Project VMT would not exceed existing regional VMT per worker minus 15 percent in Table 4.15-32, which demonstrates that the Project would generate less than 15 percent below the regional average VMT per worker. Because the VMT per worker only accounts for the VMT generated by workers and not the VMT generated by the retail customers and visitors of the Project, the Draft EIR uses the citywide total VMT per service population calculated using the Alameda CTC travel demand model, which accounts for the VMT generated by the retail customers and visitors to better account for the VMT generated by the retail component of the Project. The significance threshold used for regional retail in the Draft EIR is also consistent with recent environmental documents prepared for the City of Oakland. The Downtown Oakland Specific Plan (DOSP) EIR used the same significance threshold stating that “projects with regional-serving retail would cause substantial additional VMT if it results in a net increase in citywide VMT per service population” (DOSP EIR, 192). The significance threshold used in this Draft EIR is thus appropriate as it is consistent with significance thresholds applied by the lead agency to past planning projects.



TECHNICAL MEMORANDUM
Waterfront Ballpark District at Howard Terminal DEIR

Transportation Review of DEIR

Date: April 21, 2021 Project #: 24433
To: Ryan Sawyer, Analytical Environmental Services
From: Aaron Elias & Laurence Lewis, Kittelson & Associates, Inc.

This technical memorandum provides a review of the transportation chapter and related portions of the Draft Environmental Impact Report (DEIR) issued by the City of Oakland for the Oakland Waterfront Ballpark District Project (Project) proposed at the Howard Terminal site at the Port of Oakland. Kittelson and Associates, Inc. (Kittelson) has performed this review to highlight areas of concern and potential deficiencies in how the Project may affect the transportation circulation system. Our comments are grouped into the following sections which align with the City of Oakland’s Transportation Impact Review Guidelines (TIRG) dated April 2017. These sections include:

- Key Comments Related to Transportation – Highlights our key comments
- Travel Analysis – Comments pertaining to Section 3 of the TIRG
- Transportation Demand Management – Comments pertaining to Section 4 of the TIRG
- CEQA Analysis – Comments pertaining to Section 5 of the TIRG

KEY COMMENTS RELATED TO TRANSPORTATION

Kittelson has reviewed the transportation analysis contained in Chapter 4.15 Transportation and Circulation in the DEIR. Based on Kittelson’s review, we have identified the following five deficiencies as the most critical:

O29-2-1

1. **VMT Associated with Truck Travel.** Page 4.15-86 of the DEIR acknowledges that VMT associated with truck travel is likely to change due to trucks being relocated from Howard Terminal. However, the DEIR concludes that estimating the change in truck VMT would be speculative and therefore no estimate was completed. By omitting this element, the DEIR has not sufficiently quantified the full effect of the Project on VMT.

O29-2-2

2. **The DEIR has established two significance criteria for vehicle miles traveled (VMT) that are inconsistent with the City of Oakland’s TIRG.**

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With regard to the proposed retail component, the OPR Guidelines recommend using net change in total VMT to determine the impacts of regional retail projects. The Draft EIR normalizes the metric by dividing the total VMT by service population to be consistent with the other VMT metrics used in the Draft EIR. Thus, the Draft EIR is consistent with the OPR Guidelines in that it relies on total VMT to evaluate the impacts of the retail component of the Project on VMT.

OPR guidelines also allow for lead agencies, using more location-specific information, to develop their own thresholds for project types other than residential, office, and retail uses. Because the ballpark and performance venue are specialized uses where attendees generate substantially more activity compared to employees, it is more accurate to compare VMT per attendee rather than regional VMT per retail employee as suggested in the Oakland TIRG. This metric is more reflective of the actual land use and its unique VMT generation and therefore more appropriate to use in establishing significance thresholds. Because geographic distribution and travel mode characteristics are available for both baseball games and performances at the existing Coliseum site, it is more accurate to compare VMT per attendee at the existing Coliseum site to VMT per attendee at Howard Terminal site using a significance threshold of existing VMT per attendee minus 15 percent. In this way, the approach is consistent with OPR guidance regarding the significance threshold while recognizing that the ballpark and performance venue land uses are unique.

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Waterfront Ballpark District at Howard Terminal DEIR
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O29-2-2

- For retail uses, the DEIR states on page 4.15-157 that retail greater than 80,000 square feet would cause a significant impact if there were a net increase in the VMT per service population. This is not consistent with page 19 of the TIRG, which states a retail project of any size will cause a significant impact if the project exceeds the existing regional VMT per employee minus 15 percent.
- For the ballpark and performance venue, the DEIR states that “a project would cause substantial additional VMT if it exceeds existing VMT per attendee minus 15 percent where existing VMT per attendee is measured from existing uses at the Coliseum.” Page 24 of the TIRG states for event centers and regional-serving entertainment venues that “a project would cause substantial additional VMT if it exceeds the existing regional VMT per retail employee minus 15 percent.”

O29-2-3

Therefore, the DEIR has not analyzed transportation impacts related to the retail component of the project and the performance venue/ballpark components consistent with the City’s guidelines for transportation assessments.

O29-2-4

3. **The DEIR has not disclosed potentially significant VMT impacts for the Project’s retail component.** The numbers presented in Table 4.15-33 indicate that the Project’s retail component VMT per service population increases from 17.29 miles to 17.30 miles in 2020 and from 17.13 miles to 17.14 miles in 2040. Since the DEIR significance criteria states that “for retail projects greater than 80,000 square feet, a project would cause substantial additional VMT if it results in a net increase in citywide total VMT per service population”, the DEIR has not disclosed a significant impact since there is a net increase in VMT per service population.

O29-2-5

4. **The DEIR has not presented sufficient analysis to support the claim that the transportation demand management (TDM) plan for the performance venue will reduce VMT to a level constituting a less-than-significant impact.** Table 4.15-35 on page 4.15-182 states that the TDM plan would result in a VMT reduction of 17 percent for the performance venue and therefore the impact would be less than significant. Earlier on the same page, however, the DEIR states that the TDM Plan required to reduce the impacts of the Project’s performance venue has not been defined with specificity. No analysis is presented to support the findings that the proposed TDM elements would reduce VMT by the amounts indicated. Therefore, the impact cannot be found to be less than significant.

O29-2-6

5. **The DEIR presents insufficient analysis regarding the impacts of train blockages on Project access.** There is little analysis or discussion on what happens with access to the project if a train blocks the rail crossings. The data collection presented in the DEIR showed an average of 42 trains per day over a data collection period of one week, with one train blocking the rail crossings at the Project entrances for 87 minutes. The DEIR should provide additional information, analyses, and discussion related to vehicular access and train blockages.

Kittelson & Associates, Inc.

Oakland, California

O29-2-3 See Response to Comment O29-2-2.

O29-2-4 The VMT per service population rounded to a single decimal place to determine retail VMT impacts was applied accurately and consistent with internationally recognized mathematical standards. This rounding practice was also applied uniformly throughout the Draft EIR Section 4.15, *Transportation and Circulation*, that refer to VMT on a per capita, per worker, or per attendee basis which are rounded to a single decimal place. The difference between the Project and no project scenario is approximately 0.01 mile, which is the equivalent of 50 feet or two parking spaces. Furthermore, given the inherent degree of uncertainty in travel demand models due to practices that include calculating average trip lengths over large TAZs, rounding to a hundredth of a mile is overly precise and does not reflect the uncertainty that is embedded in model results. Consequently, rounding to a tenth of a mile is appropriate, and the change in VMT per service population for the retail uses is found to be less than significant. This is also consistent with practices in other recent environmental documents prepared by the City of Oakland including the Downtown Oakland Specific Plan EIR and the CWS North Gateway Recycling Facility Project Addendum #2.

O29-2-5 The reason for indicating in the Draft EIR that the TDM Plan for the performance venue has not been defined with specificity is that a venue operator has not been identified and the operator would determine which TDM strategies to implement. Mitigation measures have been identified to ensure that the venue operator achieves the legislative requirement to reduce vehicle trips by 20 percent over the baseline defined in the Draft EIR. Mitigation Measure TRANS-1a (Draft EIR pp. 4.15-183 through 4.15-189) would implement the TDM Plan for non-ballpark development and Mitigation Measure TRANS-1b (Draft EIR pp. 4.15-193 through 4.15-197) would implement the TMP for ballpark events. The performance venue operator would be required to implement Mitigation Measure TRANS-1a which includes a performance standard to reduce by 20 percent vehicle trips over a baseline condition without a TDM Plan. The venue operator would be responsible for developing, implementing, monitoring, and adjusting the plan and the venue operator could include additional strategies, such as those in the TMP for the ballpark events, to meet the performance standard. The City would be responsible for approving the initial plans and any subsequent updates, reviewing the monitoring reports, and confirming that the vehicle trip reductions achieve the performance standards. If the standards are not

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met, the City would require Corrective Action Plan(s) to bring the plans into conformance. The City would also institute enforcement procedures consistent with the Project's Conditions of Approval and Oakland Planning Code Chapter 17.152 if the performance standard was not met.

See Consolidated Response 4.23, *Transportation and Parking Demand Management Plan and Transportation Management Plan Considerations*, for additional information regarding effectiveness of measures.

O29-2-6 See Consolidated Response 4.6, *Rail Safety, Grade Crossing, and Grade Separation*, for responses to issues raised in the comment. Specifically, Section 4.6.3 of the consolidated response addresses conditions when a train blocks both the Market Street and Martin Luther King Jr. Way crossings for an extended period of time. Impact TRANS-3 correctly concludes that the impact would be significant and unavoidable even after mitigation.

O29-2

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Waterfront Ballpark District at Howard Terminal DEIR
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TRAVEL ANALYSIS

The following comments are generally related to analysis performed in the DEIR to meet the requirements of Section 3, Transportation Analysis, of the TIRG.

O29-2-7

- **Household VMT per Capita.** Average VMT per worker is provided on page 4.15-24, but household VMT per capita should also be provided to establish existing conditions.
- **Weighted Average VMT.** Also referenced on page 4.15-24 is the weighted average VMT for the Project site. It is unclear how this was developed and what weighting was used since VMT per the City's TIRG is analyzed based on VMT per employee or VMT per capita.

O29-2-8

- **Effects of Railroad Gate Down Times.** Page 4.15-39 identifies that during the one-week data collection period, the maximum observed gate down time for the railroad crossings in front of the Project was 87 minutes. The DEIR states this was an extraordinary event but there is no supporting evidence this is a rare occurrence and does not occur weekly or even more frequently. The observed gate down time of 87 minutes was from about 9:13 PM to 10:40 PM, which could coincide with when a baseball game or other event at the stadium is ending. The DEIR does not analyze or discuss what would happen if the railroad gates were down for a similar duration when a game or event ends. The single pedestrian bridge proposed at the site is unlikely to be sufficient to accommodate the pedestrian demand. Additionally, residents living in the area would be delayed for more than an hour before they could exit the Project Area.

O29-2-9

- **Effects of Lower On-Site Parking Supply.** The DEIR does not fully analyze how the difference in parking supply versus demand will affect the Project.
 - Residential parking, discussed on page 4.15-81, is identified as sufficient for the Project because the vehicle ownership in the census tract is about 0.94 vehicles per household whereas the Project will provide up to a maximum of 1.0 parking spaces per unit. However, this is a parking maximum, and not a parking minimum, and still allows for the Project to provide parking below 0.94 vehicles per household. The DEIR does not discuss what would happen with residential parking demand if the actual parking supply for residential units is below 0.94 parking spaces per unit. Additionally, the DEIR should discuss the parking demand generated by residential guests and visitors, who are not accounted for in the 0.94 vehicles per household estimate.

O29-2-10

- For office workers, page 4.15-81 identifies a Project parking demand of about 2.9 parking spaces per 1,000 square feet based on data from similar census tracts near the Project area. The Project would supply about 2.0 parking spaces per 1,000 square feet. The DEIR states that "since parking demand for office uses in the Project is estimated to exceed the provided parking supply, automobile use is estimated to be lower than in similar areas." There is no analysis or discussion supporting the conclusion that parking demand would decrease because the project does not provide sufficient parking to meet the anticipated demand. There may be some reduction in demand as office workers shift to other modes, but there is also the possibility that office workers will

Kittelson & Associates, Inc.

Oakland, California

O29-2-7 The comment requests that household VMT per capita be provided for existing conditions at the Project site and requests an explanation of how weighted average VMT per worker was established. [VMT per capita for residential uses is not reported on Draft EIR p. 4.15-24 because this section of the Draft EIR represents Existing Traffic Conditions and there is no residential land uses on the existing Project site. The weighted average VMT efficiency metrics are noted in a footnote on Draft EIR Table 4.15-32, which states that VMT per resident is weighted by transportation analysis zone (TAZ) population and VMT per worker is weighted by TAZ employment. The following edits to the Draft EIR (p. 4.15-24) are made to clarify this information (additions are underlined and deletions are ~~crossed out~~):

“ . . . Based on the MTC Travel Model, the regional average VMT per worker is 21.8, while the weighted average for the Project site is 16.5. The VMT per worker for the Project site is weighted by the employment in the transportation analysis zone (TAZ) 966 and 967 that cover the Project site.”

O29-2-8 See Consolidated Response 4.6, *Rail Safety, Grade Crossing, and Grade Separation*, for responses to issues raised in the comment. The 87-minute gate down time event noted by the comment was considered in the existing railroad characteristics (Draft EIR pp. 4.15-39 through 4.15-42). Impact TRANS-3 considered train blockages among other factors and correctly concludes that the impact would be significant and unavoidable even after implementing Mitigation Measures TRANS-3a and TRANS-3b.

As noted in the consolidated response when both the Market Street and Martin Luther King Jr. Way crossings are blocked for an extended period of time and a ballpark event is ending the event attendees who drove and parked on-site would remain on-site because they would be unable to leave the site by car. Attendees walking and bicycling across the railroad tracks would be inconvenienced leaving the site because they could not cross at either Market Street or Martin Luther King Jr. Way. But people walking and bicycling would have several options including: Clay Street, Washington Street, Broadway, Franklin Street, and Webster Street as well as via the pedestrian and bicycle bridge (see Mitigation Measure TRANS-3b) noted by the commenter.

O29-2

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Draft EIR (Table 4.15-19 and Figure 4.15-12) illustrate the variable nature of gate down times attributable to train activity at Market Street and Martin Luther King Jr. Way. For example, gate down times at the Marin Luther King Jr. Way crossing to accommodate freight trains range from less than one minute to 19 minutes. This variability is not predictable or static and so it is not possible to know how often or when gate down times such as the 87-minute gate down time referenced by the comment, only that this particularly observation was substantially longer than any of the other 294 gate down time observations made as part of the Draft EIR. In consideration of the comment, the Draft EIR text (p. 4.15-39) has been modified as follows (additions are underlined and deletions are ~~crossed out~~):

. . . The freight data for the Market Street crossing in the table include one ~~extraordinary~~ freight train event that caused the gate to be down for 87 minutes, from about 9:13 p.m. to 10:40 p.m. on Sunday evening.

O29-2-9 This comment expresses a desire for more analysis on residential parking if fewer spaces per residential unit were provided. Parking impacts are not a CEQA significance criterion per the City of Oakland Transportation Impact Review Guidelines Chapter 5.

See Consolidated Response 4.7, *Parking*, for more information how parking management would change with the Project. The Parking Management Plan is included in the Additional Transportation Reference Materials of the Draft EIR. The Parking Management Plan would be implemented through the Transportation Management Plan (Mitigation Measure TRANS-1b) for ballpark events.

See Consolidated Response 4.23, *Transportation and Parking Demand Management Plan and Transportation Management Plan Considerations*, for information regarding effectiveness of the TDM Plan for the non-ballpark development including the revisions to Mitigation Measure TRANS-1a, which would require residential parking to be provided at 0.85 spaces per residential unit as a means to reduce vehicle trips. According to the 2010 California Air Pollution Control Officers Association's (CAPCOA's) report *Quantifying Greenhouse Gas Mitigation Measures* parking policies such as limiting parking supply have been shown to reduce vehicle trips.

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O29-2-10 This comment expresses a desire for more analysis on office parking demand and the parking implications if parking supply is less than demand. Parking impacts are not a CEQA significance criterion per the City of Oakland Transportation Impact Review Guidelines Chapter 5.

See Consolidated Response 4.7, *Parking*, for more information how parking management would change with the Project. The Parking Management Plan is included in the Additional Transportation Reference Materials of the Draft EIR. The Parking Management Plan would be implemented through the Transportation Management Plan (Mitigation Measure TRANS-1b) for ballpark events.

See Consolidated Response 4.23, *Transportation and Parking Demand Management Plan and Transportation Management Plan Considerations*, for information regarding effectiveness of the TDM Plan for the non-ballpark development including the revisions to Mitigation Measure TRANS-1a, which would ensure the maximum of 2.0 parking spaces per 1,000 square feet for office uses as a means to reduce vehicle trips. According to the 2010 California Air Pollution Control Officers Association's (CAPCOA's) report *Quantifying Greenhouse Gas Mitigation Measures* parking policies such as limiting parking supply have been shown to reduce vehicle trips.

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park along the surrounding street network and the DEIR makes no attempt to determine how a reduced parking ratio may affect the circulation system.

O29-2-11

- o For retail parking, page 4.15-82 shows a shortfall where demand ranges from 2.8 spaces per 1,000 square feet for non-December, non-Friday weekdays up to about 4.7 per 1,000 square feet on holidays, but the Project supply is about 2.6 parking spaces per 1,000 square feet. The DEIR states that automobile trips are estimated to be lower as a result, but there is no documentation on the level of trip reduction or whether there is the potential for additional congestion resulting from people not finding a parking space at the Project.

O29-2-12

- o For hotels, page 4.15-82 states that a parking demand of 0.5 parking spaces per hotel room is assumed based on previous City code requirements. However, the standard industry text (Institute of Transportation Engineers Parking Generation Manual 5th Edition) identifies hotels in dense multi-use urban areas as having an average demand of 0.76 vehicles per room. Since the parking demand is likely higher than the parking supply, there should be analysis or discussion of where the excess demand will be accommodated.

O29-2-13

- **Transit Services at Transportation Hub.** It is unclear what transit services will use the 2nd Street Transportation Hub shown in Figure 4.15-15 and referenced in Mitigation Measure TRANS-1c. The transit service is indicated as "if provided," offering no guarantee of service. If service is provided, there is no discussion of the operating hours and whether service would be available after evening events.

O29-2-14

- **Potential Conflicts at Transportation Hub Entrance.** The 2nd Street Transportation Hub is accessible by foot via MLK Jr. Way and Embarcadero West. People accessing the 2nd Street Transportation Hub will be funneled to Embarcadero West and MLK Jr. Way. This creates potential modal conflicts at the MLK Jr. Way entrance, as all bicycle trips are directed to this location as well.

O29-2-15

- **Buffered Bike Lane Location and Modal Conflicts.** In Figure 4.15-20, 3rd Street is identified as providing the buffered bike lane, but in Figure 4.15-35, the buffered bike lane is shown on 2nd Street. Because the Transportation Hub is proposed on 2nd Street, placing the buffered bike lane on 2nd Street could create modal conflicts between transit vehicles and bicyclists. The location of the buffered bike lane on either 2nd Street or 3rd Street should be clarified. The modal conflicts with either large and/or overweight vehicles (3rd Street) or transit vehicles (2nd Street) should also be discussed.

O29-2-16

- **MLK Jr. Way Pedestrian Corridor.** As stated on page 4.15-124: "The Martin Luther King Jr. Way corridor connects Downtown Oakland with the Project site and along with Washington Street and Broadway, is expected to be a primary route for pedestrians to access the site from Downtown, 12th Street BART station, and Chinatown. It is also expected to be the primary access for bike riders since it connects with existing and planned east / west bike corridors including 2nd, 3rd, 7th, 9th and 14th Streets. The Martin Luther King Jr. Way corridor would also serve as a secondary Project access for motor vehicle traffic."

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O29-2-11 This comment expresses a desire for more analysis on retail parking demand and the parking implications if parking supply is less than demand. Parking impacts are not a CEQA significance criterion per the City of Oakland Transportation Impact Review Guidelines Chapter 5.

See Consolidated Response 4.7, *Parking*, for more information how parking management would change with the Project. The Parking Management Plan is included in the Additional Transportation Reference Materials of the Draft EIR. The Parking Management Plan would be implemented through the Transportation Management Plan (Mitigation Measure TRANS-1b) for ballpark events.

See Consolidated Response 4.23, *Transportation and Parking Demand Management Plan and Transportation Management Plan Considerations*, for information regarding effectiveness of the TDM Plan for the non-ballpark development including the revisions to Mitigation Measure TRANS-1a, which would ensure the maximum of 2.6 parking spaces per 1,000 square feet for retail, restaurant, and entertainment uses as a means to reduce vehicle trips. According to the 2010 California Air Pollution Control Officers Association's (CAPCOA's) report *Quantifying Greenhouse Gas Mitigation Measures* parking policies such as limiting parking supply have been shown to reduce vehicle trips.

O29-2-12 This comment expresses a desire for more analysis on hotel parking demand and the parking implications if parking supply is less than demand. Parking impacts are not a CEQA significance criterion per the City of Oakland Transportation Impact Review Guidelines Chapter 5.

See Consolidated Response 4.7, *Parking*, for more information how parking management would change with the Project. The Parking Management Plan is included in the Additional Transportation Reference Materials of the Draft EIR. The Parking Management Plan would be implemented through the Transportation Management Plan (Mitigation Measure TRANS-1b) for ballpark events.

See Consolidated Response 4.23, *Transportation and Parking Demand Management Plan and Transportation Management Plan Considerations*, for information regarding effectiveness of the TDM Plan for the non-ballpark development including the revisions to Mitigation Measure TRANS-1a, which would ensure the maximum of 0.5 parking spaces per hotel room. The hotel

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parking rate is less than the hotel parking demand noted by the comment and so could reduce vehicle trips. According to the 2010 California Air Pollution Control Officers Association's (CAPCOA's) report *Quantifying Greenhouse Gas Mitigation Measures* parking policies such as limiting parking supply have been shown to reduce vehicle trips.

O29-2-13 This comment requests clarification about the transit services that would use the 2nd Street Transportation Hub

Mitigation Measure TRANS-1c (p. 4.15-197) would implement the Transportation Hub on 2nd Street. As noted on Draft EIR p. 4.15-88, AC Transit Lines 72, 72M, and 72R (about 12 buses per hour) would operate on 2nd Street and additional lines could be extended and rerouted to the area at AC Transit's discretion. AC Transit's current service for these lines are provided in Draft EIR Table 4.15-1. Subject to AC Transit's preferred bus stop layout at the hub, the bus stops would likely be located between Martin Luther King Jr. Way and Clay Street to provide the most direct access to the pedestrian and bicycle bridge (Mitigation Measure TRANS-3b) over the railroad tracks. Ballpark event shuttles may be provided at the Hub through Mitigation Measure TRANS-1b, which would implement a Transportation Management Plan (TMP) for ballpark events. One of the City-required TMP strategies (Draft EIR p. 4.15-195) for opening day of the ballpark would be supplemental shuttle service to the 12th Street BART station using high capacity multidoor buses and potentially service to the West Oakland and/or Lake Merritt BART stations. As currently envisioned, these shuttle stops would be located either west of Martin Luther King Jr. Way or east of Clay Street to avoid conflicting with AC Transit's permanent bus stops.

See Consolidated Response 4.23, *Transportation and Parking Demand Management Plan and Transportation Management Plan Considerations*, for information regarding transportation management strategies for the Project including revisions to Mitigation Measures TRANS-1a and TRANS-1b which would require the ballpark event shuttles between the Transportation Hub and the 12th Street BART station as well as either the extension of additional bus service such as AC Transit Line 6 to the Transportation Hub or a new private shuttle system for the non-ballpark development.

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O29-2-14 This comment expresses an opinion that transit riders from the Transportation Hub would access the Project via Martin Luther King Jr. Way and conflict with bicyclists.

Draft EIR Figure 4.15-35, Off-Site Transportation Features—Grid 13 shows elements that facilitate separated movements including a 16-foot sidewalk and a two-way cycle track separated by a landscape buffer. In addition, the Transportation Management Plan (Mitigation Measure TRANS-1b) would include event management strategies (see Draft EIR Appendix TRA.1 Chapter 11) that would require traffic control officers or other personnel acceptable to the City of Oakland to manage the flow of people between the ballpark and the adjacent neighborhoods.

The commenter incorrectly assumes that transit riders would concentrate at the Martin Luther King Jr. Way corridor. AC Transit's permanent bus stops would likely be between Martin Luther King Jr. Way and Clay Street, so these transit riders would distribute to the two at-grade railroad crossings (i.e., Martin Luther King Jr Way and Clay Street) and the pedestrian and bicycle bridge along the Jefferson Street alignment. Riders using the City-required shuttle buses on ballpark event days would likely cross at Martin Luther King Jr. Way if the shuttle stops are west of that crossing, or at Clay Street if the shuttle bus stops are east of Clay Street.

O29-2-15 This comment misidentifies 3rd Street as providing the buffered bike lane. Draft EIR Figure 4.15-20, Howard Terminal Truck Routing, identifies 3rd Street as the Overweight Truck Corridor, not as a bikeway. Draft EIR Table 4.15-15 acknowledges the comment regarding bus/bicycle conflicts on 2nd Street and states that the mixed-use path on Embarcadero West would be the alternative east-west bike route to 2nd Street between Martin Luther King Jr. Way and Washington Street when the Transportation Hub is in high use on ballpark event days.

O29-2-16 The comment provides a citation of the project text related to the Martin Luther King Jr. Way pedestrian corridor. This comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft EIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the Proposed Project.

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O29-2-17 This comment expresses concern about potential modal conflicts and capacity issues at the Martin Luther King Jr. Way entrance.

While not required for CEQA, an intersection analysis study was completed (Draft EIR Appendix TRA.3), which included a multimodal microsimulation analysis of the study area, including the Martin Luther King Jr. Way corridor. The study concluded that the multimodal demands could be accommodated with the improvements described in Draft EIR Section 4.15.4, *Transportation Improvements*. In addition, Mitigation Measure TRANS-1b would implement a Transportation Management Plan (TMP), a draft of which is provided in Draft EIR Appendix TRA.1. Chapter 11 of the draft TMP includes event management strategies to actively manage the flow of people between the ballpark and adjacent neighborhoods using traffic control officers or other personnel acceptable to the City of Oakland. Through the combination of infrastructure improvements and active event management, modal conflicts would be minimized within the constraints of a large public event. The traffic control officers would be a required element of the TMP per Mitigation Measure TRANS-1b.

O29-2-18 This comment expresses a desire for signalized pedestrian and bike phases at the Martin Luther King Jr. Way intersection with 2nd Street. As noted on Draft EIR p. 4.15-125, the traffic signal at the Martin Luther King Jr. Way/2nd Street intersection would prohibit left-turning traffic and provide bicycle signal phasing. The suggestion for exclusive pedestrian phasing is unnecessary because left-turning traffic at this intersection would be prohibited and right-turn prohibitions would be activated before, during, and after ballpark events. The final phasing determination would be established during preliminary engineering and final design. In addition, Mitigation Measure TRANS-1b would implement a Transportation Management Plan (TMP), a draft of which is provided in Draft EIR Appendix TRA.1. Chapter 11 of the draft TMP includes event management strategies to actively manage the flow of people between the ballpark and adjacent neighborhoods using traffic control officers or other personnel acceptable to the City of Oakland. Through the combination of infrastructure improvements and active event management, modal conflicts would be minimized within the constraints of a large public event. The traffic control officers would be a required element of the TMP per Mitigation Measure TRANS-1b.

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- **Modal Conflicts and Capacity Issues.** All biking trips, along with most people accessing the 2nd Street Transportation Hub, people accessing TNCs under the highway, and many automobile trips are being directed to the MLK Jr. Way entrance. This has the effect of creating potential modal conflicts and capacity issues along MLK Jr. Way.
- **Exclusive Pedestrian and Bicycle Signal Phases.** The proposed MLK Jr. Way/2nd Street intersection will need to accommodate automobiles, bicycles, pedestrians and transit vehicles accessing the 2nd Street Transportation Hub. A signal at this location will likely need exclusive pedestrian and bicycle phases to allow people walking and biking to cross the intersection (including people biking to navigate from buffered bike lanes on both sides of the street north of 2nd Street to a cycle track on the east side of the street south of 2nd Street), and to allow transit vehicles and automobiles to cross the intersection.
- **Insufficient Capacity to Meet Combined Demand.** Figure 4.15-46 indicates between 8,180 and 8,780 pedestrians will arrive at the stadium via MLK Jr Way. Table 4.15-42 states that 4,070 pedestrians would arrive on MLK Jr. Way from 6 to 7 PM alongside 280 people biking and 1,090 vehicles. It is unlikely that all of these travel demands will be adequately accommodated with two-lanes of traffic for vehicles, a two-way cycle track, and a single 16-foot sidewalk on the east side.

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- **Travel Mode Choice Model Documentation.** Page 4.15-141 states that a travel mode choice model was developed to estimate trip generation by mode at the ballpark; page 4.15-158 references the use of the model for trip distribution. The Appendix also refers to a travel mode choice model for ballpark activity but does not describe the mode choice model, its calibration, or its application. Instead, assumed mode shifts appear to be based on qualitative judgments without reference to travel times, costs, convenience or other factors that affect mode choice for travelers. Therefore, the DEIR does not provide adequate support for any of the subsequent findings that assume shifts in travel mode for the ballpark.
- **Mode Shift of Current BART Riders.** Page 4.15-163 states that attendees who currently use BART to attend games were estimated to continue to be non-drivers and therefore none would switch to driving a personal vehicle. This assumption is not fully substantiated in the DEIR or in the Appendix. The relative walking time and distance to/from BART should be considered as well as the convenience of auto parking at each site.
- **MTC Model and Service Population VMT.** Page 4.15-177 of the DEIR states that the MTC model does not calculate retail-based service population VMT. The MTC model calculates statistics for all types of trips in the Bay Area. A more accurate statement would be that MTC has not provided maps or tables of VMT other than the maps of residential VMT per capita and worker VMT per employee.
- **Mode Split Assumptions for Performance Venue.** Page 4.15-181 of the DEIR states that estimated trip lengths for the performance venue were calculated using shortest network distance between these trip origin/destination locations and the Project site for the studied events, with the trip distribution modified to account for a changed geographic composition of

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O29-2-19 This comment expresses the opinion that it is unlikely that Martin Luther King Jr. Way can "adequately accommodate" the travel demands when ballpark events occur. The commenter correctly states the Martin Luther King Jr. Way crossings in Draft EIR Table 4.15-42. These crossings reflect the Project's buildout multimodal demands crossing the railroad tracks with a weekday evening event. While not required for CEQA, a non-CEQA multimodal microsimulation model was used to evaluate the implications of the Project at buildout both after a weekday afternoon ballpark event and prior to a weekday evening ballpark event. The analysis documentation and findings are provided in Draft EIR Appendix TRA.3. The results show that with the multimodal transportation improvements and operational strategies described in Draft EIR Section 4.15.4, the transportation system would accommodate the ballpark events. In addition, Mitigation Measure TRANS-1b would implement a Transportation Management Plan (TMP); a draft of the TMP is provided in Draft EIR Appendix TRA.1. Chapter 11 of the draft TMP describes pre- and post-event management activities, which would include the use of traffic control officers or other personnel acceptable to the City of Oakland to actively manage the movement of people between the ballpark and adjacent neighborhoods within the constraints inherent to a large public event. The traffic control officers would be a required element of the TMP per Mitigation Measure TRANS-1b.

O29-2-20 The travel mode choice model is described in detail in Draft EIR Appendix TRA.2 (Section 3.1.2). The model is based on the observed geographic distribution and mode choices of ballgame/event attendees at the Coliseum site. The same methodology was used for baseball/concert/performance events at the Coliseum site. Game/event-day BART data for the Coliseum BART station were compared to ballpark attendance to estimate existing mode share. Game/event-day BART origin-destination data were used to estimate the geographic distribution of BART riders by station, and game/event-day location-based services cell phone data were used to estimate the geographic distribution of drivers. Each mode at each geographic location was then assessed, using engineering judgement regarding whether the move to Howard Terminal would represent a substantial relative change to the desirability or feasibility of that mode based on changes to travel times, costs, and convenience.

Use of a four-step travel model for ballpark users was considered and rejected due to the unique travel behavior of ballgame attendance compared to

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available data upon which such a model could be based. Mode choice estimation models like the Alameda County Transportation Commission (Alameda CTC) Travel Model predict mode split based on travel preferences for typical trip purposes such as commute trips and shopping trips, and are therefore not well-suited to predict mode share for games/events, which have very different travel characteristics.

As described in Section 3.1.2 of Draft EIR Appendix TRA.2, compared to the Coliseum/Oakland Arena, a game/event at Howard Terminal would induce three primary changes in the travel patterns of attendees due to substantial changes to travel times, costs, and convenience:

1. Attendees who currently take BART to the Coliseum site from origins in and around downtown Oakland would shift modes to access Howard Terminal, to walking, bicycling, transit buses, or transportation network companies (TNCs).
2. Attendees who currently drive to the Coliseum site from origins near Howard Terminal would shift modes to access Howard Terminal, to walking, bicycling, transit, or TNCs.
3. Attendees from south or southeast of the Coliseum site, for whom Howard Terminal represents a longer travel distance, may no longer attend games/events, replaced by those for whom games/events would be more conveniently located. Alternatively, those who traveled to the Coliseum site by walking, bicycling, or transit may now drive to Howard Terminal.

Section 3.1.2 of Draft EIR Appendix TRA.2 describes how each of these changes affects mode choice at each affected geographic location. The level of the estimated mode shift at each location was based on engineering judgment related to the relative travel times, costs, and convenience for each mode, as well as external data such as existing ferry and bus capacity and the amount of secure bicycle parking provided at Howard Terminal. Once mode choice at each geographic location was estimated for Howard Terminal, the distribution of vehicle trips previously estimated for games/events at the Coliseum was updated to be consistent with the new mode choices.

O29-2-21 This comment expresses a desire to understand why BART riders were assumed to not switch to driving with the Project. Although the walking times between the West Oakland, 12th Street, and Lake Merritt BART stations and

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the ballpark would be longer than the walking time between the Coliseum BART station and the Coliseum, the time to drive and park for a ballpark event at Howard Terminal would also be longer than at the Coliseum because of Howard Terminal's limited on-site parking supply and lower overall parking availability adjacent to Howard Terminal. See Consolidated Response 4.7, *Parking*, which describes how ballpark attendees who drive and park would be dispersed to underutilized off-street parking. As a result, driving and parking would not improve in its relative competitiveness compared to BART at Howard Terminal.

O29-2-22 Per the comment, the text on p. 4.15-177 of the Draft EIR has been modified as follows:

~~The MTC model does not calculate retail-based service population VMT where service population is defined as workers plus residential population, and so MTC has not provided maps or tables of VMT other than the maps of residential VMT per capita and worker VMT per employee, and so~~

O29-2-23 The mode shift methodology used for baseball games (Section 3.1.2 of Draft EIR Appendix TRA.2) was also applied to concerts at both the ballpark and the performance venue. Compared to the Coliseum/Oakland Arena, a game/event at Howard Terminal would induce three primary changes in the travel patterns of attendees due to substantial changes to travel times, costs, and convenience:

1. Attendees who currently take BART to the Coliseum site from origins in and around downtown Oakland would shift modes to access Howard Terminal, to walking, bicycling, transit buses, or transportation network companies (TNCs).
2. Attendees who currently drive to the Coliseum site from origins near Howard Terminal would shift modes to access Howard Terminal, to walking, bicycling, transit, or TNCs.
3. Attendees from south or southeast of the Coliseum site, for whom Howard Terminal represents a longer travel distance, may no longer attend games/events, replaced by those for whom games/events would be more conveniently located. Alternatively, those who traveled to the

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Coliseum site by walking, bicycling, or transit may now drive to Howard Terminal.

Section 3.1.2 of Draft EIR Appendix TRA.2 describes how each of these changes affects mode choice at each affected geographic location. The level of the estimated mode shift at each location was based on engineering judgment related to the relative travel times, costs, and convenience for each mode, as well as external data such as existing ferry and bus capacity and the amount of secure bicycle parking provided at Howard Terminal. Once mode choice at each geographic location was estimated for Howard Terminal, the distribution of vehicle trips previously estimated for games/events at the Coliseum was updated to be consistent with the new mode choices.

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O29-2-24 See Response to Comment O29-2-5

O29-2-25 This comment expresses a concern about managing TNCs and curb space capacity. Traffic congestion or measures of vehicular delay are not an environmental impact under CEQA per State CEQA Guidelines Section 15064.3. Draft EIR Table 4.15-29 represents total automobile trip generation for the ballpark. The 11,850 ride-source trips referenced by the comment represent two trips before the ballpark event and two trips after the event. Thus, there would be about 2,960 ride-source vehicles serving the ballpark event over the course of a two- to three-hour period before the event and again after the event, representing about 25 vehicles per minute. For the non-CEQA multimodal transportation analysis (Draft EIR Appendix TRA.3), these services were assumed to occur under the freeway between Market Street and Martin Luther King Jr. Way. The analysis concluded that with the transportation improvements and strategies identified in Draft EIR Section 4.15.4, the transportation system would accommodate the ballpark multimodal traffic demands.

Mitigation Measure TRANS-1b would implement a Transportation Management Plan (TMP) for the ballpark events. A draft TMP is provided in Draft EIR Appendix TRA.1. Chapter 9 in the draft TMP addresses ride-sourcing or TNC management. The City's priority for the TMP would be for the Oakland A's and TNC operators to use geofencing or similar methods to restrict pickup and drop-off zones to designated locations to be established in consultation with the City. In addition, as noted in Chapter 11, traffic control officers or other personnel acceptable to the City would actively manage the area adjacent to the ballpark (see draft TMP Figure 11-4) to restrict the area to local traffic only. Traffic control officers are a requirement of Mitigation Measure TRANS-1b.

O29-2-26 This comment expresses an opinion that the intersection operation analysis may be unrealistic if some of the described improvements are not implemented. Traffic congestion or measures of vehicular delay are not an environmental impact under CEQA per State CEQA Guidelines Section 15064.3. Draft EIR Section 4.15.4 (pp. 4.15-86 through 4.15-149) describes the transportation infrastructure and operational changes imposed as CEQA mitigation measures, or recommended for implementation based on Non-CEQA analyses such as that presented in Draft EIR Appendix TRA.3. The

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attendees and a shifted travel mode for attendees near the Project site. The changed geographic composition is supported by an analysis in the Appendix which compared geographic distribution of attendees for a relocated ballpark in Atlanta. However, the DEIR lacks analysis to support the assumed mode shifts.

- **Effect of TDM Plan for Performance Venue.** Page 4.15-182 of the DEIR concludes that the TDM plan would result in a specific VMT reduction of 17 percent and therefore the impact would be less than significant. In an earlier paragraph, the DEIR states that the TDM Plan required to reduce the impacts of the Project's performance venue has not been defined with specificity. No analysis is presented to support the findings that the proposed TDM elements would reduce VMT by the amounts indicated. Therefore, the impact cannot be found to be less than significant.
- **Curb Space Demand for Ridesourcing Trips.** Table 4.15-29 on page 4.15-167 identifies 11,850 ridesourcing trips for the ballpark during the weekday evening period, which equals approximately 5,925 Transportation Network Company (TNC) vehicles (e.g., Lyft and Uber) both before and after a game. Assuming this demand is spread evenly over two hours before and after a game, the ridesourcing trips equate to approximately 50 TNCs per minute, before accounting for the likelihood that demand will increase immediately before and after a game. The DEIR does not analyze the availability of curb space capacity to accommodate the estimated ridesourcing trip demand within the designated pickup/dropoff zone under the freeway. The DEIR should also address strategies for managing TNC traffic flow under the freeway along with any requirements or agreements with Caltrans regarding use of the area.
- **Assumed Improvements for Operations Analysis.** Section 1.1 of Appendix TRA.3, the Operations Analysis memorandum, lists the assumed improvements that would be implemented with the non-ballpark development at full buildout. These improvements should only be assumed under a Plus Project scenario if the Project itself will be constructing them. However, the project description is unclear as to what improvements will be completed by the Project and what will be completed by other projects. The project description references Table 4.15-41 in the Transportation and Circulation chapter. However, these improvements are called for by other plans, mitigation measures identified in the DEIR, or non-CEQA recommendations. Therefore, the operations analysis presented may not be realistic if the Project is not required to make the improvements, especially if they are only recommendations or rely on other projects within the City of Oakland to complete.
- **Bus/Truck Lane Assumption.** Section 1.1.1 of the Appendix TRA.3 Operations Analysis memorandum states the Market Street and 7th Street intersection degrades from LOS B to LOS F during the PM peak hour due to a lane removal to accommodate the bus/truck lanes which are being considered by the City of Oakland as a separate project. If the bus/truck lane is a separate project, it is unclear why it has been analyzed as part of the Plus Project scenario. This prevents the reader from determining if the Howard Terminal Project affects the intersection. Additionally, the proposed solution for improving operations is that 250 drivers will choose to reroute to other intersections due to the higher delay. There is no analysis of the effects of this

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Mitigation Monitoring and Reporting Plan (MMRP) and Conditions of Approval will identify the status of improvements described in Section 4.15.4 and implementation responsibility.

O29-2-27 This comment expresses an opinion that the intersection operation analysis may be unrealistic if some of the described improvements are not implemented. Traffic congestion or measures of vehicular delay are not an environmental impact under CEQA per State CEQA Guidelines Section 15064.3. Specific to the conversion of a motor vehicle lane to a bus/truck-only lane on 7th Street. The lane designation change is not in any City adopted plans, nor is it actively being pursued by the City. The City recently submitted and was awarded an Active Transportation Program (ATP) grant for bike lanes on 7th Street and the grant application did not include the lane designation change. Last, the lane designation change is not recommended for the Project.

The lane designation change was evaluated in Draft EIR Appendix TRA.3 only for intersection operations with buildout of the non-ballpark development, using the Synchro software to understand the potential impact if the lane designation change were to occur at some point in the future. To understand the intersection operations on 7th Street at Market Street, see the VISSIM microsimulation modeling (Draft EIR Appendix TRA.3, Section 3), which does not include the lane designation change. The VISSIM analysis incorporates the full Project buildout plus ballpark events during weekday afternoons and evenings. The findings show that this intersection would operate at acceptable levels with the Project.

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rerouting on other study area intersections, nor any discussion of other improvements that can be implemented if vehicles do not divert as hoped.

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- **Signal Timing Improvements at Washington Street/5th Street Intersection.** Section 3.6.4 of the Appendix TRA.3 Operations Analysis memorandum calls out the Washington Street and 5th Street intersection (DD) as operating at LOS E and LOS F when the midday games are released. However, the text states the Project will develop new signal timings to improve operations at this intersection compared to existing conditions. There is no analysis on what the operations would be with the new timings and no discussion of why the new signal timings were not assumed to be in place when analyzing the Plus Project scenario.

O29-2-29

- **Motor Vehicle Travel Times.** Section 3.6.5 of Appendix TRA.3 presents the analysis of motor vehicle travel times. It is unclear from the analysis why Figure 12 generally shows lower travel times with the Project but Figure 13 shows substantially higher travel times, in particular from 5 to 6 PM. The routes for Figure 12 and Figure 13 are similar leaving the Project up to about 7th Street. If the extra delay is caused by vehicles accessing I-980 northbound near Castro Street and 12th Street, attendees potentially could drive north along Market Street and access the freeway system near Market and 35th.

O29-2-30

- **Vehicle Trip Generation and VISSIM Analysis.** Table 6 of Appendix TRA.3 states that personal vehicle and TNC trip generation for evening games sums to about 7,858 vehicles over the five-hour period from 3 PM to 8 PM. However, Table 12 in Appendix TRA.2 estimates a total of 32,440 total vehicles for weekday evening games. Assuming half this number to account for the inbound and outbound trips, the total number of vehicles studied in the VISSIM analysis appears to be only about half the trip generation for outbound trips.

O29-2-31

- **Traffic Impacts in Surrounding Neighborhoods.** The transportation operations analysis for game days appears to only include trips traveling to/from the Project site. There is no analysis to determine how vehicles parking in downtown garages or surrounding neighborhoods will affect the local transportation network in Downtown, West Oakland or near Jack London Square.

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O29-2-28 This comment expresses a concern about signal timing at the Washington Street/5th Street intersection. Traffic congestion or measures of vehicular delay are not an environmental impact under CEQA per State CEQA Guidelines Section 15064.3. Draft EIR Appendix TRA.3, Section 3, provides the multimodal analysis with the buildout of the Project plus a ballpark event. The analysis was completed with the transportation improvements described in Draft EIR Section 4.15.4, *Transportation Improvements*, to illustrate the transportation improvements and strategies necessary to support the ballpark events including traffic signal timing changes. There was not a separate analysis of conditions without signal timing changes.

O29-2-29 This comment expresses an opinion regarding traffic congestion after a weekday afternoon ballpark event. Traffic congestion or measures of vehicular delay are not an environmental impact under CEQA per State CEQA Guidelines Section 15064.3. The comment refers to changes in travel time leaving the Project after a weekday afternoon ballpark event. As noted by the comment, the additional travel time is for drivers leaving the Project destined for the I-980 freeway via Castro Street. For the two hours after an afternoon ballpark event, drivers would experience an additional two to four minutes of travel time over travel time without an event. This condition would occur up to 14 times per year and, as noted by the comment, some drivers may choose to continue north on Market Street, accessing I-980 via 17th, 27th, or 35th Streets depending on their ultimate destination.

Mitigation Measure TRANS-1b would implement a Transportation Management Plan (TMP), a draft of which is provided in Draft EIR Appendix TRA.1. Table 1-1 in the TMP identifies the key stakeholders including community groups. The language in Table 1-1 has the following language for community groups, *“Community groups may offer consultation and feedback on the project design and operational planning to help ensure a smooth integration into the existing neighborhood. Some community groups include the West Oakland Environmental Indicators Project, Jack London Improvement District (JLID), and other neighborhood and business groups in West Oakland, Jack London District, Chinatown District, and Old Oakland District, as well as Bike East Bay, Walk Oakland Bike Oakland, and SPUR Oakland”*. For example, through the TMP process, traffic control officers or other personnel acceptable to the City may actively manage motor vehicle traffic accessing I-980 to minimize driver delays while changeable message signs, if deployed,

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may be used to direct drivers to and from I-980. Traffic control officers are a requirement of Mitigation Measure TRANS-1b.

O29-2-30 The comment correctly notes the incorrect table entries in Table 6 of Draft EIR Appendix TRA.3. The table should be replaced with a new table showing the total Project trips generated by hour. The analysis in the Draft EIR was based on the data in the new table not the incorrect numbers in the Table in the Draft EIR. Therefore, the correction of the numbers in the Table does not affect the analysis and conclusions in the Draft EIR.

Table 1: Howard Terminal Trip Generation

Mode	3 to 4 PM	4 to 5 PM	5 to 6 PM	6 to 7 PM	7 to 8 PM
Full Buildout Non-Ballpark Development Trips					
Automobiles	1,670	2,090	2,260	1,770	1,340
Pedestrians	1,400	1,750	1,890	1,480	1,120
Midday Game Trips (employees and attendees)					
Personal Vehicles	3,790	3,900	450	0	0
TNCs	2,340	2,410	280	0	0
Pedestrians	13,120	13,510	1,570	0	0
Evening Game Trips (employees and attendees)					
Personal Vehicles	0	1,450	1,800	3,630	1,350
TNCs	0	840	1,040	2,090	780
Pedestrians	0	4,980	6,170	12,440	4,620

Note: Rows for automobiles, personal vehicles, and TNCs represent number of vehicle-trips; rows for pedestrians represent number of person-trips and include all modes except bicycles and vehicles parking on-site.

Source: Fehr & Peers, 2021.

The comment incorrectly compares Table 6 of Draft EIR Appendix TRA.3 with Table 12 of Draft EIR Appendix TRA.2. The Table 12 reference of 32,440 refers to the ballpark event total daily vehicular trip generation (inbound and outbound) without a Transportation Management Plan (TMP). The corrected Table 6 of Appendix TRA.3 shows the ballpark event trips (with a TMP) that occur between 3 p.m. and 8 p.m. for a ballpark weekday event ending at 3:30

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p.m. and a ballpark weekday event starting at 7:00 p.m. The VISSIM model, between 3 p.m. and 8 p.m. study period, included about 12,200 vehicle trips associated with the ballpark event which is consistent with the new table.

O29-2-31 The comment expresses a concern about traffic congestion in surrounding neighborhoods. Traffic congestion or measures of vehicular delay are not an environmental impact under CEQA per State CEQA Guidelines Section 15064.3.

See Consolidated Response 4.7, *Parking*, which illustrates how ballpark attendees who drive would be dispersed to underutilized off-street parking minimizing concentrations of traffic at any one location. As noted in the Consolidated Response, the greatest concentration of ballpark attendees who drive and park would be to the Project site and dispersed through Downtown Oakland west of Broadway. The operations analysis for the ballpark events therefore focused on the streets from these areas serving the nearest freeway accesses. A detailed microsimulation analysis was not conducted in the other neighborhoods because of the relatively low availability of underutilized off-street parking and the fact that walking between the ballpark and parking would spread out arrivals and departures reducing concentrations of automobile traffic.

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TRANSPORTATION AND PARKING DEMAND MANAGEMENT

Kittelson reviewed Appendix TRA.1, the Travel Demand Management (TDM) Plan, and Appendix TRA.2, the Howard Terminal – Transportation and Parking Demand Management Effectiveness Analysis and have identified the following comments. These comments address the analysis performed per Section 4, Transportation and Parking Demand Management, of the TIRG.

O29-2-32

- **Unclear or Illegible Map Exhibits.** Many of the map figures in the “Howard Terminal – Transportation and Parking Demand Management Effectiveness Analysis” memorandum are illegible or have conflicting information such as page 34 of 46 where Tri-Valley trips show attendee distribution as 5%, 10%, or 12%. Without clear maps, the trip distribution and redistribution numbers used in the DEIR cannot be reviewed adequately.

O29-2-33

- **TDM Measures for Smaller Events.** Appendix TRA.1, the TDM Plan, presents multiple event scenarios for the ballpark as summarized in Table 2-1. Additionally, Section 11 Appendix TRA.1 presents separate traffic control strategies for small, medium, and large events based on the number of attendees. However, the effectiveness analysis in Appendix TRA.2 appears to address only large events with a maximum attendance of 35,000. As noted in Table 2-1 of Appendix TRA.1, approximately 251 smaller events (other than baseball games and ballpark concerts) are projected to occur annually, with a maximum attendance of 7,500. It is unclear whether the TDM measures presented – in particular those addressing transit services, parking management, and ride sourcing strategies – apply to all events or are limited to baseball games and ballpark concerts.

O29-2-34

- **Mode Split Assumptions for Ballpark without Transportation Management Plan.** Table 3-3 in Appendix-TRA.1 and Table 13 in Appendix TRA.2 summarize the mode split for the Howard Terminal Ballpark in the absence of the Transportation Management Plan. These assumptions are important because they establish the baseline for measuring the required 20 percent reduction in vehicle trips. By assuming a drive-alone percentage for the Howard Terminal Ballpark that is lower than the drive-alone percentage for the existing stadium, the required vehicle trip reduction for the TMP is also lowered. There is a qualitative explanation of the mode share assumptions; however, there is no documentation provided showing the calculation of these percentages. The DEIR should provide quantitative documentation for how the trip reductions were derived prior to being used as a baseline for the required 20% reduction.

O29-2-35

- **Trip Generation and Distribution for Employees and Deliveries.** It is unclear how the trip generation calculations and mode split assumptions for the Howard Terminal Ballpark consistently account for non-attendee trips such as employees and deliveries. It appears that Appendix TRA.2 Table 12, Automobile Trip Generation for Ballpark, includes non-attendee trips, but Appendix TRA.2 Table 13, Attendees by Travel Mode – Ballpark without TMP, does not include non-attendee trips.

O29-2-36

- **Documentation to Support Trip Reduction Percentages.** Appendix TRA.2, Table 15, TMP Measures by Strategy for Ballpark, summarizes the vehicle trip reduction percentages in support of the required 20 percent reduction. Quantitative documentation should be provided

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O29-2-32 To improve the legibility of referenced figures in Appendix TRA.2, updated figures have been provided. See Chapter 7, *City-Initiated Updates and Errata to the Draft EIR*.

O29-2-33 The TMP is applicable to all ballpark events and is subject to annual monitoring to verify that the TMP achieved the 20 percent vehicle trip reduction performance metric for the year monitored inclusive of all ballpark events described in the Draft EIR Chapter 3 (Table 3-2). TMP Chapter 11 addresses pre- and post-event management for small events with fewer than 9,000 attendees, medium events with up to 17,500 attendees, and large events with more than 17,500 attendees.

O29-2-34 Section 3.1.2 of Draft EIR Appendix TRA.2 describes in detail how the estimated mode shares for a ballpark at Howard Terminal were derived. The Howard Terminal mode shares were based on the observed geographic distribution and mode choice of ballgame attendees at the Coliseum. Game-day BART origin-destination data were used to estimate the geographic distribution of BART riders by station, and game-day location-based services cell phone data were used to estimate the geographic distribution of drivers. Each location-mode pair was then assessed for whether a move to Howard Terminal would induce a change in travel mode or likelihood of attending a game.

As described in Section 3.1.2 of Draft EIR Appendix TRA.2, compared to the Coliseum/Oakland Arena, a ballpark at Howard Terminal would induce three primary changes in the travel patterns of attendees due to substantial changes to travel times, costs, and convenience:

- Attendees who currently take BART to the Coliseum from origins in and around downtown Oakland would shift modes to access a ballpark at Howard Terminal, to walking, bicycling, transit buses, or TNCs.
- Attendees who currently drive to the Coliseum from origins near Howard Terminal would shift modes to access a ballpark at Howard Terminal, to walking, bicycling, transit, or TNCs.
- Attendees from south or southeast of the Coliseum site, for whom the Project site represents a longer travel distance, may no longer attend games, replaced by those for whom games would be more conveniently located. Alternatively, those who traveled to the Coliseum site by walking, bicycling, or transit, may now drive to a ballpark at Howard Terminal.

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Section 3.1.2 of Draft EIR Appendix TRA.2 describes how each of these changes affects mode choice at each affected geographic location. The level of the estimated mode shift at each location was based on engineering judgement related to the relative travel times, costs, and convenience for each mode, as well as external data such as existing ferry and bus capacity and the amount of secure bicycle parking provided at the ballpark. The estimated mode shift at each location was then used to calculate the expected overall mode share.

The finding of a lower expected automobile mode share is reasonable due to Howard Terminal's location near Downtown Oakland and a wide variety of non-automobile transportation options. Additionally, a lower baseline automobile mode share imposes more stringent requirements on the Project, as it requires the Project to generate even fewer automobile trips (e.g., if baseline is 100 trips, a 20 percent reduction means no more than 80 trips; if baseline is 80 trips, a 20 percent reduction means no more than 64 trips).

O29-2-35 As described in Footnote B of Draft EIR Table 4.15-37 and Footnote C of Draft EIR Table 4.15-29, ballpark employee mode shares were estimates from the Oakland Transportation Impact Review Guidelines. The number of employees was estimated based on information provided by the Project sponsor. Employees who drive to the ballpark were assumed to drive alone. Deliveries were not included in the ballpark trip generation estimates. These are expected to be fewer than 15 deliveries generated on the day of a ballpark event.

O29-2-36 The effectiveness of Mitigation Measure TRANS-1b, the Transportation Management Plan for the ballpark, was evaluated in the Draft EIR (Appendix TRA.2) and it was concluded that a range of effectiveness, depending on the mix of measures chosen, could be achieved and that the mitigation measure would achieve the required 20 percent vehicle trip reductions. In consideration of significant and unavoidable air quality impacts additional analyses of the effectiveness of the mitigation measure was conducted. See Consolidated Response 4.23, *Transportation and Parking Demand Management Plan and Transportation Management Plan Considerations*, for additional information regarding effectiveness of measures to meet the 20 percent performance requirement for ballpark development stated for Mitigation Measure TRANS-1b.

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to support these percentages. Additionally, the documentation should state the assumptions that inform the high and low ends of the vehicle trip reduction ranges that are presented.

O29-2-37

- **Potential Double-Counting of Trip Reduction Percentages.** Appendix TRA.2, Table 15, TMP Measures by Strategy for Ballpark, presents the vehicle trip reduction estimates by four groups of strategies (Encourage Walking and Bicycling, Better Transit Options, Downtown Connections, and Parking Supply Management). Each group has a vehicle trip reduction estimate, but there will be overlap and potential double-counting between categories. For example, parking supply management will encourage walking, bicycling, and transit use. The DEIR should quantify how the analysis accounts for double counting.

O29-2-38

- **Time Periods for Trip Generation and Mode Split Tables.** The time period(s) should be defined for all trip generation and mode split tables in Appendix TRA.2. For example, it is unclear whether the vehicle trips in Table 12, Automobile Trip Generation for Ballpark, represent 24-hour conditions, a peak hour, or some other period based on the duration of the event and arrival patterns. It is important to state the time periods to ensure that the TMP measures will be in effect during those periods.

O29-2-39

- **Time Distribution for Arrivals and Departures.** The TMP does not address the time distribution pattern for arriving and departing attendees, both for the existing stadium and the proposed Howard Terminal Ballpark. For example, what percentage of attendees arrive within 30 minutes of the event start time? The distribution pattern for arriving and departing attendees is important for assessing the level of capacity needed to achieve the estimated vehicle trip reduction from TMP measures such as ferry service, gameday shuttles, and bicycle/scooter valet.

O29-2-40

- **Vehicle Trip Generation Reduction Numbers.** Appendix TRA.2, Table 15 should include the vehicle trip reduction as numbers in addition to percentages. The actual trip generation numbers are necessary for assessing the reasonableness of the trip reduction estimates for the various strategies.

CEQA ANALYSIS

The following comments are related to the adequacy of disclosing transportation conditions related to the CEQA checklist for transportation. These comments relate primarily to analysis performed to complete Section 5, CEQA Analysis, of the TIRG.

O29-2-41

- **VMT Associated with Truck Travel.** Page 4.15-86 of the DEIR acknowledges that VMT associated with truck travel is likely to change due to trucks being relocated from Howard Terminal. However, the DEIR concludes estimating the change in truck VMT would be speculative and therefore no estimate was completed. Since the primary method of assessing transportation-related environmental impacts is to quantify how the Project affects VMT, the DEIR should include a reasonable methodology for assessing how the closure of Howard Terminal will affect VMT. By omitting this element, the DEIR has not sufficiently quantified the full effect of the Project on VMT.

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O29-2-37 The intent of Table 15 was to illustrate the range of effectiveness for groups of strategies. The comment is correct in that if the high end of the ranges were summed there would likely be double counting of vehicle trip reduction estimates. In consideration of significant and unavoidable air quality impacts additional analyses of the effectiveness of the mitigation measure was conducted. See Consolidated Response 4.23, *Transportation and Parking Demand Management Plan and Transportation Management Plan Considerations*, for additional information regarding effectiveness.

O29-2-38 This comment requests clarification of the time period for trip generation data for the ballpark events. The data in Draft EIR Appendix TRA.2 Table 12, Table 13, and Table 14 are based on trips associated with a ballpark event as listed in Footnotes 1 and 2 of the tables. The trip generation is event-based because event start and end times vary.

O29-2-39 This comment expresses a desire to know what percentage attendee arrival/departure was assumed in the analysis. Ballpark event attendee arrival and departure characteristics by time would be influenced by many factors such as time of day, weekday versus weekend, weather conditions, attendee interest in the event, before and after event activities, type of event, and so on. The Draft EIR used arrival and departure patterns based on driveway counts for baseball games at the Coliseum. For the weekday ballpark event, it was assumed that the event ended at 3:30 p.m., with about 47 percent of the departures occurring before the end of the event, about 48 percent in the one hour after the event, and about 5 percent occurring more than one hour after. For the weekday evening game, it was assumed that the event started at 7:00 p.m., with about 18 percent arriving more than two hours prior to the event, about 22 percent arriving within one to two hours prior to the start, about 44 percent arriving within one hour of the start, and about 16 percent arriving after the event start.

O29-2-40 This comment expresses an opinion about the need to express vehicle trip reduction as numbers rather than as percentages.

Because the Project would host events of different sizes, the ranges of these reduction numbers would be so large as to be meaningless, and are therefore represented as percentages, which are more effective for comparing events of different sizes. The Draft EIR analysis is consistent with the performance standard of 20 percent vehicle trip reduction for both Mitigation Measure TRANS-1a (implement a Transportation Demand Management Plan for non-

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ballpark development) and Mitigation Measure TRANS-1b (implement a Transportation Management Plan for ballpark events). See Consolidated Response 4.23, *Transportation and Parking Demand Management Plan and Transportation Management Plan Considerations*, for additional information regarding effectiveness of measures.

O29-2-41 See Consolidated Response 4.5, *Truck Relocation*.

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O29-2-42 See Response to Comment O29-2-2.

O29-2-43 See Response to Comment O29-2-2.

O29-2-44 See Response to Comment O29-2-4.

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As noted in table 4.15-12, there are 1,534 truck trips per day that would be displaced. While some of these trips will be relocated within the Port or the former Oakland Army Base, some will move to locations outside of the seaport as acknowledged on Page 4.15-86 ("For those who prefer to use container depot facilities, where containers are stored for several days or more instead of overnight, they would likely need to find a location outside of the seaport"). Any locations outside of the seaport would be further from terminal operations causing an increase in VMT which has not been accounted for and disclosed in the EIR.

O29-2-42

- **VMT Significance Criteria for Retail.** For retail uses, the DEIR states on page 4.15-157 that retail greater than 80,000 square feet would cause a significant impact if there were a net increase in the VMT per service population. This is not consistent with page 19 of the TIRG, which states a retail project of any size will cause a significant impact if the project exceeds the existing regional VMT per employee minus 15 percent. The DEIR states that the VMT per service population metric was used because it is consistent with California Office of Planning and Research (OPR) guidance with footnote 20 on page 4.15-157 noting the OPR states "agencies should analyze the effects of a retail project by assessing the change in total VMT, because retail projects typically re-route travel from other destinations." As noted in this footnote, OPR recommends VMT for a retail project be assessed as the change in total VMT. VMT per service population is a different metric than total VMT and the OPR guidance¹ makes no mention of VMT per service population as a recommended metric for assessing retail projects. Therefore, the significance criteria used for retail is not consistent with the TIRG, or the guidance released by OPR in their technical advisory related to evaluating transportation impacts in CEQA.

O29-2-43

- **VMT Significance Criteria for Ballpark and Performance Venue.** For the ballpark and performance venue, the DEIR states that "a project would cause substantial additional VMT if it exceeds existing VMT per attendee minus 15 percent where existing VMT per attendee is measured from existing uses at the Coliseum." While this is a useful metric and threshold, it is not consistent with page 24 of the TIRG, which states for event centers and regional-serving entertainment venues that "a project would cause substantial additional VMT if it exceeds the existing regional VMT per retail employee minus 15 percent."

O29-2-44

- **Increase in VMT per Service Population for Retail Component.** The numbers presented in Table 4.15-33 indicate that the Project's retail component VMT per service population increases from 17.29 miles to 17.30 miles in 2020 and from 17.13 miles to 17.14 miles in 2040. However, the DEIR reports results to only one decimal place and concludes there is no significant impact because the VMT per service population to one decimal place does not change. Since the DEIR significance criteria states that "for retail projects greater than 80,000 square feet, a project would cause substantial additional VMT if it results in a net increase in citywide total VMT per service population, the DEIR has not disclosed a significant impact since there is a net increase in VMT per service population.

¹ "Technical Advisory on Evaluating Transportation Impacts in CEQA", December 2018, Governor's Office of Planning and Research

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O29-2-45

- **The Residential and Commercial VMT Analysis Screening Should Not Have Found the Project Screens Out based on Criterion #3.** Page 4.15-179 of the DEIR states the residential and commercial portions of the Project meet screening criterion #3. However, screening criterion #3 states a project must be within ½ mile of an existing major transit stop or an existing stop along a high-quality transit corridor. The Project is located more than a half mile from the closest BART station and the near-by ferry terminal does not qualify as a major transit stop under CEQA Section 21064.3 because it is not directly served by either bus or rail transit service (nearest bus stop is more than 1,000 feet from the terminal). The Project is also not located within a ½ mile if high quality transit corridor since CEQA Section 21064.3 requires the stop be an intersection of two or more major bus routes with a frequency of service of 15 minutes or less during commute periods. None of the bus stops within a ½ mile of the Project have two or more bus routes with a service frequency of 15 minutes or less. Finally, page 22 and 23 of the TIRG state four conditions where the presumption of less than significant impact near transit stations may not be appropriate. Page 4.15-179 of the DEIR states three of these conditions and whether they were satisfied or not but not the fourth. The fourth condition in the TIRG states "Has a retail component that is greater than 80,000 sf". This condition is not satisfied like the other three since there is more than 80,000 sf of retail proposed by the Project.

O29-2-46

- **VMT Baseline for Performance Venue.** For the ballpark and performance venue, the DEIR states that "a project would cause substantial additional VMT if it exceeds existing VMT per attendee minus 15 percent where existing VMT per attendee is measured from existing uses at the Coliseum." this metric and threshold is not consistent with page 24 of the TIRG, which states for event centers and regional-serving entertainment venues that "a project would cause substantial additional VMT if it exceeds the existing regional VMT per retail employee minus 15 percent."

O29-2-47

- **Performance Venue VMT was not Analyzed Consistent with the City's TIRG.** Per page 4.15-181, the baseline VMT calculation for the Project's performance venue used data from the Oakland Arena. this methodology is not consistent with the TIRG requirements for assessing event centers and regional-serving entertainment venues which states on page 24 of the TIRG that for event centers and regional-serving entertainment venues "a project would cause substantial additional VMT if it exceeds the existing regional VMT per retail employee minus 15 percent. Additionally, VMT per attendee analysis summarized in Table 4.15-34 incorporates mode split and geographic distribution shifts but this analysis cannot be verified due to the lack of intermediate data, calculations, and/or tables in this chapter and the appendices.

O29-2-48

- **Sidewalk Capacity and Pedestrian Demand.** Section 1.1.1 of Operations Analysis Memorandum included in DEIR Appendix TRA-03 identifies many intersections where the pedestrian activity from the ballpark will result in insufficient sidewalk space to accommodate all pedestrians. The memorandum recommends curb extensions at some locations if feasible. However, there is no analysis to demonstrate that the proposed solutions would be able to accommodate the pedestrian demand. If the pedestrian demand is too high to be accommodated on the sidewalks, pedestrians will begin walking in the streets, which poses a safety concern. The DEIR

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O29-2-45 The comment is correct in that the residential and office components of the Project do not meet VMT screening criterion #3 under the circumstances described in the comment. As stated in the comment, although the Project site is adjacent to the Oakland Ferry Terminal, it is not considered a major transit stop because the nearest bus stop is 1,000 feet from the ferry dock. Furthermore, not every residential and office parcel would be within 0.5 miles of an existing quality transit corridor. Bus Lines 72, 72M, and 72R provide 12 buses per hour to within 1,000 feet of the Project, but some of the designated residential and office parcels are beyond 0.5 miles from the existing bus stops; thus, Criterion #3 would not be met. The Draft EIR text has been revised in response to this comment. This revision does not change the Draft EIR conclusions or significance determination because the residential and office components of the Project would continue to meet Screening Criterion #2 as described on p. 4.15-178 of the Draft EIR and Criteria #3 was not relied upon in the Draft EIR analysis. Therefore, no recirculation of the Draft EIR is required pursuant to Section 15088.5(a), Recirculation of an EIR Prior to Certification.

Text Revision (p. 4.15-179)

The Project is located adjacent to the San Francisco Bay Ferry Terminal, within a one-mile area that includes the Lake Merritt, 12th Street, and West Oakland BART Stations, the Amtrak Rail Station, and within a 10- to 15-minute walk of 13 AC Transit bus routes serving downtown and beyond. Even with these available transit services, the Project would not qualify as having a major transit stop under CEQA Section 21064.3 because the site is not fully served within 0.5 miles by rail or bus transit service. The Project would not satisfy Criterion #3.

O29-2-46 See Response to Comment O29-2-2.

O29-2-47 See Response to Comment O29-2-2 and O29-2-23. The commenter is also referred to Draft EIR (Appendix TRA.2) Section 3.1.1 which establishes the existing Coliseum site travel behavior and Section 3.1.2 which establishes the Howard Terminal site travel behavior.

O29-2-48 This comment asks for more analysis of pedestrian level of service and pedestrian safety impacts of the Project. The commenter refers to Draft EIR Appendix TRA.3 Section 1.1.1, which describes additional infrastructure measures to consider in design development of the corridor improvements.

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These are additional considerations to implement to minimize the need for ongoing crowd control measures, but they are not requirements of the Project and so are separate from the improvements listed in Section 1.1. Draft EIR Appendix TRA.1 contains the draft Transportation Management Plan (TMP) and Chapter 11 of the plan describes pre- and post-event management for small (less than 9,000 attendees), medium (less than 17,500 attendees) and large (more than 17,500 attendees) events. Figure 11-4 in the draft TMP illustrates a potential strategy for managing people between large ballpark events (i.e., more than 17,500 attendees) and the adjacent neighborhoods. Each of the intersections listed in Section 1.1.1 would have traffic control officers (or other personnel acceptable to the City) to direct drivers and pedestrians through congested areas. Figure 11-1 and 11-2, respectively, illustrate potential strategies for managing people at small and medium sized events. Efficient pedestrian flows would be maintained within the sidewalk space, using a combination of blank-out turn restriction signs to restrict right- and left-turning traffic at heavily used pedestrian locations and traffic control officers when pedestrian volumes are higher to reinforce turn restrictions and efficiently move pedestrians and vehicular traffic through the corridors (Market Street, Martin Luther King Jr. Way, Washington Street, Broadway, and the railroad corridor). The draft TMP also includes traffic control officers to direct pedestrians from the West Oakland BART station toward 7th Street, rather than 3rd Street, to minimize potential conflicts between ballpark attendees and Port-related trucks using the Adeline Street Seaport access that crosses 3rd Street. The Traffic Control Officers (or other personnel acceptable to the City) to manage pre- and post-event attendees is a requirement of Mitigation Measure TRANS-1b, which would implement the TMP.

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O29-2-49 See Consolidated Response 4.7, *Parking*.

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has not fully quantified this potential safety impact or proposed feasible mitigation measures to correct it.

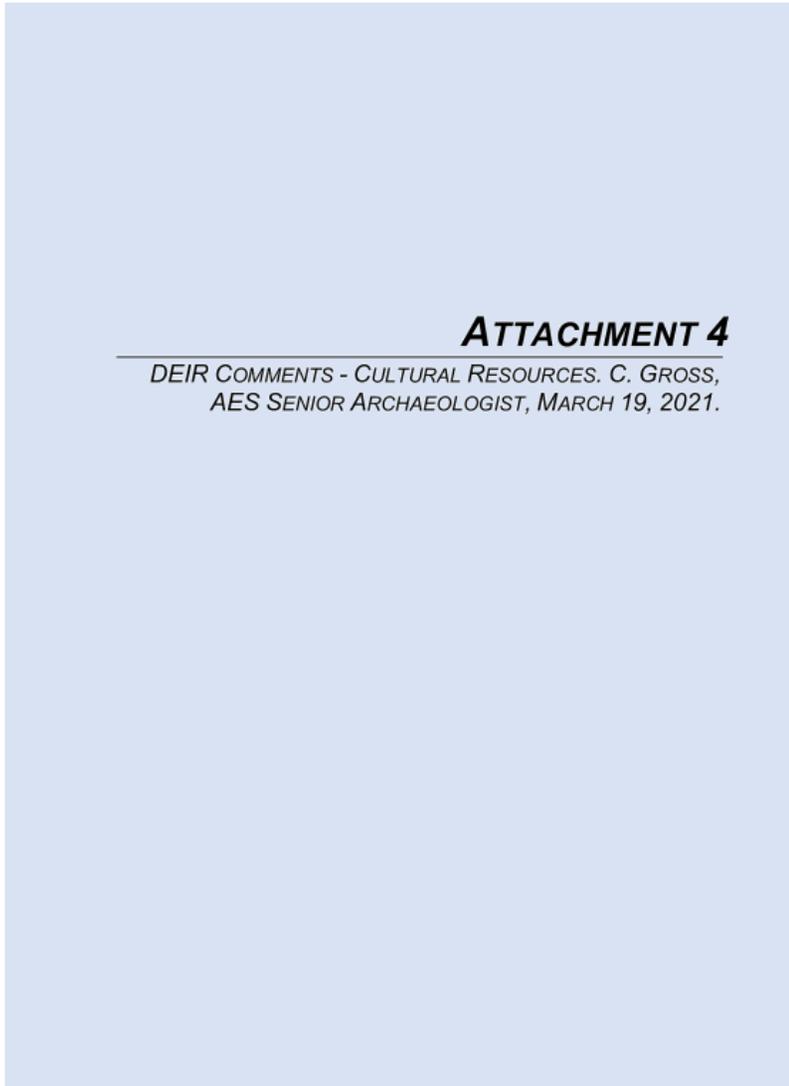
O29-2-49

- **Effects of Off-Site Parking.** Given the Project's low parking supply and the expectation that vehicles will be parked off-site in the study area, the DEIR has not adequately analyzed the impacts to pedestrians, bicycles, and other modes due to vehicles circulating and searching for parking.

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COMMENT

COMMENT



WATERFRONT BALLPARK DISTRICT AT HOWARD TERMINAL
DEIR COMMENTS - CULTURAL RESOURCES

PREPARED BY:	C. Gross, AES Senior Archaeologist
PROJECT:	Waterfront Ballpark District At Howard Terminal
SUBJECT:	DEIR Comments - Cultural Resources
DATE:	3/19/2021

INTRODUCTION

The City of Oakland (City) has prepared a Draft Environmental Impact Report (DEIR) for the Oakland Waterfront Ballpark District Project (Project) pursuant to the California Environmental Quality Act (CEQA) and State CEQA Guidelines. The Draft EIR has been prepared under Assembly Bill 734, which provides for streamlined review by the courts in the event a lawsuit is filed challenging the certification or adoption of the EIR, provided that the Project complies with certain conditions and is certified by the Governor.

The Project site consists of approximately 55 acres that comprise the Charles P. Howard Terminal (Howard Terminal) and adjacent areas within the Port of Oakland (Port) along the Inner Harbor of the Oakland-Alameda Estuary. Howard Terminal is owned by the City, and the adjacent properties that the Athletics Investment Group, LLC (Project sponsor) seeks to secure are owned by Dynegy Oakland, LLC, a Delaware limited liability company.

The proposed Project includes the following components:

- A new open-air waterfront multi-purpose Major League Baseball ballpark with a capacity of up to 35,000 persons;
- Mixed-use development including up to 3,000 residential units, up to 1.5 million square feet of office (which could include a range of commercial uses, such as general administrative and professional office, and life sciences/research), and up to approximately 270,000 square feet of retail uses;
- An approximately 50,000 square-foot indoor performance venue with capacity of up to 3,500 individuals;
- Up to approximately 280,000 square feet of hotel space including up to 400 rooms in one or more buildings and supportive conference facilities;
- A network of approximately 18.3 acres of privately owned, publicly accessible open spaces; and
- Approximately 8,900 total parking spaces at full Buildout.

Comments associated with the DEIR's assessment of impacts on cultural resources that could result from implementation of the Project are discussed below.

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O29-2-50 The comment identifies a number of historic resources including Crane X-422, the PG&E Station C Area of Primary Importance (API), and more specifically the Peaker Plant (601 Embarcadero), the Southern Pacific Railroad Industrial Landscape API, the USS *Potomac*, the Lightship *Relief*, the Remillard Brick Company, the Muller Brothers Pickle Factory API, the Wempe Brothers–Western Paper Box Company, and the proposed Jack London Maker District.

Those resources located on or within one block of the project site are included in the CEQA study area and discussed in detail in Draft EIR Appendix CUL.1 and Appendix CUL.2. These include Crane X-422, PG&E Station C including the Peaker Plant at 601 Embarcadero, the Southern Pacific Railroad Industrial Landscape API, the USS *Potomac*, and the Lightship *Relief*.

The Wempe Brothers–Western Paper Box Company (1155 5th Street) is located approximately four blocks and more than 500 feet from the closest point to the Project site, outside of the study area and immediately adjacent to an elevated section of Interstate 880 and elevated BART tracks. The Remillard Brick Company (590-592 2nd Street) is no longer considered a historic resource due to considerable alterations. Along with the Oakland Iron Works Machine and Blacksmith shop, it is noted in the Planning and Zoning Map as demolished (<https://oakgis.maps.arcgis.com/apps/webappviewer/index.html?id=3676148ea4924fc7b75e7350903c7224>). See Response to Comment H-1-11 for a more information on the consideration of adjacent historic resources with regards to CEQA.

The comment further discusses the proposed Jack London Maker District. As presented in Response to Comment H-1-11, the Jack London Maker District is not a historic resource for the purposes of CEQA and further discussion of it as such is not presented.

With regard to impacts on a potential historic district, the area between the Project site and Interstate 880 contains a number of historic resources, both individual and districts. As presented in Response to Comment O-27-76, there is not sufficient documentation to support consideration of the area as a historic district.

With regard to visual impacts, see Responses PG Comments I311-2-2 and O-27-76 for a discussion on the required CEQA thresholds that must be met for

DEIR COMMENTS - CULTURAL RESOURCES

IMPACTS TO CULTURAL RESOURCES

The Proposed Project would result in the redevelopment of portions of the Port of Oakland, which has been used for industrial and commercial purposes for over 100 years. The area maintains a historic industrial feeling characterized by older, low-scale, masonry commercial buildings, warehouses, and a section of Southern Pacific Railroad tracks lined with warehouses and shipping docks; many of the buildings in the area have been carefully preserved by adaptive reuse of the structures.

There are several significant cultural resources (i.e. resources listed on or eligible for listing on the California Register of Historical Resources [CRHR] and/or the National Register of Historic Places [NRHP]) located within and adjacent to the Howard Terminal (HT) site. These include: at least one of the container cranes along the waterfront; the Peaker Power Plant; the Southern Pacific Railroad corridor (SPRR) immediately adjacent to the HT property; the USS *Potomac* and Lightship *Relief*; the Remillard Brick Company; the Muller Brothers Pickle Factory; the Wempe Brothers – Western Paper Box Company; and the proposed Jack London Maker District, located two blocks north of the SPRR.

The proposed Jack London Maker District along 3rd Street between Brush and Clay streets includes three NRHP-listed properties, Union Iron Works, the Waterfront Warehouse Historic District, and the Wholesale Produce Market. Five Areas of Secondary Interest (ASI) are located nearby: Brett Harte Boardwalk; West Waterfront; Lower Broadway; 4th and Webster (one parcel); and the Jackson Warehouse. The Draft EIR for the Downtown Oakland Specific Plan (DOSP) EIR warns that the proposed Jack London Maker District appears to be subject to the most potential conflict and impairment or loss of designated historic resources due to the amount of proposed intensity increases as well as the number of development opportunities identified for the area.

The hallmark of all of these resources, with the possible exception of the two ships, is their visual continuity; the built environment exemplifies Oakland's early use as an important shipping port. The NRHP recognizes seven qualities of integrity that are usually all met when a resource is considered for NRHP eligibility. These are: location, design, setting, materials, workmanship, feeling, and association. The cultural resources that have been identified within the HT property and immediate vicinity retain these qualities of integrity. Under CEQA, integrity is the authenticity of a historical resource's physical identity evidenced by the survival of characteristics that existed during the resource's period of significance; again, these resources retain enough of their historic character and appearance to be recognizable as historical resources and to convey the reasons for their significance.

Of the resources listed above, the container cranes and Peaker Power Plant lie within areas that will be directly impacted by project construction unless the project is specifically designed to avoid them. The other resources will be affected by the visual changes created by construction of the Proposed Project.

Direct Impacts

Container Cranes

The Port of Oakland has played a significant role in the northern California shipping industry since the early 20th century, however it is the container shipping industry beginning in the mid-20th century that catapulted the Port of Oakland into the second largest container port in the world by 1969. Crane X-422 was originally installed in 1970, though not moved to HT until 1994. However, it is one of the earliest remaining examples of container cranes associated with the Port of Oakland and is the last remaining crane associated with the initial period of containerized shipping.

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impacts on historic resources. The historic resources that would potentially be affected by the proposed Project have been addressed in the Draft EIR. Impacts associated with potential development in the surrounding area are discussed in the DOSP EIR and are outside the scope of CEQA considerations required for the analysis of historic resources associated with this Project.

O29-2-51 Two evaluations of the cranes at Howard Terminal were completed for the Draft EIR to assess the potential for these structures to be considered as historic resources for the purposes of CEQA. The reports were completed by ESA (Draft EIR Appendix CUL.1) and Jacobs Engineering Group Inc. (Draft EIR Appendix CUL.2) and reached differing conclusions on this point. Out of an abundance of caution, Crane X-422 is considered a historic resource for the purposes of CEQA regardless of this relocation. The comment correctly summarizes the conservative analysis applied to the impacts related to Cranes X-415, X-416, X-417, and X-422.

While the Project design includes retention of the cranes on the Project site, there is a potential for Crane X-422 to be demolished as a result of implementation of the Maritime Reservation Scenario, or if safety feasibility studies conclude that the crane cannot be safely maintained in an inoperable state within a public space. It also correctly summarizes the Project description with relation to the cranes and their retention on the Project site.

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Current project planning would include demolition of all existing buildings and structures on the HT property with some exceptions. The four 200-foot high container cranes (Crane #s X-415, X-416, X-417, and X-422) may be retained or relocated "if feasible," however the EIR indicates that retention of the container cranes will ultimately be determined by a later assessment of whether such retention meets required safety standards to incorporate the cranes within a publicly accessible space and the feasibility of any required retrofitting or other safety measures. Crane # X-422 has been recommended eligible to the CRHR (DEIR Section 4.4; ESA, 2021).

Peaker Power Plant Variant

This variant to the Proposed Project would impact the PG&E Station C, two existing buildings constructed in several sections at various periods from 1888-1938. Beaux-Arts stylistic elements unify the exterior of the complex. 601 Embarcadero West, the building complex that would be impacted under this variant, is a U-shaped building with facades on Martin Luther King, Jr. Way, Embarcadero West and Jefferson Street. The brick buildings that form the west wing of the building were built in 1888-1889 and 1889-1890. The east wing is composed of two buildings constructed in 1912-1914 and 1928. The entire complex was united in 1938 with construction of the monumental section of the building on Embarcadero. The Peaker Power Plant Variant would convert the plant from jet fuel-powered turbines to battery storage and require modifications that would remove portions of the wings of the building and fuel tank, as well as development of a new building on the site of the fuel tank.

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The Peaker Power Plant is considered eligible for listing on the NRHP and therefore the CRHR (DEIR Section 4.4; ESA, 2021). Demolition of existing construction or removal would require adherence to the requirements listed in the Secretary of the Interior's Standards and Guidelines for the Treatment of Historic Properties.

The DEIR states that there will be Significant and Unavoidable Impacts attendant upon removal of Crane X-422, alterations to the PG&E Peaker Power Plant (if the Peaker Power Plant Variant is employed), and the Aerial Gondola Variant, which would cumulatively affect resources identified in the DOSP EIR through changes to the setting of the Old Oakland Area of Primary Importance. The DEIR fails to include an assessment of visual impacts to the Jack London Maker District, the NRHP-listed resources within it, or the nearby ASIs.

Visual Impacts

Aesthetic impacts to all of the cultural resources identified above would result from construction of a new baseball stadium, residential, entertainment, office, hotel, and retail spaces that would range from 50 to 600 feet high; these structures would dwarf any other structures or buildings in the area and entirely alter the visual character of the maritime industrial complex in and around the HT site, disrupting the integrity considerations enumerated above. Retention of one or more container cranes, clearly intended to make a minimal effort to retain historic flavor, would not mitigate the wholesale visual changes to the area.

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To avoid this issue entirely, the DEIR cites PRC Section 21099(d) which states that aesthetic impacts of a residential, mixed-use residential, or employment center project on an infill site located within a transit priority area is not considered a significant impact on the environment. Transit priority area, as defined at PRC Section 21099(a)(7) means an area within 0.5 miles of a major transit stop that is existing or planned, if the planned stop is scheduled to be completed within the planning horizon included in a Transportation Improvement Program. The above rationale is used to justify an Aesthetics section in the

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O29-2-52 The comment summarizes the impacts analysis in the Draft EIR, including the Project, the Peaker Plant Variant, and the Aerial Gondola Variant. It then states that the Draft EIR did not include an assessment of visual impacts on the proposed Jack London Maker District, the National Register of Historic Places-listed resources within it, or the nearby ASIs. The proposed Jack London Maker District is not a historic resource and is located outside of the study area for the Project. For a specific discussion regarding the status of the Jack London Maker District and individual historic resources in and around this area, see Response to Comment H-1-11. For a discussion regarding the consideration of visual impacts on historic resources, see Responses to Comments H-1-11, I311-2-2, and O-27-76.

O29-2-53 Aesthetic impacts are discussed in Draft EIR Section 4.1, *Aesthetics, Shadow, and Wind*. With regard to impacts on historic resources as a result of increased density associated with the Project, none of the historic resources located outside of the Project site but within the study area derive their significance from current visual appearance of the neighborhood in general, nor are their historical significances derived from visual connectivity to the waterfront. The Southern Pacific Railroad Landscape District has an important visual and physical connectivity to the railroad tracks, which would not be altered by the Project. See Responses to Comments H-1-11, I311-2-2, and O-27-76 for additional discussion regarding CEQA and aesthetic impacts on historic resources.

With regard to retention of Crane X-422, the baseline design of the Project includes retention of all four cranes. This retention is not intended to serve as mitigation for increased density of development included in the Project. However, their retention does provide a measure of continuity between the historic uses of the site as a shipping terminal, and more specifically as a container shipping terminal, and future development for recreation, residential, and commercial uses.

O29-2-54 Potential impacts to historic resources are appropriately evaluated in the Draft EIR by considering whether they would experience physical harm or whether changes in the vicinity of the historic resources would somehow alter character-defining features of the resource(s) such that the significance of the historic resource would be materially impaired. (See Draft EIR p. 4.4-21.) As a result, the consideration of visual changes to historic resources is resource-specific inquiry and unrelated to PRC Section 21099(d) and the assessment of

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aesthetic impacts. In other words, visual changes in the vicinity of an historic resource would be considered a significant impact on the resource only if the resource's significance is dependent on the existing setting or some particular aspect of the setting that would be altered. City records provide an explanation as to why each resource was designated or determined to be significant, and provides the data to support this analysis. The relationship of the SPRR API to the railroad corridor is one example described in the Draft EIR (Draft EIR p. 4.4-24).

With respect to the Draft EIR's analysis of aesthetic impacts, as explained on Draft EIR p. 4.1-1, accordance with CEQA Section 21099(d), added by Senate Bill 743 (2103), aesthetic impacts of a mixed-use project that includes residential uses and is on an infill site within a transit priority area "shall not be considered significant impacts on the environment." Accordingly, aesthetics is not considered in identifying the Project's significant environmental effects because it meets the applicable criteria in Section 20199(d), because the Project is in a transit priority area, is on an infill site, and is residential, mixed-use residential, or an employment center. Thus, the EIR does not consider aesthetics in determining the significance of Project impacts under CEQA. Nevertheless, the Draft EIR includes information about aesthetics for informational purposes. This is a separate analysis from the evaluation of effects on historic resources, which, as noted above, is dependent on whether the significance of the historic resource would be materially impaired.

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O29-2-54 DEIR that is provided for “informational” purposes only, rather than completing a rigorous analysis of visual impacts resulting from project construction. The Aesthetics section of the DEIR acknowledges the visual evidence of maritime industrial use, including the historic ships and buildings, open skyline, and cranes, but is focused almost exclusively on larger setting elements and does not analyze the impacts on the views to and from most NRHP and CRHR-eligible resources, including the SPRR; the Jack London Maker District, the Waterfront Warehouse Historic District; the Wholesale Produce Market; Oakland Iron Works; Remillard Brick Company; Muller Brothers Pickle Factory; or the Wempe Brothers – Western Paper Box Company sites.

O29-2-55 The DEIR does include an assessment of visual impacts to *cultural resources*, but focuses exclusively on:
The USS Potomac and the Lightship Relief – These impacts are assessed as less than significant since there will not be major changes to the dockside setting.

O29-2-56 The historic setting of the Southern Pacific Railroad Industrial Landscape – These impacts are assessed as less than significant since someone in the street can lower their viewpoint and limit it to just the railroad tracks and associated buildings. The DEIR does note that the cranes and entire landscape are currently visible and that all landscape elements outside the immediate railroad facilities will be cut off by construction of the Proposed Project. The DEIR restricts the impact analysis to direct effects on the architecture without placing any significance on the loss of visual context or continuity that will be lost to projected construction.

O29-2-57 Crane Removal – The DEIR states a preference for retention of the cranes, or at least Crane X-422 if feasible, however makes it clear that cultural resource reports conflict regarding the CRHR eligibility of Crane X-422, and while indicating a possible finding of Significant and Unavoidable if Crane X-422 is eligible and demolished, also indicates that changing the finding to not CRHR-eligible would result in a finding of less than significant if the crane is demolished. The DEIR fails to mention that the full project buildout could place one or more of the cranes against a completely modern backdrop with no visual connection to anything retaining historic associations, creating a visually jarring note.

O29-2-58 **Summary and Avenues of Discussion**
The Cultural Resources (and Aesthetics) sections of the DEIR acknowledge some, but not all, visual impacts related to the buildout of the Proposed Projects. However, any discussion of visual impacts to cultural resources is limited to the immediate environment (cranes, Peaker Power Plant, SPRR) and does not include analyses of local, state, and federal register listed or eligible resources immediately beyond the HT site. If they were, it can be presumed that the same argument applied to the SPRR, i.e. that there will be no visual changes at street level, would be applied to these slightly more distant resources. However, the NEPA and CEQA integrity criteria that contribute to these resources’ eligibility would be diminished by construction of a massive, modern complex that completely clashes with the established and clearly visible history of the area. Regardless of the DEIR’s implied suggestion that nothing will change if you keep your eyes down, it will be impossible to ignore the monumental architecture proposed for the HT site.

The general integrity represented by the large number of resources related to the history of shipping in the region would seem to indicate that a larger National Register Landscape District could be established that would include all of the resources discussed here. The establishment of such a district would be in keeping with the Historic Preservation Element of the Oakland General Plan, DOSP, and other local

O29-2-55 The comment states that the Draft EIR includes an assessment of visual impacts for only the USS *Potomac* and the Lightship *Relief*. The Draft EIR discusses aesthetic and visual impacts for a variety of historic resources both on the Project site and in the larger study area. These are presented in the analysis for the Project under Impact CUL-1 with regard to the two ships mentioned by the comment, Impact CUL-2 with regard to the Southern Pacific Railroad Industrial Landscape API, and Impact CUL-4 with regard to Crane X-422. For the Project plus the Peaker Plant Variant, the Draft EIR addresses views and setting as part of Impact CUL-9 with regard to the PG&E Station C API. For the Project plus the Aerial Gondola Variant, the Draft EIR addresses views and setting as part of Impact CUL-10 with regard to the Old Oakland API, Impact CUL-11 with regard to 480 4th Street, Impact CUL-12 with regard to the West Waterfront ASI, Impact CUL-13 with regard to the Western Pacific Railroad Depot, and as part of Impact CUL-4.CU for cumulative changes of the Project, Gondola Variant, and implementation of the DOSP. See Responses to Comments H-1-11, I311-2-2, and O-27-76 for additional discussion regarding CEQA and aesthetic impacts on historic resources.

O29-2-56 The significance of the Southern Pacific Railroad Industrial Landscape API includes the proximity of its contributors to each other, their shared proximity to the railroad tracks, and views through the API along the railroad tracks. The views through the district and from one contributor to another are character-defining features of the resources. Views outside of the API to elements that are not contributors to, or included within the API are not considered character-defining. Therefore, changes outside of the district as a result of the Project would not “materially impair” the historic resource and their impacts would be less than significant. See Response to Comment I311-2-2 for more discussion regarding the Southern Pacific Railroad API.

O29-2-57 The comment correctly notes that the Project includes retention of Crane X-422, and that if it were removed from the Project site, the impact would be significant and unavoidable. However, the comment erroneously states that the Draft EIR does not include a discussion of the full Project buildout and the introduction of modern buildings and infrastructure adjacent to Crane X-422.

In the impacts discussion for Impact CUL-4, the historic setting for the crane is analyzed. The Draft EIR describes the setting for the cranes as “comprised of direct access to the shipping channel and a maritime location where it was taller than most of the buildings or structures in its immediate vicinity...”

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ordinances. A higher level of documentation and analysis of changes generated by the Proposed Project should be conducted.

Reference:

ESA, 2021. Appendix CUL, Cultural Resources Supporting Information.

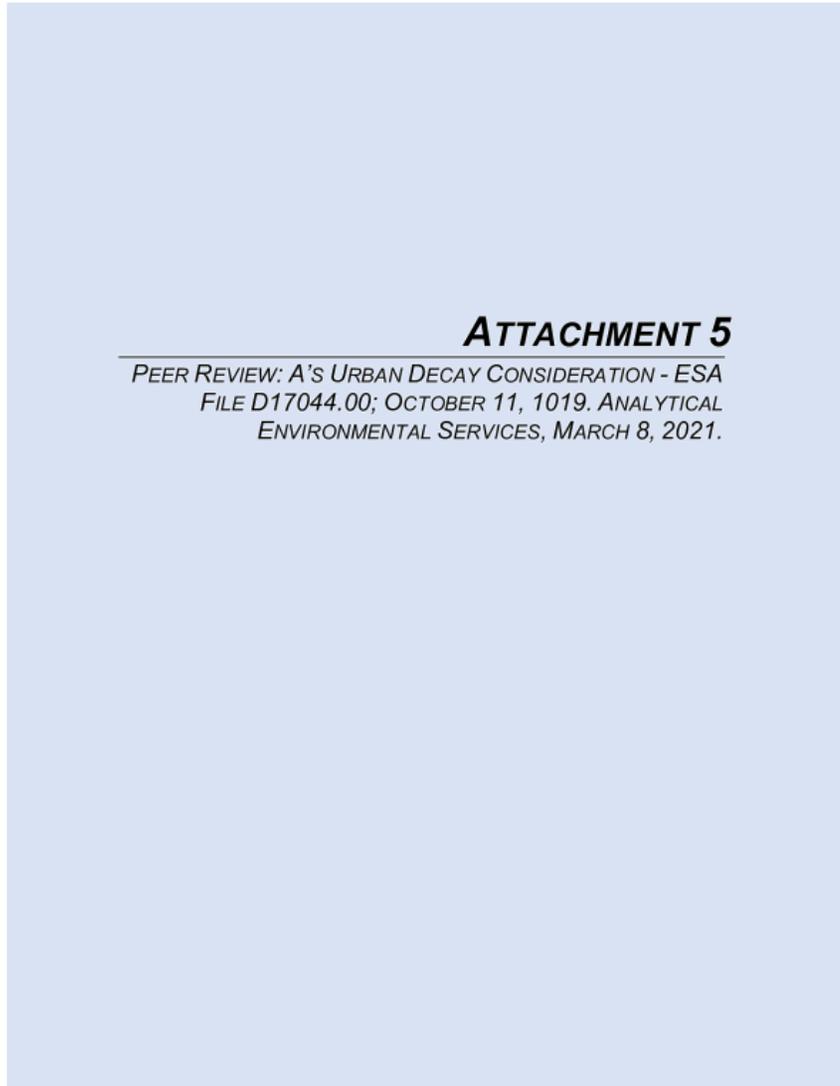
(Draft EIR p. 4.4-25). The analysis breaks down the analysis by consideration of views of the cranes from both the landside (looking west) and from the shoreline and water (looking south from Jack London Square and east from Alameda and the estuary). This analysis concludes that while the landside setting would be altered through increased bulk and density, the waterside setting would remain intact. Because the cranes derive their historical significance from their relationship with a working waterfront and access to container ships, and not from the physical features of the landside areas that were historically used for container storage, the impacts on the crane as a result of the Project would be less than significant.

O29-2-58 The comment addresses the assessment of aesthetics and impacts on historic resources as a result of increased density of development with the Project. It reiterates points made by several other reviewers. See Responses to Comments H-1-11 and O-27-76 for additional discussion regarding consideration of adjacent historic resources. See Responses to Comments H-1-11, I311-2-2, and O-27-76 for additional discussion regarding CEQA and aesthetic impacts on historic resources.

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O29-2-59 This is a general comment that includes introductory remarks and serves to introduce the more specific comments that are responded to in detail below. As a result, no specific response is provided here.

O29-2-60 See Consolidated Response 4.15, *Urban Decay*.



MEMORANDUM

Date: March 8, 2021
 To: The Files
 From: John Gifford LLB, John Fox
 Re: Peer Review: *A's Urban Decay Consideration* - ESA File D17044.00; October 11, 2019

The subject memorandum (ESA Memo) dated October 11, 2019 was written by Environmental Science Associates (ESA) in support of the February 2021 Draft Environmental Impact Report (DEIR) for the *Waterfront Ballpark at Howard Terminal* project (proposed Project). The ESA Memo, which is referenced in Section 7.3 and 7.4 of the DEIR, analyzed the potential for urban decay to occur resulting from the departure of the Oakland A's (A's) Baseball Team from the current Oakland Coliseum site and relocation to Howard Terminal (proposed Project). The ESA Memo is cited in the DEIR.

ESA's approach was to determine whether there was "sufficient evidence" to conclude that urban decay would result from the proposed Project. The conclusion of the ESA Memo is that "...urban decay is not a reasonably foreseeable consequence, and the impact is less than significant". To establish its conclusion, ESA:

1. Surveyed various local businesses as to the amount of revenue received as a direct result of A's games.
2. Reviewed the Coliseum Area Specific Plan (CASP) in relation to redevelopment.
3. Appealed to CEQA Guidelines definitions of "Urban Decay" with selected citations from *Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1204.

AES has reviewed the ESA Memo and the related analyses and conclusions. The following is a summary of our review.

A. Impact on Businesses

The ESA Memo analyzed three types of businesses: hotels, game-day vendors, and other.

1. Survey participants not specified – The documentation as to the businesses surveyed was not specific regarding which businesses were interviewed and why. It states, "A number of businesses" were contacted. We do not know how many. We don't know the process, questions or other protocols. ESA noted that, of those businesses contacted, some were "non-responsive to repeated requests to provide information while others declined to be queried." How many? What was the actual sample size?

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2. Few retail businesses were included in survey - Businesses that answered that their business would not be impacted were "primarily in the industrial category". It should be noted that the primary socioeconomic impacts of the departure of the A's from the existing Coliseum would likely fall on surrounding retail businesses. The survey's emphasis on industrial businesses does not seem that relevant, given that industrial business would be the least affected by the relocation. It appears that only one restaurant was included in the survey.

O29-2-61 See Consolidated Response 4.15, *Urban Decay*.

O29-2-62

3. Survey results are not reliable - As to surveys of this type, the California Court of Appeals noted that informal surveys of this kind are little more than anecdotal evidence where the nature of the survey is not explained, including the manner in which participants were selected, the proportion of businesses participating, and the number responding that there would be no effect on their businesses.¹ Thus, it would be speculative to rely on the data from this informal survey to support a finding of no likelihood of urban decay.

O29-2-62 See Consolidated Response 4.15, *Urban Decay*.

O29-2-63 See Consolidated Response 4.15, *Urban Decay*.

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4. Lack of objective and quantified impacts - Very importantly, there exists a specific and well-established method for calculating the effects of projects on local businesses. This technique involves an analysis of local business by major type (e.g., industrial, hospitality, retail and office) including an estimate of their "baselines" patronage or revenue. Estimates are made regarding the amount of baseline patronage/revenue that is attributable to those persons who patronize the Coliseum / Oakland Arena site, usually by preparing a "gravity" model. This yields the revenue or patronage "loss" that would occur from the proposed Project. This is the standard method of quantifying a project's impacts on local businesses. The ESA Memo includes no quantifiable analysis of any type. For this reason alone, the ESA Memo does not properly analyze impacts on local businesses or urban decay.

O29-2-64 See Consolidated Response 4.15, *Urban Decay*.

O29-2-65 See Consolidated Response 4.15, *Urban Decay*.

O29-2-66 See Consolidated Response 4.15, *Urban Decay*.

O29-2-67 See Consolidated Response 4.15, *Urban Decay*.

O29-2-64

5. Assumptions - The ESA Memo makes a number of assumptions, including:
a. The decrease in business would not be severe enough to cause closure. The assumption does not consider peak business days when teams are using the facilities. It is just as likely that peak sales sustain businesses through slower non-event periods. Without the peak sales, business could fail.

O29-2-65

b. Development around the Coliseum is not dependent on use of the facility. The survey cites industrial areas surrounding the venue as having no bearing on development or uses. It states that the Coliseum complex location "does not facilitate the Coliseum's integration into the adjacent area." Then why is there a Coliseum Area Specific Plan which does, in fact, integrate the surrounding areas?

O29-2-66

c. No deterioration of the area would occur because the Coliseum is relatively seldom used, fenced, and patrolled. This assumption is speculative and not relevant. Extended non-use of the Coliseum will have a significant impact on area businesses regardless of whether the venue remains fenced and patrolled. It is urban decay in the surrounding area that is of concern.

O29-2-67

d. Survey data does not appear to account for loss of the Raiders and Warriors revenue. The ESA Memo does state that it evaluates cumulative effects of the departure of all three sports teams (Raiders, Warriors and Oakland A's) from the existing Coliseum / Oakland Arena site. However, in most of the text of the ESA Memo and related

¹ *Placerville Historic Preservation League v. Judicial Council of California* (2017) 16 Cal. App. 5th 187

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O29-2-68 See Consolidated Response 4.15, *Urban Decay*.

O29-2-69 See Consolidated Response 4.15, *Urban Decay*.

O29-2-70 See Consolidated Response 4.15, *Urban Decay*.

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business survey, the relocation of the A's is repeatedly mentioned. Neither the relocation of the Raiders or Warriors is substantively analyzed in either the memo or the related business survey. For example, the ESA Memo is titled *A's Urban Decay Consideration*. According to an AES search in the pdf document, the word A's appears 62 times in the ESA Memo. The word "Raiders" appears 10 times and the word "Warriors" appears 7 times. Also, of the five survey results anecdotally mentioned in the business survey section of the ESA Memo, only 2 appear to relate to cumulative results. The other three survey results only focus on impacts from the A's departure.

O29-2-68

e. The ESA Memo references a report prepared by ALH Economics. Because the substantive elements of the ESA Memo appear to have been prepared by ALH Economics, the ALH Economics report should be provided so that readers of the DEIR can better understand the survey methods, and the extent to which the ESA Memo does or does not analyze cumulative effects. Please also see additional discussion below regarding cumulative impacts.

O29-2-69

The ESA Memo summary states, "[T]he ability of businesses to alter their operational practices, such as amount and mix of staff, will likely enable them to weather and adjust to changing patterns of demand associated with the cessation of major league sports events at the Coliseum complex." This is a speculative conclusion, supported only by anecdotal evidence with a small sample size. The survey is not rigorous.

Coliseum Area Specific Plan

O29-2-70

Regarding the CASP, the ESA Memo states, "The greatest potential cumulative urban decay-related risk involves the disposition of the Coliseum itself and Oakland Arena. If the buildings become difficult to support in the absence of sporting events, then a potential result could include facility closure." The ESA Memo goes on to cite the CASP as the remedy for potential urban decay. However, the memo mischaracterizes the CASP and its effects on the local businesses. The CASP is not a specific or even a general development proposal. Rather, the CASP is a planning document developed by the City of Oakland to facilitate the orderly development of the area. The City of Sacramento provides an informative definition of what a specific plan is:

"A Specific Plan is a comprehensive planning and zoning document for a defined geographic region of the City. It implements the General Plan by providing a special set of development standards applied to a particular geographic area."²

In other words, there are no proposals to redevelop the existing site of the Oakland Coliseum and the Oakland Arena. Furthermore, a review of the CASP, which was created in 2015, indicates that some of its elements are obsolete. For example, the CASP lists 6 Goals and Objectives, the first of which is:

"Goal 1 Retain Oakland's sports teams, and maximize the economic benefit of the sports teams and their facilities for Oakland and Alameda County."³

² Source: City of Sacramento website, available online at: <https://www.cityofsacramento.org/Community-Development/Planning/Long-Range/Specific-Plans>. Accessed March 5, 2021.

³ Source: City of Oakland website, available at: <http://www2.oaklandnet.com/oakca1/groups/ceda/documents/report/oak053757.pdf> Accessed March 5, 2021.

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O29-2-71 See Consolidated Response 4.15, *Urban Decay*.

O29-2-72 See Consolidated Response 4.15, *Urban Decay*.

O29-2-73 See Consolidated Response 4.15, *Urban Decay*.

O29-2-70

Thus, the CASP preferred a redevelopment of the existing Coliseum site and the surrounding neighborhoods, based on retaining the 3 major sports teams. It is the case that the CASP also included redevelopment options in the event that one or more the three sports franchises would not be retained. Thus, the CASP contains two other scenarios, in the event that all three sports teams cannot be retained at the existing site. These are: 2). retention of only one sports franchise, and 3). retention of zero sports team franchises. In summary the CASP represents a typical "specific plan" and is not at all similar to a development proposal with a specific design and timeline. Thus, the ESA Memo does not describe how the CASP would mitigate urban decay during the interim period between loss of the teams and development of the site. Indeed, the timing of the CASP anticipates a 20 to 25-year window, under the assumption that the planning process commences in earnest in the near future.

O29-2-71

Second, many other stadium relocation projects include the redevelopment of the existing site as part of their definition of "proposed project." In other cases, the redevelopment of the existing site is a reasonably foreseeable outcome, even though it is not part of the "proposed project." For example, as part of the recent relocation of the 49ers sports franchise from Candlestick Park to the City of Santa Clara, an EIR was prepared regarding the environmental impacts at the new site. The 49ers Santa Clara Stadium Final EIR was completed in November 2009⁴ and was approved by the City of Santa Clara in December 2009. In parallel, an EIR was prepared for the specific redevelopment plan at the existing Candlestick Park site. Specifically, the Candlestick Point – Hunters Point Shipyard Phase II Project Final EIR was approved in July of 2010.⁵ Two separate EIRs were prepared presumably because the existing site is located in the City and County of San Francisco, and the new site is located in the City of Santa Clara (Santa Clara County). Regardless, the environmental impacts on the existing Candlestick Park were reasonably foreseeable, and thus could be analyzed, because of the existence of a redevelopment plan, which was analyzed in the Candlestick Point – Hunters Point Shipyard Phase II Project Final EIR.

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Finally, almost two-thirds (535 acres) of the CASP is publicly owned.⁶ There is no current agreement as to which scenario is preferred, and there are no current plans to finance the project by either public or private means. This is likely to complicate any future development proposals. For these reasons, the feasibility and timing of redevelopment of the existing Coliseum site is currently speculative because a specific redevelopment plan is not reasonably foreseeable.

B. Cumulative Impacts Were Not Analyzed, Nor Quantified

O29-2-73

The ESA Memo does not address cumulative impacts to local businesses. Both the Raiders and the Warriors have vacated the existing Coliseum / Oakland Arena site in the past three years. Environmental impacts should be analyzed in relation to a "baseline" that includes the presence of both the Raiders and Warriors at the existing Coliseum / Oakland Arena site because urban decay occurs over time, and not immediately upon the occurrence of a single event such as the A's relocation. Thus, the environmental effects, at least insofar as such effects at the existing Coliseum / Oakland Arena site, should have been considered in a cumulative fashion. As

⁴ Source: City of Santa Clara website, available online at <https://www.santaclaraca.gov/Home/ShowDocument?id=12789>, Accessed March 5, 2021.

⁵ Source: City and County of San Francisco website, available online at <https://sfocia.org/process>, Accessed March 5, 2021.

⁶ Coliseum Area SP DEIR, Pg 4.9-6

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described above, the ESA Memo does touch upon cumulative effects, but appears to be a cosmetic mention and not a substantive analysis. For these reasons, the DEIS should properly analyze cumulative effects of all three sports teams vacating the current site, as required by CEQA.

C. Conclusions

O29-2-74

1. The survey of businesses forms the primary basis by which the memo concludes that departure of the A's will result in a less than significant impact to the local economy and thus preclude urban decay. However, the survey was, by definition, only anecdotal. Consequently, conclusions that rely on the survey are unreliable including its finding of less than significant impacts. An industry standard exists for estimating the revenue and patronage effects on local businesses and urban decay. This industry standard generates a quantified estimate of the effects (e.g., 20% decline in business, 30% decline, etc.). The ESA Memo did not utilize the industry standard, and thus is completely inadequate.

O29-2-75

2. The ESA Memo's analysis of impacts does not consider revenue generated during peak game events. It assumes that because these dates are relatively few that the effects are relatively insignificant.

O29-2-76

3. The ESA memo relies on the CASP to mitigate the loss of game-based revenue. It assumes that the CASP will be forthcoming and effective in covering losses by local business and does not factor in the 20 to 25-year timeline. Further, the CASP preferred a redevelopment of the existing Coliseum site and the surrounding neighborhoods, based on retaining the 3 major sports teams.

O29-2-77

4. CEQA requires cumulative impacts to be analyzed. Neither the DEIR or ESA Memo evaluate the cumulative urban decay impacts of all three local sports teams (i.e., Raiders, Warriors and Oakland A's) vacating the existing Coliseum / Oakland Arena site.

O29-2-74 See Consolidated Response 4.15, *Urban Decay*.

O29-2-75 See Consolidated Response 4.15, *Urban Decay*.

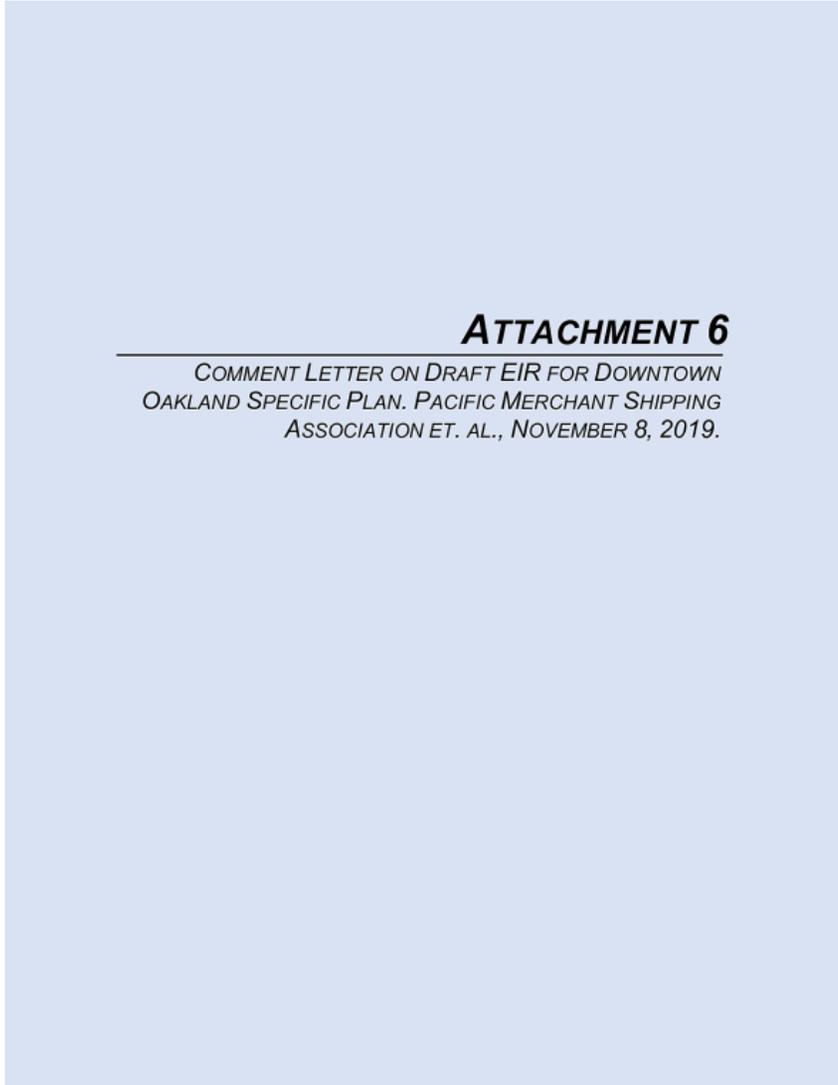
O29-2-76 See Consolidated Response 4.15, *Urban Decay*.

O29-2-77 See Consolidated Response 4.15, *Urban Decay*.

O29-3 East Oakland Stadium Alliance, by AES (Part 4)

COMMENT

RESPONSE



O29-3-1 The attachment containing the Pacific Merchant Shipping Association’s comment letter on the Draft EIR for the Downtown Oakland Specific Plan, a different project and EIR than the proposed Project and its Draft EIR, is noted. This comment raises neither significant environmental issues nor specific questions about the analyses or information on the proposed Project in the Draft EIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Project.

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COMMENT

COMMENT

November 8, 2019

Peterson Vollmann, Planner IV
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Submitted Electronically at plandowntownoakland@oaklandca.gov

Re: Comment Letter on Draft EIR for Downtown Oakland Specific Plan

Dear Mr. Vollmann:

I. Introduction.

These comments are submitted on the draft environmental impact report ("DEIR") for the proposed Downtown Oakland Specific Plan ("DTOSP") by the undersigned parties who are concerned about the DEIR's insufficient analysis of the adverse environmental impacts of allowing significant new residential and mixed use development in close proximity to waterfront industrial uses and transportation systems in and near the Port of Oakland ("Port"). These comments focus on proposed land use changes in the 16-block area west of Jack London Square,¹ including changes under the DTOSP's base proposal for future land uses in this area ("Base Case"), as well as those associated with the Howard Terminal ("HT") Option² and the related Howard Terminal Waterfront Ballpark District for a new baseball complex and residential, commercial and office uses on the Howard Terminal site immediately across the Embarcadero ("HT Mixed-Use Project").

Under the Base Case scenario, the DTOSP would allow significant new residential and mixed-use development in 8 of the 16 blocks where today almost no residential use is permitted or exists, creating inevitable land use conflicts and related environmental impacts.³ The Base Case would introduce high-intensity mid-rise housing into a critical buffer zone area which currently serves to protect both Port-related industrial activities and sensitive receptors by separating residential land uses from Port industrial uses that are permitted and encouraged under long-standing plans and policies. As described herein, the significant environmental effects associated with allowing such large-scale, encroaching residential development are neither analyzed nor mitigated in the DEIR for the Base Case scenario.

Under the HT Option, these adverse impacts would be greatly exacerbated. The HT Option would open up all 16 blocks of the current buffer zone area to residential development, while also significantly impacting the form and character of the historic area west of Jack London Square.⁴

¹ See DEIR, p. 46, Fig. III-5 (area bounded by the Embarcadero, Clay, Fifth and Brush Streets).

² DEIR, pp. 45, 49, 83 (discussing the HT Option).

³ DEIR, p. 47.

⁴ DEIR, p. 45.

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Both the DTOSP and the DEIR fail to provide specific information on the level of development allowed under either the Base Case or the HT Option. However, a closer look at both scenarios shows that massive new development would be permitted in this area.⁵ For example, expert consulting firm AES has calculated that the Base Case development could reach almost 7,000 new units with over 13,000 new residents,⁶ and the HT Option development could exceed 12,000 new units and over 23,000 new residents in this limited area.⁷ This significant new development -- when coupled with the 4,000 new residential units proposed with the HT Mixed-Use Project⁸ -- would allow over 16,000 new units and almost 31,000 new residents in the area.⁹

The DEIR fails to provide any detail regarding this massive potential increase in residential and office development intensity. It is not quantified in the DEIR, nor are its significant impacts or environmental implications sufficiently addressed. The proposed levels of development under both scenarios would result in numerous adverse effects, including land use conflicts, inconsistency with existing plans, traffic congestion and circulation hazards, public safety impacts, exposure of sensitive receptors to potentially hazardous air quality conditions, and others that are not sufficiently covered in the DEIR. Some of these impacts, such as those associated with increased parking demand, would occur not only within the immediate area, but elsewhere within the larger DTOSP boundaries.

In addition, the DEIR fails to address the potential problems that would be caused by eliminating a vital industrial buffer zone for the Port of Oakland and the industrial businesses located there. It completely ignores numerous comments submitted during the scoping process that the DEIR should include an alternative to retain existing land use designations and restrict residential development in this area.¹⁰

To redress the deficiencies outlined in these comments, the City should modify the DTOSP and withdraw the current DEIR for revision and recirculation. The City should modify the DTOSP to more accurately reflect existing conditions, eliminate both the Base Case and the HT Option for the subject 16-block area, and maintain the current limits on residential uses within that area. The City should revise and recirculate the DEIR in order to comply with CEQA and the CEQA Guidelines in light of these comments before giving consideration to the DTOSP itself.

⁵ See Analytical Environmental Services ("AES") Memorandum, November 8, 2019, *DTOSP Existing and Proposed General Plan Designations* ("AES Report"), p. 2, enclosed herewith as Ex. A. AES is an expert consulting firm with extensive experience in EIR preparation and analyses.

⁶ AES Report, p. 2, Table 3.

⁷ AES Report, p. 3, Table 4.

⁸ See DEIR, p. 127, Table V.A-4.

⁹ AES Report, p. 4, Table 6.

¹⁰ The DEIR acknowledges receipt of scoping comments concerned with "housing on the 3rd Street corridor; it is too close to industrial uses," and with interference with the flow of industrial traffic on the 3rd Street designated heavy truck route, pedestrian safety issues, and negative "impacts on industrial freight and rail movement." See DEIR, p. 14. However, these comments are erroneously dismissed as "non-CEQA" comments on the DTOSP's merits that need not be addressed in the DEIR. *Id.*, p. 13. On the contrary, as discussed in this comment letter, these are environmental issues properly considered under the California Environmental Quality Act ("CEQA"), Pub. Res. Code § 21,000 et seq., and the State CEQA Guidelines ("CEQA Guidelines"), 15 Cal. Code Regs ("CCR") § 15,000 et seq.

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II. Interests of Commenting Parties.

The parties submitting this letter represent a large and diverse group with significant interests in ensuring the continued success and vitality of the Port's maritime-related industrial uses, including transportation and union-related interests. The signatories here in connection with their work and facilities at the Oakland Seaport contribute significantly to the economy and institutions in the City in a myriad of ways.

The signatories include the AMERICAN WATERWAYS OPERATORS, the CALIFORNIA TRUCKING ASSOCIATION, the CUSTOMS BROKERS & FORWARDERS ASSOCIATION OF NORTHERN CALIFORNIA, DEVINE INTERMODAL, GSC LOGISTICS, the HARBOR TRUCKING ASSOCIATION, INTERNATIONAL LONGSHORE & WAREHOUSE UNION – LOCAL 10, INLANDBOATMEN'S UNION, MARITIME DIVISION – ILWU, the PACIFIC MERCHANT SHIPPING ASSOCIATION, QUIK PICK EXPRESS, LLC, SCHNITZER STEEL, INC., SSA MARINE, the TRANSPORTATION INSTITUTE, and UNION PACIFIC RAILROAD.

The signatories here represent the marine terminal operators, ocean carriers, and tug and harborcraft which are the maritime industry service providers at, near, and in the Port of Oakland, the motor carriers and primary rail carrier which transport intermodal containers to and from the businesses at and near the Port of Oakland, the longshore and on-water unions which represent the overwhelming majority of waterfront labor at the Port of Oakland, and the brokers and forwarders which represent the cargo interests whose products are moved through the Port of Oakland.

Each of the signatories has a significant business interest in the development of the Downtown Oakland Specific Plan, operates within or transports within or operates or transports cargo contiguous to or in relation to the Downtown Oakland Specific Plan. The signatories represent the majority of the transportation providers necessary to facilitate the local, regional and State-wide economic importance of the Port's industrial and transportation-related operations.

The economic impacts of the signatories' represented activities are critical to the overall economic success of the Port of Oakland. These economic impacts are well documented,¹¹ and as a result:

"In 2017, the Seaport supported 520,328 jobs in the state of California. Of these jobs, 11,393 jobs are directly created by Seaport activities, while another 10,507 induced jobs, are generated in the Bay Area as a result of local purchases made by those directly employed due to Seaport activity. There are 5,831 indirect jobs supported in the Bay Area as the result of \$546 million of local purchases made by directly dependent firms. In addition, the cargo moving via the Seaport supports 492,597 related jobs throughout the state of California."¹²

¹¹ See *Impacts of the A's Proposed Howard Terminal Stadium on the Operation and Economics of the Oakland Seaport* (September 2019), enclosed as Ex. B. See also Libby Schaaf and Ces Butler, *Oakland's Effort to Blend a Ballpark and the Port on the Waterfront*, San Francisco Chronicle, Nov. 4, 2019 (attached as Ex. C). Note that while a recent statement by the Mayor of Oakland and the President of the Port Board of Commissioners recognizes the importance of the Port and maintaining industrial buffer zones, that statement ignores the serious land use conflicts and environmental impacts and the long-term threat to Port operations – not sufficiently addressed in the DEIR – that would be caused under the Base Case and HT Option scenarios.

¹² "2017 Economic Impact of the Port of Oakland Seaport: Executive Summary" Port of Oakland (January 2019), pg. ES-3. Accessible at <https://www.portofoakland.com/wp-content/uploads/Economic-Impact-Report-2019-EXECUTIVE-SUMMARY.pdf> (accessed 11/8/2019)

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III. The DEIR Fails to Address the Major Development in the Critical Buffer-Zone Area for Port Operations That Would be Permitted under the DTOSP.

The entire swath of area west of Broadway and south of the 880 freeway, across both the DTOSP and the West Oakland Specific Plan, and including the Howard Terminal, provides a critical buffer zone for industrial operations at the Port of Oakland. It also serves as a support area for Port-related and maritime ancillary truck, transloading, equipment, storage and other industrial uses.

Figure III-5 in the DEIR depicts the current General Plan designations¹³ for all this area west of Broadway including the 16-block area of concern. This also includes the Third Street heavy truck corridor that serves as a designated major artery for truck traffic associated with industrial operations at the Port. These current designations allow only very minor residential use and there is no meaningful residential development there at present.¹⁴

This is in keeping with the fact that this area, along with the Howard Terminal itself, has functioned, and continues to function, as a significant buffer zone against potential noise, air emissions, and other operational effects associated with ongoing Port industrial operations, including the roadway system and railroad operations located west and north of Jack London Square.

Under the Base Case "Maker District" scenario, half of this 16-block area would be changed to designations allowing significant residential use.¹⁵ However, the DEIR fails to include any numerical description or analysis of the magnitude of the residential uses proposed in this scenario. Accordingly, it is impossible for the DEIR to assess the significant impacts of the Base Case scenario, compare and contrast those impacts to the City's existing policies, or propose any appropriate mitigation measures.

Nonetheless, by applying the City's published guidelines to the proposed land use designation changes, AES estimated the allowable number of residential units and residents in both the Base Case and the HT Option scenarios.¹⁶ These estimates demonstrate that:

¹³ These are Land Use and Transportation Element ("LUTE") Business Mix, Estuary Policy Plan ("EPP") Light Industry 1 and EPP Off-Price Retail. See AES Report, p. 2.
¹⁴ AES Report, pp. 1-2. As shown in Table 2, a maximum of only 293 residential units, with an estimation of 556 residents, would be permitted under current General Plan designations and applicable zoning provisions.

TABLE 2
Existing Allowable Residential Density – 26 Block Area

Land Use	Blocks	Acreage ^a	Max Density ^b	Max Residential Units	Potential Residents ^c
LUTE Business Mix	0/16	0.00	0	0	0
EPP Light Industry 1	1/16	2.44	30	73.13	138.94
EPP Off-Price Retail	3/16	7.31	30	219.38	416.81
			Total	293	556

¹⁵ DEIR, p. 47, Fig. III-6 (LUTE Business Mix District and Central Business District 2).

¹⁶ The AES estimates represent the maximum allowable residential intensity, consistent with CEQA § 21157(b) and CEQA Guidelines §15176(b). To the extent the DTOSP only presents the "reasonably foreseeable" estimates instead of the maximum allowable residential intensity this is a deficiency, especially since there is neither basis for nor explanation of any application of an alternative estimate of intensity of usage for an urban infill plan with a 20-year horizon where it is logical to estimate maximum buildout. Additionally, because the DTOSP identifies the area in question as subject to a "Zoning Incentive Program" meant to incentivize maximum buildout intensity, any City estimates for new residential units would be misleading if they did not capture maximum densities thereto.

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- The Base Case scenario would allow almost 7,000 residential units and over 13,000 residents within the 16-block area, dubbed as the “Jack London Maker District”.¹⁷
- The HT Option scenario¹⁸ would allow over 12,000 units and 23,000 residents.¹⁹

The HT Option must also account for the reasonably foreseeable impacts from adjacent HT Mixed-Use Project impacts. When that development is included, the total numbers climb to an estimated 16,248 residential units and almost 31,000 residents.²⁰

This critical information was not provided in the DEIR, so that Oakland residents and other readers would be properly advised of the magnitude and import of these changes in use allowed under the DTOSP in this area of Oakland, much less the full environmental consequences associated with such major changes.²¹

¹⁷ See AES Report, p. 2, Table 3:

TABLE 3
Proposed DOSP Base Case Allowable Residential Density – 16 Block Area

Land Use	Blocks	Acreeage ¹	Max Density ²	Max Residential Units	Potential Residents ³
EPP Mixed Use District	5/16	12.19	300	3,656.25	6,946.88
LUTE Central Business District 2	3/16	7.31	375	2,742.19	5,210.16
EPP Light Industry 1	8/16	19.50	30	585	1,111.50
Total				6,983	13,269

¹⁸ DEIR, pp. 48-49, Photo 2. The DEIR provides confusing and conflicting descriptions regarding the HT Option, referring to it inconsistently as the HT Mixed-Use Project in some places, and in relation only to the 16-block area in others. See discussion *infra*. It is clear from the DEIR that these areas are tied together under the HT Option for purposes of the DTOSP and therefore must be analyzed together for maximum potential impacts under CEQA.

¹⁹ See AES Report, p. 3, Table 4:

TABLE 4
Proposed DOSP HT Option Allowable Residential Density – 16 Block Area

Land Use	Blocks	Acreeage ¹	Max Density ²	Max Residential Units	Potential Residents ³
EPP Mixed Use District	13/16	31.69	300	9,506.25	18,061.88
LUTE Central Business District 2	3/16	7.31	375	2,742.19	5,210.16
EPP Light Industry 1	0	0.00	30	0	0
Total				12,248	23,272

²⁰ See AES Report, p. 3, Table 6:

TABLE 6
Summary of Allowable Residential Density – 16 Block Area and Howard Terminal

Scenario	Max Residential Units	Potential Residents
Existing Land Use Designations	298	556
DTOSP Base Case Land Use Designations	6,983	13,269
DTOSP HT Option Land Use Designations	12,248	23,272
DTOSP HT Option plus Howard Terminal	16,248	30,872

²¹ CEQA requires that an EIR “include sufficient detail to enable those who did not participate in its preparation to understand and to consider meaningfully the issues the proposed project raises.” *Sierra Club v. County of Fresno*

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To put the magnitude of these changes into perspective, in the last U.S. Census the City of Emeryville had a population of 10,080.²² The DEIR does not inform the public that the HT Option would result in the creation of a new residential district with nearly 3 times the population of the City of Emeryville within a much smaller geographic footprint, and all within 0.25 miles of the industrial uses in the Port of Oakland. The DEIR, likewise, does not analyze the impacts this proposal would bring about which are clearly significant.

For purposes of CEQA, the analysis of long-term planning documents requires the City to analyze the impact of development at maximum levels permitted under the proposed Plan. This requirement cannot be avoided by suggesting it is unknown how many projects in fact would be approved. The City has failed to do this, and as a result, the DEIR does not meet the requirements of CEQA and the CEQA Guidelines in a number of important respects, as discussed more fully below.

IV. The DEIR Fails to Adequately Describe the Project.

A. The Definition of the HT Option is Conflicting and Confusing.

The DEIR’s treatment of the HT Option is inconsistent both in analysis and use of terminology. By one definition, the HT Option consists of a change in land use designations solely within the DTOSP:

“The City is currently reviewing a proposed project to reuse the Howard Terminal site for a new baseball stadium, waterfront open space, and mixed-use development. If the City approves this project and it moves forward, the Plan proposes to amend the General Plan Land Use designations from LUTE Business Mix, EPP Light Industry 1, and EPP Off-Price Retail District to EPP Mixed Use District in the adjacent blocks between Brush, Clay, 2nd, and 4th streets to support more intense development. ***This is referred to as the Howard Terminal Option.***” DEIR, p. 49 (emphasis added)

However, by another definition, the HT Option consists of a ballpark, residential and other uses at the Howard Terminal site itself:

“The City is currently reviewing a proposed project to reuse the Howard Terminal site for a new baseball stadium, waterfront open space, and mixed-use development, ***which is referred to as the Howard Terminal Option*** throughout this document.” DEIR, p. 112 (emphasis added)

Moreover, in the Alternatives discussion, the “Howard Terminal Option” is treated as separate from, rather than including, the land use changes within the 16-block area:

“The Reduced Office alternative would not include the Howard Terminal Option. ***In addition***, the land use changes as a result of the Howard Terminal Option would not occur such that the area between Brush, Clay, 2nd and 4th streets would not become Mixed Use Flex. All other aspects of the Specific Plan would remain. See DEIR, p. 699 (emphasis added).

(2018), 6 Cal 5th 502, 510 (citing *Laurel Heights Improvement Ass’n v. Regents of University of California* (1988) 47 Cal. 3d 376, 405).

²² U.S. Census Bureau. <http://data.census.gov>. (accessed November 5, 2019).

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Accordingly, it is unclear to reviewers whether the HT Option is considered as only a change in General Plan land use designations within a 16-block area inside the DTOSP boundary; whether it refers only to the mixed-use project at the Howard Terminal site; or whether it is a combination of both. The definition of the HT Option is inconsistent throughout the DEIR and it must be revised and recirculated to accurately describe the project actually being proposed and address the impacts of that proposal based on a consistent basis.

B. The HT Option Omits Other Changes Within the DTOSP Area that Would Result from the HT Mixed-Use Project.

Even assuming the HT Option is intended to represent only changes within the DTOSP area in the event the HT Mixed-Use Project is approved, it is artificially constrained to just the 16-block area and fails to include major changes within the DTOSP that would also result from the ballpark project – such as ballpark parking, ballpark transit and rideshare users, the gondola, and displacement of Howard Terminal truck storage. This has broader consequences in several ways, including impacts on transportation throughout Jack London Square and downtown Oakland, access to Alameda and regional mobility on Interstate 880, significant air quality impacts, and especially potential safety hazards at railroad right-of-way crossings.

While the DEIR is inconsistent on the question of including or excluding the HT Mixed-Use Project from the HT Option, one thing is clear: within the DTOSP area itself, the HT Option is limited to the increased intensity of development in the subject 16-block area bounded by Brush Street, Clay Street, 5th Street and Embarcadero West.²³ However, this artificially constrained footprint for the HT Option cannot be reconciled with the plans for the HT Mixed-Use Project, which encompass not just the on-site project at Howard Terminal, but also major off-site changes to the transportation system throughout the DTOSP area. If in fact the HT Mixed-Use Project were to be approved and proceed, the resulting impacts within the DTOSP area will extend far beyond those 16 blocks. Having elected to tie the HT Mixed-Use Project together with the HT Option in the DTOSP, the DEIR should have presented a full and accurate picture of all the environmental consequences that could occur under the HT Option scenario throughout the DTOSP area.

For example, according to an analysis prepared by consultant Fehr & Peers,²⁴ these impacts include the following (all numbers for peak hour during weekend evening baseball games):

- 10,100 pedestrians walking to games through the DTOSP area, including BART and bus riders and persons who arrived by motor vehicle and parked within the DTOSP area.
- 3,300 pedestrians walking through the DTOSP area and crossing the railroad right of way via at-grade crossings at Market Street and Martin Luther King Way.
- Large numbers of ride share vehicles delivering game-goers:
 - 400 vehicles driving through the DTOSP area and crossing the railroad right of way to the Howard Terminal site.

²³ DEIR, p. 45.

²⁴ See Ex. D, Fehr & Peers, *Proposed Transportation Infrastructure – Howard Terminal Ballpark District* (June 2019).

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- 920 vehicles arriving within the DTOSP area (200 vehicles inside the “geo-fenced” area and 400 vehicles outside it) with two parking lots of 160 spaces each.

- 3,700 vehicles parking within DTOSP area; these vehicles will be driving within the DTOSP area, and their drivers and passengers will walk through the DTOSP area and cross the railroad right of way to the ballpark.
- 3,400 vehicles driving through the DTOSP area and crossing the railroad right of way to reach parking on the Howard Terminal site, with 2,200 vehicles crossing at Market Street and 1,200 vehicles crossing at Martin Luther King Way.

While inadequate parking supply, in itself, is no longer considered a significant environmental impact under CEQA, an EIR still must consider potentially significant secondary impacts related to air quality, noise, safety, and any other impacts associated with transportation, including parking.²⁵ For many projects, such secondary impacts may represent only a minor addition to the project’s direct impacts. However, the Fehr & Peers analysis indicates very large numbers of vehicles driving to and looking for parking within the DTOSP area to reach the ballpark, suggesting that the contribution of secondary impacts cannot be assumed to be minor. Yet the DEIR discussion of the HT Option contains no analysis or even mention of these environmental consequences.

In addition, the public record indicates that the HT Mixed-Use Project EIR will also consider multiple “variants” with DTOSP components, impacts, and issues, but none of these variants are reflected in the DTOSP or this DEIR. These variants include new pedestrian overcrossings and at-grade crossing improvements, and an “aerial tram or gondola above Washington Street extending from downtown Oakland near 12th Street BART to Jack London Square.”²⁶ These variants are located within the DTOSP area, not on the Howard Terminal site. Moreover, though they would be installed to serve the HT Mixed-Use Project, large numbers of people other than game-goers can be expected to use the gondola and crossing improvements to access the Jack London Square area, further altering patterns of transportation from those analyzed in the DTOSP both within and far beyond the 16 blocks of the HT Option. The gondola in particular would represent a significant change to the transit system, yet the DTOSP ignores the prospect of the gondola and its potential impacts in the HT Option analyses.

Another consequence of the HT Mixed-Use Project will be elimination of the maritime ancillary uses for intermodal trucks, including equipment and container staging and transloading, for which the Howard Terminal site is currently utilized. The current estimate for usage of this location for these purposes is that over 325,000 gate moves at Howard Terminal annually. It is reasonably foreseeable that many of the displaced trucks, serving businesses near their current preferred parking at the Howard Terminal, will seek to park in the same vicinity within the DTOSP area, increasing local congestion, emissions, delays, and safety considerations. The alternative is that these trucks will be forced out of the Port area, be required to travel greater distances for moves which are currently intra-port staged drays, and create millions of additional VMT,²⁷ hours of new regional highway delay, and tons of unnecessary Greenhouse Gas emissions, criteria pollutants, and toxic air contaminants.

²⁵ See Pub. Res. Code § 21099.

²⁶ See Ex. E, City of Oakland, *Notice of Preparation (NOP) of a Draft Environmental Impact Report for the Oakland Waterfront Ballpark District Project* (November 30, 2018).

²⁷ Vehicle Miles Traveled (“VMT”) refers to the “amount and distance of automobile travel attributable to a project” under SB 743 and the City’s VMT guidelines. See DEIR, p 161.

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Despite tying together and conditioning the HT Option on the approval of the HT Mixed-Use Project, the DEIR presents a fictitious version of the HT Option which is artificially constrained to the 16-block area. Yet obviously both the changes within the 16 blocks and the massive influx of vehicle traffic, parking and foot traffic generated by the HT Mixed-Use Project will inextricably occur together if the latter is approved. In no circumstances will the changes described as the "HT Option" in the DEIR occur without the larger changes described in the Fehr & Peers analysis. The "limited" HT Option as described in the DEIR thus represents a scenario that *will not occur* and its presentation in the DEIR is misleading to the public and decision-makers.

Finally, the cumulative impact analyses in the DEIR must consider the impact of the DTOSP together with past, present and reasonably foreseeable future projects. The DEIR acknowledges the Waterfront Ballpark District as a reasonably foreseeable future project included in cumulative impact analysis for traffic and transportation.²⁸ In fact, the HT Mixed-Use Project is recognized as contributing to one significant and unavoidable cumulative impact:

"The cumulative development includes ... the Howard Terminal development.

"Cumulative Impact TRANS-1: Development under the Specific Plan together with cumulative development, would generate additional multi-modal traffic traveling across the at-grade railroad crossings that would cause or expose roadway users (e.g., motorists, pedestrians, bus riders, bicyclists) to a permanent or substantial transportation hazard." DEIR, p. 214.²⁹

Having acknowledged one such cumulative impact with respect to Transportation, the DEIR cannot turn a blind eye to the cumulative impact and disregard others. Accordingly, even if the HT Option is limited to the 16-block area, the DEIR must consider the contribution of the HT Mixed-Use Project, including its components within the DTOSP, to all environmental impact categories – air quality, noise, traffic including railroad crossing safety, etc. – in its cumulative impact analyses. Yet the HT Mixed-Use Project is not discussed in the DEIR's cumulative impact analysis for any other impact, nor are the environmental consequences of the HT Option within the DTOSP area but outside the 16-block area.³⁰

²⁸ DEIR, p. 127, Table V.A-4.

²⁹ Since elevating the pedestrian crossing over the railroad tracks is treated as a "variant" in the Notice of Preparation for the HT Mixed-Use Project EIR, it must be assumed that all pedestrians walking to games will cross at grade at Market Street and Martin Luther King, Jr. Way in the base case for that project. The variant does not propose grade-separated vehicle crossings, so all vehicles driving to the Howard Terminal site would also cross at grade on the same two streets, even under the variant. See Ex. E, p. 4.

³⁰ The cumulative contribution of the HT Mixed-Use Project is included in projections of roadway segment congestion, although this information is buried in an appendix table. See DEIR, Appendix F, "Transportation and Circulation Supplemental Information", table of Two-Way Road Segment Traffic Volume Forecasts. It is unclear whether impacts to roadway segment Levels of Service (LOS) are treated as CEQA impacts. The DEIR cites CEQA Guidelines changes that eliminated LOS as a significance metric, yet includes a threshold of significance and makes significance findings for such impacts. See DEIR, pp. 183-184, 212-216. In any case, the DEIR does include the HT Mixed-Use Project in the cumulative modeling of roadway segment LOS, but inconsistently omits that project from other cumulative analyses. In addition, it is unclear whether the HT Option is included in the roadway segments cumulative analysis. From the column headings in the Appendix F table, it appears that the cumulative scenario may represent the Base Case DTOSP plus the HT Mixed-Use Project – a scenario which will not occur, since the HT Option occurs with the HT Mixed-Use Project. See DEIR, Appendix F.

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C. The DEIR Fails to Treat the HT Option on a Consistent Basis.

For many impact areas, the DEIR fails to carry out any analysis of the HT Option. In some cases, it is not clear if the impacts being disclosed would occur under the Base Case scenario, the HT Option, or both.

Impacts associated with the HT Option are called out only in a few instances, e.g., under Aesthetics (visual impact of increased building height, floor area ratio and density in the 16 block area) and Cultural Resources (loss of the Jack London Maker District).³¹ Otherwise, the DEIR is silent on the consequences of the HT Option.

Page 112 of the DEIR states that "A discussion of the HT Option is presented only where the impacts of the proposed project would be substantially different from the Plan," but no justification is given for proceeding in this manner. This approach makes it impossible for a reader or decision-maker to identify whether the HT Option may have been mistakenly left out of a particular subject-matter analysis, or whether the reader must assume (but with no analysis to support the assumption) that the outcomes would be the same under both the HT Option and the Base Case. The DEIR should be revised to include analysis on the HT Option for each impact section, regardless of whether impacts are claimed to be similar to those of the Base Case or not.

In addition, there are many instances throughout the DEIR where the HT Option would plainly have greater environmental consequences than the Base Case, but no distinction is drawn. For example, Chapter V.A (Land Use and Planning) states: "The areas where the most significant changes in land use are proposed include: areas south of I-880 within Jack London District including Oak Street and Victory Court and areas adjacent to Howard Terminal..."³² While an impact analysis for the Jack London District (the Base Case) is included, no impact analysis is provided for the HT Option, despite recognizing that the area adjacent to Howard Terminal is an area where the most significant changes in land use would occur as a result of the HT Option.

Impact TRANS-2, the transportation safety hazard from additional pedestrian and vehicle traffic at the at-grade railroad crossings, is an impact which clearly would be affected by greatly increased development in the vicinity of those crossings under the HT Option. Yet the discussion of Impact TRANS-2 does not address the HT Option.³³ The DEIR concludes that Impact TRANS-2 is significant and unavoidable even under the Base Case, due to the uncertainty of mitigation measure implementation.³⁴ However, that conclusion does not excuse its failure to consider the additional risk to crossing safety under the HT Option, which should be disclosed and discussed. Under Existing Conditions, the DEIR notes the risk of pedestrian injuries by trains, but reports that none have occurred at most of the crossings in the past five years.³⁵ How many more incidents can be expected with the introduction of over 23,000 nearby residents under the HT Option?³⁶ The DEIR does not say.

Chapter V.G (Biological Resources) also lacks analysis associated with the HT Option, such as potential indirect impacts to the estuary and associated species that could occur from waterfront development and increased visitation, and consultation with NOAA. Chapter V.I (Hazards and Hazardous Materials) lacks

³¹ See DEIR, pp. 352, 395.

³² DEIR, p. 131.

³³ See DEIR, pp. 210-211.

³⁴ *Id.*

³⁵ See DEIR, pp. 154-155.

³⁶ AES Report, p.4.

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analysis of the HT Option, despite the Howard Terminal being listed on the Department of Toxic Substances Control's Cortese list.³⁷ In contrast, Section 5.L (Population and Housing) includes analysis regarding the HT Option in the form of the Downtown Jack London Square area.

More examples of this hit-and-miss treatment of the HT Option throughout the DEIR include the analysis of land use conflicts, discussion of consistency with other City plans and policies (in particular the West Oakland Specific Plan), and the discussion of impacts to historic resources. These issues are discussed in more detail in the comments below.

But the fact remains that analysis of the HT Option is inconsistent across DEIR sections, and in most cases appears to be absent altogether. The DEIR should be revised to fully define and evaluate the impacts that would result under the HT Option in every impact area, so that significant impacts can be identified, and appropriate mitigation measures can be developed. Any assumptions that the Base Case and the HT Option impacts would be the same for a particular subject, and the reasoning for such assumptions, must be disclosed and exposed to scrutiny by DEIR readers and decision-makers, and not avoided through a general statement or vague and conflicting project descriptions.

V. The DEIR Fails to Adequately Address Land Use Conflicts

As explained above, the DTOSP would introduce extensive residential development and greatly increased density within the area bounded by Brush Street, Clay Street, 5th Street and Embarcadero West, where current residential use is almost non-existent. Under existing conditions, this 16-block area functions as an effective industrial buffer zone, maintaining separation between incompatible residential and heavy industrial/freight land uses at and adjacent to the Port of Oakland. Current land use designations for the parcels within this area (LUTE Business Mix, EPP light Industry, EPP Off-Price Retail District) strictly limit residential development and prevent introduction of incompatible uses.³⁸ This industrial buffer area allows for only low-density development, ranging from 2.0 to 4.0 FAR.³⁹

Under the Base Case scenario, the DTOSP would eliminate the buffer area and promote encroachment by residential and commercial uses in proximity to Port-related industrial uses. Specifically, the Base Case would re-designate the four parcels closest to the Howard Terminal (i.e. between Brush Street, Clay Street, Embarcadero, and 2nd Street) to EPP Mixed-Use District (EPP-MUD).⁴⁰ The EPP-MUD District encourages "development of nontraditional higher density housing (work/live, lofts, artist studios)."⁴¹ Additionally, the Base Case would re-designate the three parcels between Castro, Clay, 4th and 5th Streets to the Central Business District-2 designation, which allows high-density urban residential uses.⁴² As a result, the Base Case alone under the DTOSP would dramatically increase the overall density within the current buffer area.⁴³

Also, of note, because residential intensity would increase in the southern part of the Jack London District east of Broadway as well,⁴⁴ the impacts that those residents will have by placing additional pressure on

³⁷ https://www.envirostor.dtic.ca.gov/public/profile_report?global_id=01440006 (accessed 11/8/2019)

³⁸ DTOSP, Figure LU-12 and AES Report, pp. 1-2, Tables 1 and 2.

³⁹ DTOSP, Figure LU-9.

⁴⁰ DTOSP, Fig. LU-13a.

⁴¹ See EPP, p. 133.

⁴² See General Plan, p. 155.

⁴³ See DTOSP, Fig. LU-9 and LU-10a; and AES Report, p. 2, Table 3.

⁴⁴ DEIR, Fig. III-6.

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the 16-block buffer zone area of concern must be identified, analyzed and mitigated. These development pressures will increase congestion, create additional intensity of uses and public safety risks, and thus underscore the reasons for retaining non-residential use west of Broadway.

Under the HT Option, the increase in density in this buffer zone area would be even more dramatic. The HT Option would place residential uses within every part of the 16-block area, designating all parcels between Embarcadero, Fourth Street, Brush Street and Clay Street as EPP-MUD and the remaining parcels as CBD2.⁴⁵ As a result, the HT Option would further increase development intensity within the Third Street Corridor between Brush, Clay, Second and Fourth Streets, increasing the FAR from 2.0 to 12.0 and eliminating the lower-density "Maker District" proposed to be retained under the Base Case.⁴⁶ As City staff have elsewhere stated, these and other land use changes proposed in the Jack London District represent "a massive transition from industrial to mixed use commercial and residential zones."⁴⁷

Yet the degree of this transition is largely concealed from reviewers of the DEIR. The DEIR does very briefly acknowledge that the DTOSP "would result in a higher density and intensity of mixed use within the Plan area," and states generally that the Jack London District including the area adjacent to the Howard Terminal is among the areas subject to "the most significant changes in land use."⁴⁸ But there is no detail or analysis for understanding or judging this impact; in fact, despite these "significant changes," the DEIR presents only a vague and conclusory description of the resulting land use conflicts:

Residential uses adjacent or in close proximity to heavy industrial uses can be difficult to harmonize. People living near industries may experience higher levels of noise, pollution, and truck traffic, and less visually attractive conditions. Industrial uses can experience greater regulatory controls over their activities and, despite a facility's location in an industrial zone, complaints may force the facility to change its operations.⁴⁹

This cursory paragraph does not meaningfully account for the land use conflicts that would inevitably result from eliminating the industrial buffer zone and greatly increasing residential density, as well as significantly increasing pedestrian and vehicular traffic, in the area near the Howard Terminal. Nor does it allow readers of the DEIR "to understand and to consider meaningfully" the magnitude of the changes and their import. The increased residential development in this area would introduce conflicts with existing industrial sources of pollution, odors, noise and vibration, and nighttime lighting in and surrounding the Port area. Introduction of residential uses, even only as proposed in the DTOSP's Base Case, would bring heavier traffic to the area, creating safety hazards for heavy-duty vehicles, long-haul truck traffic, motorists, pedestrians, and freight and passenger rail operations on the railroad right of way. Each of these effects would be exacerbated by the higher residential density of the HT Option and, cumulatively, the DTOSP taken together with the HT Mixed-Use Project. Nor are any of these impacts adequately analyzed in the corresponding impact sections of the DEIR.

The minimal narrative provided in the DEIR does not constitute sufficient analysis and disclosure to satisfy CEQA, even had the DEIR forthrightly acknowledged there would necessarily be significant land use conflict impacts. But in fact, the DEIR does not recognize a significant impact; instead, the DEIR

⁴⁵ DTOSP, Fig. LU-13b; DEIR, p. 49.

⁴⁶ DTOSP, Fig. LU-10b.

⁴⁷ See Email from Ryan Russo, Director, Oakland Dept. of Transportation, to Gwen Livak, Bay Area Council (May 29, 2019), enclosed as Ex. E.

⁴⁸ DEIR, p. 131.

⁴⁹ DEIR, p. 137.

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finds that impacts of the DTOSP, by itself and cumulatively with foreseeable development, “would be less than significant related to conflict with adjacent land uses.”⁵⁰ That conclusion is unsupported by evidence and is facially implausible, given the magnitude of the changes in the subject 16-block area with resulting increase to up to 13,000 new residents in proximity to heavy industrial and Port activities under the Base Case; over 23,000 new residents with the HT Option; and, in the cumulative impact analysis, nearly 31,000 new residents with the HT Mixed-Use Project included.

By introducing this intensity of residential development and eliminating the buffer zone separating industrial from residential and commercial uses, the DTOSP will create extensive land use conflicts between existing industry and new residents, resulting in impacts that require greater scrutiny in the DEIR in at least the following areas:

Transportation

The DEIR does not address the transportation-related land use conflicts which will result from the introduction of intense new residential uses, generating increased pedestrian, bicycle and vehicular traffic onto the current heavy truck routes designated to serve existing industrial uses. The City and the Port have designated heavy truck routes allowing truck access to the Port area utilizing sections of Market Street, Martin Luther King, Jr. Way, Third Street, Brush Street, Castro Street, and Embarcadero West.⁵¹ These heavy truck routes also serve the more than 25,000 annual truck transactions occurring at the Howard Terminal. As the DEIR notes, two of the rail crossings, at Market Street and Martin Luther King Jr. Way, are designated truck routes, and the Market Street crossing provides truck access to Howard Terminal and Schnitzer Steel.⁵²

The DEIR also identifies the Third Street truck route as an Area of Controversy/issue to be resolved from scoping comments. DTOSP Policy M-3.9 calls for preserving existing truck routes “to, from, and within the Jack London [sic] to facilitate safe and efficient goods movement from industrial and warehousing facilities.”⁵³ Presumably, then, the City and Port do not contemplate re-routing truck routes away from the increased residential development planned for the Jack London District. Yet the DEIR contains no analysis of conflicts between the truck routes, preserved pursuant to DTOSP Policy M-3.9, and the additional vehicle and pedestrian traffic introduced into the same corridor by the DTOSP’s proposed land use changes. Deviations from this policy will result in trucking diversions, increasing VMTs, congestion, and truck idling, which will in turn have inevitable environmental impacts that need to be assessed in the DEIR.

The higher volume of vehicular and pedestrian traffic would also increase hazards at the at-grade rail crossings at Market Street, Martin Luther King Way, and Clay Street, increasing the potential for accidents at these crossings. The HT Option itself would not only create further land use incompatibility issues within the Third Street Corridor by encouraging residential development surrounding Third Street, but would introduce massive new transportation impacts on broader Downtown Oakland, which are also not evaluated in the DEIR.

⁵⁰ DEIR, pp. 139, 141

⁵¹ See Ex. G, “City of Oakland Truck Routes and Prohibited Streets” (Map); “Port of Oakland Maritime Facilities” (Map); OMC 10.52.120 (Local Truck Routes).

⁵² DEIR, p. 154.

⁵³ DTOSP, p. 131.

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Air Quality

The DEIR also fails to address the land use conflicts between the new residential uses and existing heavy industrial uses arising from air emissions (especially particulate emissions) generated by industrial uses. Beyond the brief narrative quoted above, the DEIR notes only that future projects that might generate “odors” in the DTOSP area, but nonetheless concludes this “would generally be consistent with existing land uses” and is not expected to generate a substantial number of complaints; therefore, such impacts from new sources would be less than significant.⁵⁴

Thus, the DEIR fails to discuss the significant air quality impacts of land use conflicts from a major increase in residential and commercial uses with nearby existing heavy industrial uses with respect to any threshold other than odors. This is a significant oversight, as the DTOSP would both create new emissions and impacts with respect to criteria pollutants, air toxics including diesel particulate matter, and Greenhouse Gas emissions. All of these impacts must be evaluated in the DEIR.⁵⁵

However, the DEIR fails to discuss land use conflicts from a major increase in residential and commercial uses in nearby existing heavy industrial uses that can be sources of emissions and odors.

Hazardous Materials

The DEIR fails to assess the potential land use conflicts arising from introducing residential and commercial uses adjacent to industrial sites affected by hazardous materials. The DEIR notes that “some commercial businesses (e.g., dry cleaners) and flex industry uses could use substantial quantities of hazardous material,” and that improper handling and accidents involving these substances “could expose workers, the public, and the environment to hazardous materials.”⁵⁶ Furthermore, the DEIR notes that intensification of land uses under the DTOSP “could result in the increased use of hazardous household and commercial materials, and thereby create a cumulative increase in risk associated with accidental release of hazardous materials into the environment.”⁵⁷ However, the DEIR concludes that no significant impacts related to hazards and hazardous materials would occur with implementation of the City’s Standard Conditions of Approval.⁵⁸ The DEIR thus fails to discuss the reasonably foreseeable land use conflicts arising from existing industrial facilities’ use of hazardous materials directly adjacent to new residential or commercial uses allowed under the DTOSP.

Noise and Vibration

The DEIR’s noise and vibration analysis similarly omits any substantive discussion of noise or vibration impacts resulting from land use conflicts between new residential uses and existing heavy industry and transportation systems. The DEIR notes that the highest traffic noise increase would occur along Embarcadero West, between Market Street and Martin Luther King Jr. Way—an area where residential uses would be allowed under the DTOSP—and predicts that future residential projects could be exposed

⁵⁴ See DEIR, pp. 246-247.

⁵⁵ See also discussion regarding WOCAP, VMT and LOS impacts at FN 75 and FN 80.

⁵⁶ DEIR, p. 481.

⁵⁷ DEIR, p. 489.

⁵⁸ DEIR, p. 28.

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to noise levels rated “normally unacceptable” for residential land uses.⁵⁹ The DEIR also states that impacts related to vibration from proximity to railroad trains would potentially exceed Federal Transit Administration (FTA) criteria for ground-borne vibrations.⁶⁰ Despite these findings, the DEIR concludes that impacts from operational noise and vibration for future projects under the DTOSP would be reduced to less than significant levels with implementation of the City’s Standard Conditions of Approval.⁶¹ Even under the Base Case, the DTOSP would allow residential use in the parcels immediately adjacent to the rail corridor along Embarcadero West, exposing residents to substantial noise and vibration.

Additionally, new residential uses that would be allowed adjacent to the City and Port heavy truck routes along Brush, Castro, Second and Third Streets, and Martin Luther King, Jr. Way would be exposed to heavy truck traffic and attendant noise and vibration. These impacts are not sufficiently studied in the Noise section of the DEIR.

In sum, there is insufficient analysis for the general assertions that “no significant land use impacts related to land use incompatibility would occur as a result” of DTOSP adoption and resulting development.⁶² The DEIR fails to analyze DTOSP consistency with General Plan policies purportedly discouraging incompatible development, and presents no evidence to support its conclusion that the “impacts associated with implementation of the Specific Plan and reasonably foreseeable development expected to occur in the Plan Area over the next 20 years would be less than significant related to conflict with adjacent land uses.”⁶³

In lieu of actual analysis, the DEIR’s cumulative impacts analysis is conclusory. While acknowledging that the DTOSP “would change designated parcels from Light Industry to Mixed-Use,” it does not acknowledge that this would result in a cumulatively considerable contribution to the City-wide loss of industrial land.⁶⁴ Indeed, notwithstanding that the DTOSP-enabled land use changes in the vicinity of industrial and Port activities which would all but eliminate the industrial buffer zone, the DEIR suggests to readers that the buffer zone will actually be maintained:

“[T]he Plan would not result in a significant land use impact by potentially physically dividing an established community; or conflicting with adjacent or nearby land uses; or conflicting with applicable land use plans, policies, or regulations adopted for the purpose of avoiding or mitigating an environmental effect. Although the Specific Plan would change designated parcels from Light Industry to Mixed-Use, *the Plan would maintain an industrially-zoned buffer area* between Brush and Market Streets to support the City’s Industrial Land Use Policy in the adjacent West Oakland area....”⁶⁵ (Emphasis added.)

However, the “industrially-zoned buffer area” being “maintained” is only a single block wide between Brush and Market Streets. Adjacent to, but outside that small buffer area, is the 16-block area east of Brush Street, including parcels on which residential use is currently prohibited, which the DTOSP will convert to significant residential and office uses under both the Base Case and the HT Option. The DEIR fails to consider that, far from maintaining a sufficient buffer area consistent with the City’s Industrial

⁵⁹ See DEIR, Table V.K-4; DEIR, pp. 562-563.

⁶⁰ DEIR, p. 567.

⁶¹ DEIR pp/ 561-567.

⁶² DEIR, p. 139.

⁶³ DEIR, pp. 139-140

⁶⁴ DEIR, p. 141.

⁶⁵ DEIR, p. 141.

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Land Use Policy, the DTOSP is actually proposing to destroy the buffer zone by introducing massive residential development in closer proximity to industrial uses, under both the Base Case and the HT Option.⁶⁶

As such, the DEIR’s conclusion that, by maintaining a one-block-wide buffer area, the DTOSP “would not result in a significant land use impact by... conflicting with adjacent or nearby land uses” is not supported by information and analysis in the DEIR, and is contrary to the facts and common sense.

VI. The DEIR Fails to Recognize Conflicts with Existing Plans and Policies.

CEQA requires an EIR to discuss a project’s inconsistencies with applicable local land use plans and policies. CEQA Guidelines § 15125(d). The DEIR concludes that the DTOSP would not conflict with applicable adopted land use policies, plans or regulations because it proposes amendments to the General Plan that supposedly would correct any such conflict.⁶⁷ However, the DEIR fails to acknowledge inconsistencies, or proposed amendments to resolve inconsistencies, between the DTOSP and already-adopted plans and policies, namely, General Plan Land Use and Transportation Element (“LUTE”) Policy N5.2, the West Oakland Specific Plan (“WOSP”), and the City’s Industrial Land Use Policy (“ILUP”).

A. Inconsistency with General Plan LUTE Policy N5.2.

The DEIR states that:

“Conformance to the General Plan, including Land Use and Transportation Element (LUTE) policies listed below, would discourage development of incompatible land uses or land uses that would result in a division within an established community....

Policy N5.2: Residential areas should be buffered and reinforced from conflicting uses through the establishment of performance-based regulations, the removal of non-conforming uses and other tools.” DEIR, pp. 137-138.

The DEIR immediately goes on to acknowledge the potential for impacts from introducing housing in proximity to heavy industrial uses and other sources of air emissions and noise. However, rather than reach the logical conclusion that this presents a potentially significant conflict, the DEIR states that the DTOSP “would not result in a significant land use impact by... conflicting with applicable land use plans, policies, or regulations.”⁶⁸

Thus, the DEIR fails to address the inconsistency between LUTE Policy N5.2 (as well as any other purportedly relevant General Plan policies) and the introduction of new high-density residential development in proximity to conflicting land uses. Introducing massive new residential development in an incompatible area and concluding there would be no conflict because the residential use should then be buffered (while eliminating that buffer), is facially inconsistent with this City policy.

Nor does the DEIR purport to modify LUTE Policy N5.2 in order to accommodate new residential development in the 16-block area. Instead, the DEIR expressly relies on LUTE Policy N5.2 remaining in effect and continuing to “discourage development of incompatible land uses” as support for the

⁶⁶ See Section VI.C, *infra*, for discussion of inconsistency with the ILUP.

⁶⁷ DEIR, p. 140.

⁶⁸ DEIR, p. 141.

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conclusion of less-than-significant conflict with applicable land use plans and policies. That conclusion cannot be reconciled with the magnitude of high-density residential development that would be brought into close proximity with conflicting uses under the Base Case, much less even higher density development associated with the HT Option.

B. Inconsistency with West Oakland Specific Plan.

The DEIR asserts that the DTOSP is “generally consistent” with the WOSP.⁶⁹ However, the DEIR fails to acknowledge significant inconsistencies between the two plans.

The DTOSP intersects with a portion of the WOSP between Market Street and Castro Street.⁷⁰ Specifically, the westernmost four parcels of the DTOSP, between Market and Castro, are within the “3rd Street Opportunity Area” of the WOSP, which generally covers the area south of 5th St. and east of Adeline.

As provided in the WOSP, the 3rd St. Opportunity Area “will continue to support industrial and business activities and jobs, capitalizing on its proximity to the Port of Oakland and its access to the regional freeway network,” while maintaining the “continued prohibition on residential development in this area.” WOSP, p. 4-59. The discussion of consistency with the WOSP identifies the area where the DTOSP and WOSP overlap.⁷¹ The DEIR asserts that the DTOSP and WOSP land uses are “generally consistent” (p. 94), despite the fact that the DTOSP would increase development density and height. The DEIR also notes, without analysis, that under the HT Option where the HT Mixed-Use Project is approved, development intensity in the area of concern would increase dramatically.

Regarding the overlapping 3rd Street Opportunity Area, the DEIR states:

“South of I-880 between Martin Luther King Jr. Way and Brush Street, the Specific Plan would re-designate parcels to focus light industrial uses along 3rd Street and provide a mix of uses on the periphery of the industrial core (i.e., along 4th Street and Embarcadero). The change in uses would not conflict with the WOSP, which envisions 3rd Street as an opportunity area that celebrates ‘its unique historic commercial and industrial structures’ and welcomes light industrial uses that contribute to a high-quality environment.”⁷²

To apply this logic to the Base Case scenario, the DEIR must ignore the fact that the WOSP prohibits residential development in the 3rd Street Opportunity Area, an unacknowledged land use plan inconsistency.

Further, the DEIR lacks any discussion of consistency of the HT Option scenario with the WOSP. The DEIR briefly summarizes the HT Option, but provides no discussion of whether and how this Option is or is not consistent with the WOSP.⁷³ This is significant because the HT Option is directly in conflict with the WOSP policy that light industrial uses would be focused along 3rd Street – since under the HT Option

⁶⁹ DEIR, p. 94.

⁷⁰ See DEIR, p. 34, Fig. III (although the DEIR later incorrectly states (p. 94) that this intersection between the plans occurs between Brush and Martin Luther King, Jr. Way).

⁷¹ See DEIR Fig. III-2 and pp. 93-94 (although the DEIR elsewhere incorrectly indicates that the WOSP “abuts” rather than overlaps with the DTOSP, see pp. 32, 115, 128).

⁷² DEIR, p. 94.

⁷³ DEIR, p. 95

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these properties would no longer be industrial. Again, the DEIR’s conclusion that the DTOSP “would not result in a significant land use impact by... conflicting with applicable land use plans, policies, or regulations”⁷⁴ is contradicted by the facts, and there is no basis for the DEIR to conclude that the DTOSP is consistent with the WOSP.⁷⁵

C. Inconsistency with Industrial Land Use Policy.

The DEIR also fails to address inconsistency between the DTOSP and the City’s ILUP. As noted before, the DEIR states that the DTOSP would “maintain an industrially-zoned buffer area between Brush and Market Streets to support the City’s Industrial Land Use Policy in the adjacent West Oakland area.”⁷⁶ This statement is misleading as the DTOSP would eliminate nearly the entirety of the existing buffer zone and maintain only a one-block-wide strip between Market Street and Brush Street. Only three unusually narrow parcels in that strip could retain their current zoning of CIX-1B/T (West Oakland Plan Area Commercial Industrial Mix 1B/Transport and Warehousing Combining Zone), which allows a “wide variety of transportation facilities, warehousing and distribution, and similar and related supporting uses.”⁷⁷

However, the industrial buffer identified in the ILUP – Subarea 17, for which the policy is “Keep Industrial” – extends beyond Brush Street to Martin Luther King Jr. Way, encompassing eight additional standard-size parcels.⁷⁸ Consistent with the ILUP, seven of these eight parcels currently are zoned CIX-1B (West Oakland Plan Area Commercial Industrial Mix-1B—Low Intensity Business) or M-30 (General Industrial Zone). Both CIX-1B and M-30 zoning generally support industrial uses and prohibit residential uses, which must be modified to introduce residential uses consistent with the DTOSP’s proposed land use designations.⁷⁹

Thus, the DTOSP is at best only consistent with the ILUP in a narrow one-block wide strip, but conflicts with the ILUP’s “Keep Industrial” policy in the larger area from Brush Street to Martin Luther King, Jr. Way. The DEIR fails to acknowledge this inconsistency. On the contrary, the DEIR’s claim to maintain the current industrial buffer zone in the DTOSP, when in fact it is eliminating the buffer except in the Market-Brush strip, is inaccurate and leads to the erroneous finding of no conflict with adopted land use policy. And again, the DEIR lacks any discussion at all of the inconsistency of the HT Option with the ILUP.

⁷⁴ DEIR, p. 141.

⁷⁵ Significantly, the elimination of industrial zoning along the 3rd Street Corridor and the current buffer zone generally extending west from Broadway and south of I-880 is also inconsistent with the West Oakland Community Action Plan recently adopted by the Bay Area Air Quality Management District and developed in order to implement AB 617. (See <http://www.baaqmd.gov/community-health/community-health-protection-program/west-oakland-community-action-plan>) Deviation from the WOSP in this regard may also have significant Air Quality impacts which are also not analyzed in the DEIR.

⁷⁶ DEIR, p. 141.

⁷⁷ See Oakland Municipal Code (OMC) 17.73.010.B.

⁷⁸ DEIR, Figure III-6.

⁷⁹ Residential use currently is permitted only in the parcel furthest from the waterfront, between Castro and MLK Way, Fourth and Fifth, which is zoned C-40 (Community Thoroughfare Commercial Zone).

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VII. The DEIR Also Lacks Sufficient Analysis in Several Important Impact Areas.

A. Traffic, Transportation, Parking and Public Safety.

a. Trip Generation Rates are underestimated.

The trip generation estimates for the DTOSP (Table V.B-4, p. 185) contain several errors and erroneous assumptions that result in underestimates of vehicle trips⁸⁰ that affect other analyses that depend on these inputs including Greenhouse Gas emissions and noise. Specific issues include the following:

- The trip generation for residential projects assumed an average project size of about 500 units. The Institute of Transportation Engineers (“ITE”) data used to determine trip generation has an average size of approximately 220 units and most recent residential developments in Oakland are not larger than 250 units. Assuming an average project size of 500 units may lead to an underestimate of vehicle trips being generated by the DTOSP.
- The trip generation for retail land uses does not estimate a typical size of retail establishments, but instead combines all retail for the DTOSP into one trip generation estimate. This significantly underestimates the trips generated by the retail component. When retail is treated as one large project, trip generation per square foot decreases as a project gets larger. However, the DTOSP retail is likely to consist of many smaller projects spread out over a large area. Therefore, a decline in trip generation per square foot is not anticipated as one might expect at a large mall.
- Trip generation for office projects assumed an average project size of about 500,000 square feet. The ITE data used to determine trip generation has an average size of about 171,000 square feet with few studies of developments near 500,000 square feet. The assumption of 500,000 square feet is too large for an average office building and this also affects total vehicle trip generation.
- Trip generation for the industrial components assumed a single combined project. Like retail, a very large industrial project has fewer vehicle trips per square foot than a smaller one. Since the industrial uses are likely to be spread out over the entire plan area, calculating the trip generation as a single use has likely underestimated the total number of trips.
- The calculations for pass-by reduction of the retail component of retail do not appear to be correct. For example, 63,740 daily retail vehicle trips adjusted for non-auto reductions and assuming a pass-by reduction of 17% should result in about 5,082 pass-by trips (63,740 x 46.9% x 17%) but 5,750 is reported in the table. Similarly, the PM peak hour also takes a higher

⁸⁰ In 2017, the City changed its transportation impact guidelines to align with SB 743 requirements to use the VMT approach, rather than roadway and intersection Level of Service (“LOS”) analysis, and the DEIR asserts that the DTOSP project would meet two of three VMT screening criteria and thus have no significant impact. DEIR, pp. 182-183, 189, 192. However, the Alameda County Congestion Management Program continues to use LOS as a metric for consistency with the County’s traffic Congestion Management Program, and LOS-related impacts are therefore included and analyzed in the DEIR, Appendix F. See DEIR, pp. 183. The analysis in Appendix F shows significant congestion and adverse impacts would result from introducing high-density residential growth into the 16-block area of concern and surrounding roadways, especially in concert with the HT Mixed-Use Project. DEIR, pp. 212-216.

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reduction than what the calculations would suggest (7,095 x 46.9% x 34% = 1,131 and not 1,281 as reported).

b. The analysis of safety impacts and mitigation are insufficient.

The DEIR’s discussion of safety impacts does not disclose the full extent of the consequences resulting from the introduction of nearly 30,000 new residents and pedestrians in an area with frequent heavy-duty truck and freight train traffic. Pedestrian safety and circulation are briefly addressed at pages 193-196 of the DEIR. The DTOSP includes several policies aimed at improving pedestrian safety along with specific improvements identified. The DEIR generally concludes that the plan and associated development would result in a less than significant impact on pedestrians because the DTOSP identifies a list of projects that would enhance pedestrian access and safety.⁸¹

While the list of projects identified in Figure V.B-5 of the DTOSP propose many improvements to high injury network locations, there are many streets in the high injury network that show no improvements even though the DTOSP development would increase pedestrian activity significantly throughout the area. The DEIR should contain more discussion about how streets such as 14th Street, Grand Avenue, and Lakeside Drive (which are on the high injury network) would not have a significant impact from the additional pedestrian activity without updating the pedestrian infrastructure on these streets.

Impact TRANS-2 and Cumulative Impact TRANS-1 state that “Development under the Specific Plan together with cumulative development, would generate additional multi-modal traffic traveling across the at-grade railroad crossings that would cause or expose roadway users (e.g., motorists, pedestrians, bus riders, bicyclists) to a permanent or substantial transportation hazard.” While the DEIR identifies increased railroad crossing activity as a significant impact, the DEIR needs to provide more analysis to quantify and disclose the multimodal safety impacts along the railroad corridor at at-grade crossings and between crossings. Even when an EIR concludes that an impact is significant and unavoidable, it must disclose and explain the implications of the impact, which is especially critical here, where the foreseeable outcome associated with safety would be an increase in pedestrian, bicyclist and vehicle accidents with injuries or fatalities. Additional disclosure is warranted regarding current collision rates and hotspot locations; existing substandard infrastructure conditions; and a quantification of future conditions and the anticipated increase in accidents if appropriate mitigations are not implemented.

Moreover, Mitigation Measure TRANS-2, which requires the City to undertake a Diagnostic Study to identify an unspecified “suite of improvements” to railroad crossing safety, does not satisfy the requirements for deferred mitigation under CEQA. CEQA Guidelines § 15126.4(a)(1)(B) provides that specific details of a mitigation measure may be developed after project approval when it is impractical or infeasible to include those details in the EIR, but *only if* the lead agency adopts specific performance standards that the mitigation measure will achieve, *and* identifies types of potential actions that can feasibly achieve that performance standard. Presenting both performance standards and identified types of candidate actions in an EIR is essential in order to demonstrate that, while the precise form of mitigation remains to be selected, feasible mitigation is available and reasonably likely to be effective. However, Mitigation Measure TRANS-2 as described in the DEIR (pp. 210-211) meets neither of these criteria. It specifies no performance standard which must be met by improvements to be determined through the future Diagnostic Study. As for candidate actions, the only possibility identified in Mitigation Measure TRANS-2 for consideration in the Diagnostic Study is “elements necessary for a Quiet Zone through Jack London District.” The DEIR does not explain what those “elements” might be or

⁸¹ DEIR, pp. 193-196, 210.

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how they could feasibly achieve a performance standard. A “Quiet Zone” is not itself a safety improvement, but rather a crossing where trains need not sound their horns because some other safety improvements – not identified in the DEIR – have been implemented.

The stated mitigation should also include consideration of additional grade-separated crossings that would decrease the potential exposure of pedestrians and bicyclists. At a minimum, the reference to the Diagnostic Study should state that additional grade-separated crossings will be investigated. Further, the stated mitigation should address the funding for the Diagnostic Study, since that is within the City’s control (unlike the implementation of the recommended safety improvements, which will require the participation of Union Pacific Railroad and the California Public Utilities Commission, both of which have expressed significant concerns).

B. Air Quality and Health Risks.

The introduction of residential uses within the 16-block area adjacent to Howard Terminal could result in elevated health risks for future residents and would be inconsistent with numerous City policies and requirements related to health risk, including:

- **General Plan Policy CO-12.** This policy requires the separation of land uses that are sensitive to air pollution (such as residential uses) from sources of air pollution. The City should eliminate residential uses within the 16-block area or fully discuss and explain in the DEIR how these uses will be found to be consistent with General Plan Policy CO-12.1.
- **Standard Condition of Approval SCA-AIR 4.** The City has not presented a Health Risk Assessment, prepared by a qualified air quality consultant, to determine the health risk associated with exposure of new residential uses allowed under the Base Case or the HT Option to existing sources of air emissions. To the extent that the City believes such a requirement is the responsibility of subsequent project developers, and not a requirement for the DTOSP, the City should explicitly state that any project that proposes to introduce residential uses within the 16-block area adjacent to Howard Terminal must comply with Condition of Approval SCA-AIR 4.
- **City’s Plan-Level Significance Threshold for Air Quality.** The City has not established a special overlay zone containing goals, policies, and objectives to minimize potential Toxic Air Contaminant (“TAC”) impacts in this area, which is near existing sources of TACs and within 500 feet of freeways containing 100,000 or more average daily vehicle trips.
- **City’s Project-Level Significance Threshold for Air Quality.** The City has not presented the results of a Health Risk Assessment that confirms that new residences in this area would not be exposed to: a cancer risk level greater than 100 in a million; a non-cancer risk (chronic or acute) hazard index greater than 10.0; or annual average PM2.5 concentrations greater than 0.8 micrograms per cubic meter.⁶² To the extent the City believes that such a requirement would be the responsibility of future project developers, and not a requirement for the DTOSP, the City should explicitly require that any project which proposes residential uses within the 16-block area

⁶² The City has constructive and actual notice of elevated, localized cancer risks in this area due to the recent publication of the West Oakland Community Action Plan by the Bay Area AQMD, reinforcing the need for preservation of the existing industrial buffer zone and avoidance of both the Base Case and the HT Option’s introduction of dense residential development into the 3rd Street Corridor. See: <http://www.baaqmd.gov/community-health/community-health-protection-program/west-oakland-community-action-plan>

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adjacent to Howard Terminal prepare such an analysis and make the required demonstrations.

The DEIR’s discussion and analysis of impacts associated with health risk from TAC and Criteria Air Pollutant (“CAP”) emissions is inadequate and dismissive. For comparison purposes, the EIR certified by the City for the WOSP identifies the siting of new receptors near existing TAC sources as significant and unavoidable for gaseous TACs. See WOSP EIR, p. 4.2-45, 50. However, this same effect is identified as less than significant for the DEIR for the DTOSP, despite the fact that the concentration of industrial uses within and adjacent to the DTOSP area is far greater than within the WOSP, and despite the fact that the WOSP actually required a partial no-residential zone buffer within the 16-block area adjacent to the Port.

Additionally, while the DEIR does identify emissions of CAPs resulting from the DTOSP as significant and unavoidable even with mitigation, there is no attempt to explain the relationship between this significant and unavoidable impact and human health effects, as required under CEQA.⁶³

C. Historic Resources.

The DEIR states that

“The City is currently undertaking a study to reuse the Howard Terminal site for a new baseball stadium, waterfront open space, and mixed-use development. There is also potential for a second transbay tube crossing and BART station that could be placed in the current I-980 alignment. If these changes move forward, the land use and character of surrounding blocks, could be changed as follows:

- Area between Brush, Clay, 2nd and 4th Streets can become Mixed Use Flex meaning the form and character of the proposed Jack London Maker District (along 3rd Street) is not preserved in this option.
- General Plan Amendments for this same area would change to EPP Mixed Use District.”⁶⁴

The DTOSP conflicts with the WOSP Development Objectives for the Jack London District and the Oakland General Plan’s Historic Preservation Element, which identify specific resources which could be visually impacted by changing some land use designations to Mixed-Use Flex as proposed in the DTOSP. The Jack London District is a mix of older low-scale, masonry commercial buildings and warehouses that retains its industrial character through adaptive reuse for office conversion, arts uses, or leasing to small-scale industrial users.⁶⁵

The Waterfront Warehouse Historic District (listed on the National Register of Historic Places (“NRHP”)) and the Wholesale Produce Market (potentially eligible for NRHP listing) are both Areas of Primary Importance that are located within this sub-area. In addition, the NRHP-listed Oakland Iron Works and Remillard Brick Company sites are nearby, as is the NRHP-eligible Wempe Bros.–Western Paper Box Co. site. There are also Areas of Secondary Importance (considered worthy of preservation) within the Jack London District, as well as the Southern Pacific Railroad Industrial District, an Area of Secondary Importance immediately to the west.

⁶³ *Sierra Club v. County of Fresno*, *supra*, 6 Cal.5th at 510.

⁶⁴ DEIR, p. 210.

⁶⁵ DEIR, p. 351.

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The Base Case in the DEIR (Figure III-4) would introduce a Mixed-Use Flex development area surrounding a Flex Industry core to allow for a wider range of flexible ground floor uses in the District. The DEIR notes impairment or loss of designated historic resources that would result from development, identifying these changes as both individually and cumulatively significant and unavoidable.

However, there is minimal discussion of adaptive re-use; this could provide a way to minimize impacts and allow some development, even if not as much as proposed. The mitigation measures in the DEIR are too broad and general as they only recommend a few programs that would not ameliorate significant impacts, such as reinstating and promoting Oakland's Downtown Façade Improvement Program, expanding public outreach to encourage adherence with the California Historical Building Code, updating the Oakland Cultural Heritage Survey, and providing interpretive signage in Jack London Square. The DEIR should present specific mitigation for impacts to historic-era resources rather than just referring to general provisions of local ordinances.

Mitigation Measure CULT-1A (iii) suggests that within three years of the adoption of the DTOSP, the City should adopt an adaptive reuse ordinance to encourage preservation of historic buildings. This timeline should be shortened, as the three-year window provides too much opportunity for demolition of historic structures felt to impede particular development projects. Also, adherence to the Secretary of Interior's Standards of Historic Properties and Guidelines for Preserving, Rehabilitation, Restoring and Reconstructing Historic Buildings is included as a suggestion; this should be strengthened, citing particular development types as most suitable and recommending design criteria that would, to some degree, reflect the past uses of the area.

In connection with historic resources, the DEIR briefly mentions the HT Option, presenting a figure (p. 45) that indicates elimination of the Flex Industry Designation, and conversion of the entire area north and northeast of the Howard Terminal to Mixed-Use Flex. Because the HT Option would eliminate the Flex Industrial Designation along the 3rd Street Corridor -- the area within the Jack London District that contains the most historic era buildings -- it would result in proportionally greater impacts to historic properties and the character of the Jack London District. As currently presented, it is unclear if the cultural resources assessment even takes into account the proposed change in zoning along 3rd Street under the HT Option. The DEIR should develop a specific and detailed analysis of impacts to historic properties under the HT Option, and cumulatively with the related HT Mixed-Use Project as a reasonably foreseeable future project. This analysis should include impacts to property associated with the Port of Oakland, historic uses of that portion of the Port, and the identification of or potential for prehistoric and historic archaeological resources.

The DEIR also lacks any detailed aesthetics/visual analysis focused on historic resources in general and the Jack London District in particular. Highway I-880 divides most of Oakland from the general project region, and therefore nothing would change to the north. However, views within the District would change radically if Mixed-Use Flex development introduces a large residential element into an area with an industrial character, such as the 16-block area, as well as the Howard Terminal site. There is no analysis of the change to the viewshed from the Jack London District or the historic sites listed above, many of which would be changed radically under the HT Option and/or by placing a sports stadium and 4,000 new high-rise residential units at the Howard Terminal site, completely altering the visual character of the area. Significant visual impacts such as these would conflict with Oakland General Plan policies, and development of the HT Option in particular would conflict with the City of Oakland Thresholds of Significance for aesthetics; however, there is no analysis of this subject in the DEIR.

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According to the Aesthetics section of the DEIR, views from Jack London District are typically limited due to the surrounding low-rise development and I-980 and I-880 freeways as well as several mid-rise structures such as the Glenn Dyer Detention Facility.⁶⁶ However, the Jack London District does provide some high-quality views, primarily along the southern Oakland shoreline. Views along the shore include the Oakland Inner Harbor, which spans from east to west. Views south towards the City of Alameda's harbor are also accessible along the coast, and block views of the San Francisco Bay. Views to the east include the Oakland shipping yards, including Howard Terminal, with the iconic shipping container cranes as shown in photo 27. Beyond the Oakland Inner Harbor, the San Francisco skyline can be seen far off in the distance as well.

The DEIR should be revised to clarify the extensive and adverse visual effects that would occur to views, and the visual setting of historic resources, as a result of substantially changing the character of the Jack London industrial area District from its historic roots, as a working waterfront and transportation hub for over a century, to essentially a mid-rise residential neighborhood. The DEIR should also clarify the increase in magnitude of aesthetic effects to historic resources that would occur under the HT Option (both with and without the HT Mixed-Use Project) when compared to the Base Case scenario.

VIII. The DEIR Fails to Address Indirect and Growth-Inducing Effects.

As noted in the October 2, 2019 public meeting staff report, Item 2, p. 6, City staff has acknowledged that the DTOSP will "set the stage" for a "stadium at Howard Terminal (and adjacent development)."

However, the DEIR, Section 8.A (Growth Inducing Effects) indicates that the DTOSP is "Unlikely to Induce Substantial Additional Growth Outside the Plan Area."⁶⁷ Because the DTOSP as currently proposed does not incorporate sufficient industrial land use buffers or other measures to preserve the existing industrial character along the 3rd Street Corridor, the shift in allowable land use types in this area would remove or reduce impediments to growth at the Howard Terminal Site. The DEIR should be revised to clarify that the DTOSP will result in infrastructure and land use changes that would enable growth in areas outside of the plan, especially at Howard Terminal and adjacent areas.

Several industrial companies are located within and around the HT site. As discussed previously, both the Base Case and the HT Option would introduce additional conflicts with existing industrial operations, such as residential uses and an overall significant increase in visitors and traffic. According to the DEIR, "Industrial uses can experience greater regulatory controls over their activities and, despite a facility's location in an industrial zone, complaints may force the facility to change its operations."⁶⁸ Additionally, the 1998 Oakland General Plan Land Use and Transportation Element (p. 124) states that "...Some areas will transform from one single use to new uses...some areas have industrial/housing conflicts that will be resolved through strategies to phase out one use or the other..." Therefore, it is reasonably foreseeable that under these policies, existing industrial uses in the area may be at risk to undergo significant changes, including likely displacement or elimination, as a result of the substantial increase in residential density directly adjacent to the Port proposed under the DTOSP. This will be especially significant and impactful under the HT Option. The DEIR should assess the likely direct and indirect consequences to industrial operations and businesses in the Port, and the inevitable associated environmental effects, that would result from the elimination of long-standing industrial uses that may be forced to change or cease operations as a result of encroaching residential uses allowed under the DTOSP.

⁶⁶ DEIR, p. 377.

⁶⁷ DEIR, p. 708.

⁶⁸ DEIR, p. 137.

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IX. The DEIR Fails to Address Reasonable Alternatives.

Multiple comments were submitted during scoping for the DEIR stating that an alternative should be analyzed that maintains the buffer zone needed to prevent land use conflicts that would arise when residential uses are permitted encroach closer to long-standing industrial uses. For example, comment letters suggested that the DTOSP land use map should be revised to designate areas located between Embarcadero and 3rd Street and Brush Street and Clay Street as Flex Industry. Not only does the DEIR fail to address this reasonable alternative, no justification is provided for its dismissal. This alternative, which would avoid numerous impacts under the DTOSP in this area, must be added to the EIR and analyzed in comparison to both the Base Case and the HT Option. For example, this alternative would avoid or reduce impacts to the character of the Jack London District and would avoid or reduce significant and unavoidable effects to certain historic structures as identified in the EIR. Further, this alternative would reduce or avoid significant and unavoidable impacts not currently identified in the EIR associated with land use compatibility, health risk and exposure of sensitive receptors to elevated levels of pollutants in violations of the City's land use policies (*see* discussion of Air Quality effects above). Additionally, the DEIR should analyze an alternative that is consistent with the WOSP land use designations and policies in the overlapping plan area.

X. Conclusion.

In their recent statement, the Mayor of Oakland and the President of the Board of Port Commissioners indicated that impacts on the "buffer zone between residential and industrial land uses [and] truck routes" represent significant issues, while promising to address them at a later date through measures to be developed by the Port for the HT Mixed-Use Project. *See* Ex. C. On the contrary, it is the DTOSP itself, under both the Base Case and HT Option, that will eliminate the buffer zone and impact the truck routes (though the ballpark project will certainly worsen the cumulative consequences of doing so). It is the duty of the current DEIR under CEQA to provide sufficient, in-depth analysis and mitigation for the resulting significant impacts, which cannot be left to "future" Port measures.

For the reasons provided herein, the City should modify the proposed DTOSP to (i) eliminate the HT Option and (ii) revise the Base Case to limit residential uses within the subject 16-block area in the Jack London District to existing designations and conditions. In addition, the City must revise and recirculate the DEIR in order to comply with CEQA in light of the comments submitted herein.

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Respectfully Submitted By, For, and On behalf of all the following Organizations:

AMERICAN WATERWAYS OPERATORS
CALIFORNIA TRUCKING ASSOCIATION
CUSTOMS BROKERS & FORWARDERS ASSOCIATION OF NORTHERN CALIFORNIA
DEVINE INTERMODAL
GSC LOGISTICS
HARBOR TRUCKING ASSOCIATION
INTERNATIONAL LONGSHORE & WAREHOUSE UNION – LOCAL 10
INLANDBOATMEN'S UNION, MARITIME DIVISION – ILWU
PACIFIC MERCHANT SHIPPING ASSOCIATION
QUIK PICK EXPRESS, LLC
SCHNITZER STEEL, INC.
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Exhibit A



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MEMORANDUM

DATE: 11/7/2019

RE: DTOSP Existing and Proposed GP Designations - Maximum Number of New Residential Uses allowed in Primary Area of Concern (16 block area west of Jack London Square)

Downtown Oakland Specific Plan - Residential Intensity

The Downtown Oakland Specific Plan (DTOSP) would significantly increase residential uses and pedestrian activity in proximity to industrial uses in the Port of Oakland. The proposed general plan and zoning amendments under the DTOSP would increase residential uses near the Port under both the "base case" plan scenario and the "Howard Terminal (HT) Option" scenario, which assumes that the City approves the Ballpark/Mixed Use Project at Howard Terminal.

The primary area of concern with respect to conflicts between new residential uses and Port industrial uses and transportation systems is a 16-block area from Brush Street to Clay Street, and 5th Street to Embarcadero West, directly across from Howard Terminal. The DTOSP and the DEIR do not provide information on the calculation or magnitude of the changes that would be allowed in this area. This memorandum and the tables below address permitted residential uses, including estimated numbers of residential units and new residents in the area, in the following scenarios: (i) current land use regulations, (ii) the Base Case scenario, and (iii) the HT Option scenario both with and without the HT Ballpark/Mixed Use Project.

Maximum Allowed Residential Density

Table 1 below summarizes the maximum allowed residential intensity for both existing and proposed land use classifications within the 16-block area.

TABLE 1
Maximum Allowed Residential Intensity

Land Use Classifications		Maximum Allowed Residential Intensity			
		Minimum Square Feet of Site Area per Principal Unit ¹	Maximum Density in Principal Units per Net Acre ²	Assumed Net-to-Gross Ratio	Maximum Density in Principal Units per Gross Acre ²
Existing	LUTE Business Mix	NA	NA	75%	NA
	EPP Light Industry 1	1,089	40		30
	EPP Off-Price Retail	1,089	40		30
Proposed	EPP Mixed Use District	109	400		300
	LUTE Central Business 2	87	500		375

Notes: Values in italics were calculated.
Source: 1) Table III-2, Downtown Oakland Specific Plan Draft Environmental Impact Report, 2019.
2) Table 3A, City of Oakland Guidelines for Determining Project Conformity With the General Plan and Zoning Regulations, 1998.

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Existing Scenario

Under the existing City of Oakland General Plan land use designations, the 16-block area contains: 4 blocks designated as LUTE Business Mix, 4 blocks designated as EPP Light Industrial 1, and 8 blocks designated as EPP Off-Price Retail. **Table 2** below provides an estimate of the maximum allowed residential units and residents under existing General Plan land use designations. It should be noted that while the current General Plan allows for residential development on 12 of the 16 blocks, existing zoning regulations further restrict residential development in this area to only 4 of the 16 blocks.

TABLE 2
Existing Allowable Residential Density – 16 Block Area

Land Use	Blocks	Acreage ²	Max Density ²	Max Residential Units	Potential Residents ³
LUTE Business Mix	0/16	0.00	0	0	0
EPP Light Industry 1	1/16	2.44	30	73.13	138.94
EPP Off-Price Retail	3/16	7.31	30	219.38	416.81
Total				293	556

Notes: 1) Based on estimated total area of 39.0 acres.
2) Maximum Density in Principal Units per Gross Acre.
3) Based on average household size of 1.9 residents per unit (DTOSP EIR pg. 584).
Source: Google Earth, 2019. Oakland, 1998. Oakland, 2019b.

Base Case Scenario

Under the Base Case proposed land use designations, the 16 block area would contain: 5 blocks designated as EPP Mixed Use, 3 blocks designated as LUTE Central Business District 2, and 8 blocks designated as EPP Light Industrial 1. **Table 3** below provides an estimate of the maximum allowed residential units and residents under proposed land use designations.

TABLE 3
Proposed DOSP Base Case Allowable Residential Density – 16 Block Area

Land Use	Blocks	Acreage ¹	Max Density ²	Max Residential Units	Potential Residents ³
EPP Mixed Use District	5/16	12.19	300	3,656.25	6,946.88
LUTE Central Business District 2	3/16	7.31	375	2,742.19	5,210.16
EPP Light Industry 1	8/16	19.50	30	585	1,111.50
Total				6,983	13,269

Notes: 1) Based on estimated total area of 39.0 acres.
2) Maximum Density in Principal Units per Gross Acre.
3) Based on average household size of 1.9 residents per unit (DTOSP EIR pg. 584).
Source: Google Earth, 2019. Oakland, 1998. Oakland, 2019b.

HT Option Scenario

Under the HT Option scenario, the 16 blocks area would contain: 13 blocks designated as EPP Mixed Use, 3 blocks designated as LUTE Central Business District 2, and 0 blocks designated as EPP Light Industrial 1. **Table 4** below provides an estimate of the maximum allowed residential units and residents under HT Option land use designations.

TABLE 4
Proposed DOSP HT Option Allowable Residential Density – 16 Block Area

Land Use	Blocks	Acreage ¹	Max Density ²	Max Residential Units	Potential Residents ³
EPP Mixed Use District	13/16	31.69	300	9,506.25	18,061.88
LUTE Central Business District 2	3/16	7.31	375	2,742.19	5,210.16
EPP Light Industry 1	0	0.00	30	0	0
Total				12,248	23,272

Notes: 1) Based on estimated total area of 39.0 acres.
2) Maximum Density in Principal Units per Gross Acre.
3) Based on average household size of 1.9 residents per unit (DTOSP EIR pg. 584).
Source: Google Earth, 2019. Oakland, 1998. Oakland, 2019b.

Ballpark/Mixed Use Project at Howard Terminal

In addition to the potential increased residential intensity within the DTOSP area described above, approval of the Ballpark/Mixed Use Project at Howard Terminal would introduce approximately 4,000 additional residential units adjacent to industrial uses in the Port of Oakland (DTODP EIR, p. 127, Table V.A-40). **Table 5** below summarizes the maximum residential units and residents from the Ballpark District Project.

TABLE 5

Scenario	Residential Units	Potential Residents
Ballpark District Project	4,000	7,600

Notes: Based on average household size of 1.9 residents per unit (DTOSP EIR pg. 584).

Summary

Table 6 below summarizes the maximum allowed residential units and residents under all scenarios.

TABLE 6
Summary of Allowable Residential Density - 16 Block Area and Howard Terminal

Scenario	Max Residential Units	Potential Residents
Existing Land Use Designations	293	556
DTOSP Base Case Land Use Designations	6,983	13,269
DTOSP HT Option Land Use Designations	12,248	23,272
DTOSP HT Option plus Howard Terminal	16,248	30,872

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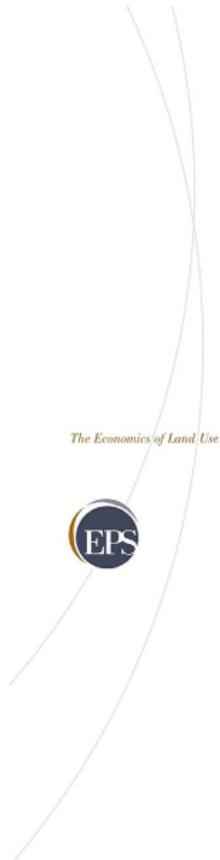
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Exhibit B

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Final Report

**Impacts of the A's Proposed
Howard Terminal Stadium on the
Operations and Economics of the
Oakland Seaport**

Prepared for:
East Oakland Stadium Alliance

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*Impacts of the A's Howard Terminal Stadium on the Port of Oakland Operations and Economics
Final Report 09/12/19*

operators for marine shipping activities.⁷ In response to the Great Recession, maritime activities at the Port have been consolidated to be more efficient, creating high demand for space to accommodate future expansion as the economy has been recovering. Currently active terminals and their operators include:

- Oakland International Container Terminal, operated by SSA Marine
- Matson Terminal, operated by SSA Marine
- TraPac Terminal, operated by TraPac
- Everport Terminal, operated by Everport Terminal Services

In addition to these marine terminals, there are two active intermodal railyards in the Seaport, one operated by Burlington Northern Santa Fe (BNSF) and another by Union Pacific. Additional facilities include a cold-storage warehouse recently built on the former Army Supply Center land that came to the Port after its closing in the BRAC process, as well as former military warehouses dating back to WWII that are still in use. The City of Oakland also received a part of the former Army Supply Center which houses additional logistics uses. The Howard Terminal, which is discussed further later in this report is under a number of short-term leases and serves as an important staging area for truck operations serving the port, as well as a training site for ILWU longshore workers. On the waterside, there are two turning basins, which are critical to Port operations as areas for turning around the ships coming in to dock at the marine terminals.

Unlike the ports of Los Angeles and Long Beach, which serve the wider U.S. economy through an overwhelmingly large volume of imports distributed widely throughout the United States, the Oakland Seaport is in relative import-export balance and serves a more local catchment due to proximity to producers in California's Central, Napa and Salinas Valleys. According to estimates from an economic impact report for the Port of Oakland, nearly 80 percent of the containerized cargo exported via the Seaport originates in the Bay Area and Northern California. Additionally, 85 percent of the containerized imports are estimated to be consumed in the region. These imports are primarily consumer retail products such as beverages, furniture, glassware, and sound and television equipment.⁸ For export containers, key commodities include beverages and wine, cereal, and food products such as frozen beef, fresh vegetables, fruits and nuts. In terms of scale, the Seaport moves 97 percent of all US wine shipped to China.⁹ The Oakland Seaport is a crucial link in the cool supply chain for California agricultural exporters, which allows fresh produce to be shipped in an unbroken refrigerated chain from field to final destination. According to Port staff, Oakland also is the best west coast port for productivity, as measured by

⁷ U.S. Department of Transportation, Bureau of Transportation Statistics, Port Performance Freight Statistics Annual Report to Congress 2018 (Washington, DC: 2018).

⁸ Martin Associates. *The Economic Impact of the Port of Oakland*. Port of Oakland, 2018, *The Economic Impact of the Port of Oakland*, www.portofoakland.com/wp-content/uploads/Economic-Impact-Report-2019-FULL-REPORT.pdf.

⁹ Dupin, Chris. "U.S. Farm Products Targeted by Chinese Tariffs." *American Shipper*, 6 Apr. 2018, www.americanshipper.com/news/us-farm-products-targeted-by-chinese-tariffs?autonumber=71015&infrom=left.

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moves per hour per crane, and maintains a very balanced import/export operation. In contrast, Los Angeles and Long Beach Ports are heavily weighted to imports, primarily from China and other parts of Asia.

Figure 1 Seaport Facilities



In addition to its vital role in northern California commerce, the Port generates significant jobs and economic benefits for Oakland and the region. As detailed in the 2017 economic impact study conducted by Martin Associates, 11,393 direct jobs were generated by the cargo handled at the marine terminals.¹⁰ These direct jobs include jobs with the ILWU, truckers serving the marine terminals, rail crew, yardmen and dispatchers moving the containers by rail to and from the marine terminals, terminal operators, steamship agents, freight forwarders, chandlers, warehouse operators, container repair and leasing companies, pilots, tug operators, and other maritime trades. Many local and national trucking firms serve the marine terminals, as do numerous individual owner/operators. The 11,393 individuals directly employed as a result of activity at the Oakland Seaport received \$641 million in wages and salaries, for an average annual salary of \$56,275. Beyond these direct jobs, approximately 16,300 indirect and induced jobs are further supported through the Seaport activity, for a total of 27,732 jobs across all categories. The effects on personal income and local consumption from these direct, induced and indirect sources totals to nearly \$2.5 billion. Looking more broadly across the state of California, the cargo moving via the Seaport supports almost 500,000 related jobs, with the total economic

¹⁰ Martin Associates. *The Economic Impact of the Port of Oakland*. Port of Oakland, 2018, *The Economic Impact of the Port of Oakland*, www.portofoakland.com/wp-content/uploads/Economic-Impact-Report-2019-FULL-REPORT.pdf.

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value related to the Seaport measured at \$60.3 billion. Due to this value of the Oakland Seaport, local businesses received \$2.2 billion in direct business revenue, resulting in \$281 million of state and local tax revenue generation.

Cargo Shipping Trends

The movement of goods into and out of U.S. ports is a significant component of the national economy. The San Francisco Bay Area goods movement system supports global supply chains and regional industries. Over the past 17 years, the major California ports have seen a dramatic increase in cargo throughput growth and associated goods movement. Waterborne foreign container trade cargo processed at California's primary ports, measured in "Twenty Foot Equivalent Units" (TEUs), increased by more than 74 percent over this period.¹¹ However, as shown in **Figure 2**, this cargo growth has not occurred uniformly across California's ports. The Port of Los Angeles is the most significant port in the United States and throughput there has increased dramatically in absolute and percentage terms since 2000. In the Bay Area, the Port of San Francisco has seen dramatic declines in shipping since the industry's transition to containerized goods movement in the 1960s, and has very little maritime shipping activity remaining.

As shown in **Figure 3**, trade at the Port of Oakland grew 69 percent between 2000 and 2017, from approximately 989,000 TEUs to nearly 1.7 million TEUs in 2017. As detailed in the Martin economic impact study, while the Port of Oakland forecasts steady growth in future years it faces competition from other West Coast ports, growing local congestion, community opposition to industrial development, and environmental concerns. In recent years, the Port of Oakland has lost market share to other ports which have better positioned themselves to take advantage of evolving trade patterns. The recently expanded Panama Canal has influenced cargo activity in the Eastern United States and Gulf Coasts. Since 2010, the Port of Oakland has slipped from being the fifth busiest port to eighth, falling behind the Port of Virginia and the Port of Houston.

¹¹ The Twenty Foot Equivalent Unit is a standard unit of cargo capacity that refers to a 20-foot-long intermodal container. Data from the US Department of Transportation, Maritime Administration, U.S. Waterborne Foreign Container Trade by U.S. Customs Ports (2000 - 2017), Total Trade - Loaded Containers Only.

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Figure 2 California Major Ports Import-Export Activity (TEUs), 2000-2017

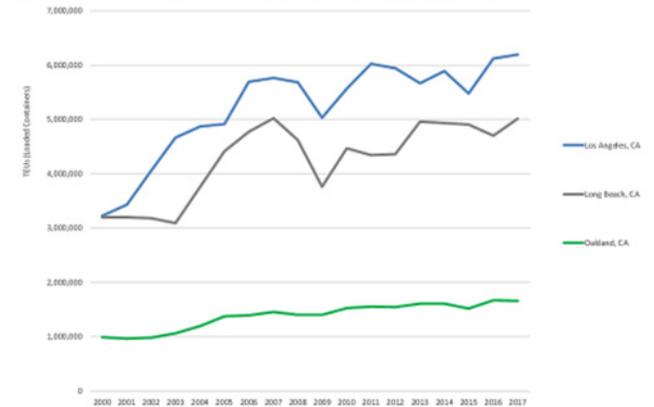


Figure 3 Growth in Shipping in California Ports

California Ports	2000	2010	2017	2000-2017		2010-2017	
				Change	% Change	Change	% Change
Long Beach, CA	3,203,555	4,466,075	5,009,490	1,805,935	56%	543,415	12%
Los Angeles, CA	3,227,743	5,570,485	6,189,161	2,961,418	92%	618,676	11%
Oakland, CA	988,773	1,526,030	1,666,100	677,327	69%	140,069	9%
Port Hueneme, CA	9,344	24,446	72,089	62,745	671%	47,644	195%
San Diego, CA	12	51,339	65,343	65,331	532442%	14,004	27%
San Francisco, CA	35,918	20	62	-35,856	-100%	42	207%
Total	7,465,346	11,638,395	13,002,245	5,536,900	74%	1,363,850	12%

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Development and Improvement of the Oakland Seaport

As noted in the Martin report, "For the Port's marine terminals to continue to increase its economic contribution to the Bay Area economy as well as the state, it is important for the Port to grow its ocean carrier service, and to work to expand its cargo throughput and associated maritime activity. In order for the Port of Oakland Seaport to grow its business, it is critical that the Port continually invest in and/or encourage terminal upgrades in order to accommodate container volume growth. Along with the expansion of marine terminals, it is equally necessary to enhance and improve the efficiency of intermodal facilities and rail connections in order to increase the Port's intermodal share of West Coast container traffic and stimulate distribution center development near the Port's marine terminals."

There have been a number of recent upgrades implemented at the Port to yield increased efficiency and capacity. These have included raising gantry cranes at Oakland International Container Terminal (OICT) to be able to serve larger vessels calling at the port. On top of this investment, SSA, the terminal operator, plans to purchase four more cranes to further expand capacity and further solidify their position as the Port's busiest terminal. Another improvement has been the extending of longer gate hours at more terminals, providing widespread operational relief.

TraPac marine terminal added a new full-service night gate for harbor truckers, accelerating cargo flow and reducing wait time for trucks. The night gate is open from 6:00 p.m. to 3:00 a.m. Monday through Thursday. A new night gate at the SSA Marine terminal at OICT began operations in 2018 as well. The night gate is designed to accommodate steady cargo growth over the next decade. As a result of night gate operations, truck transaction times are reported to be down to an average of 60 to 90 minutes.¹²

The California Air Resources Board granted \$9 million to the Port of Oakland for clean cargo equipment, including five zero-emission yard trucks to shuttle containers within the Matson marine terminal operated by SSA. The Port of Oakland also continues to build up its clean energy infrastructure. According to the Port, use of shoreside electricity at berth reached an all-time high of 78 percent of container vessels visiting Oakland in July 2018. While connected, vessels switched off diesel engines that typically power onboard systems during port stays.¹³

In addition to expanding hours of operation, and adopting environmental improvements, the future success of the Oakland Seaport depends on the ability to accommodate ever larger container ships. Figures 4 and 5 below illustrate changes in maritime shipping at the Oakland Seaport. Figure 4 shows that cargo volumes have gone up, even as the number of carriers stayed about the same, and the number of terminals decreased. This correlates with the almost tripling in size of the largest container ship handled, from 8,000 TEUs to 21,000 TEUs. Figure 5

¹² "Port of Oakland Doing More Work at Night than Ever Before." *Port of Oakland*, 4 Apr. 2018, www.portofoakland.com/press-releases/port-oakland-work-night-ever/.

¹³ "Port of Oakland Shore Power Use Hit All-Time High Last Month." *Port of Oakland*, 31 Aug. 2018, www.portofoakland.com/seaport/port-oakland-shore-power-use-hit-time-high-last-month/.

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shows how cargo volumes have changed over the last six years and are projected to continue to grow as the recovery from the economic collapse of 2018 continues. Figure 6 illustrates the trend toward larger vessel size in the maritime shipping industry as a whole.

Figure 4 Changes in Cargo Handling at Oakland Seaport

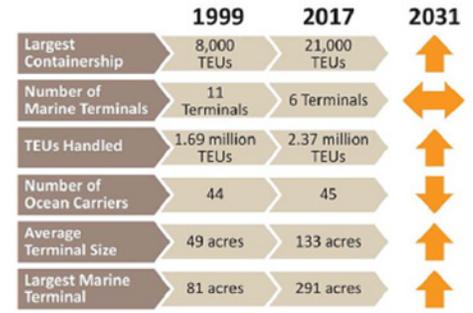
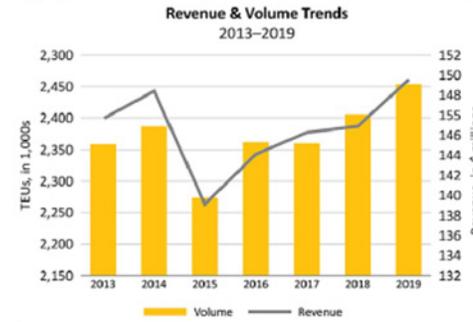


Figure 5 Historic and Projected Container Volumes in Oakland Seaport



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Figure 6 Trends in Container Vessel Size



Howard Terminal: Role in Growth of Oakland Seaport

Howard Terminal is a 50-acre site owned by the Port of Oakland. Separated from the rest of the seaport by Schnitzer Steel to the west, it is also bordered by the UP railroad and Embarcadero West to the north, a power plant and Clay street to the east, and the Inner Harbor to the south. Adapting to the trend toward larger container ships in order to sustain Oakland Seaport's productivity will require expanding the inner harbor turning basin to allow these larger vessels to be turned and serviced at OITC and other port terminals. This expansion likely will require demolition of a part of the Howard Terminal given the narrow width of the Oakland Estuary. Thus, Howard Terminal is a key element of maintaining the viability and growth potential of the Oakland Seaport in the years ahead.

The Port is fully aware that their future depends on increasing efficiencies and expanding capacities, with land in the area a very finite resource. Current trajectories put the Port at needing to expand to Ports America by 2030 to 2035, and by 2040 they would need to be utilizing Howard Terminal or fill land for further growth. While it is currently being utilized for maritime uses not dependent on the ship-to-shore gantry cranes, there has always been strong interest in maintaining Howard as an intermodal marine terminal, and it has demonstrated its value in this role in the past.

According to Port staff, Howard Terminal remains suitable for vessel loading/unloading activities given its deep-water berths access to a wide and deep-water federal navigation channel, and relatively square geometric configuration. However, because of its relatively small size (50.3 acres) relative to other modern container terminals, older container gantry cranes, and limited room for expansion, Howard Terminal is not desirable for loading and unloading of the larger container ships that call the Port. Therefore, Howard Terminal is better suited to container operations for smaller vessels that currently call other terminals; bulk operations; break-bulk operations; and ro-ro operations. However, it currently serves an important role in staging of container loads, increasing the efficiency and throughput at other terminals.

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History of Site

Howard Terminal has been an active industrial site since 1900, when the Terminal was used as a private railway station and coal storage area. It stayed private until it came under Port jurisdiction in 1978. Before its development as a container terminal, Howard Terminal has accommodated a number of industrial activities, including oil storage tanks, a manufactured gas plant, a briquette plant where compressed charcoal blocks were made, a coal tramway, an asphalt paving plant and a blacksmith.¹⁴ Consequently, the site has several generations of toxic materials under its asphalt surface. The existing deed restriction encumbering the site imposed by the DTSC provides that the only use for the property that does not present an unacceptable threat to human safety or the environment is when the site is capped and undisturbed in its current use as a marine terminal, and housing and other specified development on this site are explicitly prohibited. Development of the site would require remediation of contaminants and elimination or modification of the deed restriction.

Current Use

Marine terminal operations under SSA Terminals were formerly located on the site until they relocated to a larger site in 2014. Since that time, Howard Terminal has been serving a number of different purposes through several separate leases. One of these is as a storage and staging area for trucks moving goods within the Port. Having this location adjacent to the major active marine terminals as well as rail and truck transport operations serves an important purpose, as it allows trucks a central location to stage loads, reducing travel time, emissions, and truck traffic in the areas of West Oakland adjacent to the Port. This also increases the capacity of independent truckers to move goods quickly and at off-peak travel times, which increases their income because they are paid by the load.

The Pacific Maritime Association (PMA) also leases a portion of the Terminal. The principal business of the PMA is to negotiate and administer maritime labor agreements with the International Longshore and Warehouse Union (ILWU). The Howard Terminal site serves as a training facility for these union maritime jobs, facilitating certification of maritime workers for longshore jobs of various types.

Development of the Howard Terminal for the A's Stadium and housing, office and other uses would displace these port-related functions and impact the efficiency of Port operations. Furthermore, the development of the site for non-port uses would have a number of additional impacts on the Port that could threaten its competitiveness and viability over the long term. This point is expanded upon in Section 4 of the report.

¹⁴ Veklerov, Kimberly. "Oakland A's Ballpark Plan: Howard Terminal's Industrial Past Poses Challenges." *San Francisco Chronicle*, San Francisco Chronicle, 15 Feb. 2019, www.sfchronicle.com/bayarea/article/Howard-Terminal-s-industrial-past-poses-13618156.php?psid=rjY.

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Figure 7 Aerial View of Howard Terminal



3. THE OAKLAND A'S PROPOSED PROJECT

The Oakland A's have been exploring the possibility of building a new stadium for a number of years, first engaging with the Port of Oakland regarding interest a potential baseball stadium development at the Howard Terminal site in 2014. After early termination of a previous Exclusive Negotiating Agreement (ENA) with the Port, the A's entered into a new four-year ENA in May of 2019. The ENA includes as an attachment a Term Sheet, which specifies key business terms and principles that will be incorporated in the final agreements. The land use program for the site, which accompanies the ENA are shown in **Figure 8** below. The uses include the following:

- A new open-air waterfront multi-purpose Major League Baseball ballpark with a capacity of up to 35,000-persons that will serve as the new home to the Oakland A's, including a 'green roof' that would provide public access on non-game days with views of the Bay;
- Up to 3,000 residential units, 1.5 million square feet of office, and up to 270,000 square feet of mixed retail, cultural and civic uses that would be developed in blocks throughout the Project site west of the ballpark;
- An approximately 3,500-seat performance center;
- An approximately 280,000 square-foot 400 room hotel; and
- A network of public open spaces located throughout the site that would connect the pedestrian and bicycle network along the Oakland waterfront to the site, and would provide two large-scale open spaces.

This is a very substantial amount of non-ballpark development, located between the stadium and active Port maritime operations.

According to an Economic Impact Report published by the Bay Area Council, the non-ballpark uses delineated above would in fact be the main drivers of impact at Howard Terminal, yielding 93 percent of the cited yearly increase in output.¹⁵ Referencing \$902 million of total increase in output, with the ballpark contributing \$65 million of this, the Bay Area Council's analysis significantly overstates the potential economic benefits of the Howard Terminal development as it ignores the economic activity associated with the current stadium, failing to distinguish what development would be truly additive as compared to displacing development that could occur elsewhere in Oakland.

¹⁵ "Economic Impact of Howard Terminal Developments." *Bayareaeconomy.org*, Bay Area Council Economic Institute, May 2019, www.bayareaeconomy.org/files/pdf/Howard_Terminal_Methodology_2019.pdf.

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Additionally, the new development is immediately adjacent to Schnitzer Steel, a 24/7 metals recycling facility, and proximate to the Port's largest marine terminal, all of which generate the significant noise, day and night, light, air quality, truck, train and other environmental impacts that are characteristic of heavy industrial operations. While the Port of Oakland controls much of this industrial property, Schnitzer Steel and Union Pacific Railroad own their sites in fee and have invested substantial capital in equipment, machinery, environmental controls, and infrastructure.

There are many regulatory and process hurdles to be overcome before this development can be approved, including sign-off from the State Lands Commission that the uses are consistent with the Tidelands Trust or authorizing land swaps to free portions of the site from the Trust; approvals from BCDC on consistency with the San Francisco Bay Plan; elimination or modification of the current deed restriction and certification of site remediation by the DTSC; certification of an Environmental Impact Report, adoption of the CEQA findings by the Port Board of Commissioners; and approval of amendments to the City's General Plan, among others.

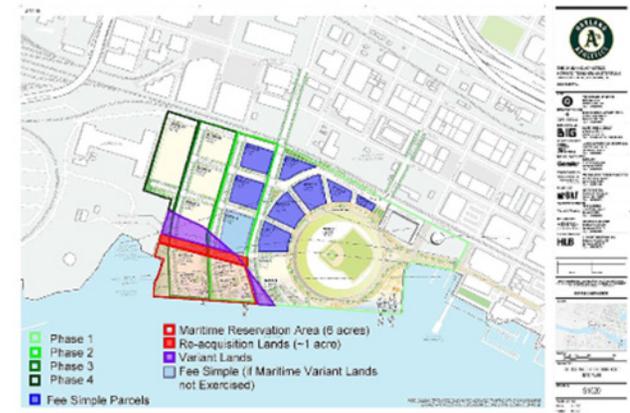
The A's have indicated that their project will be 100 percent privately financed. Among the costs the A's have stated they will finance privately are:

- Remediation of the site;
- Raising of the site to protect against sea level rise;
- Construction of all backbone, horizontal infrastructure;
- Construction of the ballpark and related open space improvements;
- A gondola system connecting the 12th Street BART station with the site;
- Environmental impact mitigation measures required as a result of CEQA analysis; and
- Entitlement and Pre-development costs.

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Figure 8 Oakland A's Proposed Ballpark and Mixed-Use Development



Private financing of all of these costs would be extremely challenging, if not impossible, under the best of circumstances. Adding to that challenge is the extra construction costs necessary to build on pilings that will be piercing contaminated soils. Just as important, the market demand for the proposed uses may be impacted by the adjacent industrial and maritime uses that produce noise, light, and train and truck traffic that are incompatible with residential and office uses. Also, as shown in the diagram, a portion of the site, designated as Maritime Reservation and Variant Lands, very well may be needed for the expansion of the Inner Harbor Turning Basin, further reducing the revenue producing potential of non-stadium uses on the site.

It is evident from the Term Sheet that the A's are depending on generating substantial revenues from non-stadium development on the site to pay for these other costs. One of the key business terms identified in the Term Sheet is that proceeds from the long-term lease or sale of these non-stadium properties would go first to the A's to pay them back for these costs, plus a return on investment that remains to be negotiated. The Port's share of any additional revenues after this priority return to the A's would be subject to a split between the Port and the A's that also remains to be negotiated. While neither the A's nor the Port have released a pro forma illustrating the financial feasibility of the Project, the economics seem daunting and it is difficult to imagine the Port receiving much if any revenue from the land disposition.

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4. POTENTIAL CONFLICTS BETWEEN THE A'S BALLPARK AND MIXED-USE DEVELOPMENT AND THE OAKLAND SEAPORT

The project proposed by the A's entails numerous conflicts with maritime and industrial uses at the Port. To the extent these conflicts cannot be adequately mitigated, they cumulatively represent a threat to the long-term competitiveness and viability of the Oakland Seaport. Likely conflicts are enumerated briefly below.

1. Provisions in the Term Sheet for the acquisition of portions of the Howard Terminal site needed for expansion of the Turning Basin could jeopardize the potential to accomplish the expansion, putting maritime operations at the Oakland International Terminal and the Matson Terminal at risk, and threatening the long-term viability of the Port of Oakland.
 - The term sheet imposes time limits on the Port's ability to elect to use portions of the Howard Terminal site for expansion of the Inner Harbor Turning Basin, including 10 years for the Maritime Reservation lands, which comprise a six-acre portion of the Terminal that likely is essential to the expansion of the turning basin, and 5 years for additional Variant Lands that may prove to be needed to adequately expand the turning basin. Given the lead time for engineering, permitting and financing the expansion of the turning basin, these time frames may obviate the potential to accomplish the expansion, putting the ability of the Port to service larger ships permanently at risk, and jeopardizing the viability of the Port as a whole.
 - The additional provision to allow reacquisition of a portion of the site that may already have been developed as part of the A's mixed-use plan would require the Port to reimburse the A's for any horizontal infrastructure built on the site. This provision would apply to the Reacquisition Lands for 10 years, and to the Variant Lands for 5 years. Bearing the cost of reimbursing the A's for infrastructure that has been built would increase the cost of reacquiring these lands, and potentially could have disruptive effects on the horizontal infrastructure serving the remainder of the site.
 - The need for and feasibility of expanding the turning basin will be studied by the Port, and the Port will request a feasibility and scoping study by the United States Army Corp of Engineers. It is anticipated that the Army Corp study would take 3 to 5 years to complete after commencement of the ENA. If the study takes 5 years, it will exceed the 4-year term of the ENA. The lack of a completed study during the course of the ENA would make execution of transaction documents during that time frame risky in terms of the ability to adequately plan for expansion of the turning basin.
2. Howard Terminal is currently used for staging of containers, reducing truck movement times and distance, and corresponding traffic in surrounding communities, and improving the productivity of independently owned truckers serving the Port. Redevelopment of the terminal would displace this use and its benefits to maritime activities and the environmental quality of surrounding West Oakland neighborhoods.

3. The introduction of residential and office uses immediately adjacent to industrial and maritime uses presents a host of conflicts that are likely to diminish the viability of such uses at the Port, where there are no comparable alternatives for such activities in the Bay Area. These conflicts, however avoidable or unreasonable, unexpected or previously mitigated, may materialize in numerous forms ranging from public nuisance litigation, inability to obtain EIR approvals for future port projects, future city or Port general planning and zoning exercises, to complaints to regulators against standard and normal industrial operations.
4. The most obvious conflict would be between high end residential towers being built immediately adjacent to Schnitzer Steel, whose 24-hour operations involve shredding auto bodies and moving scrap metal, which generate significant noise and other impacts.
5. The loading and unloading of ships, with attendant noise and light impacts, also are incompatible with adjacent residential uses.
6. The loss of industrial and maritime jobs at the Port would likely be permanently irreplaceable.
7. Location of a ballpark on the Howard Terminal would cause numerous transportation, land use, and maritime operational conflicts, and create numerous safety and health risks.
 - Approximately 40 trains per day pass the Howard Terminal daily. Additionally, assembly of trains in the Union Pacific and BNSF rail yards back up past the terminal and along the Embarcadero. Inevitably, these rail operations will come into conflict with auto and pedestrian movements to the ballpark and ancillary uses.
 - Railroads are federally regulated and schedules are dictated by national goods movement and passenger train schedules. Thus, it would be virtually impossible to alter the scheduling of these movements to mitigate interference with game day crowds, or pedestrian or auto trips generated by the residential, office, hotel, retail, and recreational uses proposed in the A's development. Because of this the UP railroad and California Public Utilities Commission have already advised the A's development that their current site plan is incompatible with their existing right of way due to a lack of vehicle-crossing grade separations.
 - The Embarcadero is one of three truck access points to the Port. The heavy congestion and traffic conflicts generated by the A's project would severely impact this access for port-related trucking.
 - The proposal to fence off a portion of the Embarcadero and close it to auto and truck traffic would further impede needed access, and could likely shift truck traffic to Third and Fifth Streets.
 - Modal incompatibilities and thus increased risk of accidents will be inevitable, as truckers, bicycles, Lyft/Uber, buses, and vehicles converge on limited roadway.
 - The increased pedestrian and train conflicts is likely to result in an increase in fatal accidents as pedestrians attempt unsafe crossing to get to a ballgame or other activity on the site.

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OPINION // OPEN FORUM

Oakland's effort to blend a ballpark and the port on the waterfront

By Libby Schaaf and Ces Butner | Nov. 4, 2019 | Updated: Nov. 4, 2019 9:51 a.m.

Oakland is the Bay Area's hub of industry and transportation. Workers who build, lift, drive, steer and move goods make up a large percentage of the region's workforce. The city and the Port of Oakland are proud of our roots as an industrial port city, and we intend to build on that foundation.

More than 84,000 Northern Californians — nearly 20,000 of them in Oakland — have jobs that depend on the Port of Oakland. They are dockworkers, warehouse technicians, airport baggage handlers, truckers, and retail and restaurant workers. The average annual salary of workers at port-related industries is \$45,342. Their contributions are central to the port's estimated \$130 billion economic value to the region.

The Board of Port Commissioners is charged with the responsibility to operate and grow the port, and the city helps to plan for responsible growth of the port. We know that job opportunities expand every time we add a flight at Oakland International Airport, add a new commercial attraction at Jack London Square, or lift more cargo with the port's iconic cranes. Success is not only continuing business as usual; success also requires innovation for efficiency and to capture opportunities.

There is a possible new opportunity for the port and people of Oakland. The Oakland Athletics are proposing a 35,000-seat baseball stadium and a mixed-use development at Jack London Square, as well as repurposing the Oakland Coliseum stadium site. The proposed ballpark project is on a 50-acre cargo terminal site — commonly known as Howard Terminal — that has not been an active terminal for the past six years due to its small size and shallow water depth. The Howard Terminal site is separated from the rest of the active seaport by a private recycling plant. The proposed ballpark would be located adjacent to Jack London Square — the port's commercial and retail area — and could greatly increase commercial activities and add civic vibrancy to the waterfront area that is Oakland downtown's gateway to the Pacific Coast, Asia and the world.

The city, the port and the A's are working together to find solutions where all can succeed. As part of that process, the Board of Port Commissioners and A's have signed an Exclusive Negotiation Term Sheet. It gives the A's up to four years to gain public agency approvals for their plan before any real estate deal can be consummated with the port. The city would be central to the approval process in the following areas:

- Environmental Impact Report certification;
- A General Plan amendment; and
- Related land use entitlements.

As we continue to consider the A's proposal, we consistently ask ourselves: Can baseball and shipping mix? We believe the answer is yes when critical safeguards are included. The ballpark has intriguing potential: increased port visibility, more Jack London Square visitors and a boost for Oakland business. And it's a new, diversified source of revenue and jobs. We also need to be certain the port's maritime activity continues to thrive and grow as a hub of industry that provides amazing jobs for Oakland and the Bay Area.

Everyone is doing their homework.

The port is conducting one-on-one meetings, focus groups and large-group summits with maritime industry constituents. The port, the city and the A's are working with these stakeholders to address issues, for example, investigating a buffer zone between residential and industrial land uses, truck routes and separation of fan traffic. In this way, the port is developing seaport compatibility measures that will become part of any future approvals.

A guiding principle during the conversations between the port, the A's and the city is to strengthen the port and maritime industry, add to the vibrancy of our waterfront, and create jobs. The final deal will ensure everyone — the city, the port and the A's — is able to continue to thrive.

Above all, the A's Howard Terminal proposal is prompting important discussions among the city, the port and stakeholders about better planning and transportation infrastructure to support both the seaport and the neighborhoods surrounding it. The city and the port are committed to coordinated efforts that grow our industrial job base and promote the health and well-being of residents. Though the A's stadium proposal at Howard Terminal is still in review, we are all proud that everyone has come together to prioritize responsible management of a priceless Oakland asset, the Port of Oakland.

Libby Schaaf is mayor of Oakland; Ces Butner is president of the board of commissioners for the Port of Oakland.
<https://www.4chronicle.com/opinion/openforum/article/Oakland-s-effort-to-blend-a-ballpark-and-the-14806173.php>

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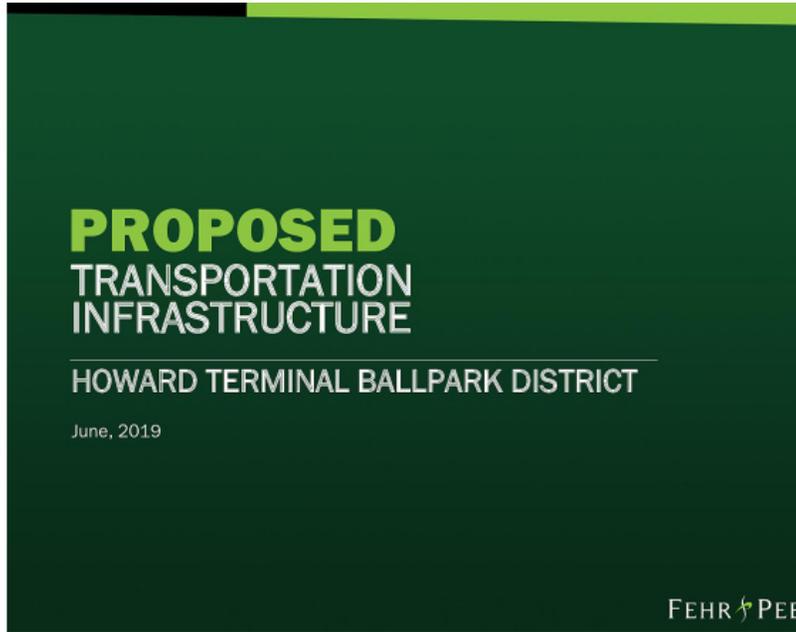


Illustration of proposed new Oakland A's ballpark at Howard Terminal featuring a rooftop park.
Photo: Oakland Athletics / Bjarke Ingels Group

Exhibit D

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TRANSPORTATION PLAN

Howard Terminal Ballpark District

GOALS THAT GUIDE THE PROCESS

- Respect existing and future neighborhood transportation needs
- Ensure safe and efficient movement of people and goods in the area
- Encourage pedestrian, bicycle, and transit use
- Reduce peak loads on transportation network
- Achieve Oakland's trip reduction goals
- Provide great ballpark fan experience

FEHR & PEERS | Howard Terminal Ballpark District

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TRANSPORTATION PLAN

Howard Terminal Ballpark District

CONSTRAINTS WE WORK WITHIN

- Limited access options
- Small block-size network in Jack London District
- Discontinuous neighborhood streets
- Limited through connections to downtown
- Given congestion, walking to BART is faster than taking the bus

FEHR & PEERS | Howard Terminal Ballpark District

COMMENT

MODE SHARE CONCLUSIONS

Calculated Mode Share – With Transportation Plan

	Weekday Evening	Weekday Day	Weekend
Drive	50%	39%	50%
BART	31%	38%	31%
TNC	13%	15%	14%
Walk	3%	4%	3%
Bike	1%	2%	1%
Ferry	1%	<1%	<1%
Bus	1%	2%	1%
Existing Coliseum			
Drive	70%	71%	74%
BART	23%	22%	19%
TNC	7%	7%	7%

FEHR & PEERS | Howard Terminal Ballpark District

O29-3

COMMENT

WHAT ARE PLAN COMPONENTS?

Transportation Plan for Howard Terminal

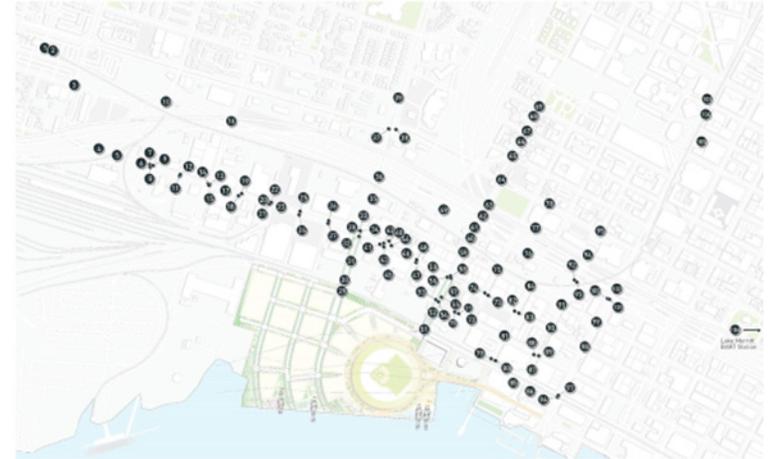
PRIMARY PLAN COMPONENTS ARE . . .

Mode	Strategy
Walk	Provide safe and desirable pedestrian routes to the site
Bike/Micro-mobility	Improve bike infrastructure to create safe routes to the ballpark
BART	Station crowd management when needed
Bus	Provide accessible and legible transit service to the site
Drive	Limit on- and off-site parking through supply and pricing
Other	Explore other modes to diversify options: gondola, ferry, etc

FEHR & PEERS | Howard Terminal Ballpark District

COMMENT

OFF-SITE STREET INFRASTRUCTURE



FEHR & PEERS | Howard Terminal Ballpark District

O29-3

COMMENT

COMMENT

BALLPARK ATTENDEES WHO BART

Weekday Evening Games – Arrival and Departures

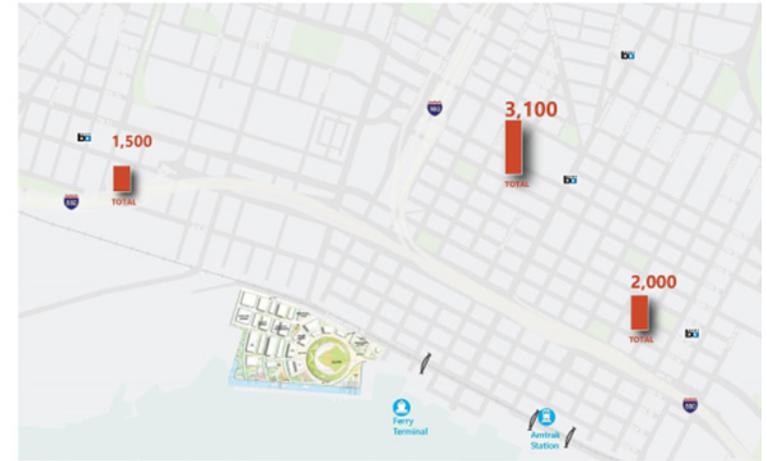


X% (Y%) = Arrival (Departure) Attendee Distribution
SOURCE: 2017 BART Ridership Data

FEHR & PEERS | Howard Terminal Ballpark District

WHAT BART STATION DO I USE?

Weekday Evening + Weekend Games – Peak Hour Buildout (~ 67 days/year)



FEHR & PEERS | Howard Terminal Ballpark District

O29-3

COMMENT

WHAT BUS DO I USE?

Weekday Evening Games

APPROACH TO BUS SERVICE

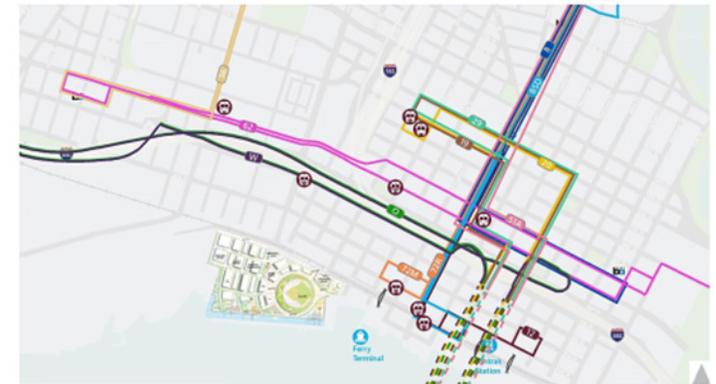
- Extend existing bus lines
- Potentially augment service on game days (no game-day specific routes)
- Explore bus-only lanes on Broadway and MLK/7th
- Evaluate cost-effectiveness of bus service options (\$/rider)

FEHR & PEERS | Howard Terminal Ballpark District

COMMENT

WHAT BUS DO I USE?

Weekday Evening Games - Existing Service



FEHR & PEERS | Howard Terminal Ballpark District

O29-3

COMMENT

TRANSIT ACCESS IMPROVEMENTS

Permanent Change

POTENTIAL BUS SERVICE OPTION

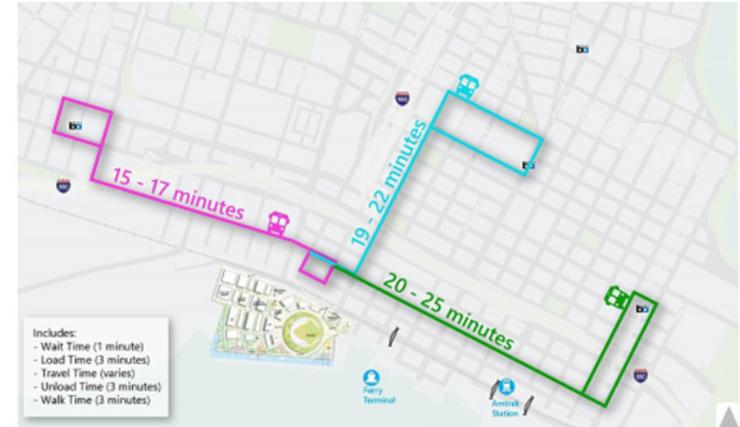


FEHR & PEERS | Howard Terminal Ballpark District

COMMENT

TRANSPORTATION PLAN CONSIDERATION

Weekday Evening Game – Shuttle Buses



FEHR & PEERS | Howard Terminal Ballpark District

O29-3

COMMENT

HOW DO I ARRIVE BY WALKING?

Weekday Evening Game - Peak Hour Buildout after Parking Plus BART



FEHR & PEERS | Howard Terminal Ballpark District

COMMENT

HOW DO I ARRIVE BY WALKING/BIKING?

Weekday Evening Games - Peak Hour Buildout



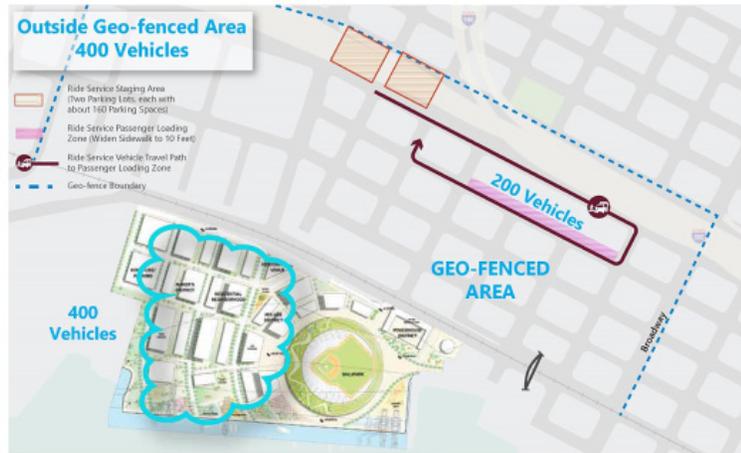
FEHR & PEERS | Howard Terminal Ballpark District

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COMMENT

RIDE SOURCING OPTIONS?

Weekday Evening Games – Peak Hour Vehicles



FEHR & PEERS | Howard Terminal Ballpark District

COMMENT

BALLPARK ATTENDEES WHO DRIVE

Weekday Evening Games -- Arrivals



FEHR & PEERS | Howard Terminal Ballpark District

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COMMENT

PARKING MANAGEMENT HIGHLIGHTS

All Ballpark Events

- Parking Reservation System at Ticket Purchase
 - Driver pays in advance for reserving a parking space
 - Guaranteed parking space available at designated time
 - Includes on-site and participating off-site parking facilities
- On-street Parking Management
 - Maintain parking for area businesses and residents

FEHR & PEERS | Howard Terminal Ballpark District

COMMENT

END

FEHR & PEERS | Howard Terminal Ballpark District

O29-3

COMMENT

WHAT ARE THE PLAN COMPONENTS

Transportation Plan for Howard Terminal

OVER 50 TRANSPORTATION INFRASTRUCTURE PROJECTS SUPPORTING . .

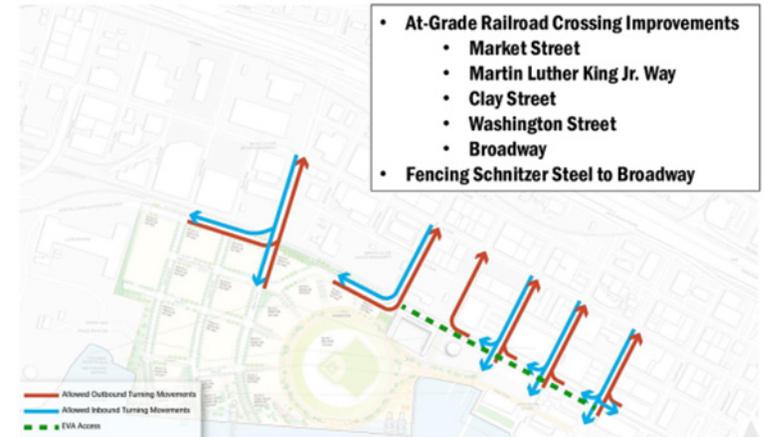
- Parking management and reservation system (all events)
- BART station crowd management (when needed)
- Ride source management and dedicated areas (all events)
- ➡ ▪ Washington Street as a pedestrian street (large events)
- ➡ ▪ Event traffic control to manage people and motor vehicles (when needed)
- Extend and adjust AC Transit bus Lines (permanent)
- Pedestrian and bike bridge(s) (permanent)
- Railroad corridor improvements (permanent)

FEHR & PEERS | Howard Terminal Ballpark District

COMMENT

CIRCULATION CHANGES AT RAILROAD

Permanent Change – Subject to CPUC Approval



FEHR & PEERS | Howard Terminal Ballpark District

O29-3

COMMENT

COMMENT

WHERE DO I PARK?

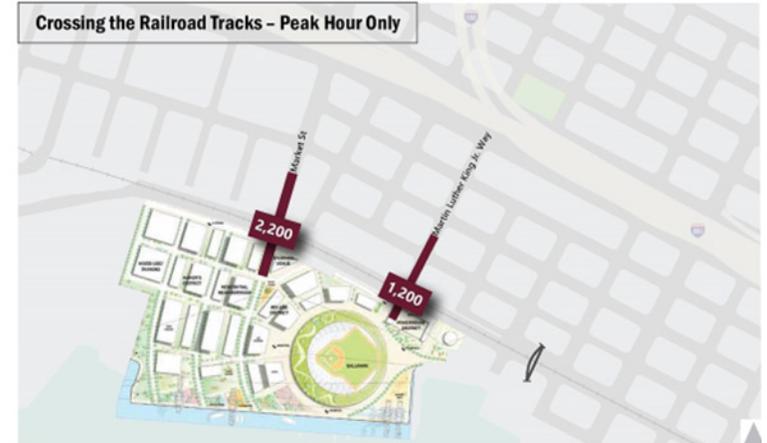
Weekday Evening Games – Parking Reservations at Buildout



FEHR & PEERS | Howard Terminal Ballpark District

VEHICLE CROSSINGS AT RAILROAD

Weekday Evening Game – Peak Hour Buildout Crossings



FEHR & PEERS | Howard Terminal Ballpark District

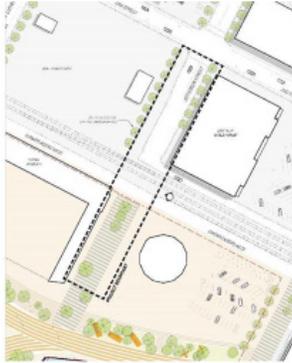
O29-3

COMMENT

COMMENT

PEDESTRIAN AND BIKE BRIDGE

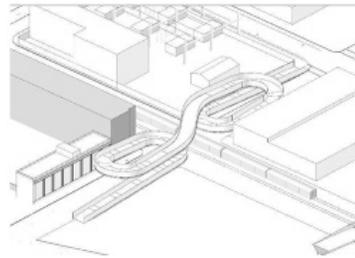
Permanent Change – Subject to CPUC Approval



- Potential locations –
- Jefferson Street (shown) or
 - Clay Street

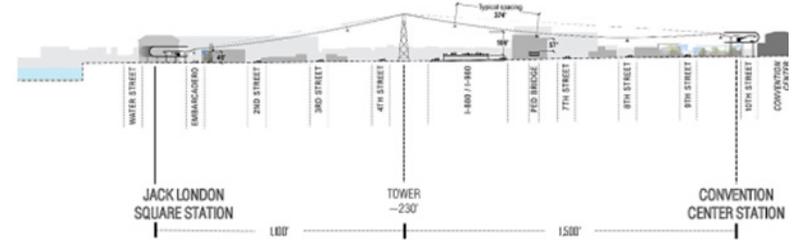
FEHR & PEERS | Howard Terminal Ballpark District

Variant in CEQA Document



GONDOLA

Permanent Change – Subject to CPUC Approval



FEHR & PEERS | Howard Terminal Ballpark District

Variant in CEQA Document

O29-3

COMMENT

COMMENT

TRANSPORTATION PLAN CONSIDERATIONS

Ballpark District

**FERRY /
WATER TAX
SERVICE**



POTENTIAL FERRY RIDERSHIP
Up to 1,200 ballpark patrons (based on Giants ridership)



FERRY CAPACITY
Up to 400 passengers per ferry



TRAVEL TIME FROM SAN FRANCISCO FERRY BUILDING
35 minutes (30 min ferry, 5 minute walk)

FEHR & PEERS | Howard Terminal Ballpark District

Exhibit E

O29-3

COMMENT

COMMENT



CITY OF OAKLAND
Bureau of Planning

250 Frank H. Ogawa Plaza, Suite 3315, Oakland, California, 94612-2032

NOTICE OF PREPARATION (NOP)
OF A DRAFT ENVIRONMENTAL IMPACT REPORT FOR THE
OAKLAND WATERFRONT BALLPARK DISTRICT PROJECT

The City of Oakland's Bureau of Planning is preparing an Environmental Impact Report ("EIR") for the Oakland Waterfront Ballpark District Project ("Proposed Project") at Howard Terminal. The City is requesting comments on the scope and content of the EIR. A description of the Proposed Project and its location, together with a summary of the probable environmental effects that will be addressed in the EIR are included herein. Pursuant to California Environmental Quality Act Guidelines §15063(a), the City has not prepared an Initial Study.

The EIR for the Proposed Project is being prepared in compliance with the California Environmental Quality Act (CEQA) (California Public Resources Code §§21000 et. seq.) and the State CEQA Guidelines (Guidelines) (California Code of Regulations, Title 14, Division 6, Chapter 3, §§15000 et. seq.). The EIR for the Proposed Project is also being prepared under the new California Assembly Bill 734 judicial streamlining legislation (California Environmental Quality Act: Oakland Sports and Mixed-Use Project) that added new provisions to CEQA as Public Resources Code § 21168.6.7 for the Proposed Project. The City of Oakland is the public agency that would consider approval of an amendment to the Oakland General Plan required for the Proposed Project, and as such, it is the Lead Agency for the Proposed Project. Pursuant to Guidelines §15082(a), upon deciding to prepare an EIR, the City as lead agency must issue a Notice of Preparation (NOP) to inform the Governor's Office of Planning and Research, trustee and responsible agencies, and the public of that decision.

The purpose of the NOP is to provide information describing the project and its potential environmental effects to those who may wish to comment regarding the scope and content of the information to be included in the EIR. Guideline §15082(b) states: "... [E]ach responsible and trustee agency and the Office of Planning and Research shall provide the lead agency with specific detail about the scope and content of the environmental information related to the responsible or trustee agency's area of statutory responsibility that must be included in the draft EIR. The response at a minimum shall identify: (A) The significant environmental issues and reasonable alternatives and mitigation measures that the responsible or trustee agency, or the Office of Planning and Research, will need to have explored in the Draft EIR; and (B) Whether the agency will be a responsible agency or trustee agency for the project." This notice is being sent to responsible or trustee agencies and other interested parties. Responsible and trustee agencies are those public agencies, besides the City of Oakland, that have a role in considering approval and/or carrying out the project. The City encourages responsible and trustee agencies and the Office of Planning and Research to provide this information to the City, so that the City can ensure that the Draft EIR meets the needs of those agencies. Once the Draft EIR is published, it will be sent to all responsible or trustee agencies and to others who respond to this NOP or who otherwise indicate that they would like to receive a copy. The Draft EIR will also be available for review at the City of Oakland at the address identified immediately below.

SUBMITTING COMMENTS IN RESPONSE TO THIS NOP: The City encourages comments to be submitted electronically via the following link: <http://comment-tracker.esassoc.com/tracker/oaklandsportseir/>. Comments that address the scope of the Draft EIR may also be directed in writing to: Peterson Vollmann, Planner IV, City of Oakland Bureau of Planning, 250 Frank H. Ogawa Plaza, Suite 2214, Oakland, CA 94612, by hand

City of Oakland
Notice of Preparation of a Draft Environmental Impact Report for the Oakland Waterfront Ballpark District Project
November 30, 2018

delivery or mail, by email to PVollmann@oaklandca.gov, or by fax to (510) 238-4730. Mr. Vollmann may be reached by phone at (510) 238-6167. Time limits mandated by State law require that the City must receive comments within 30 days after publication of this notice; however, the City will receive comments through January 7, 2019, 38 days after publication of this notice. Responses to the NOP must be received via the above web address, mailing or e-mail address or fax by 5:00 p.m. on **Monday, January 7, 2019**. Please reference Case File Number **ER18-016** in all correspondence. Comments and suggestions as to the appropriate scope of analysis in the EIR are invited from all interested parties and will be received at the EIR Scoping Meetings to be held before the City Planning Commission, as noticed below.

Commenters should focus comments on potential impacts of the Proposed Project on the physical environment. Commenters are encouraged to identify ways that potential adverse effects resulting from the Proposed Project might be minimized and to identify reasonable alternatives and mitigation measures to the Proposed Project.

EIR SCOPING MEETINGS:

The **City of Oakland Planning Commission** will conduct a public scoping meeting on the EIR for the Oakland Waterfront Ballpark District Project on **Wednesday December 19, 2018 at 6:00 p.m.** in the Council Chambers in **Oakland City Hall, 1 Frank H. Ogawa Plaza, Oakland, CA.**

The **City of Oakland Landmarks Preservation Advisory Board** will conduct a public scoping meeting on the historic and cultural resource aspects of the Proposed Project on **Monday December 17, 2018 at 6:00 p.m.** in the Council Chambers, **Oakland City Hall, 1 Frank H. Ogawa Plaza, Oakland, CA.**

PROJECT TITLE: Oakland Waterfront Ballpark District Project (Case File No. **ER18-016**)

PROJECT LOCATION: Approximately 55 acres that comprises the Charles P. Howard Terminal and adjacent parcels, located at the Port of Oakland along the Inner Harbor of the Oakland-Alameda Estuary (See Figure 1, Site Location). The site is bound generally by the Oakland Estuary Middle Harbor on the south; Jack London Square on the east; Union Pacific railroad tracks and the Embarcadero on the north; and the heavy metal recycling center, Schnitzer Steel, on the west (see Figure 2, Site Boundary and Context).

PROJECT SPONSOR: Oakland Athletics Investment Group, LLC d/b/a The Oakland Athletics

PROJECT SITE OWNERS: City of Oakland acting by and through the Port of Oakland, Dynegy Oakland, LLC, and PG&E

EXISTING CONDITIONS: Maritime support uses for short term tenants. Existing uses and activities include but are not limited to: truck parking, loaded and empty container storage and staging, and longshore training facilities. The Project Site was previously used as a maritime container terminal until 2014. Howard Terminal is designated as Berths 67 through 69 within the Port of Oakland. Berths 67 and 68 were constructed in the early 1980's, and Berth 69 was constructed in the mid 1990's. The site includes a marginal wharf structure approximately 75' wide. A below grade rock dike sits adjacent to the Oakland Inner Harbor as the site's shoreline. The remaining site is

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COMMENT

City of Oakland
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understood to be on grade pavement. Four cranes are located on Howard Terminal that were used to load/unload ships when the area was an active shipping facility. Howard Terminal is currently used by short term tenants.

Existing regional access to the Project Site exists via both Interstate 880 and Interstate 980, with on-ramps to each within one mile of the Project Site. The Project Site is located about one mile, a 20- to 25-minute walk, from three BART stations including West Oakland, 12th Street Downtown, and Lake Merritt. Railroad tracks are adjacent to the north boundary of the Project Site and there are several at-grade crossings of the railroad tracks nearby, including two directly into the Project Site. There is an Amtrak / Capital Corridor train station about one-half mile from the Project Site, transit bus service is within one-quarter mile, and the Jack London Ferry Terminal is immediately adjacent to the east of the Project Site.

The City of Oakland, acting by and through the City Council, controls the General Plan designation of the Project Site, which currently has a land use designation of "General Industrial" and the "Industrial General (IG)" zoning designation. In addition, areas of Howard Terminal fronting the Oakland Estuary (to the south) are designated within the Bay Conservation and Development Commission (BCDC) jurisdiction and are State Public Trust lands.

The Project Site is included in the list of Hazardous Waste and Substances sites in the Department of Toxic Substances Control (DTSC) EnviroStor database, one of the lists meeting the "Cortese List" requirements (<http://www.calepa.ca.gov/sitecleanup/cortese/>, accessed October 2018).

PROJECT DESCRIPTION: The Project Sponsor proposes to develop the Howard Terminal property with the following key initial plan elements:

- Demolish existing buildings on the Project Site, except the existing power plant and the existing container cranes, which may be retained;
- Address any hazardous materials that may be present on the Project Site;
- Construct:
 - A new privately funded, open-air, approximately 35,000 person capacity Major League Baseball park;
 - Up to 4,000 residential units of varying affordability and types
 - Approximately 2.27 million square feet of adjacent mixed use development, including retail, commercial, office, cultural, entertainment, flex light industrial/manufacturing, and recreational uses;
 - A performance venue with a capacity of up to 3,500 individuals;
 - A 300 to 400-room hotel;
 - New and expanded utility infrastructure; and
 - New signage and lighting;
- Construct/provide improved access from the surrounding neighborhood and regional transportation networks, which could include, but may not be limited to:
 - an expanded shuttle and/or bus service ("rubber-tire trams"); and

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City of Oakland
Notice of Preparation of a Draft Environmental Impact Report for the Oakland Waterfront Ballpark District Project
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- a new network of public streets and sidewalks that provide connectivity to and through the Project Site, and pathways that lead directly to the waterfront and related amenities.

- Construct/provide new waterfront public access, enhanced water views, and on-site open space;
- Comply with AB 734 regarding implementation of sustainability measures, development of a LEED Gold ballpark, and no net increase of greenhouse gas (GHG) emissions; and
- Phase development of the Proposed Project, with a target completion date of Spring 2023 for construction of Phase 1, including the ballpark, associated infrastructure, and potentially some ancillary development.

The Proposed Project may also consider one or more variants or options, potentially including but not limited to:

- New elevated pedestrian connections over the railroad tracks and improvements to existing at-grade crossings;
- An aerial tram or gondola above Washington Street extending from downtown Oakland near 12th Street BART to Jack London Square;
- Development of a portion of an existing power plant and removal of adjacent tanks;
- Altered edge configuration of the existing wharf to enhance public views and provide additional boat access/active water uses; and/or
- Extension of Embarcadero West to Middle Harbor Road and a new ramp from the existing Adeline Street overpass for new direct access to the Project Site.

ANTICIPATED ENTITLEMENTS AND APPROVALS: Discretionary approvals required for development of the Proposed Project are anticipated to include, but may not be limited to, the following:

- City Council approval of amendments to the General Plan and Planning Code after recommendation by the Planning Commission;
- Board of Port Commissioners approval of project transactional documents (e.g. leases and conveyance agreements);
- All necessary development permits and entitlements from the City & the Port;
- Port and State Lands Commission approval of a Trust Settlement and Exchange Agreement addressing public trust issues affecting the Project Site; and
- Bay Conservation and Development Commission (BCDC) Major Permit and Amendment to the BCDC and Metropolitan Transportation Commission (MTC) Seaport Plan.

PROBABLE ENVIRONMENTAL EFFECTS AND PROPOSED SCOPE OF THE EIR: The EIR will analyze and disclose the direct and indirect potentially significant impacts that would result from construction and operation of the Proposed Project under Existing Plus Project and Cumulative conditions (Guidelines §§15126.2, 15130), in addition to other analysis scenarios that may be appropriate for the EIR. Where significant impacts are identified, the EIR will describe potentially feasible mitigation measures that could minimize significant adverse impacts (Guidelines §15126.4). It is anticipated that the Proposed Project may have environmental impacts on aesthetics, air quality, biological resources, cultural resources, hazards, land use, noise and vibration, population and housing, public services, public utilities, transportation and circulation, hydrology and water quality, and growth inducement. It is anticipated that the Proposed Project would have no impact or less-than-significant impacts on

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O29-4 East Oakland Stadium Alliance, by AES (Part 5)

COMMENT

COMMENT

O29-4-1 See Response to Comment O29-3-1.

O29-4-1

City of Oakland
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agricultural and forestry resources. Nevertheless, the EIR will evaluate the full range of environmental issues contemplated for consideration under CEQA and the CEQA Guidelines, including but not limited to the following:

- Aesthetics, Shadow and Wind (including Light, and Glare)
- Agricultural and Forestry Resources
- Air Quality
- Biological Resources
- Cultural and Historic Resources (including Tribal Cultural Resources)
- Geology and Soils (including Geological and Seismic Hazards)
- Greenhouse Gas Emissions /Global Climate Change
- Hazards and Hazardous Materials
- Hydrology and Water Quality
- Land Use and Planning
- Mineral Resources
- Noise and Vibration
- Population and Housing (including Growth Inducement)
- Public Services (including Police Services, Fire Protection Services, Parks and Schools);
- Recreation
- Transportation and Circulation
- Public Utilities and Service Systems (including Energy Demand and Conservation)

The Draft EIR will evaluate cumulative impacts of the Proposed Project, including the effects of other past, present, and reasonably foreseeable projects in the vicinity (Guidelines §15130).

The Draft EIR will also identify and examine a range of reasonable alternatives to the Proposed Project, including, but not limited to, a No Project Alternative (Guidelines §15126.6) and an alternative site (e.g. the Oakland Coliseum site).

November 30, 2018
Case File Number: **ER18-016**


Ed Manasse, Bureau of Planning
Environmental Review Officer

Attachments:

Figure 1, Project Location Map
Figure 2, Site Boundary and Context

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COMMENT

COMMENT

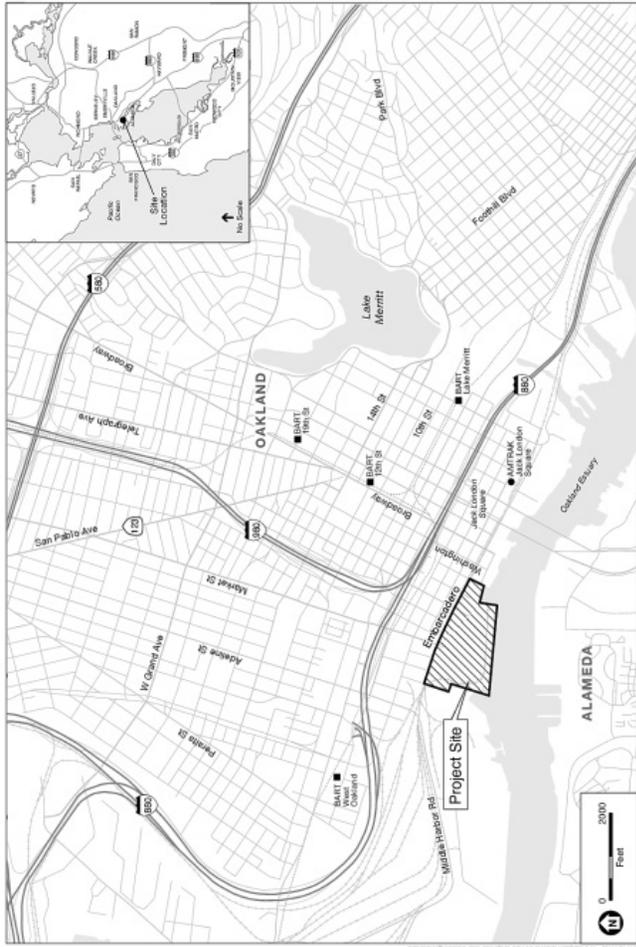


Figure 1
Project Location

SOURCE: ESA, 2018



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Figure 2
Site Boundary and Context

SOURCE: City of Oakland, Bureau of Planning



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COMMENT

COMMENT

Exhibit F

9/26/2019 Mail - MLS - Outlook

Re: Follow-Up and Update on FASTER

MLS
Tue 6/25/2019 3:04 PM

To: Russo, Ryan <RRusso@oaklandca.gov>; Landreth, Sabrina <SLandreth@oaklandca.gov>
Cc: Lake, Betsy <ELake@oaklandca.gov>; Sawicki, Mark <MSawicki@oaklandca.gov>

Please let them know these were your initial thoughts but you'll be meeting with the Mayor to finalize a list.

Let's meet about this ASAP.

Sent from my iPhone

On Jun 24, 2019, at 2:01 PM, Russo, Ryan <RRusso@oaklandca.gov> wrote:

Ryan Russo
Director, OakDOT
(510) 238-2967
rrusso@oaklandca.gov

From: Russo, Ryan
Sent: Wednesday, May 29, 2019 11:30 AM
To: Gwen Litvak <glitvak@bayareacouncil.org>
Cc: Jason Baker <jbaker@svfg.org>; Ferrara, Nicole <NFerrara@oaklandca.gov>
Subject: RE: Follow-Up and Update on FASTER

Dear Gwen,

We're looking forward to meeting with you today to discuss the Megameasure and how we can improve our transportation system for all Bay Area residents. In advance of our meetings, I want to share a few key principles and priorities.

Principles:

- 1) **Values:** The City of Oakland will work to ensure that the measure reflects our values as a City, many of which are shared with other cities throughout the Bay Area:
 - a. **Equity:** reversing systemic inequities that have persisted in our transportation systems for generations, including inequitable access to safe streets and a variety of mobility options, as well as authentically engaging communities of concern in planning processes
 - b. **Safety:** targeting areas with the highest numbers of severe and fatal crashes for infrastructure improvements, calming speeds through improved street design
 - c. **Sustainability:** creating a transportation system where the most affordable, most reliable and fastest way to get around is also the most environmentally sustainable

<https://outlook.office365.com/mail/searchid/AAQKADZjNGE2NzJLWQyM2EiNGUzMy1hMmVjLWYyZDE0NW0YjY4MgAQAKsu3eoODHFAKc5AC...>

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COMMENT

COMMENT

9/26/2019

Mail - MLS - Outlook

- d. **Responsible governance:** transparent processes that include accountability measures and metrics, and build the public's confidence in government's ability to spend their dollars wisely and responsibly
- 2) **Funding source:** as Bay Area transportation leaders consider funding sources for the megameasure, we are committed to ensuring that the funding source is guided by our values:
 - a. **Sales taxes** are regressive and don't align with our equity value. There is also no link between sales taxes and transportation. We discourage you from considering this funding source option.
 - b. **Parcel taxes** are less regressive, but also aren't clearly linked to transportation and the Bay Area is already grappling with an immense housing crisis, and raising housing costs seems inopportune. While this is more acceptable than a sales tax, we are interested in funding sources with a better nexus.
 - c. **Vehicle License Fee & Regional Gas Taxes** are either more progressive measure, provide an incentive to the outcomes we want and/or have an obvious direct link to the improvements we're seeking. We strongly encourage you to seek state legislation to allow Bay Area residents to significantly increase their VLFs and/or allow for a regional gas tax to pay for transportation infrastructure

Priorities:

As the Megameasure takes shape, we're including a preliminary list of priority projects. This is not a comprehensive list, and the projects below are at varying stages in the project development process:

- **Regional Connectivity:**
 - **Second tube** from San Francisco to Oakland
 - **Sustainable estuary crossing** between Oakland and Alameda. Some initial planning has begun on a pedestrian/bicycle bridge, and other considerations include a Transit bridge/tunnel and Gondola.
- **Multi-modal Bay Bridge Connections:**
 - Fully funding the partially funded **LINK project** to get people walking and biking from West Oakland to the East Span of the Bay Bridge
 - **West span of Bay Bridge pedestrian/bike path**
 - **Priority transit access** to the Bay Bridge from the East Bay, and potentially on the Bay Bridge
- **I-580 general purpose lane to HOV/Express Lane conversion:** ACTC project through Oakland portion of the I-580
- **I-980 tear-down,** converting freeway to housing and rebuilding the street network and connectivity between Downtown and West Oakland
- **Infill stations along BART**
 - Potential Oakland Locations: 98th Ave, High St, Howard Terminal/Jack London Square, Children's Hospital
- **Jack London railroad track undergrounding:** the current railroad alignment along Embarcadero West through Jack London Square makes for one of the highest injury and delay areas along the Amtrak network, and it results in noise pollution in an area undergoing a massive transition from industrial to mixed use commercial and residential zones. Undergrounding the railroad, perhaps in alignment with a second tube and the A's Howard Terminal development, creates an opportunity to increase reliability of Amtrak and the development of a new East Bay transit hub.

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9/26/2019

Mail - MLS - Outlook

- **Regional Express Bus Transit:** using regional system of managed lanes, provide for high frequency, high quality regional express transit
- **Undergrounding BART in East & West Oakland:** undergrounding BART in East & West Oakland creates a great opportunity for new parcels to be designed for transit oriented development and can right historic injustices
- **Major pedestrian/bicycle infrastructure projects**
 - **Coliseum BART to Bay Trail connection:** this creates a class IV pedestrian and bicycle path between the Coliseum BART station in East Oakland to the Bay Trail, linking BART riders and East Oakland community members to an incredible open space/active transportation resource that's fairly inaccessible. It requires extensive I-880 interchange reconstruction. The project is on Caltrans' PID list.
 - **East Bay Greenway:** this project has been designed and requires construction dollars to build & maintenance resources
 - (Also see LINK Project and West Span of Bay Bridge above)
- **Programmatic Categories:**
 - **Transit capital improvements:** implementation of surface transit investments (bus only lanes, BRT projects) in coordination with AC Transit
 - **Transit operations:** increasing frequency of AC Transit buses, expanding routes, reducing fares
 - **Shared mobility & parking:** planning, management, upgrading to "smart" infrastructure, e-charging stations, etc.
 - **Pedestrian and bicycle safety and maintenance:** flexible dollars to both build new safety projects and maintain existing infrastructure and paths
 - **Roadway maintenance and operations:** for signals, lighting, pavement, concrete, and ADA retrofits

We're looking forward to our initial discussion, and fleshing out these ideas further over the coming months.

Sincerely,

Ryan

Ryan Russo
Director, OakDOT
(510) 238-2967
rrusso@oaklandca.gov

From: Gwen Litvak [mailto:glitvak@bayareacouncil.org]
Sent: Thursday, May 9, 2019 5:15 PM
To: Russo, Ryan <RRusso@oaklandca.gov>
Cc: Jason Baker <jbaker@svlg.org>
Subject: Follow-Up and Update on FASTER

Hi Ryan,

I hope this email finds you well.

https://outlook.office365.com/mail/search/id/AAQKADZkNGE2NzJlWQyMzEiNGUzMy1hMWJlLWYzODE0NWMyYjY4MgAQAKuu3eoODHFAKdc5AC...

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COMMENT

COMMENT

9/26/2019 Mail - MLS - Outlook

The FASTER coalition is reaching out to a number of transportation leaders and we'd love to meet ASAP and hear about your ideas for a possible regional transportation measure.

Please see the attached for more information for discussion- no need to respond in writing; we plan to discuss these live during our meeting!

Any chance you are free Friday the 17th after 2:30pm to discuss? If not, I can provide some dates and times the following week that may work.

Thanks so much,
Gwen Litvak

Gwen Litvak | Senior Vice President, Public Policy | BAYAREA COUNCIL
353 Sacramento Street, 10th Floor | San Francisco, CA 94111 | 415-946-8706
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<FASTER Follow-Up Discussion.pdf>

<https://outlook.office365.com/mail/search/id/AAQkADZkNGE2NzJlLVQyM2EiNGUzMy1hMwJlLWYzODE0NWVjYjY4MjgAQAKui3eoODHFAKdc5AC...>

Exhibit G

O29-4

COMMENT

9/25/2019

Oakland, CA Code of Ordinances

High Street	San Leandro Street	Alameda City Limits
MacArthur Freeway	Distribution Structure	Grand Avenue
MacArthur Freeway	Edwards Avenue Interchange	Warren Freeway (State Route 13 Interchange)
MacArthur Freeway	Warren Freeway (State Route 13 Interchange)	Edwards Avenue Interchange
Maritime Street	7th Street	West Grand Avenue
Martin Luther King, Jr. Way	8th Street	Port of Oakland
Middle Harbor Road	Adeline Street	Naval Supply Depot
Nelson Mandela Parkway	8th Street	7th Street
Northgate Avenue	West Grand Avenue	27th Street
Peralta Street	12th Street	Emeryville City Limits
San Francisco-Oakland Bay Bridge and Approach	Distribution Structure	Oakland-San Francisco Boundary
San Pablo Avenue	Berkeley City Limits	Emeryville City Limits
West Grand Avenue	Maritime Street	Northgate Avenue

When authorized signs are in place giving notice thereof, the operator of any motor truck or trucking combination as defined in [Section 10.52.070](#), shall drive on such route or routes and none other except when necessary to traverse another street or streets to a destination for the purpose of loading or unloading, but only then by such deviation from the nearest truck route as is reasonably necessary.

(Ord. No. 13323, § 4, 7-21-2015; Ord. 12701 §§ 2—3, 2005; Prior traffic code § 205)

O-30 Oakland Tenants Union

COMMENT

RESPONSE



April 26, 2021

City of Oakland Bureau of Planning
250 Frank H. Ogawa Plaza, Suite 2214
Oakland, CA 94612

RE: Comments on the Draft Environmental Impact Report for the Oakland Waterfront Ballpark District Project (ER18-016)

Dear Mr. Vollmann:

Oakland Tenants Union is an organization of local housing activists committed to furthering renters' rights. We are writing to express serious concerns about the Draft Environmental Impact Report (DEIR) for the Oakland Waterfront Ballpark District Project (ER18-016). The DEIR does not provide enough information to inform the public about the potential impacts of the project. Following are five of our particular concerns.

1. This project's potential impacts on housing prices and gentrification in the surrounding community are very worrying, and it is important for the project to include affordable housing. The DEIR mentions an affordable housing program in a footnote, but it doesn't actually describe what the program entails. The DEIR says that the program might include on-site affordable housing, off-site affordable housing, and/or impact fee payments in lieu of any affordable housing. How many of the 3,000 residential units will be set aside for affordable housing? Where exactly would the construction of off-site affordable housing take place, and how many units would be built? The EIR should provide this information so that the public can understand the full scope of the project and how it will impact the surrounding community.
2. OTU is also concerned about toxic contamination at the site. The Howard Terminal site is currently so contaminated with toxic materials that it is illegal to build housing there. The DEIR states that the A's will work with the Department of Toxic Substances Control (DTSC) to clean up the site but does not provide specific information about how the site will be cleaned up, instead promising to create a plan after the City approves the DEIR. The DEIR claims that compliance with DTSC rules and regulations will ensure that the Howard Terminal site is properly cleaned up, but the A's recently sued DTSC for its failure to enforce environmental laws at the adjacent Schnitzer Steel facility and won. How can the public trust that DTSC's

O-30-1 See Consolidated Response 4.12, *Affordable Housing*, and Consolidated Response 4.13, *Gentrification and Indirect Housing Displacement*.

O-30-2 Draft EIR Section 4.8, *Hazards and Hazardous Materials*, contains a detailed description of applicable regulatory requirements that pertain to potential environmental and health and safety impacts associated with hazardous materials on the Project site. These regulatory requirements constitute substantial evidence that potential environmental and health and safety impacts associated with hazardous materials would be less than significant. While a remediation plan is scheduled to be submitted to DTSC in draft form in early 2022 to address findings of the approved *Human Health and Ecological Risk Assessment*, the final plan cannot be approved until the EIR is certified.

As explained in Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*, the mitigation measures in the Draft EIR would require the City to ensure that the Project sponsor has complied with regulatory requirements before the issuance of grading, building, or construction permits and certificates of occupancy for new buildings and uses. There is no evidentiary basis to question the effectiveness of regulatory requirements as they would be implemented at the Project site; however, the actions of public agencies are always subject to public scrutiny, and to judicial review as provided by law.

See also Response to Comment I-277-4.

O-30-1

O-30-2

P.O. BOX 10573

OAKLAND, CA 94610

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O-30

COMMENT

RESPONSE

O-30-2

regulation will make the site safe for housing if the A's can't trust DTSC to regulate the neighboring property?

3. The DEIR states that the project will have significant and unavoidable impacts on air quality and will emit large amounts of greenhouse gases (GHG) but does not provide sufficient information on how these impacts will be mitigated. West Oakland has historically been and continues to be one of the most polluted areas in California, and residents face serious health challenges, including disproportionately higher rates of hospitalization from asthma and air pollution related diseases including cancer, heart disease, and stroke. The project will bring in even more toxic air pollution, along with significant greenhouse gas emissions. The DEIR plans to mitigate this pollution with a Criteria Pollutant Mitigation Plan and a GHG Reduction Plan, but these plans will not be developed until after the city approves the EIR. The DEIR includes a list of measures that may be included in those plans, but the DEIR doesn't specify which will be included, nor does it provide information or calculations to demonstrate that those future plans will successfully reduce emissions. Even with the future air pollution mitigation plan, the DEIR says that the impacts on air quality will not be properly mitigated and will have significant impacts on the health of the community. The EIR cannot defer mitigation measures, and the A's must do more to reduce emissions and protect the health of the surrounding community.

O-30-3

4. The DEIR also fails to adequately account for traffic and parking. It states that the ballpark, with its 35,000-person capacity, and the 50,000-square-foot indoor performance venue would share just 2,000 parking spaces. For context, the existing Coliseum has a capacity for 10,000 parking spaces. The DEIR just assumes that people will find alternative means of transportation but in reality they will park on city streets in neighborhoods that are not equipped to handle the traffic.

O-30-4

5. After parking, attendees will have to cross an active railroad line where freight trains often stop for an hour or more. The DEIR does not propose a comprehensive solution to these public safety impediments and finds that the project would expose motorists, pedestrians, transit riders, and cyclists to a permanent transportation hazard, resulting in significant and unavoidable safety impacts.

O-30-5

Given these problems with the DEIR, it is impossible for members of the public to evaluate the impacts of the project, and it is not possible for the City of Oakland to make an informed decision on whether to proceed with this project. The DEIR should be revised and recirculated to provide members of the public and decision makers with accurate and transparent analysis. Thank you for considering these comments.

O-30-6

Sincerely,

O-30-3

The Draft EIR does find significant and unavoidable air quality impacts for Impacts AIR-1, AIR-2, AIR-1.CU, and AIR-2.CU. These impacts are mitigated to the maximum extent feasible as required by CEQA through air quality Mitigation Measures AIR-1a, AIR-1b, AIR-1c, AIR-1d, AIR-2a, AIR-2b, AIR-2c, AIR-2d, AIR-2e, AIR-3, AIR-4a, AIR 4b, AIR-2b, AIR-1.CU, AIR-2.CU. These impacts would also be mitigated through transportation Mitigation Measures TRANS-1a, TRANS-1b, TRANS-1c, TRANS-1d, TRANS-1e, TRANS-2a, TRANS-2b, TRANS-2c, TRANS-3a, and TRANS-3b. Many of these mitigation measures were quantified to show their anticipated emissions reductions benefits.

Impact AIR-2.CU considers the existing background health risk of West Oakland residents and the contribution of the Project's TAC emissions within the context of the poor background air quality conditions. This analysis was conducted in concert with the BAAQMD and their health risk analysis prepared pursuant to AB 617 through the West Oakland Community Action Plan. Draft EIR pp. 4.2-9 through 4.2-11 discuss the existing air quality setting and the high existing community health risks.

Mitigation Measure AIR-2e includes the preparation of a Criteria Pollutant Mitigation Plan, which identifies a specific performance standard equal to the City's thresholds of significance for criteria pollutant emissions. The Final EIR includes revisions to Mitigation Measure AIR-2e to require many of the measures listed as "recommended" in the Draft EIR. See Chapter 7, *City-Initiated Updates and Errata in the Draft EIR*, for the revised mitigation measure language including the specific requirement for a number of measures. Although Mitigation Measure AIR-2e does not include a quantitative assessment of each individual action's effectiveness in reducing emissions, it does require that emissions be reduced to below the City's thresholds of significance. This approach is permitted by State CEQA Guidelines Section 15126.4(a)(1)(B).

Mitigation Measure GHG-1 includes the preparation of a Greenhouse Gas Reduction Plan, as the commenter notes, which requires that the Project sponsor achieve "no net additional" GHG emissions as required by AB 734. With implementation of this measure, emissions would be reduced to less-than-significant levels.

O-30

COMMENT

RESPONSE

See Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*, for a discussion of mitigation measure performance standards and future plans.

O-30-4 See Consolidated Response 4.7, *Parking*.

O-30-5 See Consolidated Response 4.6, *Rail Safety, Grade Crossing, and Grade Separation*.

O-30-6 See Responses to Comments O-30-1 through O-30-5. The City has prepared the EIR in accordance with CEQA requirements to inform both the public and decision makers of the environmental consequences of implementing the Project. See Consolidated Response 4.3, *Recirculation of the Draft EIR*, which explains that although information has been added to the Draft EIR, no significant new information (e.g., information leading to a new significant impact or a substantial increase in the severity of an impact) has been added since publication of the Draft EIR. Consequently, the Draft EIR need not be recirculated.

O-30

COMMENT

RESPONSE

Eddie Yuarte, Mark Dias, and Susan Schacher
Oakland Tenants Union

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O-31 South of the Nimitz Improvement Council

COMMENT

RESPONSE

Please see attached letter.

O-31

COMMENT

RESPONSE

O-31-1 See Consolidated Response 4.6, *Rail Safety, Grade Crossing, and Grade Separation*, for responses to issues raised in the comment...

O-31-2 See Consolidated Response 4.6, *Rail Safety, Grade Crossing, and Grade Separation*, for responses to issues raised in the comment. Mitigation Measure TRANS-3a now extends rail safety improvements along the Project’s frontage and east to Oak Street.

O-31-3 See Consolidated Response 4.6, *Rail Safety, Grade Crossing, and Grade Separation*; Consolidated Response 4.7, *Parking*; and Consolidated Response 4.8, *Chinatown*, for responses to issues raised in the comment.

<https://comment-tracker.esassoc.com/oaklandspportseir/index.html>

26 April 2021

Peterson Vollmann, Planner IV
City of Oakland Bureau of Planning
250 Frank H. Ogawa Plaza, Suite 2214
Oakland, CA 94612

RE: Case File Number ER18-016

The draft EIR’s analysis of pedestrian activity is inadequate; it contains errors and omissions. Access to or egress from any facility on the project site will frequently require use of an at-grade railroad crossing. There are 8 such crossings between Market Street and Oak Street. Implementing mitigation measure TRANS-3a would “substantially improve safety along the railroad corridor” between Market Street and Broadway. However no such improvements are proposed between Broadway and Oak Street. This is a significant omission that must be corrected before the project can be approved or constructed.

O-31-1

PAGE BY PAGE COMMENTS RELATED TO RAILROAD SAFETY

CHAPTER 3 – Project Description

Page 3-43-Railroad Corridor Safety Improvements: Fencing along both sides of the railroad corridor and upgrading the at-grade crossings at Market, MLK, Clay, Washington, and Broadway will improve rail safety. However, the same treatments must continue from Broadway to Oak Street to avoid unsafe encounters with trains at the Franklin, Webster, and Oak Street intersections. Mitigation Measure TRANS-3a must be extended from Broadway to Oak Street.

O-31-2

CHAPTER 4.15 – Transportation and Circulation

Page 4.15-1-Transportation Impact Area: “The City’s guidelines indicate that transportation analyses should generally include a study area ... one-half mile or more surrounding the project site...” Figures 4.15-2, 4.15-3, and 4.15-4 clearly show that the at-grade railroad crossings at Franklin and Webster Streets are within the ½ mile Project Study Area, but there is no evidence in the draft EIR that these intersections were studied.

Pages 4.15-2 & 4.15-7-[Study Area for] Pedestrians: “The study area [for pedestrians] was expanded beyond the one-half-mile radius along these corridors [shown on Figure 4.15-6] because pedestrians are expected to use them to walk between the project site and transit/downtown.” Aren’t pedestrians also expected to walk to Jack London Square where they will also use at-grade rail crossings at Franklin and Webster Streets to access Amtrak parking garage, Amtrak station, on-street parking, Chinatown, etc.? What about access to Lake Merritt BART via Water Street, Alice Street, Embarcadero West, and Oak Street?

O-31-3

Page 4.15-6 (Figure 4.15-4)-Pedestrian Influence Area: This Figure shows that the “study area for pedestrians” includes Water Street, Alice Street, Embarcadero West, and Oak Street (for access to Lake Merritt BART). It also shows access to West Oakland BART via Market Street, 3rd Street, and Mandela

O-31

COMMENT

RESPONSE

O-31-4

Parkway. However, neither of these routes has been mentioned or studied elsewhere in the draft EIR. Why?

Page 4.15-37 (Figure 4.15-11)-Existing Parking Garages Available for Public Use: This map shows numerous "non-City/County Owned Parking (... 100 spaces or more)" that pedestrians will access from Water Street via the Webster Street at-grade railroad crossing. Why are no safety upgrades proposed?

O-31-5

Page 4.15-39 (Table 4.15-9)-Gate Down Times at Howard Terminal: Stopped and slow-moving freight trains are a significant threat to railroad safety in the Jack London District. "Gate-down" times at additional intersections such as Broadway and Webster Streets should also have been tabulated and analyzed. While federal government mandates that all train collisions be recorded, careless and daring acts perpetrated by thrill-seekers or impatient individuals are not. On a regular basis, Jack London locals witness dangerous behavior, particularly with slow-moving or stopped freight trains. Commonly, impatient individuals will climb between cars of a stopped freight train to get to the other side of the tracks. On two occasions (many years ago), I became impatient and climbed between freight cars. Fencing and upgraded railroad crossings will reduce this behavior, but it will increase east of Broadway unless Mitigation Measure TRANS-3a is extended across Franklin and Webster to Oak Street.

O-31-6

Pages 4.15-41 & 4.15-42-[Existing Railroad Characteristics]: As noted, there are eight at-grade crossings in the study area: Market, MLK, Clay, Washington, Broadway, Franklin, Webster, and Oak Streets. Mitigation measure TRANS-3a proposes safety improvements at only five of these crossings. No analysis can be found to explain the omission of the other three crossings. The collision data from the Federal government summarizes accidents involving trains. It does not include calls to 911 for auto accidents where cars get stuck on the railroad tracks and require a tow. It does not include testimony from Jack London locals who observe drivers that manage to free their vehicles without calling 911. A survey of tow truck operators might uncover some startling statistics. Federal data does include encounters between trains and pedestrians, and these encounters are likely to result in serious injury and death. In the past 5 years such encounters have been reported at both Washington Street and Franklin Street crossings. The greatest danger is when a pedestrian ignores the signal after a train has passed and is hit by a train on the other track passing in the opposite direction. Extending Mitigation Measure TRANS-3a across Franklin and Webster to Oak Street would reduce this danger significantly.

O-31-7

Page 4.15-88-Site Access Routes and Circulation Overview [Pedestrian]: The "Pedestrian Routing" described here and illustrated in Figure 4.15-19 (page 92) does not accurately represent routing pedestrians are likely to choose based on our three-decade experience of living, working, and observing in the District. The preferred pedestrian route to/from the West Oakland BART station will likely be along 3rd Street which is not only closer and more direct than 7th Street but is more pleasant and does not have the real and perceived safety concerns of 7th Street. The pedestrian route to/from Lake Merritt BART will likely be through Jack London Square, along Water, Embarcadero, and Oak streets which is closer to the waterfront and more pleasant, with more retail and restaurants and farther away from the noise and elevated structure of I-880.

Page 4.15-92 (Figure 4.15-19)-Howard Terminal Pedestrian Routing: Pre- and post-game activity will inevitably be influenced by restaurants, bars, and merchants in Jack London Square attracting fans to their establishments via advertisements, special events, and proximity. Water Street will be a major artery and it does not stop at Broadway as shown in this Figure. When arriving or leaving Jack London Square, pedestrians will certainly use the at-grade rail crossings at Franklin, Webster, and Oak Streets in

O-31-4 See Consolidated Response 4.6, *Rail Safety, Grade Crossing, and Grade Separation*, for responses to issues raised in the comment...

O-31-5 See Consolidated Response 4.6, *Rail Safety, Grade Crossing, and Grade Separation*, for responses to issues raised in the comment. Mitigation Measure TRANS-3a now extends rail safety improvements along the Project's frontage and east to Oak Street.

O-31-6 See Consolidated Response 4.6, *Rail Safety, Grade Crossing, and Grade Separation*, for responses to issues raised in the comment. Mitigation Measure TRANS-3a now extends rail safety improvements along the Project's frontage and east to Oak Street.

O-31-7 See Consolidated Response 4.6, *Rail Safety, Grade Crossing, and Grade Separation*, for responses to issues raised in the comment.

The Draft EIR identified Mitigation Measure TRANS-1b, which would implement a Transportation Management Plan (TMP) for ballpark events. The TMP outlines operational strategies to optimize access to and from the ballpark within the constraints inherent to a large public event. The TMP would be approved by the City and would incorporate input from stakeholders including community groups such as the Jack London Improvement District. The TMP would be a living document requiring periodic updates over time as travel patterns change because of development and changes to transportation infrastructure and operations. and to assure that performance standard is met. All revisions to the TMP shall be subject to the review and approval of the City. See Consolidated Response 4.23, *Transportation and Parking Demand Management Plan and Transportation Management Plan Considerations*.

O-31

COMMENT

RESPONSE

O-31-7 | addition to those at Broadway, Washington, and Clay Streets. Why are the pedestrian routes shown here different from those depicted on Figure 4.15-4-Pedestrian Influence Area (page 4.15-6)?

O-31-8 | Page 4.15-93-Railroad Crossing Improvements: For the many reasons noted above, fencing along both sides of the railroad corridor (per TRANS-3a) should extend to Webster Street where fencing already exists.

O-31-9 | Page 4.15-131-Embarcadero West Corridor: "The Alameda CTC recently completed a railroad crossing prioritization study ... and the [eight] railroad crossings through Jack London ... were categorized as Tier 1 crossings the highest priority for improvement to increase safety." Why were three of these railroad crossings omitted from Mitigation Measure TRANS-3a?

O-31-10 | Page 4.15-138-Transportation Management Plan for Ballpark: Pedestrian routes to/from BART (and Jack London Square) described in the Transportation Management Plan (TMP) need to be revised in accordance with many comments above once new data has been collected and analyzed.

O-31-11 | Page 4.15-140-TMP Strategies – City Priorities: Strategies #7 and #10 will need to be revised in accordance with comments above once new data has been collected and analyzed.

O-31-12 | Page 4.15-153-Railroad Access: For reasons noted above, fencing along both sides of the railroad corridor (per TRANS-3a) should extend to Webster Street where fencing already exists. And existing at-grade railroad crossings at Franklin, Webster, and Oak Streets should be upgraded to the safety standards required in TRANS-3a.

O-31-13 | Page 4.15-168-Site Access Trip Assignments [Pedestrian]: Whatever travel mode is used for ballpark and non-ballpark access (automobile, transit, bicycle), some pedestrian activity will almost certainly be involved. The statement that "Pedestrian trips were assigned on route directness and expected quality of the pedestrian experience" is not explained or quantified and appears to exclude everyone who visits establishments at Jack London Square before and after events.

O-31-14 | Page 4.15-171 (Figure 4.15-43)-Non-ballpark Development PM Peak Hour Volumes - Pedestrians: The numbers presented for "PM Peak Volumes" are not explained or justified. How were these estimates calculated? Why are at-grade rail crossings at Franklin, Webster, and Oak Streets excluded?

O-31-15 | Page 4.14-174 (Figure 4.15-46)-Ballpark Weekday Evening Arrivals – Pedestrians: The numbers presented for "Pedestrian Arrivals" are not explained or justified. How were these estimates calculated? Why are at-grade rail crossings at Franklin, Webster, and Oak Streets excluded?

O-31-16 | Page 4.15-233 (Table 4.15-42)-Project Related Railroad Crossing Volumes: Why does this table omit data for Franklin, Webster, and Oak Streets?

We look forward to a final EIR that answers these questions and corrects these errors and omissions.

Sincerely,

Gary Knecht, President
South of the Nimitz Improvement Council (SoNIC)
knechtgary@aol.com

O-31-8 See Consolidated Response 4.6, *Rail Safety, Grade Crossing, and Grade Separation*, for responses to issues raised in the comment...

O-31-9 See Consolidated Response 4.6, *Rail Safety, Grade Crossing, and Grade Separation*, for responses to issues raised in the comment...

The Draft EIR identified Mitigation Measure TRANS-1b, which would implement a Transportation Management Plan (TMP) for ballpark events. The TMP outlines operational strategies to optimize access to and from the ballpark within the constraints inherent to a large public event. The TMP would be approved by the City and would incorporate input from stakeholders including community groups such as the Jack London Improvement District. The TMP would be a living document requiring periodic updates over time as travel patterns change because of development and changes to transportation infrastructure and operations and to assure that performance standard is met. All revisions to the TMP shall be subject to the review and approval of the City. See Consolidated Response 4.23, *Transportation and Parking Demand Management Plan and Transportation Management Plan Considerations*.

O-31-10 See Consolidated Response 4.6, *Rail Safety, Grade Crossing, and Grade Separation*, for responses to issues raised in the comment...

O-31-11 See Consolidated Response 4.6, *Rail Safety, Grade Crossing, and Grade Separation*, for responses to issues raised in the comment. The term route directness means that a pedestrian generally travels the shortest distance between two points and the term quality of pedestrian experience is subjective taking into consideration the conditions of the sidewalks, lighting, adjacent land uses, and activities. The consolidated response explains pedestrian routing decision between the Lake Merritt BART station and the Project was determined.

The term PM Peak Hour as used in the Draft EIR represents the weekday evening commute peak hour for non-ballpark development. The automobile trip generation for the non-ballpark development is shown in Table 4.15-26 and the breakdown by travel mode is shown in Table 4.15-28.

Pedestrian arrivals shown on Figure 4.15-46 result from a manual assignment of ballpark event attendees by mode (see Table 4.15-31) to the transportation

O-31

COMMENT

RESPONSE

network. For example, attendees who arrive by BART were distributed to the three BART stations based on their trip origin on the BART system and then assigned to the streets connecting the BART stations to the Project. Bus riders were assigned to the streets based on where they get off the bus. Attendees who drive and park were distributed to the available off-street parking (see Consolidated Response 4.7, *Parking*) and then assigned to the streets connecting the parking areas to the Project. Ride-source users were assigned to the streets between the off-site pick-up / drop-off areas and the Project.

O-31-12 See Consolidated Response 4.6, *Rail Safety, Grade Crossing, and Grade Separation*, for responses to issues raised in the comment.

O-32 Customs Brokers and Forwarders Association of Northern California

COMMENT

RESPONSE

Please accept attached comment letter for DEIR on Howard Terminal from Customs
Brokers and Forwarders Association of Northern California

O-32

COMMENT

RESPONSE

April 27, 2021

City of Oakland
250 Frank Ogawa Plaza
Oakland, CA 94612



Re: Draft Environmental Impact Report for the Waterfront Ballpark District at Howard Terminal

Dear City of Oakland:

Please accept this letter submitted on behalf the members and port stakeholder affiliates of Customs Brokers Forwarders Association of Northern California.

The Howard Terminal ballpark project will transform Oakland and its Port but not in a positive way.

As users of Port of Oakland maritime services, we require the City of Oakland meet their responsibility owed their residents, local and regional stakeholders. Our clients - importers and exports rely on the seaport which generate over \$130 billion revenues. The seaport supports "20 percent Oakland-based jobs. <https://www.portofoakland.com/economic-impact-report/jobs-study-port-oakland-generates-84000-jobs-bay-area/>

The DEIR is incomplete and insufficient for City of Oakland to proceed without more extensive analysis for Oakland residents and port stakeholders for:

- Feasibility of Howard Terminal for mixed-use and residential development - cleanup costs
- Sea level rise and soil study for waterfront development - current and future costs
- Displacement of auxiliary port land for current operations and future growth
- Maritime safety and public safety including railroad grade separation
- Traffic study for game days as well as 24/7 residential and retail use
- Environmental justice impact - development of site for the 1% when Oakland promised affordable housing for the 99%

The Howard Terminal site is in industrial zone. Even though not currently used as port terminal, it provides necessary auxiliary services for Port of Oakland operation. For the ballpark and mixed-use project, the As proposal is not just Howard Terminal but also an adjacent district transformation.

The reduction of port auxiliary lands and construction of retail space threatens and restricts the Port maritime operations for future growth, especially at the Oakland International Container Terminal located to the West of Howard Terminal along the Oakland Estuary. OICT recent investments of the largest cranes on West Coast are commitments to keeping the Port prepared for the larger vessels calling West Coast. The construction of ballpark, residential and retail space at Howard Terminal

- O-32-1 See Consolidated Response 4.4, *Port Operations and Land Use Compatibility*, including the discussion in Section 4.4.3, *Disruption of Economic Activity at the Port of Oakland*. The comment raises an economic issue, not an environmental issue, which is not subject to CEQA. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Project. See Consolidated Response 4.22, *General Non-CEQA*, including the discussion of infrastructure funding in Section 4.22.2, *Financial Considerations, Community Benefits, and Other Miscellaneous Opinions*.
- O-32-2 See Consolidated Response 4.4, *Port Operations and Land Use Compatibility*, including the discussion of business displacement in Section 4.4.3, *Disruption of Economic Activity at the Port of Oakland*.
- O-32-3 See Consolidated Response 4.6, *Rail Safety, Grade Crossing, and Grade Separation*.
- O-32-4 See Consolidated Response 4.12, *Affordable Housing*, and Consolidated Response 4.14, *Environmental Justice*.
- O-32-5 See Consolidated Response 4.4, *Port Operations and Land Use Compatibility*.

O-32-1

O-32-2

O-32-3

O-32-4

O-32-5

O-32

COMMENT

RESPONSE

O-32-5 | threatens the safety for these larger vessels in the turning basin as well as shoreline security.

O-32-6 | As many stated during the public comment period at the DEIR Planning Commission Hearing April 21st, the Howard Terminal ballpark represents costs for loss of maritime jobs, construction production, rail and traffic concerns in addition to environmental unknowns. Even without 24/7 residents, game days concerns on rail separation, transportation options and public safety were expressed by port stakeholders during a city meeting in 2019. The current Coliseum site has all the infrastructure and transportation options for facilitating As fans traffic access and safety.

O-32-7 | The As organization produced beautiful renderings of their MLB ballpark dream with their luxury condominiums and retail multi-plex. However, their waterfront transformation for the ground up. City of Oakland owes their residents – current and future taxpayers – a careful analysis of what is the ground underneath. Can Oakland afford the cleanup and future expensive litigations/problems on industrial land with toxic and landfill history? A cautionary tale is San Francisco’s Millennium Tower. Proposed in 2002 and construction started in 2005, it was completed and opened 2009. The discovery of tower’s sinking problem was disclosed in 2016 although fact was found to be known before construction. In 2020, eighteen years after proposal and after several years of litigation, the “fix” is estimated at \$100 million...with taxpayers now stuck with \$25 million for a problem that was never disclosed until many years later. [https://en.wikipedia.org/wiki/Millennium_Tower_\(San_Francisco\)](https://en.wikipedia.org/wiki/Millennium_Tower_(San_Francisco))

O-32-8 | The DEIR is incomplete and insufficient for the City of Oakland to trade tax dollars and future under threat of a sports team departure. In the April 23rd SF Chronicle article, “city official were surprised by the A’s new plan, which proposes using tax-generated revenue from the site to fund infrastructure costs”. City of Oakland cannot afford multi-billion “surprises”, current or future disclosures. <https://www.sfchronicle.com/local/article/Oakland-A-s-expect-to-spend-12-billion-on-16124097.php> <https://muckrack.com/link/oHHFum/the-as-believe-their-howard-terminal-ballpark-project-is-eco-conscious-environmental-groups-are-skeptical>

O-32-9 | Lastly but importantly, what do the Oakland residents want? Most Oakland residents do not want to lose the As ball team. However, at what cost? Are residents aware of the bait-and-switch by the John Fisher and the As organization for luxury condos and waterfront gentrification takeover in the guise of Major League ballpark stadium?

O-32-10 | West Oakland residents deserve full analysis of clean-up costs, shoreline flooding and soil study, traffic and public safety. East Oakland resident deserve a rebuild on current site of Coliseum location and re-investment of the commitment the As made to Oakland sixty years ago. All residents deserve a full environmental justice evaluation to ensure any development be equitable and transforms Oakland in a positive way forward.

O-32-11 |

O-32-6 | See Consolidated Response 4.4, *Port Operations and Land Use Compatibility*, and Consolidated Response 4.10, *Alternative 2: The Off-Site (Coliseum Area) Alternative*.

O-32-7 | The comment raises an economic issue, not an environmental issue, which is not subject to CEQA. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Project. See Consolidated Response 4.22, *General Non-CEQA*, regarding how analysis of financial impacts of a project is outside of the purview of CEQA. Regarding clean-up costs, CEQA does not require the financial details of a proposed Project to be addressed in the EIR, only that the party(ies) responsible for implementation of all mitigation measures identified to address significant environmental impacts be detailed in an MMRP. The MMRP would detail the timing and responsibility party(ies) for monitoring and compliance (State CEQA Guidelines Section 15097).

O-32-8 | The comment raises an economic issue, not an environmental issue, which is not subject to CEQA. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Project. See Consolidated Response 4.22, *General Non-CEQA*, including the discussion of infrastructure funding in Section 4.22.2, *Financial Considerations, Community Benefits, and Other Miscellaneous Opinions*.

O-32-9 | This comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft EIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the Proposed Project.

O-32-10 | Comments regarding the Project’s merits or alternatives to the Project do not raise a significant environmental issue or specific questions about the analyses or information in the Draft EIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Project. Regarding clean-up costs, CEQA does not require the financial details of a proposed Project to be addressed in the EIR, only that the party(ies) responsible for implementation of all mitigation measures identified to address significant environmental impacts be detailed in an MMRP. The MMRP would detail the timing and responsibility party(ies) for monitoring and

O-32

COMMENT

RESPONSE

compliance (State CEQA Guidelines Section 15097). Flooding and sea level rise are discussed in Draft EIR Section 4.9, *Hydrology and Water Quality*; soils on the Project site are discussed in Section 4.6, *Geology, Soils, and Paleontological Resources*, and Section 4.8, *Hazards and Hazardous Materials*; traffic is discussed in Section 4.15, *Transportation and Circulation*; and public safety is discussed in Section 4.13, *Public Services*.

- O-32-11 Comments regarding the Project's merits or alternatives to the Project do not raise a significant environmental issue or specific questions about the analyses or information in the Draft EIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Project. See Consolidated Response 4.10, *Alternative 2: The Off-Site (Coliseum Area) Alternative*, and Consolidated Response 4.14, *Environmental Justice*.

O-32

COMMENT

RESPONSE

Respectfully,



Evey Hwang
President,
Customs Brokers and Forwarders Association of Northern California

O-33 Marine Firemen's Union

COMMENT

RESPONSE



BY ELECTRONIC SUBMISSION

Comments on the Oakland Waterfront Ballpark District Project DEIR

April 27, 2021

On behalf of the 500-plus members of the Pacific Coast Marine Firemen, Oilers, Watertenders and Wipers Association (Marine Firemen's Union), I submit the following:

The Port of Oakland is a major job-creating, economic engine that sustains thousands of blue-collar jobs in the region. These are jobs in transportation, logistics, warehousing and wholesale trade. Many of these jobs are well-compensated, skilled-labor positions that do not require an advanced degree; the type of jobs that are rapidly disappearing from the workforce.

Deep draft waterfront activity can only happen in one place: the deep draft waterfront. Utilizing deep draft waterfront property for alternate uses reduces the capacity of the working waterfront and limits growth of waterfront activity; and limits the creation of good-paying waterfront jobs.

- Howard Terminal performs approximately 325,000 annual gate moves by trucks and the 35-acre support facilities are used by over 3,200 trucks.
- Howard Terminal staging allows trucks to get out of West Oakland communities and creates off-peak opportunities so trucks can avoid peak congestion periods, reducing diesel emissions and traffic.
- Howard Terminal expedites logistics, is critical to the supply chain, reduces congestion and wait times and creates flexibility for equipment and container storage.

Removing the 35-acre staging area does not eliminate the activity; it simply displaces trucks into the surrounding community. Forcing industrial activities back into the residential neighborhood is inconsistent with the West Oakland Truck Management Plan. This will increase congestion and air quality, and reduce the quality of life for people living and working in West Oakland.

The A's should utilize the existing East Oakland stadium site to build the new stadium. The working waterfront needs to remain the working waterfront.

Very Truly Yours,

Anthony Poplawski
President/Secretary-Treasurer
Marine Firemen's Union
240 2nd Street
San Francisco, California 94105

- O-33-1 The comment raises an economic issue, not an environmental issue, which is not subject to CEQA. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Project. See Consolidated Response 4.4, *Port Operations and Land Use Compatibility*, which includes Section 4.4.3, *Disruption of Economic Activity at the Port of Oakland*.
- O-33-2 See Consolidated Response 4.5, *Truck Relocation*.
- O-33-3 Comments regarding the Project's merits or alternatives to the Project do not raise a significant environmental issue or specific questions about the analyses or information in the Draft EIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Project. See Consolidated Response 4.10, *Alternative 2: The Off-Site (Coliseum Area) Alternative*.

O-33-1

O-33-2

O-33-3

O-34 Harbor Trucking Association

COMMENT

RESPONSE



Harbor Trucking Association
One World Trade Center
P. O. Box 32475
Long Beach, CA 90832

April 27, 2021

City of Oakland
250 Frank Ogawa Plaza
Oakland, CA 94612

**Re: Draft Environmental Impact Report for the Oakland Waterfront Ballpark District Project at Charles P. Howard Terminal
Case File Number ER 18-016**

Dear City of Oakland Planning Commission,

The following comments are submitted on behalf of the Harbor Trucking Association (“HTA”), in response to the February 26, 2021 Draft Environmental Impact Report (“DEIR”) published by Oakland Athletics Investment Group, LLC relating to the Oakland Waterfront Ballpark District Project at Howard Terminal (the “Project”). The HTA is a coalition of intermodal carriers servicing America’s West Coast Ports of Oakland, Los Angeles, Long Beach, Seattle and Tacoma.

O-34-1

As described in greater detail below, the DEIR fails to meet the requirements of the California Environmental Quality Act (“CEQA”), as it contains a grossly deficient analysis of the significant and harmful environmental impact that the proposed Project would have on the Port of Oakland and the surrounding communities. Among its many deficiencies, the DEIR fails to adequately analyze and address the significant environmental impact that the Project would have on Port operations, traffic congestion, parking, pollutant emissions, public safety, and public infrastructure.

O-34-2

The Port of Oakland is an international import, export and transportation hub, and an integral part of the global supply chain. Port activity results in thousands of good paying jobs for the local community and the greater Bay Area. Earlier this year, three of the largest cranes in North America were assembled at the Oakland International Container Terminal to aid in its operations. In March 2021, the Port reported an all-time high container volume of import and export cargo.¹ Currently, the Port is thriving.

O-34-3

Despite the Port’s vitality, the DEIR simply glosses over, and in part completely ignores the serious impact that would result from building a major league baseball stadium, 3,000 units of residential housing, a hotel, office space and other attractions inside a highly active port. Simply put, the DEIR fails to provide a substantive evaluation of the impact that the Project would have on Port operations and how it would fundamentally change every aspect of the Port’s activities. As such, the DEIR fails to meet CEQA’s standards for review on its most basic level.

The DEIR’s dismissal of the consequences that would result from the loss of parking and increased traffic congestion is one example of the report’s failure to provide a comprehensive

¹ Source: <https://www.portofoakland.com/press-releases/port-of-oakland-reports-record-cargo-surge-in-march/>

- O-34-1 This is a general comment that includes introductory remarks and serves to introduce the more specific comments that are responded to in detail below. As a result, no specific response is provided here.
- O-34-2 Comments regarding the Project’s merits or alternatives to the Project do not raise a significant environmental issue or specific questions about the analyses or information in the Draft EIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Project. See Consolidated Response 4.4, *Port Operations and Land Use Compatibility*.
- O-34-3 See Consolidated Response 4.5, *Truck Relocation*, regarding displacement of truck parking and other existing uses from Howard Terminal. Also, note that parking impacts are exempt from environmental review pursuant to Public Resources Code Section 21099(d).

O-34

COMMENT

RESPONSE



Harbor Trucking Association
One World Trade Center
P. O. Box 32475
Long Beach, CA 90832

O-34-3 | analysis of the Project’s environmental impact. Many small trucking companies and independent owner operators utilize the 1,224 parking stalls in Howard Terminal for daily and monthly parking. Based on data provided by the Port of Oakland, Howard Terminal recorded 336,492 gate transactions in 2018, which indicates the number of trucks accessing this site for parking in a given year.² The availability of these parking stalls at Howard Terminal is critical to managing traffic in the Port and to minimizing trucks queuing at the terminals.³

O-34-4 | The Project would eliminate this much-needed parking and, as a result, traffic would significantly increase inside and outside the Port. The loss of these stalls would also force trucks to travel longer distances to find alternative parking, including on city streets. Yet, the DEIR fails to acknowledge the seriousness of this issue and offers no realistic solution to address it. The DEIR loosely states: “With the development of the proposed Project, the existing tenants and users of Howard Terminal are *assumed* to move to other locations within the Seaport (including the Roundhouse parking adjacent to Howard Terminal), the City, or the region where their uses are permitted under applicable zoning and other regulations.”⁴ (*Emphasis added*). This erroneous assumption illustrates the DEIR’s deficiency in analyzing the Project’s impact on the critical issues of traffic congestion, truck displacement, and Port operations as a whole.

O-34-5 | As another example of DEIR’s deficiency in addressing increased traffic, it admits that “VMT associated with the truck travel is likely to change, but the magnitude of the changes and whether VMT would increase or decrease is currently unknown by either the Project sponsor, the City, or the Port. Therefore, estimating the change to VMT would be speculation and is therefore not conducted.”⁵ The DEIR’s complete dismissal of this matter highlights its inadequacy in providing the necessary information for decisionmakers to properly assess the impact of the Project.

O-34-6 | The DEIR further fails to adequately address the domino effect that increased traffic and lack of truck parking inside the Port will have on the surrounding neighborhoods and local freeways. Consequently, it does not provide analysis on the environmental impact that this increased traffic would have on air quality in the local community, and beyond. The DEIR also does not account for the impact that the Project and the increased traffic will have on public infrastructure, both in the short and the long term. In these respects, the DEIR once again does not satisfy the CEQA requirements to provide a comprehensive analysis of these important topics.

O-34-7 | Another glaring omission of the DEIR is the lack of analysis of the serious threat to public safety that will inevitably arise if a baseball stadium, thousands of fans, residents and office workers interact in an active Port which has continual vehicle, rail and waterway traffic. Sadly, it is a virtual certainty that such interaction will result in the death or serious injury of pedestrians

O-34-4 | See Consolidated Response 4.5, *Truck Relocation*.

O-34-5 | See Consolidated Response 4.5, *Truck Relocation*, regarding the analysis of VMT.

O-34-6 | See Consolidated Response 4.4, *Port Operations and Land Use Compatibility*, and Consolidated Response 4.5, *Truck Relocation*.

O-34-7 | See Consolidated Response 4.6, *Rail Safety, Grade Crossing, and Grade Separation*. Safety was also considered in the transportation improvements described in Draft EIR Section 4.15.4 and in the mitigation measures, and the operations analysis of the transportation system (Draft EIR Appendix TRA.3).

² DEIR Appendix, Table 131, p. 291

³ Notably, the DEIR Appendix Table 131 shows the diesel particulate matter (DPM) from truck activity at the Howard Terminal in 2018 was approximately 12 pounds. By contrast, the Project is projected to result in significantly higher DPM emissions.

⁴ DEIR Chapter 3.17, p. 3-61.

⁵ DEIR Chapter 4.15, p. 4.15-86.

O-34

COMMENT

RESPONSE



Harbor
Trucking
Association

One World Trade Center
P. O. Box 32475
Long Beach, CA 90832

O-34-7

and drivers. The DEIR ignores this reality, perhaps because no amount of safety measures can truly account for the dangers associated with the Project.

O-34-8

Lastly, the DEIR disregards the most logical alternative to the Project, which would be building a new stadium at the existing Coliseum site. The Coliseum's current location is already suited for such a project, with its existing infrastructure, public transportation options, acreage and parking availability. The Coliseum site also does not come with the same level of environmental concerns, transportation and traffic issues, and safety problems associated with a waterfront project. Despite this option, the DEIR fails to address it as a better alternative, contrary to CEQA guidelines.

O-34-9

For the reasons described here, the DEIR does not adequately address and analyze the significant environmental impacts of the Howard Terminal Project. The DEIR is particularly void of analysis about the Project's impact on the Port's operations, intermodal activity, the surrounding communities in Oakland, traffic congestion and the ensuing environmental consequences. As such, the DEIR does not meet the standards set forth in CEQA to provide the information necessary to fully assess the Project and its significant environmental impact.

The Harbor Trucking Association respectfully requests that the City of Oakland revise the DEIR to address the issues outlined here, along with the multitude of concerns raised by the general public, and recirculate a revised DEIR for further public review and comment before taking any further action on the Project.

Sincerely,

Weston LaBar
Chief Executive Officer
Harbor Trucking Association

O-34-8

Comments regarding the merits of the Project or alternatives of the Project do not raise a significant environmental issue or specific questions about the analyses or information in the Draft EIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Project. See Consolidated Response 4.10, *Alternative 2: The Off-Site (Coliseum Area) Alternative*.

O-34-9

This comment is predicated on prior comments in this submittal. See Responses to Comments O-34-1 through O-34-8. The City has prepared the EIR in accordance with CEQA requirements to inform both the public and decision makers of the environmental consequences of implementing the Project. See Consolidated Response 4.3, *Recirculation of the Draft EIR*, which explains that although information has been added to the Draft EIR, no significant new information (e.g., information leading to a new significant impact or a substantial increase in the severity of an impact) has been added since publication of the Draft EIR. Consequently, the Draft EIR need not be recirculated.

O-35

COMMENT

RESPONSE

This is a cover letter that repeats the text of the attachment below. See Responses to Comments O-35-1 to O-35-4 below.

Dear Mr. Vollmann,

Bike Walk Alameda would like to offer comments regarding the DEIR for the Oakland Waterfront Ballpark District Project.

Our interest is around bicycle and pedestrian connectivity between West Alameda and the proposed Ballpark District, which has been largely unaddressed. Specifically, we noted that it doesn't incorporate or in any way advance the estuary bike and pedestrian bridge, an oversight we hope can be remedied, as this bridge can dramatically help mitigate the 'significant and unavoidable' traffic impacts noted in the report. The bridge is projected to eliminate 40K-50K vehicle trips across the estuary a week, and it's not hard to imagine how it might also help mitigate game day traffic and parking pressure from Alamedans if the Ballpark District comes to be. The estuary bike and pedestrian bridge is already in key local and regional planning documents, including: - The Oakland Downtown Specific Plan - The Oakland Bike Plan - The Alameda Countywide Transportation Plan - The Caltrans D4 Bike Plan - The Alameda County Transportation Commission's 10-Year Capital Improvement Plan - All of the City of Alameda's key planning documents it should be included here, too, because it's part of the region's vision, and because decisions made about the District will be consequential to the bridge.

As you likely know, a Project Study Report (PSR) has been funded by ACTC and is just getting under way, managed by the City of Alameda. One of the key objectives of the PSR is to specify the bridge landing, the winning location from the several candidates that have been proposed in the Feasibility Study completed last year. Several easements have been preserved for alignments on the Alameda side, but none have been preserved on the Oakland side yet. It's a task that needs to be done, and with the Ballpark District Project moving along, now seems like the perfect time to coordinate with various stakeholders, and make these key commitments.

One of the two preferred alignments is at Jack London Square. We understand there's a lot of complexity at this location, but particularly if the ballpark proceeds, it may be worth the extra effort. The potential to tie in to the proposed bike and pedestrian railroad overcrossing at Jefferson is very intriguing, and in our opinion, warrants study and design work. This is also the preferred landing on the Alameda side, because the landing would be a straight and very user-friendly ramp through the Alameda Landing development. It may well be, however, that the Jack London Square alignment proves infeasible. That will leave just one other option: Estuary Park. Having this alignment preserved as a Plan B is important because there are so few viable options left, and competing interests will likely surface as more time passes. Many big challenges the bridge faces have been addressed, including most recently Coast Guard approval. But getting easements secured may prove even more challenging with the passing of time. We urge you to ensure that this next important step — securing easements for the bridge — gets taken now, as part of the Oakland Waterfront Ballpark District Project, and to help advance the PSR that is in progress.

We also wanted to comment briefly on the notion that additional ferry service might address the need for connectivity across the estuary. We welcome any additional transit service as complimentary, whether by water or ground, but do not see it as a substitute for actual bike and pedestrian access, nor do we think it will ever be nearly as effective or impactful as the bridge. Operating hours and fare limitations will always be an issue, and during surge times (game days, for example), conflicts will inevitably arise.

O-35

COMMENT

RESPONSE

In writing this letter, we are sensitive to the fact that Bike Walk Alameda does not technically represent Oakland constituents, but we're neighbors, we're customers, we're visitors, we're workers, we're friends, we're family, we're fans, and we're part of a community that wants to be strengthened and better connected by more equitable and sustainable infrastructure, and all the benefits it bestows. Thank you again for your consideration.

Cyndy Johnsen Board Member, Bike Walk Alameda

O-35 Bike Walk Alameda

COMMENT

RESPONSE



(510) 516-0497
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Board of Directors

Denyse Trepanier
President

Joyce Mercado
Secretary

Brian Fowler
Treasurer

Pat Potter
Board Member

Cyndy Johansen
Board Member

Cameron Holland
Board Member

Tim Beloney
Board Member

Lucy Gigli
Founder

April 27, 2021

Subject: DEIR for the Oakland Waterfront Ballpark District Project

Dear Mr. Vollmann,

Bike Walk Alameda would like to offer comments regarding the DEIR for the Oakland Waterfront Ballpark District Project.

Our interest is around bicycle and pedestrian connectivity between West Alameda and the proposed Ballpark District, which has been largely unaddressed. Specifically, we noted that it doesn't incorporate or in any way advance the estuary bike and pedestrian bridge, an oversight we hope can be remedied, as this bridge can dramatically help mitigate the 'significant and unavoidable' traffic impacts noted in the report. The bridge is projected to eliminate 40K-50K vehicle trips across the estuary a week, and it's not hard to imagine how it might also help mitigate game day traffic and parking pressure from Alamedans if the Ballpark District comes to be.

The estuary bike and pedestrian bridge is already in key local and regional planning documents, including:

- The Oakland Downtown Specific Plan
- The Oakland Bike Plan
- The Alameda Countywide Transportation Plan
- The Caltrans D4 Bike Plan
- The Alameda County Transportation Commission's 10-Year Capital Improvement Plan
- All of the City of Alameda's key planning documents

It should be included here, too, because it's part of the region's vision, and because decisions made about the District will be consequential to the bridge.

As you likely know, a Project Study Report (PSR) has been funded by ACTC and is just getting under way, managed by the City of Alameda. One of the key objectives of the PSR is to specify the bridge landing, the winning location from the several candidates that have been proposed in the Feasibility Study completed last year. Several easements have been preserved for alignments on the Alameda side, but none have been preserved on the Oakland side yet. It's a task that needs to be done, and with the Ballpark District Project moving along, now seems like the perfect time to coordinate with various stakeholders, and make these key commitments.

1 (of 2)

O-35-1 A bicycle and pedestrian bridge connecting Oakland and Alameda is not part of the proposed Project or required as a mitigation measure for the Project. See Response to Comment A-10-2 and see Response to Comment A-10-5.

This comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft EIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the Proposed Project.

O-35-2 This comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft EIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the Proposed Project.

O-35-1

O-35-2

O-35

COMMENT

RESPONSE

O-35-2

One of the two preferred alignments is at Jack London Square. We understand there's a lot of complexity at this location, but particularly if the ballpark proceeds, it may be worth the extra effort. The potential to tie in to the proposed bike and pedestrian railroad overcrossing at Jefferson is very intriguing, and in our opinion, warrants study and design work. This is also the preferred landing on the Alameda side, because the landing would be a straight and very user-friendly ramp through the Alameda Landing development.

It may well be, however, that the Jack London Square alignment proves infeasible. That will leave just one other option: Estuary Park. Having this alignment preserved as a Plan B is important because there are so few viable options left, and competing interests will likely surface as more time passes.

Many big challenges the bridge faces have been addressed, including most recently Coast Guard approval. But getting easements secured may prove even more challenging with the passing of time. We urge you to ensure that this next important step — securing easements for the bridge — gets taken now, as part of the Oakland Waterfront Ballpark District Project, and to help advance the PSR that is in progress.

We also wanted to comment briefly on the notion that additional ferry service might address the need for connectivity across the estuary. We welcome any additional transit service as complimentary, whether by water or ground, but do not see it as a substitute for actual bike and pedestrian access, nor do we think it will ever be nearly as effective or impactful as the bridge. Operating hours and fare limitations will always be an issue, and during surge times (game days, for example), conflicts will inevitably arise.

O-35-3

In writing this letter, we are sensitive to the fact that Bike Walk Alameda does not technically represent Oakland constituents, but we're neighbors, we're customers, we're visitors, we're workers, we're friends, we're family, we're fans, and we're part of a community that wants to be strengthened and better connected by more equitable and sustainable infrastructure, and all the benefits it bestows.

O-35-4

Thank you again for your consideration.



Cindy Johnson
Board Member, Bike Walk Alameda

O-35-3 This comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft EIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the Proposed Project.

O-35-4 This comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft EIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the Proposed Project.

O-36 Golden Gate Audubon Society

COMMENT

RESPONSE



inspiring people to protect
Bay Area birds since 1917

April 27, 2021

Uploaded to: <https://comment-tracker.esassoc.com/oaklandportseir/index.html#/19/form>

Subject: **Waterfront Ballpark District Project draft Environmental Impact Report (dEIR)**

Dear Oakland Planning Commission,

On behalf of the Golden Gate Audubon Society (GGAS), please accept these comments on the Waterfront Ballpark District Project. GGAS is a 104-year-old non-profit organization with over 7,000 members who are dedicated to protecting native bird populations and their habitats.

GGAS applauds the incorporation of Bird Safety Measures, nighttime programming to reduce collisions, and educational materials promoting sustainability.

Alternatives Analysis

GGAS has previously addressed Council Members (July 2019) urging renovation of the existing Coliseum instead of constructing at the downtown Howard Terminal Location. After considering the project alternatives described in the DEIR, we continue to urge the Alternative 2: Off-Site (Coliseum Area) because of disruptive environmental and economic impacts of the Howard Stadium location. Of particular concern are the significant and unavoidable impacts to: Air Quality (AIR-1.CU, AIR-2.CU and AIR-2), Noise (NOI-1 and NOI-1.CU, NOI-2.CU), Transportation (Impact TRANS-6: The Project traffic volumes would cause the significant degradation of two CMP or MTS segments and TRANS-6.CU). These significant impacts are operational (persistent future environmental state). Many of these mitigation measures proscribe deferred plans and off-site mitigation (e.g. rather than planning for them at the start to avoid and minimize). These impacts should be addressed *in advance* of design and development and be part of siting criteria and site selection (see U.N. Mitigation Hierarchy of Avoid, Minimize, Rectify/Remedy, Compensate Enhance and CEQA Guidelines Section 15370).

Additionally, an outstanding question remains about what will happen to the Coliseum site if the A's abandon it. The existing Coliseum site reflects decades of public investment in infrastructure, and it contains all the space to build and stage a massive construction effort. There is sufficient existing parking for the stadium and a retail and entertainment village, and space for high-end, market rate, and affordable housing all within the footprint of the Coliseum and Arena complex.

GOLDEN GATE AUDUBON SOCIETY
2530 San Pablo Avenue, Suite G, Berkeley, CA 94702
phone 510.843.2222 | web www.goldengateaudubon.org | email ggass@goldengateaudubon.org

- O-36-1 This comment acknowledges the commenter's support of the Project's incorporation of numerous measures to ensure bird safety. However, this comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft EIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the Proposed Project.
- O-36-2 See Consolidated Response 4.10, *Alternative 2: The Off-Site (Coliseum Area) Alternative*, for responses to comments regarding the Coliseum site, and Consolidated Response 4.4, *Port Operations and Land Use Compatibility* and Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*, for responses to comments regarding mitigation measures.

O-36-1

O-36-2

O-36

COMMENT

RESPONSE

Air Quality, Hazards and Hazardous Materials, Hydrology and Water Quality, and Transportation

We incorporate the Sierra Club's comments on these environmental factors by reference.

In addition:

We suggest a mitigation measure to discourage the use of diesel-powered food trucks and charcoal during operation.

O-36-3

Mitigation Measure AIR-2b: Promote use of Green Consumer Products.
There is a specious connection between promotion of consumer behavior and actual purchase of green products. While well-intentioned, this measure has no measurable way to reduce ROG emissions. This measure seems to be satisfied by the developer sending an email to commercial tenants with an unclear suggestion for green consumer products (how is that defined?) that could simply be deleted. Rather, a mitigation measure should proscribe requirements for purchase of green consumer products that are based on analysis that demonstrates actual, not vaguely hypothetical, reduction in ROG emissions.

Mitigation Measure AIR-2e: Criteria Pollutant Mitigation Plan.

This appears to be deferred mitigation (it is impossible for decision makers to interpret if mitigation measures will actually reduce impacts) and allows a concerning amount of leeway for the developer to reject emission rejection actions and just purchase mitigation credits. Emission Offsets are an option – is it just possible for the developer to reject other forms of mitigation that avoid or minimize impacts and buy credits instead? In the hierarchy of mitigation, avoidance must come first.

O-36-4

Biological Resources

Thank you for incorporating the mitigation measures required by AB 734 for bird safe buildings (the City of Oakland's Bird Safety Measures) and landscaping, and nighttime programming apply best management practice strategies to avoid and reduce potential collision hazards for migratory and resident birds. It is especially important to limit light and glare spillover from the ballpark to the night sky during periods of avian migration and to adjacent habitat areas.

Mitigation Measure BIO-1b Bird Collision Reduction Measures:

vi. Suggests examples to reduce light pollution and apply best management practices. It is essential that all lighting should be downward pointing and fully shielded to minimize light pollution (while providing for needs of human safety around the complex). This measure allows exception for upward beams for nighttime programming at the Ballpark for field lighting and events and concert light shows. There should not be exceptions during spring and fall migration, particularly for concert light shows. There are examples of International Dark Skies lighting used for outdoor professional sports stadiums see guidelines here <https://www.darksky.org/our-work/lighting/lighting-for-industry/apply-osl/> an example here from a 2015

O-36-5

O-36-3 For responses pertaining to the Sierra Club's comments, see Responses to Comment Letter O-47.

Mitigation Measure AIR-2d on p. 4.2-77 of the Draft EIR has been revised to further reduce the use of diesel-powered tenant vehicles, as shown in Response A-17-9. This measure now requires: (1) all loading docks to be equipped with electrical hookups for trucks with TRUs; (2) the installation of heavy-duty electric truck charging infrastructure; and (3) the use of hybrid engines or alternative fuels.

The proposed Project is not anticipated to use charcoal during operations.

Regarding Mitigation Measure AIR-2b, the Draft EIR acknowledges on p. 4.2-83 that "given the Project sponsor does not have authority to require use of certain consumer products by building occupants or tenants, no reduction in ROG emissions can be attributed to this measure. ROG emissions would remain above the significance threshold of 54 pounds per day and 10 tons per year."

Mitigation Measure AIR-2a requires that future tenants use low-VOC paints. This is a mandate that would be enforced through the Covenants, Conditions, and Restrictions (CC&Rs) and/or ground leases, along with the MMRP.

O-36-4

See Responses to Comments O29-1-33 and O29-1-34 regarding the use of offsets pursuant to Mitigation Measure AIR-2e. This measure would allow the Project sponsor to directly fund or implement a specific offset project within the City of Oakland (item c.i) or pay mitigation offset fees to the Air District Bay Area Clean Air Foundation or other governmental entity (item c.ii) to achieve the performance standard requirement of this mitigation measure, which is to reduce total criteria pollutant emissions below the City's thresholds of significance. CEQA requires that impacts be mitigated but does not place preferences on the types or method of mitigation measures, and does not prioritize avoidance over reduction (see State CEQA Guidelines Sections 15126.4 and 15370).

See also Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*, for a discussion of mitigation measure deferral.

O-36

COMMENT

RESPONSE

- O-36-5 See Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*, regarding suggested modifications to Mitigation Measure BIO-1b: Bird Collision Reduction Measures. Mitigation measure components vi. and vii. have been amended to make mandatory avoidance of architectural illumination treatments and restrictions on upward beams of light during spring and fall migration, including during nighttime programming at the Ballpark (e.g., concert and event light shows) and field lighting, consistent with MLB Field Lighting Standards.

O-36

COMMENT

RESPONSE

O-36-5 newsletter <https://www.darksky.org/wp-content/uploads/2015/06/NS80.pdf> Musco lighting is a well-known stadium and sports field lighting manufacturer.

vii. GGAS would be happy to help offer suggestions for the building and operation management manual that promotes bird safety. Thank you for providing the example of distribution of educational materials on bird-safe practices; we welcome you to contact GGAS for materials.

O-36-6 Fireworks: There is no evidence provided that disturbance-tolerant birds can tolerate fireworks; furthermore, this analysis assumes more sensitive species will never nest closer than they are now. A mitigation measure should be added to limit fireworks outside of nesting bird season and spring and fall migration, OR another option is silent fireworks - today most people listen to music using ear buds while watching celebratory 4th of July or concert fireworks

O-36-7 A mitigation measure should be added to Air Quality because they are a source of pollution; see: <https://www.forbes.com/sites/grr/scientist/2019/12/31/festive-fireworks-create-harmful-pall-of-pollution/?sh=5283b48f2853> and <https://journals.plos.org/plosone/article?id=10.1371/journal.pone.0168297>.

BIO-1c: This measure should be expanded to other sensitive species beyond just Peregrine Falcon). Osprey, Double Crested Cormorants, Brown Pelican, Least Tern are some of the species which forage within the study area. Fireworks have caused flocks of birds to flee and die from bird collisions and in Gualala fireworks were cancelled due to impacts to nesting seabirds. There are links in more information in this National Audubon article <https://www.audubon.org/news/do-fireworks-cause-bird-deaths-what-do-fourth-july>

O-36-8 A minimum disturbance buffer between fireworks and nesting raptors of 500 feet is not universally adequate. GGAS volunteers monitoring the nesting Ospreys in Richmond, CA have documented (video) the adult/parent birds leave the nest due to fireworks disturbance. Buffers should be established in consultation with CDFW-approved biologist in consideration of each nest (e.g. the presence of natural buffers provided by vegetation or topography; nest height; locations of foraging territory; and baseline levels of noise).

We strongly urge the following portion of the mitigation measure to be removed:
"Should nesting within the Project site not be identified during surveys for 3 more consecutive seasons, it will be assumed that local peregrine falcons have selected another nesting location and annual surveys and monitoring in advance of ballpark firework displays shall no longer be necessary to avoid or minimize disturbance to this species and their nests."
This could unnecessarily preclude Peregrine Falcons from the area in the future, and would be a significant impact.

O-36-9 Native Plantings:
The project description states that: "More detail on possible plant species is presented in Section 4.3, Biological Resources..."

O-36-6 See Consolidated Response 4.17, *Bird Impacts from Fireworks Displays*.

O-36-7 The ballpark would use professional pyrotechnic products and licensed operators to conduct a limited number of fireworks displays each year. The Project sponsor would be required to obtain a permit as defined by the California State Health and Safety Code and comply with the law set forth in Part 2 of division II of the Health and Safety Code, and the rules and regulations adopted by the State Fire Marshal.

The BAAQMD does not regulate air pollution from fireworks displays. Congress has legislated the treatment of air quality data influenced by exceptional events, which includes fireworks. Events such as wildfires, high winds, volcanoes and fireworks are considered exceptional events and are exempted from being included in State Implementation Plans under the 2016 Exceptional Events Rule (41 CFR 50.14).

Particulate matter concentrations (particularly PM_{2.5}) would increase in the vicinity of the Project following the display. However, this increase would be temporary and based on data from study conducted by the National Oceanic and Atmospheric Administration Air Resources Laboratory, concentrations drop back to normal in a few hours.⁸⁵ Also, TAC emissions from fireworks would occur far above receptor locations and would largely disperse before reaching sensitive receptors. The health risk assessment (HRA) for the proposed Project calculates lifetime excess cancer risk, which is based on total annual exposure to average emissions, and annual average PM_{2.5} concentrations, which is based on average emissions occurring throughout the year (see Draft EIR p. 4.2-47 through 4.2-53). This approach follows the BAAQMD CEQA Guidelines and based on their limited frequency, occasional firework displays would not materially affect these impacts, and no mitigation would be required for Impact AIR-4 (Project-related health risks) or Impact AIR-2.CU (cumulative health risks).

Also, fireworks displays currently occur at the Coliseum; as such, the proposed Project would not result in a net increase in firework displays compared to the CEQA baseline. From a regional air quality perspective, moving the location of fireworks from East Oakland to West Oakland would not have a net effect on the Air Basin's air quality; this is consistent with how Impact AIR-1, AIR-2, and

⁸⁵ NOAA, 2015. Effects of Independence Day fireworks on atmospheric concentrations of fine particulate matter in the United States, May 30, 2015.

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RESPONSE

AIR-1.CU were evaluated. For this reason, fireworks emissions would not contribute to the proposed Project's significant and unavoidable air quality impact during project operations (Impact AIR-2 – criteria pollutant emissions). Consequently, a mitigation measure related to fireworks would not reduce any air quality impact evaluated in the Draft EIR.

O-36-8 See Consolidated Response 4.17, *Bird Impacts from Fireworks Displays*.

O-36-9 The Draft EIR project description incorrectly stated that more detail on possible plant species is presented in Section 4.3, Biological Resources, as the details of various planting palettes for use in the Project site are still unknown.

Draft EIR p. 3-47 is revised to delete this statement:

~~More detail on possible plant species is presented in Section 4.3, *Biological Resources*, in Chapter 4.~~

While not a Project requirement to plant native species, the selection of trees and other site vegetation in plantings may include native and non-native, salt- and drought-tolerant species, native or non-native trees identified on the City's approved tree list (for street trees),⁸⁶ or other species appropriate to the site, as noted by the commenter.

⁸⁶ City of Oakland 2018, Master Street Tree List, April 2017 - April 2018. Available at: <https://cao-94612.s3.amazonaws.com/documents/oak042662.pdf>.

O-36

COMMENT

RESPONSE

O-36-10 The proposed Project would comply with Section 8.28.140 of the City of Oakland Municipal Code for waste containment in a commercial setting as follows:

Section 8.28.140 - Required provision of approved containers and minimum service and container capacity; container placement; residential occupants' access to services.

A. All mixed material, and organic material created or produced in the City shall be deposited in a container or containers approved by the Director, equipped with suitable handles and a tight-fitting cover, and watertight. Every person in possession, charge, or control of any single-family dwelling, multi-family dwelling or commercial premises shall provide a sufficient number of such containers of sufficient capacity to hold all mixed materials, recyclable materials, and organic materials which are created, produced, or accumulated on such premises between the time of successive collections by the collector or removal under self-haul permit, to meet the minimum SFD and MFD service and container capacity requirements of this section, and to meet county and/or state requirements for organic materials capacity and/or recyclable materials capacity.

The commenter’s suggestion regarding education and outreach regarding the importance of the area is appreciated. While not required as mitigation, the suggestion has been incorporated into the description of Parks and Open Space Amenities on p. 3-26 of the Draft EIR, which has been modified as follows, consistent with request made by the Design Review Committee (DRC) of the Oakland Planning Commission during its review of the draft Planned Unit Development (PUD) for the Project:

The proposed Project would include a network of approximately 18.3 acres of accessible open spaces, the large components of which are described below and illustrated in Figure 3-13, Parks, Plaza, and Open Space Program and Design. The parks and open spaces are envisioned to be flexible, and accommodate a range of outdoor programming, including, but not limited to, concerts, markets, festivals and activities noted in Figure 3-13. To enhance the experience, the parks and open spaces may also incorporate interpretive materials or artworks intended

O-36-9

These details are not apparent – what page number is this supposed to be on? If not present, please describe.
We highly support the statement in the project description that “a planting palette that is resilient and appropriate for a public urban spaces, using species native to the Bay Area along with non-native, non-invasive, and salt- and drought tolerant species” and be applied to the street tree selection and 18.3 acres of open space. We emphasize the importance of native plants in supporting biodiversity.

O-36-10

In addition, we ask for mitigation measures to:

Wildlife proof trash containers to prevent ravens, rodents and other predators from accessing human food and trash and also from wind blowing trash into the surrounding area and waters. Provide announcements and displays about how to dispose of food and other event waste.

Encourage education and outreach to the residents and visitors of the significance and importance of this area through art or other means (tie in Ohlone, climate change/sea level rise education and native birds including the city bird – the Black-Crowned Night Heron which nests nearby).

O-36-11

Aesthetics
It is concerning that there is no guarantee construction and operation improvement measures may not reduce the light pollution to a less than significant level – can this be a condition of approval to reduce to less than significant?

Why are aesthetic impacts not considered environmental impacts for the purposes of CEQA when these are checklist items?

O-36-12

Conclusion
Thank you for considering these comments. We look forward to envisioning a healthy, equitable, and biodiverse future for Oakland. Please notify us of any actions or materials pursuant to this dEIR.

Thank you for your attention and consideration.

Respectfully,



Glenn Phillips
Executive Director

O-36

COMMENT

RESPONSE

to communicate information about the history of the site and its surroundings, as appropriate.

This text addition to the Draft EIR Project Description chapter does not affect or alter the analysis of impacts or identification of mitigation measures in the Draft EIR.

- O-36-11 As explained on Draft EIR p. 4.1-1, in accordance with CEQA Section 21099(d), added by Senate Bill 743 (2103), aesthetic impacts of a mixed-use project that includes residential uses on an infill site within a transit priority area “shall not be considered significant impacts on the environment.” Accordingly, aesthetics is not considered in identifying the proposed Project’s significant environmental effects because it meets the applicable criteria in Section 20199(d). Thus, the Draft EIR does not consider aesthetics, including the aesthetic impacts of light and glare in determining the significance of Project impacts under CEQA. Nevertheless, the Draft EIR includes an analysis of aesthetic impacts, including light and glare, for informational purposes, in Draft EIR Section 4.1, Aesthetics, Shadow, and Wind. However, this analysis is focused on human receptors. Because, as explained above, lighting effects related to aesthetics would be less than significant, no mitigation is required.

A separate analysis of the potential effects of light on non-human animal species, including birds and marine species, is provided in Section 4.3, Biological Resources. That section includes Mitigation Measure BIO-1b: Bird Collision Reduction Measures, as revised herein, which sets for specific conditions to avoid significant impacts from project lighting on birds. Section 4.3 also concludes that lighting effects on marine species would be less than significant.

- O-36-12 This comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft EIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the Proposed Project.

O-37 American Waterways Operators

COMMENT

RESPONSE



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Charles P. Cozzano
General Counsel & Vice President – Pacific Region

April 27, 2021

Mr. Peterson Vollmann
Planner IV
City of Oakland Bureau of Planning
250 Frank H. Ogawa Plaza, Suite 2214
Oakland, CA 94612

Re: Draft Environmental Impact Report
(EIR) for the Oakland Waterfront Ballpark
District Project

Dear Mr. Vollmann:

On behalf of The American Waterways Operators (AWO), thank you for this opportunity to comment on the Draft Environmental Impact Report (EIR) for the Oakland Waterfront Ballpark District Project.

The U.S. tugboat, towboat, and barge industry is a vital segment of America's transportation system. The industry safely and efficiently moves more than 760 million tons of cargo each year, including more than 60 percent of U.S. export grain, energy sources, and other bulk commodities that are the building blocks of the U.S. economy. The fleet consists of nearly 5,500 tugboats and towboats and over 31,000 barges. With seven members headquartered in California, and five of those within the San Francisco Bay Area, AWO and its members care deeply about the viability of the Port of Oakland and the positive economic impact its operation has on Northern California.

AWO opposes the proposed Oakland A's baseball stadium at Howard Terminal because, as currently designed, it would conflict with safe and efficient maritime operations in the surrounding navigation channels. Additionally, the Draft EIR does not evaluate the impact of the project on the operation of towing vessels working in the Port of Oakland. This is a substantial oversight as tugboats are necessary to perform ship assist services for vessels that move cargo into and out of the port and ensure marine safety in the Oakland Inner Harbor. The final EIR must account for these considerations to properly evaluate the impact of this proposal on the safe and efficient movement of maritime commerce.

AWO previously submitted comments to the City of Oakland on the Notice of Preparation (NOP) for the scoping of this Draft EIR document. Those comments highlighted the potential

The Tugboat, Towboat and Barge Industry Association

O-37-1 The comment raises an economic issue, not an environmental issue, which is not subject to CEQA. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Project. See Consolidated Response 4.4, *Port Operations and Land Use Compatibility*, including Consolidated Response 4.4.1.2, *Recreational Watercraft and Maritime Navigation*, and Consolidated Response 4.18, *Effects of Light and Glare on Maritime Operations and Safety*.

O-37-2 The comment raises an economic issue, not an environmental issue, which is not subject to CEQA. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Project. See Consolidated Response 4.4, *Port Operations and Land Use Compatibility*, and Consolidated Response 4.18, *Effects of Light and Glare on Maritime Operations and Safety*. As explained in Consolidated Response 4.18, one of the locations selected, in the Project's Lighting Technical Report, for the analysis of potential light and glare effects on maritime activity represents the approximately height of a tugboat wheelhouse (approximately 25 feet above the water surface).

O-37-1

O-37-2

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COMMENT

RESPONSE

Mr. Vollmann
April 27, 2021
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negative impacts – physical and economic – that this project would have on the Port of Oakland and the maritime economy of the entire Bay Area. We also shared our concern about any development that would obstruct access to the Turning Basin or impede it through increased recreational use. Our NOP comments specifically focused on the need for access to and safe use of the Turning Basin and the navigation channel.

While we appreciate that the Draft EIR does include limited evaluation of the potential impacts of this project on navigation, the review and evaluation is limited. The Draft EIR focuses only on one specific maritime movement and possible impacts when a ship pilot is maneuvering in the center of the Turning Basin. Missing from this evaluation are the other assisting tugboats, the operators of these vessels, and consideration of all sight lines and vantage points necessary for the safe movement of a large ship. Nor does it consider other traffic that may be in the harbor.

Without addressing the critical role of commercial harbor craft in the Port of Oakland and nearby waterways, the Draft EIR has not adequately analyzed, addressed, or potentially mitigated the safety and transportation impacts associated with ship assist work in the inner harbor and Turning Basin.

In addition, AWO supports the comments submitted by the Harbor Safety Committee of the San Francisco Bay.

Thank you again for allowing us to comment on the Draft EIR. We are happy to provide additional feedback to ensure that the safe and efficient movement of maritime commerce are properly considered throughout this process.

Sincerely,



Charles Costanzo
General Counsel and Vice President – Pacific Region

O-37-2

O-38 Watchpoint Logistics, Inc.

COMMENT

RESPONSE

Hello,

The members of Watchpoint Logistics, Inc. as well as many of our Industry colleagues have strongly voiced our stance on this project. If this measure passes a stadium at this site will grossly cripple our local economy as drastically diminish our Ocean traffic. There simply will not be enough space or roadways to accommodate the trucks from picking up containers. The space and capacity at the piers would also be drastically reduced and the Port of OAK will no longer be a viable option for importers. Ocean container traffic will be diverted either down south to Los Angeles or up north to the Portland / Seattle ports. Thus resulting in many job losses for our Bay Area Longshoreman and Port ops, not to mention many truckers shutting their doors due to the lack of ocean container traffic.

The stadium may be needed but a better solution must be found in order to save our local economy and the Port of Oakland.

O-38-1 See Consolidated Response 4.4, *Port Operations and Land Use Compatibility*, and Consolidated Response 4.5, *Truck Relocation*.

O-39 Bike East Bay

COMMENT

RESPONSE

See attached pdf, accessible here too:

https://docs.google.com/document/d/1v_AkCsR3L7nYHvew_ODHE-U5Gt_glBQ1HL3embfB-_j

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COMMENT

RESPONSE

- O-39-1 See Response to Comment O-11-1.
- O-39-2 See Response to Comment O-11-2.
- O-39-3 See Consolidated Response 4.6, *Rail Safety, Grade Crossing, and Grade Separation*.



Submitted via:
<https://comment-tracker.esassoc.com/oaklandsporseir/index.html#/19/welcome>

April 27, 2021

Peterson Vollmann
Planner IV, City of Oakland Bureau of Planning
250 Frank H. Ogawa Plaza, Suite 2214
Oakland, CA 94612

Re: Comments on Oakland Waterfront Ballpark District Project

Dear Mr. Vollman:

Bike East Bay has reviewed the DEIR for the Oakland Waterfront Ballpark District Project and is generally supportive of the project and its goal of building a major league baseball ballpark in the downtown area, well-accessed by walking, bicycling and transit. The Coliseum location of the current stadium has never been easy to bicycle to and its sole BART station is far too small to handle large crowds. In addition, the current site never has developed into a vibrant entertainment area, nor has it fostered a successful local game-day economy to support nearby residents. We feel the proposed new ballpark can do all these things if well-planned.

General Comments

Our goal for the new ballpark is for there to be safe, low-stress bikeways to access the ballpark from all directions and our main concerns are the lack of such high quality bikeways in this plan. We like the proposed new high-quality bikeways on 7th Street and MLK Jr. Way south of 8th Street to the ballpark, which will connect West Oakland to the ballpark area. However, the proposed bikeways from Downtown Oakland, from Lake Merritt BART and from Alameda to the ballpark fall short of what a project of this magnitude and importance should achieve.

There are obviously many pedestrian improvements in this plan and we support all of them, including the many new sidewalks, wider sidewalks, pedestrian bridge and upgraded crosswalks and bulb outs. We also support the pedestrian safety improvements on Embarcadero related to train and pedestrian interactions and support the at-grade railroad

O-39-1

O-39-2

O-39-3

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O-39-3 | crossing designs of the project, which in our opinion can be made sufficiently safe. We agree with the Jack London District for the need to extend the pedestrian safety railroad improvements east to Oak Street. However, expensive calls to trench the railroad tracks do not reflect our priorities. Embarcadero is not on Oakland’s high injury network and there are simply too many other more important safety issues throughout Oakland that need addressing.

O-39-4 | Similarly, the transit improvements are all good and we like the Transportation Hub on 2nd Street, but we have concerns about who will pay for the new transit services needed to get people to and from the ballpark. The DEIR leaves that to future discussions, but there needs to be a real plan to fund and ramp up transit services for game day crowds.

O-39-5 | We also are fans of the smart parking management program and know this program will improve bicycle and pedestrian safety by more efficiently directing drivers to available parking spaces and reduce cars circling and looking a spot. We support expanding this program so that Athletics fans can purchase a parking ticket at the same time they purchase their game tickets.

O-39-6 | Much of the success of the transportation plan for this project will depend on the Transportation Management Plan (TMP) and its ongoing implementation. Bike East Bay requests there be a seat on the operational oversight group of the TMP for someone representing the interests of people bicycling in the area. The TMP clearly prioritizes bicycling as a goal of the plan and for this reason should have representation from people who bicycle.

Comments related to bicycling

O-39-7 | This major project and its transportation plan should include high-quality, low stress separated bikeways from all directions and it lacks such bikeways from Downtown Oakland, from the Lake Merritt BART Station (and from points southeast) and from Alameda. Buffered bike lanes on busy streets, and especially streets before and after ballgames, are not low-stress bikeways, and the door-zone white stripe on 2nd Street is no bikeway at all.

- From West Oakland: we support the new bike lanes on 7th Street in West Oakland, although we note that this project only commits to the buffered bike lane design for these bikeways, not the protected bike lanes called for in the Oakland Bicycle Plan. Thankfully Oakland has received a state grant to upgrade these bike lanes to needed protected bike lanes.
- From Downtown Oakland: there are three potential options here, according to the Oakland Bicycle Plan and Downtown Specific Plan: 1) Franklin St/Broadway, 2) Clay/Washington and 3) MLK Jr. Way. All three of these bikeways connect at their north end to a planned east-west bikeway on 14th Street. Whichever of these three potential bikeway connections is built to support ballpark access, the bike lanes should be separated and protected and connect to 14th Street, which obviously is the needed access point to and from 12th St/City Center BART Station and from parts of West Oakland. Fig 4.15-42 in the DEIR shows projected bike trip generation to the ballpark with TMP, and shows twice as many people bicycling from downtown to the ballpark as

O-39-4 | See Consolidated Response 4.22, *General Non-CEQA*, including the discussion of infrastructure funding in Section 4.22.2, *Financial Considerations, Community Benefits, and Other Miscellaneous Opinions*.

O-39-5 | See Response to Comment O-11-4.

O-39-6 | See Response to Comment O-11-5.

O-39-7 | See Response to Comment O-11-6.

O-39-8 | See Response to Comment O-11-7.

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- O-39-9 See Response to Comment O-11-8.
- O-39-10 See Response to Comment O-11-9.
- O-39-11 See Response to Comment O-11-10.
- O-39-12 See Response to Comment O-11-11.

O-39-8
 O-39-9
 O-39-10
 O-39-11
 O-39-12

compared to from West Oakland. We agree with this projection and request that bikeways from Downtown Oakland be upgraded from the plan's buffered lanes to protected, the whole way.

- o The reason given in the City's bike plan for proposing buffered bike lanes on MLK Jr. Way above 8th Street is the number of driveways along the street. Most of these driveways are not utilized and are gated/fenced closed, and thus do not function as driveways. As such, they do not create sight line issues nor any need to remove parking for safety. There are many other streets in Oakland planned for protected bike lanes with similar driveways.
- o For the Clay/Washington bikeway option, the DEIR does not even include a complete bikeway toward downtown due to 8th Street being one-way, but we assume this is an oversight or typo. Either way, existing and planned bikeways on Clay/Washington are not adequate for game day bike access, particularly the narrow door zone bike lanes on Washington Street. In addition, on game days, Washington Street is planned for significantly increased pedestrian activity and may even be closed off to cars, which is great. But as such, Washington Street should be an auxiliary bikeway to the ballpark, perhaps for people bicycling to get something to eat or drink along Washington Street before or after a game. Old Oakland also closes Washington Street for a Friday farmer's market, as does Oakland Police due to safety concerns and as long as OPD has this authority, Washington Street cannot be a bikeway priority to the ballpark. We propose giving OakDOT all authority over street closure permits, not just review and input.
- o For Franklin/Broadway, efforts were (are) underway to plan bikeways on Franklin, but this project's proposal to stripe bus only lanes on Broadway with no bike lanes precludes this as a planned bike option to the ballpark. We support the bus only lanes on Broadway but do not support removal of Broadway as a planned bikeway. Jack London District has been supportive of bike lanes on Broadway and there have been many discussions about improving Broadway for bicycling in the JLD area that this DEIR does not acknowledge. Either way, on any road where people are allowed to bicycle and there is a side-running bus only lane, such as Broadway, people are going to bicycle in the BRT lane and that is exactly where Bike East Bay is going to tell them to bicycle. Bicycling along the right side of the road is the most intuitive place to ride and it is the safest, from our perspective. For this reason, anytime Oakland plans a side-running BRT lane, they should include protected bike lanes or they should plan on bikes in the BRT lane. On Broadway in the JLD, there is room for both, BRT lanes and protected bike lanes as planned for as part of many planning efforts.
- From Lake Merritt BART and points from the southeast, 3rd Street is the best street for planned protected bike lanes because of its width and direct connectivity. Both the Oakland Bicycle Plan and the Downtown Specific Plan identify protected bike lanes on 3rd Street, as has the Oakland Alameda Access Project. In addition, we have met with

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O-39-12

the Athletics, from the start of this planning process, and they initially agreed and took it on to begin the discussion of 3rd Street as the planned high-quality east-west bikeway in the JLD to the ballpark. Public outreach showed 3rd Street as a bikeway at meetings we attended. We know the bike plan defers to this project for any bikeway modifications, but it does so for game-day reasons, not for reasons unrelated to ballpark access. The two reasons we have heard to select 2nd Street over 3rd Street as a bikeway are the Produce Market and the Port of Oakland's over-sized truck access. Neither of these reasons has to do with game-day access and both are illogical. 2nd Street has more produce market issues than 3rd Street and is planned for a transportation hub and a potential TNC zone, which will preclude bike access during increased game-day activity. West of Market Street, this plan does recognize existing buffered bike lanes on 3rd Street where over-sized Port trucks use the street. The issues are the same east of Market Street as they are west of Market. We believe that design issues can be worked out with the Produce Market and the Port of Oakland to make 3rd Street the best option all the way to Oak Street, where planned protected bike lanes are in the works. Either way, it is not this DEIR's responsibility to redo approved bikeways for reasons unrelated to the EIR. In addition, we met with the Port of Oakland and OakDOT to have these discussions in 2019 about 3rd Street, given these concerns, and agreed then that we were going to actually take a look at truck turning issues on 3rd Street before making any decisions, but there has been no followup on that to date. Let's start that followup and in the meantime, 3rd Street is the preferred protected bikeway.

O-39-13

- From Alameda: The plan does not do anything to enhance much-needed biking or walking infrastructure from Alameda, 1000 feet across the estuary, and home to a numerous fans who could easily walk or bike to a game if it were possible. The plan should advance the estuary bike-ped bridge, which is already in all the key vision and planning documents. The timing is perfect, because the bridge is currently in the PSR phase, in which alignments need to be determined and secured. Alameda has preserved several alignments on their side already, one in Alameda Landing, directly across from Howard Terminal. We want to see coordination between the A's, the City of Oakland, the City of Alameda, and other stakeholders to ensure that a landing easement is preserved as part of the ballpark project, ideally at Jack London Square. The A's are already proposing a bike-ped bridge over the railroad tracks at Jefferson Street. Rather than looping back down to ground level on ballpark property, the bridge should stay elevated and join with active 2nd level uses of the ballpark, including a raised pathway connection to a future estuary bridge to Alameda;

O-39-14

- Within the Ballpark: We support the protected bike lanes on MLK Jr. Way south of 8th Street, but ask for a couple of improvements. One, the intersections of MLK Jr. Way and 7th Street (and 8th Street) need to be protected intersections given the increased bike traffic this intersection will attract with 7th/MLK Jr. Way being a primary bikeway access to the ballpark from West Oakland. Two, down at the project site, the two-way cycle track onto the property of the project needs to be much wider than proposed, particularly as the cycle track makes a turn to the west. We understand why

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- O-39-13 See Response to Comment A-10-2 and see Response to Comment A-10-5. A pedestrian bridge over the estuary connecting Oakland and Alameda is not part of the proposed Project or required as a mitigation measure for the Project. This comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft EIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the Proposed Project.
- O-39-14 See Response to Comment O-11-12.

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RESPONSE

O-39-14 | the roadway was widened and the bikeway constrained at this turn due to fire truck and delivery truck access, but the design here should be first for a wide cycle track that is mountable by fire trucks, not a wide roadway for fire trucks that leaves minimal width for bicycling.

O-39-15 | As we previously stated, this Project creates a net loss of bikeways to residents of Oakland as compared to the bikeways in approved plans and under development with separate projects. The plan proposes approved bikeways on 7th Street, MLK Jr Way and one block of Washington, but the project proposes to downgrade or eliminate other bikeways in approved plans and projects. There appears to be only two additional new bikeway improvements proposed by the project over and above bikeways in approved plans--a 3 block cycle track on Embarcadero and the bike-ped bridge at Jefferson Street over the RR tracks. The list of lost or downgraded bike lanes includes: Market Street from protected to buffered, Adeline Street eliminated south of 7th St, Broadway eliminated in JLD, 2nd Street at the Transportation Hub during game day, and 3rd Street not upgraded to protected bike lanes. This is a net loss of bike access from what Oakland residents have been expecting to date. Because of this net loss of expected bikeways, we don't support a limited set of bike improvements but rather have two additional asks of the Project: 1) require the pedestrian bridge over the RR tracks to be designed to potentially join with a planned bike-ped bridge over the Oakland Estuary, and secure necessary easements for the bridge landing, in the event this alignment turns out to be infeasible, an additional alignment for the bridge should be preserved to land at Estuary Park, which is just a little further away, and 2) require A's to host and promote a Bike to the Ballpark Day, once a year, at a home date in May.

O-39-16 | We support the planned 500-1,000 space bike/scooter parking at the ballpark and the cycle track along the interior roadway of the ballpark. The other interior roads should also have bike lanes at build out given the intense development planned.

O-39-17 | Over and above what is planned for bike improvements, we know that flexibility and responsiveness will be needed and we support that. For these reasons, we request a seat on the operational oversight group of TMP and ask that this plan have a short list of priority bikeway improvements to be implemented post opening of the ballpark if needed should street conditions and impacts be different than forecast. Streets that should be on this short list are 3rd Street, Broadway, MLK Jr. Way and 14th Street. This is important because of the annual TMP surveys to be conducted. If from these attendee surveys, it is learned that more people are needed to bicycle to the ballpark to meet VMT reduction goals, and from the results of the survey we learn that improved bikeways are needed for more fans to bicycle to the ballpark, what exactly would happen next? There needs to be a Plan B for additional bikeway improvements to consider in order to meet VMT goals.

O-39-18 | In Fig 4.15-1, Motor Vehicle Influence Area, why are there no intersections east of Broadway studied? In particular, bike travel on Oak Street, and 3rd Street will be impacted by ballpark traffic. Where are these impacts studied? They need to be studied since the DEIR states that the majority of traffic will be coming from these directions.

O-39-15 See Response to Comment O-11-13.

O-39-16 See Response to Comment O-11-14.

O-39-17 See Response to Comment O-11-15.

O-39-18 See Response to Comment O-11-16.

O-39-19 See Responses to Comments O-11-17 and O-11-18.

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O-39

COMMENT

RESPONSE

O-39-19 In Fig 4.15-3, Bicycle Influence Area, the extent of bicycle travel to and from the ballpark (including scooters) needs to extend to the three most adjacent BART Stations: West Oakland, 12th Street/City Center and Lake Merritt, as does Fig 4.15-4, the Pedestrian Influence Area.

O-39-20 Local Roadway Access needs to include Oak Street, 3rd Street and other nearby planned bikeways. There are major NB exits from 880 and SB entrances to 880 in this area and added traffic is going to affect active transportation modes to and from the ballpark. The Alameda County Congestion Management Program requires the Project to study impacts to all modes of travel, including bicycle trips.

Other comments and concerns

O-39-21 1. We do not support 8,900 new parking spaces at build out of both phases of the Project. 1 parking space/new residential unit is way too high. There is no need for such a large quantity of parking when there is a nearby transportation hub and three nearby BART stations, a ferry station and BRT. Oakland a few years ago lowered their off-street parking requirements in the downtown area. This Project should do better still.

O-39-22 2. We are concerned that there are no/insufficient underpass improvements of 880. More information and details to understand how existing underpasses will be improved for safety and to encourage more people to take BART to games and walk to the ballpark.

O-39-23 3. In analyzing Coliseum site traffic, for comparison VMT purposes, the analysis should use 2018 data, not 2017. The Athletics were 97-65 in 2018 and saw significant attendance increase over 2017 when the A's were 75-87 and in last place. We know with lower attendance a higher percentage of people drive because parking at the stadium becomes more convenient, and vice versa. A well-attended season at the Coliseum should be the baseline for VMT analysis of the new ballpark;

O-39-24 4. We agree a new downtown ballpark can reduce the number of people driving to games compared to the current Coliseum site, but we also agree that there is potential for West Oakland to be impacted more than they currently are from increased traffic and pollution. For these reasons, the project needs to ensure robust transit, walking and bicycling connections, so that attendees do not have to drive through West Oakland;

O-39-25 5. We support calls from Oakland United for more specifics about the affordable housing part of the project, including what type, how much and where affordable housing will be constructed. We support keeping this affordable housing in West Oakland and part of the project, to support workers at the project site and nearby;

O-39-26 6. We also want to better understand the growth inducing impacts of the project. The project needs to plan for its growth and adequately analyze its jobs-housing imbalance and where new workers are going to live and how they will get to work;

O-39-27 7. It is important to have an authentic downtown Ballpark that will leverage and celebrate the unique surrounding neighborhoods, encouraging attendees to flow through the neighborhoods, patronize businesses, experience food and drink, and bring local food into the stadium as feasible. Imagine enjoying a waterfront game with a

O-39-20 See Response to Comment O-11-19.

O-39-21 See Response to Comment O-11-20.

O-39-22 See Response to Comment O-11-22.

O-39-23 Section 4.15.4 of the Draft EIR outlines the nature and location of off-site transportation improvements that would be implemented as mitigation measures. The off-site improvements are graphically illustrated on Figures 4.15-22 through 4.15-39 (pp. 4.15-99 through 4.15-116). The off-site improvements in West Oakland are also described for the 7th Street corridor (pp. 4.15-117 and 4.15-118), I-880/5th Avenue/Adeline Street corridor (pp. 4.15-121 and 4.15-122), Market Street corridor (pp. 4.15-122 and 4.15-124), In addition, the Parking Management Plan (PMP) required as part of Mitigation Measure TRANS-1b would incorporate Residential Permit Parking (RPP) in West Oakland and a parking reservation system to manage parking at the BART overflow parking lots for ballpark attendees who drive and park.

O-39-24 See Consolidated Response 4.12, *Affordable Housing*.

O-39-25 The Draft EIR addresses growth inducement potential in Section 7.3 (beginning on p. 7-7). The analysis concludes that the increase in the residential and employment population on the Project site would not result in an unplanned increase in Oakland's population or extend services beyond the site boundary in a way that might indirectly foster unplanned growth. The Draft EIR addresses jobs-housing balance on p. 4-12-22, and the analysis concludes that proposed Project's growth would not materially alter the City's existing ratio of jobs per households. Most construction and post-construction employees are assumed to already have housing in Oakland or elsewhere in the region, as stated on Draft EIR p. 7-2. The Draft EIR describes trip generation and mode shift beginning on p. 4.15-158 with respect to employee mode of travel.

O-39-26 This comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft EIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the Proposed Project.

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COMMENT

RESPONSE

O-39-27 This comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft EIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the Proposed Project.

O-39-26

tray of dim sum from Peony Seafood or a box of Everett & Jones' BBQ ribs. This would be maximally beneficial to the A's Brand as Rooted in Oakland and be a significant economic development driver for our surrounding downtown neighborhoods. Transportation and infrastructure improvements should align with this economic and community development goal by facilitating pedestrian access through downtown instead of bypassing neighborhoods to deliver attendees directly to the stadium.

O-39-27

8. The transportation and infrastructure investments should help solve chronic downtown mobility challenges, primarily, reversing the barrier of the I-880 freeway and improving street level pedestrian safety. Not only will these be the top issues for ballpark attendees; this approach is also consistent with the development of a downtown ballpark that's authentically part of the fabric of the downtown. Where there are shared challenges beyond the reach or scope of the impact mitigations, the A's should work closely with the Oakland community to lend the gravity of their influence to advocate for better rail infrastructure, improved safety for Oakland's streets at points of freeway access and Caltrans' authority, improving regional transit systems, and more in years to come.

Thank you for considering our input and please let us know if you would like to discuss any of our ideas or concerns.

Sincerely,



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O-40 Oakland Heritage Alliance

COMMENT

RESPONSE

O-40-1 Comments received in response to the Notice of Preparation (NOP) were considered during preparation of the Draft EIR and are included as an appendix to the Draft EIR (Appendix NOP). These comments informed the selection of alternatives for analysis in Chapter 6 of the Draft EIR. Draft EIR p. 6-57 provides reasons why some suggestions received in response to the NOP were not reflected in the alternatives selected for analysis.



April 27, 2021

By electronic transmission

**ESA Associates
Peterson Vollmann, Planner IV, City of Oakland Bureau of Planning**

Re: Development at Howard Terminal. DEIR ER18-016

Dear Mr. Vollmann, ESA, and other consultants,

Oakland Heritage Alliance considers the sections of the DEIR we have reviewed as insufficient and inadequate. In particular, we note the curt dismissal of our comments on the Notice of Preparation, requesting study of alternatives. The DEIR states

6.4 Alternatives Considered but Not Analyzed in Detail in the EIR

Pursuant to CEQA Guidelines Section 15126.6(c), an EIR should identify any alternatives that were considered by the Lead Agency but were rejected during the scoping process, and briefly explain the reasons underlying this decision. Among the factors that may be used to eliminate alternatives from detailed consideration in an EIR are the following: (1) failure to meet most of the basic project objectives; (2) infeasibility; or (3) inability to avoid significant environmental effects. Several other possible alternatives were suggested in response to the Notice of Preparation (NOP) or identified for other reasons during preparation of this EIR. Each of these alternatives is briefly summarized below, along with the reason it did not warrant in-depth analysis.

In addition, the City received comments expressing support for or opposition to components of the Project or possible variants (such as the Aerial Gondola Variant). Comments also addressed design issues, such as a request that the design of the ballpark incorporate detailing that is compatible with nearby PG&E Substation C, a historic resource. To the extent that these comments reflect design preferences, they would not result in any changes to the impacts identified with the proposed Project." (Page 6-57 of DEIR).

In our comments concerning the Notice of Preparation (App. 02-Appendix-NOP), we requested mitigations and alternatives:

1. IMPACT: Demolition and/or adverse alteration of all or a portion of Pacific Gas and Electric Company Station C:

Mitigation Measures:

a. Design the project to preserve all of the historically /architecturally contributing elements within the Station C complex. Note: Although the Notice of Preparation's Project Description suggests that the "existing power plant" will not be included among

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Impacts to Pacific Gas and Electric Company Station C (an historical resource) would occur under the Peaker Plant Variant analyzed in Chapter 5 of the Draft EIR. This impact could be avoided by omitting Peaker Plant Variant from the proposed Project, which is an option available to the Project sponsor and the City, and would result in only those Project impacts described in Chapter 4 of the Draft EIR. As explained beginning on Draft EIR p. 5-40, impacts of the Variant on the historic resource would be significant and unavoidable, although two mitigation measures (HABS documentation and review of architectural plans for conformance with the Secretary of the Interior's Standards by a qualified preservation professional) would reduce, but not eliminate the severity of the impact. Restoration of previously altered portions of the resource is not included as mitigation (or as an alternative) because it would fail to address impacts of the Peaker Plant Variant. Similarly, designing the ballpark to be compatible with the resource is not provided as mitigation (or as an alternative) because it would not address or reduce any significant impacts of the Project or the Variant. As described in Response to Comment H-1-4, the Peaker Plant building would not be directly modified by the proposed Project design without the Peaker Plant Variant because all development is adjacent to, but does not include, the historic resources. Therefore, compatibility with the Secretary of the Interior's Standards is not required. Additionally, because 601 Embarcadero has an "A" rating on by the OCHS, specific modifications to the building would be subject to review by the Landmarks Preservation Advisory Board as part of the Regular Design Review procedure with implementation of the Peaker Plant Variant. Implementation of the Peaker Plant Variant would also require compliance with Mitigation Measure CUL-6B: Peaker Power Plant—Secretary of the Interior's Standards Compliance Analysis. However, compliance with the Standards is limited to modifications to the historic resource and are not required to be applied to the Project as a whole. In response to the commenter's request, Draft EIR Appendix CUL has been expanded to include the California Inventory Historic Resources form for Station C. See Chapter 7, *City-Initiated Updates and Errata in the Draft EIR*.

O-40-1

O-40 Oakland Heritage Alliance

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Impacts to the Old Oakland API (an historical resource) would occur under the Aerial Gondola Variant analyzed in Chapter 5 of the Draft EIR and could be avoided by omitting that variant from the Project, which is an option available to the Project sponsor and the City, and would result in only those Project impacts described in Chapter 4 of the Draft EIR. As explained beginning on p. 5-111 of the Draft EIR, the impacts of the Variant on the historic resource would be significant and unavoidable, although one mitigation measure (contextual design review of the Convention Center Station) is provided to reduce the severity of the impact. This mitigation measure would effectively minimize the station's architectural prominence and would include consideration of the Secretary of the Interior's Standards.

The Project sponsor does not control the Convention Center Hotel, and as a result, has not proposed installing the gondola's Convention Center Station within or entirely on top of the building. However, as explained on Draft EIR p. 5-77, there is a design option (Option 1) in which the station would sit partially over the top floor of the Convention Center parking structure, reducing the length of the station's extension over Washington Street to the extent feasible.

Chapter 5 of the Draft EIR presents the proposed modification to Pacific Gas & Electric Substation C and construction of an aerial gondola as proposed Project variants, effectively setting forth four possible choices. The four choices, which are in addition to those included as Alternatives in Chapter 6 of the EIR, include: the proposed Project with no variants, the proposed Project with the Peaker Plant Variant and no aerial gondola, the proposed Project with the Aerial Gondola Variant and no changes to Substation C, and the proposed Project with both the Peaker Plant Variant and the Aerial Gondola Variant. In addition, the Draft EIR includes the mitigation measures in Chapter 5 of the EIR in order to reduce the severity of impacts to historic resources if one or both variants are selected for implementation. Separately including these choices and mitigation measures, or different variations of these project variants, in the form of Project alternatives is not required either for the EIR to provide a "range of reasonable alternatives to the project" or for the EIR to provide the public and decision makers with an opportunity to understand the impacts to historic resources or how they can be reduced or avoided. For additional response to comments on alternatives, see Response to Comment O-19-1.

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the buildings to be demolished on the project site, various renderings and other materials presented by the applicant omit at least portions of Station C, notably the Jefferson Street wing. At a meeting with OHA, the applicant appeared unaware that the Jefferson Street portion was a contributing element of Station C.

b. Require that any modifications to the Station C buildings conform with the Secretary of The Interior Standards for the Treatment Of Historic Properties. Consider restoration of altered portions of the Station C exteriors as part of any adaptive reuse of the Station C buildings.

c. Require that the design of the new stadium and other buildings are compatible with the Station C architecture, according to the Secretary of the Interior's Standards.

d. Require that a preservation architect with demonstrated successful experience working with the Secretary of the Interior's Standards and the California Historical Building Code be included in the project design team. Include the attached California Historic Resources Inventory Form for Station C in the EIR.

2. IMPACT: Possible adverse effects of the gondola component on the Old Oakland National Register District.

Project Alternatives: Instead of the gondola, provide alternative transportation improvements to facilitate stadium access from BART, including a dedicated light rail, bus or shuttle connecting the stadium to the West Oakland BART station along Third Street.

Mitigations:

a. Locate the gondola's 10th Street Station within the Convention Center/Hotel to minimize the station structure within the Washington Street and 10th Street rights of way and to retain the openness of the air space within these rights of way to the greatest extent possible.

b. As an alternative to Measure (a):

i. Position as much of the station structure as possible outside the Washington Street right of way alignment to minimize its visual prominence when looking north within the National Register District's important Washington Street visual corridor. This measure would result in most or all of the station structure to be positioned within the 10th Street right of way outside of the Washington Street right away alignment, and

ii. Design the station to minimize its architectural prominence and to be as visually subordinate as possible to the District's contributing buildings. Minimize the height of the station structures and use materials and design treatments that maximize transparency. Refer to the Secretary of the Interior's Standards. Include a preservation architect on the station design team with demonstrated experience successfully working with the Standards. Note: preliminary station renderings presented to OHA by the applicant showed a very modernistic design that contrasted excessively with Old Oakland's contributing buildings with the station positioned at an extremely prominent location relative to the District.

O-40-1

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O-40-1

We were surprised that that the above alternative and mitigations were not discussed in Section 6.4 of the DEIR nor even specifically noted.

Since the above OHA-recommended alternative to the gondola variant is not disqualified by any of the factors (1), (2) or (3) in the first paragraph under DEIR section 6.4, and would indeed lessen impacts upon cultural resources, the refusal to explore this alternative is especially unacceptable and, along with the failure to discuss the OHA-recommended mitigations, renders the DEIR insufficient.

In addition, it is notable that the proposed demolition of portions of the east and west wings of the peaker plant is not related to the project itself, but only to the peaker plant project variant. This information was not known when the NOP was released. Pages 5-14 and 5-15 of the DEIR state that the purpose of the demolition is to accommodate a new public plaza and pedestrian circulation. These considerations are clearly not essential to the project success, since they are not part of the project itself, only the variant. **Retention of the east and west wings should therefore have been evaluated in the DEIR as an additional project alternative. The omission of such an obviously feasible alternative is a gross deficiency in the DEIR.**

1. Gondola Variant

The gondola is not an integral component of this project, but it would have serious effects on one of Oakland's most important historic areas, Old Oakland, a National Register Historic District. While it would only be useful when large events occur at the proposed stadium, fewer than 100 days of the year, its impact would be experienced 365 days, 24/7. Historic Old Oakland has survived an era of downtown demolition, several economic downturns, and a major earthquake. It should be preserved and treated with respect. The gondola, as an off-site facility, is not crucial to the project, yet the Variant would insert an obtrusive structure at the north end of Old Oakland. It would also insert an aerial structure above the Victorian buildings, the survivors of Oakland's 19th-century business area. It would present noise, crowding, and night-time disturbance effects upon the residents and businesses at Swan's.

O-40-2

It would remove people from the street level, who might otherwise patronize businesses from downtown to the ballpark. **Study the OHA-recommended alternative: Invest in alternative ground level transportation improvements. Also invest in retail and Oakland's cityscape rather than installing a gondola that avoids and competes with Oakland's retail uses and cityscape.** The Detroit People Mover was a failure (<https://www.michiganapitolconfidential.com/detroit-people-mover-maintenance-worker-paid-174602-in-2017>). The Minneapolis Skyways took people off the street and created equity issues (<https://www.journalmpls.com/focus/neighborhood-spotlight/2017/01/for-dayton-its-his-way-or-the-skyway/>).

The OHA-recommended alternative should be seriously analyzed, including studying expending the equivalent of the gondola cost by improving the walking and transit ground-level access to the proposed project. As a novelty amusement ride, the gondola presents a cute shiny object, but Old Oakland should not suffer the indignity of becoming a kind of theme park

O-40-2

Comments regarding the merits of the Project or variant to the Project do not raise a significant environmental issue or specific questions about the analyses or information in the Draft EIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Project.

As presented in Response to Comment H-1-5, construction and operation of the Aerial Gondola Variant was analyzed to determine if the Project would "cause a substantial adverse change in the significance" of the Old Oakland API and above the West Waterfront ASI resources (State CEQA Guidelines Section 15064.5[b]). This analysis concluded that this threshold was met with regard to construction of the Convention Center Station within the Old Oakland API and construction and operation of the Aerial Gondola would result in a significant and unavoidable impact on the historic resource even with implementation of Mitigation Measure CUL-7 for additional design review of the station.

The Draft EIR analysis on p. 5-113 states that "under the Aerial Gondola Variant, no contributing resources would be demolished or otherwise physically altered, and all character-defining features would remain intact. However, impacts on the setting at the [Old Oakland API] district's northern boundary and overhead through the district would result from the introduction of new gondola-related features." The integrity of the resource would remain sufficient to convey its historical significance and would not endanger its status as a historical resource at the local, state, or national level. However, there is diminished integrity as a result of modern intrusions at the northern boundary of the Old Oakland API and from the gondola cars passing overhead through what is a highly intact 19th century commercial district. To limit, but not eliminate, the visual changes, design review in addition to the City of Oakland's standard process for Class 1 Landmarks is included as Mitigation Measure CUL-7: Convention Center Station Contextual Design Review. See Response to Comment O-9-3 for more information regarding the design review process. For additional responses to comments on alternatives, see Response to Comment H-19-1 and Response to Comment O-40-1.

O-40

COMMENT

RESPONSE

O-40-2

with the gondola’s overpowering structural intrusion. Old Oakland is authentic, it is a National Register Historic District, and the gondola puts its integrity at extreme risk. **The EIR needs to address whether the gondola as proposed will disqualify Old Oakland from the National Register.**

2. Peaker Plant Variant: Avoid the demolition at the peaker plant, and design its surroundings to compliment it.

The additional alternative presented above that avoids demolition of portions of the east and west wings of the Peaker plant must be considered in the EIR. The possibility of the proposed demolition disqualifying the peaker plant from National Register eligibility must also be evaluated.

As one of the few remaining waterfront structures from Oakland’s working past, the peaker plant presents a great opportunity to tie new and old architectural elements together. We find the project description and diagrams confusing, as in the base condition there is no demolition of parts of this historic building. We strongly support avoiding demolition of parts of the building as shown in the Variant, especially as it does not seem to be necessary. Design the surrounding buildings to be compatible with it, and highlight its visual interest. We support the idea of a creative reuse so that it will contribute to the overall development. Howard Terminal is a very large site and the stadium design should be adjusted to avoid impact upon historic resources. The site would be a clean canvas—make it work and avoid the demolition.

O-40-3

Impact Cul-8 (p. 5-40)
“... However, while all other character-defining features would remain intact, the footprint of the building would be altered and the monumental size of the building would be diminished. Alterations that demolish or materially alter in an adverse manner those physical characteristics of a resource that convey its historical significance would materially impair the significance of the historic resource (CEQA Section 15064.5(2)), resulting in a significant impact. Demolition of portions of both the east and west wings would result in a loss of historic fabric and would constitute just such a significant impact. CEQA provides provisions to potentially mitigate impacts on historic resources to less than significant if they follow the Secretary’s Standards (CEQA Section 15064.5(3)); in this case, however, incorporating the Secretary’s Standards would not mitigate the loss of the building sections located at 601 Embarcadero West. Therefore, the Peaker Power Plant Variant would result in a *significant and unavoidable impact* on the historic resource.”

Although mitigations for the proposed demolition appear irrelevant, given the apparent feasibility of avoiding the proposed demolitions in the first place as discussed above, the demolition mitigations are in any case woefully insufficient.

Mitigation Measure CUL-6a is fine but does not really mitigate the impact.

Mitigation Measure CUL-6b is fine as far as it goes, but does not compensate for the loss of historic material.

O-40-3

Impacts to the Peaker Plant building would be avoided by not implementing the Peaker Plant Variant. An EIR is not required to consider alternatives to a component of a project, but only alternatives to the project *as a whole*. (See State CEQA Guidelines Section 15126.6(a); *California Native Plant Society v. City of Santa Cruz* (2009) 177 Cal.App.4th 957, 993.) Therefore, no additional alternatives are required. See Response to Comment H-1-14 for further discussion on this subject.

The Draft EIR discusses the two historic resources located on the Project site: Crane X-422 and the Peaker Plant (601 Embarcadero). Neither would be modified by the baseline project design and all development is adjacent to, but does not include, the historic resources. Therefore, compliance with the Secretary of Interior Standards is not applicable. See Response to Comment H-1-4 for further discussion on this subject.

Although implementation of the Peaker Plant Variant would constitute a significant and unavoidable CEQA impact on the historic resource, the Peaker Plant Variant would not completely remove or substantially demolish the historic resource. The majority of the building, including the entirety of its primary façade along the Embarcadero, would remain intact and in its current form. Because the buildings is not being demolished, the Peaker Plant Variant would not follow the current precedent for requiring Façade Improvement Fund contributions as mitigation. See Response to Comment H-1-3 for further discussion on this subject. See Response to Comment O-40-1 for further discussion regarding mitigation measures related to the Peaker Plant Variant.

O-40

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RESPONSE

We suggest the following additional measures:

6c: Subject any design of new buildings in the vicinity (such as entry to the stadium, proposed buildings on tank site, as well as ramps, roads, infrastructure, and accessways) to review by the Landmarks Preservation Advisory Board as well as to the regular planning and design reviews (required under 17.136.055 of Oakland code). Any nearby new design should be reviewed for contextual compatibility and must be deferential to the historic structure.

6d: Make a contribution to the Façade improvement Program of the City of Oakland in proportion to the degree to which any façade demolition is carried out, for the purposes of preserving historic buildings in the West Waterfront area.

Page 2-97 Impact CUL-9 and CUL-3.CU

3. Retain cranes and design the project to relate to context.

We remain confused by the DEIR analysis of the various cranes and their historic values. But the main point is to honor and reflect Oakland's maritime past—its port a major reason for its founding as a modern municipality, in 1852—and urge that the planning and design incorporate the cranes more into the site planning, landscape planning, and architectural plans. They should be retained as monumental found objects and should be part of easily understandable historic interpretive information at the site. These cranes can provide a unique and interesting character for the development.

4. Preserve space for maritime activities and history

As Oakland's key industry, maritime activity should be accommodated and encouraged. We urge the Port, the Athletics, the City, and the business and labor community not to turn away from this inheritance, but rather to ensure that any waterfront development not encroach on our waterfront, and to design for a symbiosis. Conflict of use should be avoided, rather than built in.

5. Cumulative Impacts to Cultural Resources

7.1.3 is inadequate; it does not address impacts to other resources aside from Crane X-422.

Impact CUL-1 and Mitigation Measure CUL-1

Both the impact statement and the mitigation suggested are inadequate and insufficient.

Devise additional Mitigation Measures to address ongoing operations for the maritime resources in CUL-1. The resources appear to be within the project area. The future viability of the resources depends upon continued access to them by the public, not only for maintenance and

O-40-4 See Response to Comment H-1-19 regarding the retention of the cranes on the Project site.

O-40-5 See Response to Comment O-9-5 for a discussion of continued maritime uses.

O-40-6 The project analysis of impacts to historic resources identified four impacts, not including impacts identified for archaeological or tribal resources. Three of these impacts were determined to be *less than significant* or could be mitigated to *less than significant*. Only the impact resulting from demolition of Crane X-422 was found to be *significant and unavoidable*.

Section 15355 of the State CEQA Guidelines defines a cumulative impact as the condition under which “two or more individual effects which, when considered together, are considerable or which compound or increase other environmental impacts... The cumulative impact from several projects is the change in the environment which results from the incremental impact of the project when added to other closely related past, present, and reasonably foreseeable probable future projects. Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time” (State CEQA Guidelines Section 15355). If that threshold is met, then the analysis must determine whether the Project’s contribution to that cumulative impact is *cumulatively considerable*. Cumulatively considerable means “that the incremental effects of an individual project are significant when viewed in connection with the effects of past projects, the effects of other current projects, and the effects of probable future projects.” (State CEQA Guidelines Section 15065.)

The cumulative analysis, beginning on p. 4.4-32, considered the proposed Project in combination with implementation of the Downtown Oakland Specific Plan (DOSPP) and the planned redevelopment of the Coliseum site under the Coliseum Area Specific Plan (CASPP). The analysis concluded that a cumulative impact to citywide historic resources would occur if all three of these projects were implemented as the DOSPP identified blocks currently within the Southern Pacific Railroad Industrial Landscape District API and the PG&E Station C API, as “opportunity sites” for new development. However, the less-than-significant impacts for the proposed Project do not make a cumulatively considerable contribution to the identified cumulative impact. Only the potential loss of Crane X-422 meets that threshold and is therefore the subject of discussion for Impact CUL-1.CU. See also Response to Comment

O-40

COMMENT

RESPONSE

O-29-113 regarding the removal of the “Howard Terminal Option” from the DOSP.

Other cumulative impacts to historic resources are identified in Chapter 5 under both the Peaker Power Plant and Aerial Gondola variants. When considering these additional, optional components of the Project, there are additional individual impacts that meet the threshold of being *cumulatively considerable*.

O-40-7 In addition to Mitigation Measure CUL-1: Maritime Resources Treatment Plan, the draft EIR includes Mitigation Measure TRANS-4: Construction Management Plan. This mitigation would require the Project sponsor and general contractor to prepare a plan, for review by the City, to minimize potential construction impacts, including impacts to cultural resources such as the USS *Potomac* and Lightship *Relief*. Implementation of this plan would address potential difficulties with site visibility, parking, and access to the waterfront and to the piers where the vessels are docked. For a more detailed discussion regarding the provisions of this mitigation and its relationship to historic resources, see Responses to Comments O-28-2, O-28-3, and O-28-4.

O-40

COMMENT

RESPONSE

O-40-7 | operations and not confined to periods of construction, but permanently, so that their organizations can continue to support them.

O-40-7 | Major use of the Potomac for activities such as public tours and special events occurs on weekends and provides the income that preserves it. How will the the resources be able to operate? Address issues such as parking availability, visibility, and intense traffic congestion with relation to their programs. Provide mitigation, such as including assistance with on-site visibility, providing permanent dedicated parking, and supporting enhanced promotion opportunities. If the incomes for these resources are compromised, provide compensatory funding so that the resources will not be starved of income, making their mission difficult.

O-40-8 | We look forward to a recirculation of the DEIR that addresses more completely the issues raised by this development.

Thank you for your consideration.

Sincerely,



Mary Harper
President

O-40-8 This comment is predicated on other comments in this submittal. As indicated in Consolidated Response 4.3, *Recirculation of the Draft EIR*, the City has prepared and circulated the Draft EIR in accordance with CEQA requirements. Although information has been added to the Draft EIR, no significant new information (e.g., leading to a new significant impact or a substantial increase in the severity of an impact) has been added since publication of the Draft EIR. Consequently, the Draft EIR need not be recirculated.

Cc:
Oakland Planning Commission
William Gilchrist
Ed Manasse
Pete Vollmann
Catherine Payne
Robert Merkamp
Betty Marvin

O-41

COMMENT

RESPONSE

O-41-1 This is a general comment that includes introductory remarks and serves to introduce the more specific comments that are responded to in detail below. As a result, no specific response is provided here.



April 27, 2021

City of Oakland
250 Frank Ogawa Plaza
Oakland, CA 94612

<https://comment-tracker.esassoc.com/oaklandsportseir/index.html>

Re: Draft Environmental Impact Report for the Waterfront Ballpark District at Howard Terminal

These comments are respectfully submitted in response to the February 26, 2021 publication of a Draft Environmental Impact Report (DEIR) for the "Oakland Waterfront Ballpark District Project" at Howard Terminal (Case File Number ER18-016). These comments are submitted on behalf of the undersigned businesses, labor unions, and trade associations who utilize and depend on a healthy, growing, and well-functioning Port of Oakland.

The DEIR is inadequate in numerous respects and fails to both analyze and mitigate numerous significant environmental impacts associated with the proposed Project at Howard Terminal. Nearly all of these significant impacts are derivative of the simple fact that the Howard Terminal is an exceptionally challenging location to develop anything other than an industrial seaport facility.

O-41-1

O-41

COMMENT

RESPONSE

O-41-2 See Consolidated Response 4.10, *Alternative 2: The Off-Site (Coliseum Area) Alternative*.

O-41-3 The comment raises an economic issue, not an environmental issue, which is not subject to CEQA. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Project. Information describing existing Port operations is included as part of the Environmental Setting specifically in Sections 4.2, *Air Quality*, 4.7, *Greenhouse Gas Emissions*, 4.10, *Land Use, Plans, and Policies*, 4.11, *Noise and Vibration*, and 4.15, *Transportation and Circulation*, of the Draft EIR. See Consolidated Response 4.4, *Port Operations and Land Use Compatibility*, and Consolidated Response 4.5, *Truck Relocation*, and Consolidated Response 4.6, *Rail Safety, Grade Crossing, and Grade Separation*.

O-41-1

The impacts associated naturally with this site are compounded by the sheer size and intensity of the project proposed here by the Oakland A's which would cram a baseball stadium, 3,000 units of residential housing, 1.5 million square feet of office space, and a hotel and other amenities onto this terminal facility constructed for intermodal container operations.

The outstanding significant environmental impacts resulting from this project which have failed to be adequately analyzed, identified, and addressed in this DEIR include:

- interference with the Port and its future operations,
- traffic and transportation nightmares,
- lack of clear descriptions and scope of the massive public infrastructure contemplated, needed, and likely publicly financed, and
- public safety and railroad safety issues.

O-41-2

The DEIR inadequately describes the one Alternative which is clearly environmentally superior to the Howard Terminal project: the existing Coliseum project location option. The DEIR cannot avoid the common sense conclusion that everyone already knows, that the existing Coliseum location is much better suited for a new ballpark. The Coliseum alternative clearly avoids many of the serious adverse impacts at the Howard Terminal site, especially as to transportation generally, VMTs, transit access, transportation safety, maritime safety, rail safety, air quality, hazardous materials, impacts on the Bay and shoreline and Public Trust lands, and other issues including urban decay and growth inducement.

Analysis of Baseline Existing Operations of the Port and its Future Operations Is Missing in its Entirety from the DEIR

The DEIR completely and knowingly avoids any substantial baseline analysis of the operations of the Port of Oakland, generally, and Howard Terminal, specifically, despite the obvious fact that the Howard Terminal is a critical component of the operations of the Port of Oakland.

O-41-3

Without a baseline analysis of the current operations of the Port of Oakland inclusive of the operations at Howard Terminal so as to place the Howard Terminal operations in their proper existing site utilization context, the DEIR is inadequate. Furthermore, without a baseline analysis of these operations it is impossible to compare, weigh or evaluate any potential impacts and mitigation measures with respect to significance.

The intermodal supply chain, including the numerous business and labor stakeholder signatories to this letter, relies on the safe and efficient operations of the Port of Oakland, including the Howard Terminal, to facilitate international trade and commerce. The supply chain stakeholders have been consistent and unambiguous with the City during the course of the development of this DEIR that all reasonably foreseeable Port business impacts, including their associated significant environmental consequences, must be analyzed. This has not occurred.

O-41

COMMENT

RESPONSE

O-41-4 Comments regarding the merits of the Project or alternatives of the Project do not raise a significant environmental issue or specific questions about the analyses or information in the Draft EIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Project. See Consolidated Response 4.10, *Alternative 2: The Off-Site (Coliseum Area) Alternative*. See also Consolidated Response 4.4, *Port Operations and Land Use Compatibility*, and Consolidated Response 4.5, *Truck Relocation*, regarding Port concerns.

O-41-3

In order to analyze and identify reasonably foreseeable impacts on Port business and their attendant environmental impacts of the removal of Howard Terminal, there first needs to be a complete baseline analysis done of Port operations. Only once these are established in a project baseline, can any policymaker at the City or any of the many responsible agencies that will be relying on this document evaluate the significance and importance of the need to preserve or relocate or eliminate the activities at Howard Terminal.

The DEIR does not provide any such baseline, and without a baseline evaluation of the existing operations at the site, is per se defective.

Inexplicable and Surprising Omission of Any Discussion whatsoever of the Coliseum Alternative as an Environmentally Superior Alternative to Howard Terminal

The DEIR includes the Coliseum location as Alternative 2 and provides that the Oakland A's could build their project and achieve their project objectives, and stay rooted in Oakland at this location. The Coliseum Alternative presents an option which would avoid all of the disruptions and impacts of constructing the project at Howard Terminal.

O-41-4

The Coliseum location is already under an approved EIR which would allow for the construction of a stadium, housing, and additional commercial and entertainment spaces as envisioned by the Oakland A's. The Coliseum location has the benefit of existing infrastructure for all modes of transportation, including direct BART and transit access, allowing for Transit-Oriented Development which is impossible at Howard Terminal. The Coliseum location has nothing like the significant toxic and hazardous materials challenges at Howard Terminal. The Coliseum location currently operates below significance threshold for air quality concerns, which are significant and unavoidable at Howard Terminal. The Coliseum location has 3x the acreage of Howard Terminal, allowing for more development of open space and green space, while still preserving more transportation options for fans, residents, and workers, including parking and TOD. The Coliseum location does not pose the same rail and truck safety issues which are significant and unavoidable at Howard Terminal. Finally, with respect to GHG emissions, because the Oakland A's have been allowed to meet their goals with respect to greenhouse gas emissions by buying credits, there is no benefit or detriment to either the Coliseum or the Howard Terminal location with respect to these emissions.

And, of critical importance to the Port's customers and supply chain stakeholders: the Coliseum poses no threat of disruption of Port business, does not introduce numerous safety of navigation variables into the Oakland Inner Harbor, does not threaten to complicate the expansion of the Turning Basin, does not displace thousands of truck transactions currently occurring at Howard Terminal into a blind ether, and does not introduce hundreds of thousands of new cars into the existing complex of trucks and trains serving the Port of Oakland's customers.

O-41

COMMENT

RESPONSE

O-41-5

In short, the Coliseum Alternative is environmentally superior in numerous significant respects. Yet, inexplicably, the Coliseum Alternative is completely omitted and not even discussed in the DEIR's evaluation of an "Environmentally Superior Alternative" (at Sec. 6.5) in comparison to the numerous impacts of the Howard Terminal.

To be consistent with the state's CEQA Guidelines, a DEIR must focus, describe and discuss all selected "feasible alternatives ... in a manner to foster meaningful public participation and informed decision making." (Guidelines § 15126.6 (f).) "[T]he discussion of alternatives shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project, even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly." (Guidelines § 15126.6(b).)

Here, the DEIR identifies the Coliseum as an Alternative, but then failed to discuss the Alternative as an Environmentally Superior Alternative, even though it obviously is. It is no justification to exclude the Coliseum from the Environmentally Superior Alternative discussion because the A's find that location to be less lucrative than Howard Terminal or less able to meet all of the A's project objectives.

No Analysis Included of Induced Growth and the Plainly Intended Transformation of Oakland's Seaport-Industrial to an Entirely New Neighborhood

The DEIR's project description violates CEQA by either improperly segmenting environmental review of the Howard Terminal project from the Draft Downtown Oakland Specific Plan or, alternatively, by refusing to acknowledge the growth inducement and cumulative impacts of the Howard Terminal project in conjunction with the Draft Downtown Oakland Specific Plan (DOSPP) area surrounding Howard Terminal.

The A's project is intended to be a catalyst for the elimination of an entire swath of Port-supporting and industrial buffer zone properties and to expand Downtown Oakland south of 880 and west of Broadway. One of the major problems with the Howard Terminal DEIR is the abject lack of acknowledgement that this project by the A's is the lynchpin of whether or not the City is abandoning its commitment to creating an industrial buffer zone which protects the Port from residential encroachment and, vice versa, protects Oakland residents from the negative externalities of the industrial Port operations on the waterfront. These impacts are compounded by the draft DOSPP, which promotes widespread upzoning, densification, additional housing, and elimination of industrial uses in the current industrial corridor and buffer zone north of Howard Terminal and west of Broadway if the A's Howard Terminal project is approved.

There is no mention of any of these cumulative impacts in the DEIR. Without an acknowledgement of this type of analysis, the environmental review is a deficient piecemeal approach to approving multiple projects with related impacts but considering them in a vacuum from each other. Taken together, the Howard Terminal project must be viewed as a critical inducement to the anti-industrial rezoning and focus on residential growth in the critical industrial buffer which currently exists.

O-41-5 See Consolidated Response 4.10, *Alternative 2: The Off-Site (Coliseum Area) Alternative*.

O-41-6 The concept of project segmentation or piecemealing derives from the State CEQA Guidelines' definition of a project, Section 15165, and pertinent case law. State CEQA Guidelines Section 15378(a) defines a "project" as "the whole of an action, which has a potential for resulting in a physical change in the environment, directly or ultimately..." Section 15165 indicates that where an individual project is a necessary precedent for an action on a larger project, or commits the lead agency to a larger project, with significant environmental effects, an EIR must address itself to the scope of the larger project. Project descriptions, and related impact analyses, must account for reasonably foreseeable future phases, or other reasonably foreseeable consequences, of projects. "An EIR must include analysis of the environmental effects of [a] future . . . action if: (1) it is a reasonably foreseeable consequence of the initial project; and (2) the future . . . action will . . . likely change the scope or nature of the initial project or its environmental effects." (Laurel Heights Improvement Association of San Francisco v. Regents of the University of California (1988) 47 Cal.3d.376, 393-399 [253 Cal. Rptr. 426]).

In this case, the proposed Project is not a necessary precedent, future phase, or reasonably foreseeable consequence of the Downtown Oakland Specific Plan (DOSPP), nor is the DOSPP a precedent, future phase, or consequence of the proposed Project. The proposed Project and the DOSPP are separate projects subject to separate approval actions by the City and other agencies. Approval of one project does not confirm approval of the other project. Consistent with CEQA, the Draft EIR for each project evaluates the cumulative impacts of implementing both projects as well as other planned development throughout Draft EIR Chapter 4 (see pp. 4.0-9 through 4.0-12). Chapter 7 of the Draft EIR analyzes whether implementation of the Project would induce growth pursuant to State CEQA Guidelines Section 15126.2(e). In accordance with CEQA, growth per se is not assumed to be necessarily beneficial, detrimental, or of little significance to the environment; it is the secondary, or indirect, effects of growth that can cause adverse changes to the physical environment. The focus of the growth inducement evaluation presented in the Draft EIR is on whether the proposed Project could induce unplanned growth, which in turn could generate adverse effects on the physical environment that have not been evaluated and disclosed. The reference in the comment to the Project as a catalyst for expanding

O-41

COMMENT

RESPONSE

Downtown Oakland south of Interstate 880 and west of Broadway is a reference to the Howard Terminal Option (“Transformational Opportunity Area #3”) described in the DOSP Draft EIR. As indicated in Response to Comment O-29-113, any decision to adopt the DOSP would be separate from a decision on the proposed Project, and would by definition result in planned growth, because the DOSP—if adopted—would be a plan for downtown Oakland. Nonetheless, subsequent to publication of the DOSP Draft EIR, the City announced they are no longer considering the Howard Terminal Option (or Transformational Opportunity Area #3), which will be removed from the Final DOSP (DOSP Update website, www.oaklandca.gov).⁸⁷ Regarding land use compatibility, see Draft EIR pp. 4.10-32 through 4.10-52 and Consolidated Response 4.4, *Port Operations and Land Use Compatibility*. Also see Response to Comment O-29-113 and Response to Comment O-51-14 regarding growth-inducing impacts.

⁸⁷ City of Oakland, 2021. Downtown Oakland Specific Plan Update, Date Posted: February 21, 2021, Last Updated: September 22, 2021. Available at: <https://www.oaklandca.gov/news/2021/downtown-oakland-specific-plan-update>.

O-41

COMMENT

RESPONSE

O-41-7 The comment raises an economic issue, not an environmental issue, which is not subject to CEQA. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Project. See Consolidated Response 4.5, *Truck Relocation*.

O-41-8 The comment raises an economic issue, not an environmental issue, which is not subject to CEQA. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Project. See Consolidated Response 4.5, *Truck Relocation*.

Inadequate Analysis of Truck and Port Traffic and Transportation Impacts

One of the most obvious and glaring results of the lack of the preparation of a baseline analysis of current Port operations is the complete abandonment of any actual analysis to quantify the impacts of truck displacement from Howard Terminal. Obviously, this displacement must be analyzed at least with respect to air quality, transportation, and safety. However, the DEIR fails to properly and fully address the ramifications of displacing all current uses at the Howard Terminal.

The displacement of the existing truck and container yard operations and usage at Howard Terminal is the primary direct, undisputed, and inevitable outcome resulting from the development of Howard Terminal. Yet, somehow, the DEIR refuses to analyze the impacts to Port trucking as being "speculative."

This is a clear DEIR deficiency. Just because a potential impact may be complicated and involve a level of analysis by experts, does not mean that the impact is "speculative" – if that were the standard for CEQA, which by its very nature requires evaluations of potential future events, all EIRs would be short, concise, easy to read, and patently uninformative. Instead, the City and project sponsor should have hired the proper experts to conduct an analysis of trucking impacts. Such an analysis will require research, application of modeling expertise, the evaluation and adoption of reasonable assumptions, and the documentation of these efforts.

This type of analysis applied to the Howard Terminal cannot be limited to just the elimination and displacement of truck parking, but must also include an analysis of the displacement of container and equipment interchange activities, vessel lay-berthing, container storage, and other truck-supporting uses which occur at that site.

While the project sponsor is happy to tell the public and say in the media that Howard Terminal is just an empty parking lot, the DEIR is fortunately held to a higher standard of analysis. Therefore, it must establish a baseline evaluation and calculation of the current uses and acknowledge that the Oakland A's are seeking to eliminate a critical piece of terminal infrastructure that is not easily replaceable. Howard Terminal provides space for small trucking companies who do not own their own yard in the Port area which affords them the opportunity to maximize efficiency and reduce contributions to air emissions and congestion by providing them with this space that will accommodate a "dray-off" delivery model. In addition, Howard Terminal allows them to take their trucks and interchanged equipment and containers off the roads and streets of West Oakland.

The resulting impacts on air quality, transportation, and other issues in the Port area and surrounding communities are unstudied in the DEIR. That includes a lack of an analysis of how truck and container moves impacted by their displacement by the Oakland A's would increase project emissions, traffic, VMT, and safety issues. Instead of evaluating these impacts, the DEIR attempts to just assume the displacement has no

O-41-7

O-41-8

O-41

COMMENT

RESPONSE

O-41-8

impacts whatsoever and presumes existing truck uses at Howard Terminal will just continue to operate at the Port as if there were no displacement at all.

To add insult to injury, while refusing to do any actual analysis of truck VMT or displacement impacts whatsoever, the DEIR actually goes out of its way in the Air Quality chapter to propose that there will actually be air quality benefits from this displacement by making the assumption (only for the purposes of the Air Quality section) that all trucks will park, stage, and operate at the Roundhouse and further away from residential exposures. There is no factual data or evidence to support this.

To the contrary, motor carriers know that removing Howard Terminal from its current uses would force the thousands of trucks that use Howard Terminal into some alternative arrangement than at present. Nearly all of these alternatives will involve additional VMT, less efficiency, more peak transits on freeways during congested rush hours, and less capacity for smaller trucking companies to utilize an efficient dray-off model of operations. For all of these reasons, the DEIR is inadequate.

Inadequate and Lack of Clear Descriptions and Scope of the Massive Public Infrastructure Contemplated, Needed, and Likely to be Publicly Financed

O-41-9

The Oakland A's have promised only to finance their stadium development with private financing. None of the other potential infrastructure needed to be developed has been described as being within the scope of the Oakland A's project financing. The obvious derivative situation is that the City of Oakland or some other private entity will be left to use public funds to subsidize and develop infrastructure for this project. These subsidies may include improvements within the scope of this DEIR and improvements outside of the scope of this DEIR.

In other words, no one knows what infrastructure is actually being developed as a part of this project by the Oakland A's or whether the necessary infrastructure may be considered by the City of Oakland as a project at some future point in time. This points to a lack of a stable and concise project description.

There is no public version of a development agreement published at this time, so it is impossible to know the scope of the terms of that agreement. There is no draft of a tax infrastructure financing district authorization ordinance or a related underwriting plan for the proceeds from a tax increment financing deal. This past Friday, just four days before the close of the public comment period on the DEIR, the Oakland A's released a proposed "Development Agreement Terms Sheet" that references the creating of two new tax-increment financing districts and \$855 million of on-site and off-site infrastructure to be funded by what they euphemistically call "project-generated revenue" (i.e., taxes). These clearly relate to analysis required to be provided in the DEIR, such as the growth inducing impacts of the Project taken together with other cumulative development reasonable forecasted in the area. However, even this late disclosure lacks any detail. The failure to release this information earlier and to provide sufficient detail, as part of the DEIR, limits our ability to review and comment here.

O-41-9 See Consolidated Response 4.1, *Project Description*, which addresses the adequacy of the Project description in the Draft EIR, as well as consideration of tax increment financing and the proposed Development Agreement. For comments related to Seaport Compatibility Measures, see Consolidated Response 4.4, *Port Operations and Land Use Compatibility*. The comment raises economic issues, not an environmental issue, which are not subject to CEQA. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Project. See Consolidated Response 4.22, *General Non-CEQA*, including the discussion of infrastructure funding in Section 4.22.2, *Financial Considerations, Community Benefits, and Other Miscellaneous Opinions*.

O-41

COMMENT

RESPONSE

O-41-10 See Consolidated Response 4.9, *Alternative 3: The Proposed Project with Grade Separation Alternative*, and also See Consolidated Response 4.6, *Rail Safety, Grade Crossing, and Grade Separation*.

O-41-9

We also do not have a clear and concise description of the Seaport Compatibility Measures that must be a part of any final plan adopted by the Port and City in order to remain consistent with the existing Port-A's ENA and negotiated Term Sheet.

Without these types of documents, it is further impossible to know whether the scope of the DEIR is broad enough to capture the improvements likely to need to be part of a decision by the City about the scale, scope, and intensity of public subsidies and publicly-provided infrastructure. Given this impossibility, the DEIR is critically deficient.

Inadequate Analysis of Railroad Safety Issues

The DEIR also fails to provide an analysis of the only project alternative that would adequately address the critical issue of rail safety inherent at the Howard Terminal location: fully grade-separated access to the site. The failure of the DEIR to include this Alternative, even though advised to be considered by the California Public Utilities Commission and requested by the Union Pacific Railroad, results in a Significant and Unmitigated impact on safety.

A failure of the City and the A's to require full and effective grade separations in the construction and design of the project will inevitably result in the avoidable injury or fatality of fans, visitors, and residents.

The only explanation for why the full grade-separation option is not included as a project alternative, is that by requiring these safety improvements somehow the A's competitiveness amongst other teams in Major League Baseball would be impacted, and therefore grade separations are infeasible. The DEIR, at Section 6.4.2, states:

"Provision of a grade-separated crossing prior to commencement of Project construction was deemed infeasible given the length of time it would take to design, get approval for, and construct a new grade-separated crossing and the stated Project objective to complete construction of the new ballpark, together with any infrastructure required within a desirable timeframe and to maintain the Oakland Athletics' competitive position within MLB."

According to this section of the DEIR, the City and the Oakland A's are literally trading the ability to prevent the death or severe injury of future Oaklanders or fans for many decades to come in exchange for the ability of the Oakland A's to save some money and potentially spend those funds to field a winning team on the field for a couple of years during the construction of this project.

The DEIR includes no analysis or justification of the claim that the investment in adequate safety infrastructure should be considered infeasible. There is simply no evaluation or discussion of how the A's baseball operations render this alternative infeasible. Therefore, there is no basis upon which the DEIR could rest on an assertion

O-41

COMMENT

RESPONSE

O-41-10

of infeasibility, or explanation of why the City of Oakland would knowingly choose to ignore an alternative to the significant impact of injuries and fatalities at this project.

When feasibility is claimed as a basis for requiring a statement of overriding considerations for significant and unmitigated impacts, it requires a high degree of justification. Similarly, the avoidance of analyzing an effective project alternative based on feasibility must meet the same high bar of justification. This requires facts, disclosure, analysis, and a discussion of the merits, however anything resembling such a discussion is omitted. This is a shameful omission. Not only is the DEIR deficient in this respect, but if the A's go forward with this project without these grade separations it will inevitably result in the tragically avoidable death or injury in fans and residents, with the City likely on the hook for the liability as a result.

O-41-11

In conclusion, the undersigned organizations have serious concerns with the inadequacy of this DEIR to address, identify, analyze, and disclose many of the significant impacts of the Oakland A's proposed Howard Terminal project. In particular, the analysis of this project's interaction with the Port of Oakland's stakeholders, the intermodal supply chain, and industrial activity is woefully deficient and largely absent.

The deficiencies of this DEIR are not only impactful to the decisions made by the City but will substantively and negatively impact the numerous other responsible agencies which may be acting in reliance on this report to further evaluate the viability of the Oakland A's proposed stadium project. While this doesn't enhance the already high CEQA thresholds of review that must be met (and that this DEIR falls short of meeting), given the complexity of this project and the many additional discretionary levels of review required of multiple public agencies, the DEIR has failed as a comprehensive disclosure and public informational document which could "provide decisionmakers with information which enables them to make a decision which intelligently takes account of environmental consequences." (CEQA Guidelines §15151).

We request that to comply with CEQA, the City revise the DEIR to account for the many deficiencies outlined in this letter and then recirculate the revised DEIR to the public for further review and comment before considering any further action on the Oakland A's Howard Terminal project application.

Respectfully submitted,

**African-American Farmers of California
Agriculture Transportation Coalition
American Waterways Operators
California Automotive Wholesalers Association
California Trucking Association
Customs Brokers & Forwarders Association of Northern California
Devine Intermodal
Dreisbach**

O-41-11 This comment is predicated on other comments in this submittal. As indicated in Responses to Comments O-41-1 through O-41-10, the City has prepared and circulated the Draft EIR in accordance with CEQA requirements. As explained in Consolidated Response 4.3, *Recirculation of the Draft EIR*, although information has been added to the Draft EIR, no significant new information (e.g., leading to a new significant impact or a substantial increase in the severity of an impact) has been added since publication of the Draft EIR. Consequently, the Draft EIR need not be recirculated.

Responsible agencies will have an opportunity to consider the adequacy of the Final EIR prior to their decision on the Project, with the options outlined in State CEQA Guidelines Section 15095(e).

O-41

COMMENT

RESPONSE

*Fashion Accessories Shippers Association
Fashion Jewelry and Accessories Trade Association
Gemini Shippers Group
GSC Logistics
Harbor Trucking Association
Inland Boatmen's Union of the Pacific
International Longshore and Warehouse Union
International Organization of Masters Mates & Pilots, AFL-CIO
Marine Firemen's Union
Matson Navigation
Nisei Farmers League
Pacific Drayage Services
Pacific Merchant Shipping Association
Sailors' Union of the Pacific
Schnitzer Steel Industries, Inc.
SSA Terminals
Transportation Institute
Union Pacific Railroad*

O-41 Businesses, Labor Unions, and Trade Associations Coalition

COMMENT

RESPONSE

Comments submitted on behalf of the following:

African-American Farmers of California

Agriculture Transportation Coalition

American Waterways Operators

California Automotive Wholesalers Association

California Trucking Association

Customs Brokers & Forwarders Association of Northern California

Devine Intermodal

Dreisbach

Fashion Accessories Shippers Association

Fashion Jewelry and Accessories Trade Association

Gemini Shippers Group

GSC Logistics

Harbor Trucking Association

Inland Boatmen's Union of the Pacific

International Longshore and Warehouse Union

International Organization of Masters Mates & Pilots, AFL-CIO

Marine Firemen's Union

Matson Navigation

Nisei Farmers League

Pacific Drayage Services

Pacific Merchant Shipping Association

Sailors' Union of the Pacific

Schnitzer Steel Industries, Inc.

SSA Terminals

Transportation Institute

Union Pacific Railroad

O-42 Schnitzer Steel Industries, Inc.

COMMENT

RESPONSE

O-42-1 This comment incorporates comments by East Oakland Stadium Alliance. See Responses to Letters O-27 and O-29 above.



April 27, 2021

Peterson Vollmann, Planner IV
City of Oakland Bureau of Planning
250 Frank H. Ogawa Plaza, Suite 2214
Oakland, CA 94612
PVollmann@oaklandca.gov

Re: Draft EIR ("DEIR") for the Oakland Waterfront Ballpark District Project at Howard Terminal ("HT Project")
(Case File No. ER18-016; State Clearinghouse No. 2018112070)

Dear Mr. Vollmann:

Regarding the above-referenced matter, please be advised that Schnitzer Steel Industries Inc., both individually and as a member of the East Oakland Stadium Alliance ("EOSA"), hereby objects to the HT Project, including the DEIR prepared by the City of Oakland for the Project, and incorporates by reference the comments on the DEIR submitted to your office on behalf the EOSA by (i) Pillsbury Winthrop Shaw Pittman, LLP (April 26, 2021) and (ii) Analytical Environmental Services (April 26, 2021).

Please ensure that this letter is entered into the record of proceedings for the HT Project.

Sincerely,

Tasion Kwamilele
Schnitzer Steel Industries | Government & Public Affairs Manager
1101 Embarcadero West, Oakland, CA 94607
tkwamilele@schm.com | 510.452.6363

Schnitzer Steel Industries, Inc.
1101 Embarcadero West, Oakland, CA 94607

O-42-1

O-43 SPUR

COMMENT

RESPONSE

O-43-1 See Consolidated Response 4.1, *Project Description*, regarding the project elements and components.



April 27th, 2021

City of Oakland Bureau of Planning
ATTN: Peterson Vollmann
Planner IV, City of Oakland Bureau of Planning
250 Frank H. Ogawa Plaza, Suite 2214
Oakland, CA 94612

SUBMITTED ELECTRONICALLY

RE: Case File Number: ER18--016 | Oakland Waterfront Ballpark District Project Draft Environmental Impact Review Comments

To Whom It May Concern:

This letter is in response to the Draft Environmental Impact Report (EIR) for the Oakland Waterfront Ballpark District Project, Case File Number: ER18--016.

SPUR is an urban policy nonprofit with offices in San Francisco, San José and Oakland and thousands of members across the region. Through research, education and advocacy, SPUR works to create an equitable, sustainable and prosperous region. We bring people together from across the political spectrum to develop solutions to the big problems cities face. SPUR is recognized as a leading civic planning organization and respected for our independent and holistic approach to urban issues.

SPUR believes that the proposed Oakland Waterfront Ballpark at Howard Terminal has the potential to be a physically and economically significant project for Oakland. It can also be a catalyst for long desired transportation and circulation investments both locally and regionally, connecting Downtown to the Oakland waterfront, securing regional rail infrastructure in Oakland, and improving freight and passenger rail safety through Jack London Square.

It must also be acknowledged that the project location is complex. Howard Terminal is at the nexus of multiple competing uses including port operations, freight rail, passenger rail, industrial, commercial and residential housing. The site is also at the center of contemplated large-scale infrastructure investments, including a possible second transbay crossing and Oakland transit hub. Adjacent to West Oakland and in close proximity to Chinatown -- communities vulnerable to residential and economic displacement -- the chosen location emphasizes the need for equity-centered, inclusive and exhaustive engagement and

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O-43-1

O-43

COMMENT

RESPONSE

mitigation to ensure the project brings shared prosperity and beneficial outcomes for all.¹ This confluence requires that the project sponsor and lead agency have a clear vision and scope, commitment to current and future Oakland residents, and cross-sector alignment to ensure success.

To that end, SPUR believes the Oakland Waterfront Ballpark Project (“Project”) should consider the following to ensure the EIR adequately addresses the complexity of this project:

- **Prioritize port operations, efficiency and growth.** While the EIR acknowledges periods of time when Howard Terminal will be completely blocked at grade due to an immobile freight train, observed to be up to 87 minutes, the document does not adequately account for current port operations at Howard Terminal and projected growth. The analysis does not appear to assume change to current freight rail traffic, which is incongruent with economic projections for shipping and maritime activities at the Port of Oakland.² The Port of Oakland is a crucial job center for the East Bay and an integral operation for commerce and shipping logistics on the West Coast. Ensuring the Project and EIR properly account for adverse impacts on Port operations and growth is critical.
- **Prioritize pedestrian and rail safety by including a pedestrian bridge crossing at either Martin Luther King, Jr. Way or Market Street to accommodate ballpark patrons approaching the stadium from West Oakland.** The vast majority of ballpark attendees, commercial patrons, and residents of the proposed project will need to cross the Union Pacific rail located directly in front of Howard Terminal, with circulation directed to Market Street and Martin Luther King, Jr. Way primarily. Pedestrian safety with grade crossings has been shown to be dangerous and difficult to manage in post-game scenarios, as evidenced by Petco Park in San Diego and Levi’s Stadium in Santa Clara.³ An alternative for fully grade separated pedestrian crossing for patrons arriving from the approach at either Martin Luther King, Jr. Way or Market Street should be included in the analysis. At grade improvements at these intersections should proceed, with the pedestrian bridge providing an alternative route, particularly in post-game scenarios where there is a freight train crossing or train splitting that blocks the intersection.
- **Enhance bicycle and pedestrian access to the Project by including a bicycle and pedestrian bridge on the water side in the analysis.** The EIR currently notes existing plans for such a bridge, but does not include this transportation improvement as a part of the Project analysis. This improvement will encourage patrons arriving to the stadium from the island to reduce vehicle

O-43-2

O-43-3

O-43-4

O-43-2 See Consolidated Response 4.4, *Port Operations and Land Use Compatibility*, Consolidated Response 4.9, *Alternative 3: The Proposed Project with Grade Separation Alternative*, and Consolidated Response 4.6, *Rail Safety, Grade Crossing, and Grade Separation*. Rail operations would continue to have priority at all grade crossings; therefore, the only potential source of additional delay to rail traffic is the risk of additional collisions at grade crossings. Consolidated Response 4.6 explains the infeasibility of multiple grade separation between rail traffic and roadway users (e.g., motorists, pedestrians, bus riders, bicyclists) along Embarcadero West, as well as the minimal risk of delays to passenger and freight rail operations due to additional collisions at grade crossings with the safety improvements required in Mitigation Measures TRANS-3a and TRANS-3b. Nevertheless, the impact of roadway users’ exposure to a permanent or substantial transportation hazard at the grade crossings (Impact TRANS-3) would remain significant and unavoidable, including with anticipated cumulative growth in rail traffic. The EIR is not required to analyze the impacts of cumulative growth to rail traffic upon proposed Project-related roadway traffic in terms of vehicular delay, per State CEQA Guidelines Section 15064.3.

O-43-3 See Consolidated Response 4.9, *Alternative 3: The Proposed Project with Grade Separation Alternative* and also See Consolidated Response 4.6, *Rail Safety, Grade Crossing, and Grade Separation*.

O-43-4 See Response to Comment A-10-5.

¹ Oakland Race and Equity Baseline Indicators Report, October 2019, https://cao-94612.s3.amazonaws.com/documents/FINAL_Baseline-Report.pdf
² 2019-2050 Bay Area Seaport Forecast, April 2020, Page 75, <https://www.bcdc.ca.gov/seaport/2019-2050-Bay-Area-Seaport-Forecast-Draft.pdf>
³ Cal Amtrak Wants Safer Ballpark Plan, April 2021, <https://sfstreetsblog.org/2021/04/20/cal-amtrak-wants-safer-ballpark-plan/>

O-43

COMMENT

RESPONSE

miles traveled and allow for sustainable modes of transportation, crucial for the Project and GHG reduction goals.

O-43-5

- **Ensure a full network of high-quality, separated and protected bike lanes from West Oakland BART, Lake Merritt BART, and Downtown BART stations.** The EIR currently discusses several existing plans regarding bicycle improvements and also suggests some additional improvements as a result of the Project. However, it does not appear that the proposed solutions allow for a continuous network of protected bike lanes from the three BART stations to the Project site. The Project and EIR analysis should account for a complete network to encourage and support bicycle travel to the Project, particularly on game days. This modality will reduce congestion and contribute to GHG reduction standards necessary for mitigating sea level rise, which should be of great interest to this project given its location along the Oakland waterfront.⁴

O-43-6

- **Explore new transit modes to serve Howard Terminal, activate Downtown and provide additional or alternative routes.** As a condition of approval, the applicant should analyze, or fund a study of, how additional transit modes such as bus rapid transit, urban circulators, and light rail could serve the Project and bring benefits to the broader City of Oakland. Such complimentary transportation studies should investigate how pedestrian and transit improvements at Howard Terminal can activate more central parts of Downtown and adjacent blocks north of the Project that currently have suboptimal pedestrian concentration. The Project should be required to address any nexuses shown between project and transit mode improvements, particularly in generating capacity for the Project's game day activities.

O-43-7

- **Coordinate proposed Transportation Hub and regional rail planning efforts to assess a possible location for a multi-modal Oakland Transit Hub and build for rail connection.** Link 21 is currently defining criteria to determine the location of a second transbay crossing, creating opportunity for additional BART stations in Oakland and a regional rail interchange if aligned with the Capitol Corridor. The Project describes a Transportation Hub at 2nd and Clay to accommodate the rerouting of AC Transit service. As a condition of approval, the applicant should fund a more complete master plan for the Transportation Hub analyzing: 1) How it can serve not only the Howard Terminal project, but also surrounding areas including Jack London Square and other nearby blocks south of I-880; 2) complementary TOD land uses; and 3) possibility as a location for an Oakland Transit Hub that connects BART, Capitol Corridor, and AC Transit service. The Transportation Hub should be built in such a way as to accommodate rail in the future and serve the area beyond the development.

⁴ San Francisco Bay Shoreline Adaptation Atlas: Working with Nature to Plan for Sea Level Rise Using Operational Landscape Units. SFEI and SPUR, April 2019, <https://www.spur.org/publications/spur-report/2019-05-02/san-francisco-bay-shoreline-adaptation-atlas>

O-43-5

See Response to Comment O-11-6 regarding bike lanes on 7th Street (Mitigation Measure TRANS-2a) that would allow continuous bike lane connections between West Oakland and the Project site. See Response to Comment O-11-7 and O-11-8 regarding bike lanes on Martin Luther King Jr. Way (Mitigation Measure TRANS-2b) that would allow continuous bike lane connections between West Oakland and Downtown and the Project site. See Response to Comment O-11-9 regarding bike lanes on Washington Street (Mitigation Measure TRANS-2c) that would allow continuous connections between Downtown and Lake Merritt BART station area and the Project site.

O-43-6

The Draft EIR identifies the transportation improvements (Section 4.15.4) to support the Project. Transit supportive measures include transit infrastructure, pedestrian infrastructure for people walking between transit and the Project, and programs supporting transit use. Mitigation Measure TRANS-1c would implement a Transportation Hub on 2nd Street, Mitigation Measure TRANS-1d would implement bus-only lanes on Broadway, Mitigation Measure TRANS-1e would implement pedestrian safety improvements connecting transit and the Project site, and Mitigation Measures TRANS-3a and TRANS-3b would implement railroad corridor safety improvements for pedestrians. In addition, Mitigation Measure TRANS-1a would implement a Transportation and Parking Demand Management (TDM) Plan that would include extending AC Transit bus lines such as Line 6, 72, 72M, and 72R to the transportation hub and include transit subsidies for the Project's residents and employees. Mitigation Measure TRANS-1b would implement a Transportation Management Plan (TMP) that would require high capacity multidoor shuttle buses between the Transportation Hub and the 12th Street BART station as well as the potential for shuttles to either the West Oakland or Lake Merritt BART stations. See Draft EIR p. 4.15-148, which describes the various transportation improvements that were discarded as infeasible, inapplicable, or ineffective. These include the I-980 freeway replacement, new passenger rail station for Amtrak at the Project site, new infill BART station near the Project site, second transbay rail crossing, and neighborhood circulators. Also see Response to Comment A-8-9 and Response to Comment A-14-17.

O-43-7

See Draft EIR p. 4.15-148, which describes the various transportation improvements that were discarded as infeasible, inapplicable, or ineffective. These include the I-980 freeway replacement, new passenger rail station for Amtrak at the Project site, new in-fill BART station near the Project site, second transbay rail crossing, and neighborhood circulators. Also see Response to Comment A-8-9 and Response to Comment A-14-17.

O-43

COMMENT

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- O-43-8
 - **Consider eliminating new parking as an alternative analysis to the Project.** The Project is situated at the nexus of many modes of transit, and the current Project considers many improvements to enhance connectivity. The EIR proposes the addition of 8,900 new parking spaces, in addition to nearly 13,000 spaces within a mile of the Project. The Project should be designed to make public transit the preferred method for accessing the stadium. Generating this large quantity of new parking greatly diminishes this objective. The EIR should consider how a no-parking alternative could better support the special needs of those that do require car transport, such as handicap and other special shuttle accommodations.
- O-43-9
 - **Consider the Project as a catalyst for undergrounding rail through Jack London Square and Howard Terminal.** As a condition of approval, the applicant should coordinate and collaborate with Union Pacific, Capitol Corridor, City of Oakland, and other entities on a study of the feasibility for undergrounding freight and passenger rail through Jack London Square and Howard Terminal. Such an effort would resolve grade separation and pedestrian safety issues with crossing the rail, as well as many circulation and connectivity issues at the Project site. Current pedestrian crossing improvements proposed in the EIR should continue, with undergrounding rail as a longer-term vision. Discussions on this potential infrastructure investment and project should begin now, as overall Project feasibility and environmental impact is determined.
- O-43-10
 - **Clearly state affordable housing goals and consider a proportion of live-work housing for a jobs-housing fit.** The Project does not adequately discuss the development of housing at a range of affordability, nor does it link the opportunity to develop housing to support the employment opportunities projected to be generated. The Project predicts 7,987 new jobs generated as a result of full buildout, and a maximum of 3,000 market rate housing units.⁵ Many of the new jobs generated as a result of the Project will be lower income positions. The Project should consider including a proportion of live-work housing to support overall quality of life and housing security for employees and residents of Oakland.
- O-43-11
 - **Offset water demand and review all options for water efficiency and savings.** The EIR does not adequately describe plans to offset demand for water in the Project. There is some mention of recycling water from underneath the ballfield for future use; however, there are many more measures to consider that also have precedence in new stadium developments. More than 85% of the water used at Levi's Stadium in Santa Clara is now grey or recycled through the use of dual-plumbing systems and no-flush urinals.⁶

⁵ Oakland Waterfront Ballpark Project Draft EIR 4.12-17, HOUSING #

⁶ Stadium Sets a New Standard for the Use of Recycled Water, June 2014.

<https://www.levistadium.com/2014/06/stadium-sets-new-standard-use-recycled-water/>

- O-43-8 See Consolidated Response 4.7, *Parking*, which addresses how the ballpark event parking would be dispersed to underutilized parking garages as well as the Project site. The Project's 3,500 on-site parking spaces reflects less than 50 percent of the anticipated ballpark parking demand.

See Consolidated Response 4.7, *Parking*. The Project's parking characteristics are described on Draft EIR pp. 4.15-80 through 4.15-82 and revised Mitigation Measure TRANS-1a (see Consolidated Response 4.23) would limit the Project's parking supply for the non-ballpark development to levels below the area's average parking demand. Residential parking at 0.85 spaces per residential unit is below the area's average auto ownership of 0.94 vehicles per unit. Office parking at 2.0 spaces per 1,000 square feet is below the area average of 2.9 spaces. The retail, restaurant and entertainment uses would be parked at 2.6 spaces per 1,000 square feet below 2.8 spaces for non-December weekday and below 4.7 spaces per thousand square feet at peak times i.e., December and weekends.
- O-43-9 The Draft EIR provides a reasonable range of alternatives as described in State CEQA Guidelines Section 15126.6, including a smaller size alternative and an off-site alternative (see Chapter 6 of the Draft EIR). In addition, the Draft EIR includes a number of mitigation measure specifically aimed at reducing vehicle trips by managing parking and taking other steps to increase the attractiveness of transit and other modes. For these reasons, analysis of an alternative with less parking than the proposed Project is not warranted or required.
- O-43-9 See Consolidated Response 4.9, *Alternative 3: The Proposed Project with Grade Separation Alternative*, and its discussion of the Capital Corridor Vision Plan. Also see Response to Comment A-8-9.
- O-43-10 See Consolidated Response 4.12, *Affordable Housing*, and the discussion of jobs-housing balance in Section 4.12.6 of the Draft EIR. The commenter's suggestion to address quality of life and housing security (non-CEQA issues) is appreciated. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Project.
- O-43-11 See Response to Comment A-5-11.

O-43

COMMENT

RESPONSE

O-43-12

- **Analyze impacts of trash generation as a result of the Project.** The activities at the ballpark will inevitably produce large quantities of trash. While the Project accounts for trash mitigation through trash collection, street sweeping, and stormwater capture, there is no discussion of addressing windblown trash. As trash will likely blow into the Oakland Estuary causing more pollution in the Bay, the Project should speak to mitigation efforts, including considering the funding of a fleet of skimmers and the installation of gutters to catch windblown trash.

O-43-13

SPUR is invested in ensuring the proposed Oakland Waterfront Ballpark District Project is successful. The above comments are intended to bring to light elements of the proposed project EIR that, if addressed, will contribute to a more equitable, sustainable, and prosperous Oakland.

Thank you for the opportunity to bring these comments through your public process. This is a crucial dialogue for the City of Oakland.

Sincerely,



[Ronak Davé Okoye](#)
Oakland Director, SPUR

cc: SPUR Oakland3 Board

- O-43-12 As stated on pp. 4.16-41 to 4.16-43 in Section 4.16, *Utilities and Service Systems* of the Draft EIR, compliance with the City's Recycling Space Allocation Ordinance and the City's Waste Reduction and Recycling Standards, in addition to implementation of Mitigation Measure UTIL-3, would provide a control plan for the collection and storage of solid waste and recyclable materials collection as noted in the comment. Control of solid waste on the Project site from blowing off site would be included in the solid waste control plan required by the City and Port.
- O-43-13 This comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft EIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Project.

O-44 Oakland Chinatown Chamber of Commerce

	COMMENT	RESPONSE
	Hi.	
O-44-1	On behalf of Oakland Chinatown Chamber of Commerce, I would like to submit the below comments from our Board after reviewing the Project EIR. I am asking you to consider our concerns sincerely and we are looking forward to the solutions and the adjustment to the project. Thank you.	O-44-1 See Consolidated Response 4.8, <i>Chinatown</i> .
	Traffic Issue 1- Congested traffic conditions before and after games in Chinatown. Mitigation 1- Direct flow of traffic towards the perimeters of Chinatown.	O-44-2 See Consolidated Response 4.8, <i>Chinatown</i> .
O-44-2	Traffic Issue 2- Encourage traffic that patronizes Chinatown. Mitigation 2- Parking at the garages in the Chinatown area would be discounted if validation is given at a local restaurant.	O-44-3 Prior to the Oakland Alameda Access Project (OAAP) being constructed bicycle riders from the Lake Merritt BART station area would use the bike lanes on Oak and Madison Streets to access the bike lanes on 2nd Street and then transition onto the bike lanes on Washington Street to access either the multiuse path or Water Street to the ballpark. Once the OAAP is constructed these riders would use the two-way cycletracks on Oak and 6th Streets to access the bike lanes on Washington Street and continue to the ballpark. Bicycle riders may also use the planned protected bike lanes on 14th Street to access the bike lanes on Martin Luther King Jr. Way to access the ballpark.
O-44-3	Traffic Issue 3- Bicycle lanes on congested pedestrian streets. Mitigation 3- Reroute the bicycle lanes towards the perimeter areas.	O-44-4 Section 9.1 of the Draft TMP (Draft EIR Appendix TRA.1) specifies that designated pick-up/drop-off areas would be provided to increase ridesourcing capacity and improve predictability compared to operations without these areas. These areas, located under the freeway, would require riders to walk the last four blocks to the ballpark. Rideshare trips between these areas and Lake Merritt BART station would be about two-thirds of a mile. These short rideshare trips earn very little driver revenue compared to trips that are two to four miles, and so rideshare trips between the Lake Merritt BART station and the ballpark are unlikely.
O-44-4	Traffic Issue 4- Possibility of the area surrounding Lake Merritt BART being used for rideshare pick up Mitigation 4- Find an alternate area.	O-44-5 See Consolidated Response 4.7, <i>Parking</i> . Mitigation Measure TRANS-1b requires implementation of the Parking Management Plan described in the Draft EIR (Additional Transportation Reference Materials, <i>Toward a High-Performance Parking Management System for a Thriving Oakland: A Plan</i>).
O-44-5	Traffic Issue 5- Parking plan relies unrealistically on the City being staffed and funded adequately to jointly manage on and off-street parking in the affected area (up to a mile away from the ballpark). Mitigation 5- Commit to funding and providing adequate resources for a comprehensive on/off-street parking program, which has a direct impact on traffic and safety, primarily pedestrian safety, to the most impacted community (Chinatown) in the City.	O-44-6 See Consolidated Response 4.8, <i>Chinatown</i> .
O-44-6	Traffic Issue 6- EIR documents that traffic congestion at/near the Webster and Posey Tubes will be seriously degraded in the near term (TRANS-6), yet do not propose any mitigations in the Chinatown area, despite an abundance of potential measures having been identified in past studies/plans, e.g. City's Pedestrian Plan, Revive Chinatown (not listed), Lake Merritt Area Specific Plan and others. Mitigation 6- Commit to funding improvements, primarily for pedestrian safety improvements, that will be needed as a direct result of degraded traffic conditions generated by the project, most especially along Webster and Harrison Streets.	

O-44

COMMENT

RESPONSE

This table lists the commenter’s traffic concerns and suggested mitigation contained in the text above. See Responses to Comments O-44-1 through O-44-6.



April 27, 2021
Comments on Oakland Waterfront Ballpark District Project EIR

Traffic Issues	Mitigations
Congested traffic conditions before and after games in Chinatown	Direct flow of traffic towards the perimeters of Chinatown
Encourage traffic that patronizes Chinatown	Parking at the garages in the Chinatown area would be discounted if validation is given at a local restaurant
Bicycle lanes on congested pedestrian streets	Reroute the bicycle lanes towards the perimeter areas
Possibility of the area surrounding Lake Merritt BART being used for rideshare pick up	Find an alternate area
Parking plan relies unrealistically on the City being staffed and funded adequately to jointly manage on and off-street parking in the affected area (up to a mile away from the ballpark).	commit to funding and providing adequate resources for a comprehensive on/off-street parking program, which has a direct impact on traffic and safety, primarily pedestrian safety, to the most impacted community (Chinatown) in the City.
EIR documents that traffic congestion at/near the Webster and Posey Tubes will be seriously degraded in the near term (TRANS-6), yet do not propose any mitigations in the Chinatown area, despite an abundance of potential measures having been identified in past studies/plans, e.g. City's Pedestrian Plan, Revive Chinatown (not listed), Lake Merritt Area Specific Plan and others.	Commit to funding improvements, primarily for pedestrian safety improvements, that will be needed as a direct result of degraded traffic conditions generated by the project, most especially along Webster and Harrison Streets.

388 9th Street, Suite 290, Oakland CA 94607 | 510.893.8979 | ChinatownChamber@gmail.com

O-45 West Oakland Benefits for Equity

COMMENT

RESPONSE

Please see the attached letter with consolidated comments.

O-45

COMMENT

RESPONSE



Via Electronic Submittal Only

Mr. Peterson Vollmann
Planner IV
City of Oakland
Planning & Building Department
pvollman@oaklandca.gov

April 27, 2021

Re: Case File Number ER18-016: Public Comment on the Draft Environmental Impact Report for the Oakland Waterfront Ballpark District at Howard Terminal

To Mr. Vollman,

We are a multi-generational group of West Oakland residents, community leaders, businesspeople, workers, researchers, and advocates who have formed a community group named the West Oakland Benefits for Equity (WOBE). While we represent many different groups and perspectives, we come together with focus to ensure just and long-term sustainable benefits from the proposed Oakland A's Waterfront Ballpark District at Howard Terminal in West Oakland.

We are invested in preserving, protecting and improving the environmental, educational, economic, cultural, and community activist leadership legacy of West Oakland, because these elements enhance our quality of life.

The West Oakland Environmental Indicators Project (WOEIP) entered a Memorandum of Understanding with the Oakland Athletics in January 2019 to formalize their community engagement in relation to the project. This group first met at the WOEIP office in February 2019 as a result of the leadership of WOEIP in partnership with five Pathways to Equity fellows. We have been meeting regularly to engage and protect the ground-breaking egalitarian, transparent and equity rooted Community Benefits Agreement (CBA) development process developed by the CBA Planning Group (comprised of representatives from the City of Oakland, Port of Oakland, Oakland A's, WOEIP and Oakland Asian Cultural Center), and guided by members of the communities most immediately impacted by the development at Howard Terminal.

We are working together to educate ourselves in order to meaningfully contribute to the development of an equity-focused, long term and sustainable CBA which will improve

O-45-1 This is a general comment that includes introductory remarks and serves to introduce the more specific comments that are responded to in detail below. As a result, no specific response is provided here. Further, this comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft EIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the Proposed Project.

O-45-1

O-45

COMMENT

RESPONSE

O-45-2 See Consolidated Response 4.13, *Gentrification and Indirect Housing Displacement*.

The existing background health risks in the West Oakland community due to exposure to toxic air contaminants (TACs) are described on Draft EIR pp. 4.2-9 through 4.2-11. Impact AIR-2.CU evaluates the proposed Project's contribution to human health risk in context with all existing background health risks due to exposure to TAC emissions and concludes that the impact would be significant and unavoidable. As discussed in Response to Comment A-11-1, A-11-4, and others, the cumulative health risk analysis in the Draft EIR was developed in consultation with BAAQMD, relies heavily on modeling data provided by BAAQMD for the West Oakland Community Action Plan (WOCAP), and follows the same modeling approach that BAAQMD used to develop the WOCAP. Because the existing background health risks already exceed the BAAQMD cumulative thresholds of significance, any additional TAC emissions associated with a project of any size would result in a significant and unavoidable impact, as is the case for the proposed Project (see Draft EIR p. 4.2-149). All feasible mitigation measures are required to reduce this impact, including Mitigation Measure AIR-2.CU, which requires the Project sponsor to incorporate applicable strategies from the WOCAP.

O-45-1

quality of life for the people of West Oakland, especially our most vulnerable and long-term residents, by addressing the legacy of historical racial inequities.

We advocate for and participate in a collaborative CBA process that is transparent, citizen-driven, inclusive, solutions-based, rooted in equity, and developed with the impacted community at the table, to redefine how real estate and infrastructure projects are financed and carried out in West Oakland and beyond. It is with this in mind that we write to formally submit our comments to the Oakland A's Waterfront Ballpark District at Howard Terminal Draft Environmental Impact Report.

Background:

West Oakland is an area of approximately six square miles, surrounded on all sides by three urban freeways: I-980, I-580, and I-880. The latter, Interstate 880, is one of the most congested freeways in the region and carries the bulk of freight related traffic. I-880 lies upwind of many residential areas in West Oakland. The Port of Oakland also wraps around the south and west sides of the community, creating a consistent upwind source of toxic air contaminants. In 2002, West Oakland Children under five years of age experienced asthma hospitalizations at a rate five to seven times the state average. Fifteen years later, according to the Alameda County Public Health Department (ACPHD), rates for emergency department visits in children under five are 70 percent higher in West Oakland than Alameda County as a whole. Based on CalEnviroScreen version 3.0, West Oakland ranks above the 90th percentile for the state in asthma emergency room visit rates, with several West Oakland census tracts exceeding the 99th percentile (i.e. among the highest rates in the state). These cover people of all ages and are taken from 2011 to 2013, after significant state incentives had been provided to reduce truck emissions. According to ACPHD, West Oakland residents die from health conditions associated with exposure to toxic air pollution, including cancer, stroke, heart disease, and chronic lower respiratory disease, at higher rates than residents of Oakland and Alameda County. These people's life expectancy is seven years less than their counterparts in the Oakland Hills.

O-45-2

West Oakland, a traditionally Black community since the 1930's, has suffered from the brutal use of eminent domain by multiple government agencies. In the mid-1950's, CalTrans, the state transportation agency, removed nearly a thousand homes to build the Cypress Freeway connector to the Bay Bridge. The Cypress Structure effectively cutoff the most western, and poorest section, of the community from the view of City Hall. West Oakland's Prescott neighborhood, with its eponymous public school and historic Black business district was suddenly "out of sight and out of mind" for policy makers. The Cypress Structure, a 70-foot tall, elevated double-decker freeway, would carry 100 percent of the diesel-fueled trucks serving the region straight through the heart of West Oakland's Black neighborhoods. In 1959, hundreds of homes and small businesses, including the famous blues and jazz clubs, Esther's Orbit Room and Slim Jenkins Club, were destroyed to make way for the United Postal Service's regional distribution center. Add the "redlining" of much of the region to keep people of color

O-45

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O-45-3 See Consolidated Response 4.13, *Gentrification and Indirect Housing Displacement*.

from moving away from the pollution, with Black residents segregated in the most polluted areas of the city. Notably, the Black small businesses owners in this neighborhood were able to hold on to their economic base while isolated from housing, jobs and economic opportunities afforded to their white counterparts.

Through the 1960's, community service groups like the Black Panthers worked to develop programs to provide clothing, shoes, and breakfasts for local school children. While many of these model programs were later appropriated by the Johnson administration's Great Society Plan, the Black Panther leaders were ruthlessly targeted by the federal Department of Justice. In the true spirit of Jim Crow, white America was terrified at the sight of Black power and self-sufficiency.

In 1964, the Bay Area Rapid Transit Agency began construction of the Transbay Tube. BART chose Seventh Street as the route from San Francisco to the outlying white commuter neighborhoods. West Oakland's Seventh Street, the historic Black business district, is perhaps the only section of the BART system where an elevated track runs down the middle of a local commercial retail district. The resultant disruption of local business by several years of construction, and the continuous noise of the trains themselves beginning in 1973, was the last nail in the coffin of what had been called the Harlem of the West.

Through it all, the people of West Oakland persevered. They struggled to make ends meet by any means necessary. Yet continued corporate disinvestment led to blight and poverty. Poverty and federal policy led to the drug epidemic and subsequent drug wars. Mass incarceration made entire generations unable to get decent jobs because of criminal records. Urban renewal and blight reduction systematically razed old Black-owned commercial buildings and reduced available public housing.

Billions and billions of dollars in public investment, designed for the "greater good", brought no significant jobs and destroyed the fragile segregated economy that was the only financial anchor for the people of West Oakland. Recently, unbridled land speculation and gentrification, driven by regional planners and a cash-strapped city government, have reduced the percentage of African Americans from 75 percent to less than 30 percent.

If one asks, "Why does West Oakland want to stand in the way of "economic development"?", the answer is that such development has invariably been achieved on their backs and to their detriment. The history of West Oakland, and thousands of communities like it, is that the "greater good" often goes to White businesses and White consumers, while the "great bad" of pollution, sickness and death goes to local communities of color, with few other options.

In addition, the West Oakland community is experiencing the common effects of gentrification, which induces the displacement of vulnerable residents of a community transformed by the wealth gains from affluent, wealthier, educated and white residents. This dramatic pattern shifts the sociodemographic, socioeconomic, economic, population, environment, and transportation of the community resulting in fragility and unsustainable conditions for its weakest and most vulnerable populations.

Recent displacement studies examine how investment and disinvestment serve as interrelated forces to further exacerbate the vulnerabilities of neighborhoods like West Oakland with "disamenities like proximity to industrial land or poor air quality driving away

O-45-2

O-45-3

O-45

COMMENT

RESPONSE

O-45-3 | lower-income communities of color, then paving the way for speculation, redevelopment and gentrification.”

Please keep this history in mind when reading our comments, below.

Formatting note: Each impact and mitigation to be commented on will be listed and quoted with our comment following:

Impact Classification:

Quoted text from Draft EIR

WOBE comment on above impact and/or proposed mitigation.

General Comments:

O-45-4 | We'd like to acknowledge that this DEIR is prepared for a large master project, with many environmental impacts to be addressed through future undetermined regulatory actions. We assume that mitigations will be worked out with the appropriate regulatory agency in the future, however we strongly state that community feedback and involvement must be part of all future steps of this project's processes.

O-45-5 | We are especially concerned that effects of the Schnitzer Steel operations on the proposed housing developments on the project site have not been analyzed. We are concerned that even after hypothetical mitigations are carried out at the local shredding company, there will still be emissions affecting the nearby developer housing.

O-45-6 | We are also concerned that the proposed tree buffer is inadequate at improving air quality in and around the development and therefore request significant additional analysis upon permit submission by qualified consultants. Figure 3-19 does not depict what was described in the narrative as the trees indicated appear to be inadequate to serve their intended purpose, please provide clarification. The proposed tree buffer should include information pertaining to species selection, wildlife habitat, water sourcing/maintenance, etc. According to current research the type of planting indicated in Figure 3-19 is inadequate for the purposes intended, please reference the research done by The Nature Conservancy, especially their 2016 paper titled "Planting Healthy Air", for guidance.

Impact AIR-2:

O-45-7 | *Operation of the Project (and combined overlapping construction and operation) would result in operational average daily emissions of more than 54 pounds per day of ROG, NOX, or PM2.5 or 82 pounds per day of PM10; or result in maximum annual emissions of*

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O-45-4 | Each individual environmental topic section within the Draft EIR contains a regulatory setting and presents relevant information about federal, State, regional, and/or local laws, regulations, plans, or policies associated with the environmental topic addressed in the section. In some cases, the mitigation measures in the Draft EIR reference required actions of other agencies, and therefore, are designed to provide a mechanism for the City to ensure compliance with regulatory requirements that mandate a certain outcome. The Project's MMRP contains a list of all mitigation measures, the regulatory agency involved, and the timing for each measure. All of these instances are consistent with State CEQA Guidelines Section 15126.4(a)(1)(B), which states that "[c]ompliance with regulatory permit or other similar process may be identified as mitigation if compliance would result in implementation of measures that would be reasonably expected, based on substantial evidence in the record, to reduce the significant impact to the specified performance standard." A list of the currently anticipated City, Port, and other agency permits and approvals that may be required is provided in Table 3-4 of the Draft EIR. Other responsible agencies may accept comments when they are taking certain permit or approval actions at their discretion and according to their established regulatory processes, but this is outside of the control of the City.

O-45-5 | The Draft EIR evaluates the impact of Schnitzer Steel's operations on future residents occupying the proposed housing units at the Project site. See Draft EIR p. 4.2-141 and Impact AIR-2.CU (Draft EIR pp. 4.2-140 through 4.2-165). Tables 4.2-23 and 4.2-25 present cumulative health risk impacts from Schnitzer Steel operations on new onsite sensitive receptors. The health risk impact of the proposed Project is evaluated in the context of exposure of new onsite sensitive receptors from Schnitzer Steel's TAC emissions. In addition, these impacts do not account for the installation of emissions controls to reduce its stationary source TAC emissions in compliance with BAAQMD Rule 11-18 (Draft EIR p. 4.2-141). Therefore, future impacts are likely to be less than analyzed in the Draft EIR.

O-45-6 | The Project proposes to use landscaping on the southwestern edge of the site would be densely planted to establish a buffer between the Project site and the existing Schnitzer Steel facility. As stated on Draft EIR p. 3-47, trees would be selected for their quality of form and distinct character, but also their hardiness to wind and weather. The proposed conceptual landscaping plan is shown in Figure 3-19 as noted in the comment. However, Mitigation Measure

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LUP-1c would impose siting limitations to physically separate sensitive land uses and strategies to buffer sensitive proposed Project uses from nearby Port, rail, and industrial operations, including vegetated buffers along the western perimeter of the site and portions of the northern perimeter west of Market Street and solid barriers in combination with vegetation barriers along the western perimeter of the Project site. Mitigation Measure LUP-1c would require the Project sponsor to develop detailed plans and specifications for buffering strategies to be used during Project development, including timing and phasing of implementation to precede on-site sensitive receptors. The buffering strategies to be used on the Project site pursuant to Mitigation Measure LUP-1c would be required to incorporate guidance contained in CARB's *Technical Advisory: Strategies to Reduce Air Pollution Exposure Near High-Volume Roadways* (2017) and the U.S. Environmental Protection Agency's (U.S. EPA's) *Recommendations for Constructing Roadside Vegetation Barriers to Improve Near-Road Air Quality* (2016).

O-45-7

The use of emergency diesel backup generators does not conflict with the City of Oakland's 2030 Equitable Climate Action Plan (ECAP). The ECAP has no requirements pertaining to emergency backup generators. ECAP Action B-1: *Eliminate Natural Gas in New Buildings* states that by 2023, the City should prohibit new buildings and major renovations from connecting to natural gas infrastructure. On December 16, 2020, the city adopted Ordinance 13632, which codifies this requirement and bans natural gas in all new development, with exceptions. The emergency diesel generators are not new buildings as defined in Ordinance 13632, and they do not use natural gas. Additionally, emergency diesel generators are required by the City's Fire Department and safety code.

ECAP Action B-2: *Plan for All Existing Buildings to be Efficient and All-Electric by 2040*, requires the City to develop a policy roadmap to achieve decarbonization of the existing building stock by 2040. This action also applies to new buildings, which emergency generators are not. However, the city's forthcoming policy roadmap may include plans to phase out all existing and new diesel generators by 2040. In this event, the Project's emergency diesel generators may be replaced by non-diesel alternatives. However, the policy roadmap and associated requirements have not been developed. Consequently, Mitigation Measure AIR-2c is consistent with both the ECAP and Ordinance 13632.

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In addition, Mitigation Measure AIR-2c has been revised to require alternatives to diesel power emergency backup generators such as battery storage or hydrogen fuel cells whenever possible when technology is available and approved for use by Fire Department. See Chapter 7, *City-Initiated Updates and Errata in the Draft EIR*, for the revised mitigation measure language.

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10 tons per year of ROG, NOX, or PM2.5 or 15 tons per year of PM10. (Criterion 2)
(Significant and Unavoidable with Mitigation)

Mitigation Measure AIR-2c: Diesel Backup Generator Specifications.
To reduce NOX associated with operation of the proposed Project, the Project sponsor shall implement the following measures. These features shall be submitted to the City for review and approval and be included on the Project drawings submitted for the construction-related permit or on other documentation submitted to the City:

1. If feasible, non-diesel fueled generators shall be installed to replace diesel-fueled generators. Alternative fuels used in generators, such as biodiesel, renewable diesel, natural gas, or other biofuels or other non-diesel emergency power systems, must be demonstrated to reduce NOX emissions compared to diesel fuel.

We are concerned that the inclusion of diesel generators is in conflict with the City of Oakland's 2030 Equitable Climate Action Plan, released in July 2020, and propose all electric solutions to be used throughout the project (ex., backup batteries with supplemental solar or other renewable power).

Impact GHG-1:

The Project could generate "net additional" GHG emissions, either directly or indirectly, from its construction and operation. (Criterion 1) (Less than Significant with Mitigation)

The table 4.7-4 description is unclear, and should be described more specifically for better understanding. It is not clear from the description of this table whether it is intended as a baseline measurement that would determine the threshold for no net additional greenhouse gas emissions. If this is the intent of the table 4.7-4, please clarify that in the paragraph describing its purpose.

Also, to assume that emergency generator emissions are zero is not a conservative assumption in this context. Generators that are used for emergency backup power are required to undergo periodic testing, and recently PG&E has instituted planned power outages to mitigate fire risk. We expect that the generator contribution to GHG emissions would be non-zero.

Mitigation Measure GHG-1: Preparation and Implementation of a GHG Reduction Plan.

A. GHG Reduction Plan Contents and Standards
Specific information on the components of each element of the Plan, as it pertains to CEQA compliance, is described below:

- 1) Land Use Program and Project GHG Emissions Estimates, by Phase –The

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O-45-8 Table 4.7-4 shows existing condition (2018) emissions by source, the first operational year of Project Phase 1, and the first operational year of Project Buildout. These emissions are used as the baseline for the proposed Project's obligation to achieve "no net additional" emissions. The calculation of the proposed Project's net additional emissions by year is shown in Table 4.7-7. The Draft EIR on p. 4.7-50 is revised as follows to provide clarification:

Table 4.7-4 presents total annual GHG emissions by source for existing conditions (2018), and adjusts these emissions for the first operational year of Project Phase 1, and the first operational year of Project Buildout, by accounting for the effect that the RPS and the State's vehicle efficiency standards would have in reducing emissions from electricity generation and mobile sources (see Table 4.7-3). This approach is more conservative than using a fixed baseline as of the year 2018, because as emissions from existing activities would decrease over time, the net new emissions for the Project increase. Emissions presented in Table 4.7-4 are subtracted from the project's total emissions to determine the project's "net additional" emissions; please see the following tables for additional detail.

This text addition to the Draft EIR Air Quality chapter does not affect or alter the analysis of impacts or identification of mitigation measures in the Draft EIR.

Emergency generator emissions for A's-related existing condition emissions are conservatively assumed to be zero because the emergency generator at the Coliseum site is also used for non A's-related activities. Therefore, it is difficult to accurately apportion their use to the A's operations. It is conservative to assume that generator emissions would be zero because the project's "net additional" emissions are calculated as the difference between the project's emissions and A's-related existing condition emissions. Therefore, zero generator emissions for existing conditions increases the project's "net additional" emissions because they are not subtracted from the project's total emissions.

O-45-9 CEQA does not require evaluating lifecycle emissions associated with construction materials or other activities associated with a project.

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According to State CEQA Guidelines Section 15064.4, “a lead agency should make a good-faith effort, based to the extent possible on scientific and factual data, to describe, calculate or estimate the amount of greenhouse gas emissions resulting from a project.” The guidelines also state that a lead agency has discretion to select a model or method to calculate GHG emissions that it considers “most appropriate to enable decision makers to intelligently take into account the project’s incremental contribution to climate change” provided that this selection is supported with substantial evidence and that the limitations of the model or method are disclosed.

The City chose the CalEEMod emissions model and other modeling protocols to assess the Project’s GHG emissions. The model does not include embodied carbon in the construction materials; there are currently no standard protocols for calculating these emissions, nor is the information required to estimate these emissions publicly available.

Regarding the impacts of a project under CEQA, State CEQA Guidelines section 15064(d) states that a lead agency “shall consider direct physical changes in the environment which may be caused by the project and reasonably foreseeable indirect physical changes in the environment which may be caused by the project.” The State CEQA Guidelines define a direct physical change as “a physical change in the environment which is caused by and immediately related to the project.” The State CEQA Guidelines define an indirect physical change as “a physical change in the environment which is not immediately related to the project, but which is caused indirectly by the project.” However, the State CEQA Guidelines also advise against speculating indirect changes, stating that, “an indirect physical change is to be considered only if that change is a reasonably foreseeable impact which may be caused by the project. A change which is speculative or unlikely to occur is not reasonably foreseeable.”

An accurate and reliable estimate of lifecycle emissions associated with construction materials used at the Project site in the future is not possible given that it is currently not known where materials would come from, who would manufacture them, and what the detailed supply chain process would be. This information would be required to estimate GHG emissions associated with embodied carbon in construction materials. Therefore, estimating these emissions would be speculative and not required by CEQA. The Association of

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Environmental Professionals (AEP) draft whitepaper on lifecycle GHG inventories supports this conclusion:⁸⁸

A further challenge to including consumption-based emissions for construction materials and consumer goods and services is that they may have elongated supply chains, and the data necessary to accurately quantify embedded emissions may not be readily available, due to business practices concerning proprietary data, or due to the fact that other jurisdictions (particularly outside California or outside the United States and Europe) may not track GHG emissions in sufficient detail. CEQA admonishes lead agencies to avoid speculation in completing their analyses and making conclusions. Furthermore, CEQA does not require a lead agency to complete every study possible, but rather to fully disclose impacts based on reasonably available data. Developing project-specific estimates of embedded GHG emissions for all construction materials, or future consumed goods and services that are related to complex supply chains, would require extensive research and may not be able to accurately identify GHG emissions for many consumed items without substantial uncertainty.

The AEP whitepaper also notes that cement manufacturing emissions are already accounted for and regulated by the state as point sources and other regulatory entities such as CARB and various air districts. Further, their GHG emissions are regulated under the California cap and trade regulation to achieve the State's legislated GHG emission reduction targets:

There have been a few CEQA analyses for projects that have included estimates of emissions associated with certain construction materials, such as concrete. While it is feasible to estimate upstream emissions associated with cement manufacturing (provided reasonable and non-speculative assumptions can be made about cement source, and production emissions data is available), the emissions associated with cement manufacturing by non-project entities are accounted for in project inventories for the cement plant, and by the jurisdiction containing the cement plant. Thus, inclusion of such emissions would result in double-counting of emissions. Furthermore, in the case of cement, manufacturing is directly regulated by the state, both as a point

⁸⁸ AEP, 2017. Production, Consumption and Lifecycle Greenhouse Gas Inventories: Implications for CEQA and Climate Action Plans, August 2017.

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source and under the California cap and trade regulation, and thus such emissions can be presumed to be controlled sufficiently through state regulation to meet the state’s legislated GHG reduction goals. While one could include cement manufacturing emissions associated with project concrete use, the addition of such emissions would not add any information necessary to make conclusions about the significance of project emissions compared to statewide reduction goals. Similar conclusions could be made about steel and other materials from other jurisdictions—they are either accounted for in other project or jurisdictional inventories, or are outside the state (or country) and thus beyond the purview of state inventory practice.

In addition, the California Natural Resources Agency addressed lifecycle emissions in the Final Statement of Reasons prepared for the amendment to Appendix F of the State CEQA Guidelines pursuant to SB 97, which is the state law that established the requirement that GHG emissions must be assessed under CEQA.⁸⁹

The amendments to Appendix F remove the term —lifecycle. No existing regulatory definition of —lifecycle exists. In fact, comments received during OPR’s public workshop process indicate a wide variety of interpretations of that term. (Letter from Terry Rivasplata et al. to OPR, February 2, 2009, at pp. 5, 12 and Attachment; Letter from Center for Biological Diversity et al. to OPR, February 2, 2009, at pp. 17.) Thus, retention of the term—lifecycle in Appendix F could create confusion among lead agencies regarding what Appendix F requires. Moreover, even if a standard definition of the term —lifecycle existed, requiring such an analysis may not be consistent with CEQA. As a general matter, the term could refer to emissions beyond those that could be considered —indirect effects of a project as that term is defined in section 15358 of the State CEQA Guidelines. Depending on the circumstances of a particular project, an example of such emissions could be those resulting from the manufacture of building materials. (CAPCOA White Paper, pp. 50-51.) CEQA only requires analysis of impacts that are directly or indirectly attributable to the project under consideration. (State CEQA Guidelines, § 15064(d).) In some instances, materials may be

⁸⁹ California Natural Resources Agency, 2009. Final Statement of Reasons for Regulatory Action, Amendments to the State CEQA Guidelines Addressing Analysis and Mitigation of Greenhouse Gas Emissions Pursuant to SB97, December 2009.

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manufactured for many different projects as a result of general market demand, regardless of whether one particular project proceeds. Thus, such emissions may not be caused by the project under consideration. Similarly, in this scenario, a lead agency may not be able to require mitigation for emissions that result from the manufacturing process. Mitigation can only be required for emissions that are actually caused by the project. (State CEQA Guidelines, § 15126.4(a)(4).

Although the Final Statement of Reasons does not prohibit CEQA documents from including some lifecycle emissions in their assessment of a project's impacts, it identifies the problematic nature of these emissions given the difficulty in attributing them to a project. The Natural Resources Agency explicitly chose to exclude the term "lifecycle" from CEQA's requirements, demonstrating that it did not think such emissions are mandatory for project-level assessment. Further, the Natural Resources Agency identified the problematic nature of a lead agency's authority to impose mitigation on emissions that result from materials manufacturing process, and highlighted that pursuant to CEQA, mitigation can only be required for emissions that are actually caused by a project.

Finally, the City's threshold of significance for GHG impacts is if the construction and operation of the Project would generate "net additional" GHG emissions, either directly or indirectly. This threshold is consistent with the requirements of AB 734, which requires that the Project will not result in any net additional emissions of GHGs compared to the baseline. Mitigation Measure GHG-1 requires that the Project meet the "no net additional" requirement through the preparation and implementation of a Greenhouse Gas Reduction Plan. After implementation of Mitigation Measure GHG-1, the impact would be less than significant (see Draft EIR p. 4.7-66).

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O-45-10 Mitigation Measure GHG-1 has been revised to be consistent with the City’s natural gas ban, which went into effect on December 16, 2020 via Ordinance 13632 requiring all newly constructed buildings to be all-electric and prohibiting installation of natural gas or propane plumbing. The revised mitigation measure requires the Project to be fully electric, except for food service which can seek a waiver for exemption pursuant to Ordinance 13632.

The emission reductions associated with this change are documented in Response to Comment I-93-14. See Chapter 7, *City-Initiated Updates and Errata in the Draft EIR*, for the revised mitigation measure language.

O-45-9

GHG Reduction Plan shall identify the amount of construction and square footage of development anticipated within each phase or sub-phase of the Project and shall estimate the projected annual and total net emissions of the Project by phase or sub-phase, inclusive of all sources of Project emissions and consistent with all categories of sources identified in the EIR. To estimate the construction and operational emissions, the Plan shall utilize full approved buildout (e.g., number of units, square footage of retail, etc.), inclusive of any required design features or other GHG Emission Reduction Measures as described below. The Project GHG emissions estimates in the Plan shall be based upon design and energy use estimates, Project-specific traffic generation, and equipment to be used on-site. The emission factors for electricity and transportation shall be based on those commonly used at the time the Plan is completed or at the time the Plan is subsequently amended, reflecting vehicle emissions standards and building energy standards in effect at the time. Consistent with the methodology used in the EIR, future year emissions factors shall be based on enacted regulations that are in effect and affect the emissions source (e.g., California’s Renewables Portfolio Standard for electricity, and fuel efficiency standards for on-road vehicles). Construction-related emissions shall be presented for both horizontal and vertical construction emissions by year for each phase. Net (incremental) emissions shall be derived by subtracting from total Project emissions (construction plus operations) the emissions from the existing A’s baseball operations at the Oakland Coliseum and at their offices in Jack London Square using the methodology in EIR. Future emission factors shall be applied both to the Project and to the existing operations so as to reflect vehicle emissions standards and building energy standards in effect at the time, as described in the previous paragraph. The net emissions calculated shall demonstrate compliance with the “no net additional” threshold as set forth in greater detail above.

We are concerned that the GHG Reduction Plan does not mention the embodied carbon in the construction materials themselves, and suggest that this mitigation measure should include evaluations of reduced-carbon construction materials as well as a life-cycle analysis of the proposed horizontal and vertical construction from the perspective of embodied carbon and GHG emissions. This is particularly relevant to the structural systems of the proposed project elements.

O-45-10

Mitigation Measure GHG-1: Preparation and Implementation of a GHG Reduction Plan.

(2) Required Measures.

ix. Electrify a minimum of 50% of the residential units as required by CARB certification. Unless a waiver is granted by the City for a Project use, the Project would also be required to comply with building electrification requirements in the City’s building code that reduce or eliminate the use

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of natural gas in effect at the time of Project development. Compliance with regulatory measures shall not qualify as a mitigation measure

Table 4.7-6 indicates that the Project is expected to produce 3,872 MTCO₂/year from natural gas sources both in the ballpark uses and non-ballpark uses. However, the Oakland City Council voted in December of 2020 that the City would ban natural gas heating and utilities from new residential and commercial construction. The analysis of the GHG emissions should take into account the City's electrification requirements, and adjust the Project calculations accordingly.

Mitigation Measure GHG-1: Preparation and Implementation of a GHG Reduction Plan.

*(3) Menu of Additional Emission Reduction Measures: On-Site
The following types of measures shall be included in the Plan as necessary to meet the requirements of this mitigation measure and the "no net additional" GHG emissions requirement for the Project.*

*iii. On-site measures to reduce solid waste emissions:
(b) Organic waste diversion: Ensure that unused edible food at restaurants and supermarkets is donated to recovery and collection organizations that can distribute it to the neediest populations beyond regulatory requirements.*

(c) Increase the use of reusable bags: Promotions by on-site merchants to support the City's "Bring Your Own Bag" campaign and increase the use by customers of durable reusable bags.

We recommend that the Project Applicant strengthen mitigation measure 3.iii.(b) by partnering with local organizations that are well positioned to identify and serve "the neediest populations". It is unclear what the criteria are for identifying the neediest populations.

We also suggest that Mitigation Measure GHG-1: 3.iii.(c) can be strengthened by requiring that vendors and restaurants providing food at the ballpark use all compostable containers to reduce landfill waste streams, which can be a significant source of methane and other GHG emissions.

Impact HAZ-2:

The Project is located on a site which is included on a list of hazardous materials sites compiled pursuant to Government Code Section 65962.5 (i.e., the "Cortese List") and could create a significant hazard to the public or the environment. (Criterion 5) (Less than Significant with Mitigation)

Mitigation Measure HAZ-1a: Preparation and Approval of Consolidated RAW, LUCs and Associated Plans. Prior to Project-related grading or construction

O-45-11

O-45-12

O-45-11 Mitigation Measure GHG-1 lists several on-site GHG reduction measures that are to be included in the GHG Reduction Plan as necessary to meet the "no net additional" GHG emissions requirements of the Project. Mitigation Measure GHG-1 item 3.iii(b) and (c) on p. 4.7-60 is revised as follows:

iii. On-site measures to reduce solid waste emissions:

(a) **Organic waste diversion:** Ensure that unused edible food at restaurants and supermarkets is donated to recovery and collection organizations, such as FoodShift, a non-profit organization in Alameda, California, that can distribute it to the neediest populations beyond regulatory requirements.

(b) **Increase the use of reusable bags and compostable containers:** Require vendors and restaurants providing food at the ballpark to use all compostable containers, and encourage Ppromotions by on-site merchants to support the City's "Bring Your Own Bag" campaign and increase the use by customers of durable reusable bags.

O-45-12 As discussed in Draft EIR Section 4.8, *Hazards and Hazardous Materials, Section 4.8.3, Significance Criteria, Soil Management and Reconsolidation and Select Offsite Disposal*, approximately 200,000 cubic yards of soil would be sent to appropriate landfills for offsite disposal. It is conservatively assumed that 50 percent of this material would be handled as RCRA Hazardous Waste or Class I California Hazardous Waste. Although the exact location for disposal has not been determined, a candidate Class I Hazardous Waste landfill would be Clean Harbors Buttonwillow Landfill in Buttonwillow, California. No soil would be disposed of anywhere in Oakland. See Consolidated Response 4.16, *Remediation Plans, Land Use Covenants, and Human Health and Ecological Risk Assessment*, for further explanation of the DTSC's public participation process.

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O-45-12

onsite, the project sponsor shall prepare a consolidated RAW, LUCs, and associated plans, all of which shall be submitted to the DTSC for review and approval.

We are concerned that the disposal of Hazardous Wastes will be directed into vulnerable and historically marginalized communities. We request that the Project Applicant provide documentation for the proper disposal of hazardous materials to the Department of Toxic Substance Control (DTSC) for review with a specific focus on mitigating or eliminating health risks and environmental damage at the proposed final disposal site. Furthermore, we request that the DTSC make approved documentation available as a public record, similar to the information from Large Quantity Generators.

O-45-13

Impact LUP-2:

The Project could result in a fundamental conflict with adjacent or nearby land or water-based uses. (Criterion 2) (Less than Significant with Mitigation)

Mitigation Measure LUP-1a: Boating and Recreational Water Safety Plan and Requirements. *The Project sponsor shall develop a protocol for boating and water recreation around the Project site with the approval of the City of Oakland and the Port of Oakland, the San Francisco Bay Area Water Emergency Transportation Authority, the Harbor Safety Committee of the San Francisco Bay Region, and the United States Coast Guard.*

We are concerned that the affected neighborhoods will again be locked out of access to the Bay and suggest the inclusion of a kayak launch for local access to the Bay.

O-45-14

Impact POP-2:

Implementation of the proposed Project would directly induce population growth by proposing new homes, and by extending roads and infrastructure to serve the Project site; however, this growth is within regional projections and consistent with the General Plan. (Criterion 1) (Less than Significant)

We are concerned that the increase in population and housing will exacerbate the disenfranchisement of existing West Oakland residents, leading to further segregation, gentrification, income inequalities.

We are concerned that the cumulative growth of the area surrounding the ballpark will widen the gap between the density of the development around the ballpark village and the existing residences of West Oakland. Even though the population growth of this particular project is expected to be within the regional projections and General Plan, the analysis does not appear to address the cumulative impact on the neighborhood of establishing high-rise and high

O-45-13 The Draft EIR identifies Mitigation Measure LUP-1a to mitigate a potential fundamental land use conflict with maritime navigation. As discussed in the Draft EIR on p. 4.10-35, the Project does not propose facilities for recreational watercraft or direct water access to the Project site, but analyzes the fact that the ballpark and Waterfront Park could indirectly create a new demand for recreational watercraft users adjacent to the Project site. Two public boat docks, however, are located at the foot of Broadway and Franklin Street, and private kayak, canoe, and paddleboard rentals are also available from a local business in Jack London Square, which often launch from the public boat docks into the Estuary (Draft EIR p. 4.14-6), and are available to the public to launch their own small recreational watercraft. Finally, the proposed Project includes the following objective: "Increase public use and enjoyment of the waterfront by opening the south and southwestern shores of the project site to the public with a major new waterfront park and inviting waterfront promenade featuring multiple public open spaces that are usable and welcoming in all seasons, extending access to the Oakland waterfront from Jack London Square, West Oakland and Downtown Oakland through design of a bicycle, pedestrian, and transit-oriented community with well-designed parks, pedestrian-friendly streets, walkable blocks, and links to open spaces, taking advantage of the project site's unique proximity to Jack London Square, the waterfront and downtown" (Draft EIR p. 3-15). The Project would reduce barriers and extend public connections to the waterfront through development of Athletics Way, the Waterfront Park, which would allow for public access to the shoreline, and add approximately 1.25 miles of the Bay Trail, including along the waterfront as part of the Waterfront Park. The Project's proposed onsite circulation system would be designed to provide connectivity to the outside street network along the northern edges of the Project site (Draft EIR p. 4.10-31,32). See also Response to Comment A-12-59, regarding the opportunity to fish from the public access area along the wharf's edge.

O-45-14 See Draft EIR Section 4.12.5 for a discussion of cumulative impacts related to population growth, which would be less than significant for reasons explained on p. 4.12-20. See also Consolidated Response 4.13, *Gentrification and Indirect Housing Displacement*.

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O-45-14 | density development in close proximity to neighborhoods with predominantly low-rise housing. We request that each high-rise project be considered individually by the Planning Commission for public review/comment.

Impact POP-3:

Implementation of the proposed Project would directly induce population growth by proposing new businesses and by extending roads and infrastructure to serve the Project site; however, this growth would be consistent with the General Plan. (Criterion 1) (Less than Significant)

O-45-15 | This is consistent with the General Plan; however, the environmental impact will be insurmountable in its contribution to air pollution and greenhouse gas emission, import and export of construction material, and increase in traffic due to construction and operations of the Ballpark Village.
We are especially concerned about the impacts on air quality and transportation that are indicated as Significant and Unavoidable, and we see these as being interrelated with population growth in the density proposed on this project site.

Impact POP-4:

Implementation of the proposed Project would not directly or indirectly displace substantial numbers of existing people or housing units necessitating the construction of replacement housing elsewhere. (Criteria 2 and 3) (Less than Significant)

O-45-16 | This may not physically displace any residents of West Oakland due to the fact that there are currently no residents of the Howard Terminal property, but there is a very high likelihood that it will economically displace current residents due to rising costs of living.

We are concerned that the radius of analysis for this project is inadequate to predict an accurate projection of impact.

Impact PUB-2:

The Project could result in an increase in demand for police services that would require new or physically altered police facilities in order to maintain acceptable service ratios, response times, or other performance objectives, construction of which could have significant physical environmental impacts. (Criterion 1) (Less than Significant with Mitigation Incorporated)

O-45-17 | We are concerned that this analysis does not take into account the policing needs of the impacted communities around the Howard Terminal site as well as the additional need of a stadium that holds up to 35,000 attendees.

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O-45-15 | The Draft EIR concluded that the proposed Project would result in significant and unavoidable impacts related to air quality and transportation, and that the magnitude of these impacts is partly due to the scale of construction and development associated with the proposed Project. The Project site is within a Priority Development Area designated in Plan Bay Area 2040. Plan Bay Area 2040 is a sustainable communities strategy that integrates transportation, land use, and housing for the express purpose of helping to meet statewide greenhouse gas reduction targets.

The threshold for Population impacts relates to whether the population growth is unplanned (See criterion on in Section 4.12.3 of the Draft EIR). Air quality and transportation impacts related to the planned population growth caused by the project is studied separately in the respective sections of the Draft EIR. Please also see Chapter 6 of the Draft EIR and its discussion of a Reduced Development Alternative.

O-45-16 | The key purpose of the Draft EIR is to evaluate the proposed Project's effects on the physical environment and to disclose those effects to decision makers at the City of Oakland, the Port of Oakland, other responsible agencies, and the public. The scope of the population and housing impacts and analysis is addressed on Draft EIR pp. 4.12-18 and 4.12-19. As indicated therein, potential indirect displacement could occur if development at the Project site results in physical or socioeconomic changes (e.g., rising costs) in the vicinity, but social and economic effects are only relevant under CEQA if they would result in or are caused by an adverse physical impact on the environment, and there is no evidence that implementation of the proposed Project would do so. See also Consolidated Response 4.13, *Gentrification and Indirect Housing Displacement*.

O-45-17 | Under CEQA, a project could have a significant impact on public services if: (1) it would require the construction of new or physically altered governmental facilities in order to maintain acceptable levels of public services; and (2) the construction or alteration of such facilities would result in a substantial adverse physical impact on the environment (Draft EIR p. 4.13-22). The proposed Project would generate approximately 6,000 new residents – an increase that would not change the 2018 officer to resident ratio of 1.8 per 1,000 residents Citywide. Even with a higher local residential population and an eventual increase in local police staffing levels, OPD has indicated that the

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mixed-use development would not trigger a need to build new or expanded police facilities based on increased demand (Draft EIR p. 4.13-28).

As described in the Draft EIR, the OPD provides increased police protection for A's baseball games at the Oakland Coliseum and other sporting events (e.g., past Golden State Warriors basketball games and Oakland Raiders football games) and other events in the City, and assigns and dedicates additional OPD personnel specifically for these games/events. Accordingly, the OPD would redistribute and increase local staffing for the games/events at the proposed ballpark, as needed. The level of OPD personnel required on and/or offsite for games/events would be determined in advance of the game/event by the OPD in coordination with the Project sponsor and/or event sponsor generally based on projected attendance as noted on Draft EIR p. 4.13-28. Similarly, BART police would be expected to redistribute and increase local staffing for the games/events at the proposed ballpark, as needed.

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O-45-17 We are concerned that the description of the police presence analysis is vague and confusing.
We are concerned that this will remove police presence from East Oakland.
We are concerned that there will not be enough police presence in West Oakland when there are events at the stadium.
Additionally, we are concerned about funding for the increase in BART policing on game days. Money should be set aside to ensure that ALL inbound and outbound BART lines have additional police presence on every train 3 hours before and 3 hours after each major event.

O-45-18 **Impact PUB-4:**
The Project would not result in an increase in demand for libraries at a level that would require new or physically altered library facilities in order to maintain acceptable service ratios, response times, or other performance objectives, construction of which would have significant physical environmental impacts. (Criterion 1) (Less than Significant)
The evaluation of the impact of 3,000 new housing units, which could account for 6,000 new residents does not appear to be accounted for in the analysis of increased demand for library services.

O-45-19 **Impact REC-1 and REC-2:**
Impact REC-1: The Project would not increase the use of existing neighborhood and regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated. (Criterion 1) (Less than Significant)
Mitigation: None Required
We are concerned that the increase in residential population at the Project site will create an increased demand for recreational programs at local parks in the project vicinity. Though the project will create and maintain new open space and connections to the Bay Trail, this does not address the desire that people have for programmed activities that promote social cohesion. There is demonstrated demand for programs and activities within Oakland, as evidenced by the 2,000 visitors/day at Lincoln Square Park. Furthermore, it is noted in the analysis that Lowell Park athletic fields have a C rating in part due to overuse and, and both the Lowell Park and Estuary Park athletic fields are suffering from lack of maintenance and organized activities. We propose that the Project reevaluate impact REC-1 with the perspective that new residents will use local park resources such as sporting activities, group classes, and

O-45-18 The Draft EIR acknowledges on p. 4.13-32 that the additional population introduced by the proposed Project (including the proposed 3,000 residential units) would result in an increased demand for library services. Although the Project would cause an increase in residential population, there is no evidence to suggest that the potential increase in population would result in an increase in demand for libraries at a level that would require new or physically altered library facilities in order to maintain acceptable service ratios, response times, or other performance objectives, construction of which would have significant physical environmental impacts. As further explained in the Draft EIR, because there are multiple library facilities within 1 mile of the Project site, and remote online library services are available, the Oakland Public Library does not expect that the increase in population resulting from the proposed Project would result in the need for new or expanded library facilities. Therefore, the Draft EIR concluded on p. 4.13-22 that Project impacts to libraries would be less than significant and no mitigation would be required.

O-45-19 As noted in the Draft EIR, the proposed parks and open spaces are envisioned to be flexible, and accommodate a range of outdoor programming, including, but not limited to, concerts, markets, festivals and activities (Draft EIR p. 3-26). Thus, consistent with the analysis in the Draft EIR, the proposed publicly-accessible open spaces would absorb a substantial part of demand for general recreational facilities of new residents, employees, and visitors, due to the amount of open space provided, mix of passive and active uses proposed, and ease of access (Draft EIR p. 4.14-13). Based on the City of Oakland’s CEQA *Thresholds of Significance*, the Project would have a significant adverse impact related to recreation if it would increase the use of existing neighborhood or regional parks or other recreational facilities such that substantial physical deterioration of the facility would occur or be accelerated. As analyzed in the Draft EIR, while the proposed Project would increase the demand for athletic fields in the vicinity of the Project site due to an increase in the residential population on the Project site, existing recreational facilities with athletic fields likely to be used by Project residents, including Lowell Park and Estuary Park, are better maintained and/or already have plans to renovate and expand. Additionally, a limited number of Project residents would use these specialized recreational resources, as participation in team sports varies between age groups, and overall participation in team sports for individuals in the U.S. has been estimated at approximately 23 percent. Therefore, consistent with the analysis in the Draft EIR, the Project would not

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substantially increase or accelerate the substantial physical deterioration or degradation of existing athletic field recreational resources (Draft EIR p. 4.14-13). Also, as described in the Draft EIR, the proposed Project would contribute its fair share to the City of Oakland Landscaping and Lighting Assessment District, which funds operation and maintenance for park and recreation facilities (including Lincoln Square Park, Lowell Park, and Estuary Park), through payment of parcel taxes that will be assessed based on changes in land use (Draft EIR p. 4.14-14). Therefore, the Draft EIR concluded on p. 4.14-14 that Project impacts to neighborhood and regional parks and other recreational facilities would be less than significant and no mitigation would be required.

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O-45-19

programmed recreation. Therefore, we disagree with the conclusion that no mitigation is required.

O-45-20

Consistent with the “Comments of the OACC and WOBE on the Alternatives Analysis for the San Francisco Bay Area Seaport Plan Presented by the BCDC Staff to the Seaport Planning Advisory Committee March 26, 2021”, we request that recreational facilities on the Project site include a recreational fishing pier.

Impact TRANS-1B:

VMT per attendee generated by the ballpark component of the Project would be more than 15 percent below similar uses, resulting in a less-than-significant impact for the ballpark component of the Project. (Criterion 1) (Less than Significant with Mitigation)

Mitigation Measure TRANS-1b: Transportation Management Plan

17. Enforcement of local access restrictions to limit circulation of vehicles other than local traffic within the neighborhoods adjacent to the Project site before, during, and after ballgames.

O-45-21

The DEIR fails to provide a quantifiable or enforceable mitigation measure to reduce associated vehicle miles traveled. Please clarify “enforcement of local access restrictions.”

Mitigation Measure TRANS-1b: Transportation Management Plan

20. Coordination with OakDOT on the management of on-street parking on-site and in adjacent neighborhoods within one mile of the Project site, including the implementation of RPPs, through the OakPark parking plan.

Please clarify who will pay for the cost of RPPs. We are concerned this will impose an unfair cost burden on residents and the City.

Mitigation Measure TRANS-1b: Transportation Management Plan

21. Further reduction of on-site parking as needed to achieve VTR goals.

O-45-22

Please document how a reduction of on-site parking will not become a burden on the neighboring community. We are concerned that additional reduction in on-site parking will create an overflow parking burden on the neighborhood and/or traffic and air quality burdens due to increased ridesharing. We propose the reduced on-site parking is directly tied to an equivalent increase in investment in public transit to compensate for the fewer vehicles/vehicle trips. We also propose incentivizing public transit options for ballpark attendees.

Mitigation Measure TRANS-1b: Transportation Management Plan

The TMP shall include an ongoing monitoring and enforcement program to ensure that the TMP is implemented on an ongoing basis during project operation.

O-45-23

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O-45-20

See Response to Comment A-12-59, regarding opportunity to fish from the public access area along the wharf’s edge.

O-45-21

The Transportation Management Plan (TMP) is required per Mitigation Measure TRANS-1b and a draft is provided in Draft EIR Appendix TRA.1. The TMP’s Chapter 11 illustrates the management procedures to be employed at different event sizes that would include physical barriers and required traffic control officers (or other personnel acceptable to the City) to provide management of the local access restrictions to make it difficult for attendees to use automobiles in the area. In addition, through the Parking Management Plan (a required element to the TMP) the on-street parking within 1 to 1.5 miles of the Project would be controlled with parking meters and Residential Parking Permits, and the meter durations could be adjusted to preclude their use by attendees to the ballpark who drive. Implementation of the parking management program will be described in the Mitigation Monitoring and Reporting Program.

The Draft EIR on pp. 4.15-189 through 4.15-193 demonstrates that the VMT per attendee would decrease with a vehicle trip reduction of 20 percent as required by Mitigation Measure TRANS-1b. The measure sets forth a performance standard (20 percent vehicle trip reduction) and provides a list of required and possible strategies by which ballpark events would achieve the performance standard. The TDM and TMP effectiveness memo included in Draft EIR Appendix TRA.2 demonstrates that the mitigation measure would be effective.

See Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*. Mitigation Measures TRANS-1a and TRANS-1b provide mechanisms for the City to monitor compliance with the 20 percent vehicle trip reduction (performance standard). Consolidated Response 4.23, *Transportation and Parking Demand Management Plan and Transportation Management Plan Considerations*, shows the expected effectiveness and feasibility of the identified measures to achieve the 20 percent performance standard.

O-45-22

See Consolidated Response 4.7, *Parking*.

O-45-23

The draft TMP in Draft EIR Appendix TRA.1 (Table 1.1) lists key stakeholders. Key stakeholders include neighborhood and business groups based in West Oakland that may offer consultation and feedback on the Project design and operational planning to help ensure a smooth integration into the neighborhood.

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O-45-24 See Consolidated Response 4.6, *Rail Safety, Grade Crossing, and Grade Separation*.

O-45-25 See Response to Comment A-10-1.

O-45-23

We are concerned that a TMP Monitoring team may not accurately consider resident concerns. The mitigation measure should include West Oakland resident representation on the Monitoring Team. Alternatively, please clarify how the Monitoring Team will communicate with residents to properly address resident concerns and issues that need to be revisited in the TMP.

Impact TRANS-3:

The Project would generate additional multimodal traffic traveling across the at-grade railroad crossings on Embarcadero that would expose roadway users (e.g., motorists, pedestrians, bus riders, bicyclists) to a permanent or substantial transportation hazard. (Criterion 2) (Significant and Unavoidable with Mitigation)

Mitigation Measure TRANS-3a: Implement At-Grade Railroad Crossing Improvements.

Subject to obtaining necessary approvals from CPUC and other responsible agencies, the Project sponsor shall install at-grade railroad crossing improvements including fencing and railroad crossing features to enhance multimodal safety along and across the railroad tracks including elements that would facilitate a Quiet Zone (if pursued by others) designation through Jack London District.

O-45-24

We are concerned that the pedestrian at grade railroad crossings as planned are not adequately mitigated. It is not sufficient to propose a project that will create a significant increase in pedestrian traffic for the large events at the proposed stadium and not properly mitigate to prevent a very real possibility for loss of life due to a pedestrian collision with an oncoming train. We implore you to propose better mitigation that does not leave this as a "significant and unavoidable" impact.

We request collaboration with Amtrak and Capitol Corridor Joint Powers Authority to bring the railroad tracks below-grade.

Impact TRANS-6:

The Project traffic volumes would cause the significant degradation of two CMP or MTS segments in the near term. (Criterion 4) (Significant and Unavoidable):

- *Posey Tube in the eastbound direction between the City of Alameda and the City of Oakland.*
- *Webster Tube in the westbound direction between the City of Oakland and the City of Alameda.*

O-45-25

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We recognize that adding another lane is not feasible due to right of way restrictions. Please explore additional solutions to accommodate the increased automobile traffic between Alameda and Oakland, such as a ferry service or shuttle service.

Section 7.3.2 Urban Decay:

...if the economic or social effects would result in physical changes to the environment, the analysis shall focus on these physical changes. Courts have recognized that such physical changes may include the potential for projects to cause or contribute to "urban decay," such as the substantial physical deterioration of downtown shopping centers caused by major "big box" retail construction outside the downtown.

O-45-26

We are concerned about the unanalyzed effects of gentrification caused by the project on the surrounding neighborhoods. Although the project site is in an urbanized area, there is no study of the proposal compared to the combined scale of current and currently permitted buildings that make up the neighborhoods surrounding the project site. The scale and density of the proposed project will introduce a new height and density to the neighborhood, and can set a precedent for evolving zoning variances based on the changed character of the area. No analysis was provided of the possible future 'urban decay' that may result from the number of tall buildings proposed by the project and their effect on nearby land values and the foreseeable speculation boom/bust/blight that may cause.

O-45-27

The residents of West Oakland have been experiencing environmental injustices for decades and cannot bear the burden of any additional significant negative impacts. While investment in the neighborhood is needed and welcomed, the significant and unavoidable impacts identified in this DEIR, especially on Air Quality, must be more thoroughly mitigated so that this proposed development will have a long term significantly positive impact on its existing neighbors.

WOBE thanks you for the opportunity to officially voice our concerns. We would be happy to address any questions you may have.

Sincerely,

West Oakland Benefits for Equity (WOBE), including, but not limited to:

Ms. Margaret Gordon (Co-Lead), Co-Director of West Oakland Environmental Indicators Project

Brian Beveridge (Co-Lead), Co-Director of West Oakland Environmental Indicators Project

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O-45-26 See Consolidated Response 4.15, *Urban Decay*, and Consolidated Response 4.13, *Gentrification and Indirect Housing Displacement*.

O-45-27 For a discussion of the significant and unavoidable impacts on air quality and the mitigation measures required to reduce these impacts, see Responses to Comments A-7-32, A-11-1, A-11-3, A-17-4, A-17-10, O29-2-5, O-30-3, O-45-2, O-62-40, O-62-45, O-62-47, O-63-14, O-63-48, O-63-51, and others. This comment provides a conclusion to the commenter's letter and raises neither significant environmental issues nor specific questions about the analyses or information in the Draft EIR that were not already addressed and would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the Proposed Project.

See Chapter 4, *Air Quality*, of the Draft EIR, for a discussion of mitigation measures that would be applied to the proposed project to reduce impacts to air quality. See Chapter 7, *City-Initiated Updates and Errata in the Draft EIR*, for the revised air quality mitigation measure language.

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Angie Tam, 32-year Oakland resident; Oakland A's Waterfront Ballpark District at Howard Terminal CBA Steering Committee Member: Community Health and Safety Cohort

Kevin Mulvey, Oakland A's Waterfront Ballpark District at Howard Terminal CBA Community Member: Environmental Cohort

Mercedes S. Rodriguez, Block Captain: BayPorte Village Neighborhood Watch; Neighborhood Watch Steering Committee Board Member, Area 1; Oakland A's Waterfront Ballpark District at Howard Terminal CBA Steering Committee Member: Transportation Cohort

Steve Lowe, Oakland A's Waterfront Ballpark District at Howard Terminal CBA Steering Committee Member: Transportation Cohort

Teron McGrew, Oakland A's Waterfront Ballpark District at Howard Terminal CBA Community Member: Environmental Cohort

Marjorie Wolf, Oakland A's Waterfront Ballpark District at Howard Terminal CBA Steering Committee Member: Community Health and Safety Cohort, and Board of Directors: City Slickers Farm

Jim McCarthy, Treasurer: San Pablo Historical & Museum Society

Gina Buglada, Oakland A's Waterfront Ballpark District at Howard Terminal CBA Community Member: Economic Cohort; Co-Founder, Equity Research Team

Jessica Jobe Sea, Oakland A's Waterfront Ballpark District at Howard Terminal CBA Community Member: Environmental Cohort; Co-Founder, Equity Research Team

Lucia Castello, Oakland A's Waterfront Ballpark District at Howard Terminal CBA Community Member: Education Cohort; Co-Founder, Equity Research Team

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O-46 Save the Bay

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April 26, 2021

Peterson Vollmann, Planner IV
City of Oakland Bureau of Planning
250 Frank H. Ogawa Plaza, Suite 2214
Oakland, CA 94612

RE: Draft Environmental Impact Report on the Oakland Ballpark Waterfront District Project
(Case File No. ER18-016; State Clearinghouse No. 2018112070)

Dear Mr. Vollman:

Thank you for the opportunity to submit comments on the Draft Environmental Impact Report (EIR) on the Oakland Ballpark Waterfront District Project (Howard Terminal ballpark development), the "Project."

For 60 years Save The Bay has been the voice of the Bay, the largest regional organization working to protect and restore San Francisco Bay for people and wildlife. We work to improve the health and safety of the Bay against threats from climate change and pollution, restore crucial wetlands, and connect people of all ages to the Bay shoreline. We also advocate for Bay Smart Communities where nature grows and people thrive, and resilient cities where greater equity and environmental justice create a sustainable future in a time of rapid climate change.

For the last two years, we have communicated clearly and consistently to the Oakland A's leadership, Oakland city officials and the public regarding our concerns about the proposed ballpark and mixed-use development at Howard Terminal. We have urged the A's to play by the rules, follow the applicable laws and regulations, and respect the public process by producing a full impacts and alternatives analysis that enables everyone to judge the Project's true costs, benefits, risks and implications for the Bay, the City of Oakland, and the Bay Area.

We appreciate the cost and effort invested to produce a voluminous Draft Environmental Impact Report. However, the DEIR falls short in several crucial areas that require significant additional information to meet the legal standard of the California Environmental Quality Act (CEQA) before any final approval. Most egregious is the attempt to defer crucial analysis in several areas until after Project approval and certification of the Final DEIR, which would violate the core purpose of providing the public and decision-makers with essential information needed to approve a project.

The DEIR also fails to fully evaluate a range of reasonable alternatives to the Howard Terminal location by inadequately assessing benefits of the Oakland Coliseum site that already hosts a similar ballpark facility, offers compatible land use designations, and features already constructed public transit and road access. Per CEQA's own guidelines, the Coliseum site "would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project." 14 Cal. Code Regs. § 15126.6(a). The DEIR misinforms and misleads the public by not accurately presenting the significant environmental

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O-46-1 This is a general comment that includes introductory remarks and serves to introduce the more specific comments that are responded to in detail below. As a result, no specific response is provided here. See also Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*.

O-46-2 See Consolidated Response 4.10, *Alternative 2: The Off-Site (Coliseum Area) Alternative*.

O-46-1

O-46-2

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O-46-2	benefits, lesser impacts, lower costs, and greater feasibility of developing the Project at the Coliseum site, rather than Howard Terminal.
O-46-3	<p><u>These omissions must be corrected and the DEIR must be recirculated for public comment and review.</u> Without significant additional analysis and information, the DEIR fails to provide a sufficient basis for public evaluation and agency consideration of the project at Howard Terminal.</p> <p>Among the many deficiencies in the DEIR, our comments here focus on two areas where the document's inadequacies create particular threats to the San Francisco Bay and conflict with the laws and regulations that protect it.</p> <p>Toxic Contamination Hazards</p> <p>The DEIR fails to provide adequate information about how the Project would overcome the toxic contamination hazards on the Howard Terminal site that currently prohibit the Project's proposed uses, including human habitation and residential uses, under existing Land Use Covenants in force there. The DEIR improperly defers that analysis.</p> <p>Toxics present may include polycyclic aromatic hydrocarbons, volatile organic compounds, petroleum hydrocarbons, heavy metals, cyanide and other hazardous substances. Disturbance of the capped contamination on site presents significant risks and challenges as groundwater levels there may already be near the surface, likely fluctuating daily with the tides, and subject to rising sea levels in the near future due to climate change.</p> <p>However, the DEIR does not disclose whether the Project would leave contamination in place and cover it, remove contamination entirely, or some other alternative or combination. The risks to the public and the environment of the toxic contamination itself, and potential impacts and costs of its removal or remediation, are not evaluated in the DEIR but deferred to some future process by other agencies at an unknown time. This leaves the city and the public in the dark about impacts, alternatives and costs of toxic mitigation, and future risks of exposure or migration of toxics through groundwater and sea level rise. By deferring disclosure and decisions about toxic remediation to the state's Department of Toxic Substances Control (DTSC), after certification of a final EIR, the document fails to meet CEQA's basic requirement to provide public information for informed choices by the City of Oakland.</p> <p>A legally sufficient EIR must not only include thorough analysis of the toxic contamination but also disclose how that contamination would be remediated, the impacts to human health and the environment of that remediation activity, and proposed mitigation of unavoidable significant impacts from all of that activity.</p> <p>The City of Oakland and the Bay Area public deserve and require an EIR that meets the A's environmental commitment to a full cleanup of toxic contamination on the Howard Terminal site to make it safe for the proposed uses, privately financed so as not to burden city or state</p>
O-46-4	

O-46-3 See Responses to Comments O-46-1, O-46-2, and O-46-4 through O-46-15. The City has prepared the EIR in accordance with CEQA requirements to inform both the public and decision makers of the environmental consequences of implementing the Project. As explained in Consolidated Response 4.3, *Recirculation of the Draft EIR*, although information has been added to the Draft EIR in response to comments and as City-initiated updates, no significant new information (e.g., information leading to a new significant impact or a substantial increase in the severity of a significant impact) has been added since publication of the Draft EIR. Consequently, the Draft EIR need not be recirculated.

O-46-4 This comment has several topics, each addressed below.

Remediation Requirements

The Draft EIR describes the management of contaminated materials in Section 4.8.3, *Significance Criteria, Approach to Analysis, Remediation and Mitigation of Contaminated Materials*. This section describes the proposed actions related to contaminated materials on-site which includes removal of some contaminated fill and soil, the encapsulation of some fill and soil, the management of soil vapor and groundwater, and institutional controls.

In addition, and as discussed in the Draft EIR in Section 4.8.2, *Regulatory Setting*, under *Land Use Covenants*, the Project site is subject to existing land use covenants (LUCs), operations and maintenance agreements, soil and groundwater management plans, and risk management plans, all enforced by the California Department of Toxic Substances Control (DTSC), the regulatory agency with jurisdiction. These LUCs and their associated plans would be replaced and consolidated and require approval by DTSC before commencement of construction to account for the changes to the Project site. See Consolidated Response 4.16, *Remediation Plans, Land Use Covenants, and Human Health and Ecological Risk Assessment*, for further explanation regarding substantive requirements of these replacement documents.

Deferral of Mitigation

See Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*, for a discussion of the formulation of mitigation measures for the Project, including those related to hazardous materials. The mitigation measures provided in the Draft EIR would ensure that these

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regulatory requirements are met prior to issuance of grading, building, or construction permits, and prior to issuance of certificates of occupancy or similar operating permits for new buildings and uses. With implementation of the mitigation measures, the impacts relative to hazardous materials would be reduced to less than significant.

Sea Level Rise

For a discussion of sea level rise scenarios and effects on the Project site under the proposed Project, see Response to Comment O-27-59, A-7-6 and A-7-8.

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taxpayers. Deferring full disclosure of the analysis, impacts and costs of that activity suggests that the A's may intend to avoid remediation of contamination necessary to meet the legal standards for the proposed Project.

Seaport Priority Use

The DEIR acknowledges that the Howard Terminal site lies within the Port of Oakland and is currently designated as a seaport priority use area within the San Francisco Bay Conservation and Development Commission's (BCDC) jurisdiction. Although BCDC could determine to remove the Howard Terminal project site from the port priority use designation in its Seaport Plan and adopt Bay Plan amendments that would facilitate the Project at Howard Terminal, the DEIR should not presume BCDC will do so.

O-46-5

To consider removing a port priority use area designation, the Seaport Plan requires that BCDC evaluate the impacts of a proposed removal on the region's capacity to handle the amount of ocean-going cargo projected to pass through the Bay Area ports. In essence, to justify removing Howard Terminal from port priority use designation, BCDC would need to find that the Howard Terminal site is not likely to be needed for shipping or associated activities including truck staging, equipment storage, and cargo handling, based on cargo forecasts and evaluation of alternative regional capacity. Ballparks and housing may be established in numerous locations throughout the Bay Area; shipping and associated activities cannot. Prior development of the San Francisco Bay shoreline, protection of significant shoreline areas for fish and wildlife habitat and public access, transportation infrastructure for movement of goods and cargo, and natural geographic and bathymetric features all limit the feasibility of creating port capacity in shoreline areas not already designated for port priority use. BCDC therefore faces a very high standard for removing Howard Terminal or any other existing site from port priority use.

Information presented to date to BCDC's Seaport Plan Advisory Committee indicates clearly that Howard Terminal is and will be needed as a maritime facility to meet regional shipping capacity needs for decades into the future. The A's may have recognized this hurdle as significant, even though the DEIR does not acknowledge it, because the team previously floated state legislation to override some agencies oversight of activities at Howard Terminal to facilitate placing housing in an industrial seaport area.

O-46-6

While the DEIR briefly notes "In the absence of such [BCDC] amendments, the Project could not proceed," the document should underscore this as a significant deficiency of the Howard Terminal site and should disclose that the absence of such regulatory barriers at the Coliseum site is another advantage of the Coliseum site alternative.

O-46-7

The DEIR also fails to accurately and fully characterize all current uses at Howard Terminal and the impacts of displacing those uses. Removing truck parking from Howard Terminal, for example, would worsen the existing truck parking problems in Oakland, and would likely increase pollution, traffic and other impacts in the adjacent West Oakland neighborhood and other areas of the city. The DEIR does not indicate where trucking, container storage and other

O-46-5

This comment summarizes the laws and plans implemented by BCDC. BCDC's responsibilities under the McAteer-Petris Act and related laws are separate and distinct from the requirements of CEQA. The fact that BCDC is required to make certain findings with respect to the Project does not alter the required analyses under CEQA or mandate that information be included in the EIR. The Draft EIR does not presume that BCDC would approve Seaport Plan and Bay Plan amendments, since those actions are under the jurisdiction of BCDC. Rather, the Draft EIR acknowledges that the amendments would be required for the proposed Project to ultimately proceed. As discussed in the Draft EIR, AB 1191 establishes a deadline for BCDC to determine whether to remove the Project site from the Seaport Plan's port priority use designation and make conforming changes to the Bay Plan. With such removal from the Seaport's Plan port priority use designation and changes to the Bay Plan, the Project's potential conflicts with the Seaport Plan and corresponding Bay Plan policies could be resolved. With respect to the portion of the Project site subject to BCDC jurisdiction, the Port and City would require as conditions of their approvals that the Project sponsor obtain the necessary Seaport Plan and Bay Plan amendments. With those amendments, the Project would not conflict with BCDC regulations governing shoreline use and the impact would be less than significant. In the absence of such amendments, the Project could not proceed as stated on Draft EIR p. 4.10-56.

O-46-6

This comment summarizes the laws and plans implemented by BCDC. BCDC's responsibilities under the McAteer-Petris Act and related laws are separate and distinct from the requirements of CEQA. The fact that BCDC is required to make certain findings with respect to the Project does not alter the required analyses under CEQA or mandate that information be included in the EIR. See Response to Comment O-46-5 and Consolidated Response 4.10, *Alternative 2: The Off-Site (Coliseum Area) Alternative*.

O-46-7

See Consolidated Response 4.5, *Truck Relocation*. Section 6.2.2 of the Draft EIR describes the Off-Site (Coliseum Area) Alternative and states that "No physical changes would occur at Howard Terminal, which would remain in use by the Port of Oakland for maritime uses. Uses and activities at Howard Terminal would continue to include truck parking, loaded and empty container storage and staging, longshoreperson training facilities, and occasional berthing of vessels for repair or storage."

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current activities would be relocated, nor what air quality, transportation, safety, economic and other impacts would be imposed on surrounding communities or other areas of the Port by such relocation. Complete analysis of these impacts should be added to the document and factored into the analysis of alternatives. This would illuminate a benefit of locating the Project at the Coliseum site – avoiding displacement of port activity and the significant negative impacts of that displacement.

We also share concerns about the inadequacy of this DEIR that have been articulated in detail in other comments, in the following areas:

O-46-8

Conflicting Land Uses; Impacts on Port Operations and Jobs

The DEIR does not adequately analyze and disclose the significance of the numerous conflicts that the Project's ballpark, new residential and office/commercial uses pose to adjacent Port activities, including: increased car, pedestrian, and bike traffic sharing access routes with seaport traffic; additional traffic at rail crossings at-grade; noise and diesel exhaust emissions, and other impacts. These impacts pose a significant environmental justice issue in West Oakland, which has suffered disproportionate negative impacts from historic decisions over many years. The DEIR also ignores the potential effects of gentrification on the surrounding communities. The DEIR notes but does not adequately characterize or address the impact of conflicting uses on Port operations, or the economic and jobs impact of those conflicts, including transportation delays on surface streets and railroads during events and non-event operations of new residential and commercial facilities.

O-46-9

Transportation and Public Safety

The Howard Terminal site is not served by public transit or easily accessible freeway off-ramps and is separated from downtown Oakland by Interstate 880 and busy railroad tracks. The DEIR does not adequately address the impacts on access to the Project site of trains blocking at-grade rail crossings, which create limitations on the Project's use-as-designed, and risks to emergency services and first responders to the much larger concentrations of people the Project would draw to the site. The DEIR should address how the Project will overcome train blockages and the significant impacts to walkability, site access, and emergency services, including the costs and regulatory challenges to create sufficient additional grade-separated access to the site and the feasibility of such measures. The DEIR's alternatives analysis should also underscore that the Coliseum site currently has superior transit and road access.

O-46-10

Climate Change

The DEIR suggests that Project emissions would not achieve the "net zero increase in greenhouse gas emissions" required by AB 734, especially compared to baseline conditions at Howard Terminal, primarily because of inadequate transportation planning and infrastructure.

O-46-11

- O-46-8 See Consolidated Response 4.4, *Port Operations and Land Use Compatibility*.
- O-46-9 See Consolidated Response 4.14, *Environmental Justice*, and Consolidated Response 4.13, *Gentrification and Indirect Housing Displacement*.
- O-46-10 See Consolidated Response 4.4, *Port Operations and Land Use Compatibility*. See Consolidated Response 4.6, *Rail Safety, Grade Crossing, and Grade Separation*. See also Consolidated Response 4.10, *Alternative 2: The Off-Site (Coliseum Area) Alternative*
- O-46-11 See Consolidated Response 4.6, *Rail Safety, Grade Crossing, and Grade Separation*.

See Consolidated Response 4.7, *Parking*, regarding how transportation would be managed for ballpark events. The response also summarizes several mitigation measures in the Draft EIR that prioritize non-automobile travel either through programs to reduce automobile trips or infrastructure improvements that prioritize transit, walking, and bicycling, which would contribute to minimizing Project vehicle traffic.

See Consolidated Response 4.7, *Parking*, regarding how transportation would be managed for ballpark events. The response also summarizes several mitigation measures in the Draft EIR that prioritize non-automobile travel either through programs to reduce automobile trips or infrastructure improvements that prioritize transit, walking, and bicycling, which would contribute to minimizing Project vehicle traffic.

The Draft EIR finds that through implementation of Mitigation Measure GHG-1, the Project would achieve the "no net additional" requirement and the impact would be less than significant (Draft EIR p. 4.7-66):

As discussed above, with implementation of Mitigation Measure GHG-1, the Project would result in no net additional GHG emissions. Mitigation Measure GHG-1 provides a list of required measures and a menu of additional measures for on-site and off-site GHG reduction measures, as well as a monitoring and reporting program enabling the City to actively manage compliance with the mitigation, and ensuring that the mitigation would effectively reduce project emissions to the "no net additional" threshold of significance.

O-46

COMMENT

RESPONSE

The commenter claims that inadequate transportation planning and infrastructure would prevent the Project from achieving the “no net additional” requirement, but does not provide any citation, example, or evidence to support this claim.

O-46-12 Regarding the impacts of the proposed Project to local and regional air quality, the Draft EIR thoroughly evaluates these impacts in Section 4.2. Impact AIR-1 evaluates regional emissions of criteria pollutants associated with project construction. Impact AIR-2 evaluates regional emissions of criteria pollutants associated with project operations and include a health impacts assessment of local and regional increases in ambient ozone and PM_{2.5} concentrations. Impact AIR-3 evaluates impacts from carbon monoxide concentrations associated with project-related vehicle traffic. Impact AIR-4 evaluates impacts from local exposure of nearby existing sensitive receptors to toxic air contaminants generated by project construction and operations. Impact AIR-4 evaluates impacts from local exposure of future onsite sensitive receptors to toxic air contaminants generated by project construction and operations. Impact AIR-6 evaluates potential odor impacts to nearby sensitive receptors. Impact AIR-1.CU evaluates cumulative regional air quality impacts associated with criteria pollutants. Impact AIR-2.CU evaluates cumulative health risk impacts on sensitive receptors. These impacts cover all checklist items of State CEQA Guidelines Appendix G. As such, the Draft EIR evaluates all local and regional air quality impacts associated with the proposed project as required by CEQA.

Section 4.2 also identifies numerous mitigation measures to reduce air quality impacts, including Mitigation Measures AIR-1a, AIR -1b, AIR-1c, AIR-1d, AIR-2a, AIR-2b, AIR-2c, AIR-2d, AIR-2e, AIR-3, AIR-4a, AIR-4b, AIR-2b, AIR-1.CU, AIR-2.CU, TRANS-1a, TRANS-1b, TRANS-1c, TRANS-1d, TRANS-1e, TRANS-2a, TRANS-2b, TRANS-2c, TRANS-3a, and TRANS-3b. See Chapter 7, *City-Initiated Updates and Errata in the Draft EIR*, for the revised mitigation measure language.

Finally, Chapter 6, *Alternatives*, thoroughly evaluates all project alternatives, including Alternative 2, the Off-Site (Coliseum Area) Alternative, and compares the impacts of each alternative with the impacts of the proposed project, as required by CEQA.

O-46

COMMENT

RESPONSE

5

O-46-12

The severity of Project impacts to local and regional air quality should be disclosed in greater detail, and actions to avoid or mitigate those impacts must be identified. This information should also be integrated into the comparative analysis with the Coliseum site and other alternatives.

Affordable Housing

O-46-13

The DEIR fails to specify how many affordable units the Project would provide on-site or off-site, or whether the A's propose instead to pay an affordable housing fee that would not guarantee affordable housing benefits to the West Oakland community. These alternatives and their potential impacts on transit and other environmental issues must be presented and analyzed thoroughly, including for the public and city officials to evaluate whether the Project would improve or worsen historic environmental injustices in neighborhoods surrounding the Howard Terminal and Oakland Coliseum sites. This analysis is improperly deferred.

Public Funding

O-46-14

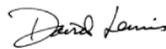
The A's, the Mayor of Oakland and others have insisted that this project will be fully privately funded. The DEIR fails to provide a complete accounting of the costs of the Project, how it will be financed and what costs would be borne by the City of Oakland or other public entities. The DEIR is also unclear what funding for Howard Terminal project implementation would be dependent on redevelopment at the Coliseum site and thereby a Project component that should be analyzed in the DEIR. Significant environmental effects could result from features of the Project or proposed mitigation measures that do not have a reliable source of funding, yet the DEIR does not address these potential impacts.

O-46-15

For all of these reasons, the DEIR should be revised and recirculated for additional public comment before certification.

Thank you for consideration of these comments.

Sincerely,



David Lewis
Executive Director

O-46-13 See Consolidated Response 4.12, *Affordable Housing*, and Consolidated Response 4.14, *Environmental Justice*.

O-46-14 See Consolidated Response 4.22, *General Non-CEQA*, including the discussion of infrastructure funding in Section 4.22.2, *Financial Considerations, Community Benefits, and Other Miscellaneous Opinion*. See also Consolidated Response 4.1, *Project Description*, which includes a discussion of infrastructure funding relevant to the proposed Project and CEQA.

O-46-15 See Consolidated Response 4.1, *Project Description*; Consolidated Response 4.3, *Recirculation of the Draft EIR*; and Consolidated Response 4.22, *General Non-CEQA*.

O-47 Sierra Club

COMMENT

RESPONSE

Dear Mr. Vollmann,

Please find our Sierra Club comments on the subject EIR attached. Please do not hesitate to contact us should you have any questions. Thank you for your consideration!

Respectfully,
Igor Tregub (he/him)
on behalf of the Sierra Club

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COMMENT

RESPONSE



April 27, 2021

Peterson Vollmann, Planner IV
City of Oakland Bureau of Planning
250 Frank H. Ogawa Plaza, Suite 2214
Oakland, CA 94612
PVollmann@oaklandca.gov

Submitted electronically at <https://comment-tracker.esassoc.com/oaklandsportseir/index.html>.

Re: Comment Letter on Draft EIR for Oakland Waterfront Ballpark District Project (Case File No. ER18-016; State Clearinghouse No. 2018112070)

Dear Mr. Vollmann:

The Sierra Club is concerned about significant environmental and environmental justice impacts presented by the Oakland A's proposed move from the Coliseum to a new stadium at the Howard Terminal at the Port of Oakland. Almost one year ago, the Sierra Club presented comments to Mayor Schaaf and Members of the Oakland City Council expressing these concerns.¹ Unfortunately, the Draft Environmental Impact Report for the Oakland Waterfront Ballpark District Project (DEIR) fails to adequately disclose to the public or mitigate the proposed Project's significant environmental impacts, including to air quality, greenhouse gas emissions and transportation/circulation, hazardous materials, water quality, and biological resources, among others.

Perhaps the most concerning deficiency is the DEIR's misleading comparison of alternatives, including Alternative 2 - a project at the Coliseum Site that would avoid or lessen almost all environmental impacts and improve environmental justice for Oakland residents. The Coliseum Site is already approved for use as a stadium (and would not create land use conflicts such as that at the Howard Terminal by bringing thousands of residents and visitors to an area surrounded by industrial and heavy railway uses that cannot be moved from the Seaport and transportation corridor location). But where the Howard Terminal is a busy industrial and commercial transportation center, the Coliseum Site is transit-accessible, and development at that location would lift up surrounding East Oakland neighborhoods, rather than displacing maritime businesses and workers. Development at Howard Terminal would create numerous significant environmental impacts that would not occur at the Coliseum location, including the following:

¹ Sierra Club San Francisco Bay letter to Mayor Libby Schaaf and Members of the Oakland City Council re Sale of Coliseum Property to Oakland Athletics (June 29, 2020), incorporated herein by reference.

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O-47-1 This is a general comment that includes introductory remarks and serves to introduce the more specific comments that are responded to in detail below. As a result, no specific response is provided here.

O-47-2 See Consolidated Response 4.10, *Alternative 2: The Off-Site (Coliseum Area) Alternative*, and Consolidated Response 4.14, *Environmental Justice*.

O-47-1

O-47-2

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O-47-3 1. Transportation Impacts. Howard Terminal has insufficient transit access and would require residents and visitors to make at-grade railroad crossings perhaps multiple times per day. This creates a significant safety risk, including to pedestrians and bicyclists who might try to cross the tracks when trains are stopped, as the DEIR acknowledges is a common occurrence. The DEIR makes no study of such public safety risks, including to children who might be drawn to climb on or around the trains. This transportation conflict also could cause motorists to circle or idle for significant periods of time, increasing air emissions that were not adequately studied by the DEIR (see below). The DEIR does not adequately study, present, or adopt feasible mitigation. The aerial gondola variant is far-fetched and not reliable, nor required and does not mitigate transportation and public safety impacts. Additional transportation and circulation comments are attached to this letter.

O-47-4

O-47-5 2. Air Quality and Climate Change. The greenhouse gas emissions from transportation to and from the Project is a major concern for a site that would attract an average of 20,500 people to each of 80+ home games per season and events almost every day of the year, not to mention residents and employees. Because the Howard Terminal is not well-served by public transit (the nearest BART stations – 12th Street and Lake Merritt – are more than a mile away and separated from the site by Interstate 880 and busy railroad tracks as stated above), it is likely that numerous visitors would drive and create areas of localized significant air quality impacts when circling to find parking, extending out into nearby neighborhoods, and idling when stopped at a railroad crossing. With tens of thousands of visitors several times per week, air emissions would negatively impact nearby residents. The DEIR failed to adequately study or mitigate this foreseeable increase in emissions. (To the contrary, both BART and Amtrak have stops right at the Coliseum, where the area has been developed and designed to serve transportation needs for large events.)

O-47-6 In Chapter 4-5 (Energy), the DEIR gives the Project credit for people buying electric vehicles (EVs) because the Project will install EV charging stations (DEIR at 37). However, the DEIR does not provide any evidence of such a cause-and-effect result. There is no study to support the claim that people will be induced to buy an EV because of a charging station at the Project. Moreover, the DEIR does not indicate whether or to what extent EV charging stations would benefit residents. The DEIR does not present information on any estimated number of future occupants that would buy EVs because of charging stations at their parking spaces, or how much of an effect this would have on them. Presumably occupants (who would be interested in purchasing EVs) might already have EVs. This is not taken into account and the DEIR's conclusion that energy impacts would be mitigated to a level that is less than significant is unsupported. See DEIR at 4-5-37, 38, 4-5-42, 43, 4-5-47, 47.

O-47-7 Operational diesel generators according to the DEIR present an excess cancer risk of 4 - 9 per million, which appears excessive in the context of a new ballpark that can be planned to accommodate lighting, food service, and other distributed electricity needs. Diesel generators are utilized in recreational areas that were never planned for electrical hookups, but Howard Terminal is being planned at a time when operational diesel generators are known to emit large quantities of diesel particulate matter, which can cause excess cancer risk and exacerbate asthma for local event participants and the surrounding

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O-47-3 See Consolidated Response 4.6, *Rail Safety, Grade Crossing, and Grade Separation*.

This comment also raises skepticism that the Gondola can be built and that it can provide a substantial number of trips. Draft EIR Chapter 5.2 describes the Gondola Variant including the engineering and environmental affects, and was based on the conceptual engineering studies prepared by SCJ Alliance titled *Oakland A's Ball Park Access Gondola, Conceptual Design Summary* (dated April 2019). As noted in Draft EIR Section 5.2 (p. 5-67), the gondola system would be designed to transport a maximum of 6,000 passengers per hour which can be accomplished with cabin headways of 20 to 25 seconds. Also see Response to Comment A-13-4 regarding the Gondola. The comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft EIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Project.

O-47-4 This comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft EIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the Proposed Project.

O-47-5 Greenhouse gas emissions associated with transportation to and from the Project site are calculated and evaluated under Impact GHG-1 of the Draft EIR, Section 4.7. See Tables 4.7-6 and 4.7-7 (see Appendix AIR.1 for additional information). These emissions would be mitigated to a less-than-significant impact by achieving "no net additional" GHG emissions required by Mitigation Measure GHG-1 and AB 734.

The Draft EIR also evaluates both local and regional air quality impacts associated with transportation in Impact AIR-2, AIR-4, and AIR-5. Impact AIR-2 evaluates regional criteria pollutants associated with project operations, including vehicle traffic, and identifies a number of mitigation measures to reduce this impact. The Draft EIR finds that this impact would remain significant and unavoidable after mitigation.

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As discussed in Draft EIR Chapter 3, *Project Description*, the Project is located within a one-mile area that includes Lake Merritt, 12th Street, and West Oakland BART stations. Impact AIR-3 in Section 4.2 *Air Quality* discusses the localized effects on air quality due to increased traffic from Project operations. As stated in Draft EIR p. 4.2-96 through 97, per the BAAQMD CEQA Guidelines' screening criteria for CO, localized CO concentrations should be estimated for projects in which (a) project-generated traffic would conflict with an applicable congestion management program established by the county congestion management agency or (b) project-generated traffic would increase traffic volumes at affected intersections to more than 44,000 vehicles per hour (or 24,000 vehicles per hour where vertical and/or horizontal mixing is substantially limited, such as tunnels, parking garages, bridge underpasses, natural or urban street canyons, and below-grade roadways). In Oakland, only the MacArthur Maze portion of Interstate 580 exceeds the 44,000 vehicles per hour screening criteria, which is approximately 2 miles northwest of the Project site and would therefore not result in elevated CO concentrations at the Project site. Further, ambient CO standards have not been exceeded in the Bay Area for over a decade, largely due to reformulated fuels in California and vehicle emissions controls, as discussed above. Therefore, development under the proposed Project would not be required to estimate localized CO concentrations as it would not contribute to CO concentrations exceeding CAAQS.

Additionally, the proposed Project would be designed and constructed to achieve a 20 percent vehicle trip reduction for the ballpark via implementation of a Transportation Management Plan (TMP) and a 20 percent vehicle trip reduction for non-ballpark land uses via implementation of a Transportation and Parking Demand Management Plan (TDM). These plans, will aid in reducing the number of single-occupant vehicles and to increase the use of rideshare, transit, bicycle and walk modes for trips to and from the Project site. These plans are required by AB 734 and proposed as part of the Project but are also included as mitigation measures and in the Project's mitigation monitoring and reporting program (MMRP) to ensure their effectiveness and monitoring.

Impact AIR-4 and AIR-5 evaluate local impacts on nearby existing sensitive receptors and new onsite sensitive receptors from exposure to the Project's TAC emissions. The Draft EIR calculates health risks associated with this exposure, consistent with the BAAQMD CEQA Guidelines, and identifies

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numerous mitigation measures to reduce these impacts to less-than-significant levels. Further, Section 4.15, *Transportation and Circulation*, thoroughly evaluates the Project's transportation impacts and denies many mitigation measures to reduce these impacts.

Section 4.2 identifies numerous mitigation measures to reduce air quality impacts, including Mitigation Measures AIR-1a, AIR-1b, AIR-1c, AIR-1d, AIR-2a, AIR-2b, AIR-2c, AIR-2d, AIR-2e, AIR-3, AIR-4a, AIR-4b, AIR-2b, AIR-1.CU, AIR-2.CU, TRANS-1a, TRANS-1b, TRANS-1c, TRANS-1d, TRANS-1e, TRANS-2a, TRANS-2b, TRANS-2c, TRANS-3a, and TRANS-3b. See Chapter 7, *City-Initiated Updates and Errata in the Draft EIR*, for the revised mitigation measure language.

Therefore, the Draft EIR adequately studies and mitigates all foreseeable increases in emissions associated with the proposed project, including localized emissions.

O-47-6 See Responses to Comments O29-1-22 through O29-1-28. See also Electric Vehicle Assumptions for the Oakland Waterfront Ballpark District Project (Ramboll, 2021) for a detailed technical analysis that supports the link between EV charging infrastructure and EV travel, additional detail on emission reduction calculation methods, new data and information on CARB's 2021 Mobile Source Strategy VISION modeling update, an evaluation of the optimal number of EV charging spaces for the proposed Project, and the emission reduction potential of medium- and heavy-duty EV charging infrastructure.⁹⁰ Although this comment is directed at the energy effects of the Project's EV charging spaces, the same issues discussed for air quality and GHG emissions in the referenced responses above apply to energy. In addition, Section 4.5 *Energy* does not determine that Impact ENE-1 is less than significant based solely on the modeled benefit of the Project's EV chargers; the impact determination is based on several factors regarding the Project's anticipated energy demand. Removing the modeled benefit of the Project's EV chargers on energy use would not change the impact findings.

O-47-7 The cancer risk associated with the exposure of existing offsite sensitive receptors to *unmitigated* diesel generator TAC emissions would be four per

⁹⁰ Ramboll, 2021. Electric Vehicle Assumptions for the Oakland Waterfront Ballpark District Project, November 3, 2021.

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million for Scenario 1 and nine per million for Scenario 3 at the MEIR location (Draft EIR p. 4.2-100).

As indicated on Draft EIR p. 4.2-44, the diesel generators are for emergency use during power outages; the generators would not be used routinely but rather serve as a back-up power source should a power outage occur. Emissions would also occur during the routing testing and maintenance of all 17 diesel powered generators. To reduce emissions associated with operation of the Project, Mitigation Measure AIR-2c is required (see Draft EIR p. 4.2-76). After mitigation, the cancer risk at the existing offsite sensitive receptor location associated with exposure to diesel generator TAC emissions would be reduced to 0.15 per million for Scenario 1 and 0.049 per million for Scenario 3 at the MEIR location (Draft EIR p. 4.2-107). This is a reduction of 96-99 percent compared to the unmitigated cancer risk values.

Further, Mitigation Measure AIR-2c has been revised to require alternatives to diesel power emergency backup generators such as battery storage or hydrogen fuel cells whenever possible when technology is available and approved for use by Fire Department. See Response to Comment O-45-7. See Chapter 7, *City-Initiated Updates and Errata in the Draft EIR*, for the revised mitigation measure language.

Integrating distributed electrical outlets at the Project site would not reduce emissions or health risk impacts associated with the Project's emergency diesel generators. As noted above, the generators would be used in emergency situations when electrical power is not available from the grid. The generators are needed to supply emergency power to existing outlets; additional outlets would not generate new electricity or eliminate the need for the emergency generators.

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- O-47-7 | community. The DEIR should implement a mitigation measure to integrate distributed electrical outlets to minimize or eliminate use of operational diesel generators.
- O-47-8 | Mitigation of Construction Emissions - The DEIR identifies mitigated excess lifetime cancer risk, chronic hazard index, and annual average PM_{2.5} concentration of the proposed project at the new MEIR. The EIR outlines a menu of mitigation options, but lacks clarity as to the timeline and process for selecting and verifying the adequacy of mitigation measures.
- O-47-9 | A deduction is applied for greenhouse gas (GHG) emissions under existing conditions at the Oakland Coliseum as part of its calculation of “no net increase” of GHG emissions. However, the DEIR does not state that in applying such a deduction, that any future use of or activity on the existing site will need to at minimum acquire a compliant GHG offset product for operations or new uses that were credited to the Howard Terminal site. Failure to clarify this issue would raise a compliance issue with AB 734 standards, and the adequacy of this EIR for GHG mitigation measures.
- O-47-10 | Greenhouse gas emissions associated with construction of the Howard Terminal project are “amortized” over 30 years despite occurring in specific years of construction activity. The DEIR is unclear as to why this amortization is relevant from an environmental perspective. Is the Project seeking to defer mitigation of its upfront construction emissions across thirty years, despite the atmospheric forcing impacts of greenhouse gases starting in the year that the emissions occurred in? The EIR should clarify how construction emissions are mitigated as they are emitted, and to account for any delay to mitigation based on an accepted scientific rationale based on atmospheric forcing equivalency.
- O-47-11 | 3. **Sea Level Rise, Water Quality, and Flooding.** The depth to groundwater at the Howard Terminal site is already shallow and with rising sea level and high tide or storm events, contaminants in the ground water are at risk to migrate, including vertically or to the Bay. Sea levels are expected to rise dramatically in the coming decades, which could flood parts of West Oakland, including the Howard Terminal. The DEIR does not adequately disclose or mitigate these risks. The DEIR indicates that additional fill (soil) will be placed on the site, but does sufficiently demonstrate that sea level rise will not therefore continue to create risks of contaminated groundwater migration or other risks, including the increased potential for liquefaction-induced damage during earthquakes (see below). The proposed “wall” could also affect groundwater flow and levels in and around the Project site, but these effects are not studied or disclosed, nor are potential impacts to biological resources during in-water or other work. In addition, trucking in the enormous amounts of fill required will cause air emissions and greenhouse gas emissions that could be avoided by use of the Coliseum Site.
- O-47-12 |
- O-47-13 | Moreover, raising the Project site that is essentially at or near sea level (Bay level) could subject adjacent shorelines to increased wave energy and higher storm surges as sea level rises. Recent studies (see JGR OCEANS, *Assessing the Influence of Shoreline Adaptation on Tidal Hydrodynamics: The Role of Shoreline Typologies*, by Michelle A. Hummel & Mark T. Stacey, December 29, 2020) suggest these impacts can be severe and are not necessarily limited only to adjacent properties. In coastal bays,

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- O-47-8 | Impacts AIR-4 and AIR-5 evaluate the proposed Project’s health risk impact on existing offsite and new onsite sensitive receptors. Mitigation Measures AIR-1c, AIR-2c, AIR-2d, AIR-2e, AIR-3, AIR-4a, and AIR-4b are identified to reduce these impacts to less-than-significant levels (Draft EIR p. 4.2-104 through 4.2-108 and 4.2-113 through 4.2-119). Mitigation Measure AIR-2e includes a menu of additional measures and a performance standard; see Responses to Comments A-11-2, A-11-3, O29-1-33, and O29-1-34 for additional discussion. See also Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*, for a discussion of mitigation measure deferral.
- O-47-9 | All other mitigation measures identified to reduce health risks require specific actions and include specific implementation timelines and requirements, contrary to the commenter’s claim. Further, all mitigation measures will be implemented and enforced by the City through the Mitigation Monitoring and Reporting Program (MMRP). The MMRP will ensure that all mitigation measures are enforced, and their effectiveness is monitored.
- O-47-9 | AB 734 requires the Project to achieve “no net additional” GHG emissions compared to existing baseline conditions.⁹¹ The CARB Determination defines existing baseline conditions as: “existing condition at the Proposed Project site at the Port of Oakland’s Charles P. Howard Terminal and adjacent parcels, located along the Inner Harbor of the Oakland-Alameda Estuary.” Through AB 734, the proposed Project would result in no new emissions compared to the existing baseline. If new activities were to occur at the existing Coliseum site that generate “new” GHG emissions, such as vehicle trips associated with new commercial or retail uses, they would be unrelated to the Project and thus not need to be analyzed in the Draft EIR for the proposed Project. These activities might also be subject to CEQA review themselves and therefore have to conduct their own analysis of GHG impacts. AB 734 makes no requirement of future activities at the Project site not associated with the Project. Further, CEQA only requires an analysis of the Project’s direct and indirect effects, and does not require analysis of future, not reasonably foreseeable or speculative actions or activities at the Project site unrelated to the Project. State CEQA Guidelines Section 15126.2(a) states [emphasis added]:

⁹¹ CARB, 2020. *CARB Determination for the AB 734 Oakland Waterfront Ballpark District Project*, letter dated August 25, 2020 to Scott Morgan, Chief Deputy Director, Office of Planning and Research.

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An EIR shall identify and focus on the significant environmental effects of the proposed project on the environment. In assessing the impact of a proposed project on the environment, the lead agency should normally limit its examination to changes in the existing physical conditions in the affected area as they exist at the time the notice of preparation is published, or where no notice of preparation is published, at the time environmental analysis is commenced. Direct and indirect significant effects of the project on the environment shall be clearly identified and described, giving due consideration to both the short-term and long-term effects.

As noted in Response to Comment A-11-7, the City would not use the A's related emissions at the Coliseum as a baseline for any future CEQA project. This means that any future project would be unable to take a deduction in emissions associated with A's related activities at the Coliseum, and therefore these emissions would not be double-counted.

O-47-10 In the Draft EIR, construction emissions are amortized over a 30-year period to illustrate the Project's GHG emissions impact over its anticipated 30-year lifetime, starting with Year 8, as shown in Table 4.7-7 (Draft EIR p. 4.4-55). As discussed in Response to Comment O-26-05, GHG emissions have long atmospheric lifetimes of 100 years or more, and the atmospheric warming impact of GHG emissions produced in a one year persists for many years into the future, so a 30-year lifetime is appropriate. Mitigation Measure GHG-1: Preparation and Implementation of a GHG Reduction Plan does not defer mitigation of construction emissions. Mitigation Measure GHG-1 accounts for the Project's emissions in a different manner and requires an updated GHG Reduction Plan for each phase or sub-phase of development that calculates the actual quantity of emissions from construction and operation of the phase or sub-phase for the life of the Project (defined as 30 years of operation), calculates the reductions necessary (including local, direct, and offset credits) to achieve the "no net additional" requirement for the proposed phase or sub-phase, and identifies the specific local reduction measures and offset requirements that will be implemented to meet the threshold for the proposed phase or sub-phase. Mitigation Measure GHG-1 requires that for GHG reduction measures involving the purchase of carbon offset credits for horizontal construction emissions, contracts for purchase of credits shall be entered into prior to issuance of the first grading and/or permit for horizontal construction (P-Job permit) for each construction phase or subphase for

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horizontal construction. For GHG Reduction measures involving the purchase of carbon offset credits for vertical construction emissions, contracts for purchase of credits shall be entered into prior to issuance of the building permit for each building's construction.

Regardless, it is common CEQA practice to amortize construction GHG emissions over the anticipated project lifetime and add these amortized emissions to a project's annual operational emissions at full buildout. This is based on guidance from the South Coast Air Quality Management District's (SCAQMD's) *Interim CEQA GHG Significance Threshold for Stationary Sources, Rules and Plans* document.⁹²

As discussed above, Mitigation Measure GHG-1 requires that the Project achieve the "no net additional" standard; this means that the Project must mitigate its emissions to zero compared to the existing baseline. Mitigation Measure GHG-1 allows for this mitigation to occur through either onsite measures, offsite measures, or offset credits. For the purchase of offset credits, the Project sponsor must purchase the credits before construction begins (Draft EIR p. 4.7-67):

For GHG reduction measures involving the purchase of carbon offset credits for horizontal construction emissions, contracts for purchase of credits shall be entered into prior to issuance of the first grading and/or permit for horizontal construction (P-Job permit) for each construction phase or subphase for horizontal construction and the Applicant shall provide the third-party verification report concerning those credits, and the unique serial numbers of those credits showing that they have been retired. The City shall confirm receipt evidence that the contract has been entered into prior to issuance of the permit and evidence of the of the verification reports and serial numbers prior to completion of the phase.

For GHG Reduction measures involving the purchase of carbon offset credits for vertical construction emissions, contracts for purchase of credits shall be entered into prior to issuance of the building permit for each building's construction, and the Applicant shall provide the third-party verification report concerning those credits, and the unique serial numbers of those

⁹² SCAQMD, 2008. *Interim CEQA GHG Significance Threshold for Stationary Sources, Rules and Plans*, December 5, 2008.

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credits showing that they have been retired prior to issuance of the building permit for each building's construction. The City shall confirm receipt of verification reports and serial numbers prior to permit issuance. See Mitigation Measure GHG-1 for these and additional requirements.

By definition, offset credits represent reductions in GHG emissions that have already occurred in the past and have been verified through rigorous protocols and third-party review. Therefore, the Project's construction emissions will effectively be mitigated before they even occur.

O-47-11 This comment refers to sea level rise and liquefaction. For a discussion of sea level rise scenarios and effects on the Project site under the proposed Project, see Response to Comments O-27-60 and A-12-47.

A liquefaction analysis is presented in Draft EIR Section 4.6, *Geology, Soils, and Paleontological Resources*, Impact GEO-1. The geotechnical analysis provided preliminary recommendations to address liquefaction. Upon completion of the CEQA documentation, the proposed Project would be required by the California Building Code, and by the City of Oakland Building Code and Grading Regulations, to conduct a final geotechnical investigation that would further inform the final Project design and provide recommendations to address all identified geotechnical issues, including liquefaction. Additionally, the Liquefaction Information Memorandum prepared by ENGEO on July 7, 2021 (ENGEO, 2021) provides an explanation and analysis of the effects of liquefaction and recommendations for measures to address which are required as mitigation.

O-47-12 Draft EIR Section 4.9, *Hydrology and Water Quality*, pp. 4.9-21 through 4.9-22 and 4.9-27, provides a discussion of the proposed cutoff wall and potential impacts to groundwater. Potential impacts to biological resources due to in-water work is described in Draft EIR Section 4.3, *Biological Resources* (see Impacts BIO-1, BIO-3, BIO-4, BIO-5, BIO-6, and BIO-1.CU). See also Consolidated Response 4.10, *Alternative 2: The Off-Site (Coliseum Area) Alternative*.

O-47-13 The Hummel and Stacey (2021) study analyzed the effect that protecting each of the thirty Bay shoreline units may have on the other shoreline units. The shoreline unit that includes the Project area is comprised of regional flood protection for the cities of Oakland, Alameda, and San Leandro shoreline

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totaling more than 35 miles, of which the Project site is only 0.6 mile. The study found that the shoreline unit that includes the Project area is not one of the units of Bay shoreline that has larger impacts on other shoreline units: even with two meters of sea level rise, the offsite increases in water level due to protecting all of the Oakland, Alameda, and San Leandro shoreline unit was less than two inches. This limited effect is because this shoreline unit does not have the gradually sloping topography and space for floodwater accommodation that cause larger influences on other shorelines. In addition, the area behind the Project area is intensively developed and would not be suited to store additional flood water. Because the Project area is only a small fraction of its shoreline unit and is not part of a shoreline unit with larger impacts on other shoreline units, the proposed Project would have a negligible effect on flood hazards at other parts of the Bay shoreline.

The Project site public space, e.g., the wharf, is at approximately 7 feet COD, which is above current base flood elevation and an additional three feet of sea level rise.⁹³ Under the medium-high risk aversion scenario, this amount of sea level rise is not anticipated until about 2065. If sea level rise causes flooding becomes frequent enough to substantially impair public access, as described in Mitigation Measure HYD-3, adaptation measures would be implemented, such as parapet walls along the wharf edge or changing the programming and user experience to accommodate infrequent and temporary inundation.

Other studies, conducted by the City of Oakland, the Port of Oakland, and the Bay Conservation and Development Commission, have assessed vulnerability and developed adaptation plans for the regional shoreline that includes the Project area. The proposed Project's adaptation strategy of raising the shoreline to prevent overtopping and inundation of inland areas is consistent with the regional strategies. Implementation of the proposed Project and its adaptation plan through Mitigation Measure HYD-3, as well as collaborating with these regional strategies would keep the Project area from being isolated.

⁹³ Moffat & Nichol, 2021. Coastal Flooding, Proposed Grading Strategy, Sea Level Rise Adaptation, and Public Access on Wharf, Oakland Athletics Howard Terminal Project, July 9, 2021.

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O-47-13 interactions between tides and shoreline infrastructure impact water levels. Understanding how shoreline changes affect tidal dynamics is critical to protecting coastal communities from negative impacts, such as flooding and erosion. We find that protecting individual shoreline segments produces relatively small changes in tidal amplitudes for low increments of sea-level rise but can result in amplification of certain tidal constituents by up to 40% under higher sea-level rise scenarios. Protection of shorelines with gradually sloping topography and space for floodwater accommodation generally has the largest influence on tidal response, both locally and regionally.

Recent presentations to the San Francisco Bay Conservation and Development Commission (BCDC) showed that the public spaces along the water were not resilient to 2100 predicted Bay tidal surges and the DEIR has no plans for extending the raising of the existing site to the full impacted area. This design will create an island effect that could threaten neighboring communities or properties. The DEIR does not analyze, disclose, or provide mitigation for these potentially significant impacts.

O-47-14 4. **Liquefaction.** The DEIR describes unconsolidated sediments below the Howard Terminal site, including bay mud, in varying proportion and thickness, and notes the potential for differential sinking under the load of heavy structures proposed at the site and for liquefaction in a heavy earthquake. The nearby Hayward Fault and others are considered to be at a high risk of rupture within the next 30 years. However, the recommended mitigation is only for a future geotechnical report to be created, including construction “recommendations.” The DEIR does not demonstrate that this future plan will provide adequate or feasible mitigation.

O-47-15 5. **Site Contamination.** The Sierra Club is also concerned about Howard Terminal’s contamination by toxics and the potential, as a result of a large construction project, for human exposure or pollution of the Bay. Prior industrial uses of the site contaminated it with toxics including polycyclic aromatic hydrocarbons, volatile organic compounds, petroleum hydrocarbons, heavy metals and cyanide.³ Almost the entire Project site contains soil gas that exceeds one or more screening levels. The Department of Toxic Substances Control has a Deed Restriction on this site limiting it to industrial and commercial uses (residential uses are explicitly prohibited) and requiring review and approval for any plan that would disturb the existing cap — as the Project most certainly would. The proposed Project, excavation and construction would disturb that contamination, and potentially spread toxins into the water and air. At the very least, remediation activities would require heavy truck traffic to remove contaminated soil off-site. The air quality, noise, greenhouse gas emissions, and other impacts associated with remediation were not adequately studied in the DEIR. Additionally, the DEIR states that the Coliseum Site also contains contamination; however, those locations are much less voluminous and are generally associated with USTs or other smaller locations.

³ The Howard Terminal was previously home to oil tanks, a manufactured gas plant, a briquette plant where compressed charcoal blocks were made, a coal tramway, an asphalt paving plant and a blacksmith. These operations created streams of waste: a type of carbon called lampblack, oil tar sludge, spent coke, cyanide paint and other materials. (San Francisco Chronicle “Underneath the Asphalt” By Kimberly Veklerov, Feb 15, 2019.)

O-47-14 See Response to Comment O-26-2, O-27-55, and O-27-56. The Liquefaction Information Memorandum prepared by ENGEO on July 7, 2021 (ENGEO, 2021) provides an explanation and analysis of the effects of liquefaction and recommends various types of ground improvement prior to land development which will densify the soil, both above and below the groundwater table, including with sea level rise, and thereby help to reduce the liquefaction risk of existing fill material. The various ground improvements and methods align with Mitigation Measure GEO-1 identified in the Draft EIR to address potential risks associated with liquefaction among other potential geologic hazards (Impact GEO-1). The topics of deferral of mitigation measures and the reliance on future documents in the analysis is addressed in Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*.

O-47-15 Draft EIR Section 4.8, *Hazards and Hazardous Materials*, describes the presence of contamination on the Project site and existing land use controls that would need to be replaced in order for residential use of the site. The Draft EIR includes Mitigation Measure HAZ-1c to ensure that impacts related to exposures to contaminants during construction are addressed in compliance with regulatory requirements. The Draft EIR also analyzes potential transportation, air quality, noise, and GHG impacts associated with remediation activities by analyzing the truck trips, air pollutant emissions, and noise associated with on-site soil movement, off-haul of contaminated soil, and import of clean fill during the construction phase of the Project. See Draft EIR p. 3-57 for the quantities of trips/soil anticipated and Sections 4.2, 4.7, 4.11, and 4.15 regarding construction-related impacts.

See Consolidated Response 4.10, *Alternative 2: The Off-Site (Coliseum Area) Alternative*, for a comparison of hazardous materials at the Coliseum site.

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O-47-16

Using the Coliseum Site Alternative and building a new stadium at that location would avoid the Howard Terminal site risks altogether.

O-47-17

We urge the City to conduct sufficient environmental review to protect public health, the San Francisco Bay ecosystem, and the integrity of our system of public oversight. The A's have pursued several shortcuts, including avoidance of the standard evaluation process for the Project at the State Lands Commission and the Bay Conservation and Development Commission (see letter co-signed by Sierra Club California and the Sierra Club San Francisco Bay Chapter on this legislation) — before the DEIR was even prepared.

O-47-18

With all these concerns, we would urge the City to take another look at the Coliseum site as the preferred and environmentally superior alternative. Community leaders in East Oakland have been clear that they want the A's to stay and make good on promises to provide economic development and affordable housing. East Oakland residents have been good neighbors to the A's for decades. It's time for the A's to be good neighbors in return and develop a project that will truly benefit Oakland.

Respectfully,



Igor Tregub, Chair
Sierra Club Northern Alameda County Group

O-47-16 See Consolidated Response 4.10, *Alternative 2: The Off-Site (Coliseum Area) Alternative*.

O-47-17 This comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft EIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the Proposed Project.

O-47-18 See Consolidated Response 4.10, *Alternative 2: The Off-Site (Coliseum Area) Alternative*.

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Supplemental comments about Transportation and Circulation Chapter (4-15) of the Howard Terminal Oakland A's Ballpark Draft Environmental Impact Report

O-47-19

The study area for transportation and circulation is inadequate. As a regional draw, anticipating over 33,000 auto trips per event, the study area should include freeway access from the Bay Bridge and I-580, and the likelihood of traffic impacts on city streets from vehicles exiting the freeway upon arrival in this part of Oakland (approximately to W MacArthur and MacArthur Blvds). Significant traffic impacts are likely to impact intersections from Grand and MacArthur and Telegraph and West MacArthur through downtown, with attendant impacts on bus, bicycle, and pedestrian circulation as well as noise and pollution impacts for the residents in neighborhoods as far away as three to four miles from the project area.

O-47-20

The City of Oakland is planning to remove the I-980 highway, and its absence should be studied in the EIR. While plans have not been finalized, plans are underway and federal funding has been proposed to fund the freeway removal, with Senator Alex Padilla publicly advocating for the project. The DEIR should evaluate traffic impacts in the absence of I-980 and identify mitigations needed as I-980 removal moves forward. Given the public advocacy for the removal of I-980, it is likely that the freeway will not be available for the lifetime of the ballpark. Impacts to traffic without the existence of I-980 are foreseeable and therefore need to be studied and mitigations identified. This is another reason why traffic impacts should be studied from I-580, because without I-980 ballpark users will have exit I-580 at MacArthur or W MacArthur Blvds in order to access the ballpark.

O-47-21

Transit capacity and service must be increased in order to accommodate increased demand from the ballpark. The DEIR assumes that existing BART, Capitol Corridor and AC Transit capacity is adequate to accommodate the increased trips generated by the ballpark. This is untrue, especially given that the new trips generated by the project will be very limited in time, with the vast majority of trips aiming to arrive at the ballpark at the same time. Before the pandemic, AC Transit and BART vehicles in the area, pre-pandemic, were often at capacity during peak hours. Additionally, several City of Oakland plans and development projects also assume adequate capacity, so the cumulative impact of these projects means there is no extra capacity overall, and certainly not during crush load times generated by ballpark games and events. Similarly, the DEIR assumes ample excess WETA capacity and that WETA will provide additional "event service" at their own expense. The DEIR needs to analyze the schedules of the ballpark, determine the need for increased transit service during the peak period, and provide that service in the form of capital stock and operating expenses as a mitigation to the trips the ballpark will generate. The traffic mitigations in the plan also increase delay for bus riders, which further impacts transportation and circulation. AC Transit and the Capitol Corridor Authority have also publicly expressed the lack of extra capacity to serve the ballpark. Additional capacity for AC Transit and BART is a foreseeable and needed mitigation.

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O-47-19

Traffic congestion or measures of vehicular delay are not used in CEQA documents per State CEQA Guidelines Section 15064.3. However, the City of Oakland did require for informational purposes a detailed intersection operation analysis of the proposed Project (see Draft EIR Appendix TRA.3) as part of the Project review and as required through the TIRG, which identified many transportation improvements to support the Project. Specific to the ballpark event attendees who drive, providing less parking for the ballpark at the Project is intentional to disperse automobile traffic (through the required Parking Management Plan) to the many under-utilized parking garages within 1 to 1.5 miles of the Project. There is adequate parking supply within this distance to fully accommodate ballpark attendees who drive. This approach minimizes traffic congestion by dispersing it throughout Downtown Oakland rather than concentrating traffic at a single location. Drivers would then use the freeway access nearest their reserved parking space including: I-980 interchanges at 17th / 18th, 11th / 12th, and Jackson Streets; and I-880 interchanges at Union, Adeline, Market, Broadway, Jackson, and Oak Streets. The Project would also provide limited on-site parking for the ballpark and the automobile traffic generated by these spaces would access I-880 via 5th and 6th Streets while traffic destined to I-980 would access via Brush and Castro Street. These recommended multimodal transportation improvements are described in the Draft EIR Section 4.15.4 Transportation Improvements (pp. 4.15-86 through 4.15-149) which describes transportation improvements and strategies that are part of the Project, either because they are required as mitigation in the CEQA transportation analysis, or because the City will require them because of the non-CEQA analysis prepared to evaluate the Project.

Impact TRANS-6 addresses the volume-to-capacity ratios on the regional transportation system as described by Alameda CTC in the Congestion Management Program and the impact analysis concluded that the proposed Project would have a significant and unavoidable impact on the regional transportation network.

To minimize concentrations of traffic congestion, the proposed Project would include measures to minimize and disperse ballpark-related automobile traffic. Mitigation Measure TRANS-1b would include a Transportation Management Plan (TMP) and one element of the TMP would require a Parking Management Plan (see Additional Transportation Reference Material - *Toward a High-Performance Parking Management System for a Thriving*

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Oakland) that would include a parking space reservation system for underutilized off-street parking garages within 1 to 1.5 miles of the Project. Drivers would make an advance reservation for a parking space and then use the freeway ramp nearest the parking garage to access the space, which will minimize driver recirculation in neighborhoods and the associated negative impacts raised by the commenter.

O-47-20 Traffic congestion or measures of vehicular delay are not used in CEQA documents per State CEQA Guidelines Section 15064.3.

Draft EIR p. 4.15-148 briefly describes the transportation strategies that were considered but discarded from further study. The Downtown Oakland Specific Plan identifies for further study replacing the I-980 freeway with a surface roadway and infill development and so it was not considered in the CEQA document for the Specific Plan. The freeway alignment and design is also being considered in the context of the Link21 Project which is a new multiyear planning process by BART and regional rail providers to expand, integrate, and improve rail service across the Northern California. Given these factors the I-980 freeway replacement was considered infeasible within the timeframe that the ballpark and non-ballpark development would be constructed.

O-47-21 See Consolidated Response 4.20, *BART Station Capacity*, and Consolidated Response 4.21, *AC Transit Congestion Impacts*. See also Draft EIR Appendix TRA.6, *Transit Analysis*.

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O-47-22 See Consolidated Response 4.6, *Rail Safety, Grade Crossing, and Grade Separation*.

O-47-23 Traffic congestion or measures of vehicular delay are not used in CEQA documents per State CEQA Guidelines Section 15064.3.

Draft EIR Section 4.15.4 *Transportation Improvements* describes the transportation improvements that are incorporated into the proposed Project, required through CEQA analysis and mitigation measures, or Non-CEQA recommendations established through technical studies including the multimodal traffic operations analyses in Draft EIR Appendix TRA.3 (the transit analysis in Draft EIR Appendix TRA.6), and the road segment analysis in the Draft EIR Additional Transportation Reference Material. See Consolidated Response 4.20, *BART Station Capacity*, and Consolidated Response 4.21, *AC Transit Congestion Impacts*, for additional information regarding transit. Consolidated Response 4.7, *Parking*, addresses how the Project would disperse ballpark attendees who drive to underserved off-street parking thereby minimizing traffic congestion compared to events at the Coliseum.

Implementation of Mitigation Measure TRANS-1c (p. 4.15-197) would construct a transportation hub adjacent to the Project site that would serve at least three bus routes (12 AC Transit buses per hour) to support non-automobile travel to and from Project with the ability to expand the hub on ballpark event days to handle up to six shuttle bus stops and each shuttle stop could handle up to 12 shuttles per hour. Mitigation Measure TRANS-1d would implement Bus-Only Lanes on Broadway between Embarcadero West and 11th Street by converting one motor vehicle lane in each direction to a bus-only lane connecting the bus lanes to the existing Bus Only Lanes north of 11th Street to 20th Street on Broadway.

O-47-22

Pedestrian safety measures, particularly around the UPRR/Embarcadero railroad tracks, are inadequate to mitigate the impacts to pedestrian safety from trips generated by the project. If a significant number of trips will be by BART, there will be large numbers of people - many of whom do not regularly visit downtown Oakland - walking from the 12th St and Lake Merritt BART stations to the ballpark within a short time frame. Pedestrian injuries and deaths in Oakland are increasing (<https://www.sfchronicle.com/local/article/Oakland-traffic-deaths-jumped-by-22-in-2020-16047513.php>), with most of those deaths occurring in corridors similar to those that lie between the BART stations and Howard Terminal: high-speed arterials, one-way streets, streets with freeway access, signalized intersections, and multi-lane streets. Pedestrian safety and life-safety impacts of the project are not adequately analyzed or mitigated, and the capacity of Washington Street is overstated in the document - additional improvements are needed on Washington to provide safe passage from 12th St BART. The life-safety impact of locating an attraction adjacent to a working railroad is not adequately mitigated; fencing the railroad is a highly inadvisable idea, because it will interfere with bus operations, harm local business access, and reduce existing pedestrian trips. Providing three at-grade crossings of the railroad will also defeat the purpose of reducing these life-safety issues, since event attendees can use those to cross the tracks in an unsafe manner. Furthermore, many of the trains on Embarcadero are very long, and the grade crossings could be blocked for long stretches of time when events begin or end; this is not adequately analyzed. Burying or elevating the railroad so there are no at-grade crossings in the Jack London District is the appropriate mitigation.

O-47-23

The VMT-based analysis doesn't adequately study and mitigate impacts on transit service in downtown Oakland. The increased VMT generated by the Project would be heightened during peak hours, causing vehicle delays on several arterial streets that are one or two-lane roads. This congestion would have a particularly significant impact upon bus transit services, which would be delayed with increased automobile congestion. Without adequate mitigation, delayed bus transit operations that affect several routes and would be a significant environmental impact of the Project. While VMT per capita thresholds are met through a regional threshold, there is still a significant impact on transportation due to impacts on local circulation due to total VMT. The resulting circulation impacts are significant notwithstanding the limited scope of thresholds that only look at VMT per capita. While VMT per capita is a measure of the effectiveness of TDM programs, it fails to incorporate unique circulation conditions affecting the surrounding community, particularly in the cumulative effects on the service population that would rely on bus transit operations. The DEIR is inadequate because it fails to analyze with adequate detail circulation delays that affect bus transit operations, and to consider all feasible mitigation measures that would reduce these impacts to less than significant levels. Some feasible mitigation measures may require upgrades to infrastructure, such as timed signals, dedicated bus lanes, queue jumper roadway design, and improved bus stop and bus station infrastructure. Some feasible measures involve commitments to minimum shuttle or transit operations, but the DEIR fails to articulate the implementation and share of costs that the Project will contribute to these mitigation measures.

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Analysis of project interaction with existing plans is inadequate. The Oakland General Plan and its Lane Use and Transportation Element does not contemplate non-Port-related uses at Howard Terminal, and explicitly bars high-rise buildings outside of downtown and the Oakland Airport area. Regional, Alameda County, and city transportation plans are based on this document and do not take into account the enormous trip generation in the Howard Terminal area contemplated by the project. Therefore, the plans cannot be used as mitigations for the project, and the EIR must analyze these plans and existing traffic conditions in more depth to develop mitigations for the trip generating aspects of the project. As stated above, initial planning for the removal of I-980 is underway and that is not taken into account in the DEIR analysis or mitigations.

O-47-25

Truck parking that is currently provided at Howard Terminal will be displaced by the project. Those trucks will still need to park near the Port of Oakland and will likely park in the residential areas of West Oakland absent an alternative plan that takes into account current and projected truck traffic. The environmental document assumes that adequate space can be found elsewhere on the seaport but does not prove that with documentation. The parking of trucks in West Oakland will present significant environmental impacts to the West Oakland community, including exhaust pollution, increased likelihood of fatal truck-pedestrian and truck-bicycle interactions, and aesthetic and parking impacts. There also may be VMT or travel impacts as the trucks use a different parking area. This is a direct impact of the project but is not mitigated. Alternative truck parking must be identified and created as a mitigation to these reasonably foreseeable impacts.

O-47-26

The (optimistic) projection of over 60% of trips being by vehicle even with travel demand management is very disappointing for a project that seeks to move from a richly transit-oriented location to an area near transit-oriented downtown Oakland, in a city that is committed to addressing the climate change crisis. The greenhouse gas and VMT impacts of this project location make it less environmentally preferred than the Coliseum project location alternative. Given that the project is near downtown Oakland and its transit hubs, there is clearly substantial room for improvement in trip generation with more mitigations, such as burying the railroad tracks, improving pedestrian circulation from BART, and increasing transit operations during events.

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As described on pp. 3-11 and -12 of the Draft EIR, the project site is located within the “General Industrial and Transportation” and “Estuary Policy Plan-Retail, Dining and Entertainment 1” land use classifications and proposes to modify the existing land use designations on the site via a General Plan Amendment. Also see Section 3.14.1, and Impact LUP-6 in Section 4.10.4.

Impact TRANS-2 provides a comprehensive plan consistency analysis to determine if the transportation improvements identified through the proposed Project’s CEQA and Non-CEQA analyses would conflict with transportation projects identified in the plans. The consistency analysis is summarized in Draft EIR Table 4.15-41 pp. 4.15-202 through 4.15-229. The Draft EIR on p. 4.15-148 summarized the transportation improvements that were considered and discarded. The I-980 freeway replacement was not included in the analysis given its complexity and cost within the timeframe that the Project would be constructed. Neither Caltrans or the City of Oakland have undertaken any comprehensive planning specific to the freeway removal. The Draft Downtown Oakland Specific Plan (DOSP) identifies the freeway removal as a potential project for future study and did not conduct any transportation analysis as part of the DOSP planning or environmental studies.

O-47-25

See Consolidated Response 4.5, *Truck Relocation*.

O-47-26

The determination of the mode share for the ballpark is described in Draft EIR (Appendix TRA.2, *Howard Terminal – Transportation and Parking Management Effectiveness Analysis*). Section 3 in the document describes the data sources used, methodology, analysis and the findings. Draft EIR Table 4.15-40 shows that the annualized VMT per attendee at the existing Coliseum site is 11.0 and would be 8.4 with the Project including a TMP. See Consolidated Response 4.10, *Alternative 2: The Off-Site (Coliseum Area) Alternative*, for more information. See Consolidated Response 4.9, *Alternative 3: The Proposed Project with Grade Separation Alternative*, for discussion of grade separation options and Section 4.15 of the Draft EIR for a description of Project-related transportation improvements and trip reduction measures, which include improvements to pedestrian circulation and additional transit (or shuttles).

O-48 Union Pacific Railroad

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Attached are Union Pacific Railroad's Comments on the Howard Terminal Draft EIR

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April 27, 2021

*Via Email and First Class U.S. Mail and
Electronically via: <https://comment-tracker.esassoc.com/oaklandspportseir/index.html>*

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**Re: Howard Terminal Draft Environmental Impact Report
Comments (Union Pacific Railroad Company)
Case File No.: ER18-016**

Dear Mr. Vollmann:

Union Pacific Railroad Company ("UP") is submitting these comments on the Draft Environmental Impact Report ("DEIR") issued by the City of Oakland on February 26, 2021. We understand the DEIR to describe environmental impacts caused by development of a mixed use project on the approximately 50 acre Howard Terminal site (the "Project"), and the City's plan to mitigate those impacts as required by the California Environmental Quality Act (CEQA). The Project is designed to include a ballpark with a capacity of up to 35,000 persons, a 400-room hotel, a performance venue with a capacity of up to 3,500 patrons, parks, up to 3,000 residential dwelling units, up to 1.5 million square feet of commercial space, and up to 270,000 square feet of retail space. As discussed below and in prior communications about this Project, UP has serious concerns about the safety of vehicles and pedestrians which must cross UP's railroad tracks adjacent to Howard Terminal to access or leave the Project site.

UP's safety concerns are not limited to ballpark patrons who must cross the adjacent busy railroad corridor arriving and departing the ballpark, but also residents of the planned residential housing, including young children, shoppers, office and retail workers and their invitees, hotel guests and employees, restaurant patrons, and families that will use the planned parks. All of these people will enter and depart the project area and the described activities and venues, by walking, driving, or cycling across multiple sets of railroad tracks carrying freight and passenger

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O-48-1 See Consolidated Response 4.6, *Rail Safety, Grade Crossing, and Grade Separation.*

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O-48-2 See Consolidated Response 4.6, *Rail Safety, Grade Crossing, and Grade Separation*.

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trains day and night, seven days per week, traveling in both directions, and frequently stopped on what can be expected to be increasingly congested streets. The safety of the Oakland community and those outside the community who will use, work or play in the Project area requires grade separated vehicle and pedestrian access and egress locations to prevent train-related accidents and associated injuries and fatalities.

Railroad Operations in the Vicinity of Howard Terminal.

UP's main line – the tracks connected to UP's nationwide rail network – consists of multiple tracks running east and west, and serving UP's West Oakland Rail Yard, UP's Intermodal Facility, and various port terminal industrial customers. In addition, Amtrak and Capitol Corridor passenger trains operate on these same UP tracks. The tracks are located within UP's right-of-way that extends 50 feet on either side of the center line of the tracks. Exhibit 1 to this comment letter is an accurate diagram of UP's tracks and right-of-way.

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The right-of-way containing UP's tracks runs on Embarcadero West – at street grade -- immediately adjacent to Howard Terminal and the proposed Project site. UP's freight trains operate on these main line tracks day and night, seven days a week. Because its trains serve industries, including the Port and its tenants and customers, train operations are not static and predictable. To the contrary, train traffic responds to the needs of customers rather than a set schedule, and may increase in coming years. Each day, as few as five or as many as 15 freight trains currently operate on these Embarcadero West main line tracks; several trains stop every day at Howard Terminal. Passenger trains currently add another approximately 60 trains per day to the rail traffic on this right-of-way.

Attached as Exhibit 2 to this comment letter is an hour-by-hour scatter plot of UP's signal activation data depicting both UP freight trains (orange dots) and passenger trains (blue dots) occupying Embarcadero West intersections between Market Street and Martin Luther King Jr. Way during the two month period January 1 to February 29, 2020. Each dot represents a train. Of particular note is not simply the sheer number of trains occupying these intersections throughout each day, but also the unpredictable, complex, and dynamic nature of UP's freight train movements and operations which have no discernable pattern. The DEIR presents a far different picture of predictable and static freight train operations having minimal impact on vehicle traffic and vehicle and pedestrian safety. As Exhibit 2 so vividly demonstrates, nothing could be farther from the truth. Trains – usually multiple trains -- occupy these intersections literally during every hour of every day.

Vehicles and pedestrians can access Howard Terminal (and the proposed Project site) only by crossing this busy railroad corridor. Moreover, as the DEIR indicates, UP's freight train operations normally require that trains stop for various reasons, blocking the intersections and



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traffic, for periods of ten to 45 minutes (DEIR at 4.15-39). The DEIR data showed one train stopped for 87 minutes during the representative sample period the DEIR consultant selected (DEIR at 4.15-39). UP's own signal records, consolidated into the plot attached as Exhibit 2, show an average of almost 70 train occupations of intersections per day, with "gates down" times ranging from 10 to 15 minutes per hour for ten train switching moves. See Traffic Engineering Report attached as Exhibit 3. The DEIR does not acknowledge the significant impacts of these occupations, much less propose meaningful mitigation measures for vehicle and pedestrian traffic. In fact, the DEIR does not report total "gate down" time during peak hours, and reports down times only at Martin Luther King Jr. Way and Market Street crossings; it does not report down times at the other five street crossings. *Id.*

Significant Impacts to Pedestrian and Vehicle Traffic Must Be Mitigated

O-48-3

The DEIR minimizes rail operations adjacent to the Project site, and concludes that any safety impacts are "unavoidable." But the impacts are avoidable. Rather than dismissing the entirely avoidable dangers presented by these rail corridor crossings, the DEIR should have offered mitigation measures to address them. Stopped trains block streets, preventing both access to and egress from the Project site, at various times and various locations throughout every day. By adding up to 35,000 ballpark patrons traveling to and from games, *plus* residents of new housing, employees of businesses in new office space, shoppers using the new retail shops, and many others using the amenities planned for this development Project, all crossing the railroad corridor, the Project exposes thousands of Oakland residents and visitors to unnecessary dangers. All of these new users of the Project site must not only cross the railroad corridor – twice (coming and going) – but also will add to vehicle and pedestrian congestion, especially during periods of stopped freight trains.

A. Traffic Congestion.

O-48-4

The DEIR predicts that 3400 additional vehicles and 3300 additional pedestrians will access the Project area during peak hours (defined as a ball game or other event at the proposed stadium). Yet the capacity of the proposed ballpark is 35,000. The DEIR does not account for 35,000 patrons, or anything close to the number of patrons who may attend the ballpark following full build-out of the Project. In other words, 3400 vehicles and 3300 pedestrians do not add up to 35,000 ballpark patrons. The DEIR is deficient in failing to address this disparity, and the worst case traffic congestion and pedestrian safety and situation if the ballpark is filled to capacity.

Even assuming only 3400 additional vehicles at peak hours, the DEIR does not address where 3400 additional vehicles will queue when a stopped train is blocking the streets leading



O-48-3 See Consolidated Response 4.6, *Rail Safety, Grade Crossing, and Grade Separation*.

O-48-4 Traffic congestion or measures of vehicular delay are not an environmental impact under CEQA per State CEQA Guidelines Section 15064.3. The comment incorrectly states the number of trips generated by the Project and the number of trips crossing the railroad tracks. Draft EIR Table 4.15-42 (p. 4.15-233) summarizes the Project's pedestrian, bicycle, and automobile volumes at each of the at-grade railroad crossings assuming Project buildout with a weekday evening ballpark event. Between 3 pm and 8 pm about 32,400 pedestrians, 1,800 bicyclists, and 12,600 automobiles to the Project would cross the railroad tracks at one of the at-grade crossings between Market Street and Broadway. While not required by CEQA a detailed transportation operation analysis of this condition was completed (Draft EIR, Appendix TRA.3) and through that analysis many improvements were described to support the Project including at-grade railroad crossing improvements. The improvements listed in the appendix were consolidated and described in the Draft EIR Section 4.15.4.

See Consolidated Response 4.6, *Rail Safety, Grade Crossing, and Grade Separation*, for responses to issues raised in the comment about railroad crossing safety.

See Consolidated Response 4.7, *Parking*, for responses to issues related to managing ballpark attendees who drive.

The Draft EIR identifies several mitigation measures that prioritize non-automobile travel either through programs to reduce automobile trips or infrastructure improvements that prioritize transit, walking, and bicycling. These mitigation measures would contribute to minimizing Project vehicle traffic and are summarized below:

- Mitigation Measure TRANS-1a (pp. 4.15-183 through 4.15-189) would require the preparation of a Transportation Demand Management (TDM) Plan for the non-ballpark development with a performance metric to reduce vehicle trips 20 percent from a baseline condition without a TDM program.

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- Mitigation Measure TRANS-1b (pp. 4.15-193 through 4.15-197) would require the preparation and implementation of a Transportation Management Plan (TMP) for the ballpark events with a performance metric to reduce vehicle trips 20 percent from a baseline condition without a TMP. A draft TMP is provided in Draft EIR Appendix TRA.1 and includes the nearby transit providers i.e., AC Transit, BART, Capitol Corridor, and WETA as a key stakeholder in coordinating ballpark events.
- Mitigation Measure TRANS-1c (p. 4.15-197) would construct a transportation hub adjacent to the Project that would serve at least three bus routes (12 AC Transit buses per hour) to support non-automobile travel to and from Project with the ability to expand the hub on ballpark event days to handle up to six shuttle bus stops and each shuttle stop could handle up to 12 shuttles per hour.
- Mitigation Measure TRANS-1d (p. 4.15-198) would implement Bus-Only Lanes on Broadway between Embarcadero West and 11th Street by converting one motor vehicle lane in each direction to a bus-only lane. There are existing Bus Only Lanes north of 11th Street to 20th Street on Broadway.
- Mitigation Measure TRANS-1e (p. 4.15-198 to 200) would implement pedestrian improvements such as sidewalk widening and repair, pedestrian lighting, and intersection and driveway safety measures to promote first and last mile connections to BART and AC Transit bus stops as well as walking connections serving Downtown and West Oakland neighborhoods.
- Mitigation Measures TRANS-2a, TRANS-2b, and TRANS-2c (p. 4.15-230) would implement bicycle improvements consistent with Oakland's Bike Plan that connect the Project site to Oakland's bike network.
- Mitigation Measures TRANS-3a and TRANS-3b (pp. 4.15-235 to 4.15-240) would implement railroad corridor improvements including corridor fencing, at-grade railroad crossing improvements, and a pedestrian and bicycle bridge over the railroad tracks connecting the transportation hub with the Project site via the Jefferson Street alignment.

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into the Project site, and how 3300 additional pedestrians will safely cross the railroad tracks. The DEIR proposes to mitigate these significant impacts by constructing a single pedestrian bridge over the railroad tracks at Martin Luther King Jr. Way. The DEIR contains no data to support the notion that the capacity of the single proposed pedestrian bridge will be sufficient to handle 3300 additional pedestrians who gather to access the Project area. Importantly, the DEIR focuses on the number of pedestrians accessing the site to attend a ball game, rather than departing after a game. As noted in the attached traffic engineering report (Exhibit 3), the DEIR should have evaluated conditions when ball park patrons *depart*, all at once, following a game.

As noted above, vehicles entering the Project will encounter trains repeatedly blocking intersections for several minutes. Traffic will back up from the blocked intersection to other intersections, creating a domino effect of traffic that can be expected to back up into Oakland's City Center and to freeways. The DEIR did not address, much less propose mitigation measures for, the inevitable backup of vehicle traffic trying to enter the Project area. Traffic will be a nightmare. Cross-traffic on streets parallel to Embarcadero West will become blocked by vehicles trying to reach the Project area. The only viable mitigation measure is grade separation of the entire railroad corridor.

B. Pedestrian Safety.

The DEIR also does not address where these 3400 additional vehicles will park following full build-out of the Project. If the vehicles are to be parked outside the Project area, additional pedestrians from those parked vehicles will need to cross the rail corridor, both arriving and departing. While the DEIR predicts 3300 additional pedestrians, it does not predict or account for the number of people who will park their vehicles outside the Project area and become additional pedestrians entering the Project area from their offsite parking, and then leaving to return to their vehicles.

O-48-6

The proposed pedestrian bridge is not a realistic solution. If the proposed pedestrian bridge is choked with pedestrians, what will other pedestrians do to depart (or access) the Project area? The DEIR fails to address this question, and this failure is significant because pedestrians on their way to or from a baseball game can be expected to bypass an already choked pedestrian bridge and attempt to cross the railroad tracks at street grade. As noted in the attached Traffic Engineer's Report (Exhibit 3), pedestrian behavior at railroad crossings – not considered in the DEIR – has been characterized in research conducted by the Volpe National Transportation Systems Center as "risky." The San Diego Union-Tribune reported on September 8, 2010, that San Diego Padres' fans whose access to a baseball game at Petco Park was blocked by a BNSF freight train crawled under the train, crawled through the train between rail cars, and tried to outrun the moving train so they could reach the other side of the tracks before the train blocked their way. (The YouTube video referenced in the article can be found at the following link:



O-48-5

See Response to Comment O-48-4. Regarding the pedestrian and bicycle bridge as indicated in Figure 4.15-49 the bridge would be 20 feet wide and at peak times between 3,000 and 6,000 people per hour are anticipated to use the bridge (p. 4.15-239). At these pedestrian demands bicycle riders could also use the bridge without dismounting. The bridge can accommodate up to 15,000 pedestrians per hour with constrained walking speeds and restricted ability to pass other pedestrians. At these higher demands ballpark event attendees walking across the railroad tracks would use one of the other five at-grade crossings. If both the Project's crossings were blocked by trains the pedestrians would distribute to the bridge and the other three crossings including Clay Street, Washington Street, and Broadway.

O-48-6

See Consolidated Response 4.6, *Rail Safety, Grade Crossing, and Grade Separation*. See also Consolidated Response 4.7, *Parking*

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O-48-7 See Consolidated Response 4.6, *Rail Safety, Grade Crossing, and Grade Separation*.

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<https://youtu.be/zW9RtPUu6j0>). Based on this empirical data, the City must recognize the liability it is inviting because such dangerous behavior is foreseeable. The DEIR should have offered appropriate mitigation measures to prevent such obvious dangers. However, the DEIR does not address at all the dangerous behavior one can expect to see from those willing to climb under, over, and through trains to reach or leave a ball game or other activities in the Project site.

Moreover, trains in this corridor travel both east and west, creating the risk of a “two-train scenario,” where a pedestrian (or vehicle) attempts to cross tracks occupied by a train, only to encounter a second train traveling in the opposite direction. If unaware of the second train, the pedestrian or driver may be struck and killed by that second train.

In addition, the DEIR should have evaluated how departing ball park patrons who have consumed alcohol and may be impaired will cross the railroad corridor safely. Large gatherings of pedestrians attempting to cross railroad tracks are in danger, especially if impaired or impatiently seeking to reach an imminent baseball game or other event, or go home following a game. A single, narrow pedestrian bridge over the railroad tracks is insufficient to mitigate these dangers. In recognition of these and other dangers, the California Public Utilities Commission, which has jurisdiction over the safety of highway-rail crossings in California, has declared in its June 2020 “Section 190 [Streets and Highways Code] Grade Separation Program”:

O-48-7

“The optimal safety improvement for an at-grade highway-rail crossing is the complete separation of the railroad tracks from the roadway through construction of a grade-separation structure. Replacement of at-grade crossings with grade-separated crossings eliminates the fatalities and injuries that often result from collisions between train and highway users. It also eliminates blocking delays that cause traffic congestion, reduces the noise from train horns and automatic warning devices, and can improve emergency response times.”

The DEIR proposes fencing along the right-of-way from Martin Luther King Jr. Way to Washington Street as a means of preventing pedestrians from entering the railroad tracks. Such fencing would help prevent trespassing if it constructed with the best possible materials, such as vandal-resistant expanded metal, and if it is inspected regularly and repaired promptly. However, fencing would not assure pedestrian safety at grade crossings. Grade separation would make it unnecessary for pedestrians to cross the railroad tracks at all, and assure a large measure of safety and security for those accessing and leaving the Project site. Any fencing constructed must be sufficiently tall and durable, and placed entirely outside UP’s right-of-way. UP will not allow fencing or pathways on its right-of-way.



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C. Vehicle Safety.

The safety of pedestrians is not the only issue the DEIR fails to address and mitigate effectively. The DEIR offers the additional cars and trucks seeking access to the Project site during peak hours no new options; they must cross the railroad tracks at grade on one of the city streets entering or leaving the Project site. If a train is stopped on the tracks adjacent to Howard Terminal, the vehicles must sit and wait, typically ten to 45 minutes, but perhaps longer depending on train traffic and operations. The failure of the DEIR to address this key ingress and egress issue carries added significance when considering the impacts on traffic away from the Project site. Queues of vehicles seeking to enter the Project site at peak hours when a train is stopped on the tracks adjacent to Howard Terminal, or during switching and other routine train operations, will back up traffic from Embarcadero West into downtown Oakland and onto Highways 880 and 980. The DEIR recognizes the traffic congestion problem the Project will create, but fails to offer a solution. Traffic throughout the City will be snarled because of the additional vehicles seeking ingress to the Project site during these peak hours, and departing the Project area *en masse* after an event. The DEIR offers no effective mitigation measures.

As noted above, people engage in risky behavior near trains and train crossings, and such behavior is not limited to pedestrians. Drivers of vehicles can be expected to try to outrun oncoming trains to reach a ball game or other the Project destination to avoid being stuck on the wrong side of a stopped train. Such drivers also can be expected to drive through intersections controlled by signal gates. Again, the DEIR does not address such foreseeable behavior or seek to mitigate its impact.

D. The Grade Separation Solution.

The most obvious mitigation measure to address these impacts and dangers is grade separation, allowing vehicle traffic to flow freely and pedestrians to cross the rail corridor safely, unencumbered by stopped trains or train operations. The DEIR briefly considers and then dismisses the benefits of grade separation to mitigate these significant traffic and safety issues.

The DEIR expresses the same recognition of safety concerns that UP discusses above, but does not resolve them with the required mitigation measure. Specifically, the DEIR (Chapter 6 Alternatives) finds that:

1. Operation of the Project (during Phase I and at buildout) would generate additional multimodal traffic traveling across the at-grade railroad crossings on Embarcadero that would cause or expose roadway users (e.g., motorists, pedestrians, bus riders, bicyclists) to a **permanent or substantial transportation hazard**. Mitigation



O-48-8

O-48-9

O-48-8 Traffic congestion or measures of vehicular delay are not an environmental impact under CEQA per State CEQA Guidelines Section 15064.3. The City completed an intersection operation analysis for informational purposes to understand the extent of traffic congestion before and after ballpark events. The analysis is documented in Draft EIR Appendix TRA.3 and included a multimodal microsimulation analysis (3 pm to 8 pm) with Project buildout plus a weekday afternoon ballpark event and a weekday evening ballpark event. The microsimulation model included observed train data for the analysis period including 20 trains with gate downtimes ranging from one to five minutes. The analysis showed that with the transportation improvements described in the Draft EIR (Section 4.15.4 Transportation Improvements), the intersections would operate at acceptable levels.

See Consolidated Response 4.6, *Rail Safety, Grade Crossing, and Grade Separation*, for responses to railroad crossing issues.

See Consolidated Response 4.7, *Parking*, regarding how traffic congestion would be minimized through a Parking Management Plan (PMP) that disperses ballpark attendees who drive to under-utilized parking garages.

See Consolidated Response 4.21, *AC Transit Congestion Impacts*, regarding traffic congestion and bus transit operations.

O-48-9 See Consolidated Response 4.9, *Alternative 3: The Proposed Project with Grade Separation Alternative*.

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O-48-10 See Consolidated Response 4.9, *Alternative 3: The Proposed Project with Grade Separation Alternative*.

Measures TRANS-3a and TRANS-3b would reduce the hazard, but not to a less-than-significant level. (DEIR 6-5)

2. **Operation of the Project would increase congestion on regional roadways** included in the Alameda County Congestion Management Plan (CMP). Specifically, conditions would degrade from Level of Service (LOS) E or better to LOS F or increase the volume to capacity (v/c) ratio by 0.03 or more for segments already projected to operate at LOS F in 2020. (DEIR 6-5)
3. **Operation of the Project** (during Phase 1 and at buildout) would generate additional multimodal traffic traveling across the at-grade railroad crossings on Embarcadero that **would contribute to a cumulative transportation hazard**. Mitigation Measures TRANS-3a and TRANS-3b would reduce this significant impact, but not to a less-than-significant level. (DEIR 6-5 to 6-6)
4. **The Project in combination with other planned development would contribute to increased congestion on regional roadways** included in the Alameda County CMP. Specifically, conditions would degrade from LOS E or better to LOS F or increase the v/c ratio by 0.03 for segments already projected to operate at LOS F in 2040. The following six segments would be affected: • I-880 in the northbound direction between 23rd Avenue and Embarcadero • SR 24 in the eastbound direction between Broadway and State Route 13 • Posey Tube in the eastbound direction between the City of Alameda and the City of Oakland • Webster Tube in the westbound direction between the City of Oakland and the City of Alameda • Market Street in the northbound direction between 12th Street and 14th Street • Market Street in the southbound direction between Grand Avenue and 18th Street. No mitigation measures identified. (DEIR 6-6)
5. **With the grade separation in Alternative 3, there could be less congestion** when a freight train passes through, since vehicles would no longer have to wait for the train to pass; however, freight trains only occur approximately five times per day between the hours of 11 a.m. and 11 p.m. (DEIR 6-34)

O-48-9

Having acknowledged the “permanent or substantial transportation hazard” and other dangers and consequences of increased pedestrian and vehicle traffic across the railroad corridor, as well as the increased traffic congestion that will result from the Project but would be improved by grade separation, the DEIR remarkably fails to adopt grade separation as the most effective and permanent mitigation measure. This failure makes the DEIR deficient and must be corrected. While full grade separation is the only way to assure pedestrian, bicycle, and vehicle safety, the DEIR rejects this alternative without any meaningful consideration. The reason grade separation was rejected out-of-hand is revealed in the DEIR at Section 6.4.2, which states:

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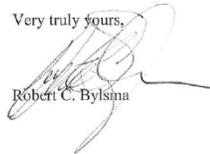
O-48-10

"Provision of a grade-separated crossing prior to commencement of Project construction was deemed infeasible given the length of time it would take to design, get approval for, and construct a new grade-separated crossing and the stated Project objective to complete construction of the new ballpark, together with any infrastructure required within a desirable timeframe and to maintain the Oakland Athletics' competitive position within MLB."

So, apparently it was the Oakland A's who made the decision to reject grade separation -- the only safe and effective means of protecting Oakland A's fans, as well as families residing in the Project area and other Oakland citizens, using Project facilities -- as "infeasible" because of "the length of time it would take" to design and build, and would affect negatively "the Oakland Athletics' competitive position within MLB." However, the DEIR's evaluation of this alternative is deficient because it does not indicate how long it would take to permit and build the needed grade separation, and whether the A's decision to "maintain [its] competitive position within MLB" in exchange for the lives and well-being of those who will use Project amenities, truly makes grade separation "infeasible" as a matter of law.

Thank you for the opportunity to comment on the DEIR for this significant proposed Project. We hope that UP's concerns for rail safety generally, and for the safety of pedestrians, bicyclers, and drivers who use the Project site will be addressed in a permanent and comprehensive way through grade separation.

Very truly yours,



Robert C. Bylsma

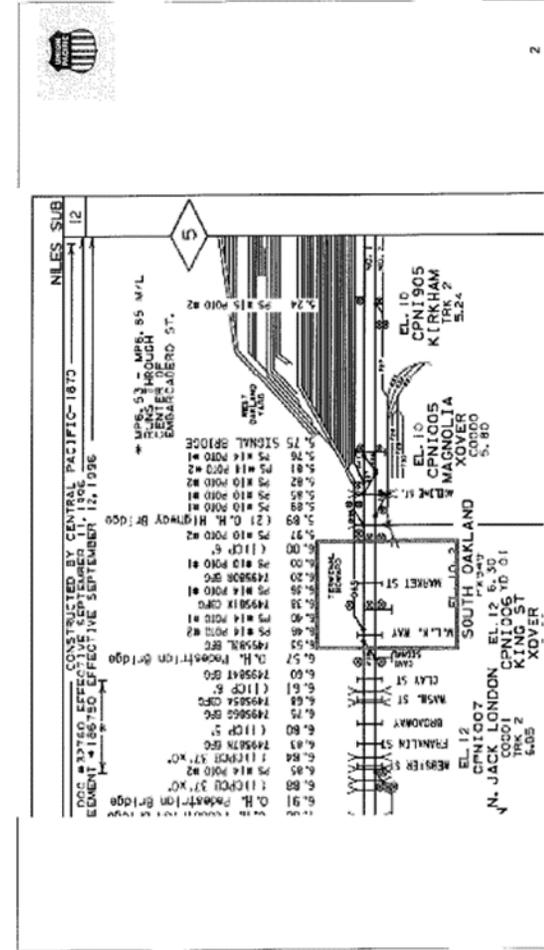


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EXHIBIT 1

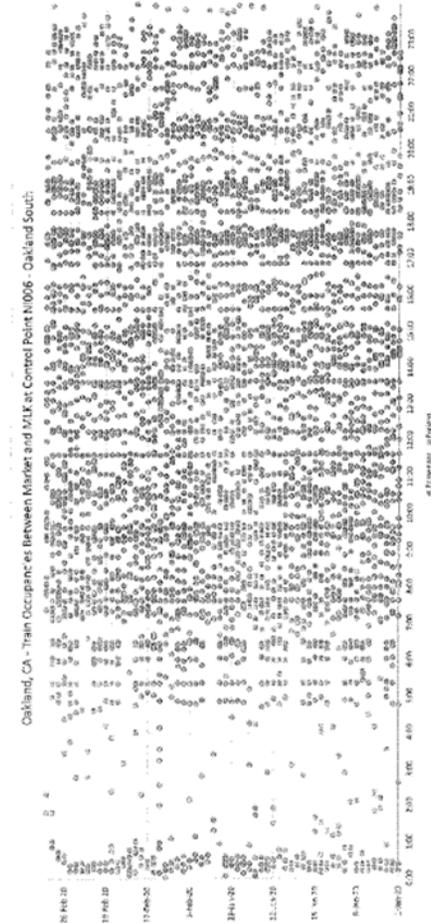


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EXHIBIT 2



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EXHIBIT 3

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RESPONSE



To: Peggy Ygbuhay, UPRR
 From: Karon Hanlanson, PE, TE
 Subject: Waterfront Ballpark District at Howard Terminal
 Draft Environmental Impact Report Review
 Date: April 27, 2021



Per Union Pacific Railroad's request, RailPros has reviewed Chapter 4.15: Transportation and Circulation, and Chapter 6: Alternatives, of the Waterfront Ballpark District at Howard Terminal Draft Environmental Impact Report (DEIR), which was released for public comment on February 26, 2021. Chapter 4.15 evaluates the transportation-related impacts resulting from the proposed Howard Terminal Ballpark development. Chapter 6 evaluates other alternatives that were studied as part of the environmental process. Additional transportation reference materials were released for review by the City of Oakland on March 26, 2021. RailPros has also reviewed the relevant documents from those reference materials which include the Oakland A's Howard Terminal Project Railroad Corridor and Grade Crossing Improvements study, referred to as the "Railroad Study" in the DEIR, the Howard Terminal - Collision History Analysis memo, and the Howard Terminal - CMP and MTS Analysis memo. The following summarizes our findings related to the project's transportation analysis.

1.0 The Transportation Analysis is Deficient

The DEIR Transportation Analysis and accompanying appendix documents are deficient in the following areas:

- The DEIR crash evaluation does not include non-train related incidents. In the past 5 years, 2016-2021, there have been two vehicle/traffic accidents, non-train related, one at Webster Street and one at Broadway. The crash evaluation also does not account for incidents with trains between crossings. In the past 5 years, 2016-2021, there was one such incident near Market Street. Given that the trains operate in the middle of the roadway from Clay Street to Webster Street there are likely to be crashes that are not reported on the FRA incident report, which are still relevant to the railroad safety analysis. Furthermore, UPRR data includes reports of vehicles on the tracks, which includes any vehicle stuck on the tracks that does not result in an incident, but which impacts train operations. In the last 5 years there have been 214 vehicle-on-track reports from Market Street to Broadway. The crash analysis should account for all incidents along the track corridor and reference surrogate safety data, where available, to accurately represent the existing safety issues along this corridor.
- The DEIR railroad analysis evaluates peak conditions for ball games, defined as 11 AM to 11 PM, but does not evaluate other peaks that would occur due to the proposed mixed-use

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O-48-11 This is a general comment that includes introductory remarks and serves to introduce the more specific comments that are responded to in detail below. As a result, no specific response is provided here.

O-48-12 The commenter asserts that the Draft EIR crash evaluation does not include non-train related incidents. The Draft EIR evaluates non-train collisions on Embarcadero West between Market Street and Broadway (memorandum *Howard Terminal – Collision History Analysis* dated December 1, 2020). Table 1A in the memorandum summarizes collisions by type at the intersecting streets including Market Street, Martin Luther King Jr. Way, Clay and Washington Streets, and Broadway. Table 1B summarizes the road segment collisions by type on Embarcadero West between Market Street and Broadway. The severity of these collisions is summarized in Table 2A and 2B for intersections and road segments, respectively. A Critical Crash Rate analysis consistent with the Highway Safety Manual was conducted to determine which intersections and road segments experienced high crash rates. The analysis concluded that Embarcadero West between Martin Luther King Jr. Way and Jefferson Street and Embarcadero West between Washington Street and Broadway have high crash rates, and that the Project would address these collisions by changing portions of Embarcadero West to a bicycle and pedestrian corridor. Specifically, the commenter is directed to Project Mitigation Measure TRANS-3a which would incorporate at-grade railroad crossing improvements and fencing along the railroad corridor while also removing motor vehicle traffic from Embarcadero West on the south side of the railroad tracks to provide a bicycle and pedestrian corridor. (Only the portion of Embarcadero West between Jefferson and Clay Streets would retain vehicle access to serve the Vistra Power Plant.)

UPRR incident data referenced by the commenter is not publicly available data and UPRR did not provide the incident data to the City either through the Notice of Preparation or through the public review of the Draft EIR. Even so the track incidents referenced by the commenter would be reduced through Mitigation Measure TRANS-3a which would incorporate at-grade railroad crossing improvements and fencing along the railroad corridor. But as noted on p. 4.15-239 of the Draft EIR even with Mitigation Measure TRANS-3a some travelers would continue to use at-grade crossings along Embarcadero West and so while the severity of the impact to the railroad corridor would be reduced it would not be fully eliminated and so even with mitigation the impact would be significant and unavoidable.

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O-48-13 The Draft EIR evaluated the Embarcadero West corridor from several perspectives. Train frequency, gate down times, and train-related collisions were identified in Draft EIR (p. 4.15-39 to 42). Refer to Response to Comment O-48-12 which describes the non-train related collision analysis conducted for Embarcadero West. Impact TRANS-3 (p. 4.15-234) addresses train crashes on the Embarcadero West corridor dating back to the 1970s. Draft EIR Appendix TRA.3 addresses traffic operations at the Embarcadero West intersections including Market Street, Martin Luther King Jr. Way, Clay Street, Washington Street and Broadway. The intersection analysis was completed for the weekday AM and PM commute peak hours with buildout of the Project and no ballpark event. A multimodal (motor vehicles, pedestrians, and trains) operations analysis was also conducted for two weekday scenarios to and from the Project site for each hour between 3 PM and 8 PM. One weekday scenario considered buildout of the Project plus an afternoon ballpark event ending at 3:30 PM with 35,000 attendees and the other scenario considered a similar evening ballpark event starting at 7 PM. Collectively, these analyses informed the Draft EIR Impact TRANS-3 and resulting Mitigation Measures TRANS-3a and TRANS-3b.

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- O-48-13 | nature of the project. The weekday AM peak, 7 AM to 9 AM is also worth analyzing because of the other proposed uses on the site and adjacent land uses.
- O-48-14 | • The DEIR study conducted a week-long observation of railroad gate activities at the Market Street and Martin Luther King Jr. Way crossings, but not at the other crossings east of the site, which are also expected to experience an increase in use and are listed as study intersections for the motor vehicles evaluation (i.e. Clay Street, Washington Street and Broadway). The analysis should be consistent in its evaluation of impacts between modes of transportation and include all railroad crossings that are expected to experience significant impacts due to the proposed development.
- O-48-15 | • Median gate down times are reported to exceed 3 minutes. According to UPRR signal records, UPRR has approximately 70 occupations of traffic intersections per day with gates down ranging from 6 minutes up to 2.5 hours for train switching moves. The analysis should review the accuracy of the data collection and ensure existing conditions are accurately reported in the DEIR.
- O-48-16 | • The study does not evaluate the total gate down time during the peak hours which may significantly impact the effective capacity of study intersections. An accurate representation of capacity should be analyzed to most accurately indicate existing conditions and identify the impacts of the proposed development.
- O-48-17 | • The DEIR Gate down time data is summarized for a period of one week. Such data is not granular enough to account for the high traffic peaks anticipated after events. This data should be evaluated at least by hour or by 15-minute increments to determine actual intersection capacity during peak roadway demand times.
- O-48-18 | • The statement in Chapter 6 of the DEIR that freight trains pass next to the project site only five times per day does not account for train switching operations in Union Pacific's adjacent West Oakland Yard. Such switching operations impact traffic and should be included in any evaluation of transportation-related impacts of the project.
- O-48-19 | • The capacity analysis in the appendix uses a default per-lane capacity of 800 vehicles per hour (vph) for surface streets. However, some of these surface streets include railroad crossings that are regularly occupied by trains. The analysis should consider the reduced capacity caused by occupied crossings.
- O-48-20 | • The capacity analysis results presented for Market Street in the appendix start at 6th Street. The capacity analysis of impacted roadways should account for impacts from the project site to the outer limits of the project, and therefore should include the segment from Embarcadero West to 6th Street.
- O-48-21 | • The capacity analysis at Broadway shows available vehicle capacity that could be used if other crossings were closed, and traffic was diverted to Broadway. The analysis should review the feasibility of crossing consolidation, given some north-south roadways in the area have available capacity.
- O-48-22 | • The proposed traffic signals and queue prevention system at Market Street and Martin Luther King Jr. Way will extend the length and duration of railroad approaches, further reducing the capacity of these intersections for the throughput of vehicles, and also will

O-48-14 Refer to Response to Comment O-48-13 which summarizes the various analyses conducted for the railroad corridor that informed Impact TRANS-3 and related mitigation measures. The gate down time activity at the Market Street and Martin Luther King Jr. Way crossings was measured specifically to establish gate down times at the Project site because these durations have a direct impact on access to and from the Project. These durations were used to establish traffic operations at the Project site (Appendix TRA.3) and to what extent access to the Project site would be blocked by trains.

O-48-15 UPRR signal records for gate down time durations were not made available to the City either as part of the EIR's Notice of Preparation or as part of the public comment on the Draft EIR. The data provided by UPRR in their comment letter (Comment O-48-2) included gate down time frequencies and that data was compared to the observations provided in Draft EIR (p. 4.15-39 and 40) and as noted in Consolidated Response 4.6, *Rail Safety, Grade Crossing, and Grade Separation* (Table 4.6-1 and Table 4.6-2), the gate down time frequency data presented in the Draft EIR is consistent with the UPRR data presented with Comment O-48-2.

While there is no way to verify the gate down time durations referenced by the commenter, the stated durations (6 minutes to 2.5 hours) are likely incorrect for the 70 gate down time events each day noted by the commenter. Most trains using the rail corridor along Embarcadero West are passenger trains with about six cars and these trains generally move through the corridor at 10 to 15 mph yielding gate down times of about one minute which is significantly less than the 6 minute minimum duration noted by the commenter.

O-48-16 The commenter is directed to the Draft EIR Appendix TRA.3 (memorandum *Howard Terminal Operations Analysis*, December 1, 2020) which includes a detailed micro-simulation multimodal (motor vehicles, pedestrians, and trains) operations analysis for two scenarios to and from the site at Project buildout, one with a weekday afternoon ballpark event ending at 3:30 pm, and one with a weekday evening ballpark event starting at 7 pm. Both scenarios included 35,000 attendees, were evaluated for five consecutive hours between 3 pm and 8 pm and incorporated observed railroad gate down times (refer to Appendix D of the memorandum). As shown in the memorandum's Appendix D a total of 20 gate down time events (between 3 and 8 pm) were incorporated into the micro-simulation traffic operation analysis with the first gate down time event occurring at 3 pm and the last

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event occurring at 7:39 pm. Also note that traffic congestion or measures of vehicular delay are not an environmental impact under CEQA per State CEQA Guidelines Section 15064.3.

O-48-17 Refer to Response to Comment O-48-7. Also, the microsimulation traffic operations analysis provided Draft EIR Appendix TRA.3 (memorandum *Howard Terminal Operations Analysis*, December 1, 2020) simulates the individual movement of all vehicles, pedestrians, and trains through the network serving the Project site at Market Street and Martin Luther King Jr. Way which provides a far more granular analysis than the one hour or 15-minute increment suggested by the commenter. Also note that traffic congestion or measures of vehicular delay are not an environmental impact under CEQA per State CEQA Guidelines Section 15064.3.

O-48-18 The Draft EIR fully accounts for train activities that impact the at-grade crossings at Market Street and at Martin Luther King Jr. Way. Train frequency and gate down time duration were observed and then documented in Draft EIR (p. 4.15-39 to 42). The observations did not separately identify train switching activities from the other train activities. Rather the observations reflect all observed events that caused the gates to go down as well as the duration of every gate down time event.

O-48-19 The capacity of 800 vehicles per hour per lane referenced by the commenter was used for the volume-to-capacity ratio analysis for road segments on the Metropolitan Transportation System (MTS) network (see Draft EIR Additional Transportation Reference Material, *CMP and MTS Analysis* dated December 1, 2020). This analysis did not evaluate the Embarcadero West corridor and its at-grade crossings because Embarcadero West is not on the MTS network.

The commenter is directed to Draft EIR Appendix TRA.3 which addresses traffic operations at the Embarcadero West intersections including Market Street, Martin Luther King Jr. Way, Clay Street, Washington Street and Broadway. The analysis used the Synchro software to evaluate the Project's non-ballpark development and the Vissim microsimulation software to evaluate the Project's buildout with a ballpark event serving the site via Market Street and Martin Luther King Jr. Way. The methodologies used are consistent with the 2010 *Highway Capacity Manual*. Also note that traffic congestion or measures of vehicular delay are not an environmental impact under CEQA per State CEQA Guidelines Section 15064.3.

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O-48-20 Refer to Response to Comment O-48-19.

O-48-21 The commenter suggests consolidating the existing at-grade railroad crossings on the Embarcadero West corridor. Chapter 6, Alternative 3, would incorporate grade separation for the Project site. Refer to Consolidated Response 4.9, *Alternative 3: The Proposed Project with Grade Separation Alternative* regarding the railroad crossings at the Project site including Market Street and Martin Luther King Jr. Way. At-grade railroad crossing consolidation along Embarcadero West, beyond the Project site, would have implications to existing land uses and circulation as described below:

- Clay Street after crossing the railroad tracks becomes a cul-de-sac with a commercial and passenger loading turnaround that also serves the Oakland Fire Station No. 2, BevMo parking, and the Oakland Jack London Square Ferry Terminal. Without the Clay Street at-grade crossing the fire station would need to be relocated to another site north of the railroad tracks. BevMo would lose its parking and associated customers. Ferry users currently access the Terminal by walking or riding their bikes across the railroad tracks at Clay Street and so closing this crossing would preclude people from accessing the ferries serving the Terminal. Closing the Clay Street at-grade crossing would also preclude both commercial and passenger loading to the adjacent retail and office uses along Water Street which is a pedestrian street. Grade separating this crossing is not feasible without removing existing buildings and altering property access within one to two blocks along Clay Street approaching the railroad tracks.
- Washington Street after crossing the railroad tracks becomes a cul-de-sac with a commercial and passenger loading turnaround serving the Waterfront Hotel and its parking, retail and office uses along Water Street near Washington Street, and about 40 boat slips. Closing the at-grade crossing would preclude guests from accessing the hotel and eliminate commercial and passenger loading serving the businesses near Washington Street as well as the vehicle access to the boat slips. Grade separating this crossing is not feasible without removing existing buildings and altering property access within one to two blocks along Washington Street approaching the railroad tracks.
- Broadway after crossing the railroad tracks becomes a cul-de-sac with a commercial and passenger loading turnaround serving Jack London Square and its parking and about 20 boat slips. Broadway is also the

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walking corridor connecting the 12th Street BART station to Jack London Square and it serves as a major bus corridor. Closing the at-grade crossing would preclude patrons to the Waterfront Café, Scott's Seafood, Plank, and other commercial uses from accessing the parking garage as well as those that walk or bike across the railroad tracks. These businesses would also lose their commercial and passenger loading and there would be no vehicle access to the boat slips. Grade separating this crossing is not feasible without removing existing buildings and altering property access within one to two blocks along Broadway approaching the railroad tracks.

- Franklin Street after crossing the railroad tracks becomes a cul-de-sac with a commercial and passenger loading turnaround serving Jack London Square and its parking about 80 boat slips, and an office building. Like Broadway, closing the Franklin Street crossing would preclude patrons from accessing several restaurants as well as commercial and office uses. Access to the parking garage would be eliminated, businesses would also lose their commercial and passenger loading, and there would be no vehicle access to the boat slips. Grade separating this crossing is not feasible without removing existing buildings and altering property access within one to two blocks along Franklin Street approaching the railroad tracks.
- Webster Street after crossing the railroad tracks serves a small parking lot at the eastern edge of Jack London Square including restaurant and commercial uses as well as an office building. Like the other crossings closing the Webster Street at-grade crossing would preclude people from walking and biking to the various uses served at this node. Webster Street does connect east to Oak Street via a two-way Embarcadero West so that with a crossing closure drivers could still access the small parking lot. Grade separating this crossing is not feasible without removing existing buildings and altering property access within one to two blocks along Webster Street approaching the railroad tracks.
- Oak Street is a major street for motor vehicle and bicycle traffic connecting through downtown Oakland across the railroad tracks to Embarcadero which continues along the waterfront serving Brooklyn Basin, the freeway, waterfront uses, and industrial uses into east Oakland. Closing the Oak Street crossing would cause substantial changes to area circulation. Grade separating this crossing is not feasible without removing existing buildings. Grade separating this crossing is not feasible without

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removing existing buildings and altering property access within one to two blocks along Oak Street approaching the railroad tracks.

- O-48-22 While traffic congestion or measures of vehicular delay are not an environmental impact under CEQA per State CEQA Guidelines Section 15064.3. the City undertook a detailed analysis of intersection operations to understand the Project's effect on traffic congestion. Response to Comment O-48-16 describes the type of intersection analyses conducted for the at-grade railroad crossings. The railroad preemption system specification, required as part of Mitigation Measure TRANS-3a and noted by the commenter, would be established as part of the GO 88-B Request (Authorization to Alter Highway Rail Crossings) which occurs during final design, and will be part of implementation of the mitigation measure as the EIR acknowledges.

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O-48-22 require interconnection to the railroad's signals system. The effective capacity of intersections controlled by these proposed signals should be evaluated to determine adequate mitigation strategies.

O-48-23

- The study states "Mitigation Measures TRANS-3a and TRANS-3b would improve safety at existing at-grade crossings but would not reduce the impact to less than significant and are subject to review and approval by another agency -- the CPUC." The DEIR does not indicate what improvements have been explored and which improvements could reduce the impacts to less than significant?
- The analysis does not address the fact that there are multiple rail uses in this corridor that could occur simultaneously because of the multiple tracks, e.g. freight and/or passenger at speed, and freight switching. Simultaneous multiple uses could result in a "second train" scenario in which vehicle or pedestrian users think the crossing activation signals only one train. This scenario was the cause of a 2017 incident. The description of that incident states, "2 trespassers went around gates in front or behind 1st train, struck by 2nd train." The analysis should consider the consequences of, and potential mitigation measures for, incidents that can occur with multiple railroad uses and multiple tracks, especially with the significant increase in the number of pedestrian and bike users anticipated at these crossings.
- The pedestrian/bicycle/vehicle volumes in Table 4.15-42 present arrival volumes; However, the true worst-case condition would be departure following an event because patrons tend to exit in mass within a short period of time after the event. Arrivals to an event typically occur over several hours. Additionally, crowds following an event can be expected to include persons who have consumed alcohol and are impaired and less able to make critical-thinking decisions. The bottom line is that expected departure volumes should be studied, to analyze more realistically the likely number of departing patrons and their condition, so that the true magnitude of impacts of the proposed development are known and appropriately studied and mitigated.
- As parking at Howard Terminal transitions to off-site for full project buildout conditions, pedestrian traffic over the crossings along Embarcadero West will increase. However, the analysis and improvements described in the DEIR for pedestrian traffic seem to be focused on near-term impacts. The analysis should further evaluate how full buildout conditions may call for different mitigation measures.
- The analysis does not evaluate how to utilize existing or proposed pedestrian overcrossings to reduce railroad safety hazards. As an example, the Howard Terminal Pedestrian Routing (Figure 4.15-19) figure does not show the existing or proposed pedestrian bridges. Washington Street is shown in Table 4.15-42 as having a peak hour pedestrian volume of 4,350, but the study shows these pedestrians crossing at-grade despite having a nearby pedestrian bridge. Furthermore, the same table shows 240 pedestrians in the peak hour at Clay Street and does not show Jefferson Street at all, yet a pedestrian bridge is proposed at Jefferson Street or Clay Street. The analysis should evaluate how the existing and proposed pedestrian overcrossings can be used to maximize safety of the corridor.

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O-48-23 The commenter is directed to Draft EIR (p. 4.15-235 and 236) which describe the railroad corridor improvements for Mitigation Measure TRANS-3a including elements such as fencing along the railroad corridor; converting Embarcadero West on the south side of the railroad tracks from a motor vehicle street to a pedestrian and bicycle path; forcing motor vehicle traffic on Embarcadero West on the north side of the railroad tracks to turn right away from the railroad tracks at each intersection; upgrading at-grade crossings with features such as quad gates, separate signals and gates for pedestrians and/or bicycles, improved crossing surfaces, and clearly defined staging areas for people walking and bicycling; and traffic signals with such elements as railroad preemption and queue cutter loops, blankout turn restriction signs, and left turn prohibitions to facilitate efficient motor vehicle flows crossing the railroad tracks.

The commenter is also directed to Mitigation Measure TRANS-3b (p. 4.15-236 to 239) which includes a pedestrian and bicycle bridge over the railroad tracks along either the Jefferson or Clay Street alignments or a comparable nearby location. The overcrossing could include some combination of stair and elevator system and potentially with ADA-compliant ramping that could also be used by bicycle riders.

Combined, these are the types of mitigations available to address the railroad crossing impacts identified in the Draft EIR. As noted in Response To Comment O-48-21 measures such as crossing consolidation are not feasible without significant impacts to existing land uses and circulation. Also, refer to Consolidated Response 4.9, *Alternative 3: The Proposed Project with Grade Separation Alternative* regarding the railroad crossings at the Project site.

O-48-24 See Consolidated Response 4.6, *Rail Safety, Grade Crossing, and Grade Separation* (Section 4.6.3 Union Pacific Railroad's Train Crossings and Double Threats).

O-48-25 The commenter is directed to the Draft EIR Appendix TRA.3 (memorandum *Howard Terminal Operations Analysis*, December 1, 2020) which includes a detailed micro-simulation multimodal (motor vehicles, pedestrians, and trains) operations analysis for two scenarios at Project buildout, one with a weekday afternoon ballpark event ending at 3:30 pm, and one with a weekday evening ballpark event starting at 7 pm. Both scenarios included 35,000 attendees and represented a study period starting at 3 p.m. and ending at 8 p.m.

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O-48-26 The Draft EIR analysis of the ballpark includes a 35,000-attendee event and assumes 3,500 cars are parked on-site. At Project buildout 2,000 cars would be parked on-site for a similar event size. The net change in the Project's total railroad crossings between the two scenarios would be 1,500 fewer cars crossing the railroad tracks and 3,450 more pedestrians crossing the tracks or a net increase of 1,950 crossings at buildout with a ballpark event. This represents about a 4% increase in the Project's total railroad crossings at buildout on a weekday between 3 p.m. and 8 p.m. with a ballpark event. The change in crossings would not change Impact TRANS-3 and the associated Mitigation Measures TRANS-3a and TRANS-3b. Nor would the 4% increase in total railroad crossings change the conclusion in the Draft EIR that Impact TRANS-3 with Mitigation Measure TRANS-3a and TRANS-3b would remain a significant and unavoidable impact.

O-48-27 The existing pedestrian bridges over the railroad tracks are unlikely to be used by many ballpark attendees as explained below and so were not assumed to be used in the Draft EIR. In addition, these pedestrian bridges do not serve the ballpark attendees who drive and park in downtown Oakland or attendees who use BART or AC Transit and so would not change the conclusion in the Draft EIR that Impact TRANS-3 with Mitigation Measure TRANS-3a and TRANS-3b would remain a significant and unavoidable impact. Each pedestrian bridge is described in the following paragraphs.

The nearest overcrossing connects an office building with the upper levels of the Washington Street parking garage. The public is prohibited from entering the office building, but they can use one of two small elevators (each accommodates five or six people) that serve street level on Embarcadero West. The elevators are in direct line of sight of the pay stations at the parking garage. So, rather than wait for an elevator ballpark patrons who park in this garage would likely cross the railroad tracks between Clay Street and Washington Street to access the parking garage after a ballpark event. Mitigation Measure TRANS-3a would be required to restrict this crossing of the railroad tracks.

The next overcrossing is almost one-half mile from the ballpark and connects an office building with the 55 Harrison Street parking garage. This pedestrian bridge is accessible through the office building's lobby by taking the elevator to the second-floor security desk where there is a route to the pedestrian bridge. There are also stairs from the street connecting to the overcrossing and ballpark attendees who drive and parking in the parking garage would

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likely use the stair system connecting the overcrossing and the parking garage. Use of the overcrossing by ballpark attendees who drive and park in the parking garage would not alter Impact TRANS-3 nor would it change Mitigation Measure TRANS-3a or TRANS-3b. This overcrossing would only serve people parking in the garage. Ballpark attendees who drive and park elsewhere would continue to use the at-grade crossings as would attendees who use BART, buses, and shuttles.

The third overcrossing is about one-half mile from the ballpark and connects the Amtrak Station. The passenger rail service is unlikely to serve any ballpark attendees because the passenger rail schedule does not align with the variable ballpark event start and end times. The overcrossing does not serve parking and so would not be used by ballpark attendees who drive. Nor, does the crossing serve pedestrian paths of travel for those who use BART, buses, and shuttles to access the ballpark.

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- Pursuant to FHWA (https://safety.fhwa.dot.gov/hsp/xings/corn_roaduser/fhwasa18040/chp3.cfm), "Closure of a crossing provides the highest level of crossing safety compared to other alternatives, because the point of intersection between highway and railroad is removed. However, the effects of closure on highway and railroad operations may not always be completely beneficial. The major benefits of crossing closure include reductions in certain types of collisions and decreased delays to highway and rail traffic, as well as lowered maintenance costs:
 - "The following four types of delay can occur on highway traffic by crossings:
 - "Presence of crossing—This delay occurs regardless of whether a train is approaching or occupying the crossing. Motorists usually slow in advance of crossings so that they can stop safely if a train is approaching. This is a required safe driving practice in conformance with the Uniform Vehicle Code, which states "...vehicles must stop within 15 to 50 feet from the crossing when a train is in such proximity so as to constitute an immediate hazard." Therefore, the existence of a crossing may cause some delays to motorists who slow to look for a train.
 - "Traffic control devices—Road users are subject to delay at passive crossings with STOP or YIELD signs as well as at active crossings when traffic control devices are actuated.
 - "Trains blocking crossings—Trains may stop and block a crossing in response to a train signal indication or during switching operations.
 - "Special vehicles—Under the Federal Motor Carrier Safety Administration (FMCSA) regulations, all vehicles transporting passengers and trucks carrying many types of hazardous materials must stop prior to crossing tracks at a highway-rail crossing (49 CFR 392.10). If following vehicles do not anticipate such stops and/or fail to maintain safe stopping distance, collisions may result."
 - The analysis of this corridor should fully review the applicability of the FHWA guidance INCREA for grade separation. Specifically, the following characteristics presented in the FHWA Highway-Rail Crossing Handbook, Third Edition should be reviewed for relevance in this corridor: 1) Annual Average Daily Traffic exceeds 30,000; 2) An average of 30 or more trains per day; 3) The expected accident frequency for active devices with gates, as calculated by the USDOT Accident Prediction Formula including five-year accident history, exceeds 0.5 (per year); 4) Vehicle delay exceeds 30 vehicle hours per day with consideration for cost effectiveness.
- The Railroad Study analysis is unclear on how future increased rail service was forecasted.
- The Railroad Study states, "These proposed changes are intended to move the vehicles in and out of the development area as safely and efficiently as possible." The proposed improvements from that study seem to be carried over to the DEIR. The analysis and proposed improvements should address the safety of all users (pedestrians and bicycles).
- The Railroad Study describes a pedestrian overpass that is 18-20 feet wide. Such a pedestrian bridge does not seem sufficient for the pedestrian volumes that are expected

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O-48-28 The commenter correctly restates the language from the *Highway-Rail Crossing Handbook*, Third Edition (p. 12 and 13) including the benefits of closure of a crossing and the types of delay that can occur on highway traffic by crossings. This portion of the comment is informational only and no further response is required.

The commenter also states that the Embarcadero West corridor should be reviewed for grade separation using criteria from the *Highway-Rail Crossing Handbook*, Third Edition (p. 122). The Handbook states that grade separation should be considered but is not required and provides guidance for agencies to consider and its criteria do not establish requirements for studying or implementing grade separated crossings. Chapter 6, Alternative 3, would incorporate grade separation for the Project site and so the Draft EIR is consistent with the Handbook guidance to consider grade separation. The commenter is also directed to Consolidated Response 4.9 *Alternative 3: The Proposed Project with Grade Separation Alternative* for additional information regarding the grade separation analysis performed for the Project site. Since the Draft EIR contains a study and analysis relating to the need for a grade separated crossing, further analysis based on the guidance under the Handbook is not required to meet CEQA standards. Response to Comment O-48-21 addresses the implications of consolidating one or more of the at-grade crossings east of the Project site i.e., Clay Street, Washington Street, Broadway, Franklin Street, Webster Street, and Oak Street.

The City recognizes the importance of managing ballpark attendees before, during, and after events and so in addition to Mitigation Measure TRANS-3a and TRANS-3b which add rail corridor fencing, at-grade crossing improvements, and a pedestrian and bicycle bridge the City has also identified Mitigation Measure TRANS-1b which would implement a Transportation Management Plan (TMP) for all ballpark events. The TMP includes a requirement that traffic control officers or other personnel acceptable to the City manage ballpark attendees pre- and post-event (see Chapter 11 in the TMP) including approaching the at-grade crossings.

O-48-29 The Railroad Study noted by the commenter was commissioned by the Project sponsor (stated in Draft EIR p. 4.15-234) and is provided in the Draft EIR's Additional Transportation Reference Material. Information from the Railroad Study that was used in the Draft EIR was limited primarily to identifying

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potential at-grade railroad crossing improvements (Draft EIR p. 4.15-93). Other data sources that were also considered are also noted on p. 4.15-93.

Train forecasts were not calculated for the Draft EIR because freight train activity is highly variable in terms of frequency, schedule, and size. UPRR does not publish freight train activities and they do not follow a consistent day-to-day schedule. Switching activities in the rail yard are also not scheduled and when the switching activities extend beyond the rail yard are variable in time and duration. So, the Draft EIR evaluated railroad operations based on existing observations which are summarized in Draft EIR (p. 4.15-39 to 42).

The commenter is also directed to Response to Comment O-48-16 addressing the multimodal intersection analysis completed for the Draft EIR. Also, refer to Impact TRANS-3 (Table 4.15-42) which summarizes the motor vehicle, pedestrian, and bicycle crossings of the railroad tracks that were considered in the impact analysis and the resulting Mitigation Measure TRANS-3a and TRANS-3b which include both corridor and at-grade crossing measures for both pedestrians and bicyclists.

O-48-30 The commenter notes that the Railroad Study commissioned by the Project sponsor describes a pedestrian overcrossing at the railroad tracks that is 18 to 20 feet wide. The commenter is redirected to Mitigation Measure TRANS-3b which would implement a pedestrian and bicycle bridge consistent with Draft EIR Figure 4.15-46 and Figure 4.15-47. These figures summarize the bridge specifications which include a 20-foot wide bridge and would include some combination of stair and elevator system potentially with ADA-compliant ramping that could also be used by bicycle riders.

The commenter suggests that the pedestrian and bicycle bridge may not be wide enough to accommodate the pedestrian demands generated by a ballpark event. Figure 4.15-46 documents the expected pedestrian demand (4,110 pedestrians) that would use the pedestrian and bicycle bridge serving the Project site if one were provided per Mitigation Measure TRANS-3b. Using methodologies in the *Highway Capacity Manual* a 20-foot wide bridge could serve up to 15,000 people per hour at the Level of Service D/E threshold. The anticipated 4,110 pedestrian demand is substantially less than the bridge's effective capacity and in fact represents a Level of Service B condition. At this service level the bridge could also serve bicycle riders without riders dismounting.

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- O-48-30 | to use the facility. The analysis should further review the capacity of such a structure, measured specifically against post game pedestrian volume peaks.
- O-48-31 | • In the Railroad Study, the "count of gate down time" data is unclear. UPRR records show 100 activations per day while the data in the report appears to show 150 activations in a week. This data should be reviewed for accuracy.
- O-48-32 | • The existing data reported in the Railroad Study shows no bicycle and pedestrian traffic at Market Street and Martin Luther King Jr. Way. This is unrealistic. Furthermore, the Railroad Study, projects 40% of bicycle and pedestrian trips shifting to these crossings despite non-existent to low existing volumes. The DEIR should justify assumed changes in trip distribution before incorporating the improvements proposed by the Railroad Study.
- O-48-33 | • The queuing figures presented in the appendix of the Railroad Study show queuing only at Market Street and do not show Martin Luther King Jr. Way. The DEIR should evaluate queuing at Martin Luther King Jr. Way prior to incorporating the improvements proposed by the Railroad Study.
- O-48-34 | • The 2017 "second train" accident reported at Washington Street (which actually occurred at Clay Street) highlights one of UPRR's primary concerns with the project as currently proposed. The analysis should evaluate how to prevent this type of incident in the future given that pedestrian traffic is predicted to increase with the proposed development.
- O-48-35 | • The DEIR and appendix do not sufficiently address the potential for crossing closures to reduce impacts. A more detailed closure analysis should be conducted in accordance with the California Manual on Uniform Traffic Control Devices, 2014 Edition, Part 8, 8A.05, Grade Crossing Elimination.
- O-48-36 | • Chapter 6 of the DEIR states, "The ability to access the site via an overcrossing could mean that more vehicles would choose this route to travel to the site..." The statement misrepresents the potential use of an overcrossing. Although an overcrossing could make vehicular access more attractive, the project site's ability to accommodate additional vehicles is at least partially dependent on available parking which is proposed to move off-site following full buildout.
- O-48-37 | • The analysis of a "no at-grade crossings" alternative in Chapter 6 evaluates removal of only one at-grade crossing via a grade separation at Market Street. This falls short of a true "no at-grade crossing analysis," which should include evaluation of how grade crossings can be consolidated, and overcrossings prioritized as the safest means of accessing the site. The analysis should include evaluation of how circulation patterns might change if grade crossings are eliminated through closure or grade separation.
- The analysis of a "no at-grade crossings" alternative in Chapter 6 deems elimination of both Market St and Martin Luther King Jr. Way as infeasible, but only considers grade separation of both. It does not consider closure of one and grade separation of the other.
- Chapter 6 states that providing two grade separations at Market Street and Martin Luther King Jr. Way would result in increased pedestrian and bicycle use at other crossings on the corridor. This does not consider the possibility of closing some or all at-grade crossings

O-48-31 The commenter is inconsistent with their representation of the UPRR data. In Comment O-48-15 the commenter states 70 activations per day which is less than the 100 activations stated in this comment. UPRR in Comment O-48-2 also refers to an average of almost 70 activations. UPRR did provide the activations in the UPRR comment letter (Comment O-48-2) and the data included gate down time frequencies. Refer to Response to Comment O-48-2 for more information.

The Railroad Study noted by the commenter was commissioned by the Project sponsor (stated in Draft EIR p. 4.15-234) and is provided in the Draft EIR's Additional Transportation Reference Material. Information from the Railroad Study that was used in the Draft EIR was limited primarily to identifying potential at-grade railroad crossing improvements (Draft EIR p. 4.15-93). The commenter is directed to the Draft EIR data (p. 4.15-39 and 40) which describes the train and crossing data considered for Draft EIR and to Consolidated Response 4.6, *Rail Safety, Grade Crossing, and Grade Separation* (Section 4.6.3 Union Pacific Railroad's Train Crossings and Double Threats) which compares the data used in the Draft EIR to the UPRR provided data (Comment O-48-2).

O-48-32 The Railroad Study noted by the commenter was commissioned by the Project sponsor (stated in Draft EIR p. 4.15-234) and is provided in the Draft EIR's Additional Transportation Reference Material. Information from the Railroad Study that was used in the Draft EIR was limited primarily to identifying potential at-grade railroad crossing improvements (Draft EIR p. 4.15-93).

The commenter claims that it is unreasonable that no existing bicycle and pedestrian traffic crossings occur at the Market Street and the Martin Luther King Jr. Way at-grade railroad crossings. These crossing only serve trucking uses including the Howard Terminal and the Schnitzer Steel Recycling Plant which generate negligible walking, bicycling, and transit trips. In addition, there are no sidewalks on Embarcadero West in the vicinity of Market Street and the Market Street sidewalks terminate at the railroad right-of-way. At Martin Luther King Jr. Way there is a sidewalk on one corner of its intersection with Embarcadero West and, like Market Street, the sidewalks on Martin Luther King Jr. Way terminate at the railroad right-of-way. There are no bicycle facilities on Embarcadero West near these crossings, rather the bicycle facilities serving the area are on 2nd Street. Given these factors it is reasonable

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that under existing conditions little to no pedestrian and bicycle activity occurs at these two crossings.

The commenter further suggests that if there is no pedestrian and bicycle crossings it is unreasonable to assume substantial increases in bicycle and pedestrian demands at these crossings with the Project. Draft EIR (p. 4.15-158 through 174) describes how Project's trip generation, distribution, and assignment calculations. The Project would redevelop about 55 acres of commercial trucking uses to a mixed-use project and ballpark with a 35,000-seat capacity. As indicated in the Draft EIR (Table 4.15-28) the non-ballpark component of the project would generate about 50,490 daily person trips and almost 25,000 of these trips would be by transit, walking, and cycling. A ballpark event would generate 35,000 person trips to and from an event and about half of these would be by a travel mode other than driving and parking (Table 4.15-31). Clearly, the Project has very different trip generation characteristics compared to the existing Howard Terminal uses. For additional information, the commenter is directed to Draft EIR Additional Transportation Reference Material, *Transportation Data Collection Sheets*, which summarizes all of the transportation data collected and used in the Draft EIR.

O-48-33 As noted in previous response to comments the Railroad Study noted by the commenter was commissioned by the Project sponsor (stated in Draft EIR p. 4.15-234) and is provided in the Draft EIR's Additional Transportation Reference Material. Information from the Railroad Study that was used in the Draft EIR was limited primarily to identifying potential at-grade railroad crossing improvements (Draft EIR p. 4.15-93).

The commenter is directed to the Draft EIR Appendix TRA.3 (memorandum *Howard Terminal Operations Analysis*, December 1, 2020) which includes a detailed micro-simulation multimodal (motor vehicles, pedestrians, and trains) operations analysis for two scenarios at Project buildout, one with a weekday afternoon ballpark event ending at 3:30 pm, and one with a weekday evening ballpark event starting at 7 pm. Both scenarios included 35,000 attendees and represented a study period starting at 3 p.m. and ending at 8 p.m. Appendix H of the memorandum contains the technical worksheets for the scenario with an afternoon ballpark event and Appendix J includes the worksheets for the scenario with an evening ballpark event. The appendices include worksheets for pedestrian speed and spacing in tabular and graphic form; as well as worksheets for intersection motor vehicle demands, volumes

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served, average delay, average and maximum queue, and graphical output of average vehicle speeds. The recommendations from this analysis are summarized at the beginning of the memorandum in Appendix TRA.3 and are described in Draft EIR (Section 4.15.4 Transportation Improvements).

O-48-34 Refer to Consolidated Response 4.6, *Rail Safety, Grade Crossing, and Grade Separation* (Section 4.6.3 Union Pacific Railroad’s Train Crossings and Double Threats). In addition, Mitigation Measure TRANS-3a includes several measures that would deter people from crossing the railroad tracks when gates are down and trains are present. These include fencing along the railroad corridor that connects to pedestrian gate systems at the at-grade crossings and quad gates (or similar treatment) such that when the pedestrian gates and quad gates are down there is a continuous barrier along the railroad corridor. These features will deter pedestrians from crossing the railroad tracks when one or more trains are present.

O-48-35 The commenter requests that a closure analysis be conducted in accordance with the California Manual on Uniform Traffic Control Devices (CAMUTCD), 2014 Edition, Part 8, 8A-05, Grade Crossing Elimination. This section includes two guidance statements pertaining to eliminating at-grade crossings. The CAMUTCD defines “guidance” as a statement of recommended, but not mandatory, practice.

Chapter 6, Alternative 3, would incorporate grade separation for the Project site and so the Draft EIR is consistent with the CAMUTCD guidance to consider grade separation. The commenter is also directed to Consolidated Response 4.9 *Alternative 3: The Proposed Project with Grade Separation Alternative* for additional information regarding the grade separation analysis for the Project site. Response to Comment O-48-21 addresses the implications of consolidating one or more of the at-grade crossings east of the Project site i.e., Clay Street, Washington Street, Broadway, Franklin Street, Webster Street, and Oak Street.

O-48-36 Absence substantial changes to the Project description the statement referenced by the commenter is factually correct. Provision of a motor vehicle overcrossing to the Project site could mean that some motor vehicle drivers would choose to use the overcrossing rather than the at-grade crossings. This would reduce but not eliminate crossing demands at the at-grade crossings because multimodal travel (i.e., vehicles, walking, bicycling, and transit) to and

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from the Project site would continue to use existing at-grade crossings such as Market Street, Martin Luther King Jr. Way, Clay and Washington Streets, and Broadway.

O-48-37 See Consolidated Response 4.9, *Alternative 3: The Proposed Project with Grade Separation Alternative*.

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through Broadway to make a multi-modal overpass at Market Street and/or Martin Luther King Jr. Way more attractive to bicycles and pedestrians.

O-48-38

2.0 The Comparison of Alternatives Does Not Accurately Reflect the Benefits of Grade Separations and Crossing Closures

- Under the comparison of alternatives in Chapter 6, the DEIR concludes that emissions would not be reduced with a grade separation. This conclusion fails to account for the increased emissions generated by vehicles stopping at occupied crossings.
- Under the comparison of alternatives in Chapter 6, the conclusion that grade separation would reduce emissions but still be significant and unavoidable fails to recognize the effectiveness of a grade separation if other accesses are appropriately controlled.

O-48-39

3.0 The Embarcadero West Corridor Poses Major Access Concerns
 The proposed project will increase existing Embarcadero West Corridor access challenges in the following ways:

- Market Street is identified as a primary vehicle access point, but it is also occupied regularly by trains. The analysis should further evaluate access to/from the site when trains occupy this crossing.
- Middle Harbor Road is identified as an emergency access/egress route. However, this emergency access/egress analysis is flawed given the access is over Port-owned Embarcadero West as well as Port-owned private at-grade crossings. Alternative access routes should be considered that are not likely to be blocked by trains, such as grade separated crossings.

O-48-40

4.0 The Embarcadero West Corridor Poses Major Safety Concerns Especially for Pedestrians and Bicycles

The existing Embarcadero West Corridor presents safety concerns, especially for pedestrian and bicycle traffic. These concerns may be exacerbated by the proposed project if not appropriately mitigated. The following summarizes our concerns:

- The designated bicycle/pedestrian routes are not routed over existing and/or proposed pedestrian overcrossings. The analysis should review how pedestrians and bicyclists could be channeled to the safest paths of travel, i.e., overcrossings.
- Fencing is proposed from Martin Luther King Jr. Way to Washington Street, but at grade crossings remain. This fencing mitigates the trespassing issue between crossings but does not address the safety issues at the grade crossings. It would be safer to close crossings in this section to all non-train modes, and use existing, proposed and additional pedestrian overpass bridges to facilitate the safe movement of pedestrians and bicycles.

O-48-41

O-48-38

As discussed starting on p. 6-33 of the Draft EIR, adding a vehicular grade separation to the Project would not alter the amount of development or the amount of parking proposed on the site, and therefore the amount of traffic (trips) would remain the same as with the proposed Project without the grade separation. Also, while the commenter is correct that a vehicular grade separation could reduce queuing at that particular location (and potentially other nearby at grade crossings), gate down times at the at grade crossings are events that occur for a small percentage of daily trips, and the reduction in emissions would therefore be nominal. As indicated on p. 6-34 of the Draft EIR, the local street network between 3rd and 7th streets represents a vehicular capacity constraint (and therefore a cause of vehicular queuing/emissions) that would continue to exist with the addition of a vehicular grade separation. See Consolidated Response 4.9, *Alternative 3: The Proposed Project with Grade Separation Alternative* and Draft EIR Section 6.4.2 for a discussion of an alternative without any at grade crossings.

O-48-39

Refer to Response to Comment O-48-16 which summarizes the operations analysis. Emergency access is discussed in Section 4.8, *Hazards and Hazardous Materials*, of the Draft EIR. Emergency Vehicle Access (EVA) on the west side of the Project site would be constructed on an alignment to be determined by the Port that connects the west end of Embarcadero West to Middle Harbor Road. Middle Harbor Road connects to Adeline Street, which contains an above-grade rail overpass. While the EVA would cross the "Roundhouse" railroad spur, this spur is off the mainline and used less frequently. EVA via Water Street and the eastbound side of Embarcadero West would remain available in the unlikely event that, during an emergency, rail traffic utilizing the "Roundhouse" spur blocks the Middle Harbor EVA at the same time that rail traffic on the UPRR main line in Embarcadero West separately blocks access via Market and Martin Luther King Jr. Way (Draft EIR pp. 4.8-54-55).

O-48-40

As noted in Response to Comment O-48-27 the existing pedestrian overcrossings would be ineffective at routing ballpark attendees walking and biking to and from a ballpark event. As noted in the Draft EIR (p. 4.15-168) the attendees who walk and bicycle to the Project site were assigned to the transportation network based on route directness and expected quality of the pedestrian experience and as a result pedestrians and bicycle riders are expected to cross the railroad tracks at one of several at-grade railroad crossings which are required to remain open.

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The at-grade railroad crossings east of the Project site are required to serve existing land uses and circulation (See Response to Comment O-48-21) and are not considered candidates for either crossing consolidation or grade separation. Chapter 6, Alternative 3, would incorporate grade separation for the Project site and Consolidated Response 4.9 *Alternative 3: The Proposed Project with Grade Separation Alternative* provides additional information regarding the grade separation analysis for the Project site.

Because these crossings must be maintained Mitigation Measure TRANS-3a was developed to improve the safety of the railroad corridor along Embarcadero West and Mitigation Measure TRANS-3b was developed to provide a pedestrian and bicycle overcrossing connecting the Project site to the Transportation Hub on 2nd Street. The City also recognizes the importance of managing ballpark attendees before, during, and after events and so in addition to Mitigation Measure TRANS-3a and TRANS-3b the City has also identified Mitigation Measure TRANS-1b which would implement a Transportation Management Plan (TMP) for all ballpark events. The TMP includes a requirement that traffic control officers or other personnel acceptable to the City manage ballpark attendees pre- and post-event (see Chapter 11 in the TMP) including approaching the at-grade crossings.

O-48-41 Refer to Response to Comment O-48-40.

O-48

COMMENT

RESPONSE



- O-48-42 • The project is expected to increase significantly pedestrian traffic, but the DEIR calls for pedestrians to continue to cross the railroad tracks at-grade. The analysis should evaluate alternatives that would allow pedestrians of all abilities safe access to and egress from the site.
 - O-48-43 • Martin Luther King Jr. Way is identified as a primary route of bicycle and pedestrian access. It is also routinely occupied by trains. Furthermore, a cycle track is included at this crossing adding complexity to a regularly occupied crossing. The analysis should evaluate how pedestrians and bicyclists may behave at a crossing that is occupied by trains for extended periods and consider alternative, safer access.
 - O-48-44 • Switching operations at West Oakland Yard west of the project site and Amtrak trains stopped at the station have the potential to activate crossings without trains being present at the crossing. This can lead to bicycles and pedestrians violating railroad signals. At other locations where crossings are frequently occupied, pedestrians have been observed crossing between stopped or slowly moving trains. The analysis should evaluate how pedestrians and bicyclists may behave at a crossing that is occupied for extended periods and consider alternative, safer access.
 - O-48-45 • Recent research has found that pedestrian behavior at or adjacent to railroad tracks can be characterized as risky. See Engineering Design for Pedestrian Safety at Highway-Rail Grade Crossings Report (2016), Cambridge, MA: Volpe National Transportation Systems Center.
 - O-48-46 • As proposed, the access issues surrounding the site could make parking along Middle Harbor Road and Adeline Street and walking to the site a desirable access route for patrons. Although Middle Harbor Road is designated as an emergency access/egress for vehicles, nothing would prevent pedestrians from using the private roadway and private crossings to access the site from Adeline Street. The analysis should evaluate how to prevent or restrict pedestrian access through private property and over private crossings.
 - O-48-47 • The proposed pedestrian overpass concepts described in the DEIR would require users to climb stairs or ramps on both sides of the pedestrian bridge. Although this concept is likely the safest path over the tracks, it may be viewed by many pedestrians as too difficult or indirect, leaving patrons to choose to cross the railroad tracks at grade. The analysis should review options to overcome the potential inconvenience of a pedestrian overpass.
- 5.0 The Proposed Improvements Create Safety Concerns**
- Our evaluation of the proposed concepts indicates that some of the improvements may increase existing and/or introduce new safety concerns in the following ways:
- O-48-48 • The proposed configuration of the Martin Luther King Jr. Way crossing creates an unsafe situation. The concept would limit sight distance of traffic signals, railroad signals and eastbound trains. Mitigations proposed by the project should consider designs that address existing safety issues without creating new ones.

- O-48-42 Refer to Response to Comment O-48-40. In addition, The commenter is directed to Mitigation Measure TRANS-3b which would implement a pedestrian and bicycle bridge consistent with Draft EIR Figure 4.15-46 and Figure 4.15-47. These figures summarize the bridge specifications which include a 20-foot wide bridge and would include some combination of stair and elevator system potentially with ADA-compliant ramping that could also be used by bicycle riders. With this measure pedestrians (and bicycle riders) would be able to cross over the railroad tracks.
- O-48-43 Per Mitigation Measure TRANS-3a the Martin Luther King Jr. Way at-grade crossing would include quad gates for motor vehicle traffic and separate gates for pedestrians and / or bicycle riders. In addition, railroad corridor fencing would be provided and connect to the gates such that when the gates are in the down position there would be no opening for pedestrians or bicycle riders to cross the railroad tracks. The measure would also include a multiuse path on the south side of the railroad corridor between Martin Luther King Jr. Way and Jefferson Street, and between Clay Street and either Washington Street or Broadway. (The portion of Embarcadero between Jefferson and Clay Streets would retain vehicle access with sidewalk serving the Vistra Power Plant where bicyclists would share the street with motor vehicle traffic.) Pedestrians and bicycle riders waiting for a train to pass at Martin Luther King Jr. Way could opt to use one of several other routes to cross the tracks. Pedestrians and bicycle riders could use the pedestrian and bicycle bridge (Mitigation Measure TRANS-3b) to cross the railroad tracks. People on the south side of the railroad corridor could also use the multiuse path to cross the railroad at the Clay or Washington Street crossings or at the Broadway crossing. People on the north side of the tracks would backtrack 200 feet to 2nd Street where they could walk to Clay, Washington, or Broadway to cross the tracks.
- O-48-44 The commenter references pedestrians and bicyclists violating railroad signals or crossing between stopped or slowly moving train cars. Mitigation Measure TRANS-3a incorporates design features to deter these activities. Corridor fencing would deter all crossings between at-grade intersection crossings. At the at-grade crossings pedestrian gate features and quad gate features would be incorporated into the fencing to deter pedestrians, bicycle riders, and motor vehicle drivers from going around the gates when they are down. Consolidated Response 4.6 *Rail Safety, Grade Crossing, and Grade Separation* (Section 4.6.5) also addresses this concern describing design differences

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between the mitigation measures in the Draft EIR and those at the Petco Park railroad crossing.

- O-48-45 The commenter provides information noting that pedestrian behavior at or adjacent to railroad tracks can be characterized as risky. No further response is required. This information will be part of the record and provided to the decision makers. Consolidated Response 4.6 *Rail Safety, Grade Crossing, and Grade Separation* (Section 4.6.5) also addresses this concern describing design differences between the mitigation measures in the Draft EIR and those at the Petco Park railroad crossing.
- O-48-46 The commenter suggests that ballpark attendees may park on Middle Harbor Road and Adeline Street and walk along the planned Emergency Vehicle Access (EVA) to access the Project site for a ballpark event. There are no pedestrian facilities on Middle Harbor Road or Adeline Street in the vicinity of the proposed EVA. The EVA is described in the Draft EIR (Chapter 3.8.6) and would include fencing along both sides of the EVA and gates at both ends of the EVA. The gates would restrict access to Port employees and emergency service providers so pedestrians would not be able to access the EVA corridor. In addition, Mitigation Measure TRANS-1b would implement a Transportation Management Plan (TMP) which would manage pre- and post-event ballpark event transportation. A required element of the TMP is a Parking Management Plan (PMP) which would be used by the City to manage both on-street and off-street parking. Through these mechanisms the Port and the City would be able to prohibit ballpark parking on Middle Harbor Road and Adeline Street so that Ballpark attendee parking would not disrupt the Seaport operations.
- O-48-47 Mitigation Measure TRANS-3b would construct a pedestrian and bicycle bridge connecting the Project site and the transportation hub on 2nd Street. This bridge location would provide a direct connection between the ballpark area and the transportation hub with the intent of making the connection a competitive alternative to using an at-grade crossing. The bridge would include some combination of stairs, elevators, and potentially ADA-complaint ramping that could serve bicycle riders with the intent that the bridge is accessible to users of all abilities.
- O-48-48 The commenter is referencing the 90-degree curve, designed for 10 mph, near the Martin Luther King Jr. Way at-grade crossing. Mitigation Measure TRANS-3a would incorporate a median and quad gates at this crossing. These features would preclude drivers from driving around the gates when in the down position. In addition, the measure calls for a traffic signal to stop traffic prior

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to the quad gates which provides an extra level of safety when either the railroad preemption system or the queue cutter loop system is triggered.

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O-48-49

- The concepts presented in the Railroad Study, which appear to be incorporated into the DEIR, show westbound Embarcadero West inside the gates on the north side of the crossings at Clay Street, Washington Street and Broadway. Although the channelizing island directs vehicles away from the crossing, drivers could still circumvent the gates and turn left through the crossing. Furthermore, the proposed layout creates a pathway inside the warning devices for non-vehicular crossing users to bypass all warning devices. These layouts should not be considered a supplemental safety measure for the proposed quiet zone. The analysis should evaluate potential closure of some or all these crossings.

O-48-50

- The study states, "Market Street, Martin Luther King Jr. Way, Jefferson Street, Clay Street, Washington Street, Broadway, Franklin Street, Webster Street and Oak Street were categorized as Tier 1 crossings, the highest priority for improvement to address safety," yet they are not considered for closure in a project that will increase their exposure. Furthermore, they are considered for quiet zone status, which is inappropriate for a mandatory railroad safety element, i.e., train horns. The analysis should evaluate the safest possible options for the highest priority crossings.

6.0 The Proposed Improvements Are Infeasible

The concepts presented are potentially infeasible given the constraints of the Embarcadero West Corridor in the following ways:

O-48-51

- Four-quad gates are proposed at several crossings. This improvement is infeasible due to the required offset from the tracks unless Embarcadero West is narrowed in both directions or east-west traffic is eliminated. Specifically, placing railroad warning devices north of Embarcadero West will not work with UPRR's railroad signaling system. The study should evaluate the feasibility of proposed mitigation measures.
- Proposed fencing along the tracks must be placed off of the railroad right-of-way and must not restrict UPRR's ability to maintain its tracks/equipment. The analysis should evaluate how to minimize impacts to railroad maintenance and operations.
- In accordance with the Union Pacific Railroad-BNSF Railway Guidelines for Railroad Grade Separation Projects (2016), The Railroad does not allow Trails parallel to the track on Railroad right-of-way and does not permit the use of Railroad Access Roads for trail use.

O-48-52

7.0 Draft Environmental Impact Report Is Inconsistent

The Draft Environmental Impact Report presents inconsistencies in the following ways:

- The document appears to have switched the Martin Luther King Jr. Way and Market Street crossing summaries. The analysis should ensure that existing conditions are correctly reflected in the document.
- The study states that Embarcadero West will be closed between Market Street and Martin Luther King Jr. Way which is inconsistent with the concept presented in Figure 4.15-35 that

O-48-53

O-48-49 The Railroad Study noted by the commenter was commissioned by the Project sponsor (stated in Draft EIR p. 4.15-234) and is provided in the Draft EIR's Additional Transportation Reference Material. Information from the Railroad Study that was used in the Draft EIR was limited primarily to identifying potential at-grade railroad crossing improvements (Draft EIR p. 4.15-93) but not the engineering layout of those improvements. The final list of crossing improvements and the engineering layout are established as part of the diagnostic study method noted in Mitigation Measure TRANS-3a and TRANS-3b. Current practice in crossing treatment selection utilizes the diagnostic study method which is incorporated into Mitigation Measures TRANS-3a and TRANS-3b and required by the CPUC. The diagnostic study uses a "Diagnostic Team" composed of experienced individuals knowledgeable in key disciplines including crossing design, safety engineering, rail operations and signaling, and traffic engineering. This approach considers all known measures to improve at-grade crossings and is intended to ensure that site-specific features are considered in adapting guidance and standards for treatments to address the issues at the crossings. The diagnostic study also provides an interdisciplinary approach which reflects all the technical considerations in selection of treatment alternatives. The diagnostic study process is conducted as part of final design, permitting, and the GO 88-B Request (Authorization to Alter Highway Rail Crossings).

O-48-50 The commenter is directed to Chapter 6, Alternative 3, which would incorporate grade separation for the Project site. The commenter is also directed to Consolidated Response 4.9 *Alternative 3: The Proposed Project with Grade Separation Alternative* for additional information regarding the grade separation analysis for the Project site. Response to Comment O-48-21 addresses the implications of consolidating one or more of the at-grade crossings east of the Project site i.e., Clay Street, Washington Street, Broadway, Franklin Street, Webster Street, and Oak Street.

O-48-51 Current practice in crossing treatment selection utilizes the diagnostic study method which is incorporated into Mitigation Measures TRANS-3a and TRANS-3b and required by the CPUC. The diagnostic study uses a "Diagnostic Team" composed of experienced individuals knowledgeable in key disciplines including crossing design, safety engineering, rail operations and signaling, and traffic engineering. This approach considers all known measures to improve at-grade crossings and is intended to ensure that site-specific features are considered in adapting guidance and standards for treatments to

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- address the issues at the crossings. The diagnostic study also provides an interdisciplinary approach which reflects all the technical considerations in selection of treatment alternatives. The diagnostic study process is conducted as part of final design, permitting, and the GO 88-B Request (Authorization to Alter Highway Rail Crossings). The design-related comments will be provided to the City for further consideration during design development. Also see Consolidated Response 4.6, *Rail Safety, Grade Crossing, and Grade Separation*, and Responses to Comments A-8-10 and A-13-5 regarding site-specific railroad right-of-way considerations, in particular for adjacent multiuse trail alignments.
- O-48-52 The commenter correctly notes that the train crash in 2019 at the Market Street crossing was incorrectly noted under the section describing the Martin Luther King Jr. Way crossing. The following edits are made to the Draft EIR (p. 4.15-41)
- *Market Street* on the north side of the railroad is a four-lane road with sidewalks on both sides. The crossing surface has been improved for motor vehicles, but the sidewalks terminate prior to the crossing. Bike lanes on Market Street terminate one block prior to the crossing at 3rd Street. The crossing serves truck access to the Project site and Schnitzer Steel. The crossing has two 9A warning devices (flashing light signals with automated gate arms and additional flashing lights on a cantilever), one in each direction, and is a designated truck route. There was a train crash in 2019 at the Market Street crossing with an unoccupied motor vehicle that resulted in no injuries. ~~There have been no train crashes at this crossing within the last five years.~~
 - *Martin Luther King Jr. Way* on the north side of the railroad is a four-lane road with on-street parking and sidewalks on both sides. South of the tracks, it is a two-lane road with no sidewalks. The crossing surface has been improved for motor vehicles, but the sidewalks terminate prior to the crossing. The crossing serves motor vehicle access to the Project site, the Vistra Power Plant, and other uses. The crossing has two 9A warning devices, one in each direction, and is a designated truck route. There have been no train crashes at this crossing within the last five years. ~~There was a train crash in 2019 at the Market Street crossing with an unoccupied motor vehicle that resulted in no injuries.~~

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O-48-53 The commenter is incorrectly interpreting Figure 4.15-35. The commenter is directed to Figure 4.15-14 which illustrates the Project site street types and alignments. Note the orange street type on the figure includes the extension of Martin Luther King Jr. Way south across the railroad tracks where it curves through the Project site intersecting Market Street about 300 feet south of the railroad tracks where it then continues west through the site. The purple street type on the same figure represents Embarcadero West which runs along the south side of the railroad tracks between Schnitzer Steel and Market Street where it terminates. Both streets are labeled on the figure.

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- shows East/West movements along Embarcadero West connecting to North/South Martin Luther King Jr. Way. The document should accurately state the intentions of the project.
- The crossing concept for Market Street is substandard and should be updated to show greatest impact. The concept shows:
 - Substandard median width for median gates. UPRR's standard width is 10' minimum.
 - Gates parallel to the tracks rather than perpendicular to the roadway.
 These substandard elements result in a concept that does not reflect the true impacts of the proposed improvements. If substandard design is being proposed, the DEIR must account for the worst case impacts.
 - The DEIR states that there have been no train crashes at the Market Street crossing between 2015 and 2019. However, the Collision History Memo states that there was one collision at this crossing in 2019. The analysis should review and accurately address all crashes in the corridor.

O-48-54 See Response to Comment O-48-51.

O-48-55 See Response to Comment O-48-52.

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COMMENT

COMMENT

EXHIBIT 4

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San Diego News & Information

LOG IN

Video shows Padres fans make risky railroad track crossings

By DEBBIE BAKER
SEP. 8, 2010 10:15 AM PT

▶

Padres fans not deterred by train on tracks



Padres fans aren't stopped by a train that stopped on the tracks in front of Petco Park during a game this summer. Police are working to educate pedestrians about the dangers of crossing over and under the trains, which are required to stop periodically for train operations.

As the Padres game got underway Wednesday evening, police conducted an education blitz to warn the public about the dangers of illegally crossing railroad tracks near the stadium downtown.

From 5:30 to 7:30 p.m., officers with San Diego and Harbor police and BNSF Railway Company targeted trespassers who use the 5th Avenue railroad crossing and often go around, under and over trains that are stopped on the tracks, said Harbor Police Sgt. Dave Fouser.

The highly-trafficked crossing is across from the convention center and near the Gaslamp trolley station. It is especially busy during Padres home games when thousands of baseball fans head to Petco Park.

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BNSF train operations require that the freight trains stop on the tracks for a short time everyday, which blocks the crossing, Fouser said.

People who don't want to wait find other means to go around and ignore the warnings lights, crossing gates and bells creating hazards for themselves and others.

Officers on Wednesday handed out rail safety material. No citations were issued. There was also an informational booth at the stadium.

The effort is the project of Operation Lifesaver, a nonprofit organization aimed at reducing the number of incidents at rail crossings.

O-49 Hanson Aggregates

COMMENT

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O-49-1 See Consolidated Response 4.4, *Port Operations and Land Use Compatibility*, including Consolidated Response Section 4.4.1.2 regarding concern about potential conflicts between an increase in recreational water users and Port-related maritime navigation and Mitigation Measure LUP-1a. See also Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measure*.



April 27, 2021

Oakland A's Waterfront Ballpark District at Howards Terminal – EIR Comments

To Whom It May Concern:

On behalf of Hanson Aggregates we would like to express our concern with the proposed plan and mitigation measure for the subject project. Specifically, in respect to maintaining clear and controlled navigable channel for commercial traffic.

Hanson operates a construction sand terminal at the south end of the Oakland Tidal Canal (aka Oakland Estuary) at High St on Tidewater Ave. Hanson uses a tug and barge to deliver sand to this terminal 24/7. The barge is 230ft long (Sand Merchant) and pushed by a tug 65ft long (San Joaquin River) (the barge), with limited maneuverability. The barge is required to keep schedule with the tides as it is critical that the barge is traveling against the current either in bound or out bound. The barge transits the Estuary almost daily during the week but can work on the weekends as well.

Hanson is concerned that events at the proposed venue will increase recreational traffic, per section 4.10-36 in the draft EIR during events and has the potential of delaying the barge. Delays may cause the barge to miss a tide which is a big economic impact to our business. The mitigation measure LUP-1a Boating and Recreational Water Safety Plan has not included reasonable 3rd party groups to be part of the "approving" party, such as the USGC or commercial maritime organizations, including:

- No provision for imposition of safety zones, security zones or restricted navigational areas for OPD pier and security assets outside of the main navigational channel but proximate to where recreational vessels are likely to loiter and congregate.
- No provision for imposition of safety zones or security zones or restricted navigational areas for commercial traffic routes
- No discussion of needs to maintain navigational security in the event of MARSEC levels 2 or 3 with respect to commercial vessel traffic
- Lack of evaluation of different event likelihoods to result in different vessel traffic patterns – concerts and fireworks likely to draw both highest concentration of vessels and highest concentration of vessels after dark – and requirements of needs for special permits.

It is imperative for our business that delays to commercial traffic do not occur. The safety of the general boating public are not put in harm's way by events, and poor policing, in the navigable channel and keeping the interaction between commercial traffic and recreational boaters safe, particularly after dark.

Regards,

Mike Bishop
Marine Operations Manager
Hanson Aggregates

O-49-1

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COMMENT

RESPONSE



O-50 Acorn Senior Citizens

COMMENT

RESPONSE

<p>O-50-1</p> <p>April 27, 2021 Peterson Vollmann, Planner IV City of Oakland Bureau of Planning 250 Frank H. Ogawa Plaza, Suite 2214 Oakland, CA 94612 PVollmann@oaklandca.gov</p> <p>RE: Draft EIR for Oakland Waterfront Ballpark District at Howard Terminal To the City Planner:</p> <p>My name is Barbara Montgomery and I am the President of the Acorn Senior Citizens. My fellow members Jacqueline Nelson, Maxine Willis-Ussery and I are concerned about the impacts of the project. As longtime West Oakland residents, we are concerned that the impacts of the A's proposed project on the West Oakland community have not been addressed in the Draft Environmental Impact Report. Having reviewed the Draft Environmental Impact Report for this project, I believe there are gaps in the report's conclusions related to traffic, housing and gentrification, and hazards which understate the costs of these impacts on my community.</p> <p>O-50-2</p> <p>West Oakland community members like myself fought for years to get truck traffic off our neighborhood streets. This problem was remedied when the City designated Howard Terminal as the staging and waiting area for trucks coming and going from the Port. Removing Howard Terminal from this critical use will force thousands of large trucks back onto West Oakland streets as they wait for shipments and drop-off times, undoing years of work to improve health and safety in West Oakland. The DEIR acknowledges that Howard Terminal is currently being used by truckers, but concludes that these trucks are "assumed to move to other locations" when Howard Terminal is converted to luxury condos. "Assumed to move" is not an analysis of the impact of where these trucks will go, which will be back onto residential West Oakland streets. The DEIR therefore does not do an analysis of the gridlock and pollution likely to come from cargo trucks diverted into neighborhood streets due to the development.</p> <p>O-50-3</p> <p>Similarly, the DEIR incorrectly concludes that it is sufficient for the A's development to allocate only 2,000 parking spots to the approximately 10,000 game day visitors the A's are expecting to arrive by car. The report provides no mitigation measures on the part of the A's to deal with the additional 5,000+ visitors arriving by car they aren't planning to provide parking for, just conceptual ideas for parking meters and the use of existing parking lots that do not supply the additional 5,000+ parking spaces needed. The report does not truly assess the impact that having thousands of cars trying to park as close to the stadium as possible will have on nearby neighborhood streets and homes because the A's have not provided sufficient parking. The DEIR also unrealistically concludes that most visitors will arrive through other means, like walking a mile from the nearest BART station, and therefore does not consider the impact of the extensive congestion we will inevitably see on game days as tens of thousands of fans cut through residential streets attend games. If only 25% of attendees to games at the Coliseum use BART, which has a stop at the doorstep of the venue, it is illogical to conclude that even more game-day attendees will take BART when the closest station is a mile away. Until the project outlines a concerted traffic plan to deal with these tens of thousands of cars and the report analyzes the impact and feasibility of this plan, the DEIR will remain insufficient. It is also concerning to me that the DEIR concludes that the introduction of 3,000 new luxury residential units to the area will help address our housing crisis instead of correctly assessing the impact that this type of housing will have on the surrounding community. The report makes a conscious choice not to evaluate the likelihood of gentrification and displacement because it deems it "speculative," which is not true. You only have to look at other stadium and luxury housing projects across the country to see that introducing homes and businesses geared towards the wealthy into low-income communities causes considerable displacement of the existing residents. The DEIR concludes that the project will contribute to meeting our region's</p> <p>O-50-4</p> <p>O-50-5</p>	<p>O-50-1 This is a general comment that includes introductory remarks and serves to introduce the more specific comments that are responded to in detail below. As a result, no specific response is provided here.</p> <p>O-50-2 See Consolidated Response 4.5, <i>Truck Relocation</i>.</p> <p>O-50-3 See Consolidated Response 4.7, <i>Parking</i>.</p> <p>O-50-4 The commenter expresses an opinion, asserting that the Project does not have a traffic plan to deal with the tens of thousands of cars and the Draft EIR is insufficient until it analyzes the impact and feasibility of the traffic plan. There are several mitigation measures in the Draft EIR (beginning on p. 4.15-183) that prioritize non-automobile travel either through programs to reduce automobile trips or infrastructure improvements that prioritize transit, walking, and bicycling.</p> <ul style="list-style-type: none"> • Mitigation Measure TRANS-1a includes a Transportation Demand Management (TDM) Plan for the non-ballpark development with a performance metric to reduce vehicle trips 20 percent from a baseline condition without a TDM program. A requirement of the TDM Plan would be to extend an AC Transit line such as Line 6 to the Project or to provide an equivalent level of peak period service with a new shuttle system serving the non-ballpark development. • Mitigation Measure TRANS-1b includes a Transportation Management Plan (TMP) for the ballpark events with a performance metric to reduce vehicle trips 20 percent from a baseline condition without a TMP. A draft TMP is provided in Appendix TRA-1 and includes the nearby transit providers, AC Transit, BART, Capitol Corridor, and WETA, as key stakeholders in coordinating ballpark events. The TMP would require a number of elements such as ballpark event shuttles that would operate between the 12th Street BART Station and the ballpark. • Mitigation Measure TRANS-1c would construct a Transportation Hub adjacent to the Project that would serve at least three bus routes (12 AC Transit buses per hour) to support non-automobile travel to and from Project, with the ability to expand the hub on ballpark event days to handle up to six shuttle bus stops and each shuttle stop could handle up to 12 shuttles per hour. • Mitigation Measure TRANS-1d would implement bus-only lanes on Broadway between Embarcadero West and 11th Street by converting one motor vehicle lane in each
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O-50 Acorn Senior Citizens

COMMENT

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direction to a bus-only lane. There are existing bus-only lanes north of 11th Street to 20th Street on Broadway.

- Mitigation Measure TRANS-1e would implement pedestrian improvements such as sidewalk widening and repair, pedestrian lighting, and intersection and driveway safety measures to promote first- and last-mile connections to BART and AC Transit bus stops as well as walking connections serving Downtown and West Oakland neighborhoods.
- Mitigation Measures TRANS-2a, TRANS-2b, and TRANS-2c would implement bicycle improvements consistent with Oakland's Bike Plan that would connect the Project to Oakland's bike network.
- Mitigation Measures TRANS-3a and TRANS-3b would implement railroad crossing improvements including fencing and at-grade crossing improvements to enhance safety for automobile drivers, pedestrians, and bicyclists crossing the tracks as well as a grade-separated pedestrian and bicycle bridge.

Collectively, these mitigation measures represent the transportation plan to support the ballpark events. A draft Transportation Management Plan (TMP) is provided in Draft EIR Appendix TRA.1, which incorporates all of the above mentioned mitigation measures. The TMP includes elements on: ballpark travel management strategies; transit; pedestrian; bicycle; personal automobiles and parking management; ride-sourcing and taxis; at-grade rail crossings; pre- and post-event management; curb management; freight; emergency vehicles; communication; and monitoring, refinement, and performance.

The TMP outlines improvements and operational strategies to optimize access to and from the ballpark within the constraints inherent to a large public event, while minimizing disruption to existing land uses and communities. The TMP considers the travel characteristics of ballpark attendees, workers, and all other visitors to the ballpark site. Its primary goal is to ensure safe and efficient access for all people traveling to and from the site, with a focus on promoting pedestrian, bicycle, and transit access, thereby reducing vehicular impacts to the site and surrounding land uses, including the Port of Oakland.

The Parking Management Plan (PMP) in the TMP is a key component to minimize automobile congestion from the Project. A draft PMP is provided in the Draft EIR's Additional Transportation Reference Materials (*Toward a High-Performance Parking Management System for a Thriving Oakland: A Plan*) and it was modeled after the successful SacPark system in Sacramento. The PMP would implement an advanced parking reservation system that ballpark attendees would use to reserve a parking space prior to an event. In this way, attendees would drive directly to their reserved space rather than driving and circulating in neighborhoods looking for an available space. In addition, residential parking permits would

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be provided to protect residential neighborhoods and on-street parking would be metered with the ability for the City to control parking meter duration to manage the number of ballpark attendees that park on-street.

The dispersed parking solution and other PMP features influence travel mode choice to ballpark events. Collectively, the mitigation measures listed above also influence travel mode choice. See Draft EIR pp. 4.15-162 through 4.15-175 for a description of how the travel mode choice was calculated.

Draft EIR p. 4.15-80 notes that the Project would provide at buildout 2,000 parking spaces (3,500 spaces at opening day) for the ballpark, compared to 9,100 parking spaces at the Coliseum. With substantially less parking for the Project's ballpark, attendees will be more likely to use one of the three BART stations, each located within about 1 mile of the Project, compared to the Coliseum where parking is plentiful. Providing less parking for the ballpark at the Project is intentional to disperse automobile traffic to the many underutilized parking garages within 1 to 1.5 miles of the Project. This approach minimizes traffic congestion by dispersing it throughout Downtown Oakland rather than concentrating traffic at a single location like the Coliseum site.

While not evaluated for CEQA, the Draft EIR included a detailed intersection operations analysis of the Project (Draft EIR Appendix TRAF.3). The analysis included buildout of the Project plus ballpark events and incorporated the mitigation measures above, including the draft TMP, as well as the off-site transportation improvements described in the Draft EIR (pp. 4.15-94 through 4.15-136). The analysis showed that a ballpark event could be successfully managed with intersection operations in the area generally at Level of Service (LOS) D or better.

O-50-5 See Consolidated Response 4.12, *Affordable Housing*, and Consolidated Response 4.13, *Gentrification and Indirect Housing Displacement*.

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O-50-5 housing needs, but does so with no analysis of the type of housing that will actually be built at the site and whether this housing meets local needs. The majority of housing built at this site will be luxury condos and will likely be far out of reach financially for most renters or potential home buyers in Oakland, especially for residents of the mostly low-income communities directly adjacent to the project. As a result, this expensive housing will not, in fact, help meet our local region's housing needs. Instead, it will gentrify our neighborhoods and force long time residents out. The DEIR's analysis of the housing impacts of this project is insufficient as long as it ignores the actual impact the type of housing built will have on the surrounding community, which will only serve to gentrify West Oakland and displace low-income Black and Latino residents.

O-50-6 We are also seriously concerned about the DEIR's conclusions about toxic cleanup of the Howard Terminal site. Currently, there is a physical cap over toxic substances in the soils at Howard Terminal. Excavation and construction will disturb these toxins and potentially spread them into the water and air, with the worst impacts threatening surrounding neighborhoods in West Oakland. The DEIR finds that the project will result in significant and unavoidable environmental and health impacts, including pollutant emissions that exceed the City's thresholds for cumulative health risk impacts on sensitive receptors, but does not provide or analyze the A's actual work plan for cleaning it up. Mitigation related to the disruption of the toxic substances was left to "future studies" and a future plan for how the toxic soil will be remedied. Without completing these studies and defining their plan for full site cleanup first, it is impossible for the EIR to fully analyze the impact of removing the cap over these toxins and exposing them to the air and nearby water. This is a major gap in the report. The fact that a plan for toxic cleanup would be approved after the EIR is certified renders the entire EIR useless.

O-50-7 The health, safety, homes, and livelihoods of West Oakland residents are at stake. The City has an obligation to take seriously and fully analyze the project's impacts on traffic, gentrification and displacement, and the health of our neighborhood. There are numerous gaps in these areas in the DEIR, allowing traffic impacts, displacement, and toxic health hazard issues to go unmitigated. Please address these serious gaps in the DEIR's analysis before this project is allowed to move forward.

Thank you, Barbara Montgomery Jacqueline Nelson Maxine Willis-Ussery

O-50-6 As analyzed in Section 4.8, *Hazards and Hazardous Materials, Impacts of the Project*, none of the hazards and hazardous materials impacts are significant and unavoidable.

As discussed in the Draft EIR in Section 4.8.2, *Regulatory Setting*, under *Land Use Covenants*, the Project site is subject to existing land use covenants (LUCs), operations and maintenance agreements, soil and groundwater management plans, and risk management plans, all enforced by the California Department of Toxic Substances Control (DTSC), the regulatory agency with jurisdiction. These LUCs and their associated plans would be replaced and consolidated and require approval by DTSC before commencement of construction to account for the changes to the Project site. See Consolidated Response 4.16, *Remediation Plans, Land Use Covenants, and Human Health and Ecological Risk Assessment*, for further explanation of the substantive requirements of these replacement documents.

As explained in Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*, the mitigation measures provided in the Draft EIR are actions that would be enforced by the City of Oakland Bureau of Building. Grading, building, or construction permits, and certificate of occupancy or similar operating permit for new buildings and uses will not be issued until the DTSC and the City of Oakland Bureau of Building have approved of the various actions required by the mitigation measures.

O-50-7 Required cleanup actions and mitigation is discussed in Draft EIR Section 4.8, *Hazards and Hazardous Materials*. Transportation, circulation, and required mitigation measures are discussed in Draft EIR Section 4.15, *Transportation and Circulation*. See also Consolidated Response 4.13, *Gentrification and Indirect Housing Displacement*.

O-51 Pacific Merchant Shipping Association

COMMENT

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Please find attached comments of the Pacific Merchant Shipping Association.

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COMMENT

RESPONSE



April 27, 2021

City of Oakland
250 Frank Ogawa Plaza, Suite 2214
Oakland, CA 94612

Submitted via <http://comment-tracker.esassoc.com/tracer/oaklandsportseir>

**Submission of Public Comments –
Draft Environmental Impact Report of Oakland Waterfront Ballpark District Project (ER18-016)**

On behalf of the members of the Pacific Merchant Shipping Association (PMSA), we offer the following comments on the Draft Environmental Impact Report (DEIR) regarding the proposed redevelopment of the Howard Terminal by the Oakland A's at the Port of Oakland (ref. Oakland Waterfront Ballpark District Project; ER18-016) (Project).

PMSA represents ocean carriers, marine terminal operators, and maritime interests which conduct business on the U.S. West Coast, including at the Port of Oakland. All of the Port of Oakland's current Marine Terminal Operator tenants, as well as the overwhelming majority of the ocean carriers calling at these terminals, are members of and are represented by PMSA. PMSA is also headquartered in Oakland at Jack London Square, and we are proud to call the Port of Oakland our home.

PMSA has reviewed the DEIR for the Project and finds it deficient, inaccurate, and incomplete with respect to numerous requirements under the California Environmental Quality Act and that it fails to acknowledge, address, analyze, identify, and mitigate numerous significant environmental impacts.

We respectfully request that PMSA's comments be acknowledged and that these deficiencies be addressed in full and that a new Draft EIR be recirculated for further additional public review and comment once all identified corrections have been made by the City of Oakland.

In addition, PMSA incorporates herein by reference the comment letter submitted by the East Oakland Stadium Alliance, of which PMSA is a member, and the letter submitted by a broad coalition of labor, businesses, and trade associations who care about the long-term health and viability of the Port of Oakland to which PMSA is a signatory.

PMSA also supports the comment letters submitted by the Harbor Safety Committee of the San Francisco Bay, the Board of Pilot Commissioners of the Bays of San Francisco, San Pablo and Suisun, the California Highway Patrol, the Capitol Corridor Joint Powers Authority, the Union Pacific Railroad, the San Francisco Bar Pilots, the American Waterways Operators, and the Harbor Trucking Association.

Draft EIR Must Evaluate All Conceivable Impacts Attendant to the Massive Project Proposed at an Existing Working Industrial Seaport Location, But Fails to Do So

The Oakland A's, as project sponsor, propose a project which would create an entirely new neighborhood of intense residential, office, and entertainment uses within the current working industrial Port area in which our members conduct business. The project would construct a Housing/Commercial complex of 4,000 new units of housing, 1.5 million square feet of new office and

PMSA HEADQUARTERS 70 Washington Street, Suite 305, Oakland, California USA 94607 PMSASHIP.COM

O-51-1

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O-51-1 This is a general comment that includes introductory remarks and serves to introduce the more specific comments that are responded to in detail below. As a result, no specific response is provided here. With respect to other comment letters incorporated by reference, see the responses to those letters above – O-27, O-29 and O-41.

With respect to the request for recirculation, sees Consolidated Response 4.3, *Recirculation of the Draft EIR*.

O-51-2 The comment is incorrect regarding the number of housing units proposed. As described in Chapter 3 of the Draft EIR, 3,000 residential units are proposed as part of the Project at Howard Terminal.

With regard to an initial study not being prepared for the proposed Project, as stated in State CEQA Guidelines Section 15060, If the lead agency can determine that an EIR will be clearly required for a project, the agency may skip further initial review of the project and begin work directly on the EIR process. In the absence of an initial study, the lead agency shall still focus the EIR on the significant effects of the project and indicate briefly its reasons for determining that other effects would not be significant or potentially significant.

The City of Oakland published a Notice of Preparation on November 30, 2018, pursuant to State CEQA Guidelines Section 15082, indicating that an EIR would be prepared for the Oakland Waterfront Ballpark District Project and inviting comments on the scope of the Draft EIR's analysis. The NOP and copies of all written scoping comments submitted are included in Appendix NOP of the Draft EIR. All of the comments have been taken into consideration in preparation of the Draft EIR.

The commenter is directed to Section 4.10, Land Use, Plans, and Policies, for analysis related to maritime navigation and the Inner Harbor Turning Basin. See Draft EIR Section 4.15, *Transportation and Circulation*, for analysis related to transportation and Port operations. See also Consolidated Response 4.5, *Truck Relocation*. See Draft EIR Section 4.7, *Greenhouse Gas Emissions*, for analysis of greenhouse gas emissions.

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retail space, and a 400-room hotel, as well as an Entertainment complex featuring a 35,000-seat ballpark and 3,500 capacity performance venue. All of this would be located on an industrial marine terminal location next to the navigational channels, terminals, roads, railroads, and industrial warehouses of our working waterfront.

Given the scope and scale of the project, the City correctly concluded in its NOP that this project should be subject to a full Environmental Impact Report. However, the City opted not to conduct an Initial Study prior to the NOP. And, when a lead agency is proceeding without an Initial Study, an EIR must address every conceivable environmental impact of a project. In other words, the lack of the creation of an Initial Study may not lawfully impact or narrow the final EIR associated with this project.

We noted in our comments on the NOP that this EIR “will need to address ALL of the traditional range of environmental issues that face any large housing project, plus those of any large commercial and retail complex, plus those of any large hotel, and plus those of any stadium venue AND, in addition to those numerous and varied considerations, ALL of the numerous comprehensive analyses of the litany of industrial environmental impacts that will likely result from the project as well. These include the potential environmental impacts resulting from such issues as Navigational Impacts, Vessel Delays, Turning Basin Impacts, Ingress and Egress of Trucking Impacts, Truck Parking Impacts, and Greenhouse Gas Emissions increases.”

The Draft EIR is deficient in numerous respects given the expansive analytical needs to address the multitude of issues that are presented by this Project with specificity, with evidence, and to avoid arbitrary and conclusory evaluations on the one hand and dismissive non-conclusions and lack of analysis of potential impacts and mitigation measures on the other. The most analytically intensive and time-consuming aspects of an EIR in this regard is often in establishing the existing baselines for CEQA analysis.

The DEIR Baseline Analyses of Existing Uses are Not Adequately Considered, Are Inconsistent Across Issue Areas When Considered, and Are Inadequate When Asserted

Two of the fundamental questions that this DEIR must answer are: “Do I know what is currently occurring at Howard Terminal from this document? And do I know to what degree and intensity those things actually happen to occur at Howard Terminal?”

The answer to both of these questions from reading this document is “No.” This is the hallmark of a defective baseline analysis.

The adequacy of the CEQA analysis contained in the DEIR will hinge on the accuracy of baselines used for environmental analysis. An accurate baseline is required to ensure that the Project’s likely environmental impacts are neither exaggerated nor obscured. Mere projections of baseline information are insufficient for baseline analysis. *Fairview Neighbors v. County of Ventura* (1999) 70 Cal.App.4th 238; *Save Our Peninsula Committee v. Monterey Bd. of Supervisors* (2001) 87 Cal.App.4th 99 [CEQA “requires that the preparers of the EIR conduct the investigation and obtain documentation to support a determination of preexisting conditions.”]. Further, *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931 states that recitation of raw data without explanation of how such

O-51-3 Existing uses on the Howard Terminal portion of the Project site are described on p. 3-3 in Chapter 3, *Project Description*, of the Draft EIR. See Consolidated Response 4.1, *Project Description*, Consolidated Response 4.4, *Port Operations and Land Use Compatibility*, and Consolidated Response 4.5, *Truck Relocation*, which address existing conditions and potential displacement of truck parking and other existing uses from Howard Terminal.

O-51-2

O-51-3

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O-51-4 See Consolidated Response 4.5, *Truck Relocation*.

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levels were derived or maintained “does not provide an adequate description of the existing environment.” *Citizens for East Shore Parks v. State Lands Commission* (2011) 202 Cal.App.4th 549 held the proper baseline for analysis of environmental impacts is “what [is] actually happening,” not what might happen or should be happening.

This DEIR fails to provide an adequate description of what is actually happening at Howard Terminal currently in any detail or consistency. And, following the failure to adequately describe the current uses, the DEIR also necessarily fails to adequately quantify the scope, intensity, and nature of any of those existing uses.

O-51-3

The DEIR does not fully, adequately, or consistently identify the current uses, and it does not fully, adequately, or consistently quantify and describe the intensity of the current uses of the site. And, because the current uses are not well documented and defined, the elimination and displacement of these current uses from Howard Terminal are not well documented enough to meet the commonsense baseline standard of knowing “what is actually happening.”

The DEIR descriptions of current operations (DEIR §§ 3.2, 3.17) vary and are inconsistent. While some of the descriptions include an acknowledgement that Howard Terminal is indeed a terminal – a facility that facilitates a number of regular and ongoing services to motor carriers, including container interchanges and staging before and after being drayed to and from a marine terminal on behalf of a customer – others describe it merely as a place for “overnight truck parking.”

What is undefined is immeasurable. Given the lack of a clear definition of the operations at Howard Terminal, it is no wonder that the DEIR fails to even attempt to truly quantify the extent of existing operations that would be displaced at Howard Terminal. The project would impact “an unknown number of independent owner/operator truck drivers” (at 3-3) and these “existing tenants and users of Howard Terminal are assumed to move to other locations with the Seaport ..., the City, or the region” (at 3-61). To the extent that this assumption is quantified, it is quantified only for potential availability by acreage of “overnight parking” (id.).

O-51-4

Putting aside the inadequacies of reliance on the assumption that alternative sites can compensate for the loss of Howard Terminal’s acreage, without a clear accounting of the actual uses on site, comparing acreages of multiple parcels is not an actual measurement of the displacement which will occur. This is admitted when the DEIR goes on to state that uses at Howard Terminal related to “container depot facilities” use on site, will “need to find a location outside the Seaport.” But when it comes to quantifying these existing uses aside from overnight truck parking, there is none. For instance, the DEIR includes a summary of “acreage” but does not discuss how the acreage is actually broken down for use with any level of specificity on site, or how many actual parking spots exist per acre, how many are spots for trucks and how many are spots for containers and chassis and other equipment, and just how many of those sites are used and for how long or how often. Without such detail the acreage number is just an abstraction that means virtually nothing, and it certainly does not rise to the required level of specificity required by CEQA to describe actual usage. And, despite the DEIR’s claims to the contrary, the City cannot waive this requirement by claiming that impacts are speculative – the baseline needs to be established prior to a discussion of impacts, otherwise there is no basis for any evaluation of the impacts, speculative or not.

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O-51-5 See Consolidated Response 4.5, *Truck Relocation*.

O-51-6 See Consolidated Response 4.5, *Truck Relocation*. See also Consolidated Response 4.4, *Port Operations and Land Use Compatibility*.

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O-51-5

Taken together, the DEIR’s development of a working baseline evaluation of existing Terminal uses by motor carriers for trucking and container interchanges in the DEIR can be characterized as being somewhere between non-existent and so overly generalized as to mean nothing. This lack of any meaningful baseline analysis of the existing truck and container terminal uses of the Howard Terminal location is particularly astounding because it is the most obvious and direct impact of the project.

While the actual uses on site are not well-defined and quantified, the DEIR does nevertheless attempt to quantify at least some baseline analyses related to the directly-related truck trips to and from the terminal necessary to conduct the business which occurs on the Terminal. This is proper, as these truck trip baselines are obviously relevant to numerous questions about potential project impacts in the DEIR, including traffic safety, traffic congestion, vehicle miles traveled, GHG emissions, and air quality impacts from criteria pollutants and air toxics.

Unfortunately, these attempts to quantify the truck trips to and from Howard Terminal are also inconsistent and ineffective at establishing one clear baseline of activities.

With respect to transportation impacts, where vehicle and truck counts and analysis of traffic flows are imperative to determine VMT and LOS impacts, the DEIR spent only one day – Wednesday, May 23, 2018 – on a traffic count to establish “Existing Project Site Characteristics” (at 4.15-46 – 4.15-47). The results are included at Table 4.15-12. Table 4.15-12 was constructed to create a baseline “to establish the site’s a.m. and p.m. peak-hour trip generation.”¹

O-51-6

But perhaps of even more significance it has also demonstrated the dramatic scope of the inadequacy of the DEIR to evaluate the baseline of use and then evaluate the scope and scale of the impacts associated with the elimination of Howard Terminal uses. Table 4.15-12 demonstrates that that 1,534 trips were generated by the Howard Terminal site on this one day in May 2018. The DEIR methodology used here necessarily concludes that this one day is representative enough from which it can draw all its transportation impact analysis. Applying this methodology, one can extrapolate the scope and scale of this activity at 1,534 trips per day for 5 days a week for 52 weeks per year, the total displaced truck transactions occurring at Howard Terminal per year is 398,840 truck transactions.

Thus, according to Table 4.15-12, the scale of the impact baseline analysis which has been ignored by the DEIR is approximately 400,000 truck transactions per year.

¹ Interestingly, and also unexplained by the DEIR but in direct contrast to one of the attempts to describe the primary usage of the Howard Terminal as “overnight truck parking” and not actual terminal container drayage operations, Table 4.15-12 data shows that the four lowest utilization periods of the day are 7am – 9am and 5pm – 7pm, the first two hours of the day and the last two hours of the day. If the primary use of Howard Terminal was indeed overnight truck parking then the period in the morning when trucks leave their stalls to go conduct business and the period in the evening when they return to their stalls for the night to park would necessarily be the busiest periods of the day. So, while there is an abject dearth of data collected, analyzed, and included in the DEIR, the data which was collected directly undermines any attempt at describing overnight parking as the primary utilization of this property.

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O-51-6 | This is a significant omission because, again, without a baseline it is impossible to judge the relativity of impacts. In this project analysis under the Transportation Chapter, the DEIR should answer a specific question: “How will Transportation issues, including VMTs and LOSs, be impacted by the displacement of the existing 400,000 truck transactions presently occurring at Howard Terminal?”

Yet, the DEIR further confuses the baseline adequacy question by establishing a completely different baseline for the analysis from trucking transits to and from Howard Terminal in the Air Quality Chapter than that used for the Transportation Chapter. Here, the DEIR does not rely on the Table 4.15-12 truck counts from May 2018 like it does for evaluation of the Transportation Chapter baseline. Instead, even though this information was curiously not included, disclosed, or referenced as the project description in Chapter 3, or in the Transportation Chapter, the DEIR appendices disclose that the Lead Agency is in possession of and is relying on actual data regarding Port activities. See Appendix-AIR, Section 5, Table 131

O-51-7 | This table shows that in relying on the 2018 actual Howard Terminal gate data provided by the Port of Oakland, that there were 336,492 transactions through Howard Terminal. This is a deviation in the baseline of 60,000 truck transactions for 2018, or 15% fewer, from the daily extrapolation of trips used in the Transportation section. This 2018 actual gate transaction disclosure occurs only once in the document, at Appendix-AIR, Section 5, Table 131. And, because the data is not provided, cited, or included in any other calculations elsewhere in the document, the balance of the descriptions and evaluations which vary from these figures are inconsistent with one another.

There is no question that nearly all baseline analyses of existing trucking and maritime operations on-site at Howard Terminal and of trucking operations running to and from Howard Terminal are inaccurate, inadequate, or inconsistent. The DEIR is plainly defective at establishing these critical CEQA criteria.

The DEIR Baseline Focus on Activities at the Oakland Coliseum is Improper, Confusing, and Not A Substitute for Adequate Baseline Analysis of Activity at the Actual Project Location

To make things even more confusing, in many cases the DEIR utilizes or substitutes the baseline for A’s operations at the Oakland Coliseum for evaluation of impacts, even though that is completely and totally irrelevant to the current operations at Howard Terminal. The utilization of one location for some analyses and one location for others raises a fundamental question, “What is the actual project baseline being used for this DEIR? Is the baseline the existing conditions and uses at Howard Terminals or the existing conditions and uses at the Oakland Coliseum?” They cannot both be the baseline.

O-51-8 | The answer should be obvious: that the operations at the project location (Howard Terminal) that will need to be described and then analyzed need to form the basis for the baseline to be applied to the new project at that location (Howard Terminal). The A’s current operations at the physical location they are in now – the Coliseum – are not occurring at Howard Terminal.

Moreover, how could the A’s take credit for the stadium’s operations at the Coliseum when they move, as they claim to be able to do? The Coliseum is still a stadium, its still there, still possible to be used, and still operating. Unless the A’s move from the Coliseum to the Howard Terminal includes a condition of

O-51-7 | Please see Consolidated Response 4.5. *Truck Relocation*. The analyses presented in the Draft EIR use a variety of data sets to characterize existing conditions depending on the nature of the analysis being undertaken. For example, the analysis of transportation impacts does not require data related to idling or queuing at Howard Terminal, whereas the air quality analysis does.

O-51-8 | The baseline for analysis in the Draft EIR is 2018, as explained in Section 4.0 of the Draft EIR. Operations at the Coliseum site are part of this baseline (i.e. they were occurring in 2018) and are relevant to the analysis because operations at the Coliseum site would be relocated to the Howard Terminal site if the Project is approved. For some impact analyses, the relocated activities are appropriately considered as “new” because the geographic context of the impact being studied is specific to Howard Terminal. The analysis of Impact AIR-4 regarding health risks related to air pollutant emissions is an example of this, and is specific to receptors in the vicinity of Howard Terminal. For other impact analyses, the relocated activities are appropriately excluded from the analysis because the geographic context of the impact being studied is broad enough to encompass both the Howard Terminal and the Coliseum site and operations will continue (whether at the Coliseum site or the Howard Terminal site). The analysis of Impact AIR-2 regarding criterial pollutants and Impact TRANS-1 regarding VMT are examples of this, and consider impacts on a regional basis.

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O-51-8 approval that the Coliseum should be shut down, the A's cannot take credit for it. Moreover, you do not need a development permit to occupy or utilize the Coliseum once the A's leave, which means it remains the Coliseum's baseline condition, not the A's baseline condition unless one of the mitigation measures of this DEIR is that the Coliseum remains dark or be razed.

O-51-9 As an example of how the DEIR's confused reliance on trying to incorporate the Oakland Coliseum baseline results in obviously wrong impacts analyses, consider the DEIR's attempt to reduce the air quality impacts of the project. When the DEIR attempts to measure the significance of the total additional emissions that will result from the project at Howard Terminal based on Construction and Operations emissions at Howard Terminal, it reduces its measurement against the Significance Threshold by proposing a "Net New Emissions" standard which subtracts the A's existing emissions at the Oakland Coliseum. (See DEIR, Table 4.2-9 regarding "Total Annual and Average Daily Combined Mitigated Construction and Mitigated Operational Emissions by Year") Considered in the context of this argument, it is patently obvious how incorrect this "net" logic is: Regardless of what happens with the existing A's operational emissions in East Oakland, those changes do not mitigate the introduction and cumulative impacts of new and significant increases in fine particulate matter emissions on communities in West Oakland.

Growth Inducement and Significant Cumulative Impacts Remain Unanalyzed

O-51-10 It would be hard to imagine a clearer Growth Inducement than the literal "if, then" scenario included in the current draft Downtown Oakland Specific Plan (DOSP). The DOSP includes a "Howard Terminal Scenario" which is a conditional scenario which creates new increased density and additional housing opportunities in the current industrial buffer zone protecting the Port and its operations from housing encroachment, but ONLY in the case that the Howard Terminal project is approved.

Yet, the DEIR dispenses entirely with the need to even analyze any potential for Growth Inducement.

The DEIR acknowledges that the CEQA Guidelines "require that an EIR evaluate the growth-inducing impacts of a proposed action," and that this is defined at Guidelines §15126.2(d) as including "economic or population growth, or the construction of additional housing," and "projects which would remove obstacles to population growth," and that in evaluating these impacts that "[i]t **must not** be assumed that growth in any area is necessarily beneficial, detrimental, or of little significance to the environment." (DEIR, at pg. 7-7)(emphasis added)

However, having cited these requirements and admonishments, the DEIR fails to consistently evaluate and apply the direct and indirect impacts which plainly exist in the interactions between the Project DEIR and the draft Downtown Oakland Specific Plan. These are impacts which are direct, indirect, and cumulative, which would remove obstacles to population growth, and are of potential significance to the environment.

O-51-11 In defense of its decision not to include ANY evaluation or analysis of any potential growth-inducing impacts whatsoever, the DEIR concludes the following (at pg. 7-9):

O-51-9 The Draft EIR presents analysis of regional criteria pollutant emissions (Impacts AIR-1, AIR-2, and AIR-1.CU) and localized TAC emissions and associated health risks (Impacts AIR-4, AIR-5, and AIR-2.CU). Regional criteria pollutant emissions include the Project's effects on *total emissions* produced within the San Francisco Bay Area Air Basin, as required by the BAAQMD CEQA Guidelines. Localized TAC emissions and associated health risks include project's effects on *local emissions* produced in the vicinity of the project site, the exposure of local sensitive receptors within the West Oakland community to these TAC emissions, and the health risks associated with this exposure. The calculation of "net new" emissions is only performed for the former regional emissions analysis and not for the latter localized health risk analysis.

As discussed in Response to Comment O-51-8, the only part of the Oakland Coliseum that was considered in the air quality baseline (for Impacts AIR-1, AIR-2, and AIR-1.CU only) was the A's related activities and their associated emissions. This is explained at Draft EIR p. 4.2-46:

For purposes of this analysis, since only emissions associated with A's operations and ballgames would be guaranteed to be relocated to the new ballpark, these were the emissions eliminated from the estimate of "net new" emissions associated with the Project for determining impacts. In other words, all A's related emissions at the new ballpark would not technically be "new" regional emissions.

The "net new" emissions for the proposed Project were calculated by taking all of the Project's emissions and subtracting only the portion of emissions at the Coliseum that are associated with the A's current activities, including ballgames and the A's headquarters operations. All other emissions occurring at the Coliseum were excluded from the "net new" calculation. This is also explained in Appendix AIR.1 (p. 1):

Upon the departure of the A's from the Coliseum, a permanent reduction in A's-related emissions potential at the Coliseum is anticipated. All current operations at the Coliseum are included in the "Existing Conditions" presented in this analysis. A portion of these current operations will be replaced by the Project; the operations associated with MLB games only will be referred to as "A's Related Existing Conditions". For this analysis, the A's 30-year average annual attendance of 22,671 people was used for the A's Related Existing Condition calculations.

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The rationale for this calculation is that with implementation of the proposed Project, the A's will move their operations (and ballgames) from the Coliseum to the new ballpark; they cannot occur in both places at the same time. Therefore, the Project's *regional* emissions impact will be to move A's related emissions, not create them, since they were already occurring at the Coliseum. This approach is consistent with the BAAQMD CEQA Guidelines:

"If a proposed project involves the removal of existing emission sources, BAAQMD recommends subtracting the existing emissions levels from the emissions levels estimated for the new proposed land use... This approach is consistent with the definition of baseline conditions pursuant to CEQA." (BAAQMD, 2017 p. 4-2 and 4-5)

Further, the analysis assumes 82 sold-out ballgames once the ballpark is fully operational, at an attendance of 35,000, while the existing emissions calculations use the A's 30-year average annual attendance of 22,671. This presents a highly conservative assessment of activity and emissions associated with the new ballpark compared to the existing ballpark, with respect to emissions associated with energy use, attendee vehicle travel, food services, and other sources.

The analysis of the proposed Project's emissions at the Project site includes all the characteristics of the site, including the local roadways and transportation network, trip generation patterns, building design and energy use, etc. The analysis of the existing A's related emissions at the Coliseum does the same at that location. So, the differences in activities at the two sites were considered. For local health risk impacts, as discussed above, no emissions subtraction was taken. This includes cancer risk impacts and impacts associated with fine particulate matter (PM_{2.5}). Draft EIR p. 4.2-53 states:

Because the Coliseum is located outside of the HRA modeling domain, TAC emissions from Coliseum operations would not affect either existing off-site sensitive receptors or new on-site sensitive receptors associated with the Project. Therefore, these health risks were not included in the HRA or impacts analysis.

The A's related activities and TAC emissions at the Coliseum have no impact on the Project's local TAC emissions and health risks on sensitive receptors located in West Oakland near the Project site. This approach is consistent with

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the commenter's accurate statement that any changes which occur in East Oakland at the Coliseum would have no effect on the Project's emissions of fine particulate matter within West Oakland and the associated public health impact of these emissions.

- O-51-10 As indicated in Response to Comment O-29-113, O-51-14, and O-41-6, subsequent to publication of the DOSP Draft EIR, and in response to community input, the City announced they will no longer be considering the Howard Terminal Option (or Transformational Opportunity Area #3), which will be removed from the Final DOSP (see DOSP Update website, www.oaklandca.gov).⁹⁴ While this option could have been adopted via a separate, discretionary decision (i.e. separate from a decision on the proposed Project) and resulted in planned growth (i.e. it would have been included in the plan for downtown), concerns regarding its relationship to the Project at Howard Terminal are no longer relevant.

Chapter 7 of the Draft EIR analyzes whether implementation of the proposed Project would induce growth pursuant to State CEQA Guidelines Section 15126.2(e). In accordance with CEQA, growth per se is not assumed to be necessarily beneficial, detrimental, or of little significance to the environment; it is the secondary, or indirect, effects of growth that can cause adverse changes to the physical environment. The focus of the growth inducement evaluation presented in the Draft EIR is on whether the proposed Project could induce unplanned growth, which in turn could generate adverse effects on the physical environment that have not been evaluated and disclosed. Consistent with CEQA, the Draft EIR evaluates the cumulative impacts of implementing the proposed Project, the DOSP, and other planned development (see in particular Draft EIR Section 4.0, pp. 4.0-9 through 4.0-12). Also see Response to Comment O-29-113.

- O-51-11 This comment is predicated on statements presented in Comment O-51-10. See Response to Comment O-51-10. As indicated there, the Draft EIR's analysis of growth-inducing impacts was prepared in accordance with CEQA requirements.

⁹⁴ City of Oakland, 2021. Downtown Oakland Specific Plan Update, Date Posted: February 21, 2021, Last Updated: September 22, 2021. Available at: <https://www.oaklandca.gov/news/2021/downtown-oakland-specific-plan-update>.

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O-51-12 See Responses to Comment O-29-113, O-41-6, and O-51-14.

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The proposed Project would be located on an infill site in an urbanized area within the Oakland Downtown & Jack London Square PDA where future growth has been planned, and would not involve any extensions of roads or other infrastructure that could enable additional development in currently undeveloped areas. Consequently, the proposed Project would not be growth-inducing.

O-51-11

This conclusion completely ignores the CEQA Guideline requirements and creates new criteria for whether an EIR must evaluate Growth Inducing impacts. The new criteria they have chosen would essentially inoculate any environmental review for any urban project from ever conducting an evaluation of growth inducement: almost the entire City of Oakland is part of a PDA, no urban area in California does not have an existing general plan, and no true infill site involves extensions of roads into currently undeveloped areas.

Of course, the presence of these conditions does not exempt the project from an evaluation of growth inducement under CEQA. While all these conditions could potentially be factors to consider when conducting a growth inducement evaluation and analysis, here they were all used as excuses not to complete any growth inducement evaluation in the DEIR at all.

A growth inducement evaluation is an important provision of a DEIR because it is one additional way in which the potential for cumulative impacts can be captured and considered, so projects are not improperly piecemealed or considered in a vacuum. *San Joaquin Raptor/Wildlife Rescue Ctr. V County of Stanislaus* (1994) 27 CA4th 713. This is also particularly important when multiple yet related projects might significantly worsen a project's adverse impacts. *Friends of the Eel River v Sonoma County Water Agency* (2003) 108 CA4th 859.

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A short history of the relationship between the current draft DOSP and Howard Terminal project would reveal that these are related projects which should not be considered in a vacuum, as has occurred here. Even a cursory analysis would reveal that the Howard Terminal site is only in the *Plan Bay Area* PDA because it was included in the Downtown Oakland Specific Plan area, despite it being both Industrial under the current City of Oakland General Plan and zoning ordinances, and a Seaport Priority Use area under the BDCD Seaport Plan. A cursory history would also reveal that after first including Howard Terminal in the draft DOSP planning boundaries, it was then removed at some unknown future time -- presumably at the request of the Oakland A's. And, of course, a simple look at the geography of the site would confirm that there is no access point to Howard Terminal that does not transit the DOSP area.

The DEIR seems to at least acknowledge the presence of this cumulative impact and the importance of review of the interaction between the Howard Terminal project and the draft DOSP in some places while ignoring it in others. For instance, regarding Cultural and Tribal Resources, the DEIR includes a discussion of whether the cumulative impacts of this project when analyzed with the draft DOSP would create a cumulative impact (DEIR, at page 2-5):

The proposed Project with the Maritime Reservation Scenario, in combination with development anticipated under the Downtown Oakland Specific Plan (DOSP) and citywide, and the treatment of Crane X-422 as a historic resource, would contribute to a

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cumulative impact on historic resources through the loss of Crane X-422. (Impact CUL-1.CU)

Regarding Transportation, the DEIR acknowledges for draft DOSP planned that there are already planned improvements in the areas near the Howard Terminal project (DEIR, at pages 4-15.52 – 4-15.55), and that even when “plans are in draft form ... all are considered in the plan consistency analysis because they are potentially relevant to the Project (Impact TRANS-2).” The DEIR also relies on the draft DOSP draft environmental documents to describe other mobility improvements for the area planned around Howard Terminal. (DEIR, at 4.15-74 – 4.15-77) But, when considered in the context of cumulative impacts of future Port traffic, the DEIR affirmatively disclaims any analysis (DEIR, at 4.15-149):

O-51-13

In the long term, automobile, truck, bicycle, and pedestrian traffic is expected to grow in the area around the Project site. The City of Oakland is proposing substantial development in the area, through the Draft Downtown Oakland Specific Plan, the West Oakland Specific Plan, and other planning efforts. In addition, the Port of Oakland plans to continue to grow its throughput. The non-CEQA effects of this collective growth on Port transportation activities are not evaluated in this section. The Port of Oakland has initiated a Seaport Transportation and Circulation Study, expected to be complete in 2021/22, to evaluate and support longer-range transportation planning in this part of Oakland.

In short, the evaluation of the draft DOSP regarding transportation impacts could result in cumulative impacts, but because the topic is complicated and involves growing future transportation impacts it was not evaluated.

Taken together with the DEIR’s affirmative rejection of any growth inducement analysis, the only conclusion that can be drawn here is that DEIR is addressing issues of cumulative impacts inconsistently and arbitrarily -- picking and choosing that some impact areas should apply an evaluation (Cultural Impacts) while others should not (Transportation Impacts).

O-51-14

There is no explanation for why the draft DOSP’s “Howard Terminal Scenario” up-zoning components are not evaluated as a growth-inducement. The closest the DEIR gets to broaching the topic is in its analysis of cumulative impacts was evaluated with respect to Land Use compatibility, Impact LUP-1.CU (DEIR, at 4.10-67), but the question of growth inducement was not evaluated. Rather, the DEIR concludes that the draft DOSP and the Howard Terminal project are both compatible because (DEIR, at 4.10-68):

The Downtown Oakland Specific Plan Draft EIR found that no significant land use impacts related to land use incompatibility would occur as a result of the adoption and development under the Specific Plan with implementation of General Plan and Draft Specific Plan policies, and the Project would not contribute to a cumulative impact.

However, the DEIR and draft DOSP when viewed together create virtually an entire new City within a City on the Oakland waterfront. There would be a complete elimination of the industrial uses of Howard

O-51-13 The comment serves as an introduction to the comments that follow. See Responses to Comments O-51-14 through O-51-15.

In accordance with CEQA requirements and the City’s adopted thresholds of significance, the Draft EIR analyzes potential cumulative transportation impacts by considering vehicle miles travelled VMT (Impact TRANS-1.CU), consistency with adopted plans and policies (Impact TRANS-2.CU), volumes of traffic using at-grade railroad crossings (Impact TRANS-3.CU), construction-related transportation hazards (Impact TRANS 4.CU), and congestion on CMP Roadway Segments (Impact TRANS-6.CU).

Traffic congestion or measures of vehicular delay are not an environmental impact under CEQA per State CEQA Guidelines Section 15064.3. As a result, the City of Oakland no longer evaluates intersection traffic operations for CEQA. However, the City’s *Transportation Impact Review Guidelines* (TIRG) (April 14, 2017) state that intersection operations analysis may be recommended at the City’s discretion (TIRG, Section 3.1.5). The analysis is typically undertaken to ensure that local streets can reasonably accommodate day-to-day traffic loads from the project being studied. The focus is on a project’s operational impact to the existing transportation systems to identify project-specific measures to address deficiencies directly caused by the Project. Cumulative deficiencies are addressed through the specific plan process including the West Oakland, Lake Merritt, and Downtown Specific Plans. As noted in the Draft EIR (p. 4.15-149) the Port of Oakland has initiated a Seaport Transportation and Circulation Study to evaluate and support longer-range transportation planning in this part of Oakland.

The City completed an intersection operation analysis for informational purposes to understand the extent of day-to-day a.m. and p.m. peak hour weekday commute traffic congestion from the Project’s non-ballpark development. The analysis is documented in Draft EIR Appendix TRA.3 and showed that with the transportation improvements described in the Draft EIR (Section 4.15.4 Transportation Improvements), the intersections would operate at acceptable levels.

The City completed a second intersection operation analysis to understand traffic congestion before and after ballpark events. The analysis is documented in Draft EIR Appendix TRA.3 and included a multimodal (motor vehicles, pedestrians, and trains) microsimulation analysis (3 pm to 8 pm) with

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Project buildout plus a weekday afternoon ballpark event and a weekday evening ballpark event. The microsimulation model included observed train data for the analysis period including 20 trains with gate downtimes ranging from one to five minutes. The analysis showed that with the transportation improvements described in the Draft EIR (Section 4.15.4 Transportation Improvements), the intersections would operate at acceptable levels.

- O-51-14 See Response to Comment O-29-113 and O-41-6 regarding growth inducement analyzed in the Draft EIR. Chapter 7 of the Draft EIR analyzes whether implementation of the proposed Project would induce growth pursuant to State CEQA Guidelines Section 15126.2(e). In accordance with CEQA, growth per se is not assumed to be necessarily beneficial, detrimental, or of little significance to the environment; it is the secondary, or indirect, effects of growth that can cause adverse changes to the physical environment. The focus of the growth inducement evaluation presented in the Draft EIR is on whether the proposed Project could induce unplanned growth, which in turn could generate adverse effects on the physical environment that have not been evaluated and disclosed. The analysis in Chapter 7 of the Draft EIR concludes that the proposed Project would not result in unplanned growth and “would be located on an infill site in an urbanized area within the Oakland Downtown & Jack London Square PDA where future growth has been planned...” (Draft EIR p. 7-9).

As the commenter notes, the DOSP Draft EIR described an option in which the area of downtown immediately north of Howard Terminal would be rezoned to permit mixed-use development (referred to in the Draft DOSP as “Transformational Opportunity Area #3”). While this option, if approved as part of a separate decision to adopt the DOSP, would meet the definition of “planned growth” in the sense that it would be part of the DOSP (a plan for downtown), subsequent to publication of the DOSP Draft EIR, and in response to community input, the City announced they will no longer be considering the Howard Terminal Option (or Transformational Opportunity Area #3), which will be removed from the Final DOSP (DOSP Update website, www.oaklandca.gov).⁹⁵

⁹⁵ City of Oakland, 2021. Downtown Oakland Specific Plan Update, Date Posted: February 21, 2021, Last Updated: September 22, 2021. Available at: <https://www.oaklandca.gov/news/2021/downtown-oakland-specific-plan-update>.

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Growth inducement and cumulative impacts are two different topics, and are analyzed differently. For growth inducement, the question is whether the Project would result in unplanned growth. For cumulative impact, the question is whether the Project would make a considerable contribution to a significant impact resulting from related past, present, and reasonably foreseeable probably future projects. The evaluations of cumulative impacts presented in the Draft are not arbitrary; rather, the analyses vary based on the specific environmental topic being analyzed (as acknowledged on Draft EIR p. 4.0-8 and in Footnote 3 on Draft EIR p. 4.0-11). Contrary to the assertion that the Draft EIR does not address cumulative impacts, Section 4.0.4 (Draft EIR pp. 4.0.8 through 4.0.12 and Appendix DEV) describes assumptions regarding cumulative development, forecasts, and projects, and how those assumptions pertain to the evaluation of transportation impacts. With regard to cumulative forecasts for transportation-related impacts, the analysis is based on the Alameda County Transportation Commission's Countywide Travel Model, consistent with Metropolitan Transportation Commission Plan Bay Area 2040, and "includes manual updates to land use assumptions to ensure they account for" the draft Downtown Oakland Specific Plan (Draft EIR p. 4.0-9). The text in Section 4.0.4 goes on to identify the specific cumulative projects and transportation infrastructure improvements factored into the cumulative analysis. See also Draft EIR pp. 4.15-244 through 4.15-249 for more specific information regarding the analysis of cumulative transportation impacts. Regarding the intent of the proposed Project, see Draft EIR Section 3.4, which presents the Project's objectives. Opinions expressed by the A's, their boosters, and others do not alter the obligations of the Oakland City Council with regard to CEQA. Comments submitted on the DOSP in association with that project will be responded to as part of that project's environmental review.

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O-51-15 See Consolidated Response 4.5, *Truck Relocation*.

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Terminal and the surrounding 16-block area which is currently zoned for industrial and Port-supporting uses. The current buffer zone with exceptionally few and very limited residential uses, would be radically redeveloped, as a whole transformation of the Downtown and Jack London Square area would occur which goes well beyond the boundaries of the Howard Terminal itself.²

This project is obviously intended to be growth inducing, and it is reasonably foreseeable to forecast this outcome, because that is how the Howard Terminal project is regularly described by the A's themselves, their boosters, and some City leadership. This project is billed in public as a "catalyst" transformation of not just Howard Terminal but the area surrounding it, connecting Downtown to the waterfront, and changing the identity of the City of Oakland; it embodies a vision of this broader and significant transformation of the City of Oakland away from its current industrial uses towards a bright, new, shiny urban quasi-San Francisco tech and residential future on the Oakland waterfront.³

This is the reality that is embraced and described by the draft DOSP "Howard Terminal Scenario." This big picture, transformative threat to eliminate industrial properties in the Port area, is a point which could not be made more clear to those of us in the economy whose businesses, jobs, or investments rely on access to the industrial Oakland waterfront. Our concerns are well known to the City of Oakland and were enunciated within our comments on the draft Downtown Plan, and those comments submitted on November 8, 2019 are hereby incorporated by reference.

Yet, despite all of the above, the DEIR affirmatively dispenses with any need to conduct an evaluation of the potential for growth inducement. This is a fatal deficiency under CEQA.

Reasonably Foreseeable Port-Related Operations, Safety, and Transportation Impacts and their Associated Significant Environmental Are Not Analyzed

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An environmental document must analyze a project's reasonably foreseeable impacts. *Laurel Heights Improvement Assn. v. Regents of University of California* (1998) 47 Cal. 3d 376, 393. Moreover, CEQA requires an analysis of the "whole of an action, which has the potential for physical impact on the environment." CEQA Guidelines, 14 CCR §15037.

² This extent and scope of this redevelopment effort has been made even more inherently clear and sweeping than originally encompassed in the draft Downtown Oakland Specific Plan by the Oakland A's release of significant new details on the stadium financing that they are proposing on the Friday before the close of DEIR comments, April 23, 2021. This comment letter will briefly address the stadium financing release and how it improperly changes the project description and impacts the growth inducement analysis below.

³ See, for example, the Editorial by Mayor Libby Schaaf, "Why Oakland should back the A's Howard Terminal plan," April 11, 2021, East Bay Times. Attached here, in its entirety, as Exhibit A. ("A development at Howard Terminal would finally connect Oakland's downtown to our waterfront and anchor the Jack London district. A new waterfront ballpark with beautiful public parks and gorgeous communal spaces for people to live and work will bring people past the freeway and create a world-class development while protecting our nearby world-class port.")

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The DEIR fails to conduct basic analysis of numerous reasonably foreseeable impacts and potential mitigation measures related to Port operations.

Trucking

Since the Project will displace trucking which still must utilize local and regional roads and yards to conduct their business at the Port, it is likely that the Project will require or induce other regional and local road improvements. Any such inducements must be disclosed, analyzed, and mitigated in the environmental document. Therefore, the DEIR should be particularly concerned about any increases in truck traffic and VMT that would increase pressure on roads surrounding the entire Port and that may lead to additional congestion, idling, emissions, and VMT on regional highways, especially interstates 80 and 880. With respect to VMTs, it is impossible to calculate the project's impacts on GHG emissions, including those generated by the altered trips to and from new and different trucking and container yards. Yet no evaluation of truck impacts with respect to displacement or VMT is done in the DEIR.

The DEIR studiously avoids the analysis of truck displacement impacts. By simply assuming that there are no appreciable changes or otherwise concluding that this trucking impact is "speculative," the DEIR does not conduct any real evaluation of trucking impacts whatsoever. This is even though the displacement of this trucking and container yard operation is plainly a reasonably foreseeable impact of the project because it is a guaranteed impact of the project. The DEIR's attempt at a justification for the lack of any evaluation of these impacts is well-summarized in two paragraphs (DEIR, at 4.15-86):

With development of the proposed Project, the existing tenants and users of Howard Terminal are assumed to move to other locations in the Seaport (including the Roundhouse parking adjacent to Howard Terminal), the City, or the region where their uses are permitted under applicable zoning and other regulations. The Port has located 15 acres of parking in the Roundhouse, directly west of Schnitzer Steel, to fulfill its obligation per OAB redevelopment to provide 15 acres of overnight truck parking. Truck drivers or businesses currently parking at Howard Terminal should find sufficient overnight parking in the Seaport or the former OAB. For those who prefer to use container depot facilities, where containers are stored for several days or more instead of overnight, they would likely need to find a location outside the Seaport. Each driver or business would make an independent assessment. All trucks currently making trips in/out of Howard Terminal will continue to make the same number of trips to and from the Seaport from their new locations. Further discussion on this assumption for the potential relocation of truck parking from Howard Terminal to the Roundhouse site is included in Section 4.2, Air Quality, in Chapter 4 of this Draft EIR.

VMT associated with truck travel is likely to change, but the magnitude of the change and whether VMT would increase or decrease is currently not known by either the Project sponsor, the City, or the Port. Therefore, estimating the change in VMT would be speculative and is therefore not conducted.

Here the DEIR makes a sweeping assumption that future physical impacts of a project might not exist with respect to trucking and container operation relocations, but without a studied and informed analysis based on facts, evidence, and investigation. Obviously, this assumption is not a substitution for

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O-51-16 See Consolidated Response 4.4, *Port Operations and Land Use Compatibility*.

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the threshold requirement of analysis of potential impacts under CEQA. Otherwise, it would be possible to avoid analyses of any number of potential impacts by mere assumption; something not allowed under the impact analysis requirement.

Likewise, the DEIR admits the fact that the project sponsor and the Lead Agency and the Port do not know anything about the impacts of trucking displacement on GHGs, so any opinion they might render would be “speculative.” And, obviously, the City and the A’s and the Port would indeed be guilty of uninformed speculation on this subject if they rendered an opinion after having admitted they have no basis upon which to form an opinion on the subject of trucking impacts. But, just as obviously, admitting that you do not know anything about a subject which has potential physical impacts on the environment is not the end of the threshold requirement of analysis of potential impacts under CEQA, rather it is an obligation to conduct an analysis.

Ignorance of the impacts of a project is no defense to a CEQA analysis requirement – to the contrary, it is the core reason why a CEQA analysis is required. Disclosure of information is an EIR requirement because a Lead Agency cannot identify and examine and mitigate environmental impacts of which it is unaware, and without knowing the impacts they cannot make environmentally optimal decisions. An EIR is a disclosure document, and for the EIR to be sufficient, lawful, and certified it must actually and effectively disclose all reasonably foreseeable environmental impacts. Not having the expertise to analyze an issue from information maintained in-house by the lead agency or from the project sponsor is not a defense to ignorance of a potential impact under CEQA. When a lead agency cannot address a potential impact of a project, it must engage competent experts who can marshal evidence, consider facts, evaluate models, and render an informed and educated opinion about the potential physical impacts which may result.

The DEIR exists to disclose and to inform both the public and policymakers about the impacts of projects, the significance of these impacts, how they are to be mitigated, and if they are not mitigated then why they are still significant and unavoidable. These impacts need to be analyzed by the parties under CEQA whether they have the data or expertise to conduct those impact analyses in-house or whether they need to hire an expert to do so. Of course, every evaluation of potential future events is an exercise in informed speculation, but when done based on facts, models, evidence, and an explained methodology that comports with well understood and documented thought on the subject these are not just blindly speculated impacts, but reasonably foreseeable impacts. If a Lead Agency could get out of an analysis of potentially foreseeable impacts just by not having the expertise to analyze the project in-house, then it would not be very long before every impact would just be “speculative” and fail to be included in a DEIR – just like the analysis of displaced truck VMTs here.

Fortunately, that is not the CEQA threshold. To meet the CEQA threshold for addressing foreseeable impacts, the impacts of this Project on trucking need to be thoroughly analyzed and mitigated.

Navigation

Several reasonably foreseeable impacts of the project involve the degradation of maritime safety as a result of the development of the project on a current terminal in a working Port environment. These include “a fundamental conflict” between commercial traffic using the Oakland Inner Harbor Channel and the Inner Harbor Turning Basin and potential recreational boating traffic attracted to the Project site

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and events, including concerts and fireworks shows, the fireworks shows themselves, and lighting and glare. The DEIR partially addresses these issues but falls short of analyzing these impacts or mitigating the impacts once analyzed.

The DEIR recognizes that “[i]f recreational boaters increase activity, including congregating or anchoring during ballgames, in the channel and turning basin, this could result in a fundamental conflict between the proposed Project and adjacent or nearby water-based uses, including maritime navigation and ferry transit, resulting in the need for mitigation.” (DEIR, at 4.10-36). This fundamental conflict poses a significant impact.

The DEIR further recognizes the risks to maritime commerce that would result from this significant impact (DEIR, at 4.10-36):

... risk of recreational watercraft impeding the safe transit of commercial ship traffic due to Project activities, a ship's Bar Pilot, in protecting the public, is likely to delay a vessel transit until recreational watercraft are no longer a safety concern. In addition to the vessel directly affected, delays can result in: (a) canceled and rescheduled truck appointments to pick up and drop off containers; (b) delays in subsequent truck appointments for other ships while time is made up for the first ship; (c) delays in the ship's departure from Oakland and arrival at its next port of call; and (d) fees and penalties on terminal operators associated with the delays. If substantial or recurring, these disruptions would create transportation inefficiencies that could require several days or more to return the Port to normal operations and ultimately lead to the risk of shipping companies terminating their business with the Port.

PMSA agrees with the DEIR that the “fundamental conflict” is a significant impact and PMSA further agrees that the litany of potential risks resulting from these impacts are accurate.

But, while the DEIR proposes mitigation measure LUP-1a to address the significant impact associated with the recreational vessel conflict,⁴ the DEIR does not first attempt to quantify or analyze the scope and scale of the identified risks associated with the attractive nuisance that the Project would be to commercial navigation and marine traffic. These have direct safety risks that are critical to evaluate as well as indirect risks with respect to transportation, GHG emissions, and air quality if vessels ultimately divert their calls to the Port of Oakland. In addition, delays to marine traffic will result in absolute increases in emissions of criteria pollutants and toxics that have not been evaluated. There is no reason that an estimate of maritime delay could not be provided based upon the number of events annually that have the potential to draw recreational boaters. Without a quantification or further qualitative

⁴ PMSA does not endorse but, rather, finds LUP-1a is a deficient mitigation measure. PMSA supports recommendations that the Harbor Safety Committee and the US Coast Guard act as the “Approving Parties” with respect to the ongoing implementation and enforcement of an established safety protocol and recommends an amendment to either substitute or add these entities to the current list of “Approving Parties” consisting of three entities which will be financially interested in the project that also have limited expertise in navigational safety: the City, the A’s, and the Port.

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O-51-17 See Consolidated Response 4.18, *Effects of Light and Glare on Maritime Operations and Safety*.

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analysis of the underlying impacts to compare the effectiveness of the proposed mitigation measure to, the DEIR has failed to identify how it has assessed whether this significant impact has been mitigated to a level of less than significant. The DEIR does not tell us how it has evaluated the efficacy of LUP-1a to reduce the numerous identified risks to less than significant or how it determined that this impact does not require a statement of overriding considerations.

With respect to lighting, building glare, and fireworks impacts, the DEIR notes that “visibility is a key factor in determining whether light and glare from the proposed Project would adversely affect the ability of maritime pilots to safely navigate the Estuary.” (DEIR, at 4.10-40) To the extent that the Project may result in a degradation of visibility which would pose an impact on maritime safety this is a significant impact that must be analyzed and have effective mitigation.

However, with respect to evaluating whether visibility would be compromised by the Project, there is only data and analysis provided to evaluate visibility and the impacts of light and glare from the stadium on one type of vessel operation and only at one location,⁵ but no evaluation of impacts from the stadium or its operations on other vessels in the estuary and no evaluation of the impacts that may result from buildings on site other than the stadium. This is a significant impact, but the public cannot evaluate any analysis or data, save at one location in the middle of the turning basin with respect to stadium lights only, on the basis that the data and analysis does not exist, and therefore one cannot conclude that the significant impact of lighting and glare from the Project is fully mitigated.

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With respect to building glare impacts on visibility, the DEIR concludes that “adjacent buildings ... could create new sources of daytime glare.” DEIR 4.10-30. This glare could be a significant impact if it reduces visibility and impacts maritime safety. With the project proposing to approve a whole new massing of the tallest buildings in Oakland directly facing both the Inner Harbor navigational channel and the Inner Harbor Turning Basin, the impacts of glare from these buildings on safe navigation impacting the length of the entire channel in the afternoon when reflection from a setting sun in the west may be acute depending on building massing and location.

However, there is no data or analysis of the impacts on visibility from glare resulting from any of these proposed structures, and as a result the DEIR does not evaluate the impacts and therefore cannot conclude that the impact of building glare is mitigated.

⁵ PMSA along with the Port of Oakland, the San Francisco Bar Pilots, and other maritime stakeholders requested that the City of Oakland and project sponsors conduct a lighting study as part of the DEIR preparation. In response, the DEIR does reflect the conclusions of a lighting study conducted for this purpose (DEIR, Appendix AES) With respect to the single receptor location on the bridge of a vessel at the center of the turning basin, PMSA has no basis to believe that the study conclusions are inaccurate, however PMSA strongly believes that limiting the lighting evaluation only to lighting from the stadium itself and only to the impacts on one set of eyes (the Pilot’s) at only one angle, at one location when multiple vessels transit multiple locations and numerous mariners are required to continuously perform tasks fundamental to vessel safety in addition to the pilot on the bridge, this study is inadequate.

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The DEIR proposes that glare impacts on mariners would be “minimized through implementation of Mitigation Measure BIO-1b, Bird Collision Reduction Measures, ... [which] would reduce the amount of reflective glass and polished surfaces on proposed buildings.” (DEIR, at 4.10-30). However, application of mitigation measure BIO-1b applies only to “the windows and glass between the ground and 60 feet above ground or to the height of existing adjacent landscape or the height of the proposed landscape.” In other words, with respect to glare impacts from the balance of buildings which exceed 60 feet in height, including the towers on the project site of up to 600 feet, the overwhelming majority of building surface areas are left uncontrolled by mitigation measure BIO-1b. There is no analysis of how much mitigation of glare impacts have been reduced because of measure BIO-1b, but by surface area, it seems to control only the first 10% of the building surface from the ground upwards. The application of this mitigation measure only begs for more analysis of this issue, not less.

With respect to fireworks, the DEIR acknowledges the possibility of “effects of pyrotechnic events, or fireworks, on adjacent or nearby water-based uses, specifically maritime pilots while they navigate the Inner Harbor,” as “[l]ighting from these events would result in temporary and short-term increases in glare when looking toward the fireworks in the sky or above the horizon.” (DEIR at 4.10-43). However, the DEIR concludes that these impacts are not significant since “fireworks displays would be typically above the line of sight of maritime pilots, safety zones would be enforced the U.S. Coast Guard, and notification would be given prior to fireworks displays, pyrotechnic displays are not expected to adversely affect the ability of maritime pilots to navigate the Inner Harbor and the Project would not result in a fundamental conflict in this regard.” (DEIR at 4.10-44).

The DEIR reaches this conclusion on two bases, one regarding pilots and one regarding US Coast Guard safety zones. First, specifically regarding pilots’ visibility, (DEIR at 4.10-43 – 4.10-44):

When viewing navigational aids or physical landmarks along the shoreline, maritime pilots look down toward the water or immediately across the surface of the water at the shoreline from a perspective 25 to 190 feet above water. Because of this downward angle, fireworks are not likely to be in the direct line of site of maritime pilots, and therefore, would not substantially interfere with their ability to navigate the Estuary.

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Second, specifically regarding safety zones, the report concludes (DEIR at 4.10-44):

Additionally, the U.S. Coast Guard regulates firework displays that are set off from barges in the San Francisco Bay (33 CFR § 165.1191). Currently, pyrotechnic events using barges are held near Oracle Park during home baseball games, near Pier 39 during the Fourth of July, near Pier 3 during Fleet Week, and near the San Francisco Ferry Building on New Year’s Eve, among others. Prior to these events, the U.S. Coast Guard establishes a temporary safety zone during the loading and transit of the fireworks barge, until after completion of the fireworks display to restrict navigation in the vicinity of the fireworks loading, transit, and firing site (typically a 100-foot radius during loading and set-up, and increases to a 560-1,000-foot radius upon commencement of the fireworks display). These regulations are needed to keep spectators and vessels away from the immediate vicinity of the fireworks firing sites to ensure the safety of participants, spectators, and transiting vessels. The Project sponsor would be required to

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obtain clearance for the pyrotechnic events involving barges from the U.S. Coast Guard, which would include notification of the event in the U.S. Coast Guard's Local Notice to Mariners prior to the event. The U.S. Coast Guard would also determine the radius required for the safety zone.

There is no analysis of impacts of glare from fireworks on visibility or any other safety parameters which might result from the use of fireworks at the project location. As a result, there is no data and analysis which analyzes impacts on visibility from glare resulting from these activities, and therefore it is impossible to evaluate the impacts and therefore cannot conclude that the significant impact of fireworks is mitigated.

The DEIR attempts to argue that such an analysis is unnecessary because they believe that state-licensed pilots are trained to not move their eyes or gaze from certain navigational aids on the bridge and they are so steeled as to be unmoved by the presence of fireworks in their working environment. State-licensed pilots are indeed trained to be safe, effective, and focused, yet observant while operating in all manner of situations and conditions. In all these instances, pilots' skills require focus and the ability of a pilot to note or evaluate hazards or navigational aids or to effectively focus on their work without becoming distracted. But this does not render pilots immune to risk, nor is that carte blanche for the project sponsor to place pilots into situations of heightened stress and risk. Nor should it be presumed that pilots only perform their duties on a bridge by restricting their visibility or field of view to the narrow vector of "look down toward the water or immediately across the surface of the water at the shoreline from a perspective 25 to 190 feet above water." To the contrary, a pilot's training emphasizes the need for keen observational capacity in the face of changing circumstances across the maritime domain – not just keeping one's head down and focused exclusively on one singular aid to navigation or location. Moreover, the conclusion of the DEIR in this regard is also seemingly premised on the idea that the pilot is controlling the vessel – but there are many crewmembers on a ship and on the harbor craft attending the ship - with critical jobs that when in highly confined waters have a small margin of error attendant to them. Even if it were appropriate to determine whether these impacts were significant or not based on a theoretical and over-generalized stereotype of how someone might go about performing a job on ship, this analysis should be done for everyone on the bridge and on a tug.

Regarding the placement of a fireworks barge and establishment of a safety zone of up to 1,000 feet, the DEIR provides no specifics regarding where in the estuary a fireworks barge and safety zone may be located. The reference to operations at Pier 39, McCovey Cove, or the Ferry Building and the conclusion that they do not impact the operations of vessels in those locations does not provide any direct analogy to the impact on vessels in the Oakland Inner Harbor which is a working navigation channel for commercial traffic within a controlled Rule 9 environment. For instance, the DEIR does not evaluate the potential impacts of a barge with a 1,000-foot safety zone and whether this would functionally shut down the entire navigational channel, which would be a significant and unmitigated impact on the ability of vessels to use the turning basin and the reach of the navigational channel in front of Howard Terminal (which is a component of using the turning basin safely in case of emergency or to accommodate multiple vessel movements). For the DEIR to accurately and completely review this project activity, the location of the barge and size of the safety zone must be described and analyzed, and the DEIR must review feasible alternatives wherein this activity can occur terrestrially and avoid any impacts simply by not launching fireworks from a barge or over the water.

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Fireworks are not a critical component of the project, not included in the project description, and yet pose a risk of significant impact to maritime safety. The DEIR provides no description and analysis of these impacts, and it is impossible to evaluate from the text of this document to what extent this project feature may impact vessel operations or degrade navigational safety. The DEIR may not presume without analysis or evaluation that impacts are neither significant nor requiring mitigation or evaluate the alternatives. Without all such analyses being completed, no fireworks barge which might shut down the navigational channel should be authorized for this project.

The DEIR Ignores or Misstates the Manner in Which Project is Inconsistent with Local and Regional Plans and Policies and These Inconsistencies Constitute Significant Impacts

A Project's inconsistencies with local plans and policies constitute significant impacts under CEQA. *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777.

West Oakland Community Air Plan

The Howard Terminal project is located in the West Oakland Community Action Plan (WOCAP)⁶ area. Adopted in 2019, the WOCAP plan does not mention Howard Terminal or the A's project, but it adopted a series of Strategies related to the reduction of impacts on West Oakland residents from air pollution and emissions from Port, transportation, and other industrial sources.

These Strategies in large part rely on the City of Oakland to further buffer and separate industrial and transportation source emissions away from residential areas (WOCAP, pages 6-2 and 6-3):

... These Strategies include lowering emissions from the most important sources in West Oakland, reducing exposure by filtering pollutants, and moving pollution sources away from residents.

Land Use Strategies

The Steering Committee identified air pollution issues closely tied to land use decisions. Nonconforming or incompatible land uses can result in increased exposure, particularly when industrial facilities or truck routes are sited near residences. The City of Oakland adopted the West Oakland Specific Plan to facilitate development in West Oakland. Consistent with the West Oakland Specific Plan, the City plans to identify locations to relocate heavy industrial businesses currently in West Oakland (Strategy #4). Relocating two recycling companies (California Waste Solutions and CASS, Inc.) to the former Oakland Army Base has been the subject of community concerns. Relocating these two firms by the end of 2024, if not sooner, will reduce exposure from both their onsite operations and from trucks traveling and idling on local streets within Zones 1 and 6 (Strategy #1). In addition to relocating polluting businesses out of residential areas, the Steering Committee also identified strategies to relocate truck yards and truck routes away from residences (Strategy #5). Exposure from trucks can be reduced by shifting and

⁶ <https://www.baaqmd.gov/community-health/community-health-protection-program/west-oakland-community-action-plan>

O-51-19 Consistency of the proposed project with local and regional plans is discussed in Section 4.2, *Air Quality*, of the Draft EIR under Impact AIR-1.CU.

The issue with the *Endangered Habitats League, Inc. v. County of Orange (2005) 131 Cal.App.4th 777* case was the consistency of the challenged project with Orange County's General Plan. The WOCAP is not the City's general plan, and therefore this case is not relevant to the proposed Project's consistency with the WOCAP. Moreover, as stated by Appeal, citing *Families Unafraid to Uphold Rural Etc. County v. Board of Supervisors*, supra, 62 Cal.App.4th at p. 1336, 74 Cal.Rptr.2d 1., "Perfect conformity is not required, but a project must be compatible with the objectives and policies of the general plan." As discussed below, the proposed Project is consistent with the WOCAP.

The WOCAP has no strategies or actions that involve relocating residents further from existing TAC sources, nor does the WOCAP include actions for siting new land use development projects in specific areas. The WOCAP (p. 6-2 to 6-3) only discusses relocating specific industrial TAC emission sources away from residents, not land use development projects or relocating residents themselves.⁹⁶ The WOCAP does not identify buffer zones as a strategy for reducing TAC exposure.^{97,98} Further, the WOCAP does not place a moratorium on all new development in West Oakland, or even recommend that new development projects site new residential locations in specific areas (such as those with lower background TAC exposure).

The proposed Project would site new residential receptors into areas close to heavy industry, such as the Port of Oakland and Schnitzer Steel. The Draft EIR evaluates the health risk impact of siting new receptors within an area that already has high background health risks and TAC exposure, and the Project's capacity to exacerbate these existing health risks.

Impact AIR-2.CU, which evaluates whether the Project, combined with cumulative development and existing background TAC sources, would contribute to cumulative health risk impacts on sensitive receptors. This analysis uses the BAAQMD's citywide health risk modeling data prepared for the WOCAP to determine the background cumulative cancer risk and PM_{2.5}

⁹⁶ BAAQMD WOEIP, 2019. *Owning our Air: The West Oakland Community Action Plan – Volume 2: Appendices*, October 2019.

⁹⁷ BAAQMD WOEIP, 2019. *Owning our Air: The West Oakland Community Action Plan – Volume 2: Appendices*, October 2019.

⁹⁸ BAAQMD and WOEIP, 2019. *Owning Our Air: The West Oakland Community Action Plan – Volume 1: The Plan*, October 2019.

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concentrations at all receptor locations in the modeling domain. The methods for this analysis are explained on Draft EIR p. 4.2-59 through 4.2-60, and the results are presented in on Draft EIR p. 4.2-146 through 4.2-153 and in tables 4.2-22 through 4.2-25. The Draft EIR concluded that Impact AIR-2.CU would be significant and unavoidable given the already high background health risk, and all feasible mitigation measures are identified to reduce this impact. However, the project-level health risk impacts (Impact AIR-4 and AIR-5) would be less than significant with mitigation.

To address this impact, Mitigation Measure AIR-2.CU: Implement Applicable Strategies from the West Oakland Community Action Plan requires the Project sponsor to implement all applicable strategies and actions from the WOCAP that apply to the Project. These include Actions 14a, 14b, 18, 29, 36, 49, and 52 (Draft EIR pp. 4.2-156 through 4.2-157). Mitigation Measure AIR-2.CU also requires the Project sponsor to “achieve the equivalent toxicity-weighted TAC emissions emitted from the Project or population-weighted TAC exposure reductions resulting from the Project, such that the Project does not result in a cumulatively considerable contribution to health risks associated with TAC emissions.” This is an objective performance standard that aims to reduce the Project’s total health risk impact to zero, through implementation of all relevant and feasible WOCAP actions, other feasible measures and technology, and offsite TAC exposure reduction projects. In addition, Mitigation Measure AIR-2e has been revised to include the option for the Project sponsor to directly fund or implement a specific offset project within the City of Oakland, including programs to implement strategies identified in the West Oakland Community Action Plan. See also Responses to Comments A-11-4, A-17-1, and A-17-12.

Therefore, the Draft EIR conducts the analysis required by CEQA and *CBIA v. BAAQMD*.

The commenter also claims that the Project is inconsistent with WOCAP action 26 because the City has not identified specific locations for the relocation of Port truck activity currently operating at Howard Terminal. WOCAP action 26 states (BAAQMD and WOEIP, 2019; pp. 6-23 and 6-24):⁹⁹

⁹⁹ BAAQMD WOEIP, 2019. *Owning our Air: The West Oakland Community Action Plan – Volume 2: Appendices*, October 2019.

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The City and Port of Oakland will work to establish permanent locations for parking and staging of Port related trucks and cargo equipment, i.e. tractors, chassis, and containers. Such facilities will provide long-term leases to parking operators and truck owner-operators at competitive rates. Such facilities will be at the City or Port logistics center or otherwise not adjacent to West Oakland residents.

This action is provided for implementation by the City and the Port independent of any decision regarding the proposed Project, and thus the proposed Project would not conflict with this action. As discussed in Consolidated Response 4.5, *Truck Relocation*, the City and the Port have each designated and provided 15 acres for truck parking, consistent with requirements of the OAB redevelopment. Also, it is currently unknown where current tenants of Howard Terminal would relocate. The State CEQA Guidelines are clear that if a lead agency “finds that a particular impact is too speculative for evaluation, the agency should note its conclusion and terminate discussion of the impact” (State CEQA Guidelines Section 15145). In this case, the Draft EIR cannot speculate where displaced tenants will move to if they cannot be accommodated within the Seaport and the Draft EIR is not required to describe baseline conditions and assess potential impacts of truck activities at unidentified new locations.

The Draft EIR analysis appropriately focuses on potential impacts of the physical changes at the site, which would include intensification of activities at the site as a result of the proposed Project and displacement of current uses. The economic impacts of commercial tenant displacement is not in and of itself considered a significant impact for CEQA purposes, thus, contrary to the commenter’s assertions, the EIR is not required to identify potential relocation sites for truck-related activities as mitigation. However, consistent with CEQA requirements, the EIR *does* consider potential secondary impacts of tenant displacement on the physical environment to the extent this is feasible, focusing on the environment proximate to the project site rather than at the tenants’ new locations because these are unknown. See Consolidated Response 4.5, *Truck Relocation*, for additional discussion.

The WOCAP community-wide cancer risk targets are:

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- By 2025, local emission sources will contribute to the average West Oakland residential neighborhood a cancer risk of no more than 200 in a million.
- By 2030, local emission sources will contribute to the average West Oakland residential neighborhood a cancer risk of no more than 110 in a million.

Note that the targets specify that “local emissions sources” will not contribute to the “average” residential neighborhood a cancer risk of greater than 200 or 110 in a million. As discussed in Impact AIR-4, after implementation of all mitigation measures, the Project’s health risk impact on existing off-site sensitive receptors would be less than the City’s thresholds of significance (including a cancer risk of 10 in a million) and the impact would therefore be less than significant with mitigation (see Impact AIR-4, Draft EIR p. 4.2-97). The targets do not state that all residential neighborhoods must experience a cancer risk of less than these values; only that the average neighborhoods do. Therefore, the fact that specific locations would exceed these values in the future does not represent an inconsistency with the WOCAP’s targets. See Draft EIR Section 4.10, *Land Use, Plans, and Policies*, and Figures 4.10-8a and 4.10-8b for an isopleth map of existing background cumulative cancer risk values at the project site in 2024. The City has provided a revised version of this figure with an updated scale in order to show a greater level of differentiation of risk between various areas on the map. The data and methodology used in the revised figure has not changed from the original shown in the Draft EIR. Please see CEQA Air Quality Technical Addendum (Ramboll, 2021) Figure 8 for the new background health risk map.¹⁰⁰ Please also see Response to Comment O29-1-29 for a discussion of the maximum background health risk values at the project site.

Further, the targets are for the future years of 2025 and 2030, not for existing conditions. The background cancer risk values do exceed 200 per million across the entire project site. This represents conditions for the year 2017, as provided by the BAAQMD. The same dataset used to prepare Figure 4.10-8a was used by BAAQMD to conduct the health risk modeling for the WOCAP. See Draft EIR p. 4.2-59 through 4.2-60 and Appendix AIR.1 p. 49-50 for a

¹⁰⁰ Ramboll, 2021. CEQA Air Quality Technical Addendum, November 2021.

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discussion of the methods used to analyze background risk values using the BAAQMD's WOCAP health risk modeling.

The fact that existing cancer risk values at the site exceed the WOCAP's targets is unrelated to the proposed Project's consistency with the WOCAP. These values represent conditions before the WOCAP is implemented and before the Project is built. As discussed above, the Project's capacity to exacerbate existing health risks is evaluated thoroughly in Impact AIR-2.CU.

Finally, as discussed in Response to Comment A-17-12, the Draft EIR discusses the WOCAP and the applicability of its actions on the proposed project (Draft EIR p. 4.2-30 through 4.2-33). The proposed Project is not inconsistent with the WOCAP and does not include any actions that are prohibited in the WOCAP. The project would also not preclude implementation of any of the WOCAP strategies cited in the comment, or any other part of the WOCAP. Also, as described above, certain WOCAP measures have been incorporated into air quality mitigation measures. Aside from the three inconsistency claims made by the commenter; including land use consistency, analysis of truck relocation, and background cancer risk; all of which are addressed above, the commenter identifies no other areas of inconsistency between the Project and the WOCAP.

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enforcing truck routes and hours within the community and enforcing existing restrictions on truck parking, truck idling (Strategy #9). ...

The Howard Terminal Project proposes to do the exact opposite of the WOCAP strategy of moving pollution sources further away from residents and creating larger buffer zones; instead of helping to reduce exposures by limiting interaction between industry and residential uses in West Oakland, the A's are seeking to move thousands of residents into areas immediately contiguous to heavy industry, directly downwind of all Port activities, and in an area already impacted by existing pollution sources.

The commonsense requirement that the DEIR must identify this land use conflict as significant is also consistent with the requirement that CEQA Guideline § 15126.2(a) requires an "EIR shall also analyze any significant environmental effects the project might cause by bringing development and people into the area affected." The California Supreme Court upheld this provision and required that the effects of environmental conditions upon a project's future residents or users be considered where the project may exacerbate existing environmental hazards. See *California Building Industry Assoc. v. Bay Area Air Quality Management District* (2015) 62 Cal.4th 369.

Yet, despite this fundamental disconnect with both the CEQA Guidelines and the WOCAP, the DEIR does not identify the Project to be inconsistent with the WOCAP or any other Air Quality plans or recommendations in its Land Use evaluation of conflicts (DEIR, at 4.10-45 – 4.10-51). To the contrary, it cites the WOCAP and its implementation measures as one reason why this project should be able to move into an industrial site despite the existing impacts.

In its description of the WOCAP in the Air Quality chapter (DEIR, at 4.2-30 – 4.2-33), the DEIR does not focus on the same WOCAP strategies for Land Use that were listed in the WOCAP summary above which advocate the separation of industrial and residential uses. But the DEIR does quote the WOCAP recommendation that (DEIR, at 4.2-31): "Action 26. The City and Port of Oakland will work to establish permanent locations for parking and staging of Port related trucks and cargo equipment, i.e., tractors, chassis, and containers. Such facilities will provide long-term leases to parking operators and truck owner-operators at competitive rates. Such facilities will be at the City or Port logistics center or otherwise not adjacent to West Oakland residents."

Howard Terminal is currently the principal and largest staging area and parking area that meets the criteria of WOCAP Action 26. Therefore, its elimination is a facial conflict with the WOCAP and a significant impact. Moreover, particularly because there are no identified replacement parking locations other than the Roundhouse and container storage is just assumed to find new locations but outside of the Port area, no analysis has occurred of these displacements to quantify or measure their related emissions, the scope of this significant impact is unknown. Thus, the DEIR has failed to both identify that the elimination of Howard Terminal is inconsistent with this WOCAP policy and to quantify the extent of this significant impact.

The goals of the WOCAP are set in terms of targets for reduced average additional localized Cancer Risk by 2025 and 2030. The 2025 Target is excess cancer risk of no greater than 200 per million in the most impacted areas of West Oakland, which is West Oakland's average air quality, and the 2030 Target is for all areas of West Oakland to reach an excess cancer risk of no greater than 110 per million, which is

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West Oakland’s best air quality. (WOCAP, at Figure 4-4). The WOCAP has established that the “Baseline conditions in West Oakland in the year 2017 for excess cancer risk resulting from exposure to local air pollution is 204 per million.

The DEIR in Figure 4.10-8a, projects that “On-site Cumulative Cancer Risk (2024)” on the Howard Terminal Project site will more often than not be well in excess of both the 2017 West Oakland cancer risk baseline and the 2025 WOCAP targets. Of the 163 data points detailed in Figure 4.10-8a, 57 were in the cancer risk zone of “0.0 – 290 per million” – which means these could be at, above, or below the WOCAP targets. This analysis cannot confirm whether those data points on Howard Terminal exceed the West Oakland baseline or not. But of the remaining 106 data points in Figure 4.10-8a, all of them exceeded an excess cancer risk of 290 per million, including 9 with a risk of over 355 per million. Therefore, per the DEIR, at least 65% of the Howard Terminal project site is projected to be at a cancer risk of at least 290 per million in 2024, while the WOCAP target for 2025 is intended to be 200 per million. And, for at least 5% of the project site, excess cancer risk is approximately double the current (2017) West Oakland baseline and nowhere near the WOCAP target.⁷

These numbers are irrefutable, and the DEIR concedes that “high background (existing) levels of pollutants and TACs at the Project site pose health risks to proposed on-site sensitive receptors, and ... under cumulative conditions, impacts to on-site sensitive receptors would be significant and unavoidable. Mitigation Measures ... are identified to reduce air quality impacts under cumulative conditions to the extent feasible.” (DEIR, at 4.10-45)

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Given how dramatically out of step the Project is with the WOCAP policies and strategies for facilitating the separation of residential and industrial uses, it is little surprise that the Howard Terminal project is also well in excess of the baseline targets of the WOCAP. These inconsistencies are clearly significant impacts which are not effectively mitigated. Yet, despite these clear discrepancies and a lack of clear data regarding excess cancer risk levels which may be below 290 per million but still well above the 2017 WOCAP baseline, with some minor adjustments to residential uses on the site and somehow creatively claiming that the Project which is eliminating and invading the current industrial buffer zone is actually creating one on-site nonetheless (Mitigation Measure LUP-1c), concludes that with the implementation of “mitigation measures, the Project would not result in a fundamental conflict with nearby or adjacent land uses due to air quality.” (DEIR, at 4.10-49)⁸

⁷ Figure 4.10-8a provides a more detailed evaluation of potential risks than compared to the balance of health risks modeled in the DEIR. First and foremost, CEQA is a public disclosure document that is intended to evaluate, in the context of the health risk assessment, how emissions risks change in surrounding communities. Using the DEIR’s standard evaluation methodology, which measures impacts only at a maximum point of impact on-site and off-site, you practically have to be an expert to see how modeled results change by reading a table when they are provided. If the DEIR is intended to demonstrate to the public at-large who are not experts how risk changes in surrounding communities and on the site, it should show isopleths in the HRA and in the related exhibits. Without a demonstration of risk with isopleths, it is nearly impossible to qualitatively describe how risk changes as part of a cumulative analysis of health risk impacts.

⁸ The Land Use evaluation for Air Quality (DEIR, at 4.10-45 – 4.10-51) also does not find the Project is in conflict with the City General Plan Air Quality objective and policies that would apply to it, including

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Public Trust Restrictions and BCDC Seaport Plan

The DEIR takes a curious approach to the fact that the Project is facially inconsistent with both the site restrictions imposed by the Tidelands Trust underlying the property and the BCDC Seaport Plan restrictions overlaying the property. Both Impact LUP-3, which concludes that "The Project would not conflict with public trust restrictions," (DEIR, at 4.10-52) and Impact LUP-4, which concludes that "The Project would not conflict with the San Francisco Bay Plan and Seaport Plan land use policies adopted for the purpose of avoiding or mitigating an environmental effect," (DEIR, at 4.10-53), end with the same sentence: "In the absence of such approval, the Project could not proceed."

The clear and obvious fact is that the Project does conflict with Public Trust Restrictions and the Project also conflicts with the BCDC Seaport Plan. These conflicts are Significant Impacts. Just because it is possible that the Public Trust can be accommodated or possible that the Seaport Plan could be amended, does not mean that those things have occurred. Indeed, as the DEIR cites, under the current law and current Plans, "the Project could not proceed." These are prima facie significant impacts.

The DEIR concludes that the Project "would not" conflict with existing law in the future because it is possible that the State Lands Commission or BCDC might choose to act to approve amendments or findings that would change the application of these existing laws – of course, this is not the CEQA standard for this analysis. The point of an EIR's disclosure of significant impacts with respect to land use conflicts is to identify the conflict. The City's clear intention here is to avoid this simple, obvious, and unavoidable disclosure of a significant impact. In the case of both situations, the A's need to make their case for amendments and special treatment for their project in the future, but reference to the existing plans and statutes would not allow the Project to proceed. Therefore, the conclusions that these conflicts with existing law are not significant impacts are just factually wrong and do not serve to adequately provide the disclosures required under CEQA.

The Project does now conflict with the Seaport Plan and the Public Trust and will continue to conflict with the Seaport Plan and the Public Trust unless and until the BCDC or SLC or both take future discretionary actions to approve the project, which they are under no obligation to do. In the absence of those special actions or amendments, then indeed "the Project could not proceed." These are facial inconsistencies with the existing law and existing plans which must be labeled for what they are and not swept under the rug for the public and for policymakers in a disclosure document as insignificant when they are not.

The Coliseum Alternative is Clearly Environmentally Superior, Yet the DEIR Fails to Include the Coliseum Alternative as Such an Option

"Policy CO-12.1: Land Use Patterns Which Promote Air Quality," which requires the City to "[p]romote land use patterns and densities which help improve regional air quality conditions by ... (c) separating land uses which are sensitive to pollution from the sources or air pollution..." despite the acknowledgement of this section in the Air Quality section of the DEIR (DEIR, at 4.2-24).

O-51-21 See Responses to Comments A-12-2, A-12-4, A-12-11, and A-12-12. The Draft EIR evaluates the potential effects of the Project proposed by the sponsor. The proposed Project that is the subject of the environmental review is described in Draft EIR Chapter 3, *Project Description*. The Draft EIR's project description acknowledges inconsistencies between the Project and the existing San Francisco Bay Area Seaport Plan and San Francisco Bay Plan priority use designation for the Howard Terminal, as well as those between the Public Trust restrictions and project elements proposed for trust lands. Among the elements of the Project described in Chapter 3 and considered in the analysis is the Project sponsor's proposal to resolve inconsistencies with the Seaport Plan and Bay Plan, along with applicable Public Trust restrictions, as explained on Draft EIR p. 3-59:

The Project sponsor is seeking amendments to regional plans prepared by BCDC and the Metropolitan Transportation Commission (MTC) and proposes a boundary settlement and exchange agreement between the Port of Oakland and the California State Lands Commission (CSLC) to accommodate the proposed Project within the context of AB 1191.

The Draft EIR on p. 3-59 states, "The Project sponsor proposes to amend both the Seaport Plan and the Bay Plan to remove the port priority use designation from the project site." Similarly, as further noted on p. 3-60, the Project sponsor proposes a public trust exchange and boundary settlement agreement because, among other reasons, "The Public Trust imposes certain use restrictions on historical tidal and submerged lands along the waterfront ... As a general rule, certain uses, such as residential and general office development, are not considered to further trust purposes."

The project description also explains (p. 3-65) that several discretionary permits and approvals would be required before development of the Project could proceed. As presented in Table 3 (p. 3-66) the required approvals or authorizations include State Lands Commission's "Approval of a Trust Settlement and Exchange Agreement addressing public trust issues affecting the Project site" and the Bay Conservation and Development Commission's "Amendment to the BCDC and Metropolitan Transportation Commission (MTC) Seaport Plan, Amendment the BCDC Bay Plan."

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Regarding determinations of impact significance, Draft EIR Section 4.10, Land Use, Plans, and Policies (p. 4.10-29), explains the proposed Project would have a significant impact on the environment if it would:

“3. Fundamentally conflict with any applicable land use plan, policy, or regulation of an agency with jurisdiction over the Project (including, but not limited to, the general plan, specific plan, local coastal program, or zoning ordinance) adopted for the purpose of avoiding or mitigating an environmental effect and actually result in a physical change in the environment...”

Impact LUP-3 discloses project inconsistencies with public trust restrictions on Draft EIR p. 4.10-52:

“A portion of the proposed ballpark would also be located within the 1923 Tidelands. A private ballpark is not identified among uses explicitly authorized under the legislative grant (see Section 4.10.2, under the subheading The Public Trust Doctrine). As also discussed in Section 3.5.1, and shown in Figure 4.10-5, proposed uses within the 1852 Tidelands and Rancho Uplands areas include portions of the ballpark, as well as all or a portion of Blocks 2-6, 9-15, and 17-18 proposed for mixed-use development, including residential, office/commercial, and retail uses west of the ballpark. These blocks could also include one or more hotels and a performance venue. Residential and general commercial and office uses are not among those commonly understood to be trust-consistent...”

The impact discussion explains that the Project as proposed would resolve these inconsistencies through a trust exchange and boundary settlement agreement – an example configuration of which is presented in EIR Figure 4.10-9 – and by obtaining State Lands Commissions trust consistency finding. Without such approvals, the EIR notes the Project could not proceed. Notably, the Draft EIR’s project description (p. 3-59) explains, “Approval of the Trust Exchange would be a condition to the Port entering into a lease for the ballpark and any other lease or sale of a development parcel covered by the first phase of the trust exchange.”

With respect to project inconsistencies with the Seaport Plan and Bay Plan land use designation, Impact LUP-4 discloses (pp. 4.10-55 and 4.10-56):

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The Seaport Plan's land use designation mirrors that of the Bay Plan maps, and similarly provides that such areas be protected for marine terminals and other directly related port activities. Because the Project proposes a range of non-port uses which would preclude future use of the area for port purposes, the Project would conflict with BCDC regulations governing port priority use areas.

The impact discussion explains the purpose of the priority use designation, the policies governing revisions to the designation, the standards that must be met, and quotes BCDC's scoping comment letter, which state, "issuance of a permit for the Project as described in the NOP could not occur unless the boundaries of the Port Priority Use Area on Bay Plan Map No. Five were revised to avoid the project site." The analysis goes on to explain that the Project would resolve the inconsistency with the site's priority use designation by obtaining the necessary Seaport Plan and Bay Plan amendments. Consistent with BCDC's directive, the Project could not proceed without such modification. Also, as with the trust exchange, the EIR notes "the Port and City would require as conditions of their approvals that the Project sponsor obtain the necessary Seaport Plan and Bay Plan amendments."

The EIR's applicable threshold states the Project would have a significant impact if it would both fundamentally conflict with an environmental plan, policy, or regulation and actually result in a physical change in the environment. As discussed for both Impacts LUP-3 and LUP-4, while inconsistencies may exist between certain elements of the proposed Project and existing public trust restrictions and land use designations, the Project could not proceed until those issues were resolved. Therefore, there is no scenario in which the Project proceeds to the stage where a physical change in the environment occur and a fundamental conflict with such restrictions and designations remains. Nevertheless, the potential physical environmental changes that could occur with project implementation after any potential conflicts are resolved are the subject of the EIR and addressed in the context of the corresponding environmental topic sections.

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PMSA supports the A's staying in Oakland, investing in a new privately-financed stadium in Oakland, providing community benefits in Oakland, and doing so by reinvesting in their home in East Oakland at the current Coliseum location. This option is clearly the best at resolving environmental conflicts but still delivering the overarching goals of the Oakland A's and the City of Oakland: providing a new stadium for the A's in the Oakland with the least number of environmental impacts and public expense.

The DEIR identification of the Coliseum location as Alternative 2 provides the opportunity for a direct and robust public disclosure of all of multitude of environmentally preferred benefits of reinvestment and redevelopment of the Coliseum location to continue its current use as a sports venue rather than moving to Howard Terminal and disrupting current port and industrial operations. However, when identifying which Alternatives are Environmentally Superior, the DEIR fails to mention the Coliseum. (DEIR, at 6-60)

With respect to avoiding all Port and West Oakland interaction issues, the Coliseum location is necessarily superior, because none of these impacts are experienced. These impacts that would be per se avoided include the introduction of significant navigational risks into the Oakland Inner Harbor and Turning Basin, disruption of significant but unknown and unmeasured disruptions to the truck and container operations being displaced from Howard Terminal, creation of significant and unavoidable cumulative new air quality impacts in the West Oakland community, avoidance of hazardous materials and toxics issues at Howard Terminal, need for development of new public transit and transportation infrastructure, and the cumulative impacts of eliminating industrial uses and jobs in conjunction with the implementation of the Downtown Oakland Specific Plan. In addition, the Coliseum Alternative would eliminate any possibility that the Project would conflict with the expansion of the turning basin, identified as the Maritime Reservation Scenario, which would ultimately further enhance navigational safety and improve Port operations.

With respect to GHG emissions in particular, the Coliseum location is also at least as good if not the environmentally superior location when compared properly to Howard Terminal. As described in the DEIR (at 6-56), the Coliseum location would have equal impacts than Howard Terminal in an unmitigated state, and then the Coliseum impacts on GHGs under the existing Coliseum District EIR would be less than significant with simple application of Standard Conditions of Approval. The Howard Terminal location on the other hand does not achieve a less than significant impact with the use of Standard Conditions of Approval, it is only able to achieve its Less than Significant with Mitigation status because it will be purchasing carbon-offset credits. To compare apples-to-apples between the Howard Terminal location and the Coliseum, and because the purchase of carbon-offset credits can occur anywhere independent of where actual emissions exist because of the operations and construction of this project, there is absolutely no question that mitigation can be utilized to achieve equal or better GHG reduction results at the Coliseum location than at Howard Terminal after the application of Standard Conditions of Approval. There are no limitations on the number of carbon-offset credits available to the Oakland A's at the Coliseum location.

The inclusion of a properly evaluated Coliseum alternative which demonstrates the same or better outcomes for all intents and purposes – the entire Howard Terminal project moved to the Coliseum property – is important because it demonstrates that the Coliseum location is a feasible alternative. CEQA prohibits approval of projects with adverse environmental impacts if there are feasible

O-51-22 See Consolidated Response 4.10, *Alternative 2: The Off-Site (Coliseum Area) Alternative*.

O-51-23 Alternative 2, the Off-Site (Coliseum Area) Alternative, would result in GHG emissions that would be considered less than significant based on the threshold of significance used in the CASP EIR and the use of Standard Conditions of Approval (SCAs) and the Project's GHG emissions would also be less than significant based on the threshold of significance used in this EIR and the implementation of Mitigation Measure GHG-1a.

Nonetheless, as explained on Draft EIR p. 6-17, whereas the Project's emissions would effectively be reduced to zero through the use of emission reduction strategies and offsets, as required in the Mitigation Measure GHG-1a, Alternative 2 would not be subject to the "no net additional" standard and would result in annual GHG emissions. Alternative 2 could also purchase offsets, but without the "no net additional" requirement imposed by AB 734, it would not be reasonable for the Draft EIR to assume that emissions would get to zero.

O-51-24 This comment is a summary of CEQA provisions and case law. This comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft EIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Project. Regarding the EIR's treatment of the Coliseum Alternative, see Consolidated Response 4.10, *Alternative 2: The Off-Site (Coliseum Area) Alternative*.

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alternatives. (Guidelines § 15021 (a)(2)) The CEQA Guidelines require an agency to “[d]isclose to the public the reasons why a governmental agency approved the project in the manner the agency chose if significant environmental effects are involved.”

The City “bears the burden of affirmatively demonstrating that . . . the agency’s approval of the proposed project followed meaningful consideration of alternatives and mitigation measures.” *Mountain Lion Foundation v. Fish and Game Commission* (1997) 16 Cal.4th 105, 134; accord *Village Laguna of Laguna Beach v. Board of Supervisors* (1982) 134 Cal.App.3d 1022, 1035. As the Court has said, while an EIR is “the heart of CEQA”, the “core of an EIR is the mitigation and alternatives sections.” *Citizens of Goleta Valley v. Bd. Of Supervisors* (1990) 52 Cal.3d 553, 564. Preparation of an adequate EIR with analysis of a reasonable range of alternatives is crucial to CEQA’s substantive mandate to “prevent significant avoidable damage to the environment” when alternatives or mitigation measures are feasible. (Guidelines § 15002(a)(3).)

“The range of feasible alternatives [for an EIR] shall be selected and discussed in a manner to foster meaningful public participation and informed decision making.” (Guidelines § 15126.6 (f).) “[T]he discussion of alternatives shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project, even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly.” (Guidelines § 15126.6(b).)

The DEIR does not foster meaningful and informed decision making if the Coliseum Alternative is not properly evaluated as an Environmentally Superior Alternative. The City is tasked with evaluating all feasible alternatives which meets this final Guideline requirement and should focus on the way the Coliseum Alternative is “capable of avoiding or substantially lessening any significant effects of the project,” and would still attain project objectives.

The Howard Terminal DEIR Fails to Adequately Disclose the Project Impacts in the Context of the Port’s Emissions Reductions, Does Not Produce A Baseline Comparison to Ongoing Restrictions on Emissions at Howard Terminal

The Howard Terminal Project is intended to redevelop a marine terminal at the Port of Oakland which is, unsurprisingly, subject to all the clean air restrictions attendant to an intermodal terminal and yard at the Port of Oakland. Which is to say that, specifically, the trucks must meet the highest trucking fleet standards set by the California Air Resources Board under the Drayage Truck Rules; any cargo handling equipment utilized on-site must be Best Available Control or Retrofit Technology; and that the vessels are using the cleanest fuels in North America. These rules are complemented by the Port of Oakland’s Beyond 2020 Plan to provide ever greater emissions reductions from maritime operations. By comparison, the development of Howard Terminal away from its maritime operations results in significant and unavoidable, even when fully mitigated, additional air emissions well in excess of current Port operations at the site.

Therefore, while the Project sponsors and their boosters are out in public bragging about how much cleaner Howard Terminal will be without industrial operations on site, the ironic truth is that by converting the Howard Terminal from a trucking and container terminal to a baseball

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O-51-25 The Port of Oakland trucks, cargo handling equipment, and marine vessels must meet all applicable CARB regulations. The Port of Oakland Beyond 2020 Plan strives for even greater emission reductions beyond CARB regulatory requirements (Port of Oakland, 2019).

The proposed Project would result in significant and unavoidable impacts to air quality; specifically, Impact AIR-1 (construction criteria air pollutants), AIR-2 (combined construction and operational criteria air pollutants), AIR-1.CU (cumulative criteria pollutants), and AIR-2.CU (cumulative health risks) would all be significant and unavoidable with mitigation. All feasible mitigation has been identified in the Draft EIR to reduce these impacts.

The chart showing project emissions of 26.6 tons of PM₁₀ per year does not account for the removal of the A’s-related existing emissions at the Coliseum; total net new emissions of PM₁₀ within the Bay Area Air Basin is 22.8 tons per year. The implementation of the Project has no bearing on the Port’s past, current, or future actions to reduce Port-related emissions from Port-controlled emissions sources. The emission reductions achieved by the Port to date are unaffected by the Project. With or without the proposed Project, the Port will continue to reduce its emissions consistent with CARB regulations and the Beyond 2020 Plan. The proposed Project would not hinder any future efforts. As discussed throughout the Draft EIR and as presented in Table 4.2-10 and others, the Project would result in greater particulate matter emissions than are currently produced at the Project site under existing conditions. This is the basis for the significant and unavoidable health risk impacts as discussed above. See also Appendix AIR for an estimate of PM emissions associated with existing Howard Terminal truck activity (Table 130).

Impact AIR-1.CU evaluates cumulative criteria pollutant emissions and Impact AIR-2.CU evaluates cumulative health risk impacts. Both impacts were found to be significant and unavoidable, and all feasible mitigation measures to reduce these impacts were identified. These include Mitigation Measures AIR-1a, AIR-1b, AIR-1c, AIR-1d, AIR-2a, AIR-2b, AIR-2c, AIR-2d, AIR-2e, AIR-3, AIR-4a, AIR-4b, AIR-2b, AIR-1.CU, AIR-2.CU, TRANS-1a, TRANS-1b, TRANS-1c, TRANS-1d, TRANS-1e, TRANS-2a, TRANS-2b, TRANS-2c, TRANS-3a, and TRANS-3b.

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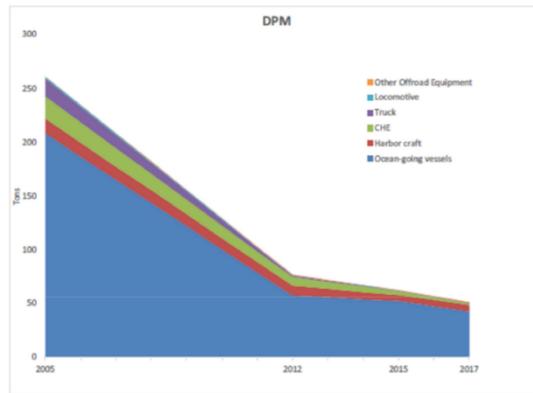
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stadium and housing and office complex, the City will be wiping out years of clean air progress, work, investments, and improvements already made by the Port and its maritime stakeholders.

As demonstrated by Figure B-1 from the Final Seaport Air Quality 2020 and Beyond Plan (May 2019), the Port has made dramatic progress in its reduction of Particulate Matter since 2005:

Figure B-1: DPM Emissions by Equipment Category



Note:
 DPM = diesel particulate matter
 Source: Port of Oakland 2017 Seaport Air Emissions Inventory Final Report (Ramboll 2018).

The current Howard Terminal operations baseline is included in the Port of Oakland emissions inventory. When one considers all the fine particulate matter emissions from across the entire Port, as calculated in the Port of Oakland 2017 Seaport Air Emissions Inventory and then compares it with the projections for the Howard Terminal Project included in the DEIR (Table 4.2-9), the cumulative impact analysis that the DEIR fails to conduct in the context of the existing Port emissions baseline becomes readily apparent. If the Howard Terminal Project is allowed to go forward, there is absolutely no question that the West Oakland community goes backwards in terms of its overall air quality and that the Oakland A's proposal will erase progress already made by the maritime industry in the reduction of emissions impacts.

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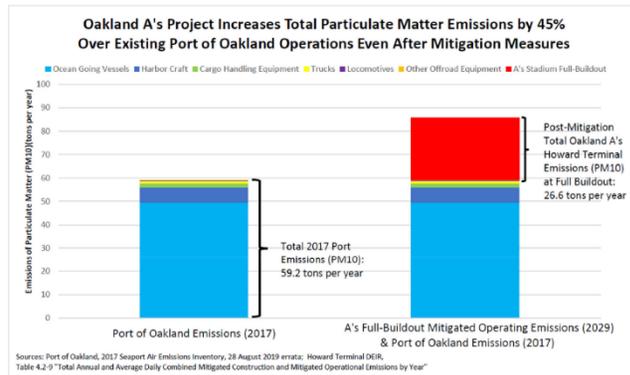
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Comparing the Oakland A's proposed 2029 full buildout emissions of PM10 (which doesn't include any of the emissions associated with increases in truck VMTs) against the 2017 Port Emissions Inventory (which is already 4 years out of date, and so therefore doesn't capture any of the recent and many additional emissions reductions associated with cleaner fuels, new hybrid cargo handling equipment, and higher percentages of vessels plugged in at berth), the Howard Terminal ballpark would actually result in a 45% increase in total PM10 emissions over Port operations totals.



The DEIR's Proposed Diesel Truck Mitigation Measure for the Oakland A's is Less Strict and Effective than the Everyday Rules for Drayage Trucks that Are Currently at Howard Terminal

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One example of how the DEIR would increase overall emissions in West Oakland is the result of the DEIR authorizing the Oakland A's to conduct transportation operations which are dirtier than the rules which govern the current drayage operations working at Howard Terminal now. Its just a fact, the drayage truck emissions standards are cleaner than most of the other trucks on the street, including the thousands of construction trucks that will be making thousands of trips to this location from the anticipated start of construction in 2023 through to the full buildout projected date of 2029. In addition, there are numerous holes which allow the provision of diesel truck operations to be less clean than the A's in public would lead the community to believe. For example, the DEIR proposes Mitigation Measure AIR-2d, which reads as follows:

O-51-26 The trucks used at the Project site would meet all CARB and BAAQMD engine emission standards, just as all Port trucks will meet all emission standards for drayage trucks. The Draft EIR fully discloses the emission factors used in the analysis of on-road construction truck emissions in Appendix AIR.1 Table 9.

Although there would be a maximum of 87,055 one-way truck trips associated with the construction of the Project, construction is anticipated from 2023 through 2029, when the Project is anticipated to be at full buildout (see Appendix AIR.1, Table 8). As stated on p. 3-32 of Draft EIR Chapter 3, *Project Description*, the technical analyses presented in the Draft EIR are conservative because the analyses assumed construction would begin earlier (2020) and be completed earlier (2027) and are therefore conservative because emissions are expected to decrease over time due to improvements in technology and regulatory requirements. In addition, construction would be temporary and would cease once construction is completed. Further, Mitigation Measures AIR-1a, AIR-1b, AIR-1c, and AIR-1d are included to address construction impacts and decrease emissions associated with construction activities. Nevertheless, Impact AIR-1 would be significant and unavoidable with mitigation.

The Draft EIR meets the requirements of CEQA and the State CEQA Guidelines by identifying all feasible mitigation measures that are capable of avoiding or reducing the magnitude of significant impacts of the proposed Project. State CEQA Guidelines Section 15126.4(a)(4) states that "[m]itigation measures must be consistent with all applicable constitutional requirements," including the requirements for a nexus between the effects of the project and the required mitigation measure, and the requirement for rough proportionality between the effect of the project and the measure required. As such, under CEQA the City is limited to imposing mitigation to avoid or reduce the magnitude of the impacts of the proposed Project.

Additionally, as discussed in Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*, the Draft EIR fully complies with requirements for mitigation by providing measures that either require very specific action or actions with predictable results, or by providing mitigation measures that include clear performance standards (i.e., required results) that would be accomplished through a mix of required and in some cases possible actions that are outlined in the measure. The use of

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performance standards is outlined in State CEQA Guidelines Section 15126.4(a)(1)(B), which states in part:

The specific details of a mitigation measure, however, may be developed after project approval when it is impractical or infeasible to include those details during the Project's environmental review, provided that the agency (1) commits itself to the mitigation, (2) adopts specific performance standards the mitigation will achieve, and (3) identifies the type(s) of potential action(s) that can feasibly achieve that performance standard that will be considered, analyzed, and potentially incorporated in the mitigation measure.

Regarding the installation of electrical hookups for diesel trucks at loading docks and mandating that all TRUs meet Tier 4 emission standards, the Project sponsor has no control over the types of trucks that will use the Project's loading docks. There would be many different vendors for the ballpark, event center, office buildings, residential buildings, retail, open spaces, and these vendors will have their own fleets of trucks serving the Project site. Future tenants and vendors at the Project site are currently unknown. The project sponsor can only provide the infrastructure to encourage the use of electric plug-in TRUs but does not have the authority to mandate that all trucks visiting the site have electric plug-in TRUs (just as the Project sponsor cannot mandate that all users of the site drive light-duty electric vehicles). See Response to Comment A-11-2 for additional discussion. See also Chapter 7, *City-Initiated Updates and Errata in the Draft EIR*, for the revised mitigation measure language.

Regarding truck-intensive projects to use advanced exhaust technology, a truck-intensive project is a project like a logistics center, warehouse, or similar facility used primarily for the movement of goods via truck. This is a City of Oakland standard condition of approval.

Regarding the prohibition on trucks idling more than two minutes, this would be enforced through the MMRP, as will all other mitigation measures in the draft EIR.

Regarding the truck route program, the anticipated operational truck routes were already included in the modeling and emissions results presented in Impact AIR-2, AIR-4, AIR-5, and AIR-2.CU. The project sponsor would be

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required to follow these truck routes or establish new routes to better avoid sensitive receptor locations.

The commenter also suggests additional mitigation measures. Placing time limits on truck deliveries is currently not feasible given that future tenants and vendors at the Project site are currently unknown and it is not possible to place realistic restrictions on future deliveries. The trucks will comply with all CARB, BAAQMD, and city requirements for time limits on truck deliveries and idling. Regarding the request for an independent on-site representative documenting compliance with mitigation measures and including a liquidated damages clause for non-performance, the mitigation measures will be enforced by the City through the MMRP pursuant to CEQA, so there is no need (or requirement under CEQA) for an on-site representative to document compliance or for a liquidated damages clause. Regarding the requirement for all trucks to meet 2010 U.S. EPA standards, all trucks serving the site are already required to meet U.S. EPA and CARB emission standards in force at the time the trucks are operating, independent of the Draft EIR's mitigation measures. See Response to Comment A-17-9 for additional discussion regarding the infeasibility of proposed mitigation measures. Regarding the requirement for construction equipment to be Tier 4, all construction equipment is required to meet Tier 4 Final emission standards through Mitigation Measure AIR-1c.

As stated above, the Draft EIR meets the requirements of CEQA and the State CEQA Guidelines by identifying all feasible mitigation measures that are capable of avoiding or reducing the magnitude of significant impacts of the proposed Project. However, a number of new and strengthened mitigation measures for both construction and operational impacts will be included in the Final EIR; see Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures* for a discussion of all changes to the air quality mitigation measures; also see Chapter 7, *City-Initiated Updates and Errata in the Draft EIR*, for the revised mitigation measure language.

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Mitigation Measure AIR-2d: Diesel Truck Emission Reduction.

The Project sponsor shall incorporate the following health risk reduction measures into the Project design and construction contracts (as applicable) in order to reduce the potential health risk due to exposure to toxic air contaminants. These features shall be submitted to the City for review and approval and be included on the Project drawings submitted for the construction-related permit or on other documentation submitted to the City.

Emissions from Project-related diesel trucks shall be reduced through implementing the following measures, if feasible:

1. Installing electrical hook-ups for diesel trucks at loading docks.
2. Requiring trucks to use Transportation Refrigeration Units (TRU) that meet Tier 4 emission standards.
3. Requiring truck-intensive projects to use advanced exhaust technology (e.g., hybrid) or alternative fuels.
4. Prohibiting trucks from idling for more than two minutes.
5. Establishing truck routes to avoid sensitive receptors in the Project. A truck route program, along with truck calming, parking, and delivery restrictions, shall be implemented.

This mitigation measure is plagued by a lack of specificity. One may even surmise that some of these mitigation measures have been written to be ignored. Some outstanding questions need to be answered to gauge how effective these mitigation measures actually are, for instance:

1. Installing electrical hook-ups for diesel trucks at loading docks.

Installing electrical hook-ups does not mitigate emissions, instead for this mitigation measure to be effective it should read "The Project Sponsor shall install electrical hook-ups for diesel trucks at all loading docks, and the Project Sponsor shall require that all trucks shall exclusively use installed electrical hook-ups while at loading docks." Otherwise, the way it is worded the A's can provide the infrastructure but then wash their hands of the problem and not be troubled to have to find fleets that can use it. In addition, this should be clarified that this requirement applies to both APUs and TRUs, as these different needs may have different requirements.

2. Requiring trucks to use Transportation Refrigeration Units (TRU) that meet Tier 4 emission standards.

Tier 4 refers to the engine that powers the TRU. There is a potential loophole where if the engine is small enough there is no applicable Tier 4 standard. It should state that all TRUs smaller than 25 hp must meet the Tier 4 engine standard for 25-50 hp engines; all others must meet the appropriate size-based emission standard.

3. Requiring truck-intensive projects to use advanced exhaust technology (e.g., hybrid) or alternative fuels.

This is so undefined you could drive a truck through it. Does this say that every truck in the project must be a hybrid or alternative fueled truck? If so, why not just say, no diesel trucks that are not hybrid or using an alternative fuel? What is a truck-intensive use? What is an advanced exhaust technology? What is the performance standard that must be met to meet advanced exhaust technology? It is a measure that is so loosely designed to mean anything. These terms must be defined to be effective.

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4. Prohibiting trucks from idling for more than two minutes.
 There is no description of how they intend to enforce this mitigation measure, as it will inevitably almost always take more than 2 min just to tell a truck driver to turn off their engine. But even if unenforceable, this would allow for a credit for limiting idling emissions in the document.

5. Establishing truck routes to avoid sensitive receptors in the Project. A truck route program, along with truck calming, parking, and delivery restrictions, shall be implemented.
 This is an inappropriate deferment of mitigation. They can define and model the results of a truck route now. There is no reason for it to be defined later.

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It does not take much imagination to consider other cleaner options for truck operations at the new Project than what is currently in the DEIR. Some potential mitigation measures could include:

- Time limits on truck delivery, no truck trips during peak hours.
- Independent, on-site representative responsible for documenting compliance with mitigation measures
- Requirement for liquidated damages clause in contracts for non-performance of mitigation measures
- All trucks must meet 2010 EPA emissions standards (for those that do not meet more advanced standards)
- All construction equipment must be Tier 4.

Project Description and Analysis is Missing Analysis of Either Future Displacement or Future Utilization for Berthing and Utilization of the Dock Face

The DEIR project description does not include any reference to the reservation of any future utilization of the Howard Terminal for vessel berthing or utilization of the dock face by commercial vessels. The DEIR does not include any analysis of any future utilization of the Howard Terminal for vessel berthing or utilization of the dock face by commercial vessels, nor does the DEIR analyze the impacts of the future removal of existing lay-berthing utilization of the Howard Terminal site by vessels. In other words, there is simply no discussion of this subject in the DEIR, and whether this use will exist or not and what the analysis of its retention or elimination would be are all unknowns.

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The use of Howard Terminal for lay-berthing is well known and regular. The heavy-load carrier *John Glenn*, for example, has been occupying a berth at Howard Terminal continuously for the duration of the public comment period of the DEIR. Therefore, its no surprise that the DEIR acknowledges that the existing uses at Howard Terminal include "Vessel berthing for maintenance and storage (wharf area requirements) – 7 acres." (DEIR, at 3-3)

Presumably, as no acreage on the new site plan is dedicated for vessel berthing on-site at Howard Terminal and this use is not included as part of the Project description, this usage will be displaced. However, no analysis of the impacts of the displacement of one of the few remaining deep-water lay berths on the San Francisco Bay accompanies the elimination of this use in the DEIR.

O-51-27 The Project would not necessarily prohibit the use of the waterside edge for layberthing. However, ships docked at this berth would not have landside access, which may deter its use for layberthing.

To the extent the comment concerns the economic impacts of not having vessel berthing or utilization of the dock face, this issue is not subject to CEQA. See Consolidated Response 4.4, *Port Operations and Land Use Compatibility*, and Consolidated Response 4.22, *General Non-CEQA*. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Project.

Additionally, the future use of the waterside edge of the Project site for vessel berthing or maritime use would be under the jurisdiction of the Port to determine if it is needed for the Seaport.

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This is inconsistent with the provisions of AB 1191 (Chap. 752, Statutes of 2019), which made several findings and declarations regarding the potential development of Howard Terminal. One such finding was that the Project development was proposed to include the “[d]edication of the waterward edge of Howard Terminal for ongoing water-dependent or maritime use, which may include access for excursion boats, recreational watercraft, and industrial small vessel mooring.” (AB 1191, Sec. 2 (b)(1)(G)).

Any reference to this type of activity remaining at the Project is missing from the project description or in any analysis in the baseline conditions for Howard Terminal. In addition, the DEIR lacks any analysis of the impact of displacement of lay berthing opportunities in the Bay and this current use is not included in any of the DEIR’s evaluations of impacts resulting from deviations from a baseline of use.

The Maritime Reservation Scenario Is A Significant Enhancement to Maritime Safety and Commerce

The Maritime Reservation Scenario (as described at DEIR 3.37-3.40), which provides for the expansion of the Inner Harbor Turning Basin, would result in a significant enhancement to navigational safety and ensure the highest level of safety for pilotage. The expansion of the turning basin is not only essential if pilots will be asked to safely accommodate larger vessels which may call on the Port of Oakland in the future, but it also expands the margin of navigational safety for all vessels of all sizes which are required to transit and turn in the Oakland Inner Harbor.

This project should only proceed in a manner which accommodates the future ability of the Port of Oakland to expand its turning basin. Any other outcome would result in a sub-optimal safety and commercial operations and would foreclose future growth and improvements in service. For enhancement of navigation safety, implementation of the Maritime Reservation Scenario is imperative if this project is to ultimately proceed.

Seaport Compatibility Measures Must be Analyzed in this DEIR or a Supplemental EIR Document as Components of the Project If They Are Intended to Be Negotiated in A Discretionary Project Approval

The DEIR project description includes a discussion of the Seaport Compatibility Measures requirement in the current agreement between the Port and the Oakland A’s. Seaport Compatibility Measures must be negotiated by the parties, will require input from seaport and maritime stakeholders, and the outcome of these negotiations will need to “be reflected in an Option Agreement (...) and other negotiated transaction documents between the Project sponsor and the Port, subject to permitting and regulatory jurisdiction of all applicable local, state and federal agencies.” (DEIR, at 3-60)

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The scope of the “Seaport Compatibility Measures to be negotiated” is described (DEIR, at 3-61) to include:

... measures, designs, and operational standards to ensure that the Project does not impact or interfere with the Port’s use or operations outside of the Project, including (i) the Port’s current or reasonably anticipated future use, operation, and development of Port facilities, properties, and utilities of Port tenants, Port contractors, or operators engaged in the maritime use of the Port Area (as defined in Section 4.10.1); (ii) the

O-51-28 See Consolidated Response 4.4, *Port Operations and Land Use Compatibility*.

O-51-29 See Consolidated Responses 4.1, *Project Description*, and Consolidated Response 4.4, *Port Operations and Land Use Compatibility*, regarding measures related to the Seaport Compatibility Measures. See also Response to Comments O-27-65 and O-51-29.

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health and safety of the Port's employees, tenants, contractors, or operators engaged in Port operations in the Port Area (and their respective employees) as well as of the future occupants of the Project site; (iii) measures to ensure that the future users, owners, lessees, and residents of and in the Project shall be notified of potential impacts of Port maritime and marine operations on their use and waive rights to claims arriving therefrom; and (iv) measures to ensure that the Project minimizes vehicular congestion from the Project and avoids conflict between vehicular and pedestrian traffic generated by the Project with Port seaport operations, including cargo truck routes and traffic measures, designs, and operational standards to ensure that the Project does not impact or interfere with the Port's use or operations.

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This description is entirely accurate. Under the terms of the current Exclusive Negotiation agreement between the A's and the Port, no final action can be taken until these Seaport Compatibility Measures are established. And these will need to be reflected in the agreements and transaction documents which ultimately implement the Project. As such, the Seaport Compatibility Measures are an integral part of the Project.

As project components they need to be analyzed under CEQA and they should be analyzed in this DEIR. However, the DEIR tries to impermissibly move these yet-to-be-negotiated project components out of the scope of this Project description by proclaiming that "Seaport Compatibility Measures, if agreed upon between the Project sponsor and the Port, may address non-CEQA impacts relating to the Port's use or operations outside of the Project." (DEIR, at 3-61).

Obviously, the DEIR cannot pre-judge whether the Seaport Compatibility Measures agreed to in this project negotiation will address CEQA impacts or non-CEQA impacts. Certainly, the City of Oakland, through a DEIR adoption, does not have the legal capacity to bind the Port as a trustee of state granted lands to consider only certain types of business, legal, commercial, or environmental Compatibility Measures. The prudent course of action to take when additional discretionary actions by a Responsible Agency are likely to occur which may impact a project description, project scope, or introduce additional impacts or new cumulative impacts is for the Lead Agency to withdraw the DEIR and wait for the Project to mature to a place where it can be analyzed in its entirety, or be prepared to do future Supplemental EIR circulation in order to properly evaluate a Project with a new description, scope, or impacts.

The Port of Oakland, Not the City of Oakland, Is the Proper Lead Agency on the DEIR for the Howard Terminal Project

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CEQA defines a "Lead agency" as "the public agency which has the principal responsibility for carrying out or approving a project which may have a significant effect upon the environment." Public Resources Code §21067. With respect to the A's proposed Project at Howard Terminal, the Port remains the public agency with principal responsibility for carrying out or approving the proposed project which is envisioned at Howard Terminal, not the City of Oakland. The Port is the Agency that will need to carry out the project as the landlord of the property on which the project is located, not the City, even though the development is located within the City's geographic boundaries. The Port is the Agency which will be responsible for supervising and approving the project, including setting the terms for any leases and sales of Port property. With respect to the management of granted tidelands trust properties, the Port

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The City of Oakland is the Lead Agency for purposes of CEQA for the proposed Project (p. 1-3 of the Draft EIR). The City's responsibility for project approval is greater than the responsibility of the Port as a single-purpose agency. As stated on p. 3-65 of the Draft EIR, "As Lead Agency for the proposed Project, the City of Oakland is responsible for a majority of approvals required for development, and for preparation of [the] Draft EIR." The City has general governmental and police powers consistent with the Charter that are applicable to and enforceable uniformly throughout the City of Oakland. The City further has exclusive authority over the approval of any change to the General Plan designation for the site, which is the highest level of land-use approval required for the Proposed Project. In addition, the proposed Project includes residential development, which, pursuant to the Section 7.06 of the Charter, requires City Council consent before any approval by the Port. All land-use regulations, zoning, development permits, and other approvals for the proposed Project then must conform to the City's General Plan. Draft EIR Table 3-5 (and 3-6 for permits and approvals anticipated for the MRS) is included pursuant to 15124(d)(2) and in a format and specificity that is standard for Oakland EIRs.

Furthermore, pursuant to CEQA, "The Port and the City agreed that, under Public Resources Code Section 21067, State CEQA Guidelines Sections 15050-15051, and related case law, the City is the lead agency responsible for environmental review of the proposed Project and will consider both certification of the EIR and amendment of the General Plan" (p. 3-14 of the Draft EIR). CEQA expressly permits agencies to enter in to such agreements to designate a lead agency. (CEQA State Guideline 15051(d)) and as explained on p. 3-11 of the Draft EIR, the City and the Port have entered into an MOU which describes a contemplated shared regulatory framework for the Project.

The comment is correct that the Port has discretionary approval over the Project. The Port is an independent department of the City of Oakland (<https://www.portofoakland.com/port/>) and it will conduct its decision-making process using this EIR, in compliance with the CEQA. The City's role as Lead Agency with primary responsibility for preparing the EIR does not mean that the Port is not fulfilling its responsibilities, only that the City has the "greatest responsibility for supervising and approving the Project as a whole" in keeping with State CEQA Guidelines Section 15051(b) and is the proper lead agency under CEQA. The Port has been consulted as a responsible agency pursuant to State CEQA Guidelines Section 15096 and Port staff have actively engaged with City staff on preparation of the EIR.

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is the Agency with general governmental powers, and the residual power granted to the City is relatively de minimis. And, without question, the Port was the Agency that acted first on this Project, not the City. These are the factors outlined in CEQA Guideline §15051 which establishes the requirements for describing how to avoid the mis-designation of the Lead Agency amongst multiple potential Responsible Agencies.

The mis-designation of Lead Agency is not harmless error, and it can be prejudicial to a CEQA adequacy determination, result in the creation of a defective EIR, and ultimately result in a necessity for the preparation of an entirely new EIR by the proper Lead Agency. *Planning and Conservation League v. Dept. of Water Resources* (2000) 100 Cal.Rptr.2d 173.

Under the interaction of State Tidelands Trust law and the City Charter, the general authority of the City to act with respect to management or control of Port property is deliberately limited. These limitations are supposed to limit the amount of municipal interference and influence over the management of granted state tidelands for the benefit of the State of California consistent with the trust. Any actions taken by the Port, as trustee, for the benefit of the municipality are strictly prohibited. Pub. Resources Code §6009(d).

Consistent with these restrictions, the source of principal control of all the following considerations for this Project site with respect to comparison of either the Port or the City:

	Port	City
Lessor and Recipient of Revenues Derivative of Prior, Present, and Ongoing Uses of Howard Terminal	✓	
Existing Entity with Exclusive Negotiating Agreement w/ Project Applicant regarding Howard Terminal project	✓	
Future Lessor or Conveyer of Howard Terminal Under Project Description of Project Transactional Documents	✓	
Trustee of Granted State Tidelands in the Port Area Subject to Enforcement by State Lands Commission including Howard Terminal	✓	
Signatory to Current Department of Toxic Substances Control Deed Restrictions on Howard Terminal	✓	
Issuer of Revenue Bonds for Financing of all Existing Port Terminal Facility Infrastructure Including Howard Terminal	✓	
Issuer of Building Permits for any Waterfront Building or Structure in the Port Area Including Howard Terminal	✓	

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"To have control and jurisdiction of that part of the City hereinafter defined as the 'Port Area' and enforce therein general rules and regulations, to the extent that may be necessary or requisite for port purposes and harbor development." Oakland City Charter §706(4)	✓	
"No franchise shall be granted, no property shall be acquired or sold, no street shall be opened, altered, closed or abandoned, and no sewer, street, or other public improvement shall be located or constructed in the 'Port Area,' by the City of Oakland, or the Council thereof, without the approval of the Board." Oakland City Charter §712	✓	
"To provide in the Port Area, subject to the provisions of Section 727, for other commercial development and for residential housing development; provided that any residential housing development shall be approved by the Board with the consent of the City Council." Oakland City Charter §706(23)	✓	✓
"The Board shall develop and use property within the Port Area for any purpose in conformity with the General Plan of the City. Any variation therefrom shall have the concurrence of the appropriate City board or commission." Oakland City Charter §727	✓	✓

The DEIR does analyze CEQA Guideline §15051 to assess whether the City's status as Lead Agency is correct or not. Rather, the City simply asserts that "[a]s Lead Agency for the proposed Project, the City of Oakland is responsible for the majority of approvals required for development, and for the preparation of the Draft EIR." (DEIR, at 3-65) The DEIR also explains that for purposes of this development Project that "the Port and City, without waiving any of their respective authorities and jurisdiction over lands within the Port Area consistent with Article VII of the Charter, have entered into a nonbinding MOU that describes a contemplated shared regulatory framework that, if ultimately approved, would apply to the Project." (DEIR, at 3-65)

This is not an evaluation of the CEQA Guideline standard for the determination of Lead Agency status. While the City might have some land-use authority over aspects of a Howard Terminal project,⁹ and is

⁹ A municipality cannot enforce local land use regulations on state property. It is a general principle of land use planning that "[a] city may not enact ordinances which conflict with general laws on statewide matters." *Hall v. City of Taft* (1956) 47 Cal. 2d 177, 184. Similar to the other provisions which govern the relationship between various levels of state and local government, "the state, when creating municipal governments does not cede to them any control of the state's property situated within them, nor over any property which the state has authorized another body or power to control." *Id.*, at 183. The tidelands trust is such an example of reserved state authority. Even when this authority is exercised through local trustees, this is still the management of statewide interests "through the medium of other selected and more suitable instrumentalities.

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undoubtedly a Responsible Agency with a number of potential permits and actions to take, it is not the proper Lead Agency. The DEIR creates Table 3-4, seemingly in an attempt to avoid the need to consider Guideline §15051 and validate the City’s novel, alternative theory that the agency with the most “Permits and approvals Anticipated” can assert Lead Agency status, but the assertion in this Table misses the mark. The real benefit of an EIR is that it provides disclosures that guide discretionary Agency actions and decisions and has precious little to do with the issuance of ministerial permits.

And the argument that the City and the Port have entered into a non-binding MOU does not alter that fact that, under CEQA, the Port cannot delegate away its environmental obligations. The proper designation of the Lead Agency is a requirement which is “so significant” that it “proscribes delegation” because “[d]elegation is inconsistent with the purposes of the EIR itself.” *Planning and Conservation League v. Dept. of Water Resources* (2000) 100 Cal.Rptr.2d 173, 185 (citing *Kleist v. City of Glendale* (1976) 56 Cal.App.3d 770, 779). With respect to Howard Terminal, this is a requirement which is parallel with the Port’s duties and responsibilities as a trustee of granted state tidelands, and the prohibitions attendant to administering these properties, including the prohibition on granting control over trust property to a third party (Public Resources Code §6009.1), and a prohibition on a trustee to allow trust lands to be utilized for local municipal benefit (Public Resources Code §6009).

Clearly, it was the Port’s initial action to enter an ENA with the Oakland A’s that even made this Project possible. *Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116 is precisely on point with respect to the need for the Port to specifically address the need for a CEQA determination if it looks likely to convey rights in the Howard Terminal to the Oakland A’s. The principle adopted by the Supreme Court is “that before conducting CEQA review, agencies must not ‘take any action’ that significantly furthers a project ‘in a manner that forecloses alternatives or mitigation measures that would ordinarily be part of CEQA review of the public project.’” *Id.* at 139, citing 14 CCR §15004(b)(2)(B).

Because CEQA is a central component of project approval, “an agency has no discretion to define approval so as to make its commitment to a project precede the required preparation of an EIR.” *Id.* at 132. In evaluating the correct timing for EIR preparation, “CEQA itself requires environmental review before a project’s approval, not necessarily its *final* approval (Pub. Resources Code, §§21100, 21151), so

How can the city ever have a superior authority to the state over the latter’s own property, or in its control and management? From the nature of things it cannot have.” *Id.*

Even if the City makes a favorable argument for its retention of some land use authority over some portion of the project site, with respect to that portion which is granted tidelands the City would still owe specific trustee duties to the state when managing these properties, regardless of the City Charter designation of roles between the Port and City. To the extent that these trustee obligations raise conflicting interests vis-à-vis the exercise of the City’s local planning laws, the specific statewide interests identified by the legislature would need to be preserved over the general authority of the municipality. To wit, if there is a “doubt whether a matter which is of concern to both municipalities and the state is of sufficient statewide concern to justify a legislative intrusion into an area traditionally regarded as ‘strictly a municipal affair.’ Such doubt [], ‘must be resolved in favor of the legislative authority of the state.’ (Abbott v. City of Los Angeles (1960) 53 Cal.2d 674, 681 [citations omitted].)” *Baggett v. Gates* (1982) 32 Cal.3d 128.

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the guideline defines ‘approval’ as occurring when the agency *first* exercises its discretion to execute a contract or grant financial assistance, not when the *last* such discretionary decision is made.” *Id.* at 134. (emphasis in original)

It is important that the Port retain its Lead Agency status for preparation of the EIR for this Project because, “postponing EIR preparation until after a binding agreement for development has been reached would tend to undermine CEQA’s goal of transparency in environmental decisionmaking.” *Id.* at 135. Therefore, if there is a project agreement, it is not the City but it is the Port which must determine when “as a practical matter, the agency has committed itself to the project as a whole or to any particular features, so as to effectively preclude any alternatives or mitigation measures that CEQA would otherwise require to be considered, including the alternative of not going forward with the project.” *Id.* at 139.

Obviously, the very purpose of CEQA to require full environmental evaluation prior to committing an Agency to a Project is to ensure EIR preparation early enough so discretionary actions are ONLY taken by an Agency once they have had access to the identification, analysis, disclosure, mitigation, and significant impact considerations required by CEQA.

The Port in acting first on the ENA and then on the Substantive and related Term Sheet has already set the terms of the deal with the A’s for the Howard Terminal Project, albeit with a stated reservation of rights and a caveat that the City still needed to produce an EIR. But that does not mean that by their act they did not identify themselves as the prime governmental actor and provide a significant commitment to the Oakland A’s.

Indeed, one indicium of when the parties to a transaction may believe that the other has made a significant commitment are the characterizations they make of decisions made to date in public. In this case, the President of the Oakland A’s is publicly characterizing (during the circulation period for this DEIR no less) that the Project sponsor believes that the current CEQA process really represents the end of discretionary actions and a conclusion of a public Agency approval process.¹⁰ A’s President Kaval has made it explicitly clear that he already believes that he has gained a substantive agreement by the Port when they adopted the Term Sheet – something that he is characterizing in the Press as the “approval” of the Project by the Port of Oakland.¹¹ This admission against interest by the Project sponsor is yet one additionally clear confirmation that if the first and primary discretionary action on this Project has

¹⁰ Sportico, “A’s Ballpark Project Heading Toward Oakland City Council Approval,” March 23, 2021 (<https://www.sportico.com/leagues/baseball/2021/as-ballpark-project-heading-toward-final-oakland-city-council-approval-1234625384/>)

¹¹ Sportico, “A’s Ballpark Project Heading Toward Oakland City Council Approval,” March 23, 2021 (emphasis added):
 ... pending litigation, the eight-member Oakland City Council could soon give approval to a preliminary development agreement, allowing shovels to be turned sometime early in 2022. ...
 “Yes, once we get approval from the City Council, that’s really the last political step to move forward,” Kaval said. “We already have the Port of Oakland approval. We already have the State of California approval. So, this is really the big thing.”

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already occurred, but prior to the preparation of any CEQA documents. The actions of the port, including the Project Sponsor, confirm that the Port should be the Lead Agency and should perform all of its duties under CEQA prior to taking any discretionary action to commit to a Project approval.

West Oakland Homelessness Baseline and Impacts Missing from Analysis in the DEIR

DEIR Chapter 4.12 on Housing and population is silent on the principal housing issue facing Oakland today: homelessness. The fact that the Project is proposing up to 3,000 units of housing, but the DEIR does not spend a single word of its Housing chapter on either establishing the baseline condition of the unhoused in the community surrounding the Howard Terminal and that it does not include any evaluation of how this project will impact the enduring housing problem of homelessness is an omission of significance.

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The lack of an establishment of the baseline existing conditions in the community regarding homelessness is not simply an issue for the Housing chapter of the DEIR, but there is also no direct discussion of how the homeless individuals who are taking shelter under the freeway and on sidewalks and in other public right of ways will be addressed when they are located in exactly the same locations where the DEIR asserts that people will be parking their cars or walking from other locations downtown. While one might scoff that the issue of homelessness has little to do with a baseball stadium, it has everything to do with the existing conditions baseline and description of the current environment on the ground where the A's intend to build their Project.

Neither the Housing chapter nor the Transportation chapter address the baseline of homelessness in the project vicinity, the potential for homeless displacement attendant to right of way improvements, or the frustration of enhanced pedestrian and other access as presumed in the DEIR if the homeless challenge continues to persist and grow on the sidewalks and parking lots necessary to mitigate the impacts of this project. The DEIR cannot realistically continue to look the other way on this very hard topic.

The Project Sponsor's Promises Made to Secure AB 734 Certification Are Not A Substitution for the Need for the Lead Agency to Ensure the DEIR Meets All Standard CEQA Requirements

The granting of AB 734 Certification¹² at the request of the Project Sponsor is not a substitution for any CEQA requirements, mitigation measures, baselines, or alternatives. CEQA does not provide for a criterion used as a benchmark for AB 734 certification to be utilized as a substitute for evaluations neither as to whether environmental impacts are significant nor as to whether significant environmental impacts are properly mitigated.

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If the DEIR characterizes any mitigation measure as reducing impacts to less than significant because of AB 734, or an environmental impact as less than significant because of AB 734, instead of proceeding with the traditional CEQA process of an actual evaluation of the baseline condition, analysis of the impacts to the baseline, and then the application of specific mitigation measures to those impacts, then the DEIR has improperly substituted AB 734 criteria for a CEQA analysis.

¹² PMSA is a party to pending litigation contesting the authority of the Governor to issue this certification.

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The setting section and analysis of population and housing impacts were developed to address the thresholds of significance presented on Draft EIR p. 4.12-12. Consequently, the analysis focuses on whether the proposed Project would directly or indirectly induce substantial unplanned population growth, or displace a substantial number of existing people, necessitating the construction of replacement housing elsewhere in excess of that contained in the City's Housing Element. While there are homeless individuals who live in the vicinity of the Project site, there is not a substantial number of homeless that congregate within the Project site that could be displaced by the proposed Project. Implementation of the proposed Project would not adversely affect the City's efforts to improve conditions for homeless individuals and reduce homelessness in the community (for more information, see <https://www.oaklandca.gov/topics/oaklands-response-to-homelessness>). Also see Consolidated Response 4.13, *Gentrification and Indirect Housing Displacement*.

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Each section of Chapter 4 in the Draft EIR identifies the significance criteria used as the basis for evaluating the significance of impacts. In virtually every case, these significance criteria are those adopted by the City of Oakland and used for all of the City's CEQA evaluations. The analysis of GHG emissions is an exception and relies on a project-specific threshold instead, and uses no "net additional" GHG emissions, which is consistent with requirements of AB 734 as described on Draft EIR pp. 4.7-36 and 4.7-37. Use of this threshold—which is effectively zero and therefore more stringent than any other possible threshold—does not represent an abuse of the CEQA process and also does not lead to use of an improper baseline or methodology for determining impacts. See the *Approach to Analysis* section starting on Draft EIR p. 4.7-37 for more information, and particularly the method for determining "net additional" emissions on p. 4.7-40, where a footnote explains the differences between calculations in the EIR and calculations for AB 734 compliance. As clarified beginning on Draft EIR p. 4.7-65, "The obligation established by Mitigation Measure GHG-1 is different from the obligation on the Project sponsor required by CARB in their AB 734 determination..." See also the discussion of AB 1191 and its use for analysis of sea level rise on p. 4.9-30 of the Draft EIR and the general discussion of the baseline provided in Draft EIR Section 4.0.1.

See also Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*, for a discussion of the function of

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Mitigation Measures TRANS-1a and TRANS-1b and their relationship to the 20 percent vehicle trip reduction requirement in AB 734. As indicated starting on p. 4.15-137 of the Draft EIR, transportation management and specifically a Transportation Management Plan for the ballpark and Transportation and Parking Demand Management for non-ballpark uses are part of the proposed Project and designed to achieve the vehicle trip reductions required by AB 734. Mitigation Measures TRANS-1a and TRANS-1b are included in the Draft EIR to provide a mechanism for the City to monitor implementation of these programs over time and ensure their effectiveness. (See pp. 4.15-183 and 4.15-193 of the Draft EIR.)

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Editorial Authored by the Mayor of Oakland During the DEIR Comment Period Expresses a Pre-judgement of the Project Merits and Bias in Favor of Project Approval

This comment is included for the express purpose of providing notice to the City of Oakland that on Sunday, April 11, 2021, the East Bay Times published an Editorial authored by Oakland Mayor Schaaf urging Support for the Project at Howard Terminal entitled "Why Oakland should back the A's Howard Terminal plan."¹³ The Editorial by the Mayor during this DEIR comment period offered support to the project and aligned her support with a "shared" vision of the project with the Project sponsor, the deference shown to the CEQA process was de minimis, and there were no qualifications acknowledged as to the multiple significant and unavoidable impacts identified in the DEIR or any of the environmentally preferred DEIR Alternatives. Her editorial concluded with these comments: "My shared goal with the A's is clear: We want to get the project in front of the City Council for final approvals by the end of this year. We are working hard to bring to Oakland a world-class ballpark and a new neighborhood that enhances our working waterfront, and we cannot wait to see this dream realized. Together, we can get this deal done and keep our beloved A's rooted in Oakland. This is our year."

Under the Oakland City Charter, not only is the Mayor the political head of the Lead Agency conducting the CEQA analysis of the Project, but the Mayor is also a potential voting member of the City Council on numerous aspects of the Project, including EIR certification, in the case of a tie amongst the members.

The Mayor's public support of the Project prior to the evaluation of the Project's impacts exhibits a pre-judgment bias in favor of the project by the head of the Lead Agency preparing the EIR and a pre-judgment bias in favor of the project by a potential member of the City Council who may be called to vote on the certification of the EIR. This is a potential disqualification as "[p]rocedural due process in the administrative setting requires that the hearing be conducted ""before a reasonably impartial, noninvolved reviewer."" Nasha LLC v. City of Los Angeles, (2004) 22 Cal. Rptr. 3d 772, 780. (citing *Gai v. City of Selma* (1998) 68 Cal.App.4th 213, 219, 79 Cal.Rptr.2d 910, italics added.)¹⁴

The publication of an Editorial in the *East Bay Times* by the Mayor of Oakland in support of a Project Application in this instance is directly analogous to the publication of an article in the local newsletter penned by a Planning Commissioner in opposition to a project in the case of *Nasha LLC*, 22 Cal.Rptr. 3d at 781, where:

... the newsletter article [authored by the Planning Commissioner] was not merely informational. The article clearly advocated a position against the project, which characterized as a "threat to wildlife corridor."

[Planning Commissioner]'s authorship of the newsletter article gave rise to an unacceptable probability of actual bias and was sufficient to preclude [Planning Commissioner] from serving as a ""reasonably impartial, noninvolved reviewer."" (*Gai*

¹³ The Editorial by Mayor Schaaf in its entirety is attached to this comment letter as Exhibit A.

¹⁴ See also *Woody's Group, Inc. v. City of Newport Beach* (2015) 233 Cal.App.4th 1012, citing *Nasha LLC*, for the proposition that prejudged participation by City Councilmember on a land use application is reversible bias.

The City of Oakland has a mayor-city counsel form of government. The mayor oversees the Executive Branch of the City and is charged, among other things, with encouraging for the physical, economic, social and cultural development of the City and actively promoting to broaden and strengthen the commercial and employment base of the City. The mayor is not a member of the City Council, but may cast a tie-breaking vote in the event of a deadlock. See <https://www.oaklandca.gov/topics/city-of-oakland-government-101>

The Oakland City Council is the legislative branch of the City. Among other things, the City Council (not the mayor) is responsible for considering certification of the EIR and approval of the proposed Project. As indicated on Draft EIR p. 1-8, before it considers approval of the Project, the City Council is required to certify that the EIR has been completed in compliance with CEQA, that the information in the EIR has been considered, and that the EIR reflects its independent judgment.

The City Council also cannot approve the proposed Project unless it makes findings for each of the Project's significant effects (Public Resources Code Section 21081; State CEQA Guidelines Section 15091). As indicated on Draft EIR p. 1-8, CEQA requires decision makers (in this case, the City Council) to balance the benefits of a project against any unavoidable environmental consequences. If environmental impacts are identified as significant and unavoidable, the City Council may still approve the Project if it finds that social, economic, or other benefits outweigh the unavoidable impacts. The City Council would then be required to state in writing the specific reasons for approving the proposed Project, based on information in the EIR and other information sources in the administrative record, in a "statement of overriding considerations."

The statements in the Mayor's editorial are consistent with the responsibilities, noted above, of the mayor's office to promote economic development in the City. The cases cited in the comment are not relevant. For example, in *Woody's Group, Inc. v. City of Newport Beach* (2015) 233 Cal.App.4th 1012, a councilmember personally filed the notice of appeal asserting the permit was incompatible with the city's general plan. (*Id.* at 1017.) In *Nasha v. City of Los Angeles* (2004) 125 Cal.App.4th 470, a planning

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commissioner authored an article encouraging denial of the project shortly before the hearing on the project, but did not disclose that he was the author; petitioner learned about the authorship shortly after the meeting and moved for reconsideration, which was denied. The court found such direct facts about the commissioner posed an unacceptable probability of actual bias.

Neither of these scenarios is present here, where Mayor Schaaf has merely expressed an opinion regarding the general merits of the Project—which is expected from a city leader on a major project affecting the region. Indeed, as held by the California Supreme Court, an elected official “has not only a right but an obligation to discuss issues of vital concern with his constituents and to state his views on matters of vital public importance” and that such conduct is not evidence of bias. (*City of Fairfield v. Superior Court* (1975) 14 Cal.App. 768, 780.)

Moreover, “an agency does not commit itself to a project ‘simply by being a proponent or advocate of the project.’” (*Cedar Fair, L.P. v. City of Santa Clara* (2011) 194 Cal.App.4th 1150, 1173.) “CEQA review was not intended to be only an afterthought to project approval, but neither was it intended to place unneeded obstacles in the path of project formulation and development.” (*Save Tara v. City of West Hollywood* (2008) 45 Cal.4th 116, 137.) This balance is particularly crucial when it concerns a complicated public project. In any complex project with significant public benefits, the planning agency and the developer inevitably engage in discussions so that the project can be fashioned to reflect the community’s needs, concerns and policies. These types of communications and interactions are not “approvals” under CEQA because they do not commit the agency to any definite course of action with respect to a project (State CEQA Guidelines Section 15352(a)). The California Supreme Court acknowledged this reality in *Save Tara*: “Approval, as defined [in CEQA], cannot be equated with the agency’s mere interest in, or inclination to support, a project, no matter how well defined.”

Opinions expressed in Mayor Schaaf’s editorial do not obviate the City Council’s or the City’s legal obligations under CEQA with regard to certification of the EIR (including that the EIR reflects its independent judgment), the adoption of findings, and related approval actions. The City Council will proceed in the manner required by law and its actions and decisions will be supported by substantial evidence, consistent with CEQA (Public Resources Code Section 21168.5).

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v. City of Selma, supra, 68 Cal.App.4th at p. 219, 79 Cal.Rptr.2d 910.) [Planning Commissioner] clearly should have recused himself from hearing this matter. His participation in the appeal to the Planning Commission requires the Commission's decision be vacated.

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Here, as in the *Nasha LLC* case, the Mayor's article clearly advocated a pre-judged position on the Project. In the event that the Mayor is potentially tasked with acting as a "reasonably impartial, noninvolved reviewer" of the adequacy of this DEIR, we would respectfully request that she recuse herself from hearing this matter.

Project Sponsor's Disclosure of Significant Project Details Not Included in the DEIR with Only Four Days Remaining in the DEIR Comment Period Is Grounds for Recirculation

On Friday, April 23¹⁵, the Project Sponsor released a detailed Development Agreement Term Sheet which attempts to further define, describe, and create new baselines by which the Project can be analyzed.¹⁵ Given the scope of the request for public funding from multiple new, and previously undisclosed and unanalyzed in the DEIR, infrastructure financing districts, the Project Sponsor is introducing new information with respect to infrastructure financing, community benefits, environmental clean-up, sea-level rise and GHG mitigation, affordable housing, and other DEIR topics, but outside of the CEQA process.

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Given the interplay between the project and the proposed infrastructure financing districts, which include a swath of West Oakland-Downtown-Jack London Square well outside of and in excess of the described Project boundaries in the DEIR, it is likely that these latest Project details would create significant impacts with respect to growth-inducements and cumulative impacts. Obviously, it is impossible to analyze such proposals at all at such a late date in the current comment period. Moreover, these are significant details which should have been revealed and discussed in detail in the DEIR itself, with its characteristics built into the project baseline, included in an analysis of the potential for significant impacts, and made available for public review and comment.

CEQA requires that the DEIR provide the public with a stable Project description. The release of this substantial and detailed term sheet for the very first time nearly two months after the publication of the DEIR, and after what would have been the original 45-day comment period timeline, evidences a desire by the Project Sponsor to not provide the public with a complete view of the actual proposal. This is also a significant deficiency which will require DEIR recirculation.

O-51-34 See Consolidated Response 4.1, *Project Description*. See also Response to Comment O-1-3. The Development Agreement term sheet addresses financial terms and does not introduce new physical improvements that may have environmental impacts that are not addressed in DEIR. Stated another way, the on-site development proposal and off-site improvements that will be included in the Development Agreement represent the Project described and analyzed in the Draft EIR.

¹⁵ Find attached copy of the "Waterfront Ballpark District at Howard Terminal Development Agreement Term Sheet, Oakland A's, Presentation Draft April 23, 2021" as Exhibit B.

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COMMENT

RESPONSE

Howard Terminal Project DEIR Comments
City of Oakland
April 27, 2021
Page 35

On behalf of the members of PMSA, I respectfully submit the above comments for the record.

Sincerely,



Mike Jacob,
Vice President & General Counsel

enclosures

cc: Pete Vollman, City of Oakland (via electronic mail)

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COMMENT

COMMENT

4/27/2021

Libby Schaaf: Why Oakland should back the A's Howard Terminal plan – East Bay Times

OPINION > COMMENTARY • Opinion

Libby Schaaf: Why Oakland should back the A's Howard Terminal plan



The Howard Terminal site and the proposed ballpark are shown in a rendering supplied by the Oakland A's. (Courtesy of Oakland A's)

By **LIBBY SCHAAF** |

PUBLISHED: April 10, 2021 at 5:09 a.m. | UPDATED: April 11, 2021 at 7:55 a.m.

Exhibit A

<https://www.eastbaytimes.com/2021/04/10/libby-schaaf-why-oakland-should-back-the-as-howard-terminal-ballpark/>



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4/27/2021

Libby Schaaf: Why Oakland should back the A's Howard Terminal plan – East Bay Times



Oakland Mayor Libby Schaaf

In March, our vision to see a new waterfront ballpark built at Howard Terminal passed an exciting milestone. The project's long-awaited and comprehensive draft environmental impact report was shared with the public, and we have received a tremendous amount of community feedback.

Now, along with the Oakland A's, the city has several more important tasks to complete before a full proposal can reach the City Council for a final vote this year.

Over the next few months, Oaklanders and A's fans are going to dig into the details of the project and engage in vigorous debates, just as we should.

Here's why the waterfront ballpark is a once-in-a-generation project for Oakland and how I will work side-by-side with the A's in the coming months to shape a clear vision and a historic project that will benefit both our community and the A's organization.

First and foremost: I want the A's to remain in Oakland forever. A prominent new home on the waterfront will help keep them here and keep their business a financially viable one well into the future.

Major League Baseball has an excellent track record for creating beautiful new ballparks that reinvigorate city centers and spawn new neighborhoods, from San Francisco to Baltimore; we want no less for Oakland.

A development at Howard Terminal would finally connect Oakland's downtown to our waterfront and anchor the Jack London district. A new waterfront ballpark with beautiful public parks and gorgeous communal spaces for people to live and work will bring people past the freeway and create a world-class development while protecting our nearby world-class port.

My goals and values for this project are straightforward and shared by the A's. We need to ensure that Howard Terminal is a good deal for the city and for the A's. We need specific, tangible and — most important — equitable jobs, housing and other direct benefits for all of our residents.

And, most critically, we need to ensure that our taxpayers will be protected and not left on the hook, as they have been in the past.

I am confident this deal will come together. I am pleased with the commitment the A's have shown to build a modern, privately financed ballpark and to privately finance the adjacent residential and commercial developments.

<https://www.eastbaytimes.com/2021/04/10/libby-schaaf-why-oakland-should-back-the-as-howard-terminal-ballpark/>



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4/27/2021

Libby Schaaf: Why Oakland should back the A's Howard Terminal plan – East Bay Times

I support the city's doing its part by using some of the new tax revenue generated by the project to help pay for new affordable housing, waterfront parks and the public infrastructure improvements that will bring fans to the game and Oaklanders to the waterfront.

I am committed to working with the A's to establish a fund to support ongoing community benefits — not just one-time deals — for the life of the project. And, of course, our agreement with the A's will have to include a binding promise from the A's to remain in Oakland far, far into the future.

I look forward to the A's joining the city of Oakland and deeply engaging with our community stakeholders in the coming months to finalize the package of community benefits and cement an ongoing partnership to make sure this project is a winner for Oakland and a winner for the A's.

My shared goal with the A's is clear: We want to get the project in front of the City Council for final approvals by the end of this year.

We are working hard to bring to Oakland a world-class ballpark and a new neighborhood that enhances our working waterfront, and we cannot wait to see this dream realized.

Together, we can get this deal done and keep our beloved A's rooted in Oakland. This is our year.

Libby Schaaf is mayor of Oakland.

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Tags: [Oakland Athletics stadium](#)



Libby Schaaf



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Exhibit B



THE OAKLAND ATHLETICS BASEBALL COMPANY

April 23, 2021

VIA EMAIL

Elizabeth Lake
Depute City Administrator
Real Estate & Major Projects

Re: The Oakland Athletics Waterfront Ballpark Development Project

Dear Ms. Lake:

Thank you for your letter dated March 31, 2021 regarding our proposed Waterfront Ballpark District at Howard Terminal (the "Ballpark Project"). Together, we have spent the last three years pursuing a bold vision of a waterfront ballpark at Howard Terminal. We have invested thousands of hours and tens of millions of dollars in pursuit of this vision, and we have held over 200 meetings with the community as part of a first of its kind race and equity driven community benefits process. Because of these investments and the efforts of City staff and the community, we are closer than we have ever been to realizing our dream of a new waterfront ballpark in Oakland.

We are now ready to hear directly from Oakland City Council (the "Council") about the Ballpark Project. Just as we heard directly from the Port of Oakland's Board of Commissioners, who unanimously voted in favor of the Exclusive Negotiation Term Sheet for the Ballpark Project, the California Legislature, who has supported the project three times in passing AB 734, AB 1191 and SB 293, and the Governor, who has supported the project by signing all three bills into law and certifying the project for streamlining pursuant to AB 734, it is time to hear directly from the Council about their interest in seeing the Ballpark Project move forward in Oakland. And, just as we did with the Port, we propose that the next step is to present the attached Development Agreement Term Sheet to the Council for their review and approval prior to their summer recess.

The Development Agreement Term Sheet is a compelling framework for the Ballpark Project. Among other things, it reflects a significant investment by the Oakland Athletics in the City of Oakland and its residents. Its key terms include:

- The Oakland Athletics will privately finance a \$1B+, architecturally significant and state of the art ballpark on Oakland's waterfront at Howard Terminal.

Oakland Athletics Baseball Company
7000 Calliseum Way • Oakland, California 94621
Administration (510)638-4900 • Ticket Office (510)638-0500 • Season Ticket and Group Service Office (510)569-5600
www.oaklandathletics.com

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THE OAKLAND ATHLETICS BASEBALL COMPANY

- The Oakland Athletics will fully fund all on-site project costs through private financing and project-generated revenues, including public parks, protection against sea level rise, and environmental remediation.
- The Oakland Athletics will commit to using unionized labor in the construction of the Ballpark Project and the operation of the ballpark.
- The Oakland Athletics will earmark \$450M of project-generated revenue to be used for community benefits, such as affordable housing. The City of Oakland and the community will direct how those funds are spent.
- The Ballpark Project will be the most environmentally sustainable project of its kind in California history, and will meet the environmental mandates of AB 734, which include local greenhouse gas reduction measures.
- At full build out, the Ballpark Project will bring approximately \$955M to the City of Oakland's General Fund.

We are eager to present the Development Agreement Term Sheet to Oakland City Council, which will give the Council an opportunity to weigh in on this groundbreaking deal. As you note in your letter, momentum in this project has been "hard-won" and we believe the Council's review and approval of the Development Agreement Term Sheet prior to summer recess is necessary to sustain that momentum. We look forward to working with you and your team to present this term sheet, which we believe represents a significant victory for Oakland and Oaklanders.

Sincerely,

Dave Kaval
President

Enclosure (Development Agreement Term Sheet)

cc: Mayor Libby Schaaf

Enclosures/

Oakland Athletics Baseball Company
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**Waterfront Ballpark District at Howard Terminal
Development Agreement Term Sheet
Oakland A's Presentation Draft April 23, 2021**

<p>1. Parties & Intent</p>	<p>This non-binding term sheet ("Term Sheet") sets forth the terms upon which the Athletics Investment Group LLC d/b/a The Oakland Athletics, a California limited liability company (or an affiliate thereof) (the "Oakland A's" or "Developer") and the City of Oakland (the "City") would negotiate and draft a Development Agreement for a mixed-use ballpark development project, as described herein, to be presented to the City Council for consideration after environmental review of the project in accordance with the requirements of the California Environmental Quality Act ("CEQA").</p> <p>Developer is proposing to acquire the rights to develop a site known as the Charles P. Howard Terminal ("Howard Terminal") on the Oakland waterfront from the Port of Oakland ("Port"), acquire certain adjacent properties from private owners, and construct a new Major League Baseball ballpark, as well as residential, entertainment, office, hotel, and retail (mixed use) development, creating a new Oakland Waterfront Ballpark District (the "Project"). The proposed Project would be constructed in phases as described below.</p> <p>The site proposed for development of the Project includes the Howard Terminal and certain adjacent properties totaling approximately 55 acres (collectively, the "Project Site"). The Project Site is located on the Oakland waterfront, north of and across the Oakland-Alameda Estuary from the City of Alameda. A location map and aerial photographs of the Project Site and the surrounding vicinity are provided on Exhibit A attached hereto.</p> <p>The City and Developer desire to enter into a Development Agreement to secure benefits for the City of Oakland and its residents, which are not achievable through the regulatory process, as well as to vest in Developer and its successors and assigns certain entitlement rights with respect to the Project Site. This Term Sheet summarizes the key terms and conditions that will form the basis for the negotiation and completion of the final Development Agreement.</p>
<p>2. Term and Early Termination</p>	<p>The "Term" of the Development Agreement shall commence upon the latest to occur of the following: 1) full execution and delivery of the Development Agreement; 2) the last effective date of the ordinances establishing a shared regulatory framework for the Project, as shall be adopted by the City Council and Board of Port Commissioners, respectively; and 3) full execution and delivery of the Option Agreement for Howard Terminal between the Port and</p>

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**Waterfront Ballpark District at Howard Terminal
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	<p>Developer (such date being the “Commencement Date”), and shall expire on the date that is 35 years from the Commencement Date. The term of the Development Agreement shall not be subject to extension for Force Majeure or for any other reason.</p> <p>Notwithstanding the foregoing, upon delivery of a written notice from the City Administrator of the occurrence of an Early Termination event, the City may terminate the Development Agreement, notwithstanding any other requirement or process set forth in the Development Agreement or law.</p> <p>An “Early Termination Event” shall exist if:</p> <p>(i) the Option Agreement with the Port expires or terminates before Developer and Port enter into the Disposition and Development Agreement (“DDA”);</p> <p>(ii) the DDA terminates before Developer enters into the Ballpark Lease with the Port; or</p> <p>(iii) Developer fails to Commence Construction of the Ballpark by that date (such date being the “Ballpark Deadline”) which is the later of: (a) May 13, 2025 or (b) four (4) years from the final adjudication of all third party legal challenges to the initial Project approvals that prevent the Commencement of Construction of the Ballpark, but, consistent with the Exclusive Negotiation Term Sheet for Howard Terminal between Developer and the Port, in no event later than May 13, 2028. The Ballpark Deadline shall be subject to extension as a result of one or more events of Force Majeure pursuant to Section 19, or, if the final Option Agreement approved by the Port effectively extends the date for Commencement of Construction of the Ballpark beyond the date contemplated in the Exclusive Negotiation Term Sheet, by the same amount of time as the Port-approved extension set forth in the final Option Agreement.</p> <p>“Commence Construction of the Ballpark” means the start of substantial physical construction of the building foundation as part of a sustained and continuous construction plan. Related terms such as “Commencement”, “Commenced” and “Commences” Construction of the Ballpark shall have the same meaning.</p>
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**Waterfront Ballpark District at Howard Terminal
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3. Termination	<p>Under the proposed transaction documents with the Port (the “Port Agreements”), the Port has reserved recapture and reacquisition rights to portions of the Project Site for expansion or reconfiguration of the Inner Harbor Turning Basin of the Oakland Estuary (the portion of the Project Site subject to such recapture and reacquisition rights, the “Termination Lands”); however, Developer retains the right to re-annex such Termination Lands into the Project Site if the Port fails to meet the conditions set forth in the Master Lease (such occurrence giving rise to “Re-Annexation Rights”).</p> <p>If the Port exercises its recapture and reacquisition rights to any of the Termination Lands, the Development Agreement will remain in effect with respect to such Termination Lands so long as Developer still has Re-Annexation Rights under the Master Lease, and, if applicable, as to any Termination Lands for which the A's has exercised its Re-Annexation Rights; provided, however, in no event shall the Term of the Development Agreement be extended as a result of Developer's exercise of its Re-Annexation Rights.</p>
4. Amendments	<p>The Development Agreement may only be amended in whole or in part, by mutual consent of the parties or their successors in interest. Amendments constituting a Material Change will require consideration by the Planning Commission and the approval of the City Council by ordinance. All other proposed amendments may be approved, on behalf of the City, by the City Administrator.</p> <p>A proposed amendment shall constitute a Material Change if it seeks to or causes: (i) an extension of the Term or the Ballpark Deadline as set forth in the Development Agreement; (ii) a material increase in the monetary or non-monetary obligations or liabilities of the City or a material decrease in the monetary or non-monetary benefits (including Community Benefits) to the City; (iii) an acceleration of other vertical development prior to substantial completion of the Ballpark; (iv) a delay in the delivery of the Project's parks and open space elements relative to the Ballpark or other vertical development; or (v) an amendment to the General Plan or Zoning Ordinance that would introduce new land uses or change the quantities of permitted land uses beyond the parameters set forth in the Development Program included with the Development Agreement.</p> <p>The granting of any subsequent project approvals or amendments to the initial project approvals or subsequent project approvals will</p>

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**Waterfront Ballpark District at Howard Terminal
Development Agreement Term Sheet
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	not require an amendment to the Development Agreement, except as set forth above.
5. Development Program	The Project consists of the development of a new Major League baseball park for the Oakland Athletics with a capacity of up to 35,000 attendees (the " Ballpark "); surrounding mixed-use development including up to 3,000 residential units; up to 1.5 million square feet of commercial uses; up to approximately 270,000 square feet of retail uses; an indoor performance center with capacity of up to 3,500 persons; hotel space with up to 400-rooms; a network of up to approximately 18 acres of publicly-accessible open spaces (less if the Port exercises its recapture and reacquisition rights for the Termination Lands); and pedestrian and bicycle access on the Project Site.
6. Phasing of Open Space and Horizontal Infrastructure	<p><u>General</u></p> <p>For reference, the Master Phasing Diagram, attached hereto as Exhibit B (the "Master Phasing Diagram"), generally identifies the phases, vertical development parcels and key open space and infrastructure elements in the Project.</p> <p>The Development Agreement will include a final phasing plan and procedures designed to ensure that infrastructure and capital improvements are constructed in a manner that is appropriate and proportional to the level of development proposed in each phase ("Phasing Plan"). The Phasing Plan will be attached as an exhibit to the Development Agreement and will describe in detail how each required infrastructure or open space element will be linked to vertical development parcels or other triggers consistent with the requirements below.</p> <p><u>Vertical Development</u></p> <p>The Ballpark must be included in the first phase of Project development. No other vertical development may proceed until Commencement of Construction of the Ballpark has occurred, nor shall any other vertical development receive an occupancy permit prior to substantial completion of the Ballpark.</p> <p>Development south of Street A and west of Market Street (Phase 2B), excepting interim improvements, may not proceed as to any</p>

**Waterfront Ballpark District at Howard Terminal
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	<p>portion until the Port's right to the Termination Lands has expired for the applicable portion, as set forth in the Section 3, above.</p> <p>Except as set forth in this Section 6 and in the Port Agreements, the Developer will retain the right to develop the vertical development in such order and time as it determines in the exercise of its business judgment.</p> <p><u>Infrastructure</u></p> <p>Phasing of infrastructure will be consistent with the final Phasing Plan and administered through the City's subdivision and permitting processes. The City will review each application for a Final Development Plan ("FDP"), phased final map and associated improvement plans, and building permits for consistency with the Phasing Plan and approved Tentative Tract Map ("TTM") and PDP to ensure that the infrastructure provided with each phase of development, including on- and off-site public streets, utilities and open space, will be delivered at an appropriate level to the proposed vertical development, as more specifically provided below.</p> <p><u>On-Site Streets, Sidewalks, and Utilities</u></p> <p>The Master Phasing Diagram shows all street segments to be included in the Project, which shall be described in greater detail in the TTM to be approved as part of initial Project approvals.</p> <p>All public streets, sidewalks and utilities contained within Phase 1 shall be completed before issuance of an occupancy permit for the Ballpark.</p> <p>For the remainder of the Project, in general, each street segment, including associated sidewalks, landscaping and utilities shall be constructed with a particular vertical development parcel, or in some cases, the first to be developed of a group of vertical development parcels. Developer shall complete the street segment as a condition precedent to issuance of an occupancy permit for that vertical development parcel, as may be further described in the Phasing Plan and approved in in each FDP.</p> <p><u>Off-Site Transportation Improvements</u></p> <p>All offsite transportation improvements required of the Project, including streets, sidewalks, bicycle lanes, at-grade and grade-separated rail safety improvements, and transit facilities, shall be</p>
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completed consistent with the requirements of the Project approvals. The Oakland A's proposal for funding these items are set forth in their Financial Plan described in Section 13 below.

Parks and Open Space

The Open Space Phasing Diagram attached hereto as **Exhibit C** shows the location of each park or open space element to be included in the Project.

Design standards and guidelines for the parks and open space elements will be included within the PDP and Design Standards and Guidelines to be approved as part of the initial Project approvals.

Athletics Way, MLK Plaza, Rooftop Park and Waterfront Park A, as well as an interim or permanent connection of the Bay Trail to Market Street, shall be completed before issuance of an occupancy permit for the Ballpark. Stomper Plaza shall be completed before issuance of an occupancy permit for Block 5.

Subject to the foregoing timing requirements for specific open spaces, individual Waterfront Parks and Open Space areas must be constructed proportional to the amount of gross square feet of development for which the City issues building permits on Blocks 1 through 17, as illustrated by the table below. The column in the table below labelled "Additional Gross SF Allowed" is based on the maximum GSF of 6.6 million gsf of development that may be permitted within the Project based on the EIR project description. For purposes of tracking proportionality of open space to development, the Baseline Allowable Gross Square Feet Table attached to the Development Agreement will assign an assumed amount of gross square feet to each development parcel that will be revised upon the completion of each development project, to reflect the actual gross square footage developed, so that parks are delivered in the same proportion as with the baseline project. The revised Allowable Gross Square Feet Table shall be utilized as the basis for issuances of future building and/or occupancy permits until such time as another Waterfront Park or Open Space is completed. Should the Port exercise the Maritime Reservation Option, the Additional Gross SF Areas shall be adjusted to reflect the revised proportion between the Waterfront Park areas and the total development areas and a revised Allowable Gross Square Feet

**Waterfront Ballpark District at Howard Terminal
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Table shall be utilized as the basis for issuances of future building and/or occupancy permits.

Baseline Allowable Gross Square Feet Table		
Open Space Area ¹	Additional Gross SF Allowed	Cumulative Gross SF ²
Waterfront Park A, Rooftop Park, MLK Park, A's Way	3,451,457 ³	3,451,457
Waterfront Park B	579,486	4,030,943
Stomper Plaza	96,581	4,127,524
Waterfront Park C	154,530	4,282,054
Waterfront Park D	927,178	5,209,232
Waterfront Park E	618,119	5,827,351
Waterfront Park F	772,649	6,600,000
Total	6,600,000	

Developer shall be allowed to pull building permits and received occupancy permits for the Cumulative Gross SF noted above. Developer shall be allowed to pull additional building permits in excess of the Cumulative Gross SF so long as a permit for an additional Waterfront Park or Open Space is approved by the City prior to approval of the additional building permits and the resulting total development area is less than the resulting Cumulative Gross SF Area inclusive of the new Waterfront Park or Open Space. The additional Waterfront Park or Open Space shall be completed prior to the approval of the Certificate of Occupancy

¹ Parks and open spaces may be delivered in any order except as otherwise expressly provided for Athletics Way, MLK Plaza, Rooftop Park, Waterfront Park A, Waterfront Park C and Stomper Plaza, and further subject to the termination of the Port's right to the Maritime Reservation Areas.

² Cumulative Gross SF illustrative based on the Open Space Areas being developed in the order shown. Actual Cumulative Gross SF may differ based on actual order of Open Space Area development.

³ Waterfront Park A, Rooftop Park, MLK Park and A's Way must all be completed as a condition to the issuance of an occupancy permit for the ballpark (estimated at 1,200,000 of ballpark and 15,000 of retail). The remaining 2,236,457 gsf (as may be adjusted) is permitted based on the completion of those parks.

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	<p>of the additional development project(s). The Developer shall be allowed to seek a Temporary Certificate of Occupancy prior to the completion of the additional Waterfront Park or Open Space if the Waterfront Park or Open Space is substantially complete and work is progressing to complete the Waterfront Park or Open Space within ninety (90) days of issuance of the Temporary Certificate of Occupancy.</p> <p><i>Fire Station No. 2</i></p> <p>Fire Station No. 2, located at 47 Clay Street, lies within the alignment of Athletics Way on the Project Site. Improvements to Station No. 2 to maintain sufficient access to the apparatus bay and fireboat, as well as onsite parking and yard space, shall be completed prior to issuance of an occupancy permit for the Ballpark. Additional improvements to add functionality to and expand the capacity of Fire Station No. 2 shall be completed prior to the completion of all buildings within Phase 1.</p>
<p>7. Vested Rights / Applicable Laws, Codes and Standards</p>	<p>Developer shall obtain approval of a PDP and a TTM for the Project Site in addition to the Development Agreement. Development, construction, occupation and implementation of the Project will be subject to additional review and approval in accordance with the requirements of these initial project approvals.</p> <p>Developer shall have vested rights for the development of the Project as set forth in the Development Agreement, Project approvals, and all Applicable Laws (defined below), which shall control the overall design, development and construction of the Project and all improvements and appurtenances in connection therewith, including, without limitation, the following: the locations and numbers of buildings proposed, the required infrastructure, land uses and parcelization, height and bulk limits, including the maximum density, intensity and gross square footages, permitted uses, provisions for open space, affordable housing, vehicular access and parking, which collectively shall be referred to as the "Vested Elements". The Vested Elements are subject to and shall be governed by Applicable Laws. The expiration of any building permit or Project approval shall not limit the Vested Elements, and Developer shall have the right to seek and obtain subsequent Project approvals, at any time during the Term, any of which shall be governed by Applicable Laws. Each later Project approval, once granted, shall be deemed a Project approval subject to the protections of the Development Agreement.</p>

**Waterfront Ballpark District at Howard Terminal
Development Agreement Term Sheet
Oakland A's Presentation Draft April 23, 2021**

	<p>The City shall process, consider, and review all later Project approvals in accordance with (i) CEQA, utilizing the certified Final Environmental Impact Report for the Project to the fullest extent permitted by law, (ii) the Project approvals received to date, including compliance with all applicable mitigation measures from the Standard Conditions of Approval and Mitigation Monitoring and Reporting Program approved therewith (the "SCA-MMRP"), (iii) any conditions of approval that are imposed by the City or other governmental agencies with jurisdiction over the Project as part of the Project approvals, (iv) the City's Charter, Municipal Code (including the Planning and Subdivision Codes) and General Plan, as each of the foregoing is in effect on the Commencement Date ("Existing Standards") and may be amended or updated in accordance with permitted New Laws as set forth below, (vi) California and federal law, as applicable, and (vii) the Development Agreement (collectively, "Applicable Laws").</p> <p>(1) All new or amended laws and standards (collectively, "New Laws") shall apply to the Project except to the extent they conflict with this Development Agreement. For the avoidance of doubt, the New Laws shall be deemed to conflict, subject to (2) below, with this Development Agreement if they:</p> <ul style="list-style-type: none"> (a) reduce the maximum allowable height or bulk of the Project, or any part thereof, or otherwise require any reduction in the height or bulk of individual buildings from that permitted under the Project approvals; (b) reduce or change the allowable parking and loading ratios, except as provided in the Transportation Demand Management Plans, or materially change the location of vehicular access, parking or loading from those permitted under the Project approvals; (c) limit, reduce or change permitted land uses for the Project from those permitted under the Project approvals; (d) control or delay the rate, timing, phasing or sequencing of the development or construction of all or any part of the Project except as expressly set forth in the Development Agreement and Project approvals;
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**Waterfront Ballpark District at Howard Terminal
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	<p>(e) require Developer to assume responsibility for construction or maintenance of additional infrastructure or open space beyond that contemplated by the Development Agreement;</p> <p>(f) impose requirements for historic preservation or rehabilitation other than those contained in the Project approvals (including the SCA-MMRP);</p> <p>(g) impose requirements for City-adopted environmental measures other than those contained in the Project approvals (including the SCA-MMRP);</p> <p>(h) require the issuance of permits or approvals by the City other than those required under the Existing Standards, except for (i) permits or approvals required on a City-wide basis that do not prevent or materially interfere with the construction or operation of the applicable aspects of the Project that would be subject to such permits or approvals as and when intended by the Development Agreement, and (ii) permits that replace (but do not expand the scope or purpose of) existing permits;</p> <p>(i) limit the availability of public utilities to the Project, including but not limited to sewer capacity and connections, or the Project's rights thereto, in a manner that materially interferes with or prevents construction of the Project, or any part thereof, as and when intended by the Development Agreement;</p> <p>(j) delay or prevent the procurement of subsequent Project approvals that are consistent with the Development Agreement and Project approvals;</p> <p>(k) increase the percentage of residential units required to be income-restricted, change the percentage of units required to be offered at any AMI threshold level or any eligibility requirements, change or impose requirements regarding unit size, finishes, amenities, or unit type, or any other change to the approved affordable housing plan beyond that contemplated by the Development Agreement; or</p> <p>(l) preclude or materially increase the cost of performance of, or compliance with, any provisions of the Development Agreement or Project approvals</p>
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**Waterfront Ballpark District at Howard Terminal
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	<p>(collectively, "Conflicting Laws"). In the event of express conflict, as determined by the City, the terms of the Development Agreement shall prevail.</p> <p>(2) Notwithstanding the foregoing, nothing in the Development Agreement shall prevent the City from:</p> <p>(a) taking any action that is necessary to protect the health and safety of the public or to comply with applicable changes in Federal or State Law, including subjecting the Project to a New Law that is applicable on a City-Wide basis to the same or similarly situated uses (if any) and applied in an equitable and non-discriminatory manner, so long as such New Law is (i) limited solely to addressing specific and identifiable issues required to protect the physical health and safety of the public; or (ii) reasonably calculated and narrowly drawn to comply with a Federal or State Law;</p> <p>(b) applying to the Project any provisions, requirements, rules, or regulations that are contained in the California Building Standards and Fire Codes, as adopted and amended by the City in accordance with the California Health and Safety Code, including requirements of the Oakland Building and Construction Code or other uniform construction codes, as the same may be amended; or</p> <p>(c) applying then-current City standards applicable to infrastructure permits for each later Project approval if the following conditions are met: (i) the standards are compatible with, and would not require a material modification to previously approved permit drawings for the work; and (ii) the standards are compatible with, and would not require any retrofit, removal, supplementation, reconstruction or redesign of what was previously built as part of the Project. If Developer claims that these conditions have not been met, it will submit to the City reasonable documentation to substantiate its claim. The Parties agree to meet and confer for a period of not less than thirty (30) days to resolve any dispute regarding application of this Section.</p>
8. Administrative Fees	For the Term of the Development Agreement, the Administrative Fees imposed on the Project shall be the rates in effect as of the date of the relevant application. " Administrative Fee " shall mean

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	any fee imposed City-wide in effect at the time and payable upon the submission of an application for any permit or approval or thereafter, generally as set forth in the City's Master Fee Schedule, as it may be amended or modified to cover the estimated actual costs to City of processing that application and/or inspecting work undertaken pursuant to that application. The term "Administrative Fee" shall not include any impact fees, exactions or City Costs.
9. Community Benefits and Affordable Housing	The Development Agreement will secure benefits for the City of Oakland and its residents, consistent, at a minimum, with the guidelines set forth in Assembly Bill 734 (2018) and the "Key Principles of the Howard Terminal Community Benefits Agreement, attached hereto as Exhibit D . Community benefits, including affordable housing, will be established through a collaborative, multi-stakeholder, equity-centered community engagement process. The Oakland A's will provide funding for the community benefits package (including affordable housing) in accordance with the Oakland A's proposed Financial Plan described in Section 13 below.
10. Workforce Development	Developer shall abide by all applicable City contracting and employment laws unless a Project-specific jobs program is approved by Council concurrently with the Development Agreement.
11. [Reserved]	
12. Arts Master Plan / Process	The Development Agreement will establish the process pursuant to which an Arts Master Plan may be developed, approved and implemented for the Project, consistent with Exhibit E hereof.
13. Financing and BIDs	The City and Developer shall pursue formation of a Community Facilities District (CFD) and an Infrastructure Financing Districts (IFD) to finance eligible capital improvement and maintenance costs associated with the Project, subject to the terms of a Financing Plan to be negotiated by the parties and included as an attachment to the Development Agreement. If requested by Developer, the City will also agree to cooperate with the establishment of a Business Improvement District and in submitting and processing grant or funding applications. The Oakland A's proposed Financial Plan is attached hereto as Exhibit F .

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14. Review of Permits / Development Applications	<p>The Development Agreement will incorporate a set of best practices for the submittal, review and processing of subsequent applications for approvals and permits required for development of the Project. These best practices are intended to facilitate the expeditious processing of subsequent project approvals and permits; to address challenges, issues, and concerns during development of the Project; and to promote accessibility, predictability, and consistency across City agencies and departments. As approved by the City, best practices may include:</p> <ul style="list-style-type: none"> • Timelines for City review and Developer resubmittal of plan sets for B- and P-Job permits (for construction of buildings and infrastructure, respectively) • Procedure for processing of "foundation only" permits • Provision of dedicated plan checkers and inspectors for the Project • Procedure for utilizing third party plan checkers and inspectors • Procedure for utilizing video inspections • Pre-approval of extended working hours, as set forth in the Project's Environmental Impact Report • Installation of Ballpark furniture, fixtures and equipment prior to issuance of a Temporary Certificate of Occupancy ("TCO") for the Ballpark • Procedure for issuance of phased TCO's on non-Ballpark development • Provision of a priority project manager, within the City Administrator's office, to effectuate all of the above and act as a facilitator for all subsequent Project permits and approvals <p>All of the above shall be at Developer's sole cost and expense, as set forth in Section 20, "City Costs", below.</p>
15. Defaults	<p>1. City Event of Default. A breach of any material obligation by the City shall be cured within the times required after</p>

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	<p>written notice provided in accordance with paragraph 3 below, and if not so cured, shall constitute a “City Event of Default”.</p> <p>2. Developer Event of Default. The occurrence of any of the following breaches shall be cured within the times required after written notice provided in accordance with paragraph 3 below, and if not so cured, shall constitute a “Developer Event of Default”:</p> <ul style="list-style-type: none"> a. Developer’s failure to have a legal or equitable interest in the Property; b. Developer’s failure to Commence Construction of the Ballpark when required by the Agreement, or, after Commencement of Construction, to proceed with construction in a sustained and continuous manner; Developer’s failure to pay any monetary amount when due; c. Developer’s failure to perform or fulfill any other material term, provision, obligation, or covenant of the Development Agreement; d. A voluntary or involuntary attempt by Developer to undertake a transfer in violation of the Agreement; or e. A filing of bankruptcy, dissolution, or reorganization by Developer or any general partner, managing member, or parent entity of the Developer. <p>3. Notice and Cure: If breaches under paragraphs 1 or 2 arise, then either the City or the Developer, as the case may be, shall notify the other Party in writing of its purported breach or failure, giving such defaulting Party forty-five (45) calendar days for monetary defaults and sixty (60) calendar days for all other defaults, to cure such breach or failure, or, if such breach is of the type that cannot reasonably be cured within the 60-day period, then such defaulting Party shall have such reasonable time to cure such breach so long as the defaulting Party commences such cure within the initial 60-day period and diligently pursues such cure to completion.</p>
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	<p>4. Developer Remedies for City Event of Default: If a City Event of Default occurs after Developer provides the City notice and cure rights pursuant to Section 3 above, the Developer may pursue any of the following remedies:</p> <ul style="list-style-type: none"> a. Terminating the Agreement; b. Prosecuting an action for actual damages (but excluding consequential, incidental or punitive damages); c. Seeking equitable relief from a court of competent jurisdiction, including, but not limited to, specific performance; or d. Pursuing any other remedy at law or in equity, subject to the limitations of Section 4.b and except to the extent the Development Agreement contemplates a different remedy for such City Event of Default. <p>5. City’s Remedies for Developer Event of Default: If a Developer Event of Default occurs, the City shall provide the Developer notice and cure rights pursuant to Section 3 above. If the Developer does not cure or begin to cure the breach within the time period specified, the City may pursue any of the following remedies:</p> <ul style="list-style-type: none"> a. Terminating the Agreement subject to the revocation procedures set forth in OMC § 17.152.060 through 17.152.230; b. Prosecuting an action for actual damages (but excluding consequential, incidental or punitive damages); c. Seeking equitable relief, including injunctive relief and specific performance; d. Pursuing any remedies available to the City at law or in equity, subject to the limitations of subsections 5.a and 5.b, and except to the extent the Development Agreement contemplates a different remedy for such Developer Event of Default (such as, for example, specific remedies included in the
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	<p>separate workforce program, community benefits program or non-relocation agreement);</p> <p>c. For a Developer Event of Default related to Developer's failure to construct requisite parks and infrastructure, as and when required by the Phasing Plan, or any subdivision or public improvement agreements, in addition to any remedies the City may otherwise have under such improvement agreements, the City's sole remedy shall be to seek specific performance and to withhold building permits or Certificates of Occupancy, as relevant, for any element of the Project that is tied to the applicable park or infrastructure.</p> <p>5. Limited Cross-Defaults. If Developer conveys or transfers some but not all of the Project or a party takes title to foreclosed property constituting only a portion of the Project, and, therefore there is more than one Party that assumes obligations of "Developer" under the Development Agreement, there shall be no cross-default between the separate parties that assumed Developer obligations, with the limited exceptions of (i) the City's rights to early termination as set forth in Section 2, and (ii) the City's right to enforce Developer's Phasing Plan obligations against a transferred development parcel (<i>i.e.</i>, the right to withhold building permits or occupancy permits to the extent permitted under Section 6 above).</p>
16. Lender Protections	<p>Development Agreement to include customary protections for mortgage and mezzanine lenders, including (i) City obligation to deliver to any Developer's lenders a copy of any notice of default or determination of noncompliance given to such Developer; (ii) Lenders shall have the right, but not the obligation, to cure within a specified period upon receipt of the notice, including such additional time to obtain possession of the Property, provided that Lender provides proper notice to the City and takes requisite steps to diligently obtain possession; (iii) the Development Agreement shall be assignable to the Lender or any other person who acquires title to all or any portion of the Property through foreclosure or deed-in-lieu of foreclosure, provided such party agrees in writing to assume all of the obligations of the Development Agreement, including any uncured defaults; provided however, that, should the</p>

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	<p>Lender acquire title, then the City shall agree to toll any deadlines for performance of any construction obligations for a period equal to the time required to obtain title plus six months; and (iv) City obligation to deliver estoppels to current and prospective lenders acknowledging that there is not actual default, the Development Agreement is still in effect, there have been no amendments to the Development Agreement, and such other factual matters as reasonably requested by such lender (the form of the Estoppel Certificate shall be attached as an Exhibit).</p>
17. Assignment	<p>Developer's rights to transfer its rights and obligations under the Development Agreement shall be as follows:</p> <ol style="list-style-type: none"> 1) Developer may not transfer its interest in the Development Agreement, in whole or in part, prior to Commencement of Construction of the Ballpark except to (a) an affiliate or (b) an entity acquiring the Oakland Athletics team and its real estate holdings, in either instance for the purpose of development of the Ballpark. 2) After Commencement of Construction of the Ballpark, Developer has the right to transfer all or any portion of its rights under the Development Agreement to the same extent that it validly transfers, under the Port transaction documents, all or any portion of its real property interest in the Project Site. 3) Prior to any transfer of the Development Agreement hereunder, the City shall review and approve the proposed Assignment and Assumption Agreement to ensure the inclusion of the requisite rights and obligations associated with the proposed real property transfer. A form of Assignment and Assumption Agreement for a full transfer of Developer's interest will be attached to the Development Agreement. The parties shall endeavor to substantially use such form for any transfer of partial interest.
18. Periodic Review	<p>The Development Agreement shall be subject to Periodic Review procedures to be set forth in the Development Agreement.</p>
19. Force Majeure	<p>"Force Majeure" shall mean event(s) that cause material delays in the Developer's performance of its obligation to Commence Construction of the Ballpark by the Ballpark Deadline, due to domestic or international events disrupting civil activities, such as</p>

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	<p>war, acts of terrorism, insurrection, acts of the public enemy, and riots; acts of nature, including floods, earthquakes, unusually severe weather, and resulting fires and casualties; epidemics and other public health crises affecting the workforce by actions such as quarantine restrictions; inability to secure necessary labor, materials, or tools due to any of the above events, freight embargoes, lack of transportation, or failure or delay in delivery of utilities serving the Project Site.</p> <p>The Ballpark Deadline may be extended by a period of time equal to the duration of a Force Majeure event; provided, however, within thirty (30) days after Developer first reasonably determines that the Force Majeure event will result in a delay in performance, Developer shall have first notified the City in writing of the cause or causes of such delay and claimed an extension for the reasonably estimated period that such cause or causes will delay Developer's ability to Commence Construction and the City shall have agreed in writing to such extension, which agreement shall not be unreasonably withheld or delayed.</p> <p>Notwithstanding the foregoing, under no circumstances shall the aggregate Force Majeure extensions exceed four (4) years.</p>
<p>20. City Costs</p>	<p>Developer shall reimburse all actual and reasonable costs incurred by the City in connection with (1) monitoring, administration and enforcement of the Development Agreement and other Project approvals, (2) processing of all current and future Project approvals, and (3) defense of all Project approvals; but excluding costs covered by Administrative Fees (the foregoing, collectively, "City Costs") The process for such payment shall require the City to submit supporting documentation and provide Developer with audit rights.</p> <p>In addition, the A's shall pay (based on a payment process to be set forth in the Development Agreement) the City for its costs incurred to provide City services to the Ballpark and surrounding neighborhoods in connection with baseball games and other events at the Ballpark, which may include (but are not limited to):</p> <ul style="list-style-type: none"> • Parking and traffic engineering and control services; • Police and other emergency services;

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	<ul style="list-style-type: none"> • Litter pickup/street and sidewalk cleanup.
<p>21. Non-Relocation</p>	<p>As material inducement for the City to enter into the Development Agreement and for the City's financial (including tax, permit or other fee) waivers, concessions and contributions committed to in the Development Agreement, Developer shall enter into a non-relocation agreement in a form of agreement to be agreed upon by the parties and Major League Baseball.</p>
<p>22. CEQA Compliance</p>	<p>The City will not approve a Development Agreement or other binding Project approvals or take any other discretionary actions that will have the effect of committing the City to the development of the Project until the final environmental analysis for the Project is completed and approved in accordance with CEQA. If the Project is found to cause significant adverse impacts that cannot be mitigated, or otherwise based on information disclosed during the environmental review process, the City retains absolute discretion to: (a) modify the Project to mitigate significant adverse environmental impacts; (b) select feasible alternatives to avoid significant adverse impacts of the proposed Project; (c) require the implementation of specific mitigation measures to address adverse environmental impacts of the Project identified in the CEQA approval documents; (d) reject the Project as proposed if the economic and social benefits of the Project do not outweigh otherwise unavoidable significant adverse impacts of the Project; or (e) approve the proposed Project upon a finding that the economic, social, or other benefits of the Project outweigh unavoidable significant adverse impacts of the Project.</p>
<p>23. Exhibits</p>	<p>The following Exhibits are attached to this Term Sheet and incorporated herein by this reference:</p> <p>Exhibit A: Site Map Exhibit B: Master Phasing Diagram Exhibit C: Open Space Phasing Diagram Exhibit D: Key Principles of the Howard Terminal Community Benefits Agreement Exhibit E: Arts Plan Exhibit F: Oakland A's Financial Plan</p>

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Exhibit A

Site Location



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Exhibit B

Master Phasing Diagram: Project Phasing



Exhibit B

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Exhibit C

Master Phasing Diagram: Open Spaces

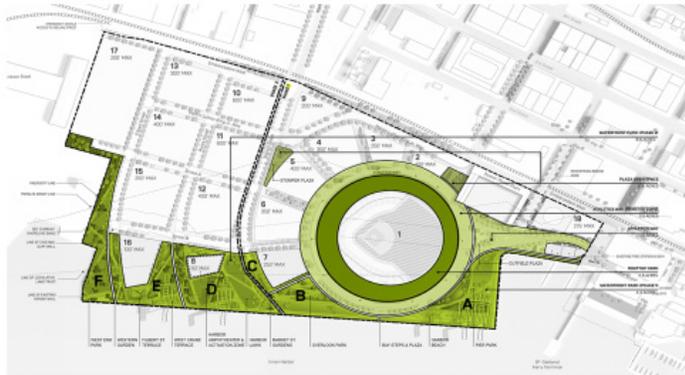


Exhibit C

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Exhibit D

**Key Principles of the Howard Terminal
Community Benefits Agreement**

This is a summary of the key principles underlying the Howard Terminal Community Benefits Agreement (CBA) to ensure that the development of the Howard Terminal property provides equity-based, structural, long-term benefits to the surrounding communities.

Statements of Intent

1. The relocation of the Oakland A's to the Howard Terminal will result in the redistribution of commercial activity and changes in land use with potential impacts that disproportionately affect Oakland's disadvantaged residents.
2. The Howard Terminal Community Benefits Agreement (CBA) is intended to help remedy inequities experienced by the most vulnerable or historically underserved populations, particularly those in areas most directly affected by the Oakland A's Howard Terminal Project -- West Oakland, Chinatown, Old Oakland, and Jack London Square.
3. The provisions of the CBA should extend to all development within the Howard Terminal Property, as defined by Assembly Bill (AB) 1191.
4. The CBA should be sustainable and long lasting for at least the term of the Oakland A's lease and all later leases of the Howard Terminal Property, regardless of whether any given parcel is ultimately developed by the A's or another developer.
5. Ideally, combined benefits will create synergistic outcomes that offer cumulative mitigation.
6. The obligations to be set forth in the CBA will be identified and prioritized by community members to carry out this intent.

Operating Principles

1. The CBA applies to all development, development rights, use and occupancy of the Oakland Sports and Mixed-Use Project, also known as the "Howard Terminal Project" for the life of the Howard Terminal Project. The CBA applies to all developers of the Howard Terminal projects and all employers, commercial tenants, subcontractors, etc. that operate on the project site. The CBA applies regardless of whether any given parcel of the Howard Terminal Property is leased or developed by the Oakland A's or some other entity. It shall be effective from development through operation, for at least 66 years.
2. The terms of the CBA will exceed any minimum requirement of local, state, or federal law for projects such as the Howard Terminal Project.
3. High priority is given to terms that serve the needs of historically underserved, vulnerable and at-risk populations, as identified in the City's Equity Indicators Report, as well as other

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relevant resources, which may include data from local, regional, state, and federal governments, as well that from private foundations and academia.

4. Each CBA obligation shall include a quantifiable goal or other objective means of determining whether that obligation has been met and meaningful remedies available in the event of non-compliance.
5. The CBA will include a permanent mechanism for ongoing community monitoring and enforcement to ensure that the CBA meets its objectives and has sufficient transparency and community accountability.
6. Community oversight and enforcement will include, at a minimum, those individuals or organizations represented on the Steering Committee that execute the CBA and their successors and assigns, including representatives of the four impacted neighborhoods of West Oakland, Chinatown, Old Oakland, and Jack London Square.
7. The following "best practices", and any others developed by the Steering Committee, will be used to develop the CBA:
 - a. Historical inequity, as described by the "Baseline Indicators Report," Oakland Municipal Code Section 2.29.170.1, and other identified sources, is to be addressed by the CBA, and the mitigation of identified historical inequity may constitute a rational basis for a CBA term,
 - b. To the extent possible, each CBA obligation will include the assessment of equity factors to determine whether the obligation has been met,
 - c. The collaborative process should create win-win situations which result in measurable long-term outcomes,
 - d. The CBA terms shall not reinforce or increase current and/or historical inequities faced by vulnerable populations in the four nearby or other communities, and
 - e. Discussions must be transparent and sufficient information must be provided on a timely basis for parties to evaluate the feasibility and viability of proposals.
8. To create a long-lasting and self-sustaining mechanism to fund Community Benefits, project specific revenue will be earmarked to fund Community Benefits as set forth in the Financial Plan attached to this Term Sheet as Exhibit F.

Exhibit D

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Exhibit E**Howard Terminal Arts Plan Process**

This exhibit to the Term Sheet for the Howard Terminal Development Agreement outlines the process through which an Arts Master Plan ("Arts Plan") may be developed, approved and implemented for the Project. If an Arts Plan is developed, approved and implemented pursuant to the guidelines below, all development within the Project Site shall be exempt from the City of Oakland (the "City") public art ordinance (OMC Chapter 15.78 - PUBLIC ART REQUIREMENTS FOR PRIVATE DEVELOPMENT, the "Public Art Ordinance"), as the intent of that ordinance will be met or exceeded by the Arts Plan that is approved for the site.

The Developer and City shall use good faith efforts to collaboratively develop and adopt an Arts Plan pursuant to the guidelines below. If such efforts fail to result in an approved Arts Plan, the Developer shall instead comply with the Public Art Ordinance, and the Arts Plan shall not apply.

Arts Master Plan Goals and Outcomes

The Arts Plan shall be developed to meet the following goals:

Create an Artistic Hub at Howard Terminal that celebrates the City's creativity, energy and diversity

- o Reflect the community's diverse population and culture
- o Feature both established and emerging artists and organizations, who reflect Oakland's diverse population
- o Feature local artists and organizations, while also expanding the reach of the program to embrace work from other geographies
- o Celebrate the area's cultural and maritime history

Public Engagement

- o Site physical art intentionally throughout the Project Site, resulting in a cohesive, freely accessible (as defined by OMC Chapter 15.78.030) public art experience
- o Explore offsite art opportunities within the four adjacent neighborhoods (Jack London District, Chinatown, Old Oakland and West Oakland) to better integrate the Project Site with the neighboring community

Define "Art" Broadly

- o Consider both performing and visual arts in creation of the Arts Plan
- o Consider opportunities for art spaces (e.g. studio space, gallery space, performing arts etc.) in addition to static physical art installations
- o Consider opportunities for temporary and rotating exhibits, as well as multidisciplinary arts festivals and ongoing programming within the Project Site and the four impacted neighborhoods

Exhibit E

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- o Consider opportunities to include art to be incorporated into the architecture/landscape architecture on site. For the purposes of this section, "artists" shall not include members of the architectural, engineering, design, or landscaping firms retained for the design and construction of the Project
- o Consider opportunities for contribution of non-commissioned art that adds depth and breadth to the public art experience, in addition to new commissions and projects
- o Ensure that permanent work is appropriately durable to withstand the test of time and interaction with the public

Build on Precedent Efforts in the City

- o Incorporate the community's priorities related to Culture Keeping and History, as reflected in the Community Benefits Agreement for the Project
- o Reflect the Goals and Priorities of the City's Cultural Plan

Arts Master Plan Elements

The Arts Plan must include the following elements:

Value

The total value of the arts installations, facilities and programming to be provided pursuant to the Arts Plan shall equal or exceed the contribution that would otherwise be required of the Project under the Public Art Ordinance, generally as follows:

- Residential Development: One-half of one percent (0.5%) of building development costs, excluding the cost of any affordable housing development; plus
- Non-Residential Development: One percent (1.0%) of building development costs.

The Arts Plan shall also set forth a process for valuing Developer contributions of existing art, so as not to dis-incentivize procuring or commissioning art from local and emerging artists.

Balance in the Arts Plan

The Arts Plan will address the general apportionment of value between:

- Newly created art
- Existing art
- Permanent installations
- Temporary installations and/or programming
- Arts spaces and facilities

Identification of Priority Opportunities for Art

Exhibit E

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The Arts Plan shall include a description of the priority opportunities for art and arts spaces (if proposed), across the Project Site and within any of the four neighborhoods adjacent to the site: West Oakland, Old Oakland, Jack London District and Chinatown. The Arts Plan should be expansive, identifying more opportunities than ultimately may be executed, with identification of the most essential opportunities that will be prioritized for implementation. Potential categories of art include, but are not limited to:

- New or previously created art to be installed within the Project Site in freely-accessible spaces (e.g. new/existing sculpture placed in/near the Ballpark or elsewhere on Project Site, art integrated into new on site construction, art installations/performance art/illumination relating to the existing shipping container cranes on site)
- New or previously created art to be located off site in freely-accessible spaces (e.g. art installations in I-880 underpasses, art related to the West Oakland Walk concept)
- Support for temporary exhibits on or off site in freely-accessible spaces (e.g. creating a rotating art gallery or performance space on site)
- Support for ongoing Arts and Cultural programming on site or off site
- Identification of opportunities for arts spaces, such as artist studios, performance space, and/or galleries, on site or off site
- A maritime-focused interpretive program designed to meet the requirements of AB1191

Phasing

The Arts Plan will include a description of how art installation, programming and/or spaces are to be phased relative to vertical and horizontal development on the Project Site. Generally, the Arts Plan will be implemented proportionately as vertical development occurs on the Project Site; provided, however, that the Developer may elect to implement public art, facilities or programs at a rate that exceeds the pace of development on site.

Maintenance

The Arts Plan will include a section on maintenance and ongoing operations, demonstrating sustainable sources of operational funding for arts programming and the maintenance and security of physical art and arts space identified in the plan, as necessary.

CBA Elements

The Arts Plan will describe how the community's priorities related to Culture Keeping and History, as reflected in the Community Benefits Agreement for the Project, are addressed in the Arts Plan.

Arts Master Plan Development and Approval

Plan Development

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The Developer will prepare a draft Arts Plan, pursuant to these guidelines, for City review and approval. Preparation of the plan will include consultation with the City's Public Art Advisory Committee (PAAC), the City's Cultural Affairs Unit and Planning Department, the Port of Oakland ("Port"), and the Bay Conservation & Development Commission ("BCDC"). The Developer may elect to convene an Arts Advisory Group consisting of interested community members, City, Port and/or BCDC staff, and/or experts in public art and culture, to provide input on development and implementation of the Arts Plan. The Developer shall submit the draft prior to or together with its application for a Final Map for the Project site.

Plan Approval

The City Administrator or his or her designee will be authorized to approve the Arts Plan, after considering PAAC and public input, no later than submittal of the Developer's application for the first building permit for the Ballpark.

Amendments

Minor Amendments to the Arts Plan that do not materially affect the phasing, quantity or quality of art or arts spaces provided in the Arts Plan may be approved by the City Administrator or his or her designee.

Major Amendments to the Arts Plan that materially affect the phasing, quantity or quality of art or arts spaces provided in the Plan, must be presented to the PAAC for review and comment prior to approval by the City Administrator or his or her designee.

Arts Master Plan Implementation

Selection of Public Art

All art to be installed on the Project Site will be selected by the Developer in conformance with the approved Arts Plan. The PAAC and Cultural Affairs Division will be consulted by the Developer for certain major works in key areas, such as new parks and open space or public rights-of-way, as identified in the Arts Plan.

All art to be installed off site in public spaces will be recommended by the Developer and approved by the City.

If established as identified above, an Arts Advisory Group will provide input on implementation, as set forth in the Arts Plan.

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Exhibit F

Oakland A's Financial Plan

The Oakland A's financial proposal to the City of Oakland includes a privately funded \$1B+ state of the art ballpark that will serve as the permanent home of the Oakland Athletics of Major League Baseball. Key terms of the financial proposal are as follows:

- The Oakland A's will privately fund an architecturally significant, LEED Gold, state of the art ballpark of more than \$1 billion.
- The Oakland A's will privately fund or contribute public art valued at \$15 million.
- The Oakland A's and the City of Oakland will enter into a non-relocation agreement, ensuring long-term, sustainable revenue in the City of Oakland.
- The Oakland A's will fully fund all on-site project costs through private financing and project-generated revenues, including public parks, protection against sea level rise, and environmental remediation.
- The City will establish two infrastructure financing districts, the Howard Terminal Infrastructure Financing District and Jack London Infrastructure Financing District, which will be a source of project-generated revenues for the Ballpark Project and the City of Oakland. The proposed footprint of those IFDs is set forth on the map below.
- Project-generated revenues from the Jack London Infrastructure Financing District are estimated at \$1.4 billion.
 - \$360 million to be used to fund off-site infrastructure (e.g., pedestrian grade separation, vehicular grade separation, bike lanes, railroad safety improvements, sidewalk improvements and intersection improvements).
 - \$1.04 billion in City and community benefits, specifically
 - \$280 million to community benefits, such as affordable housing and off-site infrastructure; and
 - \$760 to the City of Oakland's General Fund.
- Project-generated revenues from the Howard Terminal Infrastructure Financing District are estimated at \$860 million.
 - \$495 million to be used to fund all on-site infrastructure development costs (e.g., environmental remediation, seismic improvements, backbone utilities, sea level rise improvements, sidewalks/streets, over 18 acres of parks and open space, and a Bay Trail connection).
 - \$365 million in City and community benefits, specifically
 - \$170 million to community benefits, such as affordable housing and off-site infrastructure; and
 - \$195 million to the City of Oakland's General Fund.

The full project development investment is estimated at \$12 billion, including \$450 million in community benefits and \$955 million in General Fund Revenues. The Howard Terminal buildout will create more than 35,000 new jobs and \$7 billion of new revenue for the City of Oakland over the useful life of the stadium.

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Proposed IFD Map



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RESPONSE

Please see attached.

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RESPONSE



East Bay Housing Organizations

April 27, 2021

City of Oakland Bureau of Planning
 250 Frank H. Ogawa Plaza, Suite 2214
 Oakland, CA 94612

**Re: Comments on the Draft Environmental Impact Report for the
 Oakland Waterfront Ballpark District Project (ER18-016)**

Dear Dr. Vollmann,

East Bay Housing Organizations (EBHO) respectfully submits the following comments. We are in support of the joint comment letter submitted by Communities for a Better Environment (CBE) and Public Advocates. We would like to see a much more robust analysis of housing and population impacts, in particular the impact of different affordable housing scenarios and the potential for economic displacement. Full and accurate environmental review is essential to ensuring that the public and decision makers have all relevant information. Far from being outside the scope of the DEIR, these issues are intimately tied to job creation and vehicle miles travelled that have a direct bearing on environmental impacts of such a major project. The scope and intensity of the impacts on growth (and potential displacement), traffic, air quality, greenhouse gas (GHG) emissions, and numerous other environmental factors are directly correlated to the location and affordability of homes planned at Howard Terminal.

Our housing comments are as follows:

1) EBHO is in alignment with and agrees to the entirety of Section 1 of the comment letter submitted by CBE and Public Advocates. Specifically, we

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- O-52-1 This is a general comment that includes introductory remarks and serves to introduce the more specific comments that are responded to in detail below. As a result, no specific response is provided here.
- O-52-2 See Consolidated Response 4.12, *Affordable Housing*, regarding the affordable housing component of the proposed Project.

O-52-1

O-52-2

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East Bay Housing Organizations

O-52-2

request information regarding the location and unit mix of the proposed 3,000 homes, as well as the specificity of how much affordable housing will be included in the project.

O-52-3

2) With regards to Section 1-C of the CBE/Public Advocates letter, EBHO asserts that any affordable housing constructed on site and/or within three (3) miles of Howard Terminal could be included as a part of the impact analysis that is already requested.

O-52-4

While we recognize that the DEIR is a technical document, we urge the city to revise and recirculate while incorporating recommendations from its own extensive Community Benefits process. Many of the recommendations in that process, developed after months of input from many stakeholders, are in fact mitigations for the potential impacts of the project. Thank you for your consideration. We look forward to your response.

Gloria Bruce
Executive Director
East Bay Housing Organizations
538 9th Street
Oakland CA 94607

O-52-3 See Consolidated Response 4.12, *Affordable Housing*, including Section 4.12.3, *The Proposed Project's Affordable Housing Program*.

O-52-4 See Consolidated Response 4.3, *Recirculation of the Draft EIR*. Mitigation measures identified in the Draft EIR, including as modified in this document, address potentially significant or significant impacts that would result from the proposed Project, as determined through the impact analysis conducted pursuant to CEQA and professional standards. To the extent that the CBA process put forth recommendations outside of the CEQA process, which the CBA process is, City decision makers will determine if and how such recommendations should be incorporated in to the Project approvals.

O-53 Healthy Havenscourt Collaborative

COMMENT

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April 27, 2021
 City of Oakland Bureau of Planning
 250 Frank H. Ogawa Plaza, Suite 2214
 Oakland, CA 94612

VIA EMAIL

PVollmann@oaklandca.gov

Re: Comments on the Draft Environmental Impact Report for the Oakland Waterfront Ballpark District Project (ER18-016)

Dear Mr. Vollmann:

The Healthy Havenscourt Collaborative is a neighborhood collaborative, launched in 2015, that focuses on the East Oakland neighborhood of Havenscourt. HHC partners are Havenscourt residents, community-based organizations, and public agencies working together to build a healthy and vibrant Havenscourt so that residents can thrive.

O-53-1

As an ally of Oakland United, Healthy Havenscourt is writing to express serious concerns about the Draft Environmental Impact Report (DEIR) for the Oakland Waterfront Ballpark District Project (ER18-016). The DEIR does not provide enough information to inform the public about the potential impacts of the project. We are particularly concerned that the DEIR doesn't specify if affordable housing will be built, doesn't describe how the toxic contamination at the site will be cleaned up, and doesn't provide information on how the project's air pollution impacts will be mitigated

O-53-2

The DEIR does not provide enough information about affordable housing at the project site. This project's potential impacts on housing prices and gentrification in the surrounding community are very worrying, and it is important for the project to include affordable housing. The DEIR mentions an affordable housing program in a footnote, but it doesn't actually describe what the program entails. The DEIR says that the program might include on-site affordable housing. How many of the 3,000 residential units will be set aside for affordable housing? The DEIR says that the program might include off-site affordable housing. Where exactly would this construction take place, and how many units would be built? The DEIR says that the program may just involve paying impact fees. Would the impact fees be used for local affordable housing, and if so when would it be built? The EIR should provide this information, so that the public can understand the full scope of the project and how it will impact the surrounding community.

O-53-3

We are also very concerned about toxic contamination at the site, particularly if affordable housing is going to be built on-site. The Howard Terminal site is currently so contaminated with toxic materials that it is illegal to build housing there. The DEIR states that

- O-53-1 This is a general comment that includes introductory remarks and serves to introduce the more specific comments that are responded to in detail below. As a result, no specific response is provided here.
- O-53-2 See Consolidated Response 4.12, *Affordable Housing*, and Consolidated Response 4.13, *Gentrification and Indirect Housing Displacement*.
- O-53-3 See Response to Comment I-277-4 and Response to Comment O-18-3. Consolidated Response 4.16, *Remediation Plans, Land Use Covenants, and Human Health and Ecological Risk Assessment*.

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the A's will work with the Department of Toxic Substances Control (DTSC) to clean up the site but does not provide specific information about how the site will be cleaned up, instead promising to create a plan after the City approves the DEIR. The DEIR claims that compliance with DTSC rules and regulations will ensure that the Howard Terminal site is properly cleaned up, but the A's recently sued DTSC for its failure to enforce environmental laws at the Schnitzer Steel facility adjacent to Howard Terminal—and they won that lawsuit. How can the public trust that DTSC's regulation will make the site safe for housing if the A's can't trust DTSC to regulate the neighboring property?

O-53-4

The DEIR states that the project will have significant and unavoidable impacts on air quality and will emit large amounts of greenhouse gases (GHG) but does not provide sufficient information on how these impacts will be mitigated. West Oakland has historically been and continues to be one of the most polluted areas in California, and residents face serious health challenges, including disproportionately higher rates of hospitalization from asthma and air pollution related diseases including cancer, heart disease, and stroke. The project will bring in even more toxic air pollution, along with significant greenhouse gas emissions. The DEIR plans to mitigate this pollution with a Criteria Pollutant Mitigation Plan and a GHG Reduction Plan, which will not be developed until after the city approves this EIR. The DEIR includes a list of mitigation measures that may be included in those plans, but the DEIR doesn't specify which mitigation measures will be included, nor does it provide information or calculations to demonstrate that those future plans will successfully reduce emissions. Even with the future air pollution mitigation plan, the DEIR says that the impacts on air quality will not be properly mitigated and will have significant impacts on the health of the community. The EIR cannot defer mitigation measures, and the A's must do more to reduce emissions and protect the health of the surrounding community

O-53-5

Given these problems with the DEIR, it is impossible for members of the public to evaluate the impacts of the project, and it is not possible for the City of Oakland to make an informed decision on whether to proceed with this project. The DEIR should be revised and recirculated to provide members of the public and decision makers with accurate and transparent analysis. Thank you for considering these comments.

Sincerely,

The Healthy Havenscourt Collaborative

Antoinette Taylor, Havenscourt resident
Maisha Smith, Havenscourt resident
Colleen Tiffenson, Havenscourt resident
Eia Gardner, Havenscourt resident
 Regional Asthma Management & Prevention (RAMP)
 East Bay Asian Local Development Corporation (EBALDC)

O-53-4

Impact AIR-2.CU considers the existing background health risk of West Oakland residents and the contribution of the Project's TAC emissions within the context of the poor background air quality conditions. This analysis was conducted in concert with the BAAQMD and their health risk analysis prepared pursuant to AB 617 through the West Oakland Community Action Plan. Draft EIR pp. 4.2-9 through 4.2-11 discuss the existing air quality setting and the high existing community health risks.

Mitigation Measure AIR-2e includes the preparation of a Criteria Pollutant Mitigation Plan, which identifies a specific performance standard equal to the City's thresholds of significance for criteria pollutant emissions. The Final EIR includes revisions to Mitigation Measure AIR-2e to require many of the measures listed as "recommended" in the Draft EIR. See Chapter 7, *City-Initiated Updates and Errata in the Draft EIR*, for the revised mitigation measure language including the specific requirement for a number of measures. Although Mitigation Measure AIR-2e does not include a quantitative assessment of each individual action's effectiveness in reducing emissions, it does require that emissions be reduced to below the City's thresholds of significance. This approach is permitted by State CEQA Guidelines Section 15126.4(a)(1)(B).

Mitigation Measure GHG-1 includes the preparation of a Greenhouse Gas Reduction Plan, as the commenter notes, which requires that the Project sponsor achieve "no net additional" GHG emissions as required by AB 734. With implementation of this measure, emissions would be reduced to less-than-significant levels.

See Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*, regarding mitigation measures, use of performance standards, and future plans.

See Response to Comment O-30-3. See also Responses to Comments A-7-51, A-11-2, A-11-3, A-11-4, A-11-8, A-17-9, A-17-12, I-164-2, I-268-2, I-271-2, O-30-3, and O-62-43 for additional information.

O-53-5

See Responses to Comments O-53-1 through O-53-4. The City has prepared the EIR in accordance with CEQA requirements to inform both the public and decision makers of the environmental consequences of implementing the Project. As explained in Consolidated Response 4.3, *Recirculation of the Draft*

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EIR, although information has been added to the Draft EIR in response to comments and as City-initiated updates, no significant new information (e.g., information leading to a new significant impact or a substantial increase in the severity of a significant impact) has been added since publication of the Draft EIR. Consequently, the Draft EIR need not be recirculated.

O-54 F.E. Jordan Associates, Inc., by Warren Law Firm

COMMENT

RESPONSE

Please find attached the comments submitted on behalf of our clients, Fred E. Jordan and F.E. Jordan Associates, Inc., with regard to the Draft EIR for the Waterfront Ballpark District Project.

These comments are also being concurrently submitted by electronic mail to pvollmann@oaklandca.gov.

O-54

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April 27, 2021

City of Oakland Bureau of Planning
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 Submitted electronically

Peterson Vollmann, Planner IV
 City of Oakland Bureau of Planning
 250 Frank H. Ogawa Plaza, Suite 2214
 Oakland, CA 94612
 By email only to pvollmann@oaklandca.gov

RE: Oakland Waterfront Ballpark District Project
 COMMENTS ON THE WATERFRONT BALLPARK DISTRICT PROJECT DRAFT
 ENVIRONMENTAL IMPACT REPORT (EIR)
 Case No. ER18-016; State Clearinghouse No. 2018112070

To Whom it May Concern,

We represent Fred E. Jordan and F.E. Jordan Associates, Inc., a prestigious design and civil engineering firm in San Francisco (collectively, "FEJA"), and by this letter are submitting comments on their behalf with regard to the Draft EIR for the Waterfront Ballpark District Project. FEJA has significant concerns about the incompatibility of land use with its proximity to the Charles P. Howard Container Terminal and comments on the Draft EIR as set forth below.

By way of background, FEJA, in joint venture, designed the Charles P. Howard Container Terminal (the "Howard terminal"), **which site is located underneath, in part, or directly adjacent to the proposed Waterfront Ballpark District Project.** FEJA has over twenty years of substantial experience with Port of Oakland projects and was selected by the Port of Oakland to review and evaluate several Terminals in the Port's Wharf Embankment Strengthening program, including the Howard Terminal. FEJA was engaged to undertake the planning and final design of the Trapac Terminal (Carnation), the Transbay Terminal (Berths 32 and 33), the Ben Nutter Terminal (Matson Terminal) and the planning of the Port of Oakland Intermodal Project, with all of those projects comprising approximately 80% of the Port's current annual expansion.

O-54-1 See Consolidated Response 4.4, *Port Operations and Land Use Compatibility*.

O-54-2 The preliminary geotechnical investigation prepared by ENGeo, provided in draft EIR Appendix GEO, provides sufficient details to indicate that all structures associated with the proposed Project can be designed in accordance with all applicable local and state building requirements (including the Oakland and California Building Codes [i.e., Chapter 18A, *Soils and Foundations*]). The structural engineering design of the structures would be further analyzed by the geotechnical engineers in the required final geotechnical investigation. Both the DTSC and the City of Oakland Bureau of Building would need to approve of the plans or the project would not proceed.

O-54-1

O-54-2

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RE: Oakland Waterfront Ballpark District Project
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Aside from receiving acclaim for its design of the Howard Terminal by the Port Industry as the most outstanding structural design in the world, and as a direct reflection of that superb design, the Howard Terminal was the only Port of Oakland terminal that remained completely untouched by the Loma Prieta earthquake in 1989. In short, the design and the resiliency of the structure helped secure world-wide recognition for the Port of Oakland and for the City of Oakland itself.

O-54-2

After a review of the Draft EIR, FEJA has significant concerns about the proposed proximity of the Waterfront Ballpark District Project to the Howard Terminal and believes, initially, that the Draft EIR is deficient because it does not address the **structural engineering aspects** of locating a multi-story concrete stadium structure in close proximity of the quay wall of the 1,000 ft wharf structure supporting the gantry cranes. By way of example, the soil surcharge could affect the quay wall causing instability and possible failure of the four gantry cranes that are the largest and tallest in the world. The Draft EIR is further deficient in that there is a lack of discussion in the Draft EIR on whether the multi-story stadium structure foundation will be on piles of bedrock, friction piles or regular footings in consideration of surcharge from friction piles or regular footings. The Port of Oakland's Wharf Embankment Strengthening Program should also be reviewed, due to proposed dredging of the estuary, as a part of the EIR. The EIR does not address the dredging for the Turning Basin abutting the Howard Terminal for such ships as the 950 ft. Post Panamax. Also, the Geologic or Geotechnical impacts and the hazard waste impacts have been left to a Mitigation Plan to be developed which is insufficient when referencing a similar disastrous result at the Hunters Point Shipyard Development in San Francisco.

O-54-3

O-54-4

Aside from structural engineering deficiencies, the Draft EIR does not address **Recreational Life Safety** on the waterfront that might result from the site of the proposed ballpark (a stable structure) near the Howard Terminal (with an incompatible structure and site designed to withstand earthquakes). Hundreds of people could possibly be in the ballpark and/or under or around the cranes, waiting for a ball to be hit out of the ballpark or just picnicking, for example, when a catastrophe leading to injury or loss of life could occur as a result of the incompatible land use (and without proper structural engineering considerations and accommodations). **There is a reasonable potential of liability from people falling in the water, from or near the proposed stadium, or sustaining other injury.** Adding to that, it is not clear from the Draft EIR whether there will be boats allowed alongside of the ballpark as they do with restaurants along the estuary, another potential for injury. And further, there is no information in the Draft EIR as to whether boarding accommodations will be provided. These are unanswered questions and areas of concern which need to be addressed in the EIR.

O-54-5

O-54-6

O-54-7

For the reasons set forth above, the position of FEJA is that the Draft EIR is wholly insufficient and is therefore opposed. As we mentioned above, FEJA is the original designer of the Howard

O-54-3

The Draft EIR on pp. 4.3-8 and 4.3-9 describes annual dredging that has occurred historically and currently to maintain a depth of approximately 50 feet mean high water mark to support shipping operations within the Middle and Inner Harbors. This existing baseline condition is considered in the Project-level and cumulative impact analysis of the proposed Project.

O-54-4

The topics of deferral of mitigation measures and the reliance on future documents in the analysis is addressed in Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*.

O-54-5

Potential impacts related to seismic hazards and soils are addressed in Draft EIR Section 4.6, *Geology, Soils, and Paleontological Resources*. Compliance with existing laws and regulations, and Mitigation Measure GEO-1 requiring the development and implementation of geotechnical recommendations to be incorporated into the design plans and specifications, the impact would be less than significant. Both the DTSC and the City of Oakland Bureau of Building would need to approve of the plans or the project would not proceed.

O-54-6

As discussed in the Draft EIR on p. 4.10-35, the proposed Project does not propose facilities for recreational watercraft or direct water access to the Project site, but analyzes the fact that the ballpark and Waterfront Park could indirectly create a new demand for recreational watercraft users adjacent to the Project site. As discussed in the Draft EIR, Mitigation Measure LUP-1a would require installation and maintenance of signs along the wharf informing non-Port vessels that they would be prohibited from docking in any part of the wharf adjacent to the Project site (Draft EIR pp. 4.10-35 through 4.10-39). The remainder of the comment primarily concerns the merits of the proposed project and does not address the adequacy or accuracy of the Draft EIR.

O-54-7

See Responses to Comments O-54-1 through O-54-6. The City has prepared the EIR in accordance with the requirements of CEQA with the purpose of informing both the public and decision makers of the environmental consequences of implementing the Project.

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COMMENT

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RE: Oakland Waterfront Ballpark District Project
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O-54-7

Terminal and we urge that FEJA and a team that it would build to include one or more of the original structural engineers, project manager, etc. from the original construction of the Howard Terminal, be retained as consultants to better assess the deficiencies of the Draft EIR, and in the concern for not only the financial liability but the injury or loss of life that could result from a tragic results, that could ultimately arise from situating the ballpark on or adjacent to the Howard Terminal site without sufficient structural and other engineering considerations.

Sincerely,

WARREN LAW FIRM PLC

DocuSigned by:

By: Angela D. Warren

cc: Frederick Jordan, PE, President
F.E. Jordan Associates, Inc