

O-56 Northern California Land Trust

COMMENT

RESPONSE



April 27th, 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:

I am writing as the Executive Director of the Northern California Land Trust (NCLT). NCLT is California's oldest community land trust, and a long-time provider and developer of permanently affordable housing in North, West and East Oakland as well as other areas of Alameda, Contra Costa, San Francisco and Solano Counties. On behalf of our Oakland resident communities 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 either on or off site, 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.

Of particular concern to NCLT is that 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? Current standards suggest at least 20% of housing needs to be affordable and NCLT and other housing providers often create 100% affordable developments. 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 DEIR should provide this information, so that the public can understand the full scope of the project and how it will impact the surrounding community.

Especially in the context of on-site housing 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?

a community land trust providing permanently affordable housing and community facilities
NCLT is an equal opportunity housing provider

- O-56-1 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-56-2 See Consolidated Response 4.12, *Affordable Housing*. See also Consolidated Response 4.13, *Gentrification and Indirect Housing Displacement*.
- O-56-3 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*, explains the process for developing and implementing remediation plans to develop the site and be protective of people and the environment.

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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

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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,

Ian Winters
Executive Director
Northern California Land Trust

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Impact AIR-2.CU considers the existing background health risk of West Oakland residents and the contribution of the Project's toxic air contaminant (TAC) 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 (BAAQMD) 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. The Final EIR includes revisions to Mitigation Measure AIR-2e to require many of the measures previously listed as "recommended" in the Draft EIR. See Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*, and Chapter 7, *City-Initiated Updates and Errata in the Draft EIR*, for the revised mitigation measure language including all required measures. Although Mitigation Measure AIR-2e does not include a quantitative assessment of each individual action's effectiveness in reducing emissions as explained in Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*, it does require that emissions be reduced to below the City's thresholds of significance, and that this be sufficiently documented based on substantial evidence. This approach is permitted by CEQA Guidelines Section 15126.4(a)(1)(B). Please also see responses to comments A-11-2, A-11-4, A-11-6, A-17-6, A-17-12, O29-1-33, O-57-15, and O-59-4 for additional discussion.

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. The mitigation contains a list of mandatory and other feasible measures that are available and will be able to achieve the "no net additional" performance standard. This type of mitigation measure complies with CEQA standards. 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.

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See Responses to Comments A-7-51, I-268-2, I-271-2, O-30-3, and O-62-43 for additional information.

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See Responses to Comments O-56-1 through O-56-4 regarding the assertion that the issues raised in those comments prevent members of the public from evaluating the 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 with the purpose of informing both the public and decision makers of the environmental consequences of implementing the Project.

Regarding the statement that the Draft EIR should be revised and recirculated, information has been added to the Draft EIR in response to comments and as City-initiated updates (see Chapter 7, *City-Initiated Updates and Errata in the Draft EIR*). However, 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, and consequently, the Draft EIR need not be recirculated. See Consolidated Response 4.3, *Recirculation of the Draft EIR*, for more information.

O-57 Phoenix Lofts Homeowners Association, by Gagen, McCoy, McMahon, Koss, Markowitz & Fanucci

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Dear City of Oakland and ESA staff:

Today at 3:58 p.m., I emailed these 6 uploaded files (DEIR Comments) to PVollman@oaklandca.gov, but got an error message after 4 p.m. saying that my email wasn't received by the recipient.

Thus, I'd really appreciate written confirmation that these DEIR Comments are being treated as timely submitted prior to any deadline or cut-off.

Thank you!

Regards,

Dan Muller (925) 818-9248

dam@gagenmccoy.com

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William E. Gagen, Jr.
Gregory L. McCoy
Charles A. Koss
Michael J. Markowitz
Richard C. Reiner
Richard Deval Jewell
Robert M. Farnesi
Stephen T. Heath
Sarah S. Nix
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Sarita Bhandari
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April 27, 2021

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Via E-mail Only: PVollman@oaklandca.gov

Peterson Vollman, Planner IV
City of Oakland
Planning and Building Department
250 Frank H. Ogawa Plaza
Oakland, CA 94612

Re: DEIR Comments – Proposed Oakland Waterfront Ballpark District Project
City of Oakland Case File No. ER 18-016

Dear Mr. Vollman:

Our office represents the Phoenix Lofts HOA and its many members who own/reside/work at the Phoenix Lofts condominiums (collectively, "Phoenix Lofts" or "HOA"¹) at 737 2nd Street in the City of Oakland ("City"), regarding their grave concerns about the severe, negative impacts of the above-noted Oakland Waterfront Ballpark District Project ("Project") proposed at Howard Terminal (1 Market Street), adjacent to and just south of Phoenix Lofts.

To that end, on our clients' behalf we hereby submit the following comments briefly summarizing the myriad legal deficiencies of the Project's Draft Environmental Impact Report ("DEIR"), prepared to purportedly comply with the California Environmental Quality Act ("CEQA", Pub. Res. Code §21000, *et seq.*), as well as the Project's many other failures to comply with other state and local governing laws, plans, and regulations.

By way of background, Phoenix Lofts is a four (4)-story, historic concrete building with approximately twenty-nine (29) rather unique live/work and commercial condo units,

¹ Phoenix Lofts and its owners/residents are also sometimes referred to as "PL" in some of the attached, individualized DEIR Comments, all of which as noted are incorporated herein by reference.

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O-57-1 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 4.3, *Recirculation of the Draft EIR*.

Comments regarding the merits 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 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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situated just north of and right across the Union Pacific railroad (“UPRR”) tracks from the 55-acre proposed Project site. The historic building dating back to the 1920s is the former home of Phoenix Ironworks, on the western edge of Jack London Square, converted around 2000 into a mixed-use community of live/work lofts and ground-floor commercial spaces within the City’s waterfront and downtown districts. Prior to the looming specter of the proposed Project, Phoenix Lofts was considered a quintessential example of a true warehouse industrial loft building, with high ceilings, industrial support columns, exposed fittings, 7-foot tall built-in bookshelves, in-unit laundries, etc. As particularly relevant here, amenities also include (for now, at least) a roof deck, and two sky-lit atrium courtyards – which the Project’s many, extremely tall buildings will cover in shadow/shade literally months on end.

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Understandably, our clients are extremely concerned about the proposed Project’s several-years’ of extremely disturbing, constant, construction-related impacts, as well as its permanent, noisy, all hours, sun-blocking, and similarly devastating operational impacts - on both them and surrounding neighborhoods, and local and regional environmental resources. Simply put, this gargantuan Project is the wrong development, in the wrong location, and is fundamentally incompatible with surrounding residents, uses, governing plans, and legal requirements. In particular, it will – by the DEIR’s own admissions, however veiled or tortured - make living and working at Phoenix Lofts intolerable.

Thus, based on the below-noted failures and legal deficiencies, our clients respectfully request that (1) these comments, including all incorporated attachments and cited sources, be included as part of the City’s record of proceedings, or administrative record, regarding the proposed Project; (2) **the City not consider, certify, or approve the DEIR or the Project unless and until both are substantially revised to correct their many legal defects, and such revisions are recirculated for further, required public review and comment;** and (3) if the City somehow opts to certify/approve the ultimate Final EIR (“FEIR”) and Project, over our and all the other concerned commenters’ legitimate objections, then pursuant to Pub. Res. Code § 21168.6.7(f)(5)(A) this letter serve as our clients’ written request for non-binding mediation covering all of the areas of dispute raised herein, as well as any and all other issues raised by other commenters.

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The following sections briefly summarize the DEIR’s failures to comply with CEQA, as well as the proposed Project’s fundamentally incompatible with and violations of other governing state and local laws and requirements, as noted in more detail in the numerous attachments and supporting linked information, all of which is “substantial evidence” hereby incorporated by this reference as if fully set forth herein. Finally, our clients also reserve the right to add to, supplement, and/or amend these comments and supporting evidence.

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With respect to the request for mediation under Public Resources Code Section 21168.6.7(f)(5)(A), in response to this comment, the City engaged in and completed non-binding mediation with the commenter on certain issues raised in this comment letter.¹ See also Response to Comment O-63-4.

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 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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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.

With regard to the commenter's wish "to add to, supplement, and/or amend these comments and supporting evidence" in the future, under AB 734, the lead agency need not consider written comments submitted after the close of the public comment period, unless those comments address any of the following:

- (a) New issues raised in the response to comments by the lead agency.
- (b) New information released by the public agency subsequent to the release of the draft EIR, such as new information set forth or embodied in a staff report, proposed permit, proposed resolution, ordinance, or similar documents.
- (c) Changes made to the Project after the close of the public comment period.
- (d) Proposed conditions for approval, mitigation measures, or proposed findings required by Public Resources Code Section 21081 or a proposed reporting and monitoring program required by paragraph (1) of subdivision (a) of Section 21081.6, if the lead agency releases those documents subsequent to the release of the draft EIR.
- (e) New information that was not reasonably known and could not have been reasonably known during the public comment period.

¹ Jams Mediation Case Reference No. 1130009423, Oakland Sports and Mixed-Use Project Mediation, May 25, 2021.

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I. The Project and DEIR Fail to Comply with AB 734

While the DEIR authors claim that the “DEIR is being prepared under Assembly Bill (AB) 734, enacted in 2018 and codified [in CEQA]... at Public Resources Code Section 21168.6.7”, both the DEIR and proposed Project fail to satisfy AB 734’s rather stringent mandates. The following are examples of what AB 734 (Pub. Res. Code requires, and how the DEIR and Project fail to comply:

- “The Project **does not result in any net additional emissions of greenhouse gases (‘GHG’)**, including GHG from employee transportation...” (Emph. added; Pub. Res. Code §21168.6.7(a)(1)(A)(ii).)

COMMENT SUMMARY: There is no substantial evidence in the DEIR supporting the conclusory claims that the Project will somehow satisfy this key statutory requirement of “not resulting in any net additional GHG emissions”. (See, e.g., DEIR pp. 1-6, 2-3.) Among other things, the DEIR’s purported comparisons that so desperately seek to make such “compliance claims”, e.g., comparing the Project’s GHG emissions to those at the to-be-abandoned Oakland Coliseum, etc., are fatally flawed, skewed, and thus legally and analytically useless under CEQA. (Also, somewhat ironically, while the DEIR seeks to compare the Project’s GHG emissions to those at the to-be-abandoned Coliseum, as noted below the DEIR commits fatal “piecemealing” by improperly ignoring the Project’s impacts *on the Coliseum and its environs*, from “moving the A’s away”.)

- “To maximize public health, environmental, and employment benefits, the lead agency shall require measures that will reduce the emissions of GHG in the project area and in the neighboring communities of the baseball park. Not less than 50 percent of the GHG emissions reductions necessary to achieve the requirements of this clause, excluding the GHG emissions from residential uses of the Project, shall be from local, direct GHG emissions reduction measures that give consideration to criteria air pollutant and toxic air contaminant emissions reductions, including, but not limited to, any of the following:

- (I) Project design features or onsite reduction measures, or both...
- (II) Off-site reduction measures in the neighboring communities.

The applicant may obtain offset credits for up to 50 percent of the GHG emissions reductions necessary to achieve the requirement of this clause. The applicant shall, to the extent feasible, place the highest priority on the purchase of offset credits that produce emission reductions within the City of

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O-57-4 As stated in the Draft EIR on pp. 1-5 through 1-7, the proposed Project is being processed under AB 734, which allows for certain procedural benefits for certified projects that meet specific requirements. Only the Governor, acting with input from the California Air Resources Board, can certify a project as meeting the requirements of AB 734. This process is outside the normal CEQA review process.

The Project received certification under AB 734 by the Governor on February 11, 2021. This certification is final and not subject to review. The EIR does not review the Governor’s certification or the Project’s compliance with AB 734.

As a result of the Governor’s certification, the EIR is subject to the procedural requirements of AB 734. Streamlining pursuant to AB 734 does not change any of the substantive requirements for the preparation or content of the EIR. Where requirements of AB 734 are relevant to the Draft EIR analysis, they are explained, but compliance with AB 734 is not the standard for the analysis of impacts required by CEQA. (See *Mission Bay Alliance v. Office of Community Investment and Infrastructure* (2016) 6 Cal.App.5th 160, 198, fn. 26 [Governor’s certification under streamlining statutes is a separate process and does not substitute for a CEQA determination on the significance of impacts].)

See the following responses to the comments that raise specific concerns about the Draft EIR.

O-57-5 See Response to Comment O-57-4 regarding the AB 734 certification process.

The Draft EIR includes a significance threshold of “no net additional” GHG emissions and includes Mitigation Measure GHG-1. Mitigation Measure GHG-1 requires that the Project meet the “no net additional” requirement through the preparation and implementation of a GHG reduction plan. As explained in the Draft EIR, and supported by substantial evidence, after implementation of Mitigation Measure GHG-1, the impact would be less than significant (see Draft EIR p. 4.7-66). See Responses to Comments I-93-4, O-46-11, O-47-10, and others, along with Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*, for a thorough discussion of this issue.

Regarding the baseline used for the analysis, see Responses to Comments O-29-15, O29-1-4, O29-1-5, O-47-9, and O-51-9. It is important to note that the California Air Resources Board’s AB 734 Determination for the AB 734 Oakland Waterfront Ballpark District Project identifies current existing

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conditions at the Coliseum and Howard Terminal as the baseline against which the Project's new emissions should be compared (CARB, 2020).

Regarding the piecemealing claim, see Response to Comment O-57-17.

O-57-6 See Response to Comment O-57-4 regarding the AB 734 certification process. Mitigation Measure GHG-1 requires that the Project meet the "no net additional" requirement through the preparation and implementation of a GHG reduction plan. After implementation of Mitigation Measure GHG-1, the impact would be less than significant (see Draft EIR p. 4.7-66). See Responses to Comments I-93-4, O-46-11, O-47-10, and others, along with Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*, for a thorough discussion of this issue.

For a discussion of offset credits and their validity as CEQA mitigation, as supported by AB 734 and the California Air Resources Board, see Responses to Comments A-11-8, I-95-1, O-47-10, O-62-33, and O-63-56.

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Oakland or the boundaries of the Bay Area Air Quality Management District. Any offset credits **shall** be verified by a third party accredited by the State Air Resources Board...” (Emph. added; Id.)

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COMMENT SUMMARY: There is no substantial evidence in the DEIR supporting any claims that the above rather specific requirements have been met. For example and without limitation, the purported efficacy or effectiveness of proposed offset credits have **not** been verified by any third parties accredited by the State Air Resources Board. (Also, see further below, regarding the DEIR’s impermissibly weak, toothless, vague, and deferred MM, including as to air quality impacts, which fail to satisfy both CEQA, and AB 734.)

- “The project has a transportation management plan (“TMP”) or transportation demand management program (“TDMP”), or both, that achieves a 20-percent reduction in the number of vehicle trips (“VT”) collectively by attendees, employees, visitors, and customers as compared to operations absent the TMP or TDMP, or both...” (Pub. Res. Code §21168.6.7(a)(1)(A)(iii).)

The TMP or TDMP “for the baseball park shall achieve the 20-percent reduction within one-year after the completion of the first baseball season.” (Id.)

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The TMP or TDMP “for the nonbaseball-park portion of the Project shall achieve the 20-percent reduction within one year after the completion of that portion. (Id.)

The TMP or TDMP “shall include a menu of options designed to reduce the number of VT, including temporarily expanding the capacity of a public transit line, as appropriate, to serve the baseball park events, and participation in a transportation management association that will determine a range of services and programs designed to meet the 20-percent reduction, including providing incentives for transit usage and carpools, bicycle parking and support, signage, and real-time transit information.” (Id.)

COMMENT SUMMARY: There is no substantial evidence in the DEIR supporting any claims that the above rather specific requirements have been met.

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- The Project is “subject to a comprehensive package of **community benefits** approved by the Port of Oakland or City Council of the City of Oakland, as applicable, which may include local employment and job training programs, local business and small business policies, public access and open space,

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See Response to Comment O-57-4 regarding the AB 734 certification process. See the following responses to the comments that raise specific concerns with the Draft EIR.

See the Draft EIR (pp. 4.15-136 through 4.15-148), which describes the elements in the Transportation Demand Management (TDM) Plan and Transportation Management Plan (TMP) and their expected effectiveness at reducing vehicle trips. 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. Both mitigation measures include a performance standard to reduce by 20 percent vehicle trips over a baseline condition without a TDM Plan or TMP. The Project would be responsible for developing, implementing, monitoring, and adjusting the plans. 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 met, the City would require a 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 were not met. The enforcement procedures would include but not be limited to imposition of a penalty, in an amount to be determined by the City, at least sufficient to fund and manage transportation improvements that would bring the Project into conformance with the performance standard.

Draft EIR Appendix TRA.1 contains the draft TMP for ballpark events. The TDM Plan and TMP effectiveness memo included in Draft EIR Appendix TRA.2 demonstrate that the mitigation measure would be effective with the range of strategies identified. As explained in Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*, the effectiveness of various vehicle trip reduction strategies is likely to change over time in response to changes in transit services, parking supplies, and travel behavior, and advances in technology; thus, it would be impractical to lock in place a list of discrete actions at the time the Project is approved. It is therefore appropriate to require approval of a TDM plan for each building before occupancy and with building permits for the ballpark.

See Consolidated Response 4.23, *Transportation and Parking Demand Management Plan and Transportation Management Plan Considerations*, for

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additional information regarding the effectiveness of the required measures, the additional optional measures described in the Draft EIR that are likely needed to achieve the performance standard, and changes to Mitigation Measures TRANS-1a and TRANS-1b in response to comments.

O-57-8 See Response to Comment O-57-4 regarding the AB 734 certification process. 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 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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O-57-8 affordable housing, transportation infrastructure, increased frequency of public transit, and transit accessibility and *sustainable and healthy development measures for the surrounding community.*" (Emph. added; Pub. Res. Code §21168.6.7(a)(1)(A)(v).)

O-57-8 COMMENT SUMMARY: Since the proposed Project's incredibly harsh, severe impacts - to the Phoenix Lofts' residents in particular - will make living and working there intolerable, the proposed Project does not remotely satisfy or confer the above-required community benefits. Rather, both the DEIR's admitted/acknowledged *very significant* impacts, and litany of *undisclosed and unanalyzed* dire impacts, to Phoenix Lofts are precisely the *opposite* of "sustainable and healthy development measures for the surrounding community".

O-57-9 • *"Project design and implementation shall comply with the City of Oakland's Bird Safety Measures, adopted in 2013. Nighttime programming will apply best management practice strategies to avoid and reduce potential collision hazards for migratory and resident birds, to the extent feasible."* (Emph. added; Pub. Res. Code §21168.6.7(d)(8).)

O-57-10 COMMENT SUMMARY: There is no substantial evidence in the DEIR supporting any claims that the above rather specific requirements have been met.

O-57-10 In sum, for all of the above reasons, the DEIR's claims that it and/or the Project satisfy AB 734's legal requirements are unsupported – and in many cases contradicted - by substantial evidence.

II. The DEIR's Alternatives Analysis is Impermissibly Skewed by its Overly Narrow, Specific "Project Objectives"

O-57-11 Contrary to CEQA, the DEIR impermissibly describes the "Project Objectives" so narrowly and specifically that *nothing but the proposed Project, itself*, can satisfy them, thereby making the Objectives useless for their CEQA-required purpose of "assisting the City, as lead agency, in developing a reasonable range of alternatives..." (See, e.g., DEIR pp. 3-14 – 3-16.) This flaw, standing alone, is fatal under CEQA.

O-57-11 See also, the further "Alternatives Analysis" defects noted in the attached comment/spreadsheet entitled "Miscellaneous, Other Issues...", including for example and without limitation the DEIR's arbitrary, improper exclusion/elimination from the proposed Project of the presumably costly, railroad crossing "grade separation" element.

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O-57-9 See Response to Comment O-57-4 regarding the AB 734 certification process. See Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*. See also Chapter 7, *City-Initiated Updates and Errata to the Draft EIR*, for the resulting modifications to Mitigation Measure BIO-1b, Bird Collision Reduction Measures, which lists specific requirements for Project building and landscape design and operation to avoid or minimize avian collisions to a less-than-significant level, and to support compliance with AB 734 and the City of Oakland's Bird Safety Measures.

O-57-9 As stated on Draft EIR p. 4.3-37, paragraph 4: "Mitigation Measure BIO-1b specifies mandatory measures the Project sponsor must implement and requires the development of a Bird Collision Reduction Plan which would tailor bird strike reduction strategies to various Project parameters... The reduction in bird collisions during operations would be achieved through Project design considerations that are managed during review and approval by the City of Oakland Bureau of Building, to maintain consistency with the City's Bird Safety Measures, as required by AB 734."

O-57-10 See Response to Comment O-57-4 regarding the AB 734 certification process. This comment refers to earlier comments that have been responded to individually.

O-57-11 See Response to Comment O-29-90.

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III. The DEIR Impermissibly Defers Mitigation

As also noted in the attached comments (which like the DEIR are generally organized by resource topics, or types of impacts), far too many of the DEIR's proposed MM are fatally vague, incomplete "band-aids", which merely discuss "what might be done – to the extent feasible or possible, maybe...", without any objective standards, monitoring, or assurances that anything will ever, actually be done. By lacking detail and firm commitments, these so-called MM either expressly or impliedly commit the cardinal CEQA sin of illegally deferring required, feasible mitigation – or, not actually mitigating anything at all.

For example, while Table 2-1 (DEIR pp. 2-9 – 2-99) admits both (A) "The Project would create a new source of substantial light or glare which could substantially and adversely affect day or nighttime views in the area", and (B) such impacts are "Significant and Unavoidable", as to "Field Lighting", Table 2-1 rather anemically states: "**To the extent permitted by and compatible with MLB requirements, standards or professional baseball standards**, all field lighting shall be a correlated temperature of 5700K, a minimum color rendering index of 80, and field lighting **may include** accessories such as visors or shields to minimize spill light". (Emph. added; Id., p. 2-9.) So, basically, since any mitigation must be "permitted by and compatible with MLB standards", no one knows if anything "shall" be done, at all. This is just too-clever-by-half "CEQA consultant-speak".

Similarly, Table 2-1's discussion of "Architectural Lighting" weakly states: "**minimize** areas of non-signage architectural façade lighting...; integrate lighting elements into architecture **wherever possible** to minimize direct view of light sources; and rely **to the extent possible** on low mounting-height luminaires to reduce the visibility of the luminaire from a distance". None of such vague, unclear, supposed "standards" is remotely enforceable. (Emph. added; Id.)

The same is true, yet far worse, as to the DEIR's supposed "mitigation" of the Project's wind impacts. Specifically, while Table 2-1 admits that (A) "the Project would create winds that exceed 36 mph for more than one hour during daylight hours during the year", and (B) such impacts are "Significant and Unavoidable with Mitigation", the DEIR's proffered, convoluted, anemic, inexplicable MM states: "**With the goal of preventing to the extent feasible** a net increase in the number of hazardous wind exceedance locations, compared to existing (i.e., essentially flat, non-built) conditions, prior to obtaining a building permit for any building (over 100' tall), the Project sponsor... shall undertake a wind analysis... conducted by a qualified wind consultant... using a model that represents the proposed building in the context of then-existing conditions, as well as... the proposed Project as a whole (at buildout)... at test points deemed appropriate by the wind consultant and agreed upon by (City staff)... such as building entrances and sidewalks... If the wind consultant demonstrates to the satisfaction of (City staff) that the **modified design** (?) would not create a net increase in hazardous wind hours or locations under partial buildout or buildout

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O-57-12 See Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*.

O-57-13 The comment refers to the Draft EIR's Summary Table of Impacts and Mitigation Measures (Table 2-1). As its name indicates, this table recapitulates and summarizes in a single location all of the impact statements and mitigation measures identified in Draft EIR Chapter 4, *Environmental Setting, Impacts, and Mitigation Measures*. This table does not provide the complete analysis supporting each of those impacts and mitigation measures; for that, see the applicable technical sections in Chapter 4.

The commenter alleges that the measures identified to reduce the effects of field lighting and architectural lighting are unenforceable and therefore inadequate. However, as explained on Draft EIR p. 4.1-1, in accordance with Public Resources Code Section 21099(d), which was added by Senate Bill (SB) 743 (2013), the 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." Aesthetics is not considered in identifying the Project's significant environmental effects because it meets the applicable criteria identified in Section 21099(d). Thus, the 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 information about aesthetics, including light and glare, for informational purposes. Because the proposed Project's aesthetics impacts are not considered environmental impacts for the purposes of CEQA, no mitigation is required for light and glare impacts.

Accordingly, the measures identified in Draft EIR Table 2-1, on p. 2-9, are not mitigation measures, but improvement measures. These improvement measures may be adopted by the Project sponsor or required by the City as conditions of approval, but they are not required to reduce the severity of or avoid a significant impact. Thus, there is no requirement that such measures be feasible or enforceable, as would be the case for mitigation measure(s) identified to reduce or avoid significant impacts.

O-57-14 As explained in Response to Comment O-29-74, it would be neither feasible nor effective to apply mitigation in the form of design changes at this time because there are no actual building designs that can be altered to reduce pedestrian winds. Draft EIR Mitigation Measure AES-1, Wind Impact Analysis and Mitigation for Buildings 100 Feet or Greater in Height (Draft EIR p. 4.1-69), would require that each individual building undergo wind tunnel testing based

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on the actual detailed building design (as opposed to the more conservative test done for the Draft EIR that, as noted, was based only on simple rectilinear massing models). Moreover, as stated in Mitigation Measure AES-1, each building would be tested under the conditions that exist at the time the building comes forward for approval, as well as under Project buildout conditions, as they may be modified from time to time based on ongoing Project design and development. Using detailed building plans together with a setting condition that is always current would ensure the most accurate results for each succeeding wind test, thereby allowing consideration of appropriate building design features that could reduce pedestrian-level winds, if necessary.

Mitigation Measure AES-1 is 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 miles per hour for one full hour of the year. Because this mitigation measure sets forth a performance standard, it is entirely appropriate under CEQA (CEQA Guidelines Section 15126.4(a)(1)(B)).

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conditions, compared to then-existing conditions, no further review would be required. ¶
If the wind analysis determines that the building's design would increase the hours of wind hazard or the number of test points subject to hazardous winds, compared to then-existing conditions, the wind consultant shall notify the City and the Project sponsor. The Project sponsor shall work with the wind consultant to identify feasible mitigation strategies, including design changes (e.g., setbacks, rounded/chamfered building corners, or stepped facades), to eliminate or reduce wind hazards to the maximum feasible extent without unduly restricting development potential. Wind reduction strategies could also include features such as landscaping and/or installation of canopies along building frontages, and the like.” (Emph. added; Id., pp. 2-10 – 2-11.) This is but one of the DEIR’s many, classic examples of hollow, toothless, incoherent, impermissibly lacking and/or “deferred” mitigation. This flaw, standing alone, is fatal under CEQA.

O-57-15

Further examples include the supposed MM for PM₁₀ air quality impacts, which states: “The offset fee for PM₁₀ shall be made prior to issuance of the final certificate of occupancy for the final building associated with Full Buildout of the Project when operational emissions of PM₁₀ is (sic) expected to first exceed 82 pounds per day.” (Id., p. 2-21.) Since the DEIR admits that Project buildout will likely take *eight (8) or more years*, what happens, for example, if the subject emissions *exceed the above threshold(s) far sooner than expected?*

More generally, the ways in which the “offset fees” purportedly mitigating emissions are fatally flawed, hollow, and deferred include as follows: Table 2-1 states the offset fees are to be paid “to the Air District Bay Area Clean Air Foundation or other (i.e., *unknown*) governmental entity.” Second, rather than requiring or preferring the fees and emissions reduction project(s) to benefit the City of Oakland, or actually directly-impacted communities or neighborhoods (per AB 734), “the mitigation offset fee shall fund one or more emissions reduction projects within the San Francisco Bay Area Basin.” Third, and perhaps most importantly, “*The fee will be determined by the City, Project sponsor, and the Air District or other governmental entity, and be based on the type of projects available at the time of payment.*” (Id., p. 2-20.) Clearly, any notion of giving the Project sponsor a say, indeed essentially “veto power”, is the antithesis of CEQA-required mitigation. Likewise, why base the fee – and seemingly make its payment contingent - on the “type of projects available” years down the line? Among its many problems, such fuzzy, mealy-mouthed language can too easily be used by the Project sponsor to veto whatever it wishes, insist on only choosing/paying fees for some “cheaper” project – and/or waiting however long it wants until such “agreeably cheap” project becomes available. Meanwhile, contrary to all governing law, this huge Project’s huge air quality impacts will continue to spew forth, wholly unmitigated.

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Finally, as suggested above, the DEIR’s supposed air quality MM also abjectly fail to track, comply with, or satisfy the above-noted statutory requirements of AB 734.

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O-57-15 Item 2(c) of Mitigation Measure AIR-2e has been revised to require that the offset projects and fee payments be made before the issuance of the final certificate of occupancy for *each* building constructed, once combined construction and operational emissions exceed the City’s thresholds of significance. See Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*, and Chapter 7, *City-Initiated Updates and Errata in the Draft EIR*, for the revised mitigation measure language.

The commenter cites AB 734 to support the claim that offset projects must benefit local communities. AB 734 pertains only to greenhouse gas (GHG) emissions, not air quality impacts or criteria pollutant emissions. Additionally, the impact of criteria pollutants is regional (see Draft EIR p. 4.2-42), so the offset project must occur within the San Francisco Bay Area Air Basin. A local offset project would not mitigate the impact any better than a regional offset project. See Response to Comment O-57-4 regarding the AB 734 certification process.

Mitigation Measure AIR-2e does allow for the offset project fees to be determined later, depending on the specific projects identified. This is because fees can vary substantially based on the project type, which can include things like vehicle buyback, replacement and repowering of agricultural engines, and retrofits of on-road heavy-duty truck engines. It would be speculative to identify specific projects and fees at this point, as discussed on Draft EIR pp. 4.2-84 and 4.2-95.

This approach is consistent with the Bay Area Air Quality Management District’s (BAAQMD’s) Clean Air Foundation and offset program approach for CEQA mitigation, and with conversations that City staff and their consultants have had with BAAQMD. Additionally, as explained in Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*, CEQA permits the use of performance standards when specific details of mitigation measures cannot be known at the time the EIR is prepared (CEQA Guidelines Section 15126.4(a)(1)(B)). Case law, including *Golden Door Properties v. County of San Diego* (50 Cal. App. 5th 467), has established that if an EIR includes a mitigation measure that defers to the future development of the final details of proposed mitigation, it should include specific information as evidence that (1) it was necessary to defer final articulation of the measure’s features, and (2) the proposed mitigation will serve to effectively mitigate the identified effect. This information is presented in the Draft EIR. Mitigation Measure AIR-2e incorporates the CEQA

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significance thresholds described on Draft EIR p. 4.2-34 as performance standards and requires inclusion and implementation of “all feasible criteria pollutant emission reduction measures that reduce or offset the project’s incremental criteria pollutant emissions below the City’s thresholds of significance.” Offset fees are one strategy that the Project sponsor can use to achieve this standard. Therefore, the details of the offset fee program do not need to be identified at this time.

Further, the mitigation measure includes a reporting requirement that would allow the City to monitor the implementation and effectiveness of the measure over time. In this way, the mitigation measure addresses criteria pollutant emission impacts identified in Draft EIR Tables 4.2-6 and 4.2-7 and does not allow the Project sponsor to “veto whatever it wishes” or wait “however long it wants” to select offset programs. The measure would require the Project sponsor to submit recalculated emissions estimates at each phase of development because emissions would change over time in response to fuel standard changes, new technologies, and the development schedule, which would be affected by market conditions.

Finally, the cost of the offset fee program is irrelevant from a CEQA perspective, unless payment of the fee would be infeasible for the Project sponsor (pursuant to the requirements for the Findings document, per CEQA Guidelines Section 15091(c)). Mitigation Measure AIR-2e requires the Project sponsor to achieve specific emission reductions to achieve an objective performance standard, as discussed above; the cost of such programs is irrelevant. If a less expensive project reduces the same amount of reactive organic gases (ROG) and nitrogen oxides (NO_x) as a more expensive project, the Project sponsor is under no obligation to choose the more expensive project, provided that the selected project meets all requirements of Mitigation Measure AIR-2e.

O-57-16 See Response to Comment O-57-4 regarding the AB 734 certification process. If the commenter is referring to the effectiveness of mitigation generally, the requirement contained in Public Resources Code Section 21168.6.7(d)(5) would apply to the Project and a mitigation monitoring and reporting program (MMRP) would be provided for adoption by City decision-makers as part of the approval process. Mitigation measures would be adopted as conditions of approval and monitored as provided for in the adopted MMRP. See also Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*.

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IV. The DEIR Violates CEQA via Improper "Piecemealing"

Yet another cardinal sin committed by the DEIR is improperly segmenting or "piecemealing" the proposed Project, thereby impermissibly disregarding and violating CEQA's key mandate to analyze the "whole" or "all aspects" of the Project, and disclose and feasibly mitigate all of its potentially significant environmental impacts.

Here, a prime example is the DEIR's admitted refusal to analyze whatsoever the impacts of the Project *resulting from moving the Oakland A's baseball program (and numerous other huge events, concerts, etc.) from the Oakland Coliseum to the Project's new, proposed ballpark/stadium.*

Another rather stark example is the DEIR's acknowledgement of – yet utter failure to disclose, analyze, or mitigate the seemingly likely impacts from = the "Exclusive Negotiation Term Sheet for Howard Terminal" which "requires the Project sponsor and the Port to negotiate Seaport Compatibility Measures ("SCM"), which may include input from the Port's seaport and maritime stakeholders." Notably, "the outcome of these negotiations would be reflected in an Option Agreement and other negotiated transaction documents between the Project sponsor and the Port, subject to the permitting and regulatory jurisdiction of all applicable federal, State, and local agencies" and the SCM, "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." (Emph. added; DEIR, p. 2-3.) While over the past three decades I have personally reviewed dozens of DEIRs (for both project proponents, and affected neighbors), I have never seen one purport to describe any such impacts as "non-CEQA". In addition to failing to describe what the Exclusive Negotiation Term Sheet says, or apparently include a copy, the DEIR gives zero information about the timing or status of the subject negotiations. Most importantly, since these impacts are described as coming or resulting from the Port's seemingly likely changes in use/operations, *caused by the likely to-be-struck "deal" with the sponsor of this very Project*, it stands to reason such impacts (from the Port's changes) are connected with or caused by, and thus are (for CEQA purposes) "part of" the proposed Project. As such, regardless whether the likely changes (or any resulting impacts) are claimed to be "outside the Project" site, under CEQA they all must be fully disclosed, analyzed, and feasibly mitigated. Without more, this appears to be unbridled deception - as well as illegal piecemealing.

V. The DEIR's Sound/Noise Analysis is Fatally Flawed

In summary, and noted further in the attached comments re Sound & Noise, the DEIR violates CEQA's fundamental public-informational purposes, and initial, threshold requirement to accurately and fully disclose and describe the proposed Project's potentially

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O-57-17 See Consolidated Response 4.1, *Project Description*, which includes a discussion of alleged piecemealing and negotiations related to the Project, as well as Section 4.22.2, *Financial Considerations, Community Benefits, and Other Miscellaneous Opinions*, in Consolidated Response 4.22, *General Non-CEQA*. For comments related to Seaport Compatibility Measures, see Consolidated Response 4.4, *Port Operations and Land Use Compatibility*, and Section 4.1.3.

O-57-18 The significance criteria for construction-related noise impacts are presented on Draft EIR p. 4.11-25. Specifically, the criteria for construction noise are codified in Section 17.120.050 of the City of Oakland Planning Code and presented in Draft EIR Table 4.11-9. The maximum allowable receiving noise standards for temporary construction or demolition activities are the contribution of the construction activity only. While the analysis notes on Draft EIR p. 4.11-31 that "existing daytime noise levels at the Phoenix Lofts were measured to be between 76 and 81 dBA and therefore already exceed the daytime construction noise standards," this statement was inserted to provide context only. The predicted noise levels at the Phoenix Lofts from construction activities presented in Draft EIR Table 4.11-13 are solely compared to the applicable standards in Table 4.11-9 (65 A-weighted decibels [dBA] for residential uses). These predicted values represent hourly average noise levels generated by multiple pieces of equipment operating simultaneously. Because predicted construction noise levels at the Phoenix Lofts from the operation of equipment (and neglecting the existing elevated noise levels) would exceed the applicable 65 dBA standard, a significant construction noise impact was identified and mitigation measures were also identified.

The construction noise analysis only considers ambient noise in its assessment of nighttime construction noise because, as stated on Draft EIR p. 4.11-35, the City of Oakland Noise Ordinance states that if the ambient noise level exceeds the applicable standards, the standard shall be adjusted to equal the ambient noise level.

To address the significant and unavoidable construction noise impacts of the proposed Project, the Draft EIR identified the following specific mitigation measures for Impact NOI-1 (see pp. 4.11-38 through 4.11-41):

- Mitigation Measure NOI-1a: Construction Days/Hours

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- Mitigation Measure NOI-1b: Construction Noise Reduction
- Mitigation Measure NOI-1c: Project-Specific Construction Noise Measures
- Mitigation Measure NOI-1d: Construction Noise Complaints
- Mitigation Measure NOI-1e: Structural Improvements or Off-site Accommodations for Substantially Affected Receptors

It is acknowledged that the identified mitigation measures addressing construction would not be sufficient to fully reduce the construction noise impact to a less-than-significant level. Consequently, the Draft EIR identified the construction noise impact as significant and unavoidable.

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significant sound and noise impacts – all of which are essential to ever hoping to feasibly mitigate them – including by:

(A) inaccurately exaggerating Phoenix Lofts' existing, baseline sound/noise conditions and levels (which, contrary to CEQA, artificially deflates or discounts the very substantial "added noise from the Project", including from both construction-related demolition, soil compaction, pile-driving, etc., and ongoing operations, ball games, and events), thereby leaving the larger-than-disclosed impacts either under-mitigated, or unmitigated);

(B) improperly under-reporting the Project's "added impacts"; and

(C) falsely claiming that mitigation will suffice, proposing essentially useless mitigation measures ("MM"), and failing to disclose, address, or mitigate the *additional* impacts from the proposed MM themselves.

For example, while covering Phoenix Lofts in some gargantuan "sound barrier curtain" or similar shield may well block some noise, it will *also* block light into the live/work units – for very long periods of time - rendering occupancy intolerable. As noted above, this is yet another example of not only CEQA violations, but also abject failures to comply with AB 734.

Likewise, the rather insufficient "band-aid" notion of "funding alternate living arrangements for PL residents during Phase I of construction" not only highlights how truly dire the Project's impacts will be, but leaves a host of rather crucial questions unanswered, such as: "Will the Project sponsor find such potential alternate living space(s), or will PL residents have to?" "How will we/they determine what's acceptable?" "If Phase I lasts longer than the expected two (2) years, will the Project sponsor fund additional time (e.g., as required by a yearly lease)?" "What if any PL owners want to, or must, sell their unit(s) during such construction phase(s)? Logically, since the unit(s) would be unscalable during such lengthy period, how is/are the owner(s) to be compensated for such delays/losses?"

In sum, due to the Project's insufficiently disclosed, under- and unanalyzed, yet clearly horrific noise impacts on the immediately adjacent Phoenix Lofts (in addition to its dire shade, wind, air quality, and other impacts), the *only truly feasible, satisfactory mitigation is to permanently relocate* the owners/residents, via reasonable buy-out. Otherwise, there will surely be years of litigation against the City and Project sponsor validly challenging the errant Project approvals, followed by further, unending suits for legitimate trespass, nuisance, inverse condemnation/regulatory takings, private enforcement of zoning/land use regulations, and similar claims or causes of action.

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O-57-19 The commenter is referring to Mitigation Measure NOI-1e, one of a series of measures that address impacts from construction noise. Mitigation Measure NOI-1e would require the Project sponsor to provide either physical improvement(s) or alternate accommodations to residents of the Phoenix Lofts during pile driving when it occurs within 300 feet and there is a direct line of sight. Using acoustical blankets (on the side of the building in the direct line of sight) is one option, installing storm windows is another, and offering off-site accommodations is a third option. This mitigation measure is in compliance with CEQA requirements, and the commenter has not provided any evidence of related CEQA "violations".

It should also be noted that the various mitigation options identified in Mitigation Measure NOI-1e for construction noise (storm windows, acoustic blankets, off-site relocation) would be selected at the option of the occupants of the Phoenix Lofts; no occupant would be required to accept the placement of acoustic blankets and the accompanying loss of light.

With respect to the commenter's reference to the AB 734, see Response to Comment O-57-4 regarding the AB 734 certification process.

O-57-20 With respect to mitigation measures specific to residents of the Phoenix Lofts at 737 2nd Street, Mitigation Measure NOI-1e, Physical Improvements or Off-site Accommodations for Substantially Affected Receptors, is identified on Draft EIR p. 4.11-41 to provide physical improvements or temporary accommodations for residents of the Phoenix Lofts during impact or vibratory pile driving activities when it occurs within 300 feet with a direct line of sight for the duration of the pile driving activity. The duration of these activities in such proximity would reasonably be expected to be less than six months. Any renters or owners opting to be relocated would still have access to their properties; they would simply be offered another location in which to dwell while these activities occur, which would not prevent them from returning to their residences and would not represent a "taking" of property.

The temporary relocation plan that would be developed by the Project sponsor and submitted to the City's Department of Planning & Building for review would specify the duration of the accommodation and the type of accommodation, which may include a hotel or a local vacation rental.

The financial issues relating to potential relocation are an economic issue, not an environmental issue.

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O-57-21 Construction-related noise impacts are assessed on Draft EIR pp. 4.11-28 through 4.11-41.

To address the significant and unavoidable construction noise impacts of the proposed Project, the Draft EIR identified the following mitigation measures on pp. 4.11-38 through 4.11-41:

- Mitigation Measure NOI-1a: Construction Days/Hours
- Mitigation Measure NOI-1b: Construction Noise Reduction
- Mitigation Measure NOI-1c: Project-Specific Construction Noise Measures
- Mitigation Measure NOI-1d: Construction Noise Complaints
- Mitigation Measure NOI-1e: Structural Improvements or Off-site Accommodations for Substantially Affected Receptors

It is acknowledged that the identified mitigation measures addressing construction would not be sufficient to fully reduce the construction noise impact to a less-than-significant level. Consequently, the Draft EIR identified the construction noise impact as significant and unavoidable.

Draft EIR Mitigation Measure NOI-1e, Physical Improvements or Off-site Accommodations for Substantially Affected Receptors, p. 4.11-41, calls for physical improvements or temporary accommodations to be provided for residents of the Phoenix Lofts (737 2nd Street) during impact or vibratory pile driving activities when it occurs within 300 feet with a direct line of sight for the duration of the pile driving activity. The duration of these activities in such proximity would reasonably be expected to be less than six months. Any renters or owners opting to be relocated would still have access to their properties; they would simply be offered another location in which to dwell while these activities occur, which would not prevent them from returning to their residences and would not represent a "taking" of property. Therefore, permanent relocation was not considered as a proportionate or feasible mitigation measure. The construction impacts would be temporary and not permanent; therefore, permanent relocation is not an appropriate mitigation measure under CEQA, because it would be inconsistent with the "legal nexus" requirement that the mitigation be reasonably related and roughly proportional to the impact.

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VI. The DEIR's Vibration & Structural Analyses Are Fatally Flawed

As noted herein (see, e.g., attached comments re Vibration, Soils, Structure, etc.), the DEIR also violates CEQA's fundamental public-informational purposes, and initial, threshold requirement to accurately and fully disclose and describe the proposed Project's potentially significant impacts – all of which are essential to ever feasibly mitigating them – by failing to analyze the potentially significant vibration and similar impacts on the Phoenix Lofts, e.g., from the Project's years' worth of unending pile-driving, soil compaction, placement/storage of soil, debris, and other materials – all very near affected buildings, like Phoenix Lofts, etc. As such, contrary to CEQA and the City's own land use ordinances (e.g., to preserve and protect existing uses, site together only compatible uses, etc.²), these key impacts are left undisclosed, unanalyzed, and unmitigated.

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VII. The DEIR's Analysis of Biological Resource Impacts is Fatally Flawed

Examples include, without limitation, the lack of substantial evidence supporting the notions that impacts to resident and migratory birds – e.g., from building-strikes/collisions, injuries and deaths likely in the thousands per year, constituting illegal “take” of endangered/protected/listed species - have been adequately disclosed, analyzed, or feasibly mitigated. Also, the DEIR's failures to show how the proposed Project will satisfy the City's governing bird protection rules/ordinances violate both CEQA and AB 734.

O-57-23

VIII. The DEIR's Analyses of Shade (Energy), Wind, and Views Are Deficient

See the attached spreadsheet/comments noting the DEIR's failures to disclose, analyze, and mitigate the proposed Project's myriad adverse Shade (Energy), Wind, and View impacts. For example, while the DEIR admits Phoenix Lofts is the “closest (noise-) sensitive land use to the Project site” - at only “150 feet away from a Project-proposed 250-foot tower near the northern Project boundary, and approximately (only) 400 feet from the proposed ballpark” (DEIR, p. 4.11-11) – the DEIR's analysis of various Project-created shade impacts largely ignores the Phoenix Lofts simply because they do not currently not have solar panels. Consequently, the DEIR fails to assess – much less mitigate – the fact that, *for very significant portions of the year Phoenix Lofts (including its celebrated rooftop amenities (sometimes referred to as “PL407”), balconies, and large windows) will be left in the huge shadows of highrises, without any sunlight whatsoever.* In addition to making living/working there potentially intolerable, the DEIR ignores that the concrete building

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² For example, the City's General Plan (“GP”) Policy I/C4.2 (applicable to the *Business Mix* land use designation), requires the City to “Minimiz[e] Nuisances,” i.e., avoid creating nuisance impacts of existing industrial uses on residential land uses (and presumably, vice versa; via similar rules) “through appropriate siting and efficient implementation and enforcement of environmental and development goals.” (*Id.*, p. 42.) Similarly, GP Policy I/C4.1 requires the City to “protect” existing (industrial) activities “from the intrusion of potentially incompatible land uses.” (*Id.*) These and similar City mandates broadly prevent or discourage approving/siting new uses or projects that would directly threaten, conflict with, or cause nuisances as to existing businesses, residents, or uses.

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O-57-22 Construction-related vibration impacts with respect to building damage in general are assessed on Draft EIR p. 4.11-44. Additionally, construction-related vibration impacts with respect to building damage on historic structures, including 737 2nd Street, are assessed on Draft EIR p. 4.4-24.

Construction-related vibration impacts with respect to building damage to 737 2nd Street were determined to be less than significant with implementation of Mitigation Measure CUL-2, Vibration Analysis for Historic Structures. This mitigation measure states that before any vibratory construction within 150 feet of a historic resource, the Project sponsor shall submit a vibration analysis prepared by an acoustical and/or structural engineer or other appropriate qualified professional for City review and approval. The vibration analysis must establish preconstruction baseline conditions and threshold levels of vibration that could damage the structures and/or substantially interfere with activities located at 737 Second Street. The analysis must then identify design means and methods of construction that shall be utilized to avoid exceeding the thresholds. Preparing such an analysis before more specific information is available about the location and design of nearby buildings or site improvements would not provide meaningful information on the required mitigation and could result in incomplete recommendations.

O-57-23 See Response to Comment O-57-9 for how the Project would comply with AB 734 and the City of Oakland's Bird Safety Measures by implementing Mitigation Measure BIO-1b, Bird Collision Reduction Measures, which lists specific requirements for Project building and landscape design and operation to avoid or minimize impacts related to avian collisions to a less-than-significant level.

O-57-24 As explained on Draft EIR p. 4.1-19, the City considers shadow to result in a significant impact if it would:

- Cast substantial shadows on existing solar collectors;
- Substantially impair the function of a building using passive solar heat collection, solar collectors for hot water heating, or photovoltaic solar collectors;
- Substantially impair the beneficial use of any public or quasi-public park, lawn, garden, or open space;

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- Materially impair the historic significance of a historic resource by interfering with the characteristics that convey its historic importance and justify its listing on one or more registers of historical resources; or
- Fundamentally conflict with General Plan, Planning Code, and Building Code policies regarding provision of adequate lighting.

The only criterion that is applicable to the Phoenix Lofts is solar panels or other solar collectors. As noted by the commenter, the Phoenix Lofts (737 Second Street) do not have existing solar panels or other solar collectors. Accordingly, the Project would not “cast substantial shadows on existing solar collectors” or “substantially impair the function of a building using passive solar heat collection, solar collectors for hot water heating, or photovoltaic solar collectors.”

It is true that the Project would construct buildings up to 600 feet in height along the south side of Embarcadero West, across the street from the Phoenix Lofts. However, while the Project would block direct sunlight from reaching the Phoenix Lofts during at least portions of the afternoon except around the summer solstice, there would be sufficient distance between Project buildings and the Phoenix Lofts—a minimum of about 200 feet—that ample indirect light would reach this building. Moreover, direct sunlight would continue to reach the Phoenix Lofts during the morning hours except around the winter solstice in December, when direct sunlight would be available during only parts of the early morning. Because Project shadow falling on the Phoenix Lofts would not trigger any of the significance thresholds noted above, this shadow would not result in a significant impact.

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itself will no longer be passively warmed/heated by the sun. As noted in the attachments, it goes without saying that existing views will be obliterated, and the Project would cause increased, concentrated wind tunnels, for which (as noted above) the proposed MM are patently inadequate.

IX. The DEIR's Analysis of Health Impacts (Traffic, Air Quality, Pollution) is Fatally Deficient

See the attached spreadsheet noting the DEIR's failures to disclose, analyze, and mitigate the proposed Project's myriad adverse Health Impacts, including as to Traffic, Air Quality, Pollution, etc. For example and without limitation, while the DEIR admits that the Phoenix Lofts residents are the "closest (noise-)sensitive land use to the Project site" - at only "150 feet away from a Project-proposed 250-foot tower near the northern Project boundary, and approximately (only) 400 feet from the proposed ballpark" (DEIR, p. 4.11-11) - most of the DEIR's discussion and analyses of various Project-created risks (including cancer- and non-cancer health risks) inexplicably omit mention of the extremely close, direct effects on said Phoenix Lofts residents. (See, *Id.*, Sections 4.3, 4.5-4.7, 4.9-4.10, 4.12-4.17; Chapters 5-8, inclusive; Appendices 1-6, inclusive.)

X. Miscellaneous, Additional CEQA/Other Defects

Finally, for example and without limitation, while the DEIR claims the Project's failure to provide or create adequate parking spaces, causing "parking deficiencies", are absolutely "not cognizable under CEQA", the cited statute (Pub. Res. Code §21099) states that "This section does not affect the authority of a public agency to establish or adopt thresholds of significance that are more protective of the environment." (*Id.*, subd.(e).) Thus, if or to the extent the City or other relevant agencies have established/adopted such "more protective" thresholds or standards, the DEIR's failure to analyze and mitigate parking impacts is fatal.

Also, among other things (e.g., as noted in the attached "Miscellaneous/Other Issues" comment spreadsheet), the DEIR also fails to disclose, analyze, or mitigate the proposed Project's severely negative Urban Decay and Quality of Life impacts.

XI. Conclusion

For the above reasons, our clients respectfully request that the City not consider, certify, or approve the DEIR or Project - unless and until both are substantially revised to correct their many legal defects, and such revisions are recirculated for further, required public review and comment.

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O-57-25

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O-57-25 As explained on Draft EIR p. 4.1-1, in accordance with CEQA Section 21099(d), which was added by SB 743 (2013), the 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." Aesthetics is not considered in identifying the Project's significant environmental effects because it meets the applicable criteria identified in Section 21099(d). 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. The Draft EIR contains an extensive analysis of changes in views (Impact AES-1, p. 4.1-23) that is expansively illustrated with visual simulations of the proposed Project. As shown in Draft EIR Figures 4.1-13 and 4.1-14 (pp. 4.1-30 and 4.1-31), views toward the Oakland-Alameda Estuary would be substantially obstructed by the proposed Project. This change would be even more dramatic from the Phoenix Lofts, where the Project would construct buildings up to 600 feet in height along the south side of Embarcadero West, across the street from and about 150 feet south of the Phoenix Lofts.

O-57-26 See Responses to Comments O-29-74 and O-57-14.

O-57-27 Consistent with the City's adopted thresholds of significance, transportation impacts are analyzed in the Draft EIR using vehicle miles traveled and do not use traffic volumes on local roads like those near the Phoenix Lofts. The noise analysis in the Draft EIR considers potential impacts at the Phoenix Lofts location (noise monitoring location LT-3), reporting on existing noise levels (Draft EIR p. 4.11-11), impacts of nighttime and daytime construction noise (Draft EIR pp. 4.11-36 and 4.11-37), and impacts of operational noise (Draft EIR pp. 4.11-47 and 4.11-48). Mitigation measures are provided to reduce the severity of the noise impacts (see Responses to Comments O-57-18 and O-57-21).

The Draft EIR thoroughly evaluates air quality impacts under CEQA, as explained throughout the City's responses to public comments. The commenter is incorrect that the Draft EIR omits discussion and evaluation of the Project-related health risks that Phoenix Loft residents may experience as a result of air pollutant emissions. To the contrary, the maximum off-site health risk impacts were found to occur at the Phoenix Lofts. Impact AIR-4 finds that the Maximally Exposed Individual Receptor (MEIR) is located at the Phoenix Lofts at 737 2nd street (Draft EIR pp. 4.2-102, 4.2-103, and 4.2-108).

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The same MEIR is identified in Impact AIR-2.CU (Draft EIR pp. 4.2-146 and 4.2-147). See also Appendix AIR.1 Figures 9A, 9B, 9C, and 9D for the off-site MEIR locations.

O-57-28 Parking impacts are not a CEQA significance criterion per the *City of Oakland Transportation Impact Review Guidelines*, Chapter 5, *CEQA Analysis*. 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 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 4.7, *Parking*, which describes the non-CEQA parking analyses completed during preparation of the Draft EIR, as well as Mitigation Measure TRANS-1b, which would implement a Transportation Management Plan (TMP) for ballpark events. One component of the TMP is a parking management plan, a copy of which is provided in the Draft EIR's Additional Transportation Reference Material.

O-57-29 See Consolidated Response 4.15, *Urban Decay*. "Quality of life impacts" is an undefined term that does not permit a specific response. The Draft EIR includes a thorough analysis of physical environmental impacts of the proposed Project, including impacts on nearby residents.

O-57-30 See Responses to Comments O-57-1 through O-57-29. The City has prepared the EIR in accordance with CEQA requirements with the purpose of informing both the public and decision makers of the environmental consequences of implementing the Project. Regarding the statement that the Draft EIR should be revised and recirculated, information has been added to the Draft EIR in response to comments and as City-initiated updates (see Chapter 7, *City-Initiated Updates and Errata in the Draft EIR*). However, 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, 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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COMMENT

COMMENT

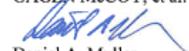
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Thank you for providing our clients the opportunity to comment on this ill-conceived, proposed Project, and please do not hesitate to contact me if you have any questions regarding the above.

Sincerely,

GAGEN McCOY, et al.



Daniel A. Muller

- Attachments: A) Further Comments re Sound & Noise
B) Further Comments re Vibration/Structure (plus articles/excerpts)
C) Further Comments re Shade/Wind/Views (plus photo renderings)
D) Further Comments re Health & Safety (Traffic, Air Quality, Pollution)
E) Further Comments re Miscellaneous/Other Issues

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EXHIBIT A

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RESPONSE

O-57-31 See Response to Comment O-57-18.

O-57-32 See Response to Comment I332-1-2.

O-57-33 See Response to Comment I332-1-38 regarding Mitigation Measure NOI-3 and noise impact considerations for existing residents and Consolidated Response 4.11, *Quiet Zone*, regarding quiet zones and train noise.

		SOUND/NOISE	
DEIR pp	Section	Concern	Supporting Documents
O-57-31	4.11-8 4.11-30 4.11-31	4.11.2 Regulatory Setting and Table 4.11-13	<p>The statements that "the current sound levels are already high" at Phoenix Lofts is erroneous and misleading (e.g., assumes an average, and/or based on the day's peak); they do not take into account that the peaks are less frequent than proposed by Project construction schedule of consistent, constant noise from equipment and activities such as demolition, pile-driving, etc.</p> <p>As can be seen from Table 4.11-13, the contribution of demolition noise at residential receptors would vary from 57 to 72 dBA. Noise levels at the Phoenix Lofts (the nearest sensitive receptor) would exceed the standards established in the City of Oakland Noise Ordinance (Oakland Planning Code section 17.120.050) which restricts construction of more than 10 days to 65 dBA during daytime hours at the nearest receiving property line (see Table 4.11-9). Resultant noise levels at all other Oakland receptors would be below this 65 dBA daytime standard. Therefore, mitigation measures are identified to reduce this Project Phase 1 construction noise impact to the Phoenix Lofts. It should be noted that existing daytime noise levels at the Phoenix Lofts were measured to be between 76 and 81 dBA and therefore already exceed the daytime construction noise standards. Noise levels at receptors in the City of Alameda from non-exempt demolition activity on Sundays would be 58 dBA, Leq which would exceed the City of Alameda daytime noise standard of 55 dBA, L50.</p>
O-57-32	4.11-35	4.11.2 Regulatory Setting and Table 4.11-2	<p>Night and Day time sound levels are drastically different as the train and traffic activities drop off considerably</p> <p>For nighttime construction activities during the hours of 7:00 p.m. to 7:00 a.m. on weekdays and 8:00 p.m. to 9:00 a.m. on weekends and federal holidays, noise level limits received by any land use from construction or demolition are not addressed by standards in Table 4.11-9 but, rather, according to the City of Oakland Noise Ordinance, these nighttime construction noise levels shall not exceed the applicable nighttime operational noise level standards in Table 4.11-8, which for residential uses would be 45-dBA (L33) (see Table 4.11-8). The ordinance further states that if the ambient noise level exceeds these standards, the standard shall be adjusted to equal the ambient noise level. However, as shown in Table 4.11-2, existing L33 noise levels on and surrounding the Project site already exceed the applicable 45 dBA standard at the south (58 dBA), west (68 dBA), and north (63 dBA) Project site boundaries; and at the nearest sensitive receptor – Phoenix Lofts (65 dBA). Consequently, as required by the ordinance, the existing ambient level at each respective boundary would be the applicable nighttime construction standard.</p>
O-57-33	2-6	2.2.1 Significant and Unavoidable Impacts - Noise and Vibration:	<p>As noted above our ambient noise level (supposedly) already exceeds allowable limits. What are they going to do to reduce the impact to neighborhood?</p> <p>The Project would result in increases in ambient noise in excess of the City's threshold and in violation of the Noise Ordinance as a result of noise from concert events, increased roadway traffic noise at full Buildout, and noise from crowds leaving the</p>

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O-57-33 cont.	1	4.11	DEIR notes the potential for increases in train horn activity due to increased pedestrians	One of the single biggest contributors to average noise at PL is train horn, an increase would have significant detrimental impact
O-57-34	5	4.11.1 (bullet points top of page)	DEIR notes that an increase in 10dB is perceived as twice as loud - this is on the scale of the proposed increase due to construction (from an already over-inflated overage assumed for PL)	this is the approximate increase expected for PL residents for many of the construction activities
O-57-35	11	4.11.2 (Noise Monitoring Location LT3)	DEIR discusses average hourly noise levels but does not mention median figures - average values include periodic high dB events from train horn - this is vastly different than constant noise from construction at or higher than same levels - would like to see median figures and data excluding train horn peaks)	Train horns may be eliminated if sufficient 4 gate barriers around crossings are introduced, if so, average hourly noise levels at PL would be substantially reduced - as a result comparison and increase due to project will be highly significant
O-57-36	30	Table 4.11-13	Data around noise levels from various construction activities and shows that would exceed standards in City Noise Ordinance. Description that PL already exceeds daytime noise levels does not take into account the impact of high dB sporadic events (train horn noise).	
O-57-37	34	4.11-34	Suggested measures to reduce noise at ground level can have 2dB impact and is enough to change to "less than significant" - the extent of the activities is unclear on the impact across various levels of elevation at PL (floors 1-5)	Responding to and tracking noise complaints is not enough, need to proactively mitigate noise instead of reacting to it.
O-57-38	35	4.11-34 (Table 4.11-14)	Comparison of existing nighttime vs. crane and concrete pours does not take into account the constant vs. intermittent noise sources	Table highlights compaction and pile installation - how frequent are these expected to be (sporadic vs. constant)?
O-57-39	41	Mitigation Measure NOI-1e:		The relocation plan is not outlined so cannot comment, but should be developed to understand any potential issues and/or completeness of proposal.
O-57-40	4.11-47	Operational Impacts	The DEIR minimizes noise impacts from ballpark events by inconsistent use of the terms temporary noise and ambient noise. Noise from train horns and trains moving down the tracks are identified as contributors to ambient noise levels even though such noise occurs on an intermittent basis when trains are passing by the Phoenix. In contrast, the DEIR describes the noise from ballpark events as a "temporary noise increase" even though they will presumably exist as long as the ballpark is in operation. In so doing, the DEIR incorrectly uses the term "temporary noise increase" to describe	

O-57-34 See Response to Comment O-57-21.

O-57-35 As stated on Draft EIR p. 4.11-42, train horn blasts can generate noise levels in excess of 100 dBA at Location LT-3b (southside of Phoenix Lofts). Grade separations and rail safety improvements would likely decrease the frequency of train horn operations along the alignments where they occur. See Section 4.11, *Quiet Zone*. See also Consolidated Response 4.9, *Alternative 3: The Proposed Project with Grade Separation Alternative*.

O-57-36 See Response to Comment O-57-18.

O-57-37 See Response to Comment O-57-20 and O-57-21.

O-57-38 See Response to Comment O-57-21.

O-57-39 See Response to Comment O-57-21.

O-57-40 See Response to Comment I332-1-23.

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O-57-41 See Response to Comment O-57-20 and O-57-21.

O-57-42 See Response to Comment I332-1-28.

O-57-40 cont.		what will, in fact, be a permanent increase in noise that occurs on an intermittent basis. In other words, if the increase in noise levels when trains pass by the building contributes to ambient noise levels, the increase in noise levels that occurs when there are ballpark events must be considered part of the ambient noise level as well. The failure to distinguish temporary increases in noise, such as those from construction activities, from intermittent increases in noise, which will go on as long as the source, either ballpark events or trains passing by the Phoenix, continues to exist.	
O-57-41	4.1-33 and 4.11-41	Construction Noise Mitigation MM proposed for significant noise impacts during construction would (themselves) have significant adverse impacts on Phoenix Lofts occupants. E.g., sound barrier curtains and other types of noise barriers might block some noise, but they would also block light to the dwelling units and work spaces in the building, making occupancy impossible. The DEIR refers to temporary relocation of residents to hotels and other sites, but there are also businesses that operate in the Phoenix Lofts both in conjunction with a residential use of the same unit (i.e. live-work unit) or in units that are totally occupied by a commercial use. In both cases, the disruption of business activities can result in a loss of business revenue as has been amply demonstrated by recent shut-downs required for public health reasons. It is impossible to determine whether relocation would occur for weeks, months, or years at a time - during which time building occupants are obliged to continue paying rents, mortgages, insurance, and other expenses. Feasible relocation plans (MM) must be presented to affected building occupants for review and acceptance, before any noise-producing construction activities can commence.	
O-57-42	4-11-47	Tables 4.11-18 and 4.11-19 If (as noted above) the standards of the City's Noise Ordinance (Oakland Planning Code section 17.120.050) - which restricts construction of more than 10 days to 65 dBA during daytime hours at the nearest receiving property line - then why is the DEIR's receptor location on the north side of Phoenix Lofts rather than the south (nearest) side, which includes both commercial and residential uses and would be more directly affected by noise?	

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EXHIBIT B

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O-57-43 See Response to Comment I332-1-15.

O-57-44 See Response to Comment I311-3-1 and I311-3-2.

O-57-45 See Response to Comment I311-3-3.

		Vibration, Geology, Soils, Structures	
DEIR pp.	Section	Concern	Supporting Documents / Expert Analysis
O-57-43	7-3	Demonstrably effective MM (rather than those proffered) that reduce effects of vibration and noise on Phoenix Lofts and surrounding residents/businesses to "less than significant levels" must be in place prior to start of construction; impacts must be professionally monitored during the entire construction process; and if any MM are found to be ineffective at preventing damage, activities suspected to affect subsidence, structural integrity, etc. must stop.	
O-57-44	4.6-1 Geology section has vibration impacts	<p>The section on Geology/Soils inappropriately narrowly construes the impact assessment criteria - with the entire focus on the building/Project site, rather than potential construction impacts, longer term settlement, or other related impacts to adjacent areas, including 737 2nd Street (PL) and West Oakland, e.g., impacted communities.</p> <p>Will the immediately adjacent residential (and other) building foundations and concrete structures in West Oakland, and specifically at 737 2nd Street (PL), be damaged or weakened by pile-driving and other Project activities, and thus made more susceptible to future strong ground shaking, motion, liquefaction?</p> <p>DEIR needs to address how construction activities such as pile-driving, overloading of the Project site (and possibly adjacent areas) by fill, soil compaction, debris loading, and structure placement can cause settlement or other geotechnical/structural problems on adjacent properties. E.g., there's no analysis of how placing large quantities of fill affects the adjacent subsurface soil conditions, by loading and transference of load in the saturated, low strength, and poorly consolidated soil and un-documented fill adjacent to the site, including the rail line.</p> <p>Also, how valid or useful can be any notions or claims that the geotechnical report was somehow peer-reviewed by "qualified" staff at ESA, who are not known as qualified in the fields of geotechnical, seismic engineering, etc.? What are the geotechnical etc. qualifications and professional licenses of ESA's supposed "peer review" staff?</p>	
O-57-45	Geology Appendix pp 103-108	Figures are not rendered correctly - no scale on figures (show as "????????") calls into question the expertise and supposed "peer review" of the consultants and City - how can these figures and/or conclusions	

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RESPONSE

- O-57-46 See Response to Comment I-334-25.
- O-57-47 See Response to Comments O-57-22 and I-311-3-5.
- O-57-48 See Response to Comment O-57-21.
- O-57-49 See Response to Comment I332-1-3.
- O-57-50 See Response to Comment I311-3-9.
- O-57-51 See Response to Comment I-307-3 for further discussion regarding 737 2nd Street, its status as a historic resource, and consideration of impacts as a result of the Project.

		represent competent, substantial evidence if mistakes - which are supposed to show conclusions - are unreadable?	
O-57-46	4.11 1-23	4.11 pp 1-23 There is long term monitoring at the Phoenix Lofts which claims that average hourly noise levels are 76-81 dBA during the day. This seems inaccurate, too high, to us. It later states there are MM to be employed, but seem particularly inadequate, particularly re pile-driving, compaction, etc.	
O-57-47	4.11.2 pp 14-25	4.11.1 pp 14-25 Vibration is mentioned with respect to noise created, but there is nothing regarding damaging soils, or our (PL) foundation. DEIR claims structures more than 150 ft from the site will not be affected, without support. What happens when we see a degradation to our foundation during construction, or afterward?	
O-57-48	4.11.4 pp 26-28	4.11.4 pp 26-28 Pile-driving and soil compaction will create substantial noise effects above allowable limits. There will be 2,000 piles driven, just for the ballpark. Trying to work in the Phoenix Lofts during this process will be impossible. Even if the existing daytime noise levels somehow plausibly exceeded daytime construction noise standards (which cannot be the case), pile-driving and compaction create different kinds of noise problems, e.g., preventing talking on the phone, meeting in person, or just plain thinking.	
		MM proposed includes working from 7:00 AM to 7:00 PM M-F for 2 years of pile-driving? Carrying on normal business, sanely living at PL during this period will be impossible.	
O-57-49	4.11.4 p 40	4.11.4 p 40 The MM "Temporary Plywood, "quiet" pile-driving, noise control blankets, "additional attenuation measures", monitoring - all seem skimpily described and woefully inadequate. As to "temporary relocation of occupants of the Phoenix Lofts during Phase 1 of construction", the only MM feasible is simply buying the owners/residents' units.	
O-57-50	4.11.4 p 47	4.11.4 p 47 How can noise Levels during events seem not to affect the Phoenix Lofts? Implausible.	
O-57-51	4.4 Table 4.4.1	4.4 Table 4.4.1 In addition to the other comments herein, after improperly discounting any potential damage, there is no MM in the event that the DEIR overlooked something. E.g., what happens if there are effects after the ballpark has been built, or during construction process? This is the first mention of Phoenix Lofts as an Age Eligible Potential Historic Resource, but it then inexplicably (without substantial evidence) states there is no reason to consider it because it doesn't qualify?	

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RESPONSE

O-57-52 See Response to Comment O-57-22.

O-57-53 See Response to Comment I311-3-1.

O-57-54 See Response to Comment I-334-26.

O-57-52	4.4.	4.4-24-25	Again, the report mentions Vibration as not being an issue for structures that are more than 150 ft from the building site. What/where is the substantial evidence, and what is Phoenix Lofts' recourse if this turns out untrue?	
O-57-53	A.09	3.2.4 Liquefaction, p 15	DDC may not be feasible within approximately 400 feet of existing structures and other vibration sensitive improvements; in these areas, RIC is likely the preferred option for ground improvement.	This process produces large vibrations in the soil that can adversely affect nearby existing structures. It is important to review the nearby adjacent facilities for vibration sensitivity, and to document their preexisting condition, especially structures within 150 m of planned drop locations. See, e.g., https://www.sciencedirect.com/topics/engineering/dynamic-compaction (copy attached)
O-57-54	A.09	3.2.4 Liquefaction p 14	Based on local experience and our understanding of the composition and depth of the hydraulically placed fill, we anticipate Direct Power Compaction (DPC) can be used in Zone 1A to densify the fill. This "analysis" is woefully inadequate.	Direct Power Compaction (DPC) – a Deep Vibro-Compaction method, is an efficient and highly economical technique for densifying loose sandy soils. In the procedure, H-piles are driven in the ground using a combination of downward and vibratory force. see, e.g., https://jafecusa.com/technology/direct-power-compaction/ (copy attached) Construction vibration induced soil heave and settlement. The main reason for the damage due to construction vibration is soil settlement, because it affects directly beneath the foundation for heritage or old buildings (like PL); this may cause significant damage and failure. See, e.g., https://www.researchgate.net/profile/Mohamed-Ramadan-

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21/publication/333022406_Influence_of_Construction_Induced_Vibrations_on_Soil_and_Adjacent_Structures/links/5c66e47092857c4eab9541ed/Influence-of-Construction-Induced-Vibrations-on-Soil-and-Adjacent-Structures.pdf
(excerpts attached, for convenience)

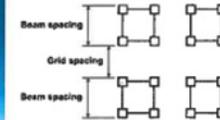
4/26/2021

Direct Power Compaction – JAFEC USA, Inc.

Direct Power Compaction

GROUND DENSIFICATION / MITIGATION FOR LIQUEFACTION

Direct Power Compaction (DPC) – a Deep Vibro-Compaction method, is an efficient and highly economical technique for densifying loose sandy soils. In the procedure, H-piles are driven in the ground using a combination of downward and vibratory force to move particles of the sandy soil closer together and reduce the voids between them. Subsequent backfilling and vibration at the H-pile sites achieve the highest density possible.



HOW IT WORKS

<https://jafecusa.com/technology/direct-power-compaction/>

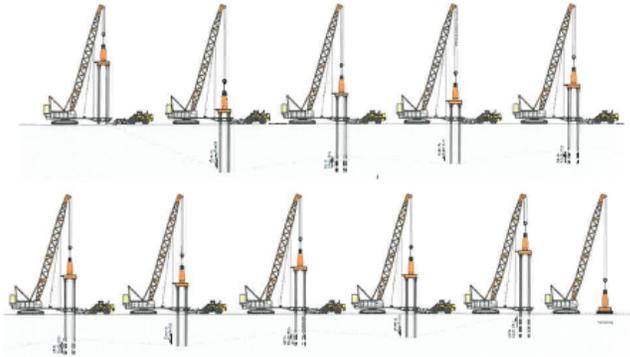
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Direct Power Compaction – JAFEC USA, Inc.



Using H-piles, vibratory energy is delivered directly into the ground. The typical configuration is a quadruple axial DPC rig with a Vibro-hammer at the top of each pile. The extent of the treatment required for optimal densification depends on the fines content and grain size/geometry of the soil being compacted. The best results are realized in sandy soils with low fines content (see Table 1, below). For loose sands/granular soils, the DPC method yields results equivalent to those of other densification/compaction methods, but the simplicity and speed of the DPC method make it the most efficient and economical solution for the improvement of sandy soils.

Material Fine Content for DPC and Efficiency

Fine Content	Efficiency	Constructability & Quality	Study Item	Cost Ratio	Construction Time Ratio
0-10%	High	Good	-	1.0	1.0
10-15%	Medium	Acceptable	-	1.0	1.1-1.2
15-20%	Low	Lower quality; need evaluation	Cycle time or alternative	1.2-1.5	1.2-1.5
> 20%	Poor	Need study or change method	Consider alternative	2.0-3.0	1.0-2.0

DPC BENEFITS:

- DPC densifies sandy soils both above & below the GWT to greater depths than dynamic compaction.
- DPC is ideal for the densification of reclaimed fills (dredge spoils).

<https://jafecusa.com/technology/direct-power-compaction/>

4/26/2021

Direct Power Compaction – JAFEC USA, Inc.

- DPC is an efficient and economical process with a proven track record.
- Well established QA/QC leads to high quality, consistent results.

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Dynamic Compaction

Dynamic compaction is one of the oldest soil improvement methods known, reportedly used by the Romans prior to 100 ad and in the United States as early as the 1800s (Weish, 1986).

From: *Soil Improvement and Ground Modification Methods*, 2014

Related terms:

Energy Efficiency, Penetration, Load Reheaters, Compressive Strength, Impact Compaction, Prefabricated Vertical Drain

Deep Densification

Peter G. Nilsson, in *Soil Improvement and Ground Modification Methods*, 2015

6.1.3 Dynamic Compaction

Dynamic compaction (DOC, heavy tamper, dynamic consolidation, etc.) is a cost-effective method of soil compaction whereby a heavy weight is repeatedly lifted and dropped from a height, impacting the ground surface with a readily calculated impact energy (Figures 6.12 and 6.13). Cuts are reportedly about 20% that of stone columns, with up to 50% savings over other deep densification alternatives (www.dorlog.com). Dynamic compaction is one of the oldest soil improvement methods known, reportedly used by the Romans prior to 100 ad and in the United States as early as the 1800s (Weish, 1986).

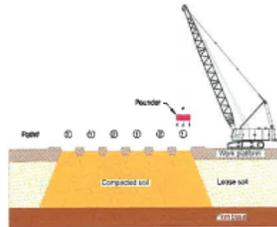


Figure 6.12. Schematic of deep-dynamic compaction (DOC).

Courtesy of Densification, Inc.

4/26/2021

Dynamic Compaction - an overview | ScienceDirect Topics



Figure 6.13. Photos of DOC field applications.

Courtesy of Pappas Baker (top) and Densification, Inc. (bottom).

The same does not accurately portray the actual loading and energy transmission process. One of the greatest misconceptions regarding dynamic compaction is that it is a surface ground treatment, as loads are applied at the surface. But dynamic compaction, as opposed to conventional shallow compaction of controlled fill, is a process of densifying soils at significant depths by applying a large impact energy at the ground surface. Upon impact, craters as deep as six feet or more are created, which must then be backfilled prior to additional compaction passes and ultimately at the completion of the compaction process. But the densification at depth occurs as a result of the dynamic wave energy that is transmitted through the ground.

The main objective of dynamic compaction can be improved strength and compressibility characteristics by either creating a uniform mat of densified material, or by compacting at locations where concentrated loads (e.g., column loads) will be applied. Improved soil properties result in increased bearing capacity and reduced settlements, including differential settlements. Dynamic compaction often allows for construction of conventional spread footings by providing bearing capacity of typically as much as 100-150 kPa (2000-3000 psf).

Dynamic compaction is suitable for densification of loose sand deposits such as those typically occurring in coastal, glacial, and alluvial deposits, as well as for dredged or hydraulically placed fills. This method has also been successfully applied to sites with boulders, collapsible soils, sites underlain by anhydrite, and so forth (Zakus et al., 2013). It is one of the better alternatives to densification of heterogeneous fills and fills containing large debris that may create obstructions for other remediation techniques, such as stone columns or rigid inclusions (www.dorlog.com). Results are best for well-drained, high permeability soils with low saturation, although some satisfactory results have been reported for improvement of silty soils with the aid of PVCs or stone columns or composite stone columns employing wickdrains (PCWS), and by providing time delays to allow for the dissipation of generated pore pressures (Dow et al., 1994; Shentzer et al., 2004). In certain conditions, saturated soils will be temporarily liquefied, allowing easier rearrangement and ultimately a tighter, denser packing upon dissipation of pore pressure. Because of this phenomenon and the benefits it can provide, "wet periods" between drop passes are sometimes specified, during which pore pressure dissipation can be monitored with piezometers to assure completion. This method is not appropriate for saturated clay soils.

Applications consist of dropping a heavy tamper (weighing from a specified height a calculated number of times at precisely determined locations in a pattern at the site. Drop patterns usually consist of primary and secondary (and occasionally tertiary) grids such as depicted in Figure 6.14. Grid spacing is typically about 3-7 m (9-21 ft), the weights typically range from 6 to 30 tons (up to 40 tons), and the drop heights typically range from 10 to 35 m (30-100 ft), sometimes more.

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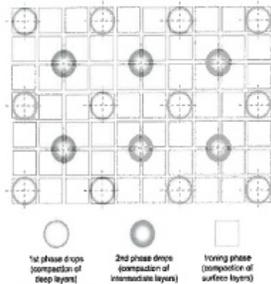


Figure 6.14. Example of grid pattern for DDC.

Effective densification is typical to depths of 10 m (or more with very big rigs and weights). The greatest improvement usually occurs between 3 and 8 m (10-25 ft) below the ground surface, with diminishing degrees of improvement at greater depths. The surface layer (surface to approximately 1.0 m) must be recompact due to its disruption by the impact loads and lack of sufficient confinement. In order to estimate the required compaction effort using dynamic compaction, the Menard formula is generally followed:

$$Z = \sqrt{\frac{2WH}{\alpha}} \tag{6.7}$$

where Z is the (required) treatment depth, M the tamping mass (tons), H the fall height, α the (soil dependent) constant, typically between 0.5 and 0.6 for sandy soils.

Greater depths have been effectively densified using a system known as high energy dynamic compaction, where maximum efficiency is achieved with the complete free fall of the weight through the use of a specially designed weight release system (www.menard-web.com). As an extreme case, Menard developed a "Giga" compactor for deeper densification at the Nice airport in France (Figure 6.15).



Figure 6.15. Menard's "Giga" compactor drops a 200-ton weight. Courtesy of Menard.

Designing a dynamic compaction project application requires determining the most efficient application of energy at the site. This may be initially determined based on data from site investigations. Actual DDC program applications are typically fine-tuned, or modified, based on test sections or after field testing of preliminary applications (i.e., after an initial phase of drops). Field measurements of penetration (or "crater depths") and pore pressures are continuously monitored to allow for adjustments to the field program. Measurements of crater depths are also used in a manner similar to proof rolling in that deeper crater depths indicate "soft" or "weak" locations that may require further attention.

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Soil Investigation and Pile Design

Mohamed A. El-Reedy PhD, in *Geotechnical Design Calculations*, 2017

<https://www.sciencedirect.com/topics/engineering/dynamic-compaction>

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5.6.1 Dynamic Compaction

Dynamic compaction (DC) also known as dynamic deep compaction, was advanced in the mid-1960s by Louis Menard. The process involves dropping a heavy weight on the surface of the ground to compact soils to depths as great as 12.5 m.

The purpose of this method is to reduce foundation settlements, reduce seismic subsidence and liquefaction potential, permit construction on fills, densely garbage dumps, and reduce settlements in compressible soils.

This method is most effective in permeable, granular soils, as cohesive soils tend to absorb the energy and limit the technique's effectiveness.

The groundwater table should be at least 1.8 m (6 ft) below the working surface for the process to be effective. In organic soils, DC has been used to construct sand or stone columns by repeatedly filling the crater with sand or stone and driving the columns through the organic layer.

This method is done by using a cyclic duty crane to drop the weight, although specially built rigs have been constructed. The crane is typically rigged with a sufficient boom to drop the weight from heights of 15.4 to 30.8 m (50 to 100 ft), with a single line to allow the weight to reach "free fall," maximizing the energy of the weight striking the ground. The weight to be dropped must be below the safe single line capacity of the crane and cable. Typically, weights range from 10 to 30 tons and are constructed of steel to withstand the repetitive dynamic forces.

The compaction procedure involves repeatedly lifting and dropping a weight on the ground surface. The height of the primary drop location is typically on a 4.8 to 6.0 m grid with a secondary pass located at the midpoints of the primary pass. Once the crater depth has reached about 1 m, the crater is filled with granular material before additional drops are performed at this location.

This process produces large vibrations in the soil, which can have adverse effects on nearby existing structures. It is important to review the nearby adjacent facilities for vibration sensitivity and to document their existing condition, especially structures within 150 m of planned drop locations.

Vibration monitoring during DC is also prudent. Extreme care and careful monitoring should be used if treatment is planned within 200 ft (61.5 m) of an existing structure.

The craters resulting from the procedure are typically filled with a clean, free-draining granular soil. A sand backfill can be used when treating sandy soils. A crushed stone backfill is typically used when treating fine-grained soils or loessills.

The depth of influence is related to the square root of the energy from a single drop (weight times the height of the drop) applied to the ground surface. The following correlation was developed by Dr. Robert Lucas based on field data:

$$D = 8(W \cdot H)^{0.5}$$

where D is the maximum influence depth in meters beneath the ground surface, W is the weight in metric tons (k kN) of the object being dropped, and H is the drop height in meters above the ground surface. The constant 8 varies with soil type and is between 6.3 and 6.7, with lower values for free-grained soils.

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Soil compaction

Anjan Patel, in *Geotechnical Investigations and Improvement of Ground Conditions*, 2019

2.6 Dynamic compaction

In dynamic compaction, a large weight usually of 200–400 kN is dropped repeatedly from a height of about 5–30 m onto the ground using a predetermined grid pattern, as depicted in Fig. 2.6, in order to densify the soil mass or to improve its compressive.

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Fig. 2.6. Dynamic compaction. (A) Dropping of weight from a certain weight (Meters). (B) Drop locations.

The maximum effective depth of compaction using dynamic compaction can be determined by using the formula as follows:

$$D_{max} = n (W/H)^{1/3} \quad (2.1)$$

where W is the dropped weight in tonnes, H is the height of drop in metres and the value n is a factor that depends upon the type of soil. This depth is also influenced by other factors such as the stratigraphy of the soil, the degree of saturation, the way in which the weight is dropped, and the presence of any damping soil layers. The value of n generally varies from 0.4 to 0.8. The number of drops at each grid point location can be calculated using Eq. (2.2) as follows:

$$E = (N \cdot W \cdot H \cdot P) / S^2 \quad (2.2)$$

where E is the applied energy, N is number of drops at each grid point location, W is dropped weight, H is the height of drop, P is number of passes, and S is the grid spacing. The drop point spacing is generally selected as 1% to 2% times the diameter or width of the dropped block.

The dynamic compaction method can be used for various applications such as for the treatment of industrial wastewaters, port and airport pavements, roads and highway embankments, heavy storage tanks, nonorganic heterogeneous fill or man-made ground containing large blocks as obstructions, and soils that are susceptible to liquefaction. The major advantage of adopting the dynamic compaction method is its very high production rate (it can be used to treat an area of $\sim 10^4 \text{ m}^2$ /month). Moreover, this method is effective both in saturated and non-saturated soils. In soft ground, the method of dynamic compaction has been proved as a better alternative to preloading, foundation piling, or soil undercutting and replacement.

However, the disadvantage or difficulty in adopting the dynamic compaction method is that it requires an intensive in situ testing programme (standard penetration test, cone penetration test, pressure meter test or load settlement test, etc.) to verify that the desired improvement has been achieved in the field. Moreover, constant monitoring is required to check for the formation of cracks, ground heave, ground vibration, induced settlement, and pore pressure development during the operation of this method on the site. This method becomes more complicated in silty and clayey deposits below the groundwater due to its relatively low permeability. In such cases, if the energy level is very high, instead of densifying the soil mass, it may bring the ground to a liquefaction state for a longer duration with negligible pore pressure dissipation. To tackle this problem wick drains associated with dynamic compaction are sometimes provided. Also, the dropping of the weight can be scheduled into phases allowing a certain period of time for the dissipation of pore pressures at each drop point location. Otherwise, the dynamic compaction method is modified to what is known as high energy pillars, where, with the help of high damping energy, large-diameter stone pillars are formed in a soft soil. In cases where the water table is close to the ground surface, dewatering is done to lower the level temporarily to at least 2 m below the surface or the ground level is raised to bring the platform suitably above the water table to allow for the dropping of weights.

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Dynamic Compaction and Dynamic Consolidation of Soils

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Naftan Nasreddinathan, Eng Chay Lee, in *Ground Improvement Case Histories*, 2015

12.2.1 Deep dynamic compaction with drop weights
The deep dynamic compaction (DDC) technique involves using a crane to drop weights of between 5 and 20 tons, from heights of up to 20 m. Figure 12.2.1 technique is best suited to large, open sites where few obstructions are present.



Figure 12.1. Example of deep dynamic compaction.

Depending on the weight used and the drop height, the depth of treatment could vary from 5–20 m in sands. The number of drops, weights used, and the height of the drops depend on the required post-treatment bearing capacity, settlement performance, and soil conditions. Between two and five passes are generally required with the first or earlier high-energy treatment passes aimed at treating the deeper soil layer and a final low-energy compaction tamping pass to compact the shallow near-surface soils disturbed during the earlier higher energy treatment passes. DDC is commonly used in reclaimed areas and landfill reclamation to provide a strong ground with less susceptibility for settlement or differential settlements.

The authors' experience has shown that DDC can be used in clay in combination with perforated vertical drains or jute drains that can withstand the impact of the drop weight.

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Improving Geotechnical Properties of Closed Landfills for Redevelopment Using Chemical Stabilization Techniques

Behnam Fatahi, ... Behzad Fatahi, in *Ground Improvement Case Histories*, 2014

8.1.1 Improvement techniques
The deep dynamic compaction (DDC) technique is a common ground improvement technique because of its economical application. Zakaria and Managan (2011) reviewed 64 case histories with respect to the effectiveness of DDC on MSW landfill sites. With DDC, large voids are reduced, and subsequently other techniques such as fly ash-lime grouting can further decrease the remaining smaller voids. In addition, the lime/fly ash slurry injection has a significant impact on protecting groundwater: neutralizing leachate. Several research works have been published on the chemical stabilization of granitic soils incorporating some waste products such as orange fibers (Fatahi et al., 2012, 2013a, b). Replacement of cement with by-product materials such as fly ash can further reduce the expenses associated with stabilization. Many researchers have reported the application of fly ash in geotechnical projects (Gowari et al., 1981; Bohme, 1993; Mobarake et al., 2010; Hoshmehdi et al., 2014a, b; Hoshmehdi et al., 2012) reported that from an economic and environmental standpoint, ash materials in slaked lime (Ca(OH)₂, calcium hydroxide) can be treated together with pozzolanic materials, such as fly ash, to develop a cementitious material. A series of laboratory permeability tests on decomposed MSW, using chemical agents, have been conducted to quantify the behavior of stabilized MSW samples.

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Deep Compaction of Granular Fills in a Land Reclamation Project by Dynamic and Vibratory Compaction Techniques

Ngay Win Bo, ... Mohd Amir Diviani, in *Ground Improvement Case Histories*, 2015

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8.5 Conclusion
Three deep compaction techniques—MBC, vibration, and dynamic compaction—relevant for **land reclamation** projects have been discussed in this chapter. The following conclusions can be drawn:

- All three techniques were found to be suitable for the **stabilization of land reclamation fills**.
- The type of equipment, spacing of points, duration of compaction, and other operational considerations are of importance in the application of these techniques.
- In the MBC technique, the selected frequency should be about the soil **resonance frequency**, and degree of compaction is found to be consistent with distance from the **installation**.
- In the vibration technique, degree of compaction is found to decrease with distance from the probe point.
- In dynamic compaction, the **central point** is found to be the most compacted point in the dynamic compaction technique, with the location directly beneath the pounder found to be the least compacted point.
- An **aging effect** is significant for the vibration technique, but it is not found to be significant for the other techniques. This can be attributed to the required injection of water or water jetting, which is applied in the vibration technique, and the subsequent dissipation of pore water.

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Dynamic Compaction and Dynamic Surcharging at Dubai's Palm Jumeira Sewage Treatment Plants

Rafik Hamid, Serge Voronin, in *Ground Improvement Case Histories*, 2015

10.3 Conclusion
This project demonstrated the effectiveness of combining dynamic surcharging and dynamic compaction for improving the ground and achieving results that would have been otherwise difficult, if not impossible, to achieve. Dynamic surcharging was able to induce additional settlements compared to what was realized under **static loading conditions**. This has not only shown the value of dynamic surcharging for increasing **total settlements** and reducing soil porosity, but is also a reminder that even if settlements are acceptable under static loading conditions, vibration of the ground due to earthquakes or any other source can impose more settlement. In conclusion:

- Dynamic surcharging can be used to increase induced foundation settlement under static surcharge by 1.3–5 times, depending on the distance from the pounder impact point, to treat silty material that would normally not be treatable by dynamic compaction, and to increase the depth of treatment.
- Although the settlement magnitude of dynamic compaction was much more than dynamic surcharging, the latter induced critical settlement at depths that were treated less effectively with the allocated pounder.
- Excluding the highest values, average f_{10} and F_{10} , respectively, ranged from approximately 2–4 MPa and from 23–30 MPa at depths of about 4–8 m. These values are significantly higher than what was suggested by Lukas (1986).
- Maximum improvement ratios were in the range of 10–18, which are significantly higher than the range that was suggested by Lukas (1986).
- Due to the combination of dynamic surcharging and pre-occupied dynamic compaction with a high number of blows, improvement can still be observed at greater depths.

Fig. 10.25 shows Tank G-G after construction.



Figure 10.23. Tank G-G after construction.

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The Changi East Reclamation Project in Singapore

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Miyai, Wu, Ba, ... Victor Chua, in *Ground Improvement Case Histories*, 2015

9.4.3 Deep compaction of sand fill
Three types of deep compaction methods were deployed to remedy the gradual aggr-dynamic compaction, MBC, and vibration. The dynamic compaction method was used in the area where the required depth of compaction was 5–7 m. The MBC and vibration methods were adopted in the areas where the required thickness of compaction was 7–12 m.

The effectiveness of dynamic compaction is dependent on the combination of weight, geometry of pounder, height of drop, spacing, number of drops, and total compactive energy applied. Experiments with different weight of pounder, height of drop, spacing, and number of drops were performed in order to establish the most cost-effective combinations. The results of one of the experiments are shown in Fig. 9.18. The pounder used was 23 t. The height of drop was 25 m. The spacing between the pounding point was 7 m x 7 m. Only one pass of compaction was used. The number of drops per pass was 10. The total energy per point was 575 tonm.

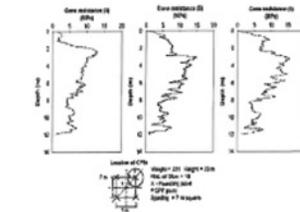


Figure 9.18. Cone resistance measured at various locations for 7-m x 7-m grid spacing (1) under the point, (2) one-middle point, (3) corner point.

After compaction, CPT tests were carried out at three locations, as indicated in Fig. 9.18. The CPT results obtained from the three locations are presented in Fig. 9.19. The variation of cone resistance with the location or the distance from the pounding point can be clearly seen. The cone resistance achieved at the corner of the pounding grid (point 3) was greater and more uniform than that at the pounding point itself (point 1). The cone resistance achieved at point 2, which was between the pounding point and the center of the grid, was in-between the cone resistance obtained at these two points. Based on the experiments, four compaction methods, as detailed earlier in Table 9.3, were selected and used in the project. A comparison of CPT cone resistances obtained before and after compaction conducted at a number of locations using Method 1 (see Table 9.3) is presented in Fig. 9.19. The effectiveness of the dynamic compaction can be clearly seen in the figure.

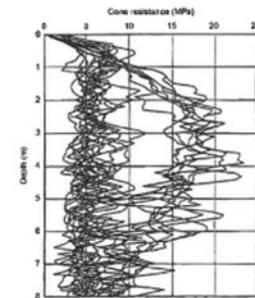


Figure 9.19. Comparison of CPT cone resistance obtained before and after dynamic compaction at various locations.

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MHC does not require water for penetration. In this method, a steady-state vibrator was used to densify the soil. As a result of vibratory excitation, the friction between the soil particles is temporarily reduced. This facilitates rearrangement of particles, resulting in densification of the soil. A specially designed steel probe was attached to a vibrator, which had variable operating frequencies. The frequency was adjusted to the resonance frequency of the soil, resulting in strongly amplified ground vibrations and thereby achieving an efficient soil densification. Two types of MHC equipment and probes, as detailed in Table 9.4, were used. Experiments were carried out on-site to study the effect of the MHC compaction. CPTs were used to evaluate the compaction results.

The results of one experiment using the MHC MS-200 H system are presented in Fig. 9.20. MHC tests were conducted at a square grid of 5 m x 5 m (see Fig. 9.19). CPT tests were conducted at five locations of an even spacing of 1.25 m in-between two MHC compaction points. The cone resistance versus depth profiles obtained at the five locations before and after compaction are shown in Fig. 9.20. It can be seen that substantial improvement was achieved at every point mainly within a depth of 4–10 m and the effect of densification does not appear to be significantly affected by the distance from the compacting points with the grid. The sand fill before compaction appears to have been mysteriously densified, possibly by seepage force or consolidation at depths near 1 and 4.5 m, as indicated by the high CPT values at those two locations. However, this localized densification effect, if it was real, had been destroyed by MHC compaction. Nevertheless, as the sand fill was recently deposited, cementation or other effects would not be a consideration.

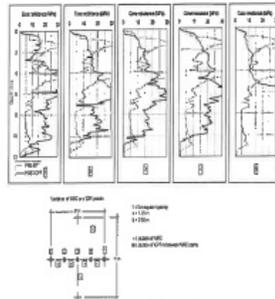


Figure 9.20. Variation of cone resistance with distance from the probe point after compaction.

Several types of vibrofloatation equipment, either electrically or hydraulically driven, were used in the project. The differences in the various types of vibrofloatation equipment are shown in Table 9.5. Among the three types of vibrofloatation equipment, the power rating is the same, but the centrifugal forces are different. The model numbers signify the amplitude. The amplitudes for V23, V24, and V32 are therefore 23, 24, and 32 mm, respectively. Model S-1000 type uses a higher power rating, but low centrifugal force and amplitude. Pennine type has a high centrifugal force and amplitude and its dimensions are all the largest of the three types. The spacings used for each piece of equipment to achieve the respective densification requirements are shown in Table 9.6. On-site experiments were also conducted to study the effect of the vibrofloatation compaction.

The results of one study are shown in Fig. 9.21. Vibrofloatation compaction using the V32 model at the 3.2 m triangle grid pattern shown in the figure was conducted. CPT tests were conducted at five locations evenly distributed between two compacting points. The cone resistance profiles obtained before and after compaction at each CPT test points are given in the figure. The results show that the effect of vibrofloatation compaction is affected by the distance to the compacting point on the position in the compaction grid. The cone resistance is the highest at the center point and the lowest near the corner point of the triangle CPT points 2 and 4). However, cone resistance at the center of the four compaction points (point 3) is higher than that at points 2 and 4. On the other hand, the improvement appears to be effective through the entire depth ranging from 3–10 m with more significant improvement felt at the bottom (see CPT profiles for points 1 and 3).

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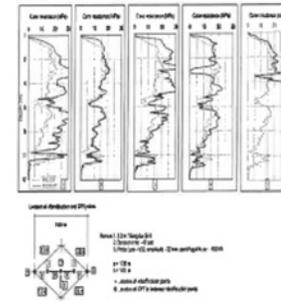


Figure 9.22. Variation of cone resistance with distance from the probe point after compaction.

Each of the three compaction methods has its own advantages and disadvantages depending on the site and soil condition in the various areas. The dynamic compaction method produces a relatively more uniform degree of densification in such layers. However, the depth of densification is limited to 6 or 7 m. The MHC method is able to compact with a wider spacing and compact the sand at a relatively deeper depth. However, the probe needs to be maintained frequently as a result of wear and tear. The vibrofloatation method can compact to a greater depth. The degree of densification is uniform along the depth, but can vary significantly with the distance from the probe points. It requires a smaller grid spacing and a sufficient supply of water.

It has been reported by Mitchell (1986) that there is an aging effect, that is an increase in the CPT cone resistance with time, after densification in sand has been carried out. Such an aging effect varies with the mode of compaction as far as the observations made in this project are concerned. As reported by Be and Choe (2004), the aging effect was the highest in vibrofloatation-compacted sand. The aging effect was not significant in sand compacted by dynamic compaction. One example is given in Fig. 9.22. The aging effect due to MHC compaction is in-between that of vibrofloatation and dynamic compaction.

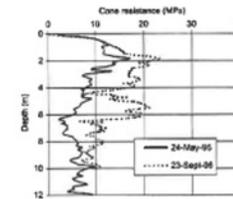


Figure 9.22. Increase in the CPT cone resistance due to aging effect after densification.

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BONDING AND PROPERTIES OF EXPLOSIVELY COMPACTED COPPER POWDER AND POLYPROPYLENE GRANULES

Abouzeinab, A., in Current Advances in Mechanical Design and Analysis, 13, 2009

1 INTRODUCTION

Most of powder compaction techniques lead to green compacts requiring sintering in order to gain high density and strength of the product. By using dynamic compaction systems, it is possible to obtain a density very close to the theoretical

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density of the material without need to [altering joints](#) [1-4]. Explosive powder compaction has been employed for producing shaped parts from powders of [metals, ceramics, polymers and aerospace materials](#) [1-9].

Explosive powder compaction methods are based on the application of very high shock wave pressure developed over very short period of time, few [microseconds](#) [5], while the explosive charge is detonated. There are two compaction systems used for explosive powder consolidation. These are designated as direct and indirect techniques. The direct compaction system is by far the most often used. In such method a [cylindrical tube](#) containing the powder is surrounded by an explosive charge of uniform thickness. The [detonation](#) of the charge develops a radial [compression wave](#) as the detonation front travels along the container. As these waves proceed inside the powders, individual particles have been accelerated toward the tube center, where they compact simultaneously.

As a matter of fact, in dynamic compaction process the [energy](#) needed for powder consolidation may be deposited very rapidly, one second or few milliseconds, so that very high heating and cooling rates (10⁴ C and can be reached). This energy is essentially deposited at the interface of particles and the mean bulk temperature remains low enough for the initial structure of the powder to be retained [1].

It has been previously reported by the author and others, independently, that a direct explosive compaction is suitable for producing a good compact of metallic and non-metallic powders [1,13-14]. In fact, all these works based on evaluating the physical and mechanical properties on the compact cross section, i.e. perpendicular to the wave [propagation direction](#). The present work aims to characterize the jetting and detect the effect of shock wave proceeding distance on the properties of the obtained compacts.

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Sprayed concrete (shotcrete)

N. Barthelemy, in [Advances in the Formulation and Reinforcement of Concrete](#), 2008

4.6 Concluding remarks

This chapter presents a brief state-of-the-art on [shotcrete](#). It demonstrates that due to its unique mix design, placement techniques, compaction dynamics, strength gain mechanisms, and internal structure, shotcrete is distinctly different from cast concrete, and hence our conventional understanding of cast concrete should be applied to shotcrete only with caution. Significant further efforts are necessary for a fundamental understanding of the nature of shotcrete and to develop materials suitable for various applications. This chapter places particular emphasis on fiber reinforced shotcrete and highlights the various benefits of fiber inclusions in shotcrete.

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Tanta University
Faculty of Engineering
Structural Engineering Department

**Influence of Construction Processes induced
Vibrations on Soil and Adjacent Structures**

A THESIS

Submitted for the Degree of Master of Science
In Engineering (Structural Engineering)

By

Mohammed Massoud Ramadan

B.Sc. Civil Engineering, Tanta University, 2013

Under the Supervision of

Prof. Marawan Shahien
Professor of Geotechnical Engineering
Faculty of Engineering - Tanta University

Assoc. Prof. Ahmed Farouk
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Faculty of Engineering - Tanta University

(2019)



Tanta University
Faculty of Engineering
Structural Engineering Department

Researcher Name

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Thesis Title

"Influence of Construction Processes induced Vibrations on Soil and Adjacent Structures"

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Abstract

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Abstract

The development in construction field has increased with high rate in the last decades; many modern ways are started to be used to make the construction process easier than before. This thesis is focusing on two methods of construction in geotechnical field and they are pile driving and dynamic compaction. Both techniques produce high magnitude of vibration through soil due to the large amount of energy which is used in driving or compaction. Vibrations are generated in large values and propagate quite fast and affect many wide areas around the vibration source.

Those vibrations may have a very destructive effect on the adjacent structures and the heritage buildings or even the underground facilities. The damage occurs due to two reasons, soil settlement beneath foundation or the directly vibrations on the building. PPV (peak particle velocity) is considered the main indicator for the possible damage which may happens to the structures, therefore, a lot of parameters and their effect on PPV are studied in this thesis.

Soil settlement is a very dangerous problem facing engineers when they have a vibration source such as pile driving or dynamic compaction, the available models for evaluating settlement values due to vibrations are also investigated.

In addition different of wave barriers as a way of preventing wave's propagation and protecting the adjacent structures close to the vibration source are investigated in details.

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Key Word:-

PPV, Finite element, Construction vibration, Pile Driving, Soil Stiffness, Plaxis, SAP, Dynamic compaction, Vibration limits, Damage criteria, Dynamic settlement, Wave barriers.

Acknowledgement

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I want to thank *my father and my uncle* for encourage me during my study and give me the enough positive support to complete my thesis.

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I am also grateful to *Soil Mechanic Research Laboratory staff* of the Faculty of Engineering, Tanta University for their support and helping me in all the problems I had.

Summary

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SUMMARY

Construction and industrial of dynamic sources produce environmental vibration problems for the surrounding soils and the adjacent structures. High vibrations and vibration-induced settlements could cause disturbance to sensitive devices inside buildings and even be the cause of structural damage and foundation failure. The main objectives of this thesis are to study the effect of construction born vibration through both pile driving and dynamic compaction techniques on the response of surrounding soil and the adjacent structure response. In this thesis all the available data for construction vibration limits and standards are provided to help the design engineer to take all precautions to avoid any possible damage that may occur to adjacent facilities.

Pile driving or dynamic compaction process-induced high values of PPV (peak particle velocity) through the surrounding soil, therefore the construction vibration due to those both techniques were investigated in details. PPV is considered as the most concern parameter to express the vibration hazard, therefore PPV is investigated at different (soil stiffness, rammer masses, drop heights, pile material and pile embedment lengths in case of pile driving). All these parameters can help researchers or design engineers to predict PPV values to avoid any possible damage in the construction site.

A series of Axisymmetric finite element analysis using Plaxis 8.2 dynamic module were run on single piles installed using driving technique (hammer type). The peak particle velocity (PPV) was calculated for pile installations by various hydraulic hammers weights considering both clay and sand deposits with various stiffnesses. The PPV of the propagated waves in the ground with distance from the source of vibration was analyzed. It is found that by increasing soil stiffness the PPV increases and then reduces by getting far from the vibration source for both pile driving and dynamic compaction. Increasing hammer mass and the dropping height increase the energy which leads to higher values of PPV. It is noticed that by increasing the pile embedment length the PPV decreases at the ground surface. It can be seen that

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wooden piles produce higher values of PPV due to their low impedance and the values of energy loss is low as well. For steel and reinforced concrete, both have a close trend in PPV values.

Comparison between Finitic Element results by Plaxis model and other prediction models for Pile Driving and dynamic compaction PPV values were set up to show which more suitable prediction model can express the PPV results in the site.

A comparison between PPV values due to pile driving and dynamic compaction is investigated to figure out which process produces higher values and thus higher damage. It can be concluded that dynamic compaction has a large values of PPV due to the higher magnitude of energy which increases PPV values at the ground surface.

The acceleration versus time history of the pile driving vibration obtained by the Finite element model (Plaxis) were used as input in another module using SAP2000 V.14 to simulate the structure model that is affected by such dynamic effect. Using SAP model shows the direct effect of vibration on the adjacent structures.

By investigating the available models for PPV values prediction through a comparison with many infield measurements, it was found that most of the prediction models only depend on the scaled energy or scaled distance but neglecting many other important parameters such as soil stiffness, length of pile, method of driving and etc.

Settlement of soil due to construction vibration is became a serious problem facing engineers when pile driving or dynamic compaction are being processed. A lot of equations and models are set to estimate the values of soil settlement due to vibration. In this thesis the available models are investigated.

Previous researchers developed different ways to reduce the hazard of vibration waves through the soil and tried to prevent its propagation. It is very important to insure the safety of the structures against vibration waves, and hence the wave barriers as a method of protection are studied in this thesis to know the optimum procurement to achieve and construct an effective barrier.

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Goals and Objectives:

This thesis has the following main objectives:

- 1-Collecting of the available data for vibration limits and international standards for both human response and structure response, as well as damage criteria, investigating the most widely used prediction models of PPV (engineering models, numerical models, theoretical models... etc).
- 2- Investigating the effect of pile driving on the soil by calculating PPV using Plaxis 8.2 and studying the destructive effect on the adjacent structures by using SAP 2000.
- 3- Comparing between infield measurements of PPV records and the available PPV prediction models, to cognition the most realistic model to be used for evaluating the PPV.
- 4- Studying the effect of dynamic compaction on the surrounding soil using Plaxis 8.2 to calculate PPV values.
- 5- Discussing the soil settlement beneath foundation and at different distances from the vibration source through the available models of calculating settlement.
- 6- Investigating of the effect of wave barriers on the wave propagation through soil for preventing the possible hazard on the adjacent structures.

Thesis Structure:

This thesis consists of seven chapters, as follows:-

Chapter 1 Introduction:

This chapter presents an introduction to identify the context and motivation of this thesis, and gives a summary of main thesis objectives and contents. Besides some recorded damages due to construction vibration.

Chapter 2 Damage Criteria:

This chapter reviews the available vibration limits and standards for PPV values to expect the possible damage to the structures.

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Chapter 3 Effect of Piles driving on Soil and Structures:

This chapter discusses the hazard of the construction vibration on soil and structures as well as illustrating the mechanism of the propagated waves through soil and also reviewing the different types of models for PPV prediction. This chapter also explains in details the numerical modeling, and describes the finite element analysis and its applications. It also contains the verification example for the Plaxis model used in this study presents the variable parameters that have been used to study the behavior of PPV through soil due to pile driving. A comparison between infield measurements and the most used models for PPV prediction is set to verify the reasonable model for PPV prediction.

Chapter 4 Effect of Dynamic Compaction on Soil and Structures:

This chapter presents variable parameters that have been used to study the behavior of PPV due to dynamic compaction process.

Chapter 5 Soil Settlement due to Construction Vibration:

This chapter presents different models that can be used for evaluating settlement values due to construction vibration.

Chapter 6 Wave Barriers:

This chapter presents the different types of wave barriers and their effect on PPV path in soil through the investigation of the barrier dimensions, infill material, and the barrier distance from the vibration source.

Chapter 7 Conclusion

In the conclusion chapter the main ideas and the results are highlighted and briefed.

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EXHIBIT C

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RESPONSE

O-57-55 See Responses to Comments O-57-25 and I-334-30.

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SHADE (ENERGY), WIND, VIEWS			
Page(s)	Section	Concern	Supporting Documents
4.1.14	Aesthetics	City of Oakland Policy W3.4: Preserving Views and Vistas. Buildings and facilities should respect scenic viewsheds and enhance opportunities for <u>visual access of the waterfront and its activities</u> . <i>Proposed project does not enhance existing waterfront visual access but creates its own, with its back to the surrounding neighborhood.</i>	
4.1.14	Aesthetics	City of Oakland LUTE Policy N1.5: Designing Commercial Development. Commercial development should be designed in a manner that is <u>sensitive to surrounding residential uses</u> . <i>Proposed is grossly out of scale with surr. resi uses and other Jack London Sq development, consisting of 6-8 story structures. Across the Estuary, Alameda Point + Landing have capped their development to 100 and 85' respectively (4.1.21). Reduced Project Alternative 4 (6.2.4) explores this option with only hotel and ballpark exceeding 100', far more reasonable and sensitive.</i>	Before + After Views
4.1.15	Aesthetics	City of Oakland LUTE Policy N8.2: Making Compatible Interfaces between Densities. The height of development in urban residential and other <u>higher density residential areas should step down as it nears lower density residential areas</u> to minimize conflicts at the interface between the different types of development. <i>The proposed "Height" is clearly not addressing this Policy.</i>	
4.1.16	Aesthetics	City of Oakland Historic Preservation Element Goal 1: To use historic preservation to foster economic vitality and quality of life in Oakland by <u>maintaining and enhancing throughout the City the historic character, distinct charm, and special sense of place provided by older properties</u> ; establishing and retaining positive continuity with the past thereby promoting pride, a sense of stability and progress, and positive feelings for the future; and preserving and encouraging a city of varied architectural styles and environmental character, and... <i>This does not mention Historically Registered or listed properties, just old ones, under which PL407 qualifies.</i>	
4.1.17	Aesthetics	City of Oakland Planning Chapter 17.136: Design Review Procedure ... future individual cumulative development projects would be subject to Design review. Design review considers the visible features of a project and the <u>project's relationship to its physical surroundings</u> . Although independent of CEQA and the EIR process, design review is focused on ensuring quality design, and on avoiding potentially adverse aesthetic effects. Projects are evaluated based on site, landscaping, <u>height, bulk, arrangement, texture, materials, colors, appurtenances, potential shadowing effects on adjacent properties</u> , and other characteristics.	

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RESPONSE

- O-57-56 Regarding the changes in views, please refer to the Response to Comment I307-3-18.
- O-57-57 See Response to Comment I307-3-27.
- O-57-58 See Response to Comment O-57-25.
- O-57-59 The Draft EIR includes information about aesthetics for informational purposes. The Draft EIR contains an extensive analysis of changes in views (Impact AES-1, p. 4.1-23) that is expansively illustrated with visual simulations of the proposed Project. The comment does not address the adequacy or accuracy of the Draft EIR and no further response is required under CEQA.
- O-57-60 See Response to Comment O-27-75.
- O-57-61 See Response to Comment O-57-24.

O-57-56	Fig 4.1.20	Aesthetics	Clearly issues here with several of the Proposed's attributes. <i>This images best sums up the grossly out of scale development being proposed. Reduced Project Alternative 4 (6.2.4) which restricts heights to 100ft exc for hotel and ballpark would get far closer.</i>	
O-57-57	4.1.41	Aesthetics	AES 2 Summary: "Despite the substantial change in visual character due to implementation of the proposed Project, the Project would be generally consistent with the City's policies regarding visual character and quality. The proposed Project would be consistent with Oakland General Plan policies OS-9.3, OS-11, OS-11.2, and T6.2, which reflect the City's desire to improve the visual quality of streetscapes, improve major entrances to City neighborhoods, and to create, maintain, and enhance civic open spaces." <i>Uncertain how they support this claim, any design professional would tell you Fig 4.1.20 does not support any city development policies aside from being a nice group of isolated buildings.</i>	
O-57-58	4.1.6	Scenic Vistas	<i>Views of the Project Site - does not mention views from our neighborhood which are significantly impacted. People live here!</i>	
O-57-59	4.1.7	Scenic Vistas	<i>Visual Character of surrounding Area - North, "Low Visual Quality", describes PL407 but not by address, and generally dismisses the area as not of interest.</i>	
	4.1.10	Scenic Vistas	<i>area to North of "Low Visual Quality"</i>	
	4.1.15	Scenic Vistas	City of Oakland Scenic Resources Policy OS-10.1 : View Protection. Protect the character of existing scenic views in Oakland, paying particular attention to: (a) views of the Oakland Hills from the flatlands; (b) views of downtown and Lake Merritt; (c) views of the shoreline; <i>They report ignores the complete loss of shoreline views from anywhere north of the site.</i>	
O-57-60	4.1.23	Scenic Vistas	<i>AES 1 Key Viewpoints were highly selective. Why was Market St not considered a Key Viewpoint? Used MLK Jr Way which sees little traffic and not major thorough fare.</i>	Market St View, PL 407 View, 2nd St View . See attached.
	4.1.39	Scenic Vistas	AES 1 Summary (4.1.39) - "proposed Project would generally be consistent with Oakland General Plan Policies OS-10.1 and OS-10.3, which strive to protect and enhance existing scenic views, because the proposed Project would enhance access to—and views of—the waterfront and historic resources in the Project vicinity " <i>Unsure how this claim is true.</i>	
O-57-61	4.1.11	Solar	<i>Solar Panels, Existing are all far away. Does not consider future solar installations such as the one considered at PL 407</i>	

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RESPONSE

O-57-62 See Responses to Comments I-96-6 and O-29-74.

O-57-63 See Responses to Comments I-307-9 and I307-3-29.

O-57-61

O-57-62

O-57-63

4.1.13	Solar	<i>Cal Solar Shade Program - No shadow cast >10% at any time between 10-2. Applies only to new trees and shrubs.</i>	
4.1.23	Solar	<i>Summary - NO Impact - No further study since existing solar so far away</i>	
		<i>PL 407 was considering building electrification, including solar PV, solar hot water, and car chargers, but due to Covid and window issues, this was placed on hold. Need to get serious again and ensure EIR accounts for Solar impacts on PL 407.</i>	
4.1.53	Solar/ Shadow	<i>Impact AES 4 - Looking at nearest panels at 101 Myrtle - deemed insignificant impact "Solar panels on buildings at 101 Myrtle Street and 655 Third Street would be shaded throughout the day on the winter solstice. While this additional shading during the winter would reduce the ability of solar panels at this address to collect sun power, the reduced amount of energy able to be produced at this address would not substantially impair the function of the building. This is because the solar equipment consists of photovoltaic solar panels used to generate electricity (as opposed to heat or hot water) and any loss in energy can be made up for with additional power drawn from the local provider, PG&E, with no impairment to the functionality of the building Thereby increasing the carbon emissions of neighboring structures while we strive for Leed Platinum. And increasing the operating costs of neighboring structures.</i>	
4.1.64	Solar/ Shadow	<i>AES 4 impact on Historic Resources - PL 407 is within S Pacific Railroad Industrial Area of Primary Importance, they state "None of the historic resources mentioned above requires access to direct sunlight as a defining characteristic of its historical significance." This comment seems inherently flawed or simply curious.</i>	
Fig 4.1.26+27	Solar/ Shadow	<i>For over half the year, PL407 will be in the shadows</i>	
4.1.12	Wind	<i>Analyzed at Airport, need local readings.</i>	
4.1.63	Wind	<i>Impact AES 5 - Significant and Unavoidable. ... "During the rather lengthy construction period, a particular building configuration resulting from development of one or more individual structures could result in localized wind conditions that would be different than those reported for the Project at completion of Phase 1 or at full buildout. It is possible that such individual building(s) could cause the wind hazard criterion to be exceeded, perhaps for one or more years." Restrict Building Hts to less than 100' and this is avoidable.</i>	
	Wind	<i>Impacts on PL407 glazing systems, roofing systems, general envelope waterproofing not being designed to withstand sustained, more frequent high winds, frequently accompanied by rain.</i>	
4.1.44	Glare	<i>Spill Light Receptors - Did not study spill light at only residential building near</i>	

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O-57-64 See Response to Comment I307-4-17.

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		<p>site. Suggest they do. While Howard Terminal does emit light 24-7, it is very low level compared to 250fc stadium lights. Of course the proposed tall buildings would shield much it.</p>	
4.1.47	Glare	<p>They even discuss the importance of spill light, "Residential uses are considered light-sensitive because they are typically occupied during the overnight hours, and are occupied by persons who have expectations of privacy and the ability to generally sleep undisturbed by obtrusive lighting", but again conveniently neglected our building, "No residential uses are proximate to these receptors..." While this is true statement, they conveniently did not place any receptors on our building.</p>	
	Glare	<p>Deferring mitigation on light stands. Why?</p>	
	Signif and Unavoidable 7-2 Impacts	<p>Effectiveness of wind analysis for bldgs 100 feet tall or higher can not be determined. Hazardous wind speeds exceeding 36 mph for more than an hour during daylight. Why isn't height limit of 100 feet proposed as mitigation? Per page 3 – see attached City Significance Thresholds</p>	<p>Introduce landscape that would now or in the future cast substantial shadows on existing solar collectors (in conflict with California Public Resource Code sections 25980-25986</p>

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Market @ 3rd - as proposed



Market @ 3rd - 100' ht limit

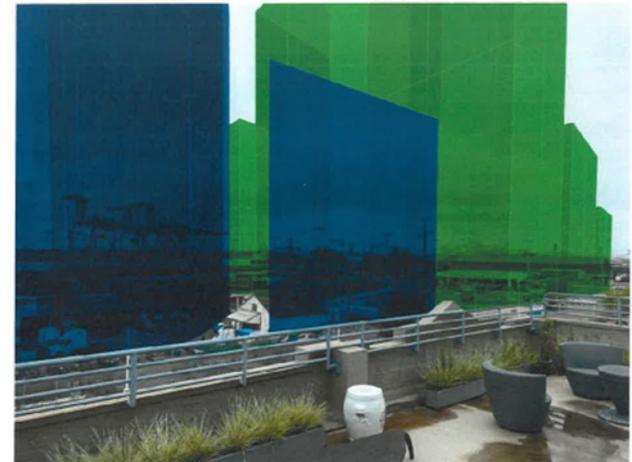
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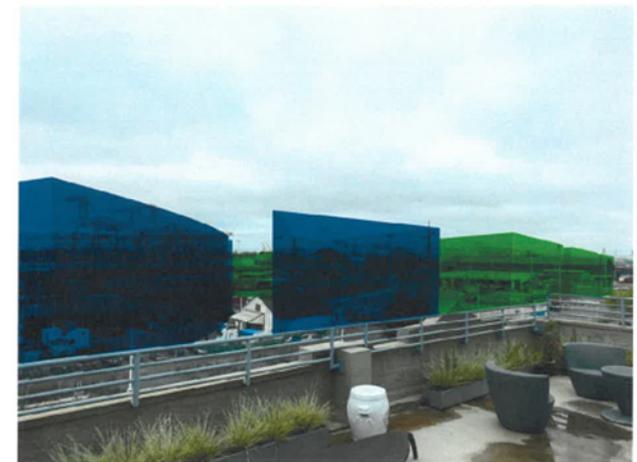
PL407 Roof Deck - as proposed



PL407 Roof Deck - as proposed



PL 407 Roof Deck - 100' ht limit



PL 407 Roof Deck - 100' ht limit

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PL407 @ 2nd - as proposed

CITY OF OAKLAND
CEQA THRESHOLDS OF SIGNIFICANCE GUIDELINES
OCTOBER 28, 2013

PURPOSE: To help clarify and standardize analysis and decision-making in the environmental review process in the City of Oakland, the City has established these CEQA Thresholds of Significance Guidelines (which have been in general use since at least 2002). These Thresholds are offered as guidance in preparing all environmental review documents (including Initial Studies and EIRs). Where possible, these Thresholds should be used unless the location of the project or other unique factors warrants the use of different thresholds. In those situations where different thresholds are proposed, justification must be provided and the City Planning and Zoning Division must approve the use of such. These Thresholds are intended to implement and supplement provisions in the CEQA Guidelines for determining the significance of environmental effects, including sections 15064, 15064.4, 15064.5, 15064.7, 15065, 15382, and Appendix G, and form the basis of the City's Initial Study and Environmental Review Checklist.¹ The Thresholds should be used to evaluate the potential primary effects of a project and should be considered when evaluating the potential secondary effects of a project, including the potential effects of mitigation measures.

When incorporating the Thresholds into environmental documents, include the bracketed notes from this Thresholds document in the environmental document. **Do not** include the footnotes from this Thresholds document in the environmental document, unless otherwise indicated; the footnotes are generally intended to provide guidance to the preparer of the environmental document and not intended for the eventual reader of the final environmental document.

These Thresholds are to be used in conjunction with the City's Standard Conditions of Approval (contained in a separate document), which are

¹ Thresholds that pertain to the effect of the environment on the project (as compared to the project's impact on the environment) are not required to be analyzed under CEQA but are nevertheless included and should be evaluated to provide information to decision-makers and the public. Insert the following language into the CEQA document: "CEQA requires the analysis of potential adverse effects of the project on the environment. Potential effects of the environment on the project are legally **not** required to be analyzed or mitigated under CEQA. However, this document nevertheless analyzes potential effects of the environment on the project in order to provide information to the public and decision-makers. Where a potential significant effect of the environment on the project is identified, the document, as appropriate, identifies City Standard Conditions of Approval and/or project-specific non-CEQA recommendations to address these issues."

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CEQA THRESHOLDS OF SIGNIFICANCE GUIDELINES
OCTOBER 28, 2013

incorporated into projects regardless of a project's environmental determination, pursuant, in part, to CEQA Guidelines sections 15183 and 15183.3. As applicable, the Standard Conditions of Approval are adopted as requirements of an individual project when the project is approved by the City and are designed to, and will, substantially mitigate environmental effects. In reviewing project applications, the City determines which of the Standard Conditions of Approval are applied, based upon the project's characteristics and location, zoning district, applicable plans, and type(s) of permit(s)/approvals(s) required for the project. For example, Standard Conditions related to creek protection permits are applied to projects on creekside properties.

The Standard Conditions of Approval were initially and formally adopted by the City Council on November 3, 2008 (Ordinance No. 12899 C.M.S.), pursuant to Public Resources Code section 21083.3 and CEQA Guidelines section 15183 (and now section 15183.3), and incorporate development policies and standards from various adopted plans, policies, and ordinances (such as the Oakland Planning and Municipal Codes, Oakland Creek Protection, Stormwater Water Management and Discharge Control Ordinance, Oakland Tree Protection Ordinance, Oakland Grading Regulations, National Pollutant Discharge Elimination System (NPDES) permit requirements, Housing Element-related mitigation measures, California Building Code, and Uniform Fire Code, among others), which have been found to substantially mitigate environmental effects. Where there are peculiar circumstances associated with a project or project site that will result in significant environmental impacts despite implementation of the Standard Conditions, the City will determine whether there are feasible mitigation measures to reduce the impact to less-than-significant levels in the course of appropriate CEQA review (mitigated negative declarations or EIRs).^{2,3}

² Insert this discussion concerning the City's Standard Conditions of Approval into the environmental document.
³ Note that certain technical studies required by the Standard Conditions of Approval are required to be performed during the CEQA process (and the results of such studies incorporated into the CEQA documents themselves) rather than after project approval.

COMMENT

CITY OF OAKLAND
CEQA THRESHOLDS OF SIGNIFICANCE GUIDELINES
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AESTHETICS, SHADOW AND WIND⁴

The project would have a significant impact on the environment if it would:

1. Have a substantial adverse effect on a public scenic vista [NOTE: Only impacts to scenic views enjoyed by members of the public generally (but not private views) are potentially significant.];
2. Substantially damage scenic resources, including, but not limited to, trees, rock outcroppings, and historic buildings, located within a state or locally designated scenic highway;
3. Substantially degrade the existing visual character or quality of the site and its surroundings;⁵
4. Create a new source of substantial light or glare which would substantially and adversely affect day or nighttime views in the area;
5. Introduce landscape that would now or in the future cast substantial shadows on existing solar collectors (in conflict with California Public Resource Code sections 25980-25986);
6. Cast shadow that substantially impairs the function of a building using passive solar heat collection, solar collectors for hot water heating, or photovoltaic solar collectors;
7. Cast shadow that substantially impairs the beneficial use of any public or quasi-public park, lawn, garden, or open space;
8. Cast shadow on an historic resource, as defined by CEQA Guidelines section 15064.5(a),⁶ such that the shadow would materially impair the resource's historic significance by materially altering those physical characteristics of the resource that convey its historical significance and that justify its inclusion on or eligibility for listing in the National Register of Historic Places, California Register of Historical Resources, Local Register of historical resources, or a historical resource survey form (DPR Form 523) with a rating of I-5;
9. Require an exception (variance) to the policies and regulations in the General Plan, Planning Code, or Uniform Building Code, and the exception causes a fundamental conflict with policies and regulations in the General Plan, Planning Code, and Uniform Building Code

⁴ See Appendix E for guidance on the cumulative analysis.

⁵ For projects requiring design review, briefly evaluate the project's consistency with the applicable design review criteria. Projects consistent with the design review criteria will generally be found to result in a less than significant impact.

⁶ See Appendix A for the definition of an historic resource.

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addressing the provision of adequate light related to appropriate uses; or

10. Create winds that exceed 36 mph for more than one hour during daylight hours during the year. [NOTE: The wind analysis only needs to be done if the project's height is 100 feet or greater (measured to the roof) **and** one of the following conditions exist: (a) the project is located adjacent to a substantial water body (i.e., Oakland Estuary, Lake Merritt or San Francisco Bay); or (b) the project is located in Downtown. Downtown is defined in the Land Use and Transportation Element of the General Plan (page 67) as the area generally bounded by West Grand Avenue to the north, Lake Merritt and Channel Park to the east, the Oakland Estuary to the south and I-980/Brush Street to the west. The wind analysis must consider the project's contribution to wind impacts to on- and off-site public and private spaces. Only impacts to public spaces (on- and off-site) and off-site private spaces are considered CEQA impacts. Although impacts to on-site private spaces are considered a planning-related non-CEQA issue, such potential impacts still must be analyzed.]

AGRICULTURE AND FOREST RESOURCES⁷

The project would have a significant impact on the environment if it would:

1. Convert Prime Farmland, Unique Farmland, or Farmland of Statewide Importance (Farmland), as shown on the maps prepared pursuant to the Farmland Mapping and Monitoring Program of the California Resources Agency, to non-agricultural use;
2. Conflict with existing zoning for agricultural use, or a Williamson Act contract;
3. Conflict with existing zoning for, or cause rezoning of, forest land (as defined in Public Resources Code section 12220(g)), timberland (as defined by Public Resources Code section 4526), or timberland zoned Timberland Production (as defined by Government Code section 51104(g));
4. Result in the loss of forest land or conversion of forest land to non-forest use; or

⁷ In determining whether impacts to agricultural resources are significant environmental effects, refer to the California Agricultural Land Evaluation and Site Assessment Model (1997) prepared by the California Dept. of Conservation. In determining whether impacts to forest resources, including timberland, are significant environmental effects, refer to information compiled by the California Department of Forestry and Fire Protection regarding the state's inventory of forest land, including the Forest and Range Assessment Project and the Forest Legacy Assessment Project; and forest carbon measurement methodology provided in Forest Protocols adopted by the California Air Resources Board.

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5. Involve other changes in the existing environment which, due to their location or nature, could result in conversion of Farmland to non-agricultural use or conversion of forest land to non-forest use.

AIR QUALITY^{8,9}

The project would have a significant impact on the environment if it would:

NOTE: The thresholds below that pertain to the effect of the environment on the project (as compared to the project's impact on the environment) are not legally required to be analyzed under CEQA but are nevertheless evaluated in order to provide information to decision-makers and the public.

PROJECT-LEVEL IMPACTS

NOTE: The thresholds below related to criteria air pollutants (thresholds 1 through 3) pertain to impacts that are, by their nature, cumulative impacts because one project by itself cannot generate air pollution that would violate regional air quality standards. Thresholds 1 through 3 pertain to a project's contribution to cumulative impacts but are labeled "Project-Level Impacts" here to be consistent with the terminology used by BAAQMD.

1. During project construction result in average daily emissions of 54 pounds per day of ROG,

⁸ The City's thresholds of significance pertaining to air quality are generally based on the thresholds adopted by the Bay Area Air Quality Management District (BAAQMD) in June 2010. In March 2012 the Alameda County Superior Court issued a judgment finding that BAAQMD had failed to comply with CEQA when the thresholds were adopted. In August 2013 the California Court of Appeal reversed the Superior Court's decision. Pursuant to CEQA, lead agencies must apply appropriate thresholds based on substantial evidence in the record. The City's thresholds rely upon the technical and scientific basis for BAAQMD's 2010 thresholds. Use of the City's thresholds is consistent with and authorized by CEQA Guidelines section 15064. The City's thresholds have not been challenged and remain in effect. The methodology for assessing air quality impacts (e.g., calculating air pollution emissions and potential health impacts) should be based on the latest version of BAAQMD's CEQA Guidelines and guidelines published by other regional, state, and federal regulatory agencies.

⁹ BAAQMD maintains a PM_{2.5}, NO_x, and Ozone monitoring station in East Oakland along International Blvd. and data from this station should be obtained and used. The consultant must submit a public records request to BAAQMD to obtain this information. The form can be submitted via BAAQMD's website: http://www.baaqmd.gov/admin/public_records_request.htm

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- NO_x, or PM_{2.5} or 82 pounds per day of PM₁₀;
2. During project operation result in average daily emissions of 54 pounds per day of ROG, NO_x, or PM_{2.5} or 82 pounds per day of PM₁₀; or result in maximum annual emissions of 10 tons per year of ROG, NO_x, or PM_{2.5} or 15 tons per year of PM₁₀;
 3. Contribute to carbon monoxide (CO) concentrations exceeding the California Ambient Air Quality Standards (CAAQS) of nine parts per million (ppm) averaged over eight hours and 20 ppm for one hour [NOTE: Pursuant to BAAQMD CEQA Guidelines, 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.];
 4. For new sources of Toxic Air Contaminants (TACs), during either project construction or project operation expose sensitive receptors to substantial levels of TACs **under project conditions** resulting in (a) an increase in cancer risk level greater than 10 in one million, (b) a non-cancer risk (chronic or acute) hazard index greater than 1.0, or (c) an increase of annual average PM_{2.5} of greater than 0.3 micrograms per cubic meter; or, **under cumulative conditions**, 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} of greater than 0.8 micrograms per cubic meter [NOTE: Pursuant to the BAAQMD CEQA Guidelines, when siting new TAC sources consider receptors located within 1,000 feet. For this threshold, sensitive receptors include residential uses, schools, parks, daycare centers, nursing homes, and medical centers. The cumulative analysis should consider the combined risk from all TAC sources.];
 5. Expose new **sensitive receptors** to substantial ambient levels of Toxic Air Contaminants (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} of greater than 0.8 micrograms per cubic meter [NOTE: Pursuant to the BAAQMD CEQA Guidelines, when siting new sensitive receptors consider TAC sources located within 1,000 feet including, but not limited to, stationary sources, freeways, major roadways (10,000 or greater

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- vehicles per day), truck distribution centers, airports, seaports, ferry terminals, and rail lines. For this threshold, sensitive receptors include residential uses, schools, parks, daycare centers, nursing homes, and medical centers.]; or
6. Frequently and for a substantial duration, create or expose sensitive receptors to substantial objectionable odors affecting a substantial number of people [NOTE: For this threshold, sensitive receptors include residential uses, schools, daycare centers, nursing homes, and medical centers (but not parks).].

PLAN-LEVEL IMPACTS¹⁰

7. Fundamentally conflict with the primary goals of the Bay Area Clean Air Plan (CAP);
8. Fundamentally conflict with the CAP because the plan does not demonstrate reasonable efforts to implement control measures contained in the CAP or the plan conflicts with or obstructs implementation of any control measures in the CAP;
9. Not include special overlay zones containing goals, policies, and objectives to minimize potential Toxic Air Contaminant (TAC) impacts in areas located (a) near existing and planned sources of TACs and (b) within 500 feet of freeways and high-volume roadways containing 100,000 or more average daily vehicle trips;¹¹ or
10. Not identify existing and planned sources of odors with policies to reduce potential odor impacts.

NOTE: See the Greenhouse Gas Emissions/Global Climate Change thresholds and the Hazards and Hazardous Materials thresholds for additional thresholds related to air emissions.

BIOLOGICAL RESOURCES

The project would have a significant impact on the environment if it would:

1. Have a substantial adverse effect, either directly or through habitat modifications, on any

¹⁰ The plan-level thresholds should be applied to long-range planning documents, such as general plans, redevelopment plans, specific plans, area plans, and community plans.

¹¹ Pursuant to BAAQMD Guidelines, the size of the overlay zones should be based upon the recommended buffer distances contained within the California Air Resources Board's (CARB's) 2005 Land Use Handbook.

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species identified as a candidate, sensitive, or special status species in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service;

2. Have a substantial adverse effect on any riparian habitat or other sensitive natural community identified in local or regional plans, policies, regulations or by the California Department of Fish and Game or U.S. Fish and Wildlife Service;
3. Have a substantial adverse effect on federally protected wetlands (as defined by section 404 of the Clean Water Act) or state protected wetlands, through direct removal, filling, hydrological interruption, or other means;
4. Substantially interfere with the movement of any native resident or migratory fish or wildlife species or with established native resident or migratory wildlife corridors, or impede the use of native wildlife nursery sites;
5. Fundamentally conflict with any applicable habitat conservation plan or natural community conservation plan;
6. Fundamentally conflict with the City of Oakland Tree Protection Ordinance (Oakland Municipal Code (OMC) Chapter 12.36) by removal of protected trees under certain circumstances [NOTE: Factors to be considered in determining significance include the number, type, size, location and condition of (a) the protected trees to be removed and/or impacted by construction and (b) protected trees to remain, with special consideration given to native trees.¹² Protected trees include *Quercus agrifolia* (California or coast live oak) measuring four inches diameter at breast height (dbh) or larger, and any other tree measuring nine inches dbh or larger except eucalyptus and *Pinus radiata* (Monterey pine); provided, however, that Monterey pine trees on City property and in development-related situations where more than five Monterey pine trees per acre are proposed to be removed are considered to be protected trees.]; or
7. Fundamentally conflict with the City of Oakland Creek Protection Ordinance (OMC Chapter 13.16) intended to protect biological resources. [NOTE: Although there are no specific, numeric/quantitative criteria to assess impacts, factors to be considered in determining significance include whether there is substantial degradation of riparian and/or aquatic

¹² Oakland Planning Code section 17.158.280(e)(2) states that "Development related" tree removal permits are exempt from CEQA if no single tree to be removed has a dbh of 36 inches or greater and the cumulative trunk area of all trees to be removed does not exceed 0.1 percent of the total lot area.

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habitat through (a) discharging a substantial amount of pollutants into a creek, (b) significantly modifying the natural flow of the water, (c) depositing substantial amounts of new material into a creek or causing substantial bank erosion or instability, or (d) adversely impacting the riparian corridor by significantly altering vegetation or wildlife habitat.]

CULTURAL AND HISTORIC RESOURCES¹³

The project would have a significant impact on the environment if it would:

1. Cause a substantial adverse change in the significance of an historical resource as defined in CEQA Guidelines section 15064.5.¹⁴ Specifically, a substantial adverse change includes physical demolition, destruction, relocation, or alteration of the resource or its immediate surroundings such that the significance of the historical resource would be "materially impaired." The significance of an historical resource is "materially impaired" when a project demolishes or materially alters, in an adverse manner, those physical characteristics of the resource that convey its historical significance and that justify its inclusion on, or eligibility for inclusion on an historical resource list (including the California Register of Historical Resources, the National Register of Historical Resources, Local Register, or historical resources survey form (DPR Form 523) with a rating of 1-5);
2. Cause a substantial adverse change in the significance of an archaeological resource pursuant to CEQA Guidelines section 15064.5;
3. Directly or indirectly destroy a unique paleontological resource or site or unique geologic feature; or
4. Disturb any human remains, including those interred outside of formal cemeteries.

GEOLOGY AND SOILS

The project would have a significant impact on the environment if it would expose people or structures to geologic hazards, soils, and/or seismic conditions so unfavorable that they could not be overcome by special design using reasonable construction and maintenance practices. Specifically,

¹³ See Appendix E for guidance on the cumulative analysis.

¹⁴ See Appendix A for the definition of an historic resource.

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1. Expose people or structures to substantial risk of loss, injury, or death involving:
 - Rupture of a known earthquake fault, as delineated on the most recent Alquist-Priolo Earthquake Fault Zoning Map or Seismic Hazards Map issued by the State Geologist for the area or based on other substantial evidence of a known fault [NOTE: Refer to California Geological Survey 42 and 117 and Public Resources Code section 2690 et. seq.];
 - Strong seismic ground shaking;
 - Seismic-related ground failure, including liquefaction, lateral spreading, subsidence, collapse; or
 - Landslides;
2. Result in substantial soil erosion or loss of topsoil, creating substantial risks to life, property, or creeks/waterways;
3. Be located on expansive soil, as defined in section 1802.3.2 of the California Building Code (2007, as it may be revised), creating substantial risks to life or property;
4. Be located above a well, pit, swamp, mound, tank vault, or unmarked sewer line, creating substantial risks to life or property;
5. Be located above landfills for which there is no approved closure and post-closure plan, or unknown fill soils, creating substantial risks to life or property ; or
6. Have soils incapable of adequately supporting the use of septic tanks or alternative wastewater disposal systems where sewers are not available for the disposal of wastewater.

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GREENHOUSE GAS EMISSIONS / GLOBAL CLIMATE CHANGE¹⁵

The project would have a significant impact on the environment if it would:

1. Generate greenhouse gas emissions, either directly or indirectly, that may have a significant impact on the environment, specifically:

PROJECT-LEVEL IMPACTS¹⁶

[NOTE: Greenhouse gas impacts are, by their nature, cumulative impacts because one project by itself cannot cause global climate change. These thresholds pertain to a project's contribution to cumulative impacts but are labeled "Project-Level Impacts" here to be consistent with the terminology used by BAAQMD.]

- a. For a project involving a stationary source, produce total emissions of more than 10,000 metric tons of CO₂e annually [NOTE: Stationary sources are projects that require a BAAQMD permit to operate.].
- b. For a project involving a land use development, produce total emissions of more than 1,100 metric tons of CO₂e annually **AND**¹⁷ more than 4.6 metric tons of CO₂e per service

¹⁵ The City's thresholds of significance pertaining to greenhouse gas / global climate change are generally based on the thresholds adopted by the Bay Area Air Quality Management District (BAAQMD) in June 2010. In March 2012 the Alameda County Superior Court issued a judgment finding that BAAQMD had failed to comply with CEQA when the thresholds were adopted. In August 2013 the California Court of Appeal reversed the Superior Court's decision. Pursuant to CEQA, lead agencies must apply appropriate thresholds based on substantial evidence in the record. The City's thresholds rely upon the technical and scientific basis for BAAQMD's 2010 thresholds. Use of the City's thresholds is consistent with and authorized by CEQA Guidelines section 15064. The City's thresholds have not been challenged and remain in effect. The methodology for assessing greenhouse gas / global climate change impacts (e.g., calculating emissions) should be based on the latest version of BAAQMD's CEQA Guidelines and guidelines published by other regional, state, and federal regulatory agencies.

¹⁶ For projects that involve both a stationary source and a land use development, calculate each component separately and compare to the applicable threshold.

¹⁷ The BAAQMD CEQA Guidelines state that the project would have a less-than-significant impact if CO₂e emissions do not exceed the 1,100 metric tons threshold OR the 4.6 metric tons per service population threshold. Because Oakland's thresholds are structured to indicate when a project would have a significant impact, the thresholds are presented here such that the project would have a significant impact if it exceeded the 1,100 metric tons threshold AND the 4.6 metric tons per service population threshold.

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population annually [NOTE: Land use developments are projects that do not require a BAAQMD permit to operate. The service population includes both the residents and the employees of the project. The project's impact would be considered significant if the emissions exceed BOTH the 1,100 metric tons threshold and the 4.6 metric tons threshold. Accordingly, the impact would be considered less than significant if the project's emissions are below EITHER of these thresholds.]¹⁸

[NOTE: The project's expected greenhouse gas emissions during construction should be annualized over a period of 40 years and then added to the expected emissions during operation for comparison to the threshold. A 40-year period is used because 40 years is considered the average life expectancy of a building before it is remodeled with considerations for increased energy efficiency. The thresholds are based on the BAAQMD thresholds. The BAAQMD thresholds were originally developed for project operation impacts only. Therefore, combining both the construction emissions and operation emissions for comparison to the threshold represents a conservative analysis of potential greenhouse gas impacts.]

¹⁸ Refer to the City's Standard Conditions of Approval for conditions related to greenhouse gas emissions (GHG) and requirements to reduce project GHG emissions even for projects with emissions below either of these thresholds. Also refer to the screening criteria contained in the BAAQMD CEQA Guidelines. For residential development projects, refer to the City's 2007-2014 Housing Element EIR screening criteria. The Housing Element EIR's analysis showed that residential development projects of less than 172 units would not result in a significant climate change impact and, therefore, no project-specific GHG analysis is required for such projects. Under an alternative approach in the Housing Element EIR, the analysis found that ANY residential development project (including those containing 172 or more units) would not result in a significant climate change impact and that no project-specific GHG analysis would be required. For residential projects containing 172 or more units, please consult with City Planning staff and the City Attorney's office on the appropriate GHG review. For nonresidential development projects and mixed-use development projects, the nonresidential component of the project must be compared to the BAAQMD screening criteria, and the applicable threshold if the screening criteria are exceeded, independently from any residential component of the project.

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PLAN-LEVEL IMPACTS¹⁹

- a. Produce emissions of more than 6.6 metric tons of CO₂e per service population annually.
- 2. Fundamentally conflict with an applicable plan, policy, or regulation adopted for the purposes of reducing greenhouse gas emissions.

HAZARDS AND HAZARDOUS MATERIALS

The project would have a significant impact on the environment if it would:

- 1. Create a significant hazard to the public or the environment through the routine transport, use, or disposal of hazardous materials;
- 2. Create a significant hazard to the public or the environment through reasonably foreseeable upset and accident conditions involving the release of hazardous materials into the environment;
- 3. Create a significant hazard to the public through the storage or use of acutely hazardous materials near sensitive receptors [NOTE: Per the BAAQMD CEQA Guidelines, evaluate whether the project would result in persons being within the Emergency Response Planning Guidelines (ERPG) exposure level 2 for acutely hazardous air emissions either by siting a new source or a new sensitive receptor. For this threshold, sensitive receptors include residential uses, schools, parks, daycare centers, nursing homes, and medical centers];
- 4. Emit hazardous emissions or handle hazardous or acutely hazardous materials, substances, or waste within one-quarter mile of an existing or proposed school;
- 5. Be located on a site which is included on a list of hazardous materials sites compiled

¹⁹ The BAAQMD CEQA Guidelines state that the plan-level threshold should only be applied to general plans. For other types of plans, such as redevelopment plans and specific Plans, the Guidelines state that the project-level thresholds should be used. The Guidelines do not state whether the plan-level threshold or the project-level thresholds should be used for individual general plan elements (as compared to revisions to the entire general plan). Therefore, the environmental analysis for individual general plan elements should use both the plan-level threshold/methodology and the project-level thresholds/methodology unless directed otherwise by City staff (see the 2007-2014 Housing Element Draft EIR as an example).

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pursuant to Government Code section 65962.5 (i.e., the “Cortese List”) and, as a result, would create a significant hazard to the public or the environment;²⁰

- 6. Result in less than two emergency access routes for streets exceeding 600 feet in length unless otherwise determined to be acceptable by the Fire Chief, or his/her designee, in specific instances due to climatic, geographic, topographic, or other conditions;²¹
- 7. Be located within an airport land use plan or, where such a plan has not been adopted, within two miles of a public airport or public use airport, and would result in a significant safety hazard for people residing or working in the project area;
- 8. Be located within the vicinity of a private airstrip, and would result in a significant safety hazard for people residing or working in the project area;
- 9. Fundamentally impair implementation of or physically interfere with an adopted emergency response plan or emergency evacuation plan; or
- 10. Expose people or structures to a significant risk of loss, injury or death involving wildland fires, including where wildlands are adjacent to urbanized areas or where residences are intermixed with wildlands.

HYDROLOGY AND WATER QUALITY

The project would have a significant impact on the environment if it would:

- 1. Violate any water quality standards or waste discharge requirements;
- 2. Substantially deplete groundwater supplies or interfere substantially with groundwater recharge such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level (e.g., the production rate of pre-existing nearby wells would drop to a level which would not support existing land uses or proposed uses for which permits have been granted);
- 3. Result in substantial erosion or siltation on- or off-site that would affect the quality of receiving waters;
- 4. Result in substantial flooding on- or off-site;

²⁰ See Appendix B for guidance on the “Cortese List.”

²¹ See the Transportation/Traffic thresholds for additional thresholds related to transportation.

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- 5. Create or contribute substantial runoff which would exceed the capacity of existing or planned stormwater drainage systems;
- 6. Create or contribute substantial runoff which would be an additional source of polluted runoff;
- 7. Otherwise substantially degrade water quality;
- 8. Place housing within a 100-year flood hazard area, as mapped on a federal Flood Hazard Boundary or Flood Insurance Rate Map or other flood hazard delineation map, that would impede or redirect flood flows;
- 9. Place within a 100-year flood hazard area structures which would impede or redirect flood flows;
- 10. Expose people or structures to a substantial risk of loss, injury, or death involving flooding;
- 11. Expose people or structures to a substantial risk of loss, injury, or death as a result of inundation by seiche, tsunami, or mudflow;
- 12. Substantially alter the existing drainage pattern of the site or area, including through the alteration of the course, or increasing the rate or amount of flow, of a creek, river, or stream in a manner that would result in substantial erosion, siltation, or flooding, both on- or off-site; or
- 13. Fundamentally conflict with the City of Oakland Creek Protection Ordinance (OMC Chapter 13.16) intended to protect hydrologic resources. [Note: Although there are no specific, numeric/quantitative criteria to assess impacts, factors to be considered in determining significance include whether there is substantial degradation of water quality through (a) discharging a substantial amount of pollutants into a creek, (b) significantly modifying the natural flow of the water or capacity, (c) depositing substantial amounts of new material into a creek or causing substantial bank erosion or instability, or (d) substantially endangering public or private property or threatening public health or safety.]

LAND USE AND PLANNING²²

The project would have a significant impact on the environment if it would:

²² A list of the City’s major planning documents is in Appendix C, as well as recommended language/approach for discussing consistency of the proposed project with the General Plan.

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1. Physically divide an established community;
2. Result in a fundamental conflict between adjacent or nearby land uses;
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; or
4. Fundamentally conflict with any applicable habitat conservation plan or natural community conservation plan.

MINERAL RESOURCES

The project would have a significant impact on the environment if it would:

1. Result in the loss of availability of a known mineral resource that would be of value to the region and the residents of the state; or
2. Result in the loss of availability of a locally-important mineral resource recovery site delineated on a local general plan, specific plan, or other land use plan.

NOISE

The project would have a significant impact on the environment if it would:

1. Generate noise in violation of the City of Oakland Noise Ordinance (Oakland Planning Code section 17.120.050) regarding construction noise, except if an acoustical analysis is performed that identifies recommend measures to reduce potential impacts.²³

²³ The acoustical analysis must identify, at a minimum, (a) the types of construction equipment expected to be used and the noise levels typically associated with the construction equipment and (b) the surrounding land uses including any sensitive land uses (e.g., schools and childcare facilities, health care and nursing homes, public open space). If sensitive land uses are present, the acoustical analysis must recommend measures to reduce potential impacts.

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TABLE 1 City of Oakland Construction Noise Standards at Receiving Property Line, dBA ¹		
Receiving Land Use	Maximum Allowable Noise Level (dBA)	
	Weekdays 7 a.m.-7 p.m.	Weekends 9 a.m.-8 p.m.
Less than 10 days		
Residential	80	65
Commercial, Industrial	85	70
More than 10 Days		
Residential	65	55
Commercial, Industrial	70	60
Notes: 1) If the ambient noise level exceeds these standards, the standard shall be adjusted to equal the ambient noise level.		

During the hours of 7 p.m. to 7 a.m. on weekdays and 8 p.m. to 9 a.m. on weekends and federal holidays, noise levels received by any land use from construction or demolition shall not exceed the applicable nighttime operational noise level standard (see Table 2);

2. Generate noise in violation of the City of Oakland nuisance standards (Oakland Municipal Code section 8.18.020) regarding persistent construction-related noise;
3. Generate noise in violation of the City of Oakland Noise Ordinance (Oakland Planning Code section 17.120.050) regarding operational noise:

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**TABLE 2
City of Oakland Operational Noise Standards
at Receiving Property Line, dBA¹**

Receiving Land Use	Cumulative No. of Minutes in a 1-Hr Period ²	Maximum Allowable Noise Level (dBA)	
		Daytime 7 a.m.-10 p.m.	Nighttime 10 p.m.-7 a.m.
Residential and Civic ³	20 (L ₃₃)	60	45
	10 (L _{16.7})	65	50
	5 (L _{5.3})	70	55
	1 (L _{1.7})	75	60
	0 (L _{max})	80	65
Anytime			
Commercial	20 (L ₃₃)	65	
	10 (L _{16.7})	70	
	5 (L _{5.3})	75	
	1 (L _{1.7})	80	
	0 (L _{max})	85	
Manufacturing, Mining, and Quarrying	20 (L ₃₃)	70	
	10 (L _{16.7})	75	
	5 (L _{5.3})	80	
	1 (L _{1.7})	85	
	0 (L _{max})	90	

Notes: 1) These standards are reduced 5 dBA for simple tone noise, noise consisting primarily of speech or music, or recurring impact noise. If the ambient noise level exceeds these standards, the standard shall be adjusted to equal the ambient noise level.
2) L_x represents the noise level that is exceeded X percent of a given period. L_{max} is the maximum instantaneous noise level.
3) Legal residences, schools and childcare facilities, health care or nursing home, public open space, or similarly sensitive land uses.

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4. Generate noise resulting in a 5 dBA permanent increase in ambient noise levels in the project vicinity above levels existing without the project; or, if under a cumulative scenario where the cumulative increase results in a 5 dBA permanent increase in ambient noise levels in the project vicinity without the project (i.e., the cumulative condition including the project compared to the existing conditions) and a 3 dBA permanent increase is attributable to the project (i.e., the cumulative condition including the project compared to the cumulative baseline condition without the project) [NOTE: Outside of a laboratory, a 3 dBA change is considered a just-perceivable difference. Therefore, 3 dBA is used to determine if the project-related noise increases are cumulative considerable. Project-related noise should include both vehicle trips and project operations.];
5. Expose persons to interior L₅₀ or CNEL greater than 45 dBA for multi-family dwellings, hotels, motels, dormitories and long-term care facilities (and may be extended by local legislative action to include single-family dwellings) per California Noise Insulation Standards (CCR Part 2, Title 24);
6. Expose the project to community noise in conflict with the land use compatibility guidelines of the Oakland General Plan after incorporation of all applicable Standard Conditions of Approval²⁴.

²⁴ The evaluation of land use compatibility should consider the following factors: type of noise source; the sensitivity of the noise receptor; the noise reduction likely to be provided by structures; the degree to which the noise source may interfere with speech, sleep or other activities characteristic of the land use; seasonal variations in noise source levels; existing outdoor ambient levels; general societal attitudes towards the noise source; prior history of the noise source; and tonal characteristics of the noise source. To the extent that any of these factors can be evaluated, the measured or computed noise exposure values may be adjusted in order to more accurately assess local sentiments towards acceptable noise exposure. (Oakland General Plan, Noise Element, 2005)

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**FIGURE 1
Land Use Compatibility Guidelines**

LAND USE CATEGORY	COMMUNITY NOISE EXPOSURE (L _{DN} OR CNEL, dB)					
	55	60	65	70	75	80
Residential	NA	CA	NU	CU		
Transient lodging – motels, hotels	NA		CA	NU	CU	
Schools, libraries, churches, hospitals, nursing homes	NA	CA	NU	CU		
Auditoriums, concert halls, amphitheaters		CA		CU		
Sports arenas, outdoor spectator sports		CA		CU		
Playgrounds, neighborhood parks	NA		NU	CU		
Golf courses, riding stables, water recreation, cemeteries		NA		NU	CU	
Office buildings, business commercial and professional	NA		CA	NU		
Industrial, manufacturing, utilities, agriculture		NA	CA	NU		

NA NORMALLY ACCEPTABLE: Development may occur without an analysis of potential noise impacts to the proposed development (though it might still be necessary to analyze noise impacts that the project might have on its surroundings).
 CA CONDITIONALLY ACCEPTABLE: Development should be undertaken only after an analysis of noise-reduction requirements is conducted and if necessary noise-mitigating features are included.
 NU NORMALLY UNACCEPTABLE: Development should generally be discouraged; it may be undertaken only if a detailed analysis of the noise-reduction requirements is conducted, and if highly effective noise mitigation features are included.
 CU CLEARLY UNACCEPTABLE: Development should not be undertaken.

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7. Expose persons to or generate noise levels in excess of applicable standards established by a regulatory agency (e.g., occupational noise standards of the Occupational Safety and Health Administration [OSHA]);
8. During either project construction or project operation expose persons to or generate groundborne vibration that exceeds the criteria established by the Federal Transit Administration (FTA).²⁵

**TABLE 3
FTA Groundborne Vibration Impact Criteria**

Land Use Category	Frequent Events ¹	Occasional Events ²	Infrequent Events ³
Category I: Buildings where vibration would interfere with interior operations	65 VdB ⁴	65 VdB ⁴	65 VdB ⁴
Category II: Residences and buildings where people normally sleep	72 VdB	75 VdB	80 VdB
Category III: Institutional land uses with primarily daytime use	75 VdB	78 VdB	83 VdB

Notes: 1) More than 70 vibration events of the same source per day.
 2) Between 30 and 70 vibration events of the same source per day.
 3) Less than 30 vibration events of the same source per day.
 4) This criterion is based on levels that are acceptable for most moderately sensitive equipment such as optical microscopes. Vibration sensitive manufacturing or research should always require detailed evaluation to define the acceptable vibration levels. Ensuring low vibration levels in a building requires special design of HVAC systems and stiffened floors.

²⁵ The FTA criteria were developed to apply to transit-related groundborne vibration. However, these criteria should be applied to transit-related and non-transit-related sources of vibration.

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- 9. Be located within an airport land use plan and would expose people residing or working in the project area to excessive noise levels; or
- 10. Be located within the vicinity of a private airstrip, and would expose people residing or working in the project area to excessive noise levels.

POPULATION AND HOUSING

The project would have a significant impact on the environment if it would:

- 1. Induce substantial population growth in a manner not contemplated in the General Plan, either directly (for example, by proposing new homes and businesses) or indirectly (for example, through extensions of roads or other infrastructure), such that additional infrastructure is required but the impacts of such were not previously considered or analyzed;
- 2. Displace substantial numbers of existing housing, necessitating the construction of replacement housing elsewhere in excess of that contained in the City's Housing Element; or
- 3. Displace substantial numbers of people, necessitating the construction of replacement housing elsewhere in excess of that contained in the City's Housing Element.

PUBLIC SERVICES

The project would have a significant impact on the environment if it would:

- 1. Result in substantial adverse physical impacts associated with the provision of new or physically altered governmental facilities, or the need for new or physically altered governmental facilities, the construction of which could cause significant environmental impacts, in order to maintain acceptable service ratios, response times, or other performance objectives for any of the following public services:
 - Fire protection;
 - Police protection;
 - Schools;²⁶ or
 - Other public facilities.

²⁶ Although impacts to schools are exempt from CEQA review and mitigation (see SB 50) the impacts should nevertheless be analyzed.

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RECREATION

The project would have a significant impact on the environment if it would:

- 1. 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; or
- 2. Include recreational facilities or require the construction or expansion of recreational facilities which might have a substantial adverse physical effect on the environment.

TRANSPORTATION/TRAFFIC²⁷

The project would have a significant impact on the environment if it would:

PROJECT IMPACTS

Conflict with an applicable plan, ordinance, or policy establishing measures of effectiveness for the performance of the circulation system, taking into account all modes of transportation including mass transit and non-motorized travel and relevant components of the circulation system, including but not limited to, intersections, streets, highways and freeways, pedestrian and bicycle paths, and mass transit, specifically:

Traffic Load and Capacity Thresholds²⁸

- 1. At a study, signalized intersection which is located **outside the Downtown area and that does not provide direct access to Downtown**, the project would cause the motor vehicle level of service (LOS) to degrade to worse than LOS D (i.e., LOS E or F) and cause the total intersection average vehicle delay to increase by four (4) or more seconds;
- 2. At a study, signalized intersection which is located **within the Downtown area or that provides direct access to Downtown**, the project would cause the motor vehicle LOS to degrade to worse than LOS E (i.e., LOS F) and cause the total intersection average vehicle delay to increase by four (4) or more seconds;
- 3. At a study, signalized intersection **outside the Downtown area and that does not provide**

²⁷ Refer to the City's current Transportation Impact Study Guidelines (contained in a separate document) for additional guidance on the transportation analysis.

²⁸ All LOS calculations shall be based on the methodologies in the current *Highway Capacity Manual*.

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direct access to Downtown where the motor vehicle level of service is LOS E, the project would cause the total intersection average vehicle delay to increase by four (4) or more seconds;

- 4. At a study, signalized intersection **outside the Downtown area and that does not provide direct access to Downtown** where the motor vehicle level of service is LOS E, the project would cause an increase in the average delay for any of the critical movements of six (6) seconds or more;

[NOTE: The Downtown area is defined in the Land Use and Transportation Element of the General Plan (page 67) as the area generally bounded by the West Grand Avenue to the north, Lake Merritt and Channel Park to the east, the Oakland Estuary to the south, and I-980/Brush Street to the west. Intersections that provide direct access to Downtown are generally defined as principal arterials within two (2) miles of the Downtown area and minor arterials within one (1) mile of the Downtown area, provided that the street connects directly to the Downtown area.]²⁹

- 5. At a study, signalized intersection for all areas where the level of service is LOS F, the project would cause (a) the overall volume-to-capacity ("V/C") ratio to increase 0.03 or more or (b) the critical movement V/C ratio to increase 0.05 or more;
- 6. At a study, unsignalized intersection the project would add ten (10) or more vehicles to the critical movement and after project completion satisfy the California Manual on Uniform Traffic Control Devices (MUTCD) peak hour volume traffic signal warrant;
- 7. For a roadway segment of the Congestion Management Program (CMP) Network, the project would cause (a) the LOS to degrade from LOS E or better to LOS F or (b) the V/C ratio to increase 0.03 or more for a roadway segment that would operate at LOS F without the project [NOTE: This threshold only applies to land use development projects that generate a vehicle trip on a roadway segment of the CMP Network located in the project study area and to transportation projects that would reduce the vehicle capacity of a roadway segment of the CMP Network].³⁰

²⁹ A map of arterials that provide direct access to the Downtown area is located in the City's Transportation Impact Study Guidelines (contained in a separate document).

³⁰ Refer to the Alameda County Transportation Commission's (ACTC) (formerly the Alameda County Congestion Management Agency) *Congestion Management Program* for a description of the CMP Network. In Oakland, the CMP Network includes all state highways, plus the following streets: portions of Martin Luther King Jr. Way, Webster/Possey Tubes, 23rd Ave., 29th Ave., and Hegenberger Rd.

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- 8. Cause congestion of regional significance on a roadway segment on the Metropolitan Transportation System (MTS) evaluated per the requirements of the Land Use Analysis Program of the CMP [NOTE: This threshold only applies to a land use development project that involves either (a) a general plan amendment that would generate 100 or more p.m. peak hour trips above the current general plan land use designation or (b) an EIR and the project would generate 100 or more p.m. peak hour trips above the existing condition. Factors to consider in evaluating the potential impact include, but are not limited to, the relationship between the project and planned improvements in the Countywide Transportation Plan, the project's consistency with City policies concerning infill and transit-oriented development, the proximity of the project to other jurisdictions, and the magnitude of the project's contribution based on V/C ratios.];³¹

- 9. Result in substantially increased travel times for AC Transit buses [NOTE: Factors to consider in evaluating the potential impact include, but are not limited to, the proximity of the project site to the transit corridor(s), the function of the roadway segment(s), and the characteristics of the potentially affected bus route(s). The evaluation may require a qualitative and/or quantitative analysis depending upon these relevant factors.];

Traffic Safety Thresholds

- 10. Directly or indirectly cause or expose roadway users (e.g., motorists, pedestrians, bus riders, bicyclists) to a permanent and substantial transportation hazard due to a new or existing physical design feature or incompatible uses [NOTE: Factors to consider in evaluating the potential impact to roadway users due to physical design features and incompatible uses include, but are not limited to, collision history and the adequacy of existing traffic controls.];

- 11. Directly or indirectly result in a permanent substantial decrease in pedestrian safety [NOTE: Consider whether factors related to pedestrian safety such as, but not limited to, the following are substantial in nature:

- Degradation of existing pedestrian facilities, including the following:

³¹ Refer to ACTC's *Congestion Management Program* for a description of the MTS and the Land Use Analysis Program. The ACTC will identify the roadway segments of the MTS that require evaluation in its letter commenting on the Notice of Preparation (NOP) issued by the City for the project. Note that the City is required to send NOPs and notices of proposed general plan amendments to ACTC under the Land Use

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- o Removal of existing pedestrian refuge islands and/or bulbouts
 - o Increase of street crossing distance
 - o Permanent removal or significant narrowing of an existing sidewalk, path, marked crossing, or pedestrian access way
 - o Increase in pedestrian or vehicle volume at unsignalized or uncontrolled intersections
 - o Sidewalk overcrowding
 - Addition of new vehicle travel lanes and/or turn lanes
 - Permanent removal of existing sidewalk-street buffering elements (e.g., on-street parking lane, planting strip, street trees)
 - Addition of vehicle driveway entrance(s) that degrade pedestrian safety, with considerations given to the following:
 - o Number of proposed vehicle driveway entrances
 - o Location of proposed vehicle driveway entrance(s)
 - o Visibility between pedestrians on the sidewalk and motorists using the proposed vehicle driveway entrance(s);
12. Directly or indirectly result in a permanent substantial decrease in bicyclist safety [NOTE: Consider whether factors related to bicyclist safety such as, but not limited to, the following are substantial in nature:
- Removal or degradation of existing bikeways
 - Addition of new vehicle travel lanes and/or turn lanes
 - Addition of vehicle driveway entrances(s) that degrade(s) bicycle safety, with consideration given to the following:
 - o Number of proposed vehicle driveway entrances
 - o Location of proposed vehicle driveway entrance(s)

Analysis Program regardless of how many project-related trips are expected to be generated.

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- o Visibility between bicyclists on travelway and motorists using the proposed vehicle driveway entrance(s);
13. Directly or indirectly result in a permanent substantial decrease in bus rider safety [NOTE: Consider whether factors related to bus rider safety such as, but not limited to, the following are substantial in nature:
- Removal or degradation of existing bus facilities
 - Siting of bus stops in locations without marked crossings, with insufficient sidewalks, or in isolated or unlit areas
 - Addition of new bus riders that creates overcrowding at a bus stop];
14. Generate substantial multi-modal traffic traveling across at-grade railroad crossings that cause or expose roadway users (e.g., motorists, pedestrians, bus riders, bicyclists) to a permanent and substantial transportation hazard. [NOTE: If the project will generate substantial multi-modal traffic across an at-grade railroad crossing, a Diagnostic Review will be required in consultation with the California Public Utilities Commission. The Review should include roadway and rail descriptions, collision history, traffic volumes for all modes, train volumes, vehicular speeds, train speeds, and existing rail and traffic controls.]¹²
- Other Thresholds**
15. Fundamentally conflict with adopted City policies, plans, or programs regarding public transit, bicycle, or pedestrian facilities adopted for the purpose of avoiding or mitigating an environmental effect and actually result in a physical change in the environment [NOTE: Factors to consider in evaluating the potential conflict include, but are not limited to, the following:
- Does the project prevent or otherwise substantially adversely affect the future installation of a planned transportation improvement identified in an adopted City policy, plan, or program?
 - Does the project fundamentally conflict with the applicable goals, policies, and/or actions identified in an adopted City policy, plan, or program?

¹² Refer to the City's Standard Conditions of Approval for conditions related to at-grade railroad crossings.

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Adopted City policies, plans, and programs to consider include, but are not limited to, the following:

- Land Use and Transportation Element (LUTE) of the General Plan (March 1998)
- Pedestrian Master Plan (November 2002)
- Bicycle Master Plan (December 2007)
- Public Transit and Alternative Modes Policy (formerly known as the "Transit-First Policy;" City Council Resolution 73036 C.M.S.)³³
- Sustainable Development Initiative (City Council Resolution 74678 C.M.S.)
- U.N. Environmental Accords (City Council Resolution 79808 C.M.S.)
- Complete Streets Policy (City Council Resolution 84204 C.M.S.)
- Capital Improvement Program];

16. Result in a substantial, though temporary, adverse affect on the circulation system during construction of the project; or

17. Result in a change in air traffic patterns, including either an increase in traffic levels or a change in location that results in substantial safety risks.

[NOTE: See the Hazards and Hazardous Materials thresholds for additional thresholds related to transportation.]

CUMULATIVE IMPACTS³⁴

18. A project's contribution to cumulative impacts is considered "considerable" (i.e., significant) when the project exceeds at least one of the thresholds listed above in a future year scenario.

³³ The Public Transit and Alternative Modes Policy is sometimes referred to as the "Transit-First Policy." City staff recommends using the term "Public Transit and Alternative Modes Policy" instead of the term "Transit-First Policy" because the policy relates to more than transit.

³⁴ See Appendix E for guidance on the cumulative analysis.

PLANNING-RELATED NON-CEQA ISSUES

The following transportation-related topics are not considerations under CEQA but should be evaluated in order to inform decision-makers and the public about these issues.

Parking³⁵

The Court of Appeal has held that parking is not part of the permanent physical environment, that parking conditions change over time as people change their travel patterns, and that unmet parking demand created by a project need not be considered a significant environmental impact under CEQA unless it would cause significant secondary effects.³⁶ Similarly, the December 2009 amendments to the State CEQA Guidelines (which became effective March 18, 2010) removed parking from the State's Environmental Checklist (Appendix G of the State CEQA Guidelines) as an environmental factor to be considered under CEQA. Parking supply/demand varies by time of day, day of week, and seasonally. As parking demand increases faster than the supply, parking prices rise to reach equilibrium between supply and demand. Decreased availability and increased costs result in changes to people's mode and pattern of travel. However, the City of Oakland, in its review of the proposed project, wants to ensure that the project's provision of parking spaces along with measures to lessen parking demand (by encouraging the use of non-auto travel modes) would result in minimal adverse effects to project occupants and visitors, and that any secondary effects (such as on air quality due to drivers searching for parking spaces) would be minimized. As such, although not required by CEQA, parking conditions are evaluated in this document as a non-CEQA topic for informational purposes.

Parking deficits may be associated with secondary physical environmental impacts, such as air quality and noise effects, caused by congestion resulting from drivers circling as they look for a parking space. However, the absence of a ready supply of parking spaces, combined with available alternatives to auto travel (e.g., transit service, shuttles, taxis, bicycles or travel by foot), may induce drivers to shift to other modes of travel, or change their overall travel habits. Any such resulting shifts to alternative modes of travel would be in keeping with the City's Public Transit and Alternative Modes Policy (sometimes referred to as the "Transit First" policy).

Additionally, regarding potential secondary effects, cars circling and looking for a parking space in areas of limited parking supply is typically a temporary condition, often offset by a reduction in vehicle trips due to others who are aware of constrained parking conditions in a given area.

³⁵ Insert this discussion concerning parking into the environmental document.

³⁶ San Franciscans Upholding the Downtown Plan v. the City and County of San Francisco (2002) 102 Cal.App.4th 656.

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Hence, any secondary environmental impacts that might result from a shortfall in parking in the vicinity of the proposed project are considered less than significant.

This document evaluates if the project's estimated parking demand (both project-generated and project-displaced) would be met by the project's proposed parking supply or by the existing parking supply within a reasonable walking distance of the project site.³⁷ Project-displaced parking results from the project's removal of standard on-street parking, City or Redevelopment Agency owned/controlled parking, and/or legally required off-street parking (non-open-to-the-public parking which is legally required).

Transit Ridership³⁸

Transit load is not part of the permanent physical environment; transit service changes over time as people change their travel patterns. Therefore, the effect of the proposed project on transit ridership need not be considered a significant environmental impact under CEQA unless it would cause significant secondary effects, such as causing the construction of new permanent transit facilities which in turn causes physical effects on the environment. Furthermore, an increase in transit ridership is an environmental benefit, not an adverse impact. One of the goals of the Land Use and Transportation Element of the Oakland General Plan is to promote transit ridership. The City of Oakland, however, in its review of the proposed project, wants to understand the project's potential effect on transit ridership. As such, although not required by CEQA, transit ridership is evaluated in this document as a non-CEQA topic for informational purposes.

This document evaluates whether the project would exceed any of the following:

- Increase the average ridership on AC Transit lines by three (3) percent at bus stops where the average load factor with the project in place would exceed 125% over a peak thirty minute period;
- Increase the peak hour average ridership on BART by three (3) percent where the passenger volume would exceed the standing capacity of BART trains; or
- Increase the peak hour average ridership at a BART station by three (3) percent where average waiting time at fare gates would exceed one minute.

³⁷ The analysis must compare the proposed parking supply with both the estimated demand and the Oakland Planning Code requirements.

³⁸ Insert this discussion concerning transit ridership into the environmental document.

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Queuing

Evaluate the project's potential effect on 95th percentile queuing. Would the project cause an increase in 95th percentile queue length of 25 feet or more at a study, signalized intersection under the Existing Plus Project condition or the Near-Term Future Baseline Plus Project condition?

Traffic Control Devices

Evaluate the need for additional traffic control devices (e.g., stop signs, street lighting, crosswalks, traffic calming devices) using the California MUTCD and applicable City standards.

Collision History

Evaluate three years of vehicle, pedestrian, and bicycle collision data for intersections and roadway segments within three blocks of the project site to determine if the project would contribute to an existing problem or if any improvements are recommended in order to alleviate potential effects of the project.

UTILITIES AND SERVICE SYSTEMS

The project would have a significant impact on the environment if it would:

1. Exceed wastewater treatment requirements of the San Francisco Bay Regional Water Quality Control Board;
2. Require or result in construction of new storm water drainage facilities or expansion of existing facilities, construction of which could cause significant environmental effects;
3. Exceed water supplies available to serve the project from existing entitlements and resources, and require or result in construction of water facilities or expansion of existing facilities, construction of which could cause significant environmental effects;³⁹
4. Result in a determination by the wastewater treatment provider which serves or may serve the project that it does not have adequate capacity to serve the project's projected demand in addition to the providers' existing commitments and require or result in construction of new

³⁹ ERMUD needs to be consulted early and a Water Supply Assessment performed for certain, larger projects (see Appendix D).

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wastewater treatment facilities or expansion of existing facilities, construction of which could cause significant environmental effects;

5. Be served by a landfill with insufficient permitted capacity to accommodate the project's solid waste disposal needs and require or result in construction of landfill facilities or expansion of existing facilities, construction of which could cause significant environmental effects;
6. Violate applicable federal, state, and local statutes and regulations related to solid waste;
7. Violate applicable federal, state and local statutes and regulations relating to energy standards;⁴⁰ or
8. Result in a determination by the energy provider which serves or may serve the project that it does not have adequate capacity to serve the project's projected demand in addition to the providers' existing commitments and require or result in construction of new energy facilities or expansion of existing facilities, construction of which could cause significant environmental effects.

⁴⁰ See Appendix F of the State CEQA Guidelines for guidance on information related to energy-conservation that must be contained in an EIR.

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APPENDICES

A. Guidance on Historical Resources

B. Guidance on the "Cortese List"

C. List of Oakland's Major Planning Documents and Recommended General Plan Consistency Language and Approach

D. Water Supply Assessments and Early Consultation with EBMUD

E. Cumulative Analysis Guidance

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APPENDIX A

GUIDANCE ON HISTORICAL RESOURCES

In the City of Oakland, an historical resource under CEQA is a resource that meets any of the following criteria:

- 1) A resource listed in, or determined to be eligible for listing in, the California Register of Historical Resources;
- 2) A resource included in Oakland's Local Register of historical resources (defined below), unless the preponderance of evidence demonstrates that it is not historically or culturally significant;
- 3) A resource identified as significant (e.g., rated 1-5) in a historical resource survey recorded on Department of Parks and Recreation Form 523, unless the preponderance of evidence demonstrates that it is not historically or culturally significant;
- 4) Meets the criteria for listing on the California Register of Historical Resources; or
- 5) A resource that is determined by the Oakland City Council to be historically or culturally significant even though it does not meet the other four criteria listed above.

The City of Oakland's Local Register (Historic Preservation Element Policy 3.8) includes the following:

- All Designated Historic Properties (Landmarks, Heritage Properties, Study List Properties, Preservation Districts, and S-7 and S-20 Preservation Combining Zone Properties); and
- Potential Designated Historic Properties that have an existing rating of "A" or "B" or are located within an Area of Primary Importance.

Each of these criteria is discussed in greater detail below:

1) California Register of Historical Resources

The building[s] on the subject site (a) [are or are not] listed in the California Register of Historical Resources; and (b) [have or have not] been determined eligible by the State Historical

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Resources Commission for listing in the California Register of Historical Resources. These buildings [are or are not] automatically eligible for listing in the California Register (pursuant to Public Resources Code section 5024.1(d)(1) and (2) and 14 Cal. Code Regs. Section 4851(a)) as they [have or have not] been listed in or formerly determined eligible for the National Register of Historic Places or the California Historic Landmarks program (landmarks 770 or higher).

Therefore, the buildings [are or are not] considered historical resources under this criterion.

2) City of Oakland Local Register of Historical Resources

A "local register of historical resources" means a list of properties officially designated or recognized as historically significant by a local government pursuant to a local ordinance or resolution, unless the preponderance of evidence demonstrates otherwise.

In March 1994, the Oakland City Council adopted the Historic Preservation Element of the General Plan. The Historic Preservation Element sets out a graduated system of ratings and designations resulting from the Oakland Cultural Heritage Survey (OCHS) and Oakland Zoning Regulations. The Element provides the following policy related to identifying historic resources under CEQA:

- Policy 3.8 Definition of "Local Register of Historical Resources" and Historic Preservation "Significant Effects" for Environmental Review Purposes: For purposes of environmental review under the California Environmental Quality Act, the following properties will constitute the City of Oakland's Local Register of Historic Resources:
 - 1) All Designated Historic Properties (Landmarks, Heritage Properties, Study List Properties, Preservation Districts, and S-7 and S-20 Preservation Combining Zone Properties); and
 - 2) Potential Designated Historic Properties that have an existing rating of "A" or "B" or are located within an Area of Primary Importance.

The Oakland Cultural Heritage Survey uses a five-tier rating system for individual properties, ranging from "A" (highest importance) and "B" (major importance) to "E" (of no particular interest). This letter rating is termed the Individual Property Rating of a building and is based on the following criteria:

Visual Quality/Design: Evaluation of exterior design, interior design, materials and construction, style or type, supporting elements, feelings of association, and importance of designer.

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History/Association: Association of person or organization, the importance of any event, association with patterns of history, and the age of the building.

Context: Continuity and familiarity of the building within the city, neighborhood, or district.

Integrity and Reversibility: Evaluation of the building's condition, its exterior and interior alterations, and any structural removals.

Properties with conditions or circumstances that could change substantially in the future are assigned both an "existing" and a "contingency" rating. The existing rating (UPPER CASE letter) describes the property under its present condition, while the contingency rating (lower case letter, if any), describes it under possible future circumstances.

The Local Register also includes properties within Areas of Primary Importance (API). An API is a district that appears eligible for the National Register of Historic Places.

Here, the building[s] are rated _____.

Therefore, the buildings [are or are not] considered historical resources under this criterion.

3) State Historic Resources Survey/Inventory

A resource evaluated and determined by the State Historic Preservation Office to have a significance rating of 1-5 on a Department of Parks and Recreation Form 523 (historic resources survey) is presumed to be a historical resource unless the preponderance of evidence demonstrates it is not.

Here, a DPR Form 523 [was submitted on [date] with a significance rating of ___] or [has not been submitted to the State]. [NOTE: AN UPDATE MUST BE PERFORMED]

Therefore, the buildings [are or are not] considered historical resources under this criterion.

(4) Meets Criteria for Listing in the California Register of Historical Resources

A. California Register of Historic Resources

In order for a resource to meet the criteria for listing in the California Register, it must satisfy all of the following three provisions:

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1. It meets one of the following four criteria of significance (Public Resources Code section 5024.1(c) and CEQA Guidelines section 15064.5):

- (a) The resource "is associated with events that have made a significant contribution to the broad patterns of California's history and cultural heritage;"
- (b) The resource "is associated with the lives of persons important in our past;"
- (c) The resource "embodies the distinctive characteristics of a type, period, region, or method of construction, or represents the work of an important creative individual, or possesses high artistic values;" or
- (d) The resource "has yielded, or may be likely to yield information important in prehistory or history" (this criterion applies primarily to archaeological sites).

2. The resource retains historic integrity;⁴¹ and

3. It is fifty years old or older (except where it can be demonstrated that sufficient time has passed to understand the historical importance of the resource).

B. National Register of Historic Places

Generally, a resource eligible for listing on the National Register of Historic Places is also eligible for listing on the California Register.

The National Register of Historic Places evaluates a resource's eligibility for listing based on the following four criteria: districts, sites, buildings, structures, and objects.

Criterion A (Event): That are associated with events that have made a significant contribution to the broad patterns of our history.

Criterion B (Person): That are associated with the lives of persons significant in our past.

⁴¹ The California Register defines "integrity" as "the authenticity of a property's physical identity, evidence by the survival of characteristics that existed during the property's period of significance." That is, it must retain enough of its historic character or appearance to be recognizable as an historical resource. The California Register regulations specify that integrity is a quality that applies to historic resources in seven ways: location, design, setting, materials, workmanship, feeling, and association. A property must retain most of these qualities to possess integrity. Moved or reconstructed buildings can be eligible under certain circumstances.

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Criterion C (Design/Construction): That embody the distinctive characteristics of a type, period, or method of construction, or that represent the work of a master, or that possess high artistic values, or that represent a significant and distinguishable entity whose components may lack individual distinction.

Criterion D (Information Potential): That have yielded, or may be likely to yield, information important in prehistory or history.

Significance: To be listed on the National Register, a property must be shown to be "significant" at the local, state, or national level under one or more of the National Register criteria. Mere association with historic events or trends, individuals, or styles is not enough: the property's specific association must be considered important as well.

Integrity: The property must also possess historic "integrity." Integrity is defined as "the ability of a property to convey its significance." The National Register criteria recognize seven qualities that define integrity: location, design, setting, materials, workmanship, feeling, and association.

- "Location" refers to the place where the historic property was constructed.
- "Design" is the combination of architectural elements that create the form, structure, and style of the property.
- "Setting" is the physical environment surrounding a historic property.
- "Materials" are the original physical components that were combined during a particular period in time and in a particular pattern to form the historic property.
- "Workmanship" is the physical evidence of the building crafts and skills of a particular culture during a given period.
- "Feeling" is a property's expression of the aesthetic or historic sense of a particular period of time.
- "Association" is the direct link between an important historic event or person and a historic property.

Special considerations apply to moved or reconstructed properties, cemeteries, religious or commemorative properties, and properties achieving significance within the past 50 years.

Here, the resource[s] [are or are not] eligible for listing on the California Register.

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appear[s] eligible, according to _____, because _____
has/have been formally determined eligible by _____, on [date]

do[es] not appear eligible, according to _____, because _____
has/have been formally determined ineligible by _____, on [date]

Also, the resource[s] [are or are not] eligible for listing on the National Register.

appear[s] eligible, according to _____, because _____
has/have been formally determined eligible by _____, on [date]

do[es] not appear eligible, according to _____, because _____
has/have been formally determined ineligible by _____, on [date]

Therefore, the resources [are or are not] considered historical resources under this criterion.

5) Determined by a Lead Agency to be Historically Significant

The fact that a resource is not considered historic pursuant to the above four criteria does not preclude a lead agency from determining that the resource is nonetheless a "historical resource" for CEQA purposes.

Here, the buildings [are or are not] considered to be historically significant because they [have or have not] been determined by the City of Oakland to be a historic resource [this would be an unusual situation that would require some narrative & explanation].

[NOTE: There are just three very early State Historical Landmarks (Site of College of Calif., Site of St. Mary's College, Camino of Rancho San Antonio) not covered by the categories above unless SHPO has got around to evaluating them.]

Therefore, the buildings [are or are not] considered historical resources under this criterion.

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Non-CEQA General Plan Policies Regarding Historic Resources

There are other General Plan policies that relate to historic resources, but do not involve CEQA issues. Such policies do not provide thresholds of significance for CEQA purposes (as they apply to a much wider range of properties, not just those that meet the CEQA standards set forth above). These policies are discussed solely for the benefit of the decision-makers who will, as a policy matter, consider and apply them for consistency prior to issuing discretionary permits for the project.

- Policy 3.1 Avoid or Minimize Adverse Historic Preservation Impacts Related to Discretionary City Actions: The City will make all reasonable efforts to avoid or minimize adverse effects on the Character-Defining Elements of existing or Potential Designated Historic Properties which could result from private or public projects requiring discretionary City actions.
- Policy 3.5 Historic Preservation and Discretionary Permit Approvals: For additions or alteration to Heritage Properties or Potential Designated Historic Properties requiring discretionary City permits, the City will make a finding that: (1) the design matches or is compatible with, but not necessarily identical to, the property's existing or historical design; (2) the proposed design comprehensively modifies and is at least equal in quality to the existing design and is compatible with the character of the neighborhood; or (3) the existing design is undistinguished and does not warrant retention, and the proposed design is compatible with the character of the neighborhood.

For any project involving complete demolition of Heritage Properties or Potential Designated Historic Properties requiring discretionary City permits, the City will make a finding that: (1) the design quality of the proposed project is at least equal to that of the original structure and is compatible with the character of the neighborhood; (2) the public benefits of the proposed project outweigh the benefit of retaining the original structure; or (3) the existing design is undistinguished and does not warrant retention, and the proposed design is compatible with the character of the neighborhood.

- Policy 3.7 Property Relocation Rather than Demolition as Part of Discretionary Projects: As a condition of approval for all discretionary projects involving demolition of existing or Potential Designated Historic Properties, the City will normally require that reasonable efforts be made to relocate the properties to an acceptable site, including advertising the availability of the property for at least ninety (90) days.
- Policy 3.11 Historic Preservation and Seismic Retrofit and Other Building Safety Programs:

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- (a) The City's building safety programs, including seismic retrofit programs, will seek to preserve existing or Potential Designated Historic Properties and their Character-Defining Elements. Where changes to such elements are unavoidable to achieve code compliance or other City-mandated modifications, the City will encourage owners to design the changes in a manner which minimizes visual impacts.
- (b) Prevailing codes for the City's building safety programs when applied to existing or Potential Designated Historic Properties will be the Oakland Building Code; the Uniform Code for Building Conservation where permitted under state law; and, for qualified historical buildings, the State Historical Building Code.
- Land Use Element Policy D6.2 Reusing Vacant or Underutilized Buildings: Existing vacant or underutilized buildings should be reused. Repair and rehabilitation, particularly of historic or architecturally significant structures, should be strongly encouraged. However, when reuse is not economically feasible, demolition and other measures should be considered.

[THERE MAY BE MORE POLICIES DEPENDING ON PROJECT AND WHETHER CITY/AGENCY FINANCIAL OR OTHER SUPPORT IS PROVIDED—SEE LIST OF POLICIES IN GENERAL PLAN CONFORMITY GUIDELINES]

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APPENDIX B

GUIDANCE ON THE "CORTESE LIST"

The list of hazardous materials sites compiled pursuant to Government Code section 65962.5 is commonly referred to as the "Cortese List." The Cortese List is located on the California Environmental Protection Agency's website at:

<http://www.calepa.ca.gov/SiteCleanup/CorteseList/default.htm>

The list on Cal EPA's website is a compilation of the following lists:

- List of Hazardous Waste and Substances sites from Department of Toxic Substances Control (DTSC) EnviroStor database
- List of Leaking Underground Storage Tank Sites by County and Fiscal Year from Water Board GeoTracker database
- List of solid waste disposal sites identified by Water Board with waste constituents above hazardous waste levels outside the waste management unit (PDF)
- List of "active" CDO and CAO from Water Board (MS Excel, 632 KB)
- List of hazardous waste facilities subject to corrective action pursuant to section 25187.5 of the Health and Safety Code, identified by DTSC

Each of these lists meets the Cortese List requirements. A project site listed on any of these lists is considered to be listed on the Cortese List. Pursuant to section 15300.2 of the CEQA Guidelines, a categorical exemption shall not be used for a project located on a site included on the Cortese List.

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APPENDIX C

LIST OF OAKLAND'S MAJOR PLANNING DOCUMENTS

I. OAKLAND GENERAL PLAN ELEMENTS⁴²

- 1) Land Use and Transportation Element (LUTE) (adopted 3/98; text amended 12/99 and 6/05; check with City for latest land use map)
- 2) Estuary Policy Plan (adopted 6/99; amended 6/06)
- 3) Open Space, Conservation and Recreation (OSCAR) Element (adopted 6/96)
- 4) Historic Preservation Element (adopted 3/94; amended 7/98 and 1/07)
- 5) Bicycle Master Plan (updated and adopted 12/07 as part of the LUTE)
- 6) Pedestrian Master Plan (adopted 11/02 as part of the LUTE)
- 7) Housing Element (adopted 12/10)
- 8) Noise Element (adopted 6/05)
- 9) Safety Element (adopted 11/04)
- 10) Scenic Highways Element (adopted 9/74)

II. OTHER PLANS AND DOCUMENTS

- 1) Oakland Policy Plan (adopted 9/74; amended by LUTE to combine all remaining policies into a "Governance Document;" the Governance Document has not been issued but the goals/policies are listed in the LUTE as part of the amendments)
- 2) Guidelines for Determining Project Conformity with the General Plan and Zoning Regulations (adopted 5/98) [NOTE: Contains a helpful list of major general plan policies]
- 3) North Oakland Hill Area Specific Plan (NOHASP) (adopted 11/86)

III. BASE REUSE PLANS

- 1) Oak Knoll (adopted 8/96)

⁴² Check to see if mitigation measures were adopted for these elements and incorporate as appropriate.

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- 2) Army Base (adopted 7/02; amended 12/06; 12/07; 6/12)

IV. OTHER PLANNING STUDIES

- 1) Mandela Parkway Corridor
- 2) West Oakland 2000
- 3) Gateway Development
- 4) Shepard Canyon Corridor
- 5) Medical Hill
- 6) LUTE Technical Appendix
- 7) Census
- 8) Harrison /Oakland Community Transportation Plan (2/10)

IV. REDEVELOPMENT PLANS⁴³

- 1) Acorn
- 2) Broadway/MacArthur/San Pablo
- 3) Central District
- 4) Central City East
- 5) Coliseum
- 6) Oak Center
- 7) Oak Knoll
- 8) Oakland Army Base
- 9) Stanford/Adeline
- 10) West Oakland

⁴³ Check to see if mitigation measures were adopted for these plans and incorporate as appropriate.

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V. CONSISTENCY OF PROJECT WITH PLANS AND POLICIES

[NOTE: The following language should be included in any discussion of the consistency of the proposed project with the General Plan:]

Conflicts with a General Plan do not inherently result in a significant effect on the environment within the context of CEQA. As stated in section 15358(b) of the CEQA Guidelines, “[e]ffects analyzed under CEQA must be related to a physical change.” Section 15125(d) of the Guidelines states that EIRs shall discuss any inconsistencies between the proposed project and applicable General Plans.

Further, Appendix G of the CEQA Guidelines (Environmental Checklist Form) makes explicit the focus on *environmental* policies and plans, asking if the project would “conflict with any applicable land use plan, policy, or regulation . . . adopted for the purpose of avoiding or mitigating an environmental effect” (emphasis added). Even a response in the affirmative, however, does not necessarily indicate the project would have a significant effect, unless a physical change would occur. To the extent that physical impacts may result from such conflicts, such physical impacts are analyzed elsewhere in this document.

Regarding a project’s consistency with the General Plan in the context of CEQA, the Oakland General Plan states the following:

The General Plan contains many policies which may in some cases address different goals, policies and objectives and thus some policies may compete with each other. The Planning Commission and City Council, in deciding whether to approve a proposed project, must decide whether, on balance, the project is consistent (i.e., in general harmony) with the General Plan. The fact that a specific project does not meet all General Plan goals, policies and objectives does not inherently result in a significant effect on the environment within the context of the California Environmental Quality Act (CEQA). (City Council Resolution No. 79312 C.M.S.; adopted June 2005)

[NOTE: AFTER LISTING THE MOST APPLICABLE GENERAL PLAN POLICIES, DISCUSS THE OVERALL CONSISTENCY OF THE PROJECT WITH THE POLICIES.]

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APPENDIX D

WATER SUPPLY ASSESSMENTS AND EARLY CONSULTATION WITH EBMUD

CEQA GUIDELINES SECTION 15083.5

Projects affecting water agencies and meeting the criteria established in CEQA Guidelines section 15083.5 are required to send the Notice of Preparation for an EIR to each public water system that serves or would serve the proposed project. These agencies have 30 days to submit a water supply assessment addressing the adequacy of the supply to support the demand created by the project. The lead agency shall include in the EIR the information provided by the water agency (up to 10 pages) and must determine whether project water supplies will be sufficient to meet the demand of the project, in addition to existing and planned future uses.

SB 221 (GOVERNMENT CODE SECTION 66473.7)

SB 221 requires that cities and counties demonstrate that there is sufficient water supply before they approve a tentative map for the residential development. The sufficiency of water supply can be established by obtaining a written verification from a public water supplier that confirms that total water supplies available within a 20 year projection will adequately meet projected demand associated with proposed subdivision.

SB 221 applies to proposed residential subdivisions of more than 500 dwelling units and does not apply to infill development -- residential housing proposed for a site that is within or immediately contiguous to an **urbanized area** -- or to housing projects that are exclusively for low-income households (Gov't Code section 66473.7(i)(1)). Oakland should be considered an urbanized area⁴⁴ and thus SB 221 **does not apply here**.

SB 610

SB 610 applies to the following:

- Residential developments of more than 500 units;

⁴⁴ Although SB 221 does not provide a definition of "urbanized area," Oakland meets the definition of such contained in other statutes/regulations (Health & Safety Code section 33320.1; CEQA Guidelines section 15387).

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- Shopping centers or business establishments employing more than 1,000 persons or containing more than 500,00 square feet of floor area;
- Commercial office buildings employing 1,000 persons or containing more than 250,000 square feet of floor area;
- Hotels or motels containing more than 500 rooms;
- Industrial plants occupying more than 40 acres or containing more than 650,000 square feet; or
- Any combination of the above that results in equivalent water consumption.

SB 610 requires that before approving any projects that fall within the categories above, cities and counties must request a water supply assessment from the water supplier most likely to serve the project and must include the water supply assessment in any CEQA environmental documents.

Additionally, the water supply assessment must evaluate if the total water supplies during a 20-year projection will meet the projected water demand associated with the proposed project (Water Code sections 10912(a), 10911(b), 10910(b), and 10910(c)(4)).

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APPENDIX E

CUMULATIVE ANALYSIS GUIDANCE

The cumulative analysis must evaluate whether the project's incremental effect is cumulatively considerable when combined with other projects causing related impacts. The analysis shall include **all past, present, and reasonably foreseeable future projects**. To account for these other projects, CEQA allows cities to use the "list method" (i.e., a list containing past, present, and reasonably foreseeable future projects) and/or the "forecast method" (i.e., a projection or model). The City of Oakland uses a combination of both the list method and the forecast method for cumulative analyses.

For transportation-related impacts (including transportation-related noise, air quality, and greenhouse gas impacts) the City generally uses the forecast method, by utilizing the countywide transportation model of the Alameda County Transportation Commission (formerly the Alameda County Congestion Management Agency). For guidance on the cumulative analysis for transportation-related impacts, refer to the City's current Transportation Impact Study Guidelines (separate document).

For all other impacts, the City generally uses the list method, which is based upon the past, present, and reasonably foreseeable future projects contained in the City's latest List of Major Development Projects. Assume that all projects on the List, including projects with pre-application discussions and those that are under review, approved, and completed, are existing in both the Cumulative Baseline (without project) condition and the Cumulative Baseline Plus Project condition.

For each of the topics below, evaluate both the Cumulative Baseline (without project) condition and the Cumulative Baseline Plus Project condition:

Cultural

If the project is located on a site with an historic resource, within an historic district, or adjacent to an historic resource:

1. Evaluate the project site.

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2. Evaluate adjacent buildings.
3. Evaluate the district.
4. Also evaluate the potential impact with consideration to the citywide impact. [NOTE: See the analysis for the Kaiser Center Office development project, as an example.]

Visual

1. View points should be developed through the scoping session, public comments, and consultant recommendations.
2. Look at the visual impact analysis of other projects in the vicinity of the project.
3. Refer to the City's wind database for information on reasonably foreseeable projects (see "Wind" discussion below).

Shadow

1. Unless directed otherwise by the City, evaluate the following dates/times: 9:00 a.m., 12:00 p.m., and 3:00 p.m. for the Spring Equinox, Summer Solstice, Fall Equinox, and Winter Solstice.

Wind

1. The City maintains a database of projects to be used for the cumulative wind analysis. Check with City staff.
2. The wind consultant must determine the wind radius and provide the City with a wind radius map to be used to identify projects to be used in the cumulative analysis.
3. The applicant is responsible for adding the project and all reasonably foreseeable projects from the wind database within the wind radius to the wind model.
4. The applicant is responsible for modifying the wind model to physically modify buildings that have changed.
5. The applicant is responsible for repairing any damaged buildings in the wind model.
6. The applicant must notify the City of modifications made to the wind model so that the City can update the City's wind database. This is important so that the City knows what is in the actual physical model.

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RESPONSE

O-57-65 See Responses to Comments O-57-18 and O-57-27.

O-57-65

HEALTH & SAFETY (TRAFFIC, AIR QUALITY, POLLUTION)				
Page(s)	Section	Inconsistency	Concern	Supporting Documents / Expert Analysis
4.11	Introduction to Noise		It states, "The potential effects of the environment on the project are not legally required to be analyzed or mitigated under CEQA, except where the project impacts exacerbate the existing conditions	Where it Exacerbates: - included potential increases in train horn activity due to the increase in pedestrians near the existing rail line. - the introduction of noise from ball park and concert events and fireworks, and generation of construction-related noise
4.11-5 & 4.11-31	Noise	No way to measure effects, but they/we won't really notice because it's already (purportedly) noisy there/here at Phoenix Lofts. WHAT?	There is (purportedly) no completely satisfactory way to measure the subjective effects of noise, or the corresponding reactions of annoyance and dissatisfaction. This is an impermissible "punt" – i.e., CEQA violation.	But... then on 4.11-31, they dismiss/disregard this by saying "which may render the resultant noise contribution from this phase (read: potentially significant impacts) less noticeable."
4.11-11	Noise & the Phoenix Lofts		Noise Monitoring Location LT-3: This off-site location is at the Phoenix Lofts at 737 2nd Street, approximately 150 feet north of, and across the UPRR tracks from, the northern Project site boundary. The four-story Phoenix Lofts which, while technically zoned as a commercial use, has units with permitted full-time occupancy and are therefore conservatively considered as the closest noise-sensitive land use to the Project site. This location is also approximately 150 feet from a Project-proposed 250-foot tower near the northern Project site boundary, and approximately 400 feet from the proposed ballpark.	Noise monitoring data indicate average hourly noise levels of 76 to 81 dBA during daytime hours and 59 to 79 dBA during nighttime hours
4.11-36	Noise & the Phonix lofts		Table 4.11-15, the contribution of demolition and compaction noise at the Phoenix Lofts could occasionally exceed the standards established in the City of Oakland Noise Ordinance, which restricts construction of more than 10 days to 65 dBA during daytime hours at the nearest receiving property line, while noise levels at all other receptors would be below the standard.	

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O-57-66 See Response to Comment O-57-27.

O-57-67 The comment lists a number of Draft EIR sections and notes "no mention of Phoenix Lofts/737 2nd" or other statements with no further context. The comment does not address the adequacy or accuracy of the Draft EIR and no further response is required under CEQA. The comment will be forwarded to the decision makers for their consideration during deliberations on the proposed Project.

O-57-68 The comment reiterates information from the noise setting section with no further context. The comment does not address the adequacy or accuracy of the Draft EIR and no further response is required under CEQA. The comment will be forwarded to the decision makers for their consideration during deliberations on the proposed Project.

O-57-65

O-57-66

O-57-67

O-57-68

4.11-42		Different quotes on what level creates hearing loss	States in Table 4.11.5 that Hearing loss happens at < 70 dBAa (Leq, 24 hour)	But then at 4.11-42 they say "Short-term noise levels constituting the threshold of pain and hearing damage are 120 dB and 140 dB, respectively. Therefore, Project construction would not result in adverse health effects related to pain and hearing loss."
4.2-102, 4.2-103	Cancer / Health		cancer risks at Phoenix increase 6.5x over city threshold (The off-site MEIR is located at the Phoenix Lofts) "the net total Project cancer risk (unmitigated) would be 65 per million at the off-site MEIR, which is the Phoenix Lofts (737 2nd St)."	
4.2-108	Non-cancer health		claim that it's "less than significant with mitigation"	
	Health		They claim Phoenix Lofts is already exposed to a lot of problems: "Nearby existing off-site sensitive receptors (such as those located at Phoenix Lofts approximately 100 feet to the north of the Project site) are currently exposed to this local DPM and PM2.5 emitted at Howard Terminal without implementation of the Project, resulting in increased cancer risk, chronic non-cancer risks, and exposure to PM2.5 concentrations."	
4.2-98				
4.3 section				No mention of Phoenix Lofts/737 2nd
4.4-11				Phoenix Lofts listed as "SPRR API contributor"
4.5 section				No mention of Phoenix Lofts/737 2nd
4.6 section				No mention of Phoenix Lofts/737 2nd
4.7 section				No mention of Phoenix Lofts/737 2nd
				Mention of 737 2nd St being close to a receptor: "Proximity to Existing Sensitive Receptors"
4.8-23				
4.9 section				No mention of Phoenix Lofts/737 2nd
4.10 section				No mention of Phoenix Lofts/737 2nd
4.11 section				LOTS of mentions - about noise.
4.11-5	Hearing Health		Exposure to high levels of noise can cause permanent hearing impairment. The levels at which noise exposure can lead to hearing	

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RESPONSE

O-57-69 See Response to Comment O-57-18.

O-57-68	4-11.6	Hearing Health	loss (140 dB) or pain (120 dB) is a common method of measuring health effects or impacts of noise.	
O-57-69	4.11-61	Sound Levels: Is this both construction noise and stadium noise? I do not see that they are taking in duration. So a noise from a truck or a train is a short timespan (is this level recorded) vs a 2 hour game.	Other potential health effects of noise identified by WHO include decreased performance for complex cognitive tasks, such as reading, attention span, problem solving, and memorization; physiological effects such as hypertension and heart disease (after many years of constant exposure).	At noise monitoring location LT-1, along the Estuary, recorded noise levels were 65 DNL, which would be within the "conditionally acceptable noise exposure category for residential uses. Mitigation Measure NOI-3 (Noise Reduction Plan for Exposure to Community Noise) requires the Project sponsor to submit a Noise Reduction Plan prepared by a qualified acoustical engineer for City review and approval that identifies specific noise reduction measures (e.g., sound-rated window, wall, and door assemblies) to achieve an acceptable interior noise level of 45DNL within the interior space of residential buildings. It should be noted that the predominant noise source observed at this location was existing container truck operations within the Project site. As discussed in Chapter 3, Project Description, with 4. Environmental Setting, Impacts, Standard Conditions of Approval, and Mitigation Measures 4.11 Noise and Vibration Waterfront Ballpark District at Howard Terminal 4.11-62 ESA / D171044 Draft Environmental Impact Report February 2021 development of the proposed Project, the existing tenants and users of Howard Terminal are assumed to move to other locations within the region in which their uses are permitted under applicable zoning and other regulations. Therefore, with Mitigation Measure NOI-3, the noise exposure of proposed residential

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O-57-70 The comment lists a number of Draft EIR sections and notes "no mention of Phoenix Lofts/737 2nd" or other statements with no further context. The comment does not address the adequacy or accuracy of the Draft EIR and no further response is required under CEQA. The comment will be forwarded to the decision makers for their consideration during deliberations on the proposed Project.

O-57-71 See Response to Comment I-269-3.

O-57-69	4.11-30	Hearing Health	Noise levels at the Phoenix Lofts (the nearest sensitive receptor) would exceed the standards established in the City of Oakland Noise Ordinance (Oakland Planning Code section 17.120.050) which restricts construction of more than 10 days to	
	4.12 section		No mention of Phoenix Lofts / 737 2nd	
O-57-70	4.13 section		No mention of Phoenix Lofts / 737 2nd	
	4.14 section		No mention of Phoenix Lofts / 737 2nd	
	4.15 section		No mention of Phoenix Lofts / 737 2nd	
	4.16 section		No mention of Phoenix Lofts / 737 2nd	
	4.17 section		No mention of Phoenix Lofts / 737 2nd	
	chapter 5		No mention of Phoenix Lofts / 737 2nd	
	chapter 6		No mention of Phoenix Lofts / 737 2nd	
	chapter 7		No mention of Phoenix Lofts / 737 2nd	
	chapter 8	N/A	No mention of Phoenix Lofts / 737 2nd	
	Appendix 1		No mention of Phoenix Lofts / 737 2nd	
	Appendix 2		No mention of Phoenix Lofts / 737 2nd	
	Appendix 3		No mention of Phoenix Lofts / 737 2nd	
	Appendix 4		No mention of Phoenix Lofts / 737 2nd	
	Appendix 5		No mention of Phoenix Lofts / 737 2nd	
Appendix 6				
O-57-71	4-13	Public Services	Inappropriate to use Coliseum incidents as a basis for analysis of projected need for service because of Coliseum's proximity to BART and stadium parking, which reduce likelihood of impacts on nearby residential and business areas. DEIR gives insufficient consideration of disruption to residents and businesses	

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O-57-71			immediately north of project due to vandalism, public urination, burglaries, etc. More appropriate to consider need for police as a result of incidents near Chase Center and Giants ballpark in SF.	
O-57-72	2-22 to 28	Mitigation	Any strategies based on West Oakland CAP should be implemented in all areas north of project including but not limited to energy storage systems, installation of vehicle charging stations, air filtration systems, etc. for both residential and non-residential receptors.	
O-57-73	2-54	Toxics	Critical to ensure that measures are in place to ensure toxic plumes will not be created by excavation and dewatering	
	2-56	Public Safety	Critical to consider and include realistic measures to prevent threats that may occur if trains block tracks during emergency. Based on actual experience such incidents can block direct access for hours.	
O-57-74	7-4	Public Safety	Transportation hazard created by at-grade railroad crossings is a significant and unavoidable impact. Moreover, no measures identified to address cumulative impact on roadway segments. Changes are proposed to crossing at Market and MLK but no discussion of crossing at Brush.	
O-57-75	Primus 2020	Parking	No discussion of impact of use of streets in area to north and northeast of site as truck parking. Area between Market and Broadway should be included for RPP. Residents and local business must have priority for parking as element of any parking strategy	

O-57-72 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 such as zero emission trucks, upgrading locomotives with cleaner engines, replacing existing diesel stationary and standby engines with Tier 4 diesel or cleaner engines, or expanding or installing energy storage systems (e.g., batteries, fuel cells) to replace stationary sources of pollution. Draft EIR Mitigation Measure AIR-2.CU requires the Project sponsor to incorporate applicable strategies from the WOCAP; these must occur locally to offset the Project’s health risk impact in the community. Both measures have been revised to incorporate comments received on the Draft EIR; see Response 4.2, *Formulation, Effectiveness and Enforceability of Mitigation Measures* for discussion and the revised mitigation measure language. Also see responses to comments A-11-4, A-17-1, and A-17-12.

O-57-73 See Consolidated Response 4.16, *Remediation Plans, Land Use Covenants, and Human Health and Ecological Risk Assessment*.

O-57-74 See Consolidated Response 4.6, *Rail Safety, Grade Crossing, and Grade Separation*.

O-57-75 See Response to Comment O-57-28.

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- O-57-76 See Response to Comment O-57-29.
- O-57-77 See Response to Comment I-332-3.
- O-57-78 See Response to Comment A-5-11.
- O-57-79 See Response to Comment I-332-3.
- O-57-80 See Consolidated Response 4.6, *Rail Safety, Grade Crossing, and Grade Separation* and 4.9, *Alternative 3: The Proposed Project with Grade Separation Alternative*.

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O-57-79

O-57-80

		MISCELLANEOUS/OTHER	
DEIR pp	Section	Concern	Supporting Documents / Expert Analysis
4.13-22	Urban Decay	Quality of Life issues are dismissed with comment that they will be considered as part of planning approval. Urban Decay discussion (p. 7-9) focuses on effect that A's leaving Coliseum will have on surrounding area. No discussion of deterioration that may result if impacts of construction and project operation including noise (exceeding standards during construction and permanent increase of 5 dBA), glare, traffic etc. degrade the quality of life in the area north of project site to extent that occupancy becomes intolerable. Because of project size, construction period impacts may continue for 7 or more years.	
4-16	Environmental analysis	Ch 4-16 Utilities and Service Systems is inconsistent with chapters 4.5 and 4.7 requiring a 20% reduction in energy and provision of GHG sequestration methodologies. Table 4-16.2 indicates that the existing vs project pervious surfaces will be less than 5%, yet chapters 4.5 energy and 4.7 GHG indicate that the provision of new pervious surfaces will be a benefit and comply with sustainability requirements. A less than 5% reduction in paved surfaces is not of value to meet GHG goals, and the inconsistencies in these chapters should be resolved.	
4-16	Environmental analysis	CH 4-16 does not include a description of recycled or reclaimed water to be used for landscaping as described in Chapters 4.5 and 4.7. It appears that reclaimed water is not to be provided. Need documentation whether it is available at the site. If recycled or reclaimed water is not going to be used, then the analysis in Chapters 4.5 and 4.7 is flawed and does not meet sustainability requirements. Chapters 4.5 4.7 and 4.16 therefore need to be revised to accurately and correctly describe what is being proposed.	
4.7 and 4.16	Environmental analysis	Chapters 4.7 GHG and 4.16 Utilities are internally inconsistent, with the GHG discussion painting a rosy picture of a sustainable green development that substantially increases green space, uses reclaimed water, and decreases demands on water, wastewater and solid waste generation. The Utilities discussion outlines a regional and project issue where water supplies are fragile and cyclic, wastewater will increase, not decrease, and solid waste will not decrease but will strain the regional waste management system. As such, the EIR is inadequate, and the reader is unsure which "analysis" is correct.	
	Alternatives	The UPRR requested that all access to the Project site be grade-separated and span the rail right-of-way. The UPRR also stated "current crossings will also not be reliable points of access during construction because they may often be occupied by trains, thereby preventing movement of construction vehicles, equipment, and personnel. Construction plans must take this into account." The proposed Project would include a number of rail safety improvements in the vicinity of the site that are intended to	How is this CEQA criteria, and how would this merit a finding of overriding considerations? The conclusion is that the "desire" of the developer, and the oversight of MLB are more important

O-57

COMMENT

RESPONSE

O-57-80 See Consolidated Response 4.6, *Rail Safety, Grade Crossing, and Grade Separation* and 4.9, *Alternative 3: The Proposed Project with Grade Separation Alternative*.

O-57-81 See Consolidated Response 4.2, *Formulation, Effectiveness and Enforceability of Mitigation Measures*.

O-57-80

		<p>address the safety of pedestrians, bicyclists, and motorists, as described in Section 4.15, Traffic and Circulation. However, even with these improvements, this Draft EIR concludes that the Project would have a significant and unavoidable impact related to rail safety, and the City has therefore elected to analyze a possible alternative that would include a grade-separated crossing for vehicles, as well as for pedestrians and bicyclists.</p> <p>In other words, the City and the developer arbitrarily decided not to bother with analyzing grade separation, and falsely equates at grade improvements with grade separation, without any fact or substantiation. The EIR arbitrarily identified one location with a brief analysis and concluded the impacts were similar.</p> <p>This is a significant flaw in the analysis, as the provision of grade separation is consistent with Oakland and Regional Plans, CPUC requirements, and has the potential to mitigate some of the identified significant noise impacts. Furthermore, the EIR is inadequate since the single grade separation alternative failed to include bicycle and pedestrian facilities as part of the analysis, despite the City's directive to do so.</p> <p>"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."</p>	<p>considerations than the safety health and wellbeing of Oakland residents, and specifically the West Oakland frontline community. As such, the EIR is flawed and inadequate, as it does not factually nor materially analyze grade separation alternatives, but as stated above, dismisses this option due to the developer's desired timeline and MLB directive. This is not an impartial analysis, and does not support required findings.</p>
	<p>Overall comments</p>	<p>Overwhelmingly, the EIR includes regulatory requirements as mitigation measures. As stated on Page 4.7-59: Compliance with regulatory measures shall not qualify as a mitigation measure. Project specific mitigation measures must be incorporated into the EIR in order to ensure that mitigation can be achieved.</p> <p>Likewise, deferral of mitigation to future stages (many without public review or input opportunity) is used frequently throughout the document. Deferral of mitigation is not an appropriate mitigation measure.</p> <p>The EIR uses terms like "where feasible", "appropriate" or "likely" which are vague, non specific terms that do not provide a measurable assessment of mitigation success to reduce significant impacts. The project description is specific as to what is included and should be analyzed in definitive terms.</p> <p>Many mitigation measures include review and approval by the City of Oakland, but the City is essentially a project partner with a vested interest in project implementation. The EIR does little to ensure that project review by City or identification of mitigation measures by the EIR consultant are impartial. Was</p>	

O-57-81

O-57

COMMENT

RESPONSE

O-57-82 See Consolidated Response 4.6, *Rail Safety, Grade Crossing, and Grade Separation*.

O-57-81

O-57-82

		the developer allowed to review, edit and comment on identified mitigation measures?	
	Overall comments	"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."	the statement in the EIR below might have implications for other projects as it sets a precedent that a private objective is a legitimate basis for a statement of overriding considerations, which the City is required to make when there are significant and unavoidable impacts. Not sure meeting their objective is an appropriate CEQA topic

O-58 Center for Sustainable Neighborhoods

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 Center for Sustainable Neighborhoods supports policies and projects that help build sustainable neighborhoods and regions. We embrace sustainability as a triple bottom line value that insists on improving environmental, social and economic conditions in concert.

The choice of location for the ballpark and the associated commercial and residential development that would accompany it represents one of the most important decisions Oakland has faced in generations.

Whether Oakland's waterfront can walk and chew gum at the same time, as one wag put the question of whether the ball park village and maritime interests can both thrive, is an important question. The project includes a number of concessions designed to protect Maritime interests, as for instance reserving space to accommodate a larger turning basin if that is needed in the future. However, the strength of those measures is beyond the scope of our inquiry.

We have looked at the alternatives principally through the lens of Smart Growth. From this perspective the Howard's Terminal site has a great deal to commend it.

The superior ghg limits required by AB 734 for the Howard Terminal site represent an important environmental guarantee that the coliseum site would lack. These regulatory advantages build on and complement the location efficiency that Howard's Terminal provides.

According to vmt maps produced by MTC, the location at Howard Terminal is one of the best in the Bay Area for low carbon development, and is superior to the

O-58-1 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 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 speaks to certain merits of the proposed Project and does not raise any environmental issues that have not already been adequately addressed in the Draft EIR. It is provided here for consideration by the decision makers as they consider taking action on the Project.

O-58-2 See Consolidated Response 4.10, *Alternative 2: The Off-Site (Coliseum Area) Alternative*.

O-58-1

O-58-2

O-58

COMMENT

RESPONSE

O-58-2

Coliseum site. Moreover, the intensity and mix of uses in the proposed project are exemplary, and are responsive to the potential of the site.

We appreciate that the city and the environmental consultants have chosen to use modern vmt metrics rather than LOS as the fundamental frame for evaluating vehicle impacts. This is essential if we want to address both greenhouse gas emissions and criteria pollutants. However, the draft EIR failed to follow the lead of the EIR on the Plan Bay Area for evaluating greenhouse gas emissions.

The EIR for Plan Bay Area tells us that concentrating development in PDAs and PDA like places is the area's most important strategy to reduce greenhouse gas emissions. The draft EIR for the Howard Terminal project, in contrast, follows the example of the EIRs for the Downtown Hayward Specific Plan, and the Downtown Berkeley Specific Plan, and for numerous projects located in PDAs throughout the region, to suggest that the no project alternative is not only superior, but would have no impacts. The contradiction between the EIRs on the regional and local projects exposes a logical fallacy that underlies the local EIRs which is that there are no environmental impacts associated with underutilizing the most strategically important transit oriented locations in the region.

O-58-3

The right approach is to tier from the EIR on the regional document, following its convention of assuming development not located in one place will be located elsewhere in the region. If you assume at the very least, that residential and commercial development not accommodated in the project would be redistributed elsewhere in the region per the IMPLAN model used by MTC to evaluate alternatives to Plan Bay Area, you would get a better sense of the true cost of underutilizing a strategically important transit oriented site. Given this type of analysis, the evidence presented in MTC's maps suggests that the proposed project would demonstrate superior performance to the Reduced Project Alternative, and even better performance vis a vis the No Project Alternative.

The 450 million commitment to affordable housing and other community benefits will also contribute both to making Oakland more inclusive. This isn't just a social benefit, but would contribute to further reducing regional vmt and greenhouse gas emission. We would presume that the 450 million investment would be concentrated in the same highly advantageous downtown geography identified on the MTC map.

O-58-4

To ensure a fuller accounting of the environmental merit of the project we would like to ask what the environmental and social benefits are of high road labor practices for both construction and permanent jobs within the project area. That the project is making commitments to both the Building Trades (including a local hire component) and to UNITE HERE is a best practice in environmental justice. This will improve wages for a quantifiable number of employees who are residents of environmental justice neighborhoods in Oakland and surrounding communities

We appreciate the stellar commitment to green building practices too, and would note that the commitment to using a skilled and trained workforce for all

O-58-3

While the commenter's perspective is understood, the Draft EIR addresses the impacts of a single proposed Project, and not those of a regional plan. For this reason, the Draft EIR appropriately defines the No Project Alternative as one that would see no development by the Project sponsor, either at the Project site or elsewhere. Nonetheless, the Draft EIR's analysis of cumulative transportation impacts (and by extension, the analysis of operational air quality, greenhouse gas emissions, energy, vehicle miles traveled, and noise impacts) relies on a transportation model that includes regional growth projections; and in that sense, the Draft EIR's analysis incorporates projected growth throughout the region.

O-58-4

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 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. Please see Consolidated Response 4.14, *Environmental Justice*, Consolidated Response 4.12, *Affordable Housing*, and Consolidated Response 4.16, *Remediation Plans, Land Use Covenants, and Human Health and Ecological Risk Assessment*.

O-58

COMMENT

RESPONSE

O-58-4

construction is an important but too often overlooked component of green building that the A's got right. This is particularly important when you consider the clean up.

While some may contend that the best approach to a brownfield site is to leave it alone so as to avoid the hassle of cleaning it up, the more environmentally respectful approach often is to clean it up to a residential standard. In this case, the potential of sea level rise to mobilize underground contaminants were they left in place make consideration of remediation especially important. Clean up, if done correctly, can produce a better outcome for the surrounding community, but requires careful attention to detail and a commitment to following a full suite of best practices including using including using skilled and trained workers.

The Laborer's training center in San Ramon provides some of the most sophisticated training on environmental clean up available anywhere in the country. That the As have committed to using skilled and trained workers, including workers trained at this training center, to perform all environmental clean up is exactly the signal you would want to see that they are ready for the challenge to make the most of an opportunity for environmental restoration. This aspect of the Howards Terminal project is ambitious and commends the site, as choosing an alternate site could leave more contamination in place, which would be a serious environmental injustice.

Respectfully

Tim Frank, Executive Director

O-59 Oakland Rising

COMMENT

RESPONSE

From: [Beth Gunston](mailto:Beth.Gunston)
To: lv_sul_PVollmann@oaklandca.gov
Subject: Letter on DEIR for A's development
Date: Tuesday, April 27, 2021 8:53:55 AM
Attachments: [CP Comments on DEIR for A's development.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,
Please find attached Oakland Rising's public comments pertaining to the A's development at Howard Terminal.
Thank you for your consideration.
Beth



Beth Gunston
Strategic Partnerships Director
She/her
510-925-3374 (cell)
www.OaklandRising.org

Ways you can support:

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

O-59

COMMENT

RESPONSE



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:

Oakland Rising educates and mobilizes voters in the flatlands to speak up for and take charge of the issues impacting our lives. We are a multilingual, multiracial social justice collaborative with deep roots in East and West Oakland, proving that residents working together have the power to change how our city is run. Our base includes 25% of Oakland's voters – or 61,000 new, occasional and unlikely voters – who join us to fight together around policies and governance that advance smart, community-first solutions for a thriving city.

O-59-1

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. 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-59-2

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

570 14th Street, Suite 6, Oakland, California 94612 • 510.261.2600 • info@oaklandrising.org • www.oaklandrising.org

OUR PARTNERS

Asian Pacific Environmental Network • Causa Justa -- Just Cause • East Bay Alliance for a Sustainable Economy
Ella Baker Center for Human Rights • Communities United for Restorative Youth Justice • Bend The Arc • St. Mary's Center
Parent Voices • Mujeres Unidas Y Activas

O-59

COMMENT

RESPONSE

O-59-2

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. 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 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-59-3

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, 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-59-4

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.

O-59-5

Thank you for considering these comments.

Sincerely,

liz suk
Interim Executive Director
Oakland Rising

O-59-3 See Response to Comment I-277-4 and Response to Comment O-18-3.

O-59-4 Impact AIR-2.CU considers the existing background health risk of West Oakland residents and the contribution of the Project's toxic air contaminant (TAC) 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 (BAAQMD) 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. The Final EIR includes revisions to Mitigation Measure AIR-2e to require many of the measures previously listed as "recommended" in the Draft EIR. See Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*, and Chapter 7, *City-Initiated Updates and Errata in the Draft EIR*, for the revised mitigation measure language including all required measures. Although Mitigation Measure AIR-2e does not include a quantitative assessment of each individual action's effectiveness in reducing emissions as explained in Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*, it does require that emissions be reduced to below the City's thresholds of significance, and that this be sufficiently documented based on substantial evidence. This approach is permitted by CEQA Guidelines Section 15126.4(a)(1)(B). Please also see responses to comments A-11-2, A-11-4, A-11-6, A-17-6, A-17-12, O29-1-33, and O-57-15 for additional discussion.

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. The mitigation contains a list of mandatory and other feasible measures that are available and effective to achieve the "no net additional" performance standard. This type of mitigation measure complies with CEQA standards. 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.

O-59

COMMENT

RESPONSE

See also Responses to Comments A-7-51, I-164-2, I-268-2, I-271-2, O-30-3, and O-62-43 for additional information.

O-59-5

See Responses to Comments O-59-1 through O-59-4 regarding the assertion that the issues raised in those comments prevent members of the public from evaluating the 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 with the purpose of informing both the public and decision makers of the environmental consequences of implementing the Project.

Regarding the statement that the Draft EIR should be revised and recirculated, information has been added to the Draft EIR in response to comments and as City-initiated updates (see Chapter 7, *City-Initiated Updates and Errata in the Draft EIR*). However, 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, and consequently, the Draft EIR need not be recirculated. See Consolidated Response 4.3, *Recirculation of the Draft EIR*, for more information.

O-60 National Railroad Passenger Corporation (Amtrak)

COMMENT

RESPONSE

From: [Khalifin, Alexander](mailto:Khalifin_Alexander)
To: zvolimarc@oaklandca.gov
Subject: Waterfront Ballpark District Project Draft Environmental Impact Report
Date: Tuesday, April 27, 2021 1:52:14 PM
Attachments: [Amtrak Comment Letter - Waterfront Ballpark District DEIR_4.27.21.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.

Good afternoon,

Attached, please find Amtrak's comment letter regarding the Waterfront Ballpark District Project DEIR. Thank you and please let me know should you have any questions.

Alex Khalifin
Senior Manager, Government Affairs
National Railroad Passenger Corporation
245 2nd Street / Floor 2 | Oakland, CA 94607
Email: alexander.khalifin@amtrak.com | Mobile: 510.206.9067

O-60

COMMENT

RESPONSE

NATIONAL RAILROAD PASSENGER CORPORATION
187 S. Holgate Street / Room 320 | Seattle, WA 98134
Robert.Eaton@Amtrak.com | Tel 206-903-5539



April 27, 2021

Peterson Vollmann
City of Oakland
250 Frank H. Ogawa Plaza
Oakland, CA 94612

Re: City of Oakland Draft Environmental Impact Report Waterfront Ballpark District Project

Dear Mr. Vollmann:

As the operator of the California's intercity passenger rail, which includes *Capitol Corridor* (CCJPA), *San Joaquin* (SJPA) and Amtrak's long distance service, we appreciate the opportunity to comment on the Draft Environmental Impact Report for the proposed Waterfront Ballpark District project. While Amtrak recognizes that the proposed project has the potential to transform Jack London Square into a waterfront destination, generate development and growth, it also presents some safety concerns due to its proximity to active railroad tracks. To this end, Amtrak supports the comments submitted by CCJPA, and SJPA regarding the need for additional study of the proposed project and the safety risks it potentially presents to motorists, pedestrians, and bicyclists crossing the railroad tracks.

As proposed, the waterfront district will not only be home to a new 35,000 seat stadium but will also include 3,000 new units of housing, 1.5 million square feet of offices, and 270,000 square feet of retail space, all of which will be adjacent to live railroad tracks with multiple at-grade crossings resulting in drastic increase of pedestrian and vehicular traffic at Jack London Square.

There is an undeniable safety concern with increased traffic over at-grade crossings and Amtrak believes more needs to be done so all parties adequately understand the potential safety impact of this project. Amtrak concurs with the recommendation of both CCJPA and SJPA to expand the project boundary and study a combination of grade separation and permanent closure of railroad crossings near and adjacent to the new ballpark to mitigate the transportation hazards related to railroad crossings.

Amtrak understands the significance of the Waterfront Ballpark District project and the positive impact it will have on the community and the passengers we serve. However, safety must be our number one priority and this project, as proposed, could create significant safety hazards for pedestrian, vehicle and bicycle traffic crossing active railroad tracks in order to access the site. We urge the City to work with Amtrak and other appropriate stakeholders to further study and evaluate the feasibility of a grade separation and permanent closures for railroad crossings near or adjacent to the Waterfront Ballpark District. In addition, Amtrak recommends that the City consider using a portion of the community benefits funding, as provided by the Oakland Athletics through a \$450 million earmark, towards improving rail safety in those locations where housing is developed adjacent to the railroad tracks. Amtrak looks forward to working with all the appropriate stakeholders as this exciting project moves forward and we reserve the right to submit further comments as additional information is available and additional study is undertaken.

O-60-1 See Consolidated Response 4.6, *Rail Safety, Grade Crossing, and Grade Separation*.

O-60-2 See Consolidated Response 4.6, *Rail Safety, Grade Crossing, and Grade Separation*. See also Consolidated Response 4.22, *General Non-CEQA*, regarding community benefits and economic issues.

O-60-1

O-60-2

O-60

COMMENT

RESPONSE



Sincerely,

A handwritten signature in black ink, appearing to read "Robert C. Eaton".

Robert C. Eaton
Amtrak
Director, Government Affairs

O-61 West Oakland Environmental Indicators Project, by Greenfire Law, PC

COMMENT

RESPONSE

From: [Jessica Blome](#)
To: [Vollmann, Peterson](#)
Cc: [Ryan Bevanridga](#)
Subject: Public Comment on Draft EIR for the Oakland Waterfront Ballpark District Project
Date: Tuesday, April 27, 2021 3:07:48 PM
Attachments: [2021-04-27 Public Comment_Howard Terminal_FINAL.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 West Oakland Environmental Indicator Project, I am submitting the attached public comment regarding the Draft EIR for the Oakland Waterfront Ballpark District Project.

Please confirm receipt of the comment.

Sincerely,

Jessica L. Blome
Greenfire Law, PC
2001 Addison St., Suite 300
Berkeley, CA 94704
(510) 900-9502 ext. 5
jblome@greenfirelaw.com

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O-61

COMMENT

RESPONSE

O-61-1 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 4.3, *Recirculation of the Draft EIR*.



JESSICA L. BLOME
2550 Ninth Street, Suite 204B
Berkeley, CA 94710
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www.greenfirelaw.com

April 27, 2021

By Electronic Mail

Mr. Peterson Vollmann
Planner IV
City of Oakland
Planning & Building Department
pvollmann@oaklandca.gov

RE: West Oakland Environmental Indicators Project's Public Comment on the Draft Environmental Impact Report for the Oakland Waterfront Ballpark District Project

Dear Mr. Vollman:

This law firm represents the interests of the West Oakland Environmental Indicators Project (WOEIP), a resident-led, community-based environmental justice organization dedicated to achieving healthy homes, healthy jobs, and healthy neighborhoods for all who live, work, learn, and play in West Oakland, California. As you are no doubt aware, in 2017, the State of California passed AB617, groundbreaking legislation that called for community-informed solutions to poor air quality in the state's most impacted communities. Since its inception, WOEIP has overseen the multi-stakeholder steering committee responsible for developing and implementing AB617's West Oakland Community Action Plan, known as Owning Our Air. WOEIP is working with a team of technical advisors to evaluate the Draft Environmental Impact Report (Draft EIR) for the Oakland Athletics Investment Group, LLC's proposal to develop a new Oakland Waterfront Ballpark District (the Project). This public comment joins those other technical comments. This public comment, however, will focus on the California Environmental Impact Reports legal requirements, principally in the appropriateness of approving a project with unavoidable significant impacts on the environment when feasible environmentally superior alternatives are available.

The Oakland A's proposed development of Oakland Waterfront Ballpark District represents one of the largest investments ever in West Oakland. WOEIP remains neutral about the Project but sincerely hopes the City will work with citizens to mitigate or avoid impacts to the environment stemming from the Project as requested in WOEIP's technical comments and according to the plain rules of CEQA as explained in this legal analysis.

O-61-1

O-61

COMMENT

RESPONSE

O-61-2 This is a general comment that describes the proposed Project and the alternatives analyzed in the Draft EIR. 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. As a result, no specific response is provided here.

WOEIP Legal Analysis
Page 2 of 7

1. The proposed Project and its environmentally superior alternative.

The proposed Project location is the Charles P. Howard Terminal and certain adjacent properties located within the Seaport Area of the Port of Oakland, which includes the waterfront area generally bounded by the San Francisco-Oakland Bay Bridge (Bay Bridge) to the northwest, I-880 to the east and northeast, and Howard Terminal on its easternmost extension, for a total of 55 acres. (Draft EIR, Chap. 3, p. 3-3; see also Id. at Figure 3-2, p. 3-4.) The proposed Project would construct the following, among other features, in two phases: a new waterfront Major League Baseball park; a performance venue; a mixed-use development with up to 3,000 residential units, up to 1.5 million square feet of office space, and up to 270,000 square feet of retail; and up to 280,000 square feet of hotel space, including up to 400 rooms. (Id. at Chap. 2, p. 2-1—2-2.) Phase 1 of the development is projected to take two years of construction and includes the ballpark, 540 residential units, 250,000 square feet of commercial office space, 30,000 square feet of retail space, and the hotel. Phase 2, referred to as the “Buildout,” is projected to take an additional six years. (Id. at p. 3-3.)

To comply with CEQA’s requirement to evaluate the feasibility of alternatives to the proposed Project, the Draft EIR evaluated an “environmentally superior” “Alternative 4, The Reduced Project Alternative.” (See generally Draft EIR, Chap. 6.) In selecting alternatives, the

**TABLE 6-3
COMPARISON OF ALTERNATIVE 4: REDUCED PROJECT ALTERNATIVE WITH THE PROPOSED PROJECT**

Land Uses	Alternative 4: Reduced Project Alternative	Proposed Project at Buildout
Ballpark	35,000 capacity	35,000 capacity
Performance venue	3,500 capacity	3,500 capacity
Hotel	400 rooms	400 rooms
Residential	700 dwelling units	3,000 dwelling units
Commercial (Office) ^a	350,000 sq. ft.	1.5 M sq. ft.
Commercial (Retail)	63,000 sq. ft.	270,000 sq. ft.
Parking Spaces	Ballpark: 2,000 Hotel: 200 Residential: 700 Commercial: 700, Retail/Restaurant: 154	Ballpark: 2,000 Hotel: 200 Residential: 3,000 Commercial: 3,000 Retail/Restaurant: 700
Open Space		
Waterfront Park	10.3 acres ^b	10.3 acres ^b
Athletics Way	5.0 acres	5.0 acres
Ballpark Rooftop	2.5 acres	2.5 acres
Plaza Open Space	0.5 acres	0.5 acres

NOTES:
a. Commercial (office) uses could include a range of commercial uses, including but not limited to general administrative and professional office and life sciences/research.
b. 0.9 acres in the Maritime Reserve Scenario.
SOURCE: ESA, 2020

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City of Oakland considered the Project objectives (See Id. at Chap. 3, see also Id. at Chap. 6 § 6.1.1, p. 6-2.), significant impacts to the environmental, and the feasibility of the alternatives “based on factors in CEQA Guidelines Section 15126.6(f)(1).” (Id. at p. 6-1.) Alternative 4, The Reduced Project Alternative, would include site preparation and phased construction of a new ballpark and other uses; however, commercial and residential development would be at lower densities than with the proposed Project. With Alternative 4, only the ballpark and hotel(s) would be taller than 100 feet, and both the amount of construction and the intensity of operational use of the site would be significantly less than with the proposed Project. (Id. at p. 6-34.) Indeed, according to Table 6-3, Alternative 4 eliminates two-thirds of housing and commercial development in order to achieve substantial reductions in significant environmental impacts. (Id. at Table 6-3, p. 6-35.) Table 6-3 is provided herein for ease of reference.

2. WOEIP advocates for a structured, phased environmental review process to happen alongside the long-term buildout of the proposed Project.

At the outset, WOEIP is concerned about the City’s plan to construct the proposed Project in two phases. The “Buildout” phase of the Project should be subject to its own environmental review process closer-in-time to actual construction. Structuring the environmental review process over a period of years would give project proponents opportunity to evaluate and adopt the most aggressive, technologically advanced mitigation measures possible. If the City insists on going forward with the programmatic approach reflected in the Draft EIR, the City should include a process for evaluating significant individual project impacts as the buildout occurs. Without such consideration, the public will be shut out of future environmental policy decisions, which will no doubt happen behind closed doors over the years-long buildout of this massive project. By way of example, the City approved the Gateway Logistics Center at the Port and Oakland Army Base in 2002 after evaluating the massive, multiple-contingency project in a single EIR. Now, after twenty years of construction, the public has no role in review or oversight of any project considered by the 2002 EIR, including GoPort, a \$350 million transportation project. Without 2021 mitigation technology, the GoPort project is obviously deficient and under-protective of air quality, land use, sea level rise, and traffic congestion management. The City should consider this example when evaluating the environmental impacts of the proposed Project, and its nearly ten-year-long construction timeline.

3. The proposed Project will have several, serious significant unavoidable impacts on the environment as proposed.

The Draft EIR finds that the proposed Project will result in significant and unavoidable impacts to the environment, even with implementation of feasible mitigation measures, in the following areas of concern to WOEIP:

- **Air Quality:**
 - Project-level and cumulative conditions could result in or contribute to construction-related criteria pollutant emissions in excess of the City’s thresholds. (Impact AIR-1 and Impact AIR-1.CU)

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O-61-3 See Consolidated Response 4.1, *Project Description*.

O-61-4 The comment lists and expresses concern about significant and unavoidable impacts found in the Draft EIR. 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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- Under Project-level and cumulative conditions, operation of the Project (and combined overlapping construction and operation) would result in average daily emissions of criteria pollutants in excess of the City's thresholds. (Impact AIR-2 and Impact AIR-CU)
- The Project, combined with cumulative development, would also contribute to cumulative health risk impacts on sensitive receptors. (Impact AIR-2.CU)
- **Noise and Vibration:**
- Project construction could result in or contribute to substantial temporary or periodic increases in ambient noise levels above existing levels or in excess of standards established in the general plan or noise ordinance or applicable standards of other agencies. (Impact NOI-1 and Impact NOI-1.CU)
- Project construction could result in or contribute to groundborne vibration exceeding the criteria established by the Federal Transit Administration. (Impact NOI-2)
- The Project would result in increases in ambient noise in excess of the City's threshold and in violation of the Noise Ordinance as a result of noise from concert events, increased roadway traffic noise at full Buildout, and noise from crowds leaving the proposed ballpark. (Impact NOI-3 and Impact NOI-2.CU)
- **Consistency with Transportation Plans:** Project traffic would increase congestion on regional roadways included in the Alameda County Congestion Management Plan, exceeding Alameda County's standard on two roadway segments (Impact TRANS-6) and contributing to exceedances at six segments (Impact TRANS-6.CU).

(Draft EIR, Chap. 2, p. 2-5—2-6, Table 2-1, p. 2-9.)

4. Absent a finding of infeasibility, CEQA requires that the City approve the environmentally superior feasible Alternative 4, the Reduced Project Alternative.

The Draft EIR admits that the proposed Project will result in significant environmental impacts that cannot be avoided or substantially lessened with mitigation. As a result, the City of Oakland cannot approve the proposed Project unless it finds environmentally superior alternatives "infeasible." (Pub. Res. Code, §§ 21091(a)(3), 21081(a)(1)-(3); 14 Cal. Code Regs. § 15091(a)(3); see also *Flanders Found. v. City of Carmel-by-the-Sea* (2012) 202 CA4th 603, 620.) This requirement originates in Public Resources Code, section 21002, which states:

[I]t is the policy of the state that public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of the projects. . . . The Legislature further finds and declares that in the event specific economic, social, or other considerations make infeasible such project alternatives or such mitigation measures, individual projects may be approved in spite of one or more significant effects thereof.

O-61-5 As the commenter notes, decision makers will be required to make specific findings if they approve the Project and reject alternatives. Specifically, CEQA Guidelines Section 15019(a)(3) would require a finding that "Specific economic, legal, social, technological, or other considerations, including provision of employment opportunities for highly trained workers, make infeasible the mitigation measures or project alternatives identified in the final EIR." Pursuant to CEQA Guidelines Section 15019(b), this finding must be supported by substantial evidence in the record. See subsection 4.10.4 in Consolidated Response 4.10, *The Off-Site (Coliseum Area) Alternative*, for a discussion of the Environmentally Superior Alternative. The commenter's opinion on alternatives will be provided to the decision makers, who will decide whether to approve the proposed Project or select an alternative.

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In other words, absent a finding of infeasibility, the City's selection of the proposed Project is indefensible under CEQA.

CEQA defines "feasible" as capable of being accomplished in a successful manner within a reasonable period of time, taking into account economic, environmental, social, technological, and legal factors. (Pub. Res. Code, § 210-61.1; 14 Cal. Code Regs. § 15364.) A project is infeasible if it is inconsistent with agency goals or policies or fails to meet project objectives. (See *City of Del Mar v. City of San Diego* (1982) 133 CA3d 401 (alternatives did not align with City's growth management program so were infeasible); see also *Los Angeles Conservancy v. City of W. Hollywood* (2017) 18 CA5th 1031, 1042 (alternative was inconsistent with project objections that were based on city policies for development of site). According to the Draft EIR, "Because the overarching purpose of the proposed Project is to construct a new major league ballpark, no alternatives were selected for analysis that would not achieve this purpose, except for the No Project Alternative." (Draft EIR, Chap. 6, p. 6-2 (emphasis added).

To be sure, the Draft EIR identified Alternative 4, The Reduced Project Alternative, as the "second most environmentally superior alternative [after the No Project Alternative] because it would reduce the significant and unavoidable air quality impacts of the proposed Project and all other build alternatives." (Id. at Chap. 2, § 2.3.1, p. 2-7.) Specifically, "operational-related criteria pollutant emissions under the Reduced Project Alternative would be less than the significance thresholds." (Id. at Chap. 6, § 6.5, p. 6-60.) This statement is a stunning admission, given the unavoidable impacts identified in Impact Air-2, include:

- Under Project-level and cumulative conditions, operation of the Project (and combined overlapping construction and operation) would result in average daily emissions of criteria pollutants in excess of the City's thresholds. (Impact AIR-2 and Impact AIR-CU)
- The Project, combined with cumulative development, would also contribute to cumulative health risk impacts on sensitive receptors. (Impact AIR-2.CU)

The City of Oakland is not the first lead agency to identify a feasible environmentally superior alternative. Lead agencies have attempted to approve projects over feasible environmentally superior alternatives in the past. In *Citizens for Quality Growth v. City of Mt. Shasta*, the court overturned a lead agency's approval of a project because it failed to consider the feasibility of alternatives when adopting an alternative would have provided the only means by which to reduce or avoid a project's significant effects on wetlands. (*Citizens for Quality Growth v. City of Mt. Shasta* (1988) CA3d 433.) Similarly, in *Resource Defense Fund v. LAFCO*, the court held that a lead agency's approval of a project without finding an environmentally superior alternative infeasible constituted prejudicial error. (*Resource Defense Fund v. LAFCO* (1987) 191 CA3d 886; see also *Preservation Action Council v. City of San Jose* (2006) 141 CA4th 1336; *San Bernardino Valley Audobon Soc'y v. County of San Bernardino* (1984) 155 CA3d 738; *Atherton v. Board of Supervisors* (1983) 146 CA3d 346.)

From an environmental policy perspective, it is impossible to justify a project that would result in the long-term increase in average daily emissions of criteria pollutants in excess of the City's thresholds and contribute cumulative health impacts to sensitive populations. (See Draft

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EIR, Chap. 6, Table 6-5, p. 6-52-56.) That is why CEQA prohibits the City from adopting the Project as proposed when the environmentally superior Alternative 4 is feasible and would result in lessened or avoided significant environmental impacts to air quality. WOEIP urges the City to select Alternative 4.

5. A statement of overriding considerations is inappropriate when a feasible environmentally superior alternative is available.

An environmental impact report (EIR) is an informational document whose purpose is to inform the public and decision makers of the environmental consequences of agency decisions before they are made. Beyond this informational purpose, an EIR can lead to affirmative legal obligations for agencies: they are required to mitigate or avoid the significant effects on the environment identified in an EIR whenever it is feasible to do so if they approve projects that have significant effects. (Pub. Res. Code, § 21002.1(b).) Agencies are permitted to approve projects with significant environmental impacts, even if there are no feasible mitigation measures, if they find that overriding considerations justify the approval. Those considerations must be set forth in a statement of overriding considerations and supported by substantial evidence. (Pub. Res. Code, § 21081; Cal. Code Regs., § 15093.) A statement of overriding considerations is a written statement specifying that because of the project's overriding benefits, the agency is approving the project despite its environmental harm. The statement must set forth the reasons for the approval based on the final EIR or information in the record. (14 Cal. Code Regs., § 15093(b); see also 14 Cal. Cod Regs., § 15043.)

O-61-6

The Draft EIR does not include a statement of overriding considerations justifying the selection of the Project, which alone renders a City decision approving the Project vulnerable to appeal. (*Woodward Park Homeowners Assn., Inc. v. City of Fresno* (2007) 150 Cal.App.4th 683, 722 (invalidating a statement of overriding considerations for its informational defects and because it was not made available to the public for review and comment).)

In addition to this informational defect, a statement of overriding considerations is inappropriate when the approval of the Project is indefensible due to the availability of an environmentally superior alternative that would avoid or lessen the significant and unavoidable impacts resulting from the Project as proposed. Indeed, "CEQA does not authorize an agency to proceed with a project that will have significant, unmitigated effects on the environment, based simply on a weighing of those effects against the project's benefits, unless the measures necessary to mitigate those effects are truly infeasible." (*City of Marina v. Board of Trustees of California State University* (2006) 39 Cal.4th 341, 368-369.) Such a rule, "even were it not wholly inconsistent with the relevant statute (Pub. Res. Code, § 21081(b)), would tend to displace the fundamental obligation of '[e]ach public agency [to] mitigate or avoid the significant effects on the environment of projects that it carries out or approves whenever it is feasible to do so' (id., § 21002.1(b))." (Id.)

6. The City should select Alternative 4 because The Reduced Project Alternative is less likely to result in gentrification and urban displacement in West Oakland.

O-61-7

According to the Urban Displacement Project, a research and action initiative of UC Berkeley, gentrification is "a process of neighborhood change that includes economic change in

O-61-6 Section 15093 of the CEQA Guidelines requires the preparation of a statement of overriding considerations if the specific economic, legal, social, technological, or other benefits of a project outweigh its significant and unavoidable environmental impacts. The lead agency prepares a statement of overriding considerations at the time that it approves the project, following preparation of the final EIR (CEQA Guidelines Section 15093(b)). If the City approves the Project and the final EIR identifies significant and unavoidable impacts (as does the Draft EIR—see Section 7.1), then, consistent with Section 15093, the City will prepare a statement of overriding considerations based on the Final EIR and other information in the record and supported by substantial evidence.

O-61-7 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 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 background information provided by the commenter is appreciated. See Consolidated Response 4.13, *Gentrification and Indirect Housing Displacement*. As explained in the Consolidated Response and on Draft EIR p. 4.12-18, because displacement associated with gentrification is an area-wide phenomenon, "it would be speculative to identify a singular causal relationship or contribution of increased land or housing costs attributable to the Project to indirect displacement." For the same reason, it would be difficult to assign a direct linkage to Alternative 4.

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a historically disinvested neighborhood—by means of real estate investment and new higher-income residents moving in—as well as demographic change, not only in terms of income level, but also in terms of changes in the education level or racial make-up of residents.” (See Urban Displacement Project “Gentrification,” available at <https://www.urbandisplacement.org/>.) While increased investment in an area can be positive, gentrification is often associated with displacement, which means that in some of these communities, long-term residents are not able to stay to benefit from new investments in housing, healthy food access, or transit infrastructure. Even for long-time residents who are able to stay in newly gentrifying areas, changes in the make-up and character of a neighborhood can lead to a reduced sense of belonging, or feeling out of place in one’s own home. The influx of affluent, often white gentrifiers to formerly low-income neighborhoods can be viewed as a form of racial exclusion from urban areas with vibrant economies.

O-61-7

The Bay Area is particularly vulnerable to gentrification resulting urban displacement. As of June 2020, nearly one-third of poor neighborhoods in Oakland and San Francisco experienced gentrification between 2013 and 2017, the highest rate in the country according to a new national study by the National Community Reinvestment Coalition. (See East Bay Times article, dated June 2020, provided as Exhibit A.) The study spotlighted the Bay Area’s housing bubble caused by high-wage tech workers and expensive housing, which have continued to push out lower-wage residents who increasingly cannot afford to live in once-affordable neighborhoods like West Oakland and Uptown. A copy of the study and its predecessor are provided as Exhibits B and C to this letter for inclusion in the administrative record for the proposed Project.

As explained in the opening paragraphs of this public comment, WOEIP is neutral regarding the reasonableness or necessity of the proposed Project in general, but it feels strongly that Alternative 4 is the best path forward for West Oakland, a neighborhood under threat from gentrification and at high risk of urban displacement. With its reduction in density, Alternative 4 not only represents the obvious choice from an environmental policy perspective but also gives West Oakland residents the best chance of staying in their homes where they can enjoy the Oakland A’s investment in West Oakland for generations.

O-61-8

WOEIP encourages the City to select Alternative 4, the Reduced Project Alternative, because it is feasible and because it would result in a reduction in the operational and cumulative long-term impacts of air pollution to less than significant levels with mitigation. The diverse, sensitive population of West Oakland deserves the City’s utmost protection from environmental harm, gentrification, and urban displacement, along with the economic development and opportunity that will come to West Oakland because of the Oakland A’s Waterfront Ballpark District.

Sincerely,



Jessica L. Blome
Greenfire Law, PC

O-61-8 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 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 remainder of the comment letter provides exhibits that contain general studies or information on gentrification and displacement that are not specific to the proposed Project. See Consolidated Response 4.13, *Gentrification and Indirect Housing Displacement*.

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Bay Area gentrified at nation's fastest rate: study

<https://www.mercurynews.com/2020/06/18/oakland-s-f-neighborhoods-fastest-gentrified/>



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Oakland, S.F. neighborhoods fastest gentrifying in U.S.

High housing costs and wages pushing out poor residents



A home for sale is seen on Wood Street in West Oakland, Calif., on Tuesday, Aug. 7, 2018. (Jane Tyska/Bay Area News Group)

By **LOUIS HANSEN** | lhansen@bayareanewsgroup.com | Bay Area News Group
PUBLISHED: June 18, 2020 at 3:47 p.m. | UPDATED: June 20, 2020 at 6:10 a.m.

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4/26/21.

Bay Area gentrified at nation's fastest rate: study

<https://www.mercurynews.com/2020/06/18/oakland-s-f-neighborhoods-fastest-gentrified/>



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Nearly one-third of households in the Bay Area saw income gains between 2013 and 2017, according to a new study. San Jose was also among the fastest-growing areas, with median household incomes there rising 14 percent between 2013 and 2017. Thursday by the N

The study spotlighted the Bay Area, where researchers found that the country has seen little new investment and gentrification over the last decade, NCRC research showed. But high-wage tech workers and expensive housing have continued to push lower-wage neighbors out of West Oakland, Uptown, East Palo Alto and other communities.

The study quantifies what Bay Area residents have seen for years: historically low-income neighborhoods rapidly changed by new, higher-income residents. "It's a combination of economic activity, land use and geography," said NCRC director of research Jason Richardson. The nonprofit coalition advocates for private reinvestment in under served communities.

The researchers looked at census data in poor communities from 2012 to 2017 for substantial rises in median household income, housing prices, and the share of residents with four-year degrees to find gentrification.

Researchers identified 41 of 131 low- and moderate-income tracts in San Francisco and Oakland that saw substantial increases in household income, education and home prices. The San Francisco and Oakland metro areas saw 31 percent of its eligible communities gentrify, outpacing Denver (27.5 percent) and Boston (21 percent) as the most intense changes in the country, according to NCRC.

In San Jose, 13 of 72 tracts — about 18 percent — had large gains in wealth and educational status.

In West Oakland, for example, median household income rose from \$80,700 to \$86,300 between 2010 and 2017, while the percent of population with four-year degrees rose from one-third to nearly one-half, according to the study.

The study also considered the possible future effects of federal opportunity zones on low and moderate-income neighborhoods. The opportunity zones, established in the 2017 Tax Cuts and Jobs Act, allow tax breaks for certain investments in distressed communities. The program is designed to fuel investment in 8,000 urban and rural zones designated as disadvantaged by state governors.

NCRC researchers found nearly 70 percent of the opportunity zones overlap or run adjacent to communities most likely to experience gentrification. "These are some of the most distressed neighborhoods in the U.S.," said report co-author Bruce Mitchell. The investments could bring opportunities for residents — but studies have shown long-time residents are usually displaced by the community make-overs. Renters and people of color are most vulnerable.

Critics worry that the investment program may accelerate gentrification in many neighborhoods, even as properties are redeveloped.

NCRC researchers said it's too soon to gauge the impact of opportunity zones on communities. Mitchell noted that reinvestment will likely be slowed as the economy is hampered by the coronavirus pandemic.



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Shifting Neighborhoods: Gentrification and cultural displacement in American cities

Jason Richardson, *Director, Research & Evaluation, NCRC*
Bruce Mitchell PhD., *Senior Research Analyst, NCRC*
Juan Franco, *Senior GIS Specialist, NCRC*



NCRC
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Shifting neighborhoods: Gentrification and cultural displacement in American cities

ABOUT NCRC

NCRC and its grassroots member organizations create opportunities for people to build wealth. We work with community leaders, policymakers and financial institutions to champion fairness in banking, housing and business.

Our members include community reinvestment organizations, community development corporations, local and state government agencies, faith-based institutions, community organizing and civil rights groups, minority and women-owned business associations, and social service providers from across the nation.

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Shifting neighborhoods: Gentrification and cultural displacement in American cities

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Shifting neighborhoods: Gentrification and cultural displacement in American cities

EXECUTIVE SUMMARY

Gentrification is a powerful force for economic change in our cities, but it is often accompanied by extreme and unnecessary cultural displacement.¹ While gentrification increases the value of properties in areas that suffered from prolonged disinvestment, it also results in rising rents, home and property values. As these rising costs reduce the supply of affordable housing, existing residents, who are often black or Hispanic, are displaced. This prevents them from benefiting from the economic growth and greater availability of services that come with increase investment. Gentrification presents a challenge to communities² that are trying to achieve economic revitalization without the disruption that comes with displacement.

This study found that from 2000 through 2013 the following occurred:

- Gentrification and displacement of long-time residents was most intense in the nation's biggest cities, and rare in most other places.
- Gentrification was concentrated in larger cities with vibrant economies, but also appears in smaller cities where it often impacted areas with the most amenities near central business districts.
- Displacement of black and Hispanic residents accompanied gentrification in many places and impacted at least 135,000 people in our study period. In Washington, D.C., 20,000 black residents were displaced, and in Portland, Oregon, 13 percent of the black community was displaced over the decade.
- Seven cities accounted for nearly half of the gentrification nationally: New York City, Los Angeles, Washington, D.C., Philadelphia, Baltimore, San Diego and Chicago.
- Washington, D.C., was the most gentrified city by percentage of eligible neighborhoods that experienced gentrification; New York City was the most gentrified by sheer volume. Neighborhoods were considered to be eligible to gentrify if in 2000 they were in the low 40% of home values and family incomes in that metropolitan area.
- The study lends weight to what critics say is a concentration not only of wealth, but of wealth-building investment, in just a handful of the nation's biggest metropolises, while other regions of the country languish.
- The strict tests for gentrification and displacement in this study and the limitations of the data available likely undercounted instances of gentrification and displacement.
- Most low- to moderate-income neighborhoods did not gentrify or revitalize during the period of our study. They remained impoverished, untouched by investments and building booms that occurred in major cities, and vulnerable to future gentrification and displacement.

¹ Cultural displacement results when the tastes, norms, and desires of newcomers supplant and replace those of the incumbent residents, and can also entail the loss of historically and culturally significant institutions for a community.

² In this report we have used the words community, city, and metro area interchangeably. We have also used the census tract as a proxy neighborhood in many cases and these words should be considered synonymous for our purposes.

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Shifting neighborhoods: Gentrification and cultural displacement in American cities

A major transformation is occurring in the most prosperous American cities. Many of the 600+ member organizations of the National Community Reinvestment Coalition (NCRC) have raised concerns about gentrification, displacement and transformations in their communities. We wanted to better understand where gentrification and displacement was occurring, and how to measure and monitor it. Does gentrification also mean displacement? Using U.S. census and economic data, NCRC found that many major American cities showed signs of gentrification and some racialized displacement between 2000 and 2013. Gentrification was centered on vibrant downtown business districts, and in about a quarter of the cases it was accompanied by racialized displacement. Displacement disproportionately impacted black and Hispanic residents who were pushed away before they could benefit from increased property values and opportunities in revitalized neighborhoods. This intensified the affordability crisis in the core of our largest cities.

Gentrification was most intense in the nation's biggest coastal cities, yet in medium to small cities of the nation's interior it was rare: Most of the nation's cities and towns did not experience gentrification as measured in this study.

Neighborhoods experience gentrification when an influx of investment and changes to the built environment leads to rising home values, family incomes and educational levels of residents. Cultural displacement occurs when minority areas see a rapid decline in their numbers as affluent, white gentrifiers replace the incumbent residents.

In this study, neighborhoods were considered to be eligible to gentrify if in 2000 they were in the lower 40% of home values and family incomes in that metropolitan area.

Measuring gentrification and displacement is fraught with controversy, since people who are impacted by the economic and social transition of their neighborhoods feel the disruption of community ties directly. This study measured gentrification and displacement using empirical methods and data, which has its own flaws and limitations. First, while the use of U.S. census data improves the validity of the study's findings, it also restricts the population analysis to a time period extending from 2000 to 2010, while the social and economic data were gathered under the U.S. Census American Community Survey (ACS) program, covering the period starting in 2000 and until 2009-2013, a five-year consolidation of the social and economic data. This limits our findings to the not-too-distant past. However, neighborhoods with a more recent dynamic of gentrification and displacement could not be covered. Second, the use of census tracts, which average about 4,000 residents, as a proxy for neighborhoods could disguise neighborhood changes taking place at smaller community sizes. As a consequence of these restrictions on the time frame and scale of the study, it should not be implied that other neighborhoods have not experienced the same effects before, during or since the study period. Instead, the study is designed to identify instances of gentrification and displacement that can be measured with a high level of confidence, and avoid falsely noting gentrification where none occurred, but it cannot capture the full-lived reality of residents in gentrifying neighborhoods.

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RESEARCH

Shifting neighborhoods: Gentrification and cultural displacement in American cities

Disinvestment in low- and moderate-income communities results from a long history of discrimination in lending, housing and the exclusionary, racialized practice known as redlining³. A recent study by the Federal Reserve Bank of Chicago directly linked community disinvestment with historical redlining practices evident in the Home Owners Loan Corporation (HOLC) residential security ("redlining") maps, completed for all major cities of the U.S. 80 years ago⁴. A 2018 study by NCRC found that three out of four neighborhoods marked "hazardous" by HOLC surveyors in the 1930s are still struggling economically, with lower incomes and higher proportions of minority residents. The economic outcomes for black and Hispanic families residing in disinvested areas are often stunted by lower incomes, fewer businesses and fewer opportunities to build wealth. This history set the stage for gentrification and displacement.

Local advocates and officials should pursue policies that encourage investment while promoting the ability of existing residents to stay and benefit from revitalization. In our 2016 paper, *The Community Reinvestment Act: How CRA can promote integration and prevent displacement in gentrifying neighborhoods*, we identified several ways in which local stakeholders can promote revitalization to benefit the broader community, such as partnerships between banks and community-based organizations to encourage equitable development; limited-equity co-ops and community land trusts; providing existing tenants with the right of first refusal in apartment conversions coupled with low-income and first-time buyer financing programs; inclusionary zoning regulations; and split tax rates for the incumbent residents of gentrifying neighborhoods. Additionally, HUD's Affirmatively Furthering Fair Housing (AFFH) process provides an opportunity for community groups to engage with municipal leadership in the planning process. AFFH provides a mechanism for identifying areas that are vulnerable to, or may be in the early stages of, gentrification. Community groups can then work to develop strategies to avoid displacement of incumbent residents by attracting investment and providing affordable housing.

Large and small local banks can also play a role by supporting the development of housing and finance options that accommodate the retention of low- and moderate-income families in the community, rather than excluding them. Bank regulators should recognize pro-integrative bank finance as responsive to the needs of the community, crediting banks for these efforts in their CRA exams. Strategies like those advanced through HUD's AFFH rule, promoting investment in inclusive and diverse neighborhoods, should be eligible for CRA consideration. It is essential that programs promoting the economic prosperity of incumbent residents of gentrifying neighborhoods be discussed on the public evaluations released subsequent to a CRA exam to document their effectiveness and encourage other banks to apply comparable investment strategies in their markets.

3 See NCRC report on HOLC and redlining <https://ncrc.org/holc/>

4 <https://www.chicagofed.org/publications/working-papers/2017/wp2017-12>

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INTRODUCTION

Any discussion of gentrification is likely to elicit a range of responses. A conversation with an NCRC member living in an impoverished and high-crime neighborhood in Baltimore, Maryland, culminates with a plea: "When can we get some of that (gentrification) in my community?" Another NCRC member from Portland, Oregon, experiences gentrification as an erosion of community ties, as rents escalate and families are displaced. In Arlington, Virginia, a large rental community of 3,000 mostly Hispanic immigrants drawn by a robust Washington, D.C., economy is uprooted when the property is sold, bulldozed and replaced by a mix of luxury and affordable apartments, which are neither truly affordable nor plentiful for the former tenants⁵. In the rapidly gentrifying Shaw neighborhood of Washington, D.C., the Lincoln Temple United Church of Christ, a congregation that had existed since the 1860s and was a landmark of the Civil Rights struggle, is forced to dissolve in 2018 as its membership drops to just 20 congregants⁶. Gentrification is controversial because it affects people at the neighborhood level, it can disrupt the familiar and established ties of a place, creating a disorienting new locale. For people displaced as the neighborhood becomes unaffordable, this is more than just nostalgia or discomfort with the unfamiliar. Often, they must accept longer commutes and a disruption of the support structures provided by their old neighbors and family. In these cases, gentrification is understood as the terminal stage of exclusion of minority (usually black) residents from affordable housing inside the city. Public policy measures starting with "slum clearance" in the 1930s and 1940s then became "urban renewal" (Collins & Shester 2012; Hyra 2012) and construction of the highway system, which split communities in the 1950s, 1960s and 1970s (Mohl 2004; Karas 2015), which then became "redevelopment" in the 1980s and 1990s. Now, the remnant of these communities face an affordability crisis as affluent, usually white gentrifiers with access to credit move in and transform the economic and social dynamics of a community.

While community perceptions of gentrification range from hope for better living conditions to anxiety and even hostility, research on gentrification is divided on whether displacement is an inevitable outcome. Some researchers assert that gentrification attendant with displacement is a complex issue and while mobility rates of low-income residents are equivalent in gentrifying and non-gentrifying areas, low-income families are unable to afford to move in and replace exited families as housing costs escalate (Ding, Hwang, and Dvirngi, 2015). Other researchers found that displacement was rare (Ellen and O'Regan, 2011; Freeman 2005), while others comment on its prevalence (Newman and Wyly, 2006). This divergence of opinion could be because both the scale and type of gentrification vary from place to place. The urban form, or patterns of land-use in U.S. cities, differ considerably in

⁵ Ama Valley Apartments <https://www.usatoday.com/story/news/nation/2014/11/10/horthern-virginia-diversity-race/1807952/>
⁶ <https://www.washingtoncitypaper.com/news/city-desk/article/21023685/after-150-years-lincoln-temple-united-church-of-christ-has-held-its-last-service>

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size and structure, and the process of gentrification can involve neighborhoods in a rapid process of change or unfold over decades in larger districts. Additionally, while the residential and commercial aspects of a community are interwoven, gentrification of residential and commercial areas involve slightly different dynamics (Meltzer 2016). Displacement also may take different forms: either racial/ethnic or by class and culture. Finally, Marcuse (1986) argues that in many cases displacement due to systematic urban disinvestment, which resulted in the abandonment of many downtown neighborhoods, often precedes gentrification. For all of these reasons, it is helpful to be clear about the type of gentrification considered, how it is being studied and over what period.

The focus of this report is residential gentrification and racial and ethnic displacement throughout urban areas of the U.S. It is a comprehensive national level analysis of gentrification and displacement in 935 metropolitan areas. The goal was to determine how widespread gentrification was in U.S. urban areas, and then identify neighborhoods where gentrification and displacement occurred simultaneously. The first step of this analysis is to find neighborhoods with indications of gentrification. Utilizing a methodology developed by Columbia University Professor Lance Freeman, the study examines increases in education levels, home values and income as the defining criteria of whether gentrification has occurred in a neighborhood (2005). We determine which neighborhoods (census tracts) show indications of gentrification over the period from 2000-2013. In tracts with indications of gentrification, a second analysis is conducted to examine whether racial/ethnic displacement occurred during the same time period. The research questions addressed by this study are: 1) How prevalent is gentrification and subsequent displacement? 2) Are there regional differences in gentrification and displacement? 3) What census variables are associated with gentrification across the nation?

LITERATURE REVIEW

The term "gentrification" was first coined in the 1960s by British sociologist Ruth Glass (1964) to describe the displacement of the working-class residents of London neighborhoods by middle-class newcomers. From its inception, gentrification has been understood as a form of neighborhood change, resulting in the displacement of incumbent residents of one social class and culture by another more affluent class, linked with an increase in property values. In the case of the United States, the segregated residential structure of American cities creates circumstances in which gentrification often occurs along racial lines. In these cases of gentrification and racial displacement, affluent white incomers often displace the incumbent minority residents.

Gentrification is a complex form of neighborhood change. At the street level, it is visible in the upgrading of the built structure of neighborhoods, as houses are refurbished and businesses established (Krase, 2012; Kreager, Lyons and Hays 2011; Papachristos et al. 2011). While the most basic understanding of gentrification involves the movement of

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people and investment to affect neighborhood change, it also involves broader political and economic forces. Policy decisions by governments impact both transportation and the availability of services and amenities in a community. The interplay between government and the public in decisions regarding zoning and the allocation of public resources, coupled with decisions by private developers on the investment of capital, deeply influence neighborhood desirability (Zuk et al. 2015). The forces driving neighborhood changes, like gentrification, also involve an interplay between the movement of people, public policy decisions and the availability of capital. Consequently, gentrification is a subject that requires analysis of social, political and economic circumstances.

The economic drivers of neighborhood change involve supply-side dynamics of public investments and land value within the context of the wider metropolitan economy. While working on his PhD at Johns Hopkins University, the late Neil Smith observed the gentrification of Baltimore's Inner Harbor (1979). This stirred him to establish the drivers that lead to gentrification in terms of land rents – the depreciation and physical deterioration of older built structures, and the increase in the potential income returns from the land on which they were built. When the potential income return from land rents exceeds the perception of risk by investors, neighborhoods become likely candidates for redevelopment. While economics explain the flows of capital to gentrifying commercial and residential areas, there are broader cultural factors that have shifted perspectives on the desirability of an urban lifestyle and increased the demand for downtown locations.

Neighborhood lifestyle preferences have always had a powerful role in establishing the desirability of different urban locations. The post-war era saw a shift in both federal policy and consumer culture that had enormous impact on urban residential patterns (Cohen 2004). Economic conditions of the Depression era and production priorities during World War II hindered construction of new housing for over a decade. This contributed to an antiquated stock of urban housing, the supply of which was too small to meet demands of a growing and increasingly affluent population in the post-war era. The availability of mortgage financing through the Housing Act of 1949 sparked a construction boom. Much of the housing was built in suburbs, where developers utilizing economies of scale could find large undeveloped tracts for massive new developments. This accelerated a reconfiguration of the American urban system, as white middle-class residents suburbanized, shifting population and capital away from downtown areas (Jackson 1987). Often, this left the downtown areas of cities with high proportions of minority and low-income residents, resulting in a reduced revenue base and greater demands for city services. This shift in economic prosperity and population away from the downtown areas of cities has become widely accepted as a theory of post-war urban decline; however, urban development varied greatly across the country and should not be taken as the sole explanation of post-war urban development (Beauregard 1993). In the present era, the aging housing stock of inner-ring suburbs has become less desirable as the demands of commuting and allure of downtown amenities have shifted demand for housing closer to the central business district (CBD) of urban areas.

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The question “who gentrifies?” is contingent on demographics and class. Many authors cite the role of young millennials in gentrification (Hwang & Lin 2016; Baum-Snow & Hartley 2016; Couture & Handbury 2016; Ding, Hwang & Divringi 2015). Millennials are less likely to harbor racial and ethnic animosity than previous generations (Freeman & Cai, 2015; Owens, 2012; Glaeser & Vigdor, 2012). Many downtown areas of cities have also experienced reductions in violent crime over the last two decades, which could make certain low-income neighborhoods enticing to newcomers (Ellen, Horn & Reed 2016). Increasing work hours and reduction in leisure time has also created a demand to reduce commute time and work closer to home (Edlund, Machade, & Svitchi 2016). Public policy decisions also have impact. Several researchers cite the role of the HOPE VI program in the demolition of distressed public housing (Goetz 2013; Vale & Gray 2013). Shifts in city level spending on mixed-income developments, parks and bike share enhance downtown desirability (Buehler and Stowe, 2016; Hyra 2012; Tissot, 2011). Finally, many city leaders have acted on the advice of influential urban planners, like Edward Glaeser and Richard Florida, who popularized the idea that the amenities of the downtown areas of cities draw Gen-Xer's and Millennials who are part of an affluent “creative class” that revitalizes neighborhoods (Clark, 2011; Florida, 2014; Glaeser & Shapiro, 2003). A combination of undervalued property and changing cultural perceptions about the desirability of urban living increases the demand for residences in downtown areas of many U.S. cities.

While gentrification implicitly involves economic transition as a more affluent class replaces the incumbent residents, many researchers also note that there are cultural and racial dimensions to this form of neighborhood change. Millennial perceptions about race have shifted from those of prior generations, so that minority neighborhoods are now seen as “cool and edgy” (Hyra 2016), but that does not necessarily mean they remain inviting or affordable for the incumbent residents. Several researchers found that neighborhoods transitioning to affluence create new social tensions that influence interactions, which can often result in micro-level segregation (Chaskin & Joseph, 2015; Tach, 2014; Hyra 2015). The new residents might shift the community's focus of concern and the dynamics of political power, including black and white middle-class gentrifiers wielding political influence in local initiatives that sometimes oppose the expansion of affordable housing in their new neighborhoods (Boyd 2005; Hyra 2008; Pattillo 2007).

Despite many studies on the issue a crucial question remains, does gentrification also mean displacement? The economics of gentrification explicitly state that neighborhood property values increase, decreasing the supply of affordable housing available to lower-income residents who are then displaced, as the cost of living in the neighborhood increases. However, several studies indicate that the mobility rates of low-income people are equivalent in gentrifying and more stable low-income neighborhoods (Ding, Hwang & Divringi, 2015; Ellen & O'Regan, 2011; Freeman, 2005; Freeman & Braconi, 2004; McKinnish, Walsh & White, 2010). Some cite this as evidence that widespread displacement is not occurring. However, Hyra (2016) argues that this is an incorrect interpretation that merely shows that

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low-income rates of mobility are uniformly high across all types of neighborhoods. It's not that displacement is not occurring in gentrifying neighborhoods, but that in general low-income people move more often. Additionally, the movement of other low-income residents back into gentrifying neighborhoods is constrained by a lack of affordable housing (Ding, Hwang & Divringi, 2015). Over time, the neighborhood experiences a net loss of low-income residents as housing costs rise, and the neighborhood becomes less and less affordable. This transition in the economic status of neighborhoods often occurs along racial lines, as incumbent low-income black and Hispanic residents move and are replaced by higher-income white gentrifiers. Freeman (2005) found a surge in white movement into black neighborhoods since 2000.

The influx of affluent white gentrifiers to formerly low-income minority neighborhoods can be viewed as a form of racial exclusion from urban areas with vibrant economies. There has been increased exclusion of incumbent black homeowners from gentrifying neighborhoods, driven by racial disparities in access to home lending. Black and Hispanic applicants for mortgages in gentrified neighborhoods were 2.32 times and 1.96 times more likely to be denied credit than non-Hispanic white applicants between 1993 and 2000 (Wylly & Hammel 2004). Neighborhood level disparities in access to mortgage credit access have a long history and have been documented in several cities by NCRC (Richardson *et al.* 2015 & 2016). Rothstein (2017) documents the history of redlining going back to the early part of the 20th century. A combination of local policies related to zoning, restrictive covenants, prohibition of lending in "hazardous" neighborhoods and informal segregationist practices like residential steering and social pressure prevented residents of low-income and minority neighborhoods from gaining access to credit. This pattern of disinvestment prepared the ground for gentrification and displacement in many neighborhoods (Marcuse 1986). Gentrification, which decreases the supply of affordable housing, coupled with policies of public housing demolition (Goetz 2013), have resulted in the displacement of racial minorities and low-income residents in some cities.

METHODS

This study sought to quantify variations in displacement in U.S. urban areas by assessing changes at the census tract (neighborhood) level using nationwide U.S. census data normalized by the longitudinal tract database (LTDB)⁷. Normalization of the census data is necessary because tract boundaries can change over time, leading to inaccuracies. We analyzed LTDB data for socioeconomic changes during the period 2000 to 2013 for all 50 U.S. states. Population changes were assessed using decennial census data for 2000 and 2010, which was normalized by the LTDB.

Researchers have used several different methods to identify neighborhoods that seem to be experiencing gentrification and to then assess rates of residential change. The study

⁷ <https://sd.ad.brown.edu/projects/diversity/researcher/bridging.htm>

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adopted a methodology developed by Freeman (2005) and utilized by the Philadelphia Federal Reserve (Ding, Hwang & Divringi, 2015) and Governing.com (2015) to locate gentrified areas. The method involves assessing the educational level and economic status of residents, and the value of properties in the neighborhood at the beginning of the census period, then assessing changes in the next U.S. census. This includes several checks:

- Eligibility determined by tracts in the Core Based Statistical Area (CBSA), which are below the 40th percentile in both median household income and median house value. In addition, the population must be 500 residents or greater at the beginning of the period.
- Possible gentrification is determined by including all eligible tracts and then identifying tracts that were in the top 60th percentile for increases in both median home value and the percentage of college graduates.
- Determining tract level median household income increases from 2000-2013 when adjusted for inflation is the final check.
- Census tracts meeting all of the above listed criteria were then identified as undergoing, or having undergone, gentrification.

The criteria for gentrification are all indications that the socioeconomic status of the residents of the tract shifted. We then reviewed each tract for changes in the population of the racial subgroups⁸. These changes were assessed using two criteria:

1. Did the racial group's percentage of the population decline by more than two standard deviations from the mean of all census tracts?⁹
2. Did the absolute number of residents from that racial group decline by at least five percent?

If the census tract gentrified and met both of these criteria, we identified it as having experienced cultural displacement¹⁰ (Figure 1). Cultural displacement results when the tastes, norms and desires of newcomers supplant and replace those of the incumbent residents (Zukin 2010). Since this kind of cultural transformation of neighborhoods is difficult to measure directly, the decline in minority subpopulation was used as a proxy. Population shifts were examined utilizing decennial census 2000 and 2010 population data.

⁸ Data on the following racial and ethnic subgroups was used: non-Hispanic White, Black, Hispanic and Asian. Only the decennial Census offers a low enough sampling error to be of use, limiting our study to data from the 2000 and 2010 Censuses.

⁹ The change in population at the census tract level is normally distributed.

¹⁰ Hyta, D., 2015. The back-to-the-city movement: Neighbourhood redevelopment and processes of political and cultural displacement. *Urban Studies*, 52(10), pp.1753-1773.

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Gentrification and Displacement Criteria



Figure 1: Criteria for gentrification and displacement at census tract level using 2000 and 2010 decennial census and 2009-2013 5-year ACS.

RESULTS

NATIONAL CHANGES – GENTRIFICATION

Nationally, 90.7 percent, or 67,153 census tracts have a micropolitan or metropolitan designation, and are assigned to an urban area. Of these urban tracts, 16.7 percent or 11,196 tracts met the criteria for being eligible for gentrification in 2000, the beginning of the examination period (Figure 2). A total of 1,049 census tracts met all three of the checks for gentrification: increases in median home value, educational attainment and increases in income between by 2013. This amounts to nine percent of the eligible urban census tracts across the U.S. While this seems to indicate that gentrification is rare, the selection criteria was stringent and limited to a relatively short period of time. Gentrification appears to be clustered in sections of larger and economically vibrant cities that are close to central business districts. Residents are drawn to the neighborhoods by proximity to employers, and the clustering of amenities and services associated with an urban lifestyle. Finally, displacement was indicated in 232, or 22 percent, of the gentrified tracts.

Neighborhoods with Indications of Gentrification and Displacement 2000-2013



Figure 2: Number of urban census tracts meeting eligibility, gentrification and displacement criteria nationally. About 9 percent of the eligible tracts gentrified, and 17 percent of those also had indications of racial/ethnic displacement.

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While gentrification impacted a minority of census tracts in U.S. cities, it was quite concentrated in the largest urban areas. At the national level, almost a quarter (24 percent) of all urban areas, or CBSAs, saw at least one tract gentrify between 2000 and 2013 (Table 1). CBSAs are urban areas with a population of at least 10,000 and include small micropolitan areas, analogous to towns, and larger metropolitan statistical areas (MSAs), or cities. In 13 percent of towns and cities, only one tract gentrified. More moderate levels of gentrification, between two and 10 tracts, occurred in eight percent of towns and cities. Intensive gentrification, cases in which more than 10 tracts underwent gentrification between 2000 and 2013, occurred in three percent of towns and cities nationally.

Number of Cities with the Number of Neighborhoods Gentrified 2000-2013

Number of Tracts Gentrified Across All 935 CBSAs	CBSAs (Cities)	Percent of all CBSAs
No Gentrification	711	76%
Only 1 Tract Gentrified	120	13%
2 to 5 Tracts Gentrified	62	7%
6 to 10 Tracts Gentrified	14	1%
More Than 10 Tracts Gentrified	28	3%

Table 1: U.S. cities (CBSA) with the number of census tracts gentrified during the period 2000-2013.

We assessed the population sizes of cities in which gentrification was occurring. Gentrification was concentrated in the largest urban areas. CBSAs with a population of one million or greater contained 79 percent of gentrifying tracts. Cities with populations between 500,000 and 1 million comprised another seven percent. Cities with populations between 100,000 and 500,000 contained 10 percent of gentrifying tracts. The smallest cities and towns, under a population of 50,000, contained only four percent of the tracts that gentrified nationally (Figure 3). The map shows that while coastal cities had the largest amount of tracts undergoing gentrification, large cities in the interior like Atlanta, Dallas, Denver, Minneapolis and Pittsburgh also underwent extensive gentrification.

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Cities with the Number of Neighborhoods Gentrified

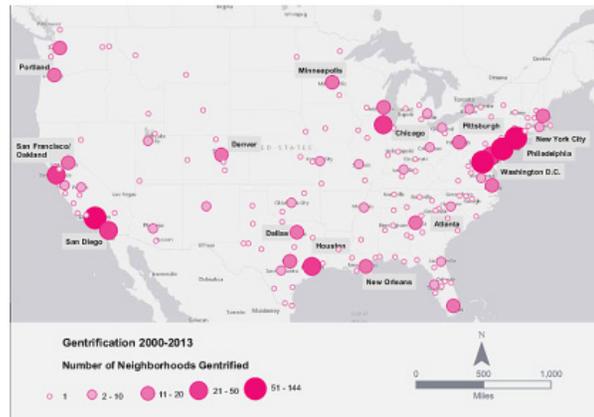


Figure 3: National distribution of cities with the number of tracts (neighborhoods) undergoing gentrification 2000-2013.

Cities with the highest rates of gentrification included New York City, Los Angeles, Washington, D.C., Philadelphia, Baltimore, San Diego and Chicago (Figure 4). These seven cities accounted for nearly half of the total gentrification nationally, or 501 tracts out of 1,049. It is surprising that Baltimore and Philadelphia metro areas are in the top 10 list, with the fourth and fifth largest number of gentrified tracts in the study, since these cities are not considered among the nation's most economically dynamic cities. Different patterns of gentrification seem to be evident for the three largest cities (New York City, Los Angeles, Chicago), compared with the next three largest (Washington, D.C., Philadelphia, Baltimore).

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Cities with Neighborhoods Gentrified 2000-2013

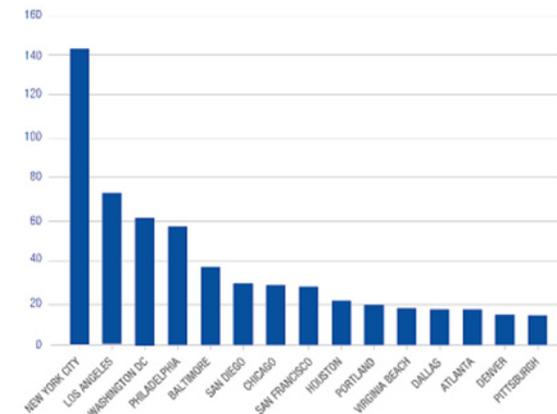


Figure 4: Cities by the number of tracts gentrified 2000-2013.

The three largest metro areas (New York City, Los Angeles, Chicago) are in the top seven for the number of neighborhoods which gentrified in Figure 4. The top tier cities in population size have many more neighborhoods, and may be more economically dynamic than second tier and third tier cities. Examining cities by the proportion of neighborhoods eligible in 2000 and which did gentrify over the next 10 years provides a more meaningful indication of the rates of gentrification in some areas (Table 5). Washington, D.C., was the city with the highest percentage of gentrifying neighborhoods, with San Diego, New York City, Atlanta, Baltimore and Portland also having both high numbers of tracts and high rates of gentrification.

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Cities Listed by the Intensity of Gentrification 2000-2013

City	Total Tracts	Eligible Tracts	Gentrified Tracts	Gentrified %
Washington D.C.	1346	154	62	40%
San Diego	627	100	29	29%
New York City	4515	590	144	24%
Albuquerque	202	31	7	23%
Atlanta	946	76	17	22%
Baltimore	679	171	38	22%
Portland	491	93	19	20%
Pittsburgh	711	69	14	20%
Seattle	718	90	18	20%
Philadelphia	1473	332	57	17%
Virginia Beach	414	105	18	17%
San Francisco	975	159	27	17%
Richmond	305	37	6	16%
Honolulu	243	38	6	16%
Minneapolis	771	141	22	16%
Austin	350	72	11	15%
Sacramento	484	80	12	15%
Denver	619	94	14	15%
Jacksonville	258	68	10	15%
Boston	1003	75	11	15%
Los Angeles	2922	512	73	14%
New Orleans	392	85	12	14%
Bridgeport	210	70	8	11%
Tampa Bay Area	740	79	9	11%
St. Louis	620	79	9	11%
Miami	1215	106	12	11%
Oklahoma City	363	65	7	11%
Providence	366	56	6	11%

Table 2: Cities with high percentages of eligible gentrifying neighborhoods 2000-2013

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Major Cities with Gentrified Neighborhoods and Displacement 2000-2013

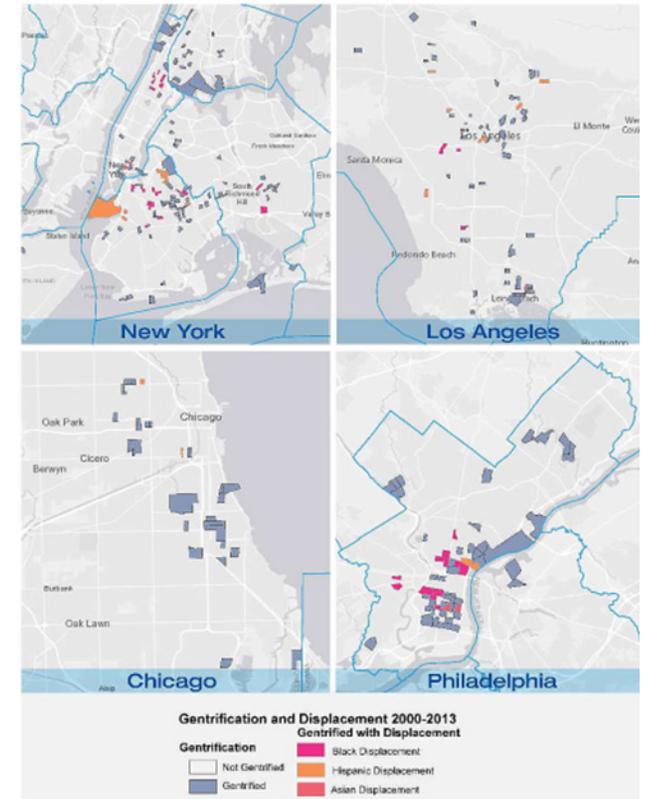


Figure 5a-f: Gentrification and displacement in New York City, Los Angeles, Chicago, Philadelphia, Washington D.C. and Baltimore. The largest three cities (Chicago, Los Angeles, New York City) have a scattered and diffused pattern of gentrification, while Baltimore, Philadelphia and Washington D.C. show greater concentration of gentrification activity around the downtown core.

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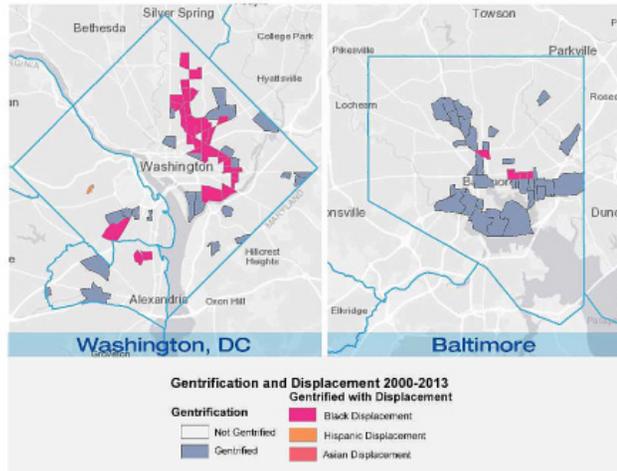


Figure 5a-f: Gentrification and displacement in New York City, Los Angeles, Chicago, Philadelphia, Washington D.C. and Baltimore. The largest three cities (Chicago, Los Angeles, New York City) have a scattered and diffused pattern of gentrification, while Baltimore, Philadelphia and Washington D.C. show greater concentration of gentrification activity around the downtown core.

Examining the maps of different cities reveals patterns of concentrated gentrification in some, but more diffuse patterns in others. Analysis of the Baltimore map (figure 5f) indicates the concentration of gentrification around the Inner Harbor that then stretches from downtown north to Johns Hopkins University. Baltimore, Philadelphia and Washington, D.C., all show concentrated gentrification around their central business districts, while the pattern of gentrification is more scattered in the largest three cities: Chicago, Los Angeles and New York City (Figures 5a-f).

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NATIONAL CHANGES – DISPLACEMENT

Cultural displacement was examined by calculating the reduction of black and Hispanic residents in census tracts. Nationally, 187 of the gentrified tracts showed some level of black displacement, and 45 tracts showed Hispanic displacement (Table 3). This impacted over 135,000 people nationally. While white residents increased in most tracts, there were instances in which the Asian and Hispanic residential population increased in tracts experiencing gentrification and black residential population declined.

Numbers of Black and Hispanic Residents Displaced Nationally 2000-2013

Type of Transition	Tracts	Residents
Reduction in Black Residents	187	-110,935
Reduction in Hispanic Residents	45	-24,374

Table 3: Demographic transition of tracts with large black and Hispanic residential loss 2000-2010.

Next, we calculated the average losses in metro areas that experienced gentrification and black or Hispanic residential population loss. In the case of black residential displacement, the average loss per tract was 593 black residents (Table 4). New Orleans experienced the most average loss, 1,075 black residents per tract, largely attributable to massive dislocation of neighborhoods caused by the Hurricane Katrina disaster in 2005. Black residential losses in Washington, D.C., New York City and Philadelphia were especially acute due to the high number of tracts involved and their large displacement numbers. More than 20,000 black residents of Washington, D.C., nearly 15,000 in New York City and 12,000 in Philadelphia moved out of gentrifying neighborhoods.

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Cities with High Levels of Black Displacement

Metro	Tracts	White Avg	Black Avg	Asian Avg	Hispanic Avg
Washington D.C.	33	525	-617	71	120
New York City	26	382	-574	96	179
Philadelphia	16	770	-737	102	18
San Francisco-Oakland	13	279	-517	110	150
Houston	8	-127	-648	14	137
Portland, OR	7	747	-622	-6	-27
Atlanta	7	704	-702	68	5
New Orleans	7	120	-1075	5	56
Baltimore	5	110	-673	22	235
Los Angeles	5	234	-280	260	255
Charlotte	4	411	-621	8	2
Richmond	4	408	-413	36	23
Dallas	4	-52	-701	13	54
Austin	4	500	-523	19	-175
Pittsburgh	3	-140	-935	26	20
Jacksonville	3	185	-704	-10	27
NATIONAL	187	404	-593	62	97

Table 4: Metro areas in which more than two tracts experienced gentrification and Black population loss during 2000-2010. The total number of tracts and average number of residents lost in tracts with displacement is given.

Tracts with indications of Hispanic displacement were much fewer than those with indications of black displacement, though the average number of displaced residents per tract was similar. In the 45 tracts with indications of Hispanic displacement, the average residential decrease was 542. Denver and Austin had the highest average decreases of Hispanic residents in gentrifying tracts with 1,054 and 1,039 respectively (Table 5).

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Cities with High Levels of Hispanic Displacement

Metro	Tracts	White Avg	Black Avg	Asian Avg	Hispanic Avg
New York City	9	524	60	-4	-500
Los Angeles	8	409	358	-8	-477
Houston	5	893	129	325	-422
Dallas	4	150	-16	-19	-437
Denver	4	672	38	-100	-1054
Austin	3	474	41	1	-1039
San Jose	2	306	2327	61	-181
San Diego	2	201	23	-48	-854
Phoenix	2	204	7	160	-466
Chicago	2	144	14	54	-463
NATIONAL	45	499	206	35	-542

Table 5: Metro areas in which more than one tract experienced gentrification and Hispanic population loss during 2000-2010. The total number of tracts and average number of residents per tract are given.

In order to examine regional differences in black and Hispanic displacement from gentrifying tracts, we calculated the percentage of gentrifying tracts and tracts with indications of displacement. Cities with the highest levels of black displacement between 2000 and 2010 were concentrated in the South, with 9 out of 16 cities with high levels of black displacement located there (Figure 6). Richmond, Charlottesville, Washington, D.C., and New Orleans had the highest percentages of black displacement at the tract level (Figure 6). While Richmond and Charlottesville had moderate levels of gentrification, at least half of the gentrifying tracts in those cities also experienced displacement.

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Cities with High Levels of Black Displacement and the Number of Neighborhoods gentrified

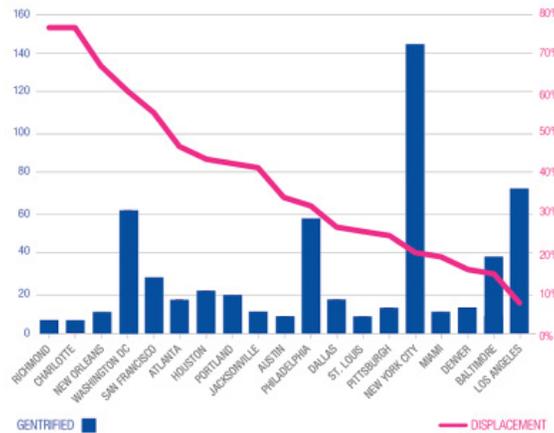


Figure 6: Metro areas with high rates of tract-level black displacement with the number of tracts qualifying as gentrified.

Hispanic displacement occurred in fewer cities than black displacement, and affected 45 census tracts nationally. The city with the largest number of tracts impacted was New York City, where nine tracts had losses indicative of Hispanic displacement. Aside from New York City, Hispanic displacement was most intense in the West, with Denver, Austin, Houston and Dallas having the highest percentages followed by Los Angeles (Figure 7). However, the number of affected tracts were small: five in Denver; four in Austin, Dallas and Houston; and eight in Los Angeles. This difference in the rate of Hispanic and black displacement might be attributed to the high rate of suburbanization for the Hispanic population of those cities, since nationally, 45 percent of Hispanic residents live in areas outside the downtown core. Suburbanization rates of black residents are lower at 39 percent (Massey & Tannen, 2018). The levels of segregation from non-Hispanic whites also diverge widely for the two demographic groups. The most common indicator of segregation is the dissimilarity index,

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which measures the evenness of the distribution of residents between two groups. At the national level, this index is much higher for white non-Hispanic and black residential areas at .60, than it is for white non-Hispanic and Hispanic residential areas at .40. The Hispanic population also increased quite rapidly over the study period, increasing from 12.5 percent of the population in 2000 to 16.3 percent in 2010. The black percentage of the population increased less, from 12.9 percent in 2000 to 13.6 percent in 2010. The lower levels of demographic displacement of Hispanic residents could be attributable to a combination of population growth, lower segregation relative to non-Hispanic whites and/or decreased frequency of gentrification in Hispanic-majority neighborhoods, which are more likely to be located in suburbs than black-majority tracts.

Cities with High Levels of Hispanic Displacement and the Number of Neighborhoods gentrified

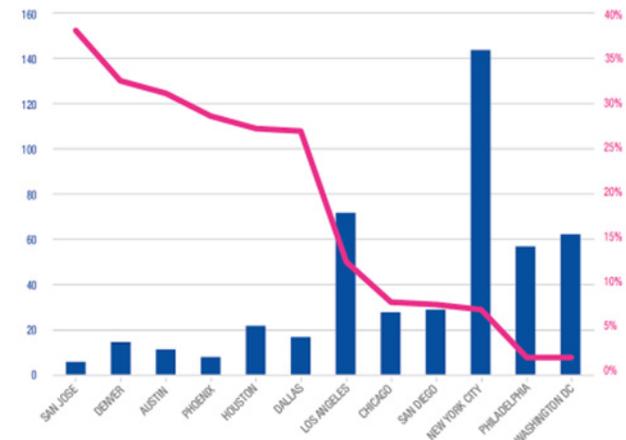


Figure 7: Gentrification and Hispanic displacement nationally, in which more than 2 tracts gentrified between 2000-2013.

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Cities with High Levels of Black and Hispanic Displacement 2000-2013

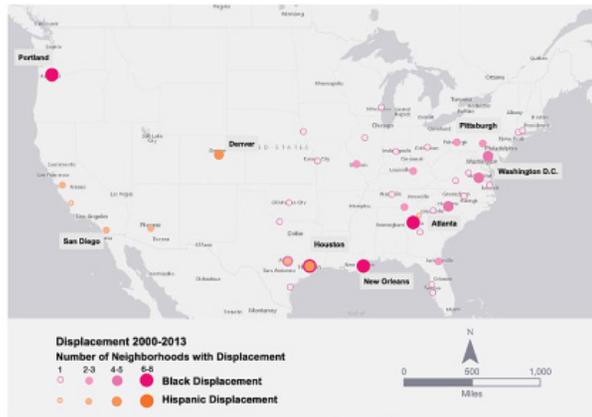


Figure 8: Number of tracts with indications of black and Hispanic displacement from 2000-2013. Hispanic displacement is concentrated in the West and black displacement in the East and Midwest.

Critics of gentrification sometimes argue that long-term disinvestment and depopulation of neighborhoods established the economic and social conditions for later cultural displacement (Marcuse 1986). In order to test this, we examined cities with a high number of tracts with black displacement for long-term demographic shifts between 1990 and 2010 (Table 6). The 20-year study period was chosen to capture the impact of demographic changes unfolding over a longer time frame than gentrification, especially in instances where displacement actually preceded gentrification. In most cases, a pattern of decreasing percentages of black, and increasing percentages of white, residents occurred in gentrifying tracts. This tract-level pattern of black decreases and white increases in residents was especially prevalent in Washington, D.C., San Francisco-Oakland, Atlanta, New Orleans and Richmond. Many tracts also showed that there was long-term population loss, indicating abandonment of the area or reduced residential density before or during a demographic transition. This trend was apparent in Baltimore, but especially severe in New Orleans,

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where the Hurricane Katrina catastrophe forced widespread neighborhood abandonment. Philadelphia and Washington, D.C., had much lower levels of population loss in gentrifying tracts. The cities of Dallas, Richmond, New York City, and especially Atlanta and San Francisco, had high rates of population growth.

Black Displacement and Population Change in Neighborhoods

City	Tracts With Black Displacement	Overall Population Change 1990-2010	White Population Change 1990-2010	Black Population Change 1990-2010
Washington DC	33	-4%	21%	-32%
New York City	26	5%	7%	-18%
Philadelphia	16	-10%	19%	-23%
San Francisco-Oakland	13	21%	13%	-27%
New Orleans	7	-75%	12%	-17%
Atlanta	7	17%	29%	-38%
Baltimore	5	-52%	-8%	-2%
Richmond	4	10%	30%	-45%
Charlotte	4	9%	0%	-72%

Table 6: Tracts with indications of black displacement and percentages of overall population loss, then the percentages of black and white residential change across gentrified tracts in the city.

There were also notable declines in the Hispanic population and increases in white population in many cities between 1990 and 2010. The exceptions to this were in Los Angeles and San Diego (Table 7), where both white and Hispanic populations declined in gentrifying neighborhoods. Linkages between tract-level population loss and demographic change were evident in Denver, Dallas, San Diego and Chicago. Areas of Hispanic displacement in Denver, Houston, Austin and Dallas are shown in figures 8 a-d. All of these cities also contained tracts experiencing black displacement.

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Hispanic Displacement and Population Change in Neighborhoods

CBSA	Tracts With Hispanic Displacement	Overall Population Change 1990-2010	White Population Change 1990-2010	Black Population Change 1990-2010
New York City	9	21%	9%	-14%
Los Angeles	8	16%	-5%	-12%
Houston	4	12%	25%	-30%
Denver	5	-3%	17%	-17%
Dallas	4	-6%	20%	-19%
Austin	4	11%	16%	-17%
San Diego	2	-17%	-4%	-12%
San Jose	2	16%	1%	-22%
Phoenix	2	65%	11%	-21%
Chicago	2	-17%	0%	-10%

Table 7: Tracts with indications of Hispanic displacement and percentages of Hispanic and non-Hispanic white residential change across all gentrified tracts in the city.

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Cities with High Level of Hispanic Displacement 2000-2013

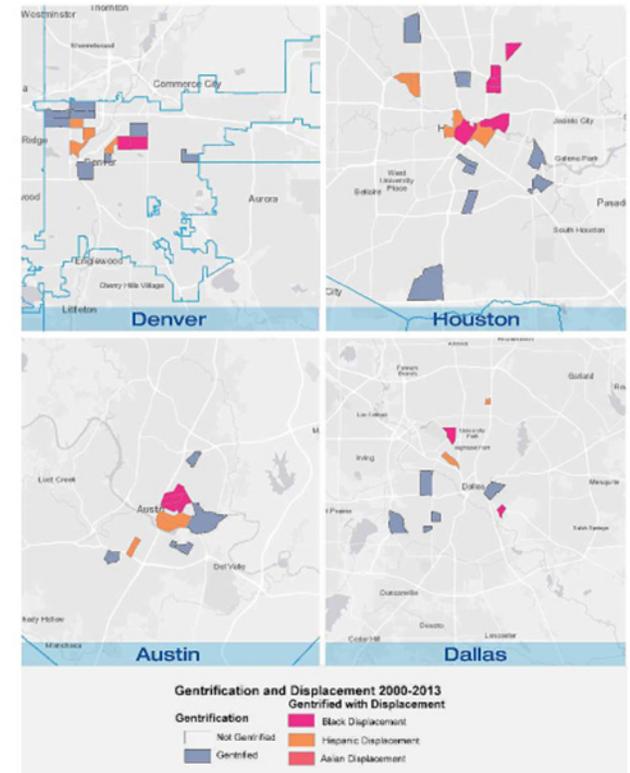


Figure 9a-d: Gentrification and Hispanic displacement. Denver, Houston, Austin and Dallas CBSAs had the highest rates of Hispanic displacement during 2000-2013. In all cases, the metropolitan areas also had indicators of black residential displacement.

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DISCUSSION & CONCLUSION

Past studies of gentrification and displacement have measured neighborhood change by assessing the rates of mobility of incumbent low-income residents in gentrifying areas. Generally, the results showed high but comparable rates of mobility for low-income residents in gentrifying and non-gentrifying tracts, but with low rates of low-income replacement in gentrifying tracts. Consequently, that method of analysis did not directly measure racial/ethnic displacement. This study used a different approach, examining shifts in the racial/ethnic composition of tracts in 2000 and 2010 in order to determine where gentrification and demographic changes were indicative of displacement. National rates of gentrification are low in towns and smaller cities, with 76 percent of urban areas not experiencing any gentrification under our criteria. This may be a conservative estimate due to the requirement of an absolute increase in household income. Another 13 percent experienced gentrification in only one neighborhood, while 8 percent of U.S. cities experienced moderate gentrification. However, the largest population centers experienced intensive gentrification with 3 percent of cities showing indications of gentrification in 10 or more tracts, and 79 percent of gentrifying tracts being within cities with one million or more residents. Though gentrification may be relatively rare at the national level, it can be intensive in the largest cities with dynamic economies. Coastal cities experienced the highest rates of gentrification, with seven out of the top 10 cities in total tracts gentrified being located on the East or West coast.

The Tax Cuts and Jobs Act of 2017 created 8,000 Opportunity Zones throughout the country to lure investment to struggling neighborhoods. Although those Opportunity Zones were not defined when this study began, preliminary analysis indicates that 70% of gentrified neighborhoods are within or adjacent to an Opportunity Zone. However, most Opportunity Zones do not appear to have been gentrified during the study period.

Some questions to investigate in the future: Will Opportunity Zone investments concentrate mainly in booming areas, and skip many others, as we found for gentrification. Will investments flow primarily into Opportunity Zones that are already gentrified, or adjacent to gentrified neighborhoods?

This study indicates that minority displacement is indeed occurring in many cities, where it is often concentrated in areas near the central business district. Displacement of minority groups was high in gentrifying tracts, with 22 percent having indications of high levels of either black or Hispanic residential loss. While larger cities experienced higher levels of gentrification, displacement also seemed to correspond with regional location. Southern cities experienced greater intensity of black displacement, while western cities experienced greater intensity of Hispanic displacement. Additionally, Washington, D.C., and Philadelphia were notable for their high levels of black displacement, while Denver and Austin had high levels of Hispanic displacement. These results indicate that gentrification is

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often accompanied by high levels of cultural displacement. Since the displacement portion of this study was limited to the decades before 2010, it is difficult to assess the proportion of minority neighborhoods which have indications of displacement that will lead to racial and ethnic integration, or resegregate and become white majority areas over time. It is essential to examine the economic and demographic changes which result from gentrification for their impact on equity at the neighborhood level.

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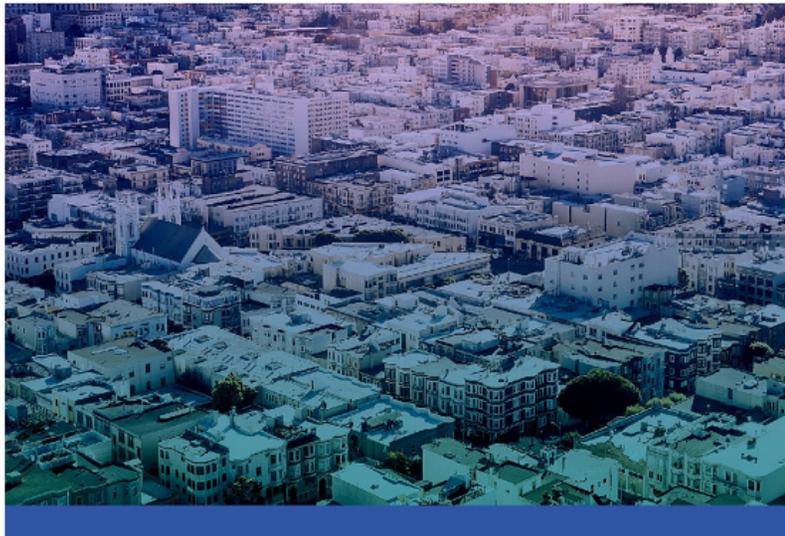
Do Opportunity Zones benefit or gentrify low-income neighborhoods?

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ABOUT NCRC

NCRC and its grassroots member organizations create opportunities for people to build wealth. We work with community leaders, policymakers and financial institutions to champion fairness in banking, housing and business.

Our members include community reinvestment organizations, community development corporations, local and state government agencies, faith-based institutions, community organizing and civil rights groups, minority and women-owned business associations and social service providers from across the nation.

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EXECUTIVE SUMMARY

COVID-19 exposed deep economic and social fault lines nationwide, with profound implications for how we attract investment to our poorest communities and the impact that investment has on low- and moderate-income (LMI) and minority populations.

The pandemic also made clear what was already going on before it: While a small number of cities were booming, most were not. NCRC's 2019 report on [gentrification and cultural displacement](#) identified a small group of boomtowns that experienced large scale gentrification and notable displacement of longtime minority communities. But they were rare. Most cities and towns were struggling. Their problem was stagnation and disinvestment, not gentrification or displacement. Most LMI communities in most places remained mired in poverty and lacked critical investment.

Widespread protests in 2020 against systemic racism and police brutality erupted in a nation that was already suffering not only from a pandemic but also from the brutality of chronic poverty and economic distress.

COVID-19 struck a nation that was already mostly struggling. Recovery in most places will be even more challenging than in those where investment was already concentrated. Unless we act now.

In this follow-up report, covering data from 2012 through 2017, NCRC once again found that gentrification and displacement was highly concentrated, and that most low-income neighborhoods, and the vast majority of cities, continued to deal with a chronic lack of investment.

San Francisco, California, took the title of most intensely gentrified city in America during 2013-2017, followed by Denver, Colorado, and Boston, Massachusetts. They had the largest share of their vulnerable neighborhoods that gentrified during that time period. Washington, D.C., ranked No. 1 in the 2019 report, dropped to No. 13. Gentrification and displacement continued there, but it surged elsewhere.

For this report, we also took a closer look at Opportunity Zones. Since their debut in 2018, Opportunity Zones raised fears that they might exacerbate gentrification and the displacement of LMI and minority communities. The role that Opportunity Zones will play in neighborhood development, gentrification and displacement is not well understood, and no real data is yet collected on investments in the Opportunity Funds that drive this process.

For the most part, OZs were indeed the places in the most dire need of investment. Economic inequality was higher, home values and incomes lower and fewer families owned their homes than in any other part of the city. Despite the fact that 69% of gentrified

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neighborhoods were either in or adjacent to an OZ, the majority of Opportunity Zones were in fact those places that needed the most help. In the 921 cities that saw very little gentrification in this report, all LMI neighborhoods were struggling, but the Opportunity Zones were usually the worst off.

There was a stark racial divide in these communities as well, with gentrifying neighborhoods overwhelmingly populated by people of color. The average minority population of the neighborhoods included in this study was 50%, but that figure rose to 77% in areas we determined to have gentrified. Homeownership in both gentrifying neighborhoods and OZs was significantly lower than in the rest of these cities as well. Often, the people who lived there, overwhelmingly people of color, were not benefiting from the investment that flowed there. [As the Philadelphia Federal Reserve](#) found, renters are more vulnerable to displacement as their communities gentrify, and unlike owners, they reap none of the rewards that rising home prices and rents can bestow.

NCRC once again found that gentrification remains a significant threat to minority and LMI families in some of the largest and most prosperous parts of the country. These cities are home to over 14% of all Americans. In these cities, Opportunity Zones overlap gentrification to a high degree.

Throughout the rest of the country the narrative changes a great deal, with disinvestment more common throughout nearly all LMI neighborhoods. High levels of inequality as well as low home values and incomes prevented many families from building wealth at all. Here Opportunity Zones highlighted the neighborhoods that have the greatest need.

This study reinforces the need for the Community Reinvestment Act (CRA), and its [modernization and expansion](#) to adapt to the realities of today's mortgage market. CRA is important for driving investment to lower-income communities and families, a fact that persists despite the appearance of substantial gentrification in some of the largest cities we looked at. Chronic disinvestment in lower-income communities will undoubtedly be exacerbated by the COVID-19 crisis. In those communities where gentrification existed, the ability for residents to resist displacement will be harder, and in most of the country it will become even harder to attract investment at all. The data underscores the need for a more equitable system and policies that help more communities attract investment without displacing the families that live there.

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INTRODUCTION

The 2017 "Tax Cuts and Jobs Act" created a new mechanism which allows investments in distressed neighborhoods to be sheltered from tax liabilities. Opportunity Zones (OZs) were supposed to be economically distressed communities [where investment in businesses are given preferential tax treatment](#). By the end of 2018, 8,764 census tracts, neighborhoods in rural and urban areas with indications of economic distress, were nominated by governors and designated as Opportunity Zones by the Secretary of the U.S. Treasury.¹ OZs are controversial. Critics of OZs have voiced concern that they will fuel "gentrification on steroids" in urban areas,² accelerate displacement³ and intensify rather than solve the problem of a lack of affordable housing in many cities.⁴ Proponents of the law argued that OZs would provide extensive tax benefits to industry and create the circumstances for industries to remain in or relocate to low-income areas, providing employment and other opportunities to low-income residents. However, if the investments in OZs do not benefit low-income residents, they simply become the equivalent of "mini tax havens for the rich" transplanted to low-income neighborhoods.⁵

In this report, we looked at newly gentrifying neighborhoods in the 2013-2017 time-period. We also compared them with OZs. Our analysis focused on OZs located in urban areas and their correspondence with the neighborhoods in towns and cities where there were indications of gentrification. We examined urban areas because a majority of the U.S. population lives in cities and towns of over 10,000 residents, and also because gentrification is an issue that impacts urban areas.⁶ A spatial overlay of the newly announced OZs with gentrifying areas allowed us to compare economic and social conditions within them and also with other urban neighborhoods. The period following the conclusion of the Great Recession to about 2012 has been one of ongoing but uneven economic recovery for urban areas.⁷ We assessed an uneven pattern of gentrification in urban areas since 2012. Our analysis answered questions about where neighborhoods with recent indications of gentrification are located, whether these gentrifying neighborhoods are close to OZs and how OZs differ from other urban neighborhoods in their socioeconomic status and demographics.

We identified 954 neighborhoods with indications of gentrification in the period 2013-2017. These were concentrated in 20 "intensely gentrifying" metro areas, where a

1 <https://www.irs.gov/newsroom/opportunity-zones-frequently-asked-questions>

2 <https://kinder.rice.edu/urbanedge/2019/02/20/opportunity-zones-gentrification-steroids>

3 <https://tep.org/how-opportunity-zones-benefit-investors-and-promote-displacement/>

4 <https://www.enterprisecommunity.org/download?fid=11643&rid=8725>

5 <https://bipoverty.org/2018/12/13/tax-break-low-income-opportunity-rich>

6 As of 2017, the U.S. Census Bureau estimated that 85.87 percent of U.S. residents live in an MSA. https://factfinder.census.gov/aces/tableservices/jsst/pages/productview.html?_lang=en&_ss=1

7 <https://www.brookings.edu/blog/the-avenue/2018/01/22/uneven-growth/>

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high percentage of low-income and low home value neighborhoods that were eligible for gentrification in 2008-2012 showed indications of gentrification. In each of these cities, at least 10 neighborhoods gentrified during the 2013-2017 period. Nationally, half of all of the gentrifying neighborhoods were in these 20 cities. The top cities for intensity of gentrification during the period are San Francisco-Oakland, Denver, Boston, Miami and New Orleans. This list changed from the one in our previous report, which covered the period 2000-2012. Previously, Washington, D.C., had indications of the highest intensity of gentrification, but dropped to 13th in this new report. All of the top 20 cities in this report were amongst the top 30 in intensity during the earlier report period, 2000-2012.

The analysis divided neighborhoods into five categories: neighborhoods that were eligible for gentrification but did not gentrify, gentrifying neighborhoods, OZs, gentrifying OZs and all "other urban" neighborhoods (primarily middle- to upper-income areas). The largest number of neighborhoods are in the other urban neighborhood category, followed by neighborhoods eligible to gentrify that did not and then the urban OZs. The number of neighborhoods with indications of gentrification was much smaller than the number of urban OZs, but there was considerable overlap and adjacency of these two categories. Sixty-nine percent of gentrifying areas were within or next to an OZ and 179 of the gentrifying neighborhoods were also categorized as OZs.

Despite their degree of overlap, most gentrifying areas had very different economic conditions than OZs. Indications of economic prosperity - household income, home value and college education - quickly increased in gentrifying areas. Rents rose fastest in gentrifying and middle- to upper-income urban neighborhoods, creating housing affordability pressures. This contrasted with the OZs, which on average had lower population, higher percentages of black residents, lower median home value, lower median household income, lower rates of owner occupancy, low college education levels and greater economic inequality. They also had the lowest median rent and high levels of business and residential vacancy. In fact, nearly 84% of the urban OZs overlapped with CRA designated LMI neighborhoods. Usually, OZs were among the most distressed neighborhoods in their communities.

Our findings suggest that concern about the impact of OZs is warranted, but that the designation of an area as an OZ, especially in most cities where gentrification is not widespread, is usually an indicator of a neighborhood in economic distress with high levels of income inequality. However, because of the high degree of adjacency of OZs and urban neighborhoods experiencing gentrification, OZs may be especially prone to gentrification as they are impacted by the spill-over effects from neighborhoods next to them. The primary problem of the newly designated OZs is not so much how they were selected, but whether or not they will benefit their residents, and not just wealthy investors seeking to reduce their tax liability. While OZs usually represent neighborhoods with great economic need, the Tax Cuts and Jobs Act failed to establish sufficient metrics to evaluate the outcome of investments

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or how they are benefiting the residents of OZs. The minimal restrictions on investment types, and the absence of metrics for measuring success makes investments under the law vulnerable to exploitation and "gaming," which favors high returns over social benefits.

METHODS

The present study built on the methods employed in our previous study covering neighborhood change and gentrification during 2000-2012.⁸ While the prior study utilized Decennial Census 2000 and 2010 and American Community Survey (ACS) data, which was normalized to account for census tract boundary changes, the present study relied on five-year ACS data collected during the periods 2008-2012 and 2013-2017. Some of the ACS data, especially the demographic data, has large margins of error. This is because the data is drawn from surveys taken during a five-year period. Consequently, we did not analyze displacement by race and ethnicity, a task that requires precise counts of the residents in a neighborhood. Instead, the present study focused on socioeconomic data related to income, home value and education level to assess neighborhood-level gentrification.

Gentrification and Displacement Criteria



Figure 1: Criteria used to evaluate gentrification at the census tract level

This study directly compared census tracts, hereafter referred to as neighborhoods, in the central city portion of urban areas. Neighborhoods were separated into five categories: those which were eligible for gentrification, those which were gentrifying, neighborhoods designated as OZs, gentrifying OZs and all other urban neighborhoods which were not gentrifying nor been designated as an OZ (Table 1). Due to the overlap of the two categories, we removed the 179 neighborhoods that were labeled "gentrifying OZs" from the statistical analysis.

⁸ <https://ncrc.org/gentrification/>

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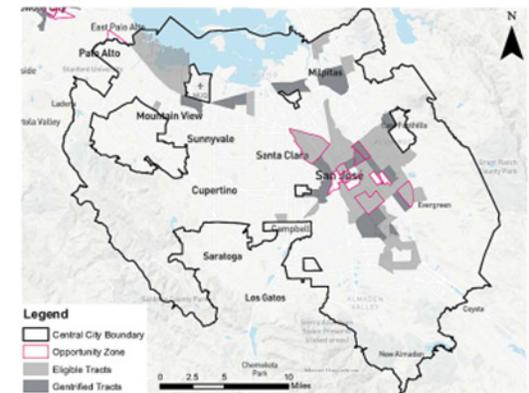
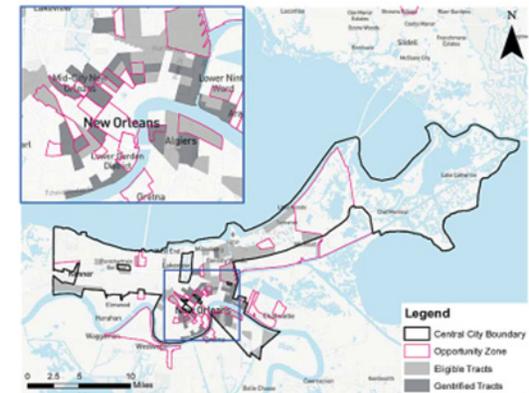
Neighborhood Classifications

Neighborhood Type	Description	Neighborhood Count
Eligible to gentrify	In the lower 40th percentile of income and home value but not gentrifying	9,743
Gentrifying	Eligible and with increases in income, home values, and college attainment	954
Opportunity Zone	Designated opportunity Zone with no evidence of gentrification	4,089 Urban
		4,581 Rural
Gentrifying Opportunity Zone	Opportunity Zone and gentrified	179
Other	Urban neighborhoods that were not eligible to gentrify and are not Opportunity Zones (usually middle- to upper-income)	15,039

Table 1: Neighborhood categories used in this study with description and count of census tracts, or neighborhoods in each category. Note that the "Gentrified Opportunity Zone" category duplicates neighborhoods in both "Gentrified" and "Opportunity Zone" categories.

A descriptive analysis of the average, or mean value, was conducted and then the differences were analyzed between categories of urban neighborhoods in cities with at least one gentrifying neighborhood and other cities without any indication of gentrification. Intensity of gentrification was quantified as the percentage of neighborhoods which were gentrifying out of those which were eligible to gentrify. Only urban central city neighborhoods were considered. These neighborhoods were defined as those that are part of the central city of a metropolitan area as defined by the Office of Management and Budget (OMB).⁹ Figures 2a and 2b show a sample of the central cities boundaries in two metro areas. The central city indicator confines eligibility to the more concentrated urban area in the examples of New Orleans, Louisiana, and San Jose, California. Areas excluded from the central city neighborhoods appear as "holes" in the maps. Examples of these are parks, government installations and airports, which are not densely populated residential areas. The maps show how eligible and gentrifying neighborhoods were contained in central city areas, while OZs were not restricted by this qualification and extended to lower density suburbs and exurban areas.

⁹ <https://www.fiec.gov/hmda/doc/census03.doc>



Figures 2a-2b The New Orleans and San Jose metro areas. The central city includes the more densely populated areas of both areas, and is used as one condition for gentrification. Designated Opportunity Zones can be in urban or suburban neighborhoods of metro areas, and also in rural areas.

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RESULTS

National Level – Gentrification and Opportunity Zones

Nationally, out of the 72,668 neighborhoods that were evaluated, 9,743 neighborhoods were eligible for gentrification. Of these, 954 or 9.8%, had indications of gentrifying during the 2013-2017 time period (Table 2).

Neighborhoods that Gentrified and are Opportunity Zones

Total Tracts	Eligible	Gentrifying	Gentrifying and in or next to an Opportunity Zone
72,668	9,743	954	657

Table 2: Classification of census tracts or neighborhoods at the national level.

In our prior study of gentrification between 2000 and 2012, we found that gentrification was relatively rare in metropolitan areas in the U.S. However, gentrification was highly concentrated in the largest and most economically dynamic cities. The current analysis confirms the pattern, with 654 of the 940 designated metro areas (CBSA) having no indications of gentrification, while 37 cities contained more than five neighborhoods which were undergoing gentrification (Table 3). This means that less than 4% of U.S. cities showed indications of extensive gentrification during the period. However, during the past five years more cities experienced at least some level of neighborhood gentrification than in the prior period.

Comparison of Gentrification at City Level 2000-2017

Number of Tracts Gentrifying Across All 940 CBSAs	CBSAs (Cities) 2000-2012	CBSAs (Cities) 2012-2017	Percent of All CBSAs 2012-2017
No Gentrification	711	654	69.6%
Only 1 Tract Gentrifying	120	167	17.8%
2-5 Tracts Gentrifying	62	82	8.7%
6-9 Tracts Gentrifying	14	18	1.9%
10 Or More Tracts Gentrifying	28	19	2.0%

Table 3: Distribution of census tracts or neighborhoods with indications of gentrification in Metro areas. (Source: Author's calculations based on Decennial Census 2000 and 2010 data, and ACS 5-year 2008-2012 and 2013-2017 datasets.)

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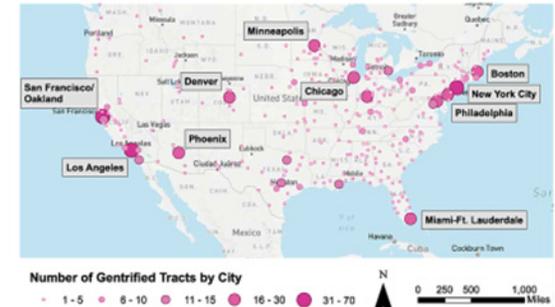


Figure 3: The distribution of gentrifying neighborhoods at the national level. Top ten cities for intensity of gentrification are labeled.

Gentrification is an urban phenomenon, while OZs have been designated in both urban and rural areas. Table 4 establishes the number of neighborhoods in rural and urban areas across the U.S. Of the 8,670 neighborhoods designated as OZs, 4,089 are in urban areas (in metro areas as designated by CBSA boundaries). There are many more of these urban OZs than there are gentrifying neighborhoods. However, the overlap of gentrifying areas with OZs is high. Almost 69% of the neighborhoods identified as gentrifying in the 2013-2017 data were either within or adjacent to an OZ. The vast majority of OZs (98%) were census tracts that are "low-income communities" with high rates of poverty, though a small number (2%) of non-low-income contiguous census tracts were also designated.¹⁰ Our analysis indicates that 88.93% of the OZs are in low- to moderate- income areas as designated under the Community Reinvestment Act of 1977 (CRA). Most of the OZs that were not in actual low- to moderate-income areas are adjacent to them.

Gentrification and Opportunity Zones in Rural and Urban areas

Tract Type	Total Tracts	Opportunity Zones	Gentrifying	In/Adjacent Opportunity Zone
Urban	26,864	4,089	954	657
Rural	47,137	4,581	N/A	N/A
Total	74,001	8,670	954	657

Table 4: Distribution of Opportunity Zones and gentrifying neighborhoods.

¹⁰ This is based on the list of designated Opportunity Zones issued on 12/14/2018 in which 198 of the 8,764 OZs listed are considered "Non-LIC contiguous". <https://www.cdfund.gov/Pages/Opportunity-Zones.aspx>

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Gentrification within metropolitan areas

Metro areas with the largest population size lead the U.S. in the number of neighborhoods with indications of gentrification during the period. New York, Los Angeles and Chicago are first, second and fifth respectively. In fact, half of the top ten gentrifying cities have populations over five million, the smallest being Indianapolis with two million residents. Gentrification is usually associated with population size and growth of U.S. cities, and a variety of economic and cultural factors “pull” people to cities where it is most intense. Some of these factors involve strong correlations for gentrification with wage and income growth, expansion of technology based industries, transit access and use.¹¹

Cities with Neighborhoods Gentrified 2013-2017

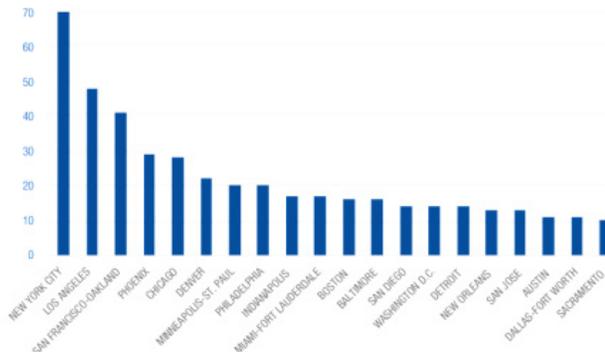


Figure 4: Metro areas listed by the number of gentrifying census tracts, or neighborhoods

Our report covering gentrification from 2000 to 2012 indicated that Washington, D.C., had the greatest intensity of gentrification, nationally. Since 2013, San Francisco-Oakland shows indications of the highest intensity, closely followed by Denver, then Boston and Miami (Table 5). All of these cities experienced 20% or more of the neighborhoods that were eligible, undergoing gentrification during the most recent period. New Orleans is also high on the list for intensity of gentrification, an indication of the rapid development of neighborhoods affected by Hurricane Katrina during the past decade.¹² Washington, D.C., still has a high intensity of gentrification, with a total of 14 (16%) of eligible neighborhoods gentrifying over the past five years, though the pace of gentrification seems to have slackened.

11 Florida, R. (2017). *The new urban crisis: How our cities are increasing inequality, deepening segregation, and failing the middle class-and what we can do about it*. Basic Books. Pg 223

12 <https://www.citylab.com/environment/2019/02/gentrification-causes-new-orleans-natural-disasters-hurricane-katrina/582499/>

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Most Intensely Gentrifying Cities 2013-2017

City	Total Tracts	Eligible Tracts	Gentrifying Tracts	Gentrifying %
San Francisco-Oakland	975	131	41	31.3%
Denver	619	80	22	27.5%
Boston	1003	75	16	21.3%
Miami-Ft. Lauderdale	1215	81	17	21.0%
New Orleans	392	64	13	20.3%
Austin	350	56	11	19.6%
New York City	4515	362	70	19.3%
San Jose	383	72	13	18.1%
Phoenix	991	162	29	17.9%
Sacramento	484	56	10	17.9%
Minneapolis	771	115	20	17.4%
Indianapolis	360	100	17	17.0%
Washington D.C.	1346	86	14	16.3%
San Diego	627	88	14	15.9%
Los Angeles	2921	404	48	11.9%
Baltimore	679	150	16	10.7%
Chicago	2210	324	28	8.6%
Philadelphia	1473	280	20	7.1%
Detroit	1294	293	14	4.8%
Dallas	1314	238	11	4.6%

Table 5: Twenty most intensely gentrifying metro areas 2013-2017. (Source: Author's calculations based on 2008-2012 and 2013-2017 Census ACS 5-year data)

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Neighborhood level differences

Descriptives

We analyzed differences between neighborhoods eligible for gentrification, designated OZs, gentrifying neighborhoods and all other urban neighborhoods of the 286 metro areas with indications of gentrification. Measurement of the average, or mean values, for a broad range of factors was undertaken. This descriptive analysis reveals several differences of resident's economic status in four neighborhood categories (Table 6).

Descriptive Statistics for Neighborhood Types

Variable	Opportunity Zone	Eligible	Gentrifying	Other Urban
2017 Population	3,513	3,956	4,108	4,425
2010 Black %	46.39%	33.18%	25.36%	13.89%
2010 Asian %	3.42%	4.76%	5.84%	8.79%
2010 Hispanic %	17.90%	27.32%	31.26%	19.25%
2010 White non-Hispanic %	31.50%	33.58%	36.23%	56.30%
2017 Median Home Value \$	\$165,885	\$154,802	\$216,784	\$372,139
2017 Median Household Income \$	\$32,850	\$39,259	\$44,228	\$69,875
2017 College Education %	13.58%	12.88%	16.19%	31.92%
2017 Median Rent \$	\$850	\$925	\$992	\$1,279
2017 Housing Units	1,562	1,620	1,625	1,881
2017 Gini Coeff.	0.4742	0.4389	0.4361	0.4334
2017 Ownership Costs %	21.13	21.06	21.07	20.31
2017 Owner Occupancy %	34.76%	44.88%	43.47%	55.59%
2017 Residential Vacancy %	7.08%	5.88%	4.49%	1.94%
2017 Business Vacancy %	13.34%	12.21%	10.98%	8.13%
Number of Neighborhoods	1,992	5,617	742	12,449

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Table 6: Descriptive statistics. Average values of selected variables in four neighborhood categories. Neighborhoods that are Gentrified OZs are excluded from the analysis. (Source: Decennial Census 2010 and Census ACS 5-year data 2013-2017)

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"Urban" neighborhoods refers to areas that are within central cities, but met neither the classifications for gentrification eligibility or the OZ designation. These neighborhoods have higher indicators of socioeconomic status and most qualify as middle- to upper- income areas. They have the highest average population, median home value, median household income and percentage of college graduates. They are also the most expensive in terms of median rent costs and have the lowest residential and business vacancy levels. Demographically, the urban neighborhoods had the highest percentage of Asian and non-Hispanic White, and lowest percentage of Black residents, in 2010. In contrast, neighborhoods designated as OZs have the lowest median household income, and the second lowest percentage of college graduates and median home value. By those measures, the OZs are slightly higher than neighborhoods that were "eligible" for gentrification at the beginning of the period in 2012, but did not gentrify. The eligible neighborhoods were in the lowest 40th percentile of median household income and home value for the area in 2008-2012, and did not substantially improve during the 2013-2017 time frame of the Census ACS data. Economic inequality as measured by the Gini coefficient was greatest in OZs. Rents in OZs were 14.3% and 33.5% less than in gentrifying or other urban neighborhoods, respectively. The average population of OZs are the lowest, and they also had the lowest levels of owner-occupancy and highest residential and business vacancies, which may indicate greater degrees of abandonment. Demographically, OZs had the highest percentage of Black, and lowest percentage of non-Hispanic White, residents. Neighborhoods that were eligible to gentrify had marginally better economic conditions in terms of median home values and household income than OZs, but had lower percentages of college educated residents. Their home owner occupancy and vacancy rates were close to those of the OZs, again indicative of abandonment. Finally, gentrifying neighborhoods were sandwiched between OZs and other urban neighborhoods in terms of their economic conditions. Gentrifying areas had the second highest population average, median home value, household income and the percent of college educated residents. Values in gentrifying neighborhoods were all significantly higher than OZs, but lower than other urban neighborhoods. Median rents were also between the other two categories, however, the ownership costs were on par with eligible and gentrifying neighborhoods. Additionally, gentrifying neighborhoods had the largest increases in median home values, household income, education levels, cost of rent and decreases in owner occupancy. Gentrifying areas show improvements in the socioeconomic status of residents from eligible neighborhoods, but they are also places where rent costs more. This indicates general reduction in affordability, however, home ownership costs declined across all central city neighborhoods in the 2013-2017 period from those in the prior 2008-2012 period. This could be due to the effects of the foreclosure crisis, when many properties were "underwater" and mortgages often exceeded the value of the houses, and household income decreased due to the recession.

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Opportunity Zones and Gentrifying Areas Compared

OZs cover a wide geographic area, encompassing rural and urban areas. Our analysis is restricted to OZs in the urban neighborhoods within central city areas. In these neighborhoods, there is considerable overlap with and adjacency to the neighborhoods which have indications of gentrification. So how do changes in socioeconomic conditions in gentrifying neighborhoods and OZs compare? Gentrifying neighborhoods showed significant increases in median home value, median household income, percentage of college educated residents, but also in economic inequality as measured by the Gini coefficient (Table 7). By these measures, it is clear that gentrifying neighborhoods are undergoing rapid change, with improving economic conditions.

Neighborhood Changes 2012-2017

Change Variable	Opportunity Zone	Eligible	Gentrifying	Other Urban
Change Median Home Value	-3.67%	-3.58%	24.55%	3.02%
Change Median Household Income	3.41%	2.70%	18.96%	4.86%
Change in College Educated	-11.26%	-15.80%	17.89%	-15.72%
Change in Economic Inequality (Gini)	1.47%	1.19%	0.65%	0.95%
Number of Tracts	1,992	5,617	742	12,449

Table 7: Change in values of median home value, income and education by neighborhood classification in cities with some indication of gentrification. Gentrifying Opportunity Zones are excluded from the analysis since they would be in two neighborhood categories. (Source: US Census ACS 5-year 2013-2017, with calculated changes from ACS 2008-2012)

Next, if we examine the OZs, we find that they have very different economic conditions from those in gentrifying areas. OZs saw deteriorating median home values and a decrease in college-educated residents. They also saw a widening of the gap in economic inequality that was even greater than it was in those neighborhoods that were eligible but did not gentrify. In fact, the economic conditions in OZs most closely mirror those of neighborhoods that were eligible for gentrification but did not gentrify. Remember, that the eligible neighborhoods were in the bottom 40th percentile in measures of median home value and median household income. This analysis shows that on average, median home value deteriorated even further, though household incomes rose.

While the analysis seems to indicate that, on average, the socioeconomic conditions in OZs were marginally better than in the eligible to gentrify neighborhoods and that the conditions in OZs deteriorated, were these changes statistically significant? We used an

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Analysis of Variance (ANOVA) along with a common test of statistical significance, Tukey's test for Honestly Significant Differences (HSD), to check this by examining the changes between OZs and all of the other neighborhood types. The results shown in Table 8 indicate that there were highly significant differences between the changes in median home value, median household income and percentage of college educated residents in the OZs from all other neighborhood categories. However, the differences in the increase in economic inequality (Gini coefficient) in OZs were significant from those in urban and gentrifying areas, but not from the eligible to gentrify neighborhoods.

Significance Levels of Neighborhood Changes

Change Variable	Mean of Opportunity Zones	Eligible Mean Difference	Gentrifying Mean Difference	Other Urban Mean Difference
Change Median Home Value	-3.67%	0.0009***	-0.2823***	0.0669***
Change Median Household Income	3.41%	-0.007***	0.1554***	0.0145**
Change College Educated Residents	-11.26%	-0.0454***	0.2915***	-0.0446***
Change Economic Inequality (Gini)	1.47%	-0.0029	-0.0082*	-0.0052*
Number of Tracts	1,992	5,617	742	12,449

*p<.05; **p<.01; ***p<.001

Table 8: Changes in Opportunity Zones compared to all other neighborhood categories 2013-2017. ANOVA with a test of statistical significance in changes between Opportunity Zones and other neighborhood categories. Value of the difference in the mean with level of statistical significance is shown. (Source: US Census ACS 5-year 2013-2017, with calculated changes from ACS 2008-2012)

The analysis indicated that neighborhoods that were designated as OZs and also those that were eligible for gentrification but did not gentrify were at the bottom in terms of home value, income and educational attainment of their residents. While OZs had slightly higher median home value in the most intensely gentrifying metros, they were worse-off by all of the other socioeconomic measures than the eligible neighborhoods that did not gentrify, and much worse than gentrifying neighborhoods.

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DEMOGRAPHICS

While nearly 86% of the U.S. population of 325 million¹³ lived in urban areas in 2017, about one-third were residents of most densely urbanized central city areas. In the previous section, it was seen that the number of urban areas experiencing some gentrification was small, however, the actual number of people living in these metros was four times greater than the number who were living in cities without any gentrification (Table 9). Over 3 million people, or nearly 1% of the population, live in neighborhoods with indications of gentrification. While intense gentrification may be relatively rare across the U.S., it is most concentrated in the populous cities of the coastal regions, and a considerable number of people live in the neighborhoods most impacted by it.

Estimated Population 2017

City Category	Opportunity Zones	Eligible	Gentrifying	Other Urban	Total
Cities without Gentrification	3,213,702	4,495,293	NA	11,968,968	19,697,963
Cities with Gentrification	6,997,340	22,222,421	3,048,355	55,092,520	87,360,636
Total	10,211,042	26,717,714	3,048,355	67,061,488	107,058,599

Table 9: Estimated 2017 population totals of central city areas by neighborhood category. (Source: Author's calculation based on US Census ACS 5-year 2013-2017 population estimates)

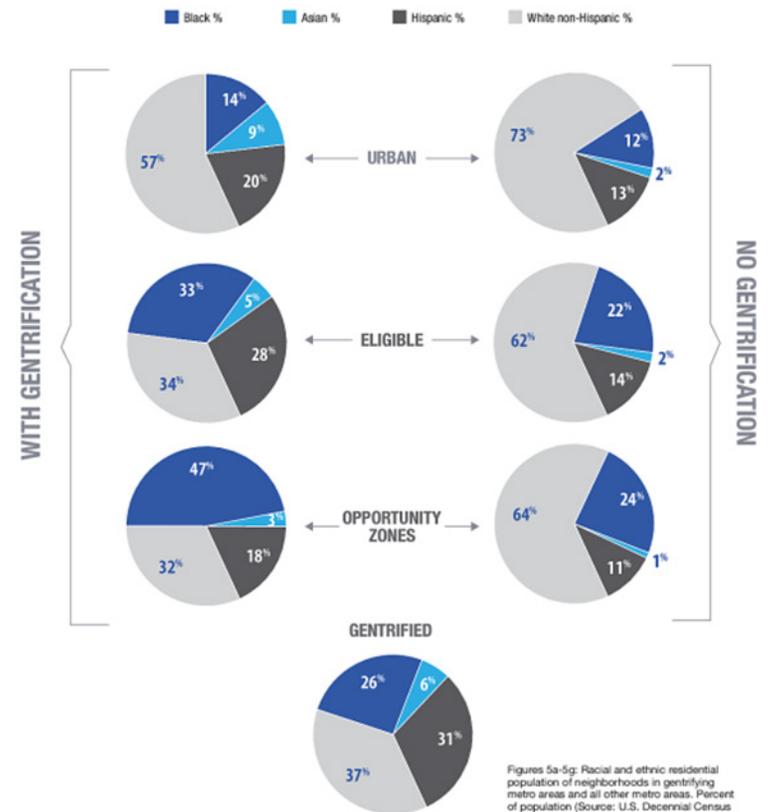
Looking back to 2010 at the demographic composition of the city neighborhoods, the cities that experienced some gentrification were much more diverse in their racial and ethnic composition than those cities without any gentrification. Gentrifying neighborhoods had a low average percentage of White non-Hispanic residents in 2010, only 37% (Figure 5g). The racial and ethnic composition of the eligible, other urban and OZ designated neighborhoods were also considerably more diverse in 2010 than neighborhoods in metro areas without any gentrification (Figures 5a-5f).

13 <https://www.census.gov/newsroom/press-releases/2017/estimates-ksaho.html>

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Comparisons of Gentrification Cities without and With Gentrification



Figures 5a-5g: Racial and ethnic residential population of neighborhoods in gentrifying metro areas and all other metro areas. Percent of population (Source: U.S. Decennial Census 2010 and author's calculations)

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Overall, this indicated that cities experiencing intense gentrification were both larger and had greater racial diversity than other cities. The impact of gentrification was considerable for Black and Hispanic residents who were a majority of the population in 2010 of neighborhoods which later gentrified. This concentration of intense gentrification in major urban areas with diverse neighborhoods disproportionately affected minority communities, a finding of our earlier report on gentrification and displacement in the period 2000-2012.¹⁴

AFFORDABILITY AND HOMEOWNERSHIP

A lack of affordable housing may impinge homeownership in the largest and most economically dynamic U.S. cities. One of the effects of the 2008 mortgage crisis and subsequent recession was a deeper decline in home values than any since the Great Depression in the 1930's, with a slow rebound in residential construction.¹⁵ This reduced the volume of housing stock, and by 2018, when normal rates of household growth returned, the national vacancy rate reached its lowest level since 1994.¹⁶ Despite these indicators of renewed demand, housing production has lagged, placing pressure on house prices and rents and decreasing the availability of affordable housing. A survey by the National Association of Home Builders in September 2019 reported that 4 in 5 respondents believe that the lack of affordable housing has reached crisis levels.¹⁷

Gentrification is sometimes cited as a factor in decreased housing affordability because it reduces the supply of lower-cost rental units,¹⁸ leading to displacement of low-income and minority residents, which was addressed in our prior study covering the 2000-2012 time period.¹⁹ Our present study addressed more recent changes in factors related to housing affordability and homeownership by examining median rent, the number of residential units, levels of residential and business vacancy, owner costs and home owner occupancy. Table 10 indicates the percent change in these variables using the ACS 5-year data covering changes from 2008-2012 and 2013-2017. Median rent increased fastest in middle- to upper-income other urban and in gentrifying neighborhoods. Additionally, the gentrifying and other urban neighborhoods had lower levels of residential and business vacancy than the

14 <https://ncrc.org/gentrification/>

15 https://www.jchs.harvard.edu/sites/default/files/Harvard_JCHS_State_of_the_Nations_Housing_2019.pdf

16 <https://fred.stlouisfed.org/series/USHVAC>

17 <https://www.nahb.org/news-and-publications/press-releases/2019/09/most-majority-of-americans-cite-growing-housing-affordability-problem-as-a-crisis.aspx>

18 Immergluck, D., Carpenter, A., & Lueders, A. (2018). Hot city, cool city: explaining neighbourhood-level losses in low-cost rental housing in southern US cities. *International Journal of Housing Policy*, 18(3), 454-478.

19 <https://ncrc.org/gentrification/>

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other neighborhood categories, however, the number of residential units increased the most in other urban and OZs, with gentrifying neighborhoods having a slightly lower increase in units. It may seem peculiar that owner costs declined across all neighborhood categories, however, this variable takes into account changes in household income during a long period. Therefore, this may be an artifact of use of the ACS 5-year dataset, the earlier one of which had a midpoint of 2010, covering the period of the mortgage foreclosure crisis during which a quarter of homeowners in certain markets held mortgages that were over-leveraged and "underwater" relative to their home value.²⁰ The high levels of mortgage insolvency and over-leveraging, combined with declines in income during the recession created an intense financial downturn which would impact homeownership costs. The subsequent 2013-2017 ACS dataset covered a period of financial expansion, with lower mortgage rates and marginally increasing incomes which would have impacted ownership costs. Overall, median rent in gentrifying neighborhoods was second highest in cost and increased almost as much as that in the other urban neighborhoods. These increases in rental costs and low vacancy levels seem to indicate declining affordability, though the decrease in ownership costs could have acted as a mitigating factor in gentrifying neighborhoods.

Changes in Neighborhood Affordability and Homeownership 2012-2017

Change Variable	Opportunity Zone	Eligible	Gentrifying	Other Urban
Change in Median Rent	3.30%	2.96%	6.96%	7.05%
Change in Residential Units	1.78%	0.84%	1.49%	2.74%
Change in Owner Cost	-3.33%	-3.44%	-4.16%	-2.96%
Change Owner-Occupancy	25.33%	15.40%	18.16%	7.51%
2017 Residential Vacancy	7.08%	5.88%	4.49%	1.94%
2017 Business Vacancy	13.34%	12.21%	10.98%	8.14%
Number of Tracts	1,992	5,617	742	12,449

Table 10: Changes in variables related to affordability and homeownership in cities with indications of at least one neighborhood gentrifying. (Source: US Census ACS 5-year 2013-2017, with calculated changes from ACS 2008-2012)

Homeownership levels, as measured by owner occupancy, appeared to increase across every neighborhood category in cities with indications of gentrification. While middle- to upper-income other urban neighborhoods had the highest levels of owner occupancy, OZs

20 <https://www.frbf.org/economic-research/publications/economic-letter/2010/october/underwater-mortgages/>
http://haas.institute.berkeley.edu/sites/default/files/haasinstitute_underwateramerica_publish_0.pdf

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Gentrification and Disinvestment 2020

and gentrifying neighborhoods experienced the strongest increase during the study period. Despite this, the OZs had the lowest overall level of owner occupancy, and barely a third of the residents of these neighborhoods were homeowners. They also had the highest vacancy levels, and the lowest average number of housing units. OZs and neighborhoods eligible for gentrification had indications of being the most affordable, but also had the lowest levels of homeownership in cities with indications of gentrification.

CONCLUSION

This study examined differences in socioeconomic and demographic factors for OZs and those areas that were not designated as OZs. There were clear differences not just between OZs and other neighborhoods but between OZs in cities where there were indications of gentrification and other metro areas where there was no gentrification. Taken as a whole, OZs tended to be neighborhoods with lower incomes and home values as well as fewer residents with a college education, regardless of whether or not they were gentrifying. Income inequality in OZs was also higher than in other neighborhoods. There were also sharp differences in the demographics of neighborhoods in cities which had some indications of gentrification and those that did not, with much higher percentages of minority residents across all neighborhood classifications; eligible, gentrified, other urban and OZ. In the cities with indications of gentrification, the differences between OZs and other neighborhoods were amplified, with OZs having the highest percentages of minority residents. In cities without indications of gentrification, the population of OZs in 2010 was 36% people of color, while in the cities with gentrification that figure rose to 68%. Black residents make up the majority of the people of color in these communities, just as they tend to make up a larger percentage of residents in distressed neighborhoods that were eligible but did not gentrify.

Neighborhoods designated as OZs far outnumbered those neighborhoods where the study found gentrification. This was due to the design of the Opportunity Zone program, which allows states to designate up to 25% of their low-income neighborhoods as OZs as long as they meet the program criteria. Those designations are not limited by central city location or other population measures that were used to determine gentrification eligibility. However, among those neighborhoods where this study identified gentrification, 69% of the time they were either an OZ or they were adjacent to one.²¹ This high degree of overlap, and the intensive concentration of Black households validated concern that OZs may trigger displacement in gentrifying neighborhoods.

²¹ 657 of the 954 neighborhoods which have indications of gentrification during the 2013-2017 study period are within, or adjacent to a designated Opportunity Zone.

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The findings of this study suggest that concern about the impact of OZs is warranted, but that the designation of an area as an OZ, especially in the majority of cities where gentrification is not widespread, is an indicator of a neighborhood with the greatest distress and income inequality. In fact, nearly 84% of the urban OZs overlap CRA designated low- to moderate-income neighborhoods. A study focus for OZs should be placed on the types and quality of investments attracted to them, and whether these investments contribute to the economic well-being of low-income residents in which the investment is made. Future areas of research on OZs could include an assessment of the overall level and form that investment takes in these areas and how it differs from other neighborhoods. Also, the impact on the residents, particularly low- to moderate income and minority families, is a concern. The current lack of data on Opportunity Fund investments presents a major barrier to future research. This makes it difficult to quantify whether the economic impact of OZs results in economic revitalization, or gentrification and displacement.

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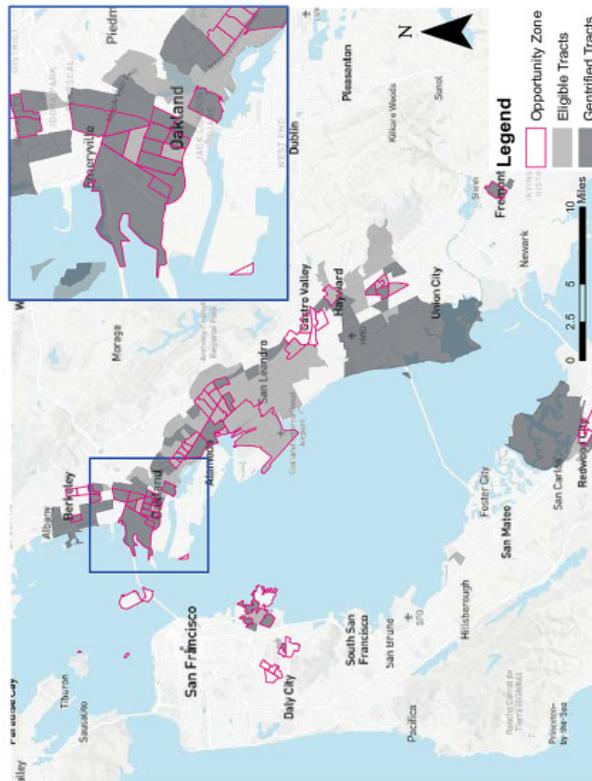
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APPENDIX -

Gentrification and Opportunity Zones in the Top Five Cities for Intensity



A-1 San Francisco Bay metro area

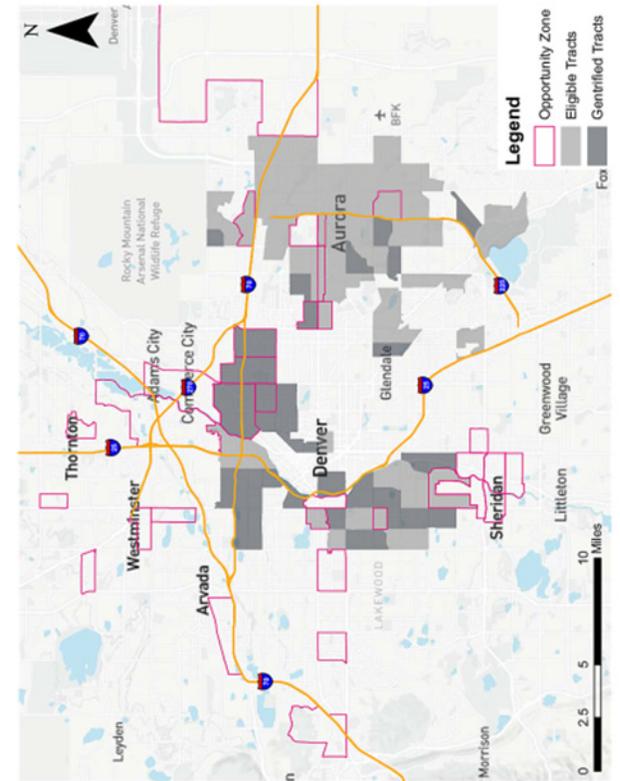
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A-2 The Denver metro area

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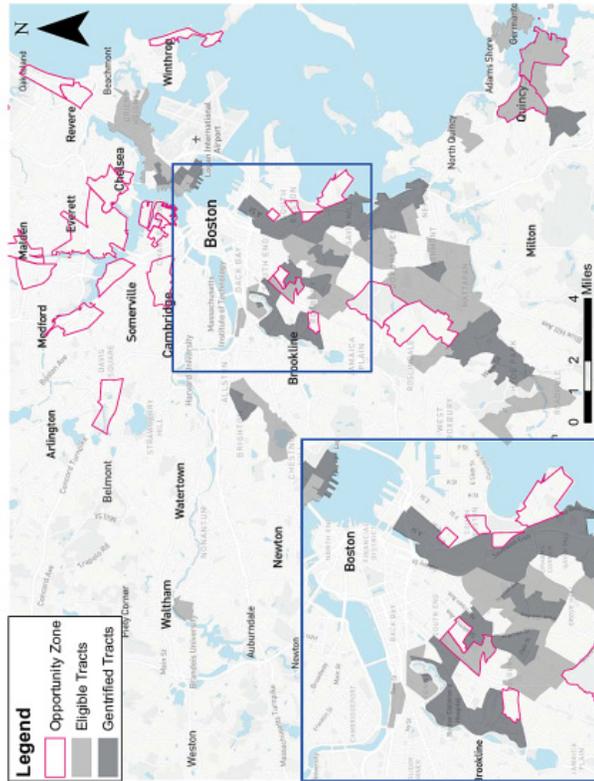
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A-3 Boston metro area

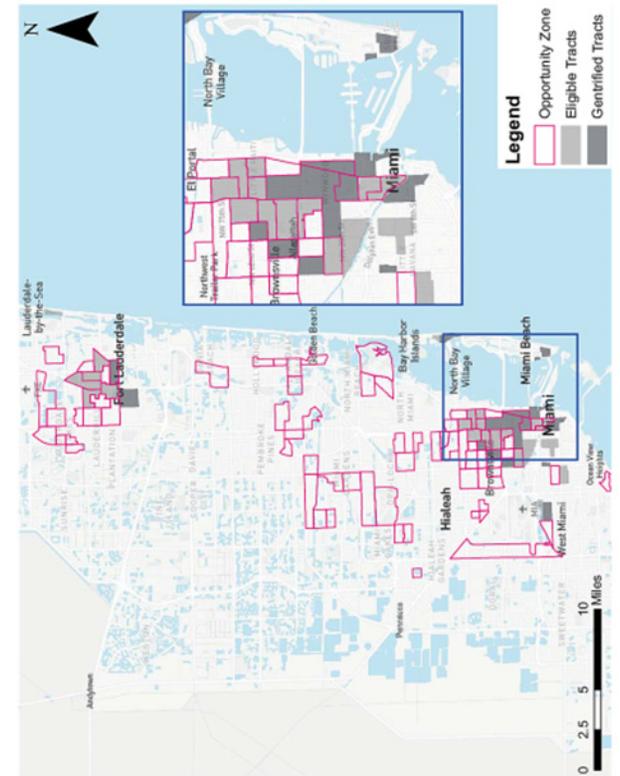
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A-4 Miami and Fort Lauderdale metro area

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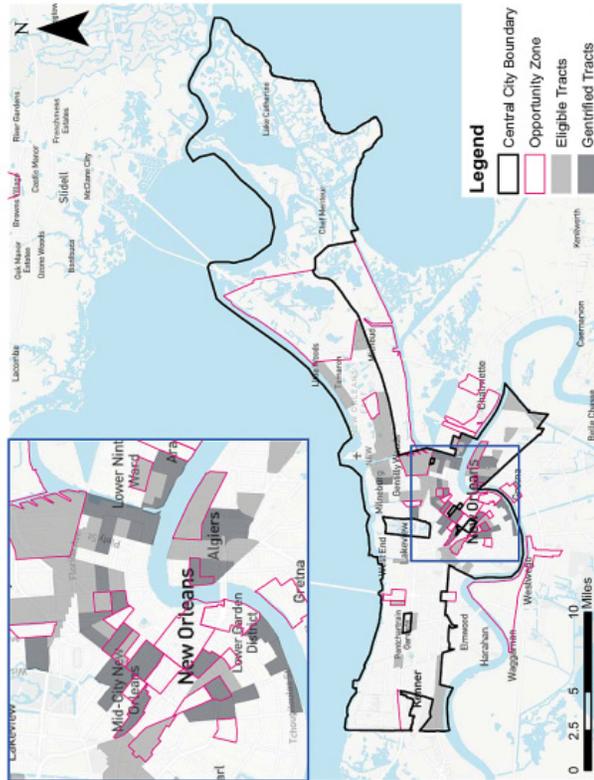
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A-5 New Orleans metro area

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VARIABLE	URBAN		ELIGIBLE		GENTRIFIED		OPPORTUNITY ZONE		GENT/OZ	
	MEAN	SD	MEAN	SD	MEAN	SD	MEAN	SD	MEAN	SD
POPULATION 2017	4,276	2,024	4,178	1,837	4,267	2,040	3,777	2,147	3,663	2,01
MEDIAN HOME VALUE 2017	498,462	310,170	208,115	146,973	293,844	165,287	249,860	228,426	221,763	161.9
MEDIAN HOUSEHOLD INCOME 2017	77,736	35,360	40,953	16,320	46,957	16,845	35,940	16,629	35,319	13.84
COLLEGE EDUCATED OVER 25 2017	0.354	0.196	0.132	0.121	0.178	0.130	0.152	0.129	0.159	0.10
MEDIAN RENT 2017	1,459	528	1,034	287	1,118	304	995	327	916	236
NUMBER OF HOUSING UNITS 2017	1,783	925	1,606	698	1,577	714	1,585	846	1,565	736
GINI COEFFICIENT 2017	0.441	0.067	0.445	0.063	0.440	0.058	0.485	0.069	0.479	0.05
OWNERSHIP COST 2017	21,508	6,211	22,453	6,680	22,598	6,634	22,022	9,105	20,464	7.51
OWNER OCCUPIED 2017	0.517	0.249	0.420	0.196	0.385	0.203	0.304	0.187	0.314	0.18
BLACK % 2010	0.141	0.228	0.378	0.360	0.291	0.300	0.563	0.350	0.640	0.30
ASIAN % 2010	0.126	0.151	0.066	0.116	0.084	0.117	0.046	0.098	0.027	0.06
HISPANIC % 2010	0.225	0.218	0.345	0.304	0.399	0.285	0.230	0.249	0.191	0.22
NON_HISPANIC WHITE 2010	0.496	0.284	0.208	0.238	0.224	0.225	0.174	0.229	0.154	0.19
CHANGE MEDIAN HOME VALUE	0.058	0.199	0.005	0.456	0.350	1.005	-0.016	0.413	0.390	0.65
CHANGE MEDIAN HOUSEHOLD INCOME	0.009	0.211	0.030	0.214	0.219	0.211	0.041	0.273	0.275	0.21
CHANGE COLLEGE EDUCATED	-0.133	0.266	-0.158	0.529	0.216	0.648	-0.081	0.573	0.262	0.59
CHANGE RENT	0.084	0.196	0.032	0.158	0.078	0.153	0.048	0.176	0.074	0.18
CHANGE UNITS	0.025	0.133	0.016	0.078	0.025	0.088	0.031	0.152	0.036	0.09
CHANGE GINI	0.010	0.054	0.014	0.063	0.003	0.054	0.021	0.069	0.013	0.05
CHANGE COSTS	-3.187	5.559	-3.784	6.689	-4.184	6.665	-3.027	7.969	-3.367	7.58
CHANGE OWNER OCCUPANCY	0.121	0.342	0.179	0.301	0.212	0.320	0.315	0.302	0.296	0.31
NUMBER OF TRACTS		N=6728		N=2311		N=371		N=819		N=7

A-6 Descriptive statistics Top 20 Cities in the intensity of gentrification by census tract classification. (Source: Author's calculations based on 2008-2012 and 2013-2017 Census ACS)

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Gentrification and Disinvestment 2020

VARIABLE	URBAN		ELIGIBLE		GENTRIFIED		OPPORTUNITY ZONE		GENT/OZ	
	MEAN	SD	MEAN	SD	MEAN	SD	MEAN	SD	MEAN	SD
POPULATION 2017	4,550	2,225	3,782	1,766	3,955	2,007	3,566	1,757	3,105	1,57
MEDIAN HOME VALUE 2017	212,028	151,381	117,791	78,902	143,489	91,717	106,579	74,933	114,924	70,91
MEDIAN HOUSEHOLD INCOME 2017	58,703	25,283	38,063	14,744	41,448	14,046	31,037	11,120	30,689	8,77
COLLEGE EDUCATED OVER 25 2017	0.261	0.155	0.129	0.105	0.146	0.107	0.121	0.094	0.125	0.07
MEDIAN RENT 2017	993	354	824	214	869	247	733	178	722	132
NUMBER OF HOUSING UNITS 2017	1,985	941	1,647	701	1,663	774	1,630	710	1,458	648
GINI COEFFICIENT 2017	0.433	0.068	0.437	0.062	0.433	0.061	0.468	0.069	0.461	0.06
OWNERSHIP COST 2017	18.026	3.619	19.368	4.440	19.206	4.550	18.739	5.144	18.634	5.67
OWNER OCCUPIED 2017	0.587	0.203	0.478	0.177	0.475	0.178	0.388	0.179	0.345	0.18
BLACK % 2010	0.134	0.193	0.278	0.306	0.227	0.280	0.340	0.333	0.380	0.35
ASIAN % 2010	0.041	0.073	0.031	0.066	0.033	0.064	0.023	0.057	0.028	0.07
HISPANIC % 2010	0.149	0.199	0.206	0.247	0.233	0.263	0.141	0.200	0.145	0.19
NON_HISPANIC WHITE 2010	0.652	0.255	0.467	0.304	0.486	0.305	0.474	0.320	0.427	0.30
CHANGE MEDIAN HOME VALUE	-0.003	0.190	-0.053	0.333	0.150	0.314	-0.043	0.299	0.268	0.48
CHANGE MEDIAN HOUSEHOLD INCOME	0.027	0.187	0.022	0.194	0.166	0.183	0.032	0.236	0.258	0.30
CHANGE COLLEGE EDUCATED	-0.195	0.270	-0.164	0.521	0.152	0.542	-0.162	0.550	0.314	1.58
CHANGE RENT	0.051	0.188	0.027	0.160	0.059	0.137	0.027	0.158	0.094	0.26
CHANGE UNITS	0.029	0.104	0.005	0.112	0.005	0.081	0.007	0.095	-0.007	0.07
CHANGE GINI	0.010	0.055	0.011	0.062	0.010	0.061	0.010	0.067	-0.005	0.07
CHANGE COSTS	-2.440	3.729	-2.886	4.975	-4.064	5.344	-2.961	5.524	-3.249	6.39
CHANGE OWNER OCCUPANCY	0.031	0.300	0.125	0.294	0.153	0.287	0.188	0.305	0.259	0.31
NUMBER OF TRACTS		N=9144		N=4697		N=391		N=2211		N=11

A-7 Descriptive statistics for all other cities, with lower intensity of gentrification by census tract classification. (Source: Author's calculations based on 2008-2012 and 2013-2017 Census ACS)

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O-62 Oakland United Coalition

COMMENT

RESPONSE

From: [Heather Lewis](mailto:Heather.Lewis@calclaw.com)
To: svollmann@oaklandca.gov
Subject: Comments on Waterfront Ballpark District Project Draft Environmental Impact Report (case file ER18-016)
Date: Tuesday, April 27, 2021 4:00:46 PM
Attachments: [HT_ER18-016 Comment_20210427.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,

Please find attached the comments of Communities for a Better Environment, Public Advocates, East Bay Alliance for a Sustainable Economy, East Bay Community Law Center, Causa Justa: Just Cause, Urban Peace Movement, Urban Habitat, Alliance of Californians for Community Empowerment, and Faith in Action East Bay on the Waterfront Ballpark District Project Draft Environmental Impact Report (case file ER18-016).

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

Sincerely,

Heather Lewis
Joseph Grib
David White
Chris Wilson
Environmental Law Clinic
University of California, Berkeley School of Law
353 Law Building
Berkeley, CA 94720-7200

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COMMENT

RESPONSE

O-62-1 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 4.3, *Recirculation of the Draft EIR*.



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 Mr. Vollmann:

Communities for a Better Environment, Public Advocates, East Bay Alliance for a Sustainable Economy, Causa Justa: Just Cause, East Bay Community Law Center, Urban Peace Movement, Urban Habitat, Alliance of Californians for Community Empowerment, and Faith in Action East Bay respectfully submit these comments on the Draft Environmental Impact Report (DEIR) for the Oakland Waterfront Ballpark District Project (Project). We write as members of the Oakland United coalition to raise serious concerns about the analysis and legal validity of the DEIR that must be addressed prior to finalization of the environmental review process and certification of the Final EIR. The geographic scope and intensity of development contemplated by the DEIR will have widespread environmental impacts not just on the surrounding neighborhoods but on all of Oakland and the greater East Bay. Full and accurate environmental review is essential to ensuring that the public and decision-makers have all relevant information.

The Project's environmental impacts will be determined in large part by the housing and economic growth that results from this Project, and the DEIR cannot fully mitigate those impacts until they are thoroughly and accurately analyzed. The scope and intensity of the impacts on traffic, air quality, greenhouse gas (GHG) emissions, and numerous other environmental factors will necessarily be determined by the affordability of homes planned both at the Project site as well as other locations in Oakland, the wages of jobs created in the Howard Terminal location, and the displacement of low-income residents in surrounding neighborhoods. If the City

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COMMENT

RESPONSE

O-62-2 This is a general comment that includes introductory remarks and serves to introduce more specific comments which are responded to in detail below. As a result, no specific response is provided here. 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 4.12, *Affordable Housing*, and Consolidated Response 4.1, *Project Description*.

approves an EIR that fails to describe the full impacts of this Project, the City will miss a valuable opportunity to ensure that those impacts are mitigated by appropriate measures—such as a commitment to affordable housing, local hire policies, and living wage employment

This document fails to comply with the California Environmental Quality Act’s basic mandate to provide complete and accurate information about the foreseeable environmental impacts of the project and to consider and adopt mitigation measures to avoid or reduce these impacts. This DEIR:

- Fails to provide an accurate, stable, and finite project description;
- Fails to adequately and completely describe direct, indirect, and cumulative environmental impacts;
- Proposes ineffective mitigation measures and fails to support findings of efficacy with substantial evidence;
- Impermissibly defers the formulation of mitigation measures to some future time; and
- Provides insufficient detail for an adequate comparison of alternatives.

These failures thwart CEQA’s essential purpose of ensuring that government decision makers and the public are fully informed about the potential environmental impacts of proposed projects.

For the reasons further described below, we respectfully request that this DEIR be revised and recirculated. Recirculation is required when significant additional data or information is added after a draft EIR is issued for public review, such that the public has been deprived of a “meaningful opportunity to comment” upon an adverse impact, feasible mitigation measures, or feasible project alternatives.¹ The informational deficiencies of this DEIR have deprived the public of a meaningful opportunity to comment on the Project’s true impacts, as well as feasible mitigations measures and alternatives that could reduce those impacts, and as such the DEIR must be revised and recirculated for public comment.

I. The DEIR’s project description inadequately describes the proposed affordable housing plan.

The purpose of the project description is to provide public decision-makers and affected groups with an accurate view of the project, such that they can balance the project’s benefits against its environmental costs.² A project description is “fundamentally inadequate and misleading” if it “gives conflicting signals to decision makers and the public about the nature and scope of the project.”³ As such, an “accurate, stable, and finite” project description is an essential condition of a legally sufficient EIR.⁴

Additionally, CEQA requires that the entirety of a project be reviewed in a single EIR. An agency may not split a project into smaller pieces or segments to avoid a complete

¹ CEQA Guidelines, 14 Cal. Code Regs. § 15088.5(a)

² *County of Inyo v. City of Los Angeles*, 71 Cal. App. 3d 185, 192–93 (1977).

³ *Citizens for a Sustainable Treasure Island v. City & Cnty. of San Francisco*, 227 Cal. App. 4th 1036, 1052 (2014).

⁴ *Washoe Meadows Cmty. v. Dept’s of Parks & Recreation*, 17 Cal. App. 5th 277, 287 (2017) (citing *Cnty. of Inyo v. City of Los Angeles*, 71 Cal. App. 3d at 193).

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O-62-3 See Consolidated Response 4.12, *Affordable Housing*.

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environmental analysis.⁵ Courts have considered distinct activities as one CEQA project and required them to be reviewed together in one document in two situations: (1) when the purpose of the project under review is to provide the necessary first step toward a larger development,⁶ and (2) when development of the project under review requires or presumes completion of another activity.⁷

Here, the DEIR appears to commit to an affordable housing program, but provides no information about what the affordable housing program will actually entail, instead describing several options without committing to any one. A legally adequate project description would describe the proposed affordable housing program in detail, including impact analyses and mitigation measures. Especially given that the current project description proposes additional off-site development that is not analyzed anywhere in the EIR, the City must issue a revised DEIR that commits to an affordable housing program, and which describes and analyzes a concrete quantity of units in an identifiable location.

A. The DEIR fails as an informational document because it does not commit to a plan for implementing the affordable housing program, including how much affordable housing will be built and where.

O-62-3

The DEIR presents affordable housing as an important part of the Project, listing the creation of affordable housing units as a component of several project objectives.⁸ Yet the DEIR

⁵ *Berkeley Keep Jets Over the Bay v. Board of Port Comm'rs*, 91 Cal. App. 4th 1344, 1358 (2001).

⁶ See, e.g., *Laurel Heights Improvement Ass'n v. Regents of Univ. of Cal.*, 47 Cal. 3d 376, 397–98 (1988) (EIR for university's development of part of a facility should have included university's plans to use the remainder of the facility, even when university's plans were not definite); *Bozung v. Local Agency Formation Comm'n*, 13 Cal. 3d 263, 283–84 (1975) (city's annexation of land must be considered together with the development it would facilitate); *City of Carmel-by-the-Sea v. Board of Supervisors*, 183 Cal. App. 3d 229, 244 (1986) (where a county rezoned land as "a necessary first step to approval of a specific development project").

⁷ *Nelson v. Cnty. of Kern* 190 Cal. App. 4th 252, 272 (1990) (EIR for reclamation plan should have included mining operations that compelled it).

⁸ DEIR at 3-15 (Project Objective 2: "Increase housing at a range of affordability levels;" Project Objective 6: "Construct high-quality housing...offering a mix of unit types, sizes, and affordability to assist Oakland in meeting its housing demand;" Project Objective 7: "support a comprehensive package of benefits, which may include...affordable housing."); see also Libby SchAAF, *Why Oakland should back the A's Howard Terminal plans*, Marin Independent Journal, Apr. 10, 2010, <https://www.marinij.com/2021/04/10/libby-schaaf-why-oakland-should-back-the-as-howard-terminal-ballpark> (Mayor Libby SchAAF explains that equitable and tangible affordable housing is a major part of her support for the project); Bill Shaikin, *Oakland's Athletics need a home. They may get one—and provide 6,000 more*, L.A. Times, Mar. 11, 2019, <https://www.latimes.com/sports/mlb/la-sp-oakland-ballpark-housing-crisis-20190310-story.html> ("[Mayor] SchAAF is focused on affordable housing, and the considerable help the Athletics might be able to lend. The Oakland housing crisis is about a city pricing out teachers, public safety workers and longtime renters, not about an absence of construction. . . . In the Giants' Mission Rock project—negotiated with the city of San Francisco and approved by voters there—40% of the residences are reserved for affordable housing."); Zach Spedden, *Housing a major component of A's Ballpark Proposal*, Ballpark Digest, Mar. 12, 2019, <https://ballparkdigest.com/2019/03/12/housing>.

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RESPONSE

O-62-4 See Consolidated Response 4.12, *Affordable Housing* for a discussion of affordable units to be provided on site. The City considered potential outcomes of its housing impact fee program when the program was established and reports on the program's effectiveness annually. See, for example, the City of Oakland's *Impact Fee Annual Report For: Affordable Housing, Jobs/Housing, Transportation, & Capital Improvements Impact Fees Fiscal Year Ended June 30, 2020*, dated December 27, 2020, and updated February 21, 2021.²

fails to provide any detail about the quantity or location of affordable housing that will be constructed as part of the Project. In the DEIR, the project description states that mixed-use development will include "up to 3,000 residential units."⁹ However, a footnote states that the "Project will have an affordable housing program, which may include on-site or off-site affordable housing units and/or the payment of impact fees."¹⁰ The affordable housing component of the Project is a primary concern among large segments of the surrounding community: while the DEIR appears to propose an affordable housing program, it suggests that some indeterminate number of additional residential units might be built at some place off-site as part of the Project.¹¹ However, these potential off-site units are not discussed further or analyzed in any of other part of the DEIR.

O-62-3

The DEIR provides no detail about what proportion of its residential development is set aside for affordable housing: in other words, whether affordable housing will be part of the 3,000 allotted mixed-use units or will be additional residential development *beyond* the 3,000 on-site units.¹² The DEIR says this affordable housing development may occur off-site, but doesn't identify, even generally, *where* this potential off-site residential development might be sited.¹³ This information is highly relevant for the affected public seeking to assess the environmental impacts of the project. For example, affordable housing close to the site for lower-wage workers at the ballpark or hotel would reduce emissions because those individuals may otherwise need to live farther from the site and commute from more affordable areas. By contrast, building the off-site development in a neighborhood removed from the project site could result in additional emissions, and could exacerbate displacement and gentrification in the neighborhoods surrounding the project. The DEIR does not concretely identify, or even loosely suggest, the scale or quantity of affordable housing units that may be constructed off-site, let alone discuss the impacts of the proposed development on the existing community and environment at that undisclosed location.¹⁴

O-62-4

Even though the DEIR commits to an affordable housing program, affordable housing might not actually be constructed as part of that program. The DEIR indicates that the A's could forego on-site or off-site affordable housing completely, and instead just pay impact fees.¹⁵ However, because the DEIR provides no information about the structure or amount of these impact fees, it is impossible for either the City or members of the public to assess whether this would be an effective option to address housing concerns. In addition to providing these details, a revised EIR should analyze impact fees' effect on displacement and gentrification, relative to actually constructing affordable units.

[a-major-component-of-as-ballpark-proposal/](#) ("Given the priority that Oakland officials, including mayor Libby Schaaf, are placing on the development of affordable housing in particular, the new units that would come from the A's plans could be a welcomed element.").

⁹ DEIR at 3-26.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

² City of Oakland, 2021. The City of Oakland Impact Fee Annual Report for: Affordable Housing, Jobs/Housing, Transportation, & Capital Improvements Impact Fees Fiscal Year Ended June 30, 2020, December 27, 2020, Updated: February 21, 2021.

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RESPONSE

O-62-5 See Consolidated Response 4.12, *Affordable Housing*, and Consolidated Response 4.1, *Project Description*.

O-62-6 See Consolidated Response 4.12, *Affordable Housing*. The City appreciates the commenter's focus on housing production goals and welcomes participation in the planning process underway to update the Housing Element of the City's General Plan.

O-62-5

Here, the DEIR's impact analysis only considers 3,000 on-site units. However, the project description states that a major project component and multiple core objectives may call for development beyond those 3,000 units, potentially off-site.¹⁶ For that reason, the DEIR's project description is unstable. A revised EIR must include a specific plan for the affordable housing program, including the location, proportion, and scale of additional on-site and off-site development. The revised EIR must also include an impact analysis and mitigation measures for this plan.

B. A revised DEIR should specify a fixed number of affordable housing units to avoid a conflict with the Oakland General Plan's Housing Element.

O-62-6

The DEIR's failure to provide a fixed number of affordable housing units to be constructed prevents the City from reliably evaluating the project's effects on the City's affordable housing production goals articulated in the Housing Element of the General Plan. Under its Regional Housing Needs Allocation, by 2023 the City must identify sites for 14,765 units of new housing, 6,949 of which must be designated as affordable housing units.¹⁷ As of 2020, only 1,506 affordable housing units have been permitted, leaving 5,443 affordable units yet to be built or even permitted to meet the Housing Element's goal, even as the City has already met (and exceeded) its market-rate housing production goals.¹⁸ With less than two years left under this current Housing Element, it is incumbent upon the City to ensure that projects approved for development further the City's attempts to fulfill its allocation. Further, given that full project buildout is not expected until 2029,¹⁹ the Project's lack of a definite plan for affordable housing renders it impossible to determine how this Project will impact the City's progress on its next Housing Element, post-2023.

Providing an accurate number of how many affordable units will be constructed if the City approves this project is necessary to adequately track the City's progress towards its Housing Element goals. Although the Howard Terminal site was not initially zoned for residential use or considered as one of the Housing Element's housing opportunity sites, it is now the largest major development project proposal being considered by the City and therefore represents a significant proportion of all potential affordable units.²⁰ Its 3,000 units of housing could go a long way towards meeting the City's 2023 affordable housing goals. By refusing to commit to the proportion of units that will be affordable, the project prevents the City from comparing it to project alternatives whose inclusion of affordable housing would better achieve these goals.

¹⁶ DEIR at 3-26, 3-15.

¹⁷ City of Oakland, *Housing Element 2015-2023* (Dec. 9, 2014) at 26, <https://www.oaklandca.gov/resources/read-the-2015-2023-housing-element>.

¹⁸ City of Oakland, *2020 Housing Element Annual Progress Report* (2020) Table B, https://cao-94612.s3.amazonaws.com/documents/Oakland2020_Locked.xlsx. As of 2020, the City had permitted 7,816 market-rate units, exceeding its Regional Housing Needs Allocation goal by 5,800 market-rate units. *Id.*

¹⁹ DEIR at 3-32 n.11.

²⁰ City of Oakland, *Major Development Projects List* (Jan. 20, 2021), <https://cao-94612.s3.amazonaws.com/documents/Major-Projects-List-for-Public-Distribution-March-5-2020.xlsx>.

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Furthermore, ensuring that the City permits a sufficient number of affordable units impacts its eligibility for additional transportation improvement funds. As a site within one of the Housing Element's Priority Development Areas, development at Howard Terminal should be eligible for funding from MTC and One Bay Area Grant (OBAG) to support infrastructure and transportation improvements.²¹ Since 30% of OBAG funds are tied to a local jurisdiction's past and future affordable housing production, meeting the City's affordable housing goals will have a direct effect on the amount of funding received.²² Such funding would be an important opportunity for the City to improve its transportation infrastructure and could ultimately reduce GHGs and VMTs incurred by the development.

C. If the A's plan to build affordable housing off-site, they must include an impact analysis in this EIR.

If off-site residential development is contemplated as a part of the proposed Project, the DEIR must analyze the impacts of that development. CEQA prohibits piecemealing of analysis, which refers to splitting a single project into smaller pieces or segments to avoid a complete environmental analysis.²³

O-62-8

Building off-site housing is clearly meant as an extension of the same Project currently under review, as the project description pitches its affordable housing plan as being required to satisfy the central project objective to have some proportion of the 3,000 residences be affordable. If total housing (on-site and off-site) will be 3,000 units, then there is a piecemealing problem: the DEIR impermissibly breaks up the project into smaller pieces and analyzes the impacts separately. There could be increases in vehicle miles traveled at off-site housing, as discussed below in Part VIII, and all impacts must be considered in one DEIR.

Off-site residential development is a foreseeable consequence of the proposed Project, as the project description explicitly mentions it as a method by which the project may complete one of its "major project components:" the mixed-use development.²⁴ Additionally, project objectives 2, 6, and 7 all commit to the inclusion of affordable housing.²⁵ In this way, the DEIR presents its affordable housing program as a significant part of its plan, but provides little clarity as to its actual plan for the program. Because the DEIR presents off-site affordable housing as a potential part of the program, such development is sufficiently linked to the proposed project that it warrants analysis in the same EIR.

O-62-9

A thorough discussion of the sponsor's plan for proposed off-site residential development and analysis of its impacts—is crucial for the public and relevant agencies to be informed participants in the environmental review process. The record does not indicate that the

- O-62-7 See Consolidated Response 4.12, *Affordable Housing*. The proposed Project would include 3,000 dwelling units and meet the City's affordable housing requirements. While the City's availability to meet state housing goals may be one factor that contributes to the City's competitiveness for certain funding sources, neither the City's ability to meet its goals nor its ability to secure funding would be negatively affected by the outcome of one project, particularly one that would effectively demonstrate the City's willingness to make substantial additions to its housing supply.
- O-62-8 See Consolidated Response 4.12, *Affordable Housing*. See also Consolidated Response 4.1, *Project Description*, which includes a discussion of alleged piecemealing and negotiations related to the Project.
- O-62-9 See Consolidated Response 4.12, *Affordable Housing*. See also Consolidated Response 4.1, *Project Description*, which includes a discussion of alleged piecemealing and negotiations related to the Project.

²¹ City of Oakland, *Housing Element 2015-2023* (Dec. 9, 2014) at 294, <https://www.oaklandca.gov/resources/read-the-2015-2023-housing-element>.
²² Metropolitan Transportation Comm'n, *One Bay Area Grants – How Do Counties Get Funds?*, <https://mtc.ca.gov/our-work/fund-invest/investment-strategies-commitments/focused-growth/one-bay-area-grants>.
²³ See, e.g., *Berkeley Keep Jets Over the Bay v. Board of Port Comm'rs*, 91 Cal. App. 4th 1344, 1358 (2001).
²⁴ DEIR at 3-26.
²⁵ DEIR at 3-15.

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Project sponsor is in direct control of any off-site land on which this development could occur. In part for that reason, it is difficult to ascertain where the development might take place. Wherever the development might take place, it is important that it prioritizes minimizing impacts related to emissions, dust, noise, and so on. For example, affordable housing located on or near the project site could reduce VMT (and therefore reduce air emissions) by allowing workers at the Howard Terminal site to forgo driving to work. Moreover, because the Howard Terminal area is relatively close to public transit, VMT would likely be lower than an off-site option that is farther from BART. A revised EIR should clarify a proposed location or locations for off-site residential development, and should provide a thorough analysis of foreseeable impacts and corresponding mitigation measures.

O-62-10

Off-site residential housing is *not* presented as a variant, alternative, or mitigation measure, but rather as part of the core project description.²⁶ It does not matter that off-site residential housing is offered as one of three options to satisfy the residential development project objective: while an EIR generally should have a clear and stable plan that is not splintered into various options, if it does include options within the plan, all proposed options should be described and analyzed sufficiently to foster informed public decision-making.²⁷ A project description that identifies variations in design is only permissible if all possible variations are fully described and separately evaluated, and the maximum possible scope of the project is clearly disclosed.²⁸ Because it fails to sufficiently describe or analyze its proposal for off-site affordable residential development, the DEIR is deficient.

The DEIR should be revised to describe in detail the plan to include affordable housing as part of the Project's residential development. With respect to on-site affordable housing, the project description should include the proposed proportion of affordable units within (or beyond) the total 3,000 units proposed. Additionally, the DEIR should be revised to adequately describe and analyze the proposed option to build affordable housing off-site. This description should clarify the development's specific location off-site, its scope, whether the units will be a subsection or in addition to the total 3,000 units proposed on-site. The revised EIR should analyze all relevant corresponding impacts and offer mitigation measures for significant impacts.

II. The DEIR provides an incomplete analysis of growth inducing impacts and fails to analyze the environmental and health impacts of economic indirect displacement.

O-62-11

The DEIR's methodology for evaluating growth-inducing impacts would render CEQA's mandate to study such impacts meaningless, as there is almost no imaginable project for which it would yield a finding of significant impact. The DEIR erroneously assumes that a single project exceeding City-wide population growth patterns by more than 100% will not have a growth inducing impact.²⁹

O-62-10 See Consolidated Response 4.12, *Affordable Housing*. See also Consolidated Response 4.1, *Project Description*, which includes a discussion of alleged piecemealing and negotiations related to the Project.

O-62-11 This comment is predicated on assertions presented in subsequent comments in this submittal; see Responses to Comments O-62-12 through O-62-21. See Draft EIR Section 7.3.1, *Growth Inducement*, which appropriately describes potential growth associated with the Project and concludes that the growth would fall within the planned growth for Oakland. See also Responses to Comments O-51-14 and O-29-113 regarding growth inducement.

²⁶ DEIR at 3-26, 3-15.

²⁷ See *Washoe Meadows Cmty. v. Dep't of Parks & Recreation*, 17 Cal. App. 5th 277, 287-89 (2017).

²⁸ *South of Market Community Action Network v. City & County of San Francisco*, (2019) 33 Cal. App. 5th 321, 332-33 (2019).

²⁹ DEIR at 7-8 to -9.

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O-62-12

First, the DEIR wrongfully concludes that “adding up to 3,000 new market rate and affordable residential units would increase the residential population on the site by” a mere 6,000 persons.³⁰ This necessarily assumes that each unit would only result in two new people in Oakland while providing no basis for this conclusion and ignoring existing household sizes and trends in Oakland, where households sizes are closer to three people on average.³¹

Next, the DEIR arbitrarily ignores historical growth rates, instead focusing only on future projections. As the DEIR acknowledges, the City’s population experienced “an average annual increase of approximately 1.2 percent from 2010 to 2018.”³² The Project anticipates a population growth of 6,000 new residents, which would amount to a 1.4% increase in residential population from a single project.³³ This single project will surpass annual residential population growth patterns by more than 100% when compared to the growth patterns that the City has actually experienced.

The DEIR erroneously focuses on growth projections that are expected for 2040 while ignoring that the proposed project is expected to reach full build out nearly a decade before the 2040. This is a massive project that will surpass annual growth patterns and will result in an increased need for public facilities, infrastructure, or housing that will result in an environmental impact.

Given population, housing, and employment growth of this magnitude, the DEIR’s conclusions that the project would not result in substantial induced population growth or a significant increase in housing demand are implausible, lack substantial evidence, and are clearly legally flawed. This incomplete housing analysis renders inadequate the DEIR’s analysis of growth inducing impacts, housing, transportation, air quality, greenhouse gas emissions, and other environmental impacts.

A. The DEIR provides a wholly inadequate analysis of displacement.

The DEIR erroneously concludes that “[i]mplementation 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.”³⁴ The DEIR appears to rely on the assumption that because “displacement is such a widespread phenomenon, it would be speculative to identify a singular causal relationship or contribution of increased land or housing costs attributable to the Project to indirect displacement” and states that because there are currently no residents in the proposed project area, no displacement will occur.³⁵

O-62-13

³⁰ *Id.* at 7-8.
³¹ U.S. Census Bureau, *Oakland City QuickFacts* (2019), <https://www.census.gov/quickfacts/fact/table/oaklandcitycalifornia/HSD310219> (2.58 persons per household).
³² DEIR at 4.12-2.
³³ DEIR at 4.12-2 (2018 population of 428, 827).
³⁴ *Id.* at 4.12-18.
³⁵ *Id.*

O-62-12 As indicated on Draft EIR pp. 4.12-12 and 4.12-13, the ratio of persons per housing unit used for the Project (2.0) relies on project- and location-specific factors, as well as the Metropolitan Transportation Commission's Priority Development Area (PDA)–level projections in Plan Bay Area 2040. The projections used in Plan Bay Area 2040 for the Oakland Downtown & Jack London Square PDA estimate that 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) 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 citywide or Bay Area–wide estimates (based on data from the California Department of Finance) presented in Draft EIR Table 4.12-1.

Regarding the statement that the EIR “erroneously focuses on growth projections for 2040” and that the Project will surpass annual growth patterns, City and regional plans use horizon years as targets that reflect community values, and to help ensure that growth over time occurs in an orderly fashion. There is neither an expectation nor a requirement that increases in residential or employment growth be uniform across each plan year or throughout the planning area, nor would that be the norm. Implementing the Project at the proposed location does not mean that there would be an equivalent increase in the amount of housing and employment projected to occur by 2040. Rather, the Project would essentially concentrate, spatially and temporally, a portion of the projected growth within the Project area and within the period of buildout for the Project.

As indicated on Draft EIR p. 4.12-18, although buildout of the Project would result in increased employment, this growth would be consistent with the City’s and regional plans for growth and thus would not constitute substantial unplanned growth. Employment growth in the area would be served by planned streets and infrastructure, the impacts of which are analyzed throughout the Project’s Draft EIR.

O-62-13 The Draft EIR's analysis of displacement is based on the discussion presented in Impact POP-4 on pp. 4.12-18 and 4.12-19 and other information in the administrative record. The statement that the Draft EIR’s analysis of the

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potential for the Project to displace substantial numbers of existing people or housing units is inadequate is based on assertions presented in Comment O-62-14. See Response to Comment O-62-14 and Consolidated Response 4.13, *Gentrification and Indirect Housing Displacement*.

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CEQA requires analysis of direct and indirect impacts, including impacts resulting from social and economic consequences of the project.³⁶ As discussed above, the DEIR is legally inadequate because the housing plan, and specifically the affordable housing plan, is entirely omitted from the project description and is not part of the environmental impact analysis. The DEIR provides no basis for its failure to adequately account for displacement that may occur as a result of new housing that will be built within the project location and housing that will need to be built outside of the project location in order to meet the new demand created by this project. For these reasons, any analyses of displacement, population growth, impacts on public facilities, and air quality are also legally insufficient. This massive project will surpass annual growth patterns and will result in an increased need for public facilities, infrastructure, and housing that will result in an environmental impact.

In fact, displacement in the surrounding neighborhood is likely to occur; however, we do not know what neighborhoods in Oakland or elsewhere in the region will experience an environmental impact because the DEIR has omitted this portion of the project description all together and therefore also omitted any analysis of its impacts. This displacement will have environmental impacts and significant social and economic effects, but these impacts are completely absent from the DEIR's analysis. The DEIR must therefore evaluate the physical, environmental, and health consequences associated with economic displacement. For example, among other steps, the DEIR should model displacement and identify likely trends in displacement, including areas likely to face pressure, number of households affected, the communities expected to absorb these households, and the location and quantity of resulting demand for additional housing construction.

Moreover, to analyze the environmental impacts only on the project area, as the DEIR does here, is unlawful, inconsistent, and illogical. CEQA requires that "[t]he EIR shall ... analyze any significant environmental effects the project might cause by bringing development and people into the area affected"³⁷ Specifically, an EIR must "[d]iscuss the ways in which the proposed project could foster economic or population growth, or the construction of additional housing, either directly or indirectly, in the surrounding environment."³⁸

The DEIR states that "the Project would include infrastructure improvements necessary to serve the Project site, and would not extend services to other adjacent areas that could be redeveloped."³⁹ It then goes on to conclude that:

Project-related growth would be adequately served by existing utility and public services providers and would require no additional

³⁶ 14 Cal. Code Regs. §§ 15064(e), 15131(b); see *Preserve Poway v. City of Poway*, 245 Cal. App. 4th 560, 575 n.7 (2016); *El Dorado Union High Sch. Dist. v. City of Placerville*, 144 Cal. App. 3d 123, 132 (1983) (holding that social effects of increased student enrollment and potential for overcrowding could lead to construction of new facilities and were thus relevant under CEQA); see also *Bakersfield Citizens for Local Control v. City of Bakersfield*, 124 Cal. App. 4th 1184, 1215 (2004) (holding that the EIR improperly dismissed possibility that large shopping center could drive other retailers out of business as an economic effect when urban decay and other blight-like conditions could result).

³⁷ Cal. Code Regs. tit. 14, § 15126.2(a) (emphasis added).

³⁸ *Id.* § 15126.2(d).

³⁹ DEIR at 7-8.

O-62-14 See Consolidated Response 4.12, *Affordable Housing*, and Consolidated Response 4.13, *Gentrification and Indirect Housing Displacement*. The Draft EIR appropriately analyzes population growth in Section 4.12 and the demand for public services in Section 4.13. These analyses consider the Project's proposal to construct 3,000 units on the Project site and do not speculate regarding the amount or location of affordable housing that may be constructed off-site because such sites have not been identified. Any off-site housing would be subject to separate environmental review and entitlement when the site(s) are identified, and the resulting population increase would be consistent with regional projections used in the Draft EIR's analysis of cumulative impacts.

O-62-15 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.

The analysis of the Project's potential to displace a substantial number of people or housing units was prepared consistent with CEQA. See Consolidated Response 4.12, *Affordable Housing*, and Consolidated Response 4.13, *Gentrification and Indirect Housing Displacement*, for further information.

Regarding the off-site affordable housing units, as indicated on Draft EIR p. 3-26, the Project "may include on-site or off-site affordable housing units and/or the payment of impact fees. Should the Project satisfy its affordable housing component via off-site development at as-yet unidentified sites, that development would require separate environmental review and entitlement; these units 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, to the extent that such impacts can be known at this time without engaging in speculation (e.g., as to the specific location where the affordable housing would be developed). Please see Consolidated Response 4.12, *Affordable Housing*, for revisions to the text on p. 3-26 of the Draft EIR cited above.

The comment correctly cites text in the Draft EIR regarding the location of employees associated with the Project; however, see the discussion of the job/housing relationship on Draft EIR p. 4.12-22, which expands on this issue

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and describes the Draft EIR's approach to addressing uncertainties regarding this issue: "the regional transportation model used in Section 4.15, *Transportation and Circulation*, of this Draft EIR uses projections with inherent assumptions regarding the amount and location of jobs and housing as well as the types of jobs and housing and the travel that occurs between them."

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public facilities that would have significant environmental effects. In summary, 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.⁴⁰

O-62-15

The DEIR makes this conclusion even after recognizing that affordable housing may be built elsewhere in the City. This conclusion ignores CEQA guidelines, caselaw, and makes a mockery of CEQA legal requirements. Even after recognizing the magnitude of a new work force, the DEIR concludes that "most employees would already have housing in Oakland or elsewhere in the region, and some would be new residents and seek housing either on the Project site (which would provide up to 3,000 new units), or elsewhere in Oakland or the region."⁴¹

O-62-16

Due to the specific vulnerability of surrounding low-income tenants, a foreseeable impact of the project is that market pressures will lead to displacement and an ongoing shortage of homes affordable to low-income households in the adjacent communities. By ignoring displacement, the DEIR omits an important analysis of environmental impacts.

III. The DEIR erroneously assumes that the project's induced economic growth is "well within the planned growth for Oakland."

O-62-17

The DEIR wholly fails to consider the indirect and induced economic growth that will result from the project, which means that the full growth impact of the Project on the surrounding neighborhood is far higher than what the DEIR currently states. The DEIR also omits any analysis of the displacement impacts that the project is likely to cause as demand from highly paid executive employees drives up housing costs in the neighboring China Town and Old Oakland neighborhood, thereby forcing low-income residents to move far away and increase their auto usage and relating environmental impacts.

A. The DEIR fails to accurately analyze the number and type of jobs that will result from the Project, and therefore fails to assess and mitigate the environmental impacts associated with this development.

O-62-18

Properly assessing the employment growth that will result from the project is a bedrock issue on which numerous other aspects of the DEIR rests, including an assessment of growth inducing impacts, traffic, air quality, and greenhouse gas emissions. The DEIR fails to account for indirect and induced economic growth; fails to justify the assumptions underlying its job creation estimates; and fails to accurately analyze the types of jobs that will be created. For these reasons, the DEIR must be revised and recirculated.

The DEIR dramatically under-states the economic growth that will result from the project by completely failing to consider the indirect and induced job growth that it will cause. The DEIR ignores how economic growth dynamics work: the ballpark, event center, and hotel will need to make purchases from food wholesalers, and purchase a variety of supplies, and will expand the need for transportation services for its growing workforce, event goers, and full-time employees all generating additional employment. The DEIR omits any analysis of indirect and

⁴⁰ *Id.*

⁴¹ *Id.*

O-62-16 See Consolidated Response 4.13, *Gentrification and Indirect Housing Displacement*.

O-62-17 See Consolidated Response 4.13, *Gentrification and Indirect Housing Displacement*, and Response to Comments O-29-113, O-51-14, and O-41-6 regarding growth inducement.

O-62-18 This comment faults the EIR for not adequately considering "indirect and induced" job growth associated with the Project. The Draft EIR analyzes reasonably foreseeable direct and indirect impacts attributable to the Project and analyzes (in Chapter 7) whether implementing the Project would induce growth pursuant to 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 that must be analyzed under CEQA.

The focus of the growth inducement evaluation presented in the Draft EIR is on whether the Project could induce unplanned growth, which in turn could generate adverse effects on the physical environment that have not been evaluated and disclosed. As indicated in Sections 4.12 and 7.3 and elsewhere throughout the Draft EIR, the employment and housing estimates associated with the Project are consistent with planned growth in regional planning and the City's General Plan. Any indirect or induced employment growth that may occur would also be consistent with planned growth because the regional plan prepared by the Metropolitan Transportation Commission incorporates projections of employment based on macroeconomic trends and land availability. The physical environmental impacts of these projections, including through buildout of priority development areas throughout the Bay Area, was evaluated in the Plan Bay Area 2040 EIR (adopted in July 2017). The City's approach to evaluating cumulative impacts on the physical environment (summarized in Draft EIR Section 4.0) also takes into account projected (or planned) development, and thus captures the potential impacts of any indirect or induced employment that may result. See Draft EIR pp. 4.15-158 through 4.15-177 for an extensive discussion of the methods used to characterize travel demand, vehicle trip generation, and vehicle miles traveled associated with the Project.

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induced jobs, and with these omissions the DEIR itself concludes that the Project will result in significant and unavoidable emissions that cannot be reduced to a less than significant level.⁴²

The DEIR estimates full project buildout employment at 9,499, with 7,987 of those representing new jobs.⁴³ The DEIR then relies on job increase projections for 2040 and concludes that “[t]he estimated increase in full-time employment (i.e., not construction workers) under the Project would constitute approximately 18 percent of this increase in jobs, well within the planned growth for Oakland.⁴⁴” The total number of jobs in Oakland is projected to increase from 220,792 in 2018 to 272,760 by 2040, or 51,968 more than in 2018.⁴⁵ There is no dispute that no existing local or regional plan considered the environmental impacts of adding more than 7,987 new jobs to Oakland by 2029, when the Project is estimated to reach full buildout.⁴⁶ The growth analysis is legally inadequate and does not comply with CEQA standards because this figure omits indirect job growth and relies on growth projections that did not anticipate such a massive project in Oakland. As such the DEIR’s conclusion that this growth is “well within planned growth for Oakland” is implausible, lacks substantial evidence, and is clearly legally flawed.

O-62-19

The DEIR further fails to explain the underlying assumptions of its employment analysis. For example, the DEIR appears to rely upon the Coliseum Draft EIR for its assumptions of the average number of jobs that would be provided by each tenant, but the DEIR fails to explain why those assumptions were reasonable, or explain why the DEIR relies upon the *draft* Coliseum EIR, rather than the final, certified EIR.⁴⁷ The DEIR also fails to analyze whether these jobs already existed in Oakland, or the likelihood that job estimates for the office and retail spaces could fall below full capacity (instead, it bases its analysis on the assumption of full capacity).⁴⁸ The DEIR also omits any analysis on what portion of the economic growth at the Howard Terminal site might represent the relocation of pre-existing economic activity. The DEIR does not analyze whether it is likely that new businesses would be created in response to the construction of additional office space, or if the availability of new retail space would incentivize the expansion of existing retail businesses. Without further explanation, the Project’s true impact on job creation is unknown.

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Finally, the DEIR does not distinguish the wage levels or skill levels of the jobs associated with the Project. These distinctions are essential because the type of job created will impact determine the level of environmental impact associated with each job. For example, lower-income households tend have lower daily vehicle miles traveled (VMT) than higher

O-62-19 As indicated throughout the Draft EIR, the projected growth in housing and employment attributable to the Project is consistent with regional and City planning. The concern expressed in the comment regarding the year of Project buildout is addressed in Response to Comment O-62-12. Regarding the statement that the analysis of growth inducement is inadequate because it omits indirect job growth, see Response to Comment O-62-18. Assumptions regarding employment associated with the Project are presented in Draft EIR Table 4.12-8 (p. 4.12-17).

Regarding the statement about the Draft EIR’s reliance on the Coliseum Draft EIR for the average number of jobs that would be provided by each tenant, the Coliseum Draft EIR was one of three sources for employment estimates presented in the table, and the data in the table were directly informed by data on existing employment at the Coliseum. The Project’s Draft EIR utilized the best information available at the time of publication; changes to the Coliseum EIR when it was finalized were minor and would not materially affect the analysis or conclusions regarding the Project’s population and housing effects. Contrary to assertions made in the comment, the Draft EIR indicates which jobs associated with the Project already exist (see the columns characterizing existing and new full time employees in Table 4.12-8) and thus which jobs would essentially relocate from the Coliseum, and new employment positions associated with office uses (see the row for “Office” employment presented in Table 4.12-8).

O-62-20 The Draft EIR includes employment information salient to the evaluation of environmental impacts (e.g., transportation, air quality), including information on construction-phase employment (see Draft EIR Section 3.13.3, p. 3-58) and post-construction employment (see Draft EIR Section 3.6.4, p. 3-35). Tables 3-2 and 3-3 (Draft EIR p. 3-36) present breakdowns of post-construction employment by event type and team operations. Table 4.12-8 (Draft EIR p. 4.12-17) and associated text present a comprehensive breakdown of post-construction employment associated with the Project, distinguishing full-time equivalent employment, employment by Project component (e.g., as staff, office, retail), and net new employment. Information on the wage levels and skill levels of proposed employment is of interest to the City, but it is not a necessary or meaningful distinction to adequately analyze foreseeable transportation and air quality impacts for the purposes of environmental analysis under CEQA.

⁴² DEIR at 4.2-70.

⁴³ DEIR at 4.12-17.

⁴⁴ DEIR at 7-8.

⁴⁵ DEIR at 4.12-5 (Table 4.12-3).

⁴⁶ DEIR at 3-32 n.11.

⁴⁷ DEIR at 4.12-17 (citing “Rates from City of Oakland, 2014b [Coliseum Draft EIR, SCH# 2013042066, August 2014]” as a source for the jobs estimates in Table 4.12-8).

⁴⁸ DEIR at 4.12-16.

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O-62-21 This comment is predicated on assertions made in other comments in this submittal. See Responses to Comments O-62-11 through O-62-20. Regarding the assertion that the Project will result in economic growth that has not been accounted for, see Responses to Comments O-62-12, O-62-15, and O-62-18.

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income households, resulting in fewer GHG and air emissions.⁴⁹ This information is also essential for determining the jobs-housing fit, as discussed below. If the Project generates significant low-wage employment in excess of affordable housing availability, workers may endure longer commutes from more affordable areas, thereby increasing air emissions associated with commutes. The DEIR must be revised and recirculated to specify the types of jobs that will be created and to analyze and mitigate the impacts of these different types of jobs.

B. The DEIR's conclusion that project-induced housing demand in Oakland would be less than significant is without substantial evidence and contrary to law.

Because the project will result in significant economic growth and opportunities that have not been previously accounted for in any plans or growth projections, it will necessarily drive housing demand and induce growth that has not been accounted for and that will necessitate the construction of additional housing to accommodate.

While this comment discusses many flaws in the DEIR's treatment of growth-inducing impacts and increased housing demand, we note at the outset that there is a fundamental structural flaw that pervades the DEIR's entire analysis of these issues. After dramatically understating the economic growth that will be created by the project indirectly and the number of housing units that will be needed to accommodate these workers, the DEIR further attempts to minimize the impacts of this housing demand by assuming that it will be distributed throughout an unknown geographic area.

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It does so by assuming that "[m]ost employees would already have housing in Oakland or elsewhere in the region, and some would be new residents and seek housing either on the project site or elsewhere in Oakland."⁵⁰ This assumption is completely at odds with standard methodology for impact fee nexus studies, where the creation of new jobs is expected to directly or indirectly bring new workers to the city, including low wage workers who qualify for affordable housing.⁵¹ This assumption masks the true extent of the impacts that will be created by adding an unplanned increase of many thousands of workers to Oakland's work force. The assumption that any housing demand could be accommodated within existing and planned housing rests on multiple assumptions that are not supported by substantial evidence.

First, it is based on an inaccurate estimate of jobs creation that is unsupported by substantial evidence, as described above. Second, planning to export the Project's induced housing need to many other cities and counties does not eliminate those impacts. The relevant required CEQA analysis is of the significance of the aggregate induced growth a project will

⁴⁹ Transform, *Why Creating and Preserving Affordable Homes Near Transit is a Highly Effective Climate Protection Strategy* (May 2014) at 9, <https://www.transformca.org/sites/default/files/CHPC%20TF%20Affordable%20TOD%20Climate%20Strategy%20BOOKLET%20FORMAT.pdf>.

⁵⁰ DEIR at 7-8.

⁵¹ See Vernazza Wolfe Assocs. & Hausrath Economics Grp., *Oakland Affordable Housing Impact Fee Nexus Analysis: Prepared for City of Oakland* (Mar. 10, 2016) at 14-21, <https://cao-94612.s3.amazonaws.com/documents/Oakland-Affordable-Housing-Impact-Fee-Nexus-Analysis.pdf>; David Paul Rosen & Assocs., *Commercial Development Linkage Fee Analysis, City of Oakland* (Sep. 13, 2001), <https://cao-94612.s3.amazonaws.com/documents/Commercial-Development-Nexus-Fee-Analysis-for-the-Jobs-Housing-Impact-Fee.pdf>.

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generate, not of a number of artificially divided smaller portions of that growth. Total impact may still be significant even if distributed across a large geography. Third, the DEIR's analysis also ignores the fact that that projected housing growth is already fully subscribed based on the DEIR's job creation projections.

The DEIR must be revised and recirculated to accurately describe the impacts of the Project's induced growth, including an analysis of the additional housing units that would need to be constructed to accommodate employment growth, the proportion of units required by affordability level, and the potential locations of those housing units.⁵²

IV. The DEIR fails to discuss planned development at the Coliseum site, which is presumed as part of this Project's approval.

The entirety of a project must be reviewed in a single EIR. CEQA requires that "environmental considerations do not become submerged by chopping a large project into many little ones—each with minimal potential impact on the environment—which cumulatively may have disastrous consequences."⁵³ An agency cannot split a project into smaller pieces or segments to avoid a complete environmental analysis.⁵⁴

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Courts have considered distinct activities as one CEQA project and required the activities to be reviewed together in one document in two situations: (1) when the purpose of the project under review is to provide the necessary first step toward a larger development,⁵⁵ and (2) when development of the project under review requires or presumes completion of another activity.⁵⁶ Here, moving the A's from the Coliseum site to the ballpark proposed at Howard Terminal is a necessary first step to realize the Coliseum redevelopment plan. At the same time, the Howard Terminal project presumes completion of the Coliseum redevelopment, as construction at Howard Terminal will rely upon proceeds from the redevelopment of the Coliseum complex.

A. The Howard Terminal Project is the first step to make the Coliseum redevelopment possible.

The DEIR must analyze impacts at the Coliseum site because approval of the Howard Terminal project is a necessary first step to begin development at the Coliseum. In *Laurel*

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⁵² *Napa Citizens for Honest Gov't v. Napa Cty. Board of Supervisors*, 91 Cal. App. 4th 342, 370-71 (2001) (EIR's growth inducement analysis was legally sufficient when it included the number of employees the project would add, the number of new housing units required by income, and explored possible locations of units).

⁵³ *Bozung v. Local Agency Formation Comm.*, 13 Cal. 3d 263, 283-284 (1975).

⁵⁴ *Berkeley Keep Jets Over the Bay v. Board of Port Comm'rs*, 91 Cal. App. 4th 1344, 1358 (2001).

⁵⁵ See, e.g., *Laurel Heights Improvement Ass'n v. Regents of Univ. of Cal.*, 47 Cal. 3d 376, 397-98 (1988) (EIR for university's development of part of a facility should have included university's plans to use the remainder of the facility, even when university's plans were not definite); *Bozung v. Local Agency Formation Comm'n*, 13 Cal. 3d 263, 283-84 (1975) (city's annexation of land must be considered together with the development it would facilitate); *City of Carmel-by-the-Sea v. Board of Supervisors*, 183 Cal. App. 3d 229, 244 (1986) (where a county rezoned land as "a necessary first step to approval of a specific development project").

⁵⁶ *Nelson v. Cty. of Kern* 190 Cal. App. 4th 252, 272 (1990) (EIR for reclamation plan should have included mining operations that compelled it).

O-62-22 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 redevelopment of the Oakland Coliseum, see Consolidated Response 4.1, *Project Description*, for a discussion of the relationship between the proposed Project and redevelopment of the Coliseum, and an explanation of how Coliseum development is included in the cumulative impact analysis.

O-62-23 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.

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O-62-24 The comment is not correct that the Project presumes the redevelopment of the Coliseum project. The Draft EIR focuses on the impacts of development at the Howard Terminal site because that is what is proposed by the Project sponsor, and such development would be independent of changes at the Coliseum as discussed on Draft EIR pp. 1-2 and 4.0-11 – 4.0-12. The City’s Coliseum Area Specific Plan (CASP) sets forth a development framework for the Coliseum site and the CASP EIR analyzes potential impacts of the area’s redevelopment, using a variety of scenarios. This is a separate project and the Draft EIR does not need to be revised to update the CASP EIR. See Consolidated Response 4.1, *Project Description*, for a discussion of the relationship between the proposed Project and redevelopment of the Coliseum, and an explanation of how Coliseum development is included in the cumulative impact analysis.

The comment raises an economic issue, not an environmental issue that is subject to CEQA, and, thus, no response is required. 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.

Heights Improvement Association v. Regents of University of California, a university relocated its pharmacy school to a building which was 354,000 square feet in size, but only 100,000 square feet was available to the university since one-half of the building was occupied by the California Department of Transportation pursuant to a lease with the University which expired in 1990 with an option to extend until 1995.⁵⁷ The EIR analyzed the school’s relocation into the 100,000 square feet of a building, but did not consider the additional environmental effects that would result from the university’s use of the remaining 254,000 square feet when it became available in 1990.⁵⁸ The draft EIR stated that the University would occupy the entire facility when the remainder of the space became available, so the future expansion and general type of future use was reasonably foreseeable.⁵⁹

Similarly, here, the A’s have stated their intention to significantly redevelop the Coliseum area into a mixed-use facility once the site becomes available.⁶⁰ Right now, their primary impediment to that redevelopment is the fact that the A’s still occupy the Coliseum baseball stadium. So, moving the A’s into a new stadium at Howard Terminal is a necessary first step to enable the planned Coliseum site redevelopment. In that sense, the public should view the Howard Terminal and the Coliseum development as one single interconnected project. To adequately serve as a public informational document, this DEIR should be revised to describe the planned construction at the Coliseum site, and should include a thorough analysis of the associated impacts and mitigation measures.

B. The Howard Terminal project presumes completion of the Coliseum project through reliance on funds from the Coliseum redevelopment to finance the Howard Terminal Project.

Coliseum redevelopment is necessary in order for the A’s to make the development at Howard Terminal a reality: the A’s have stated that they are relying on revenue from a redeveloped Coliseum site to finance the Howard Terminal project.⁶¹ The DEIR’s phasing plan indicates that the project calls for building the ballpark first, as quickly as possible as part of Phase I so that the A’s can move into it as their new ballpark.⁶² Then, while the DEIR models an 8-year total construction timeline, it repeatedly states that construction is likely to take longer or occur in more than two phases, as timing and feasibility rely on a variety of unpredictable market

⁵⁷ *Laurel Heights*, 47 Cal. 3d at 393.

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ Kevin Truong, *Alameda County Approves Coliseum Sale to the A’s*, S.F. Business Times, Dec. 23, 2019, <https://www.bizjournals.com/sanfrancisco/news/2019/12/23/alameda-county-approves-coliseum-sale-to-the-as.html> (“The A’s are seeking to redevelop the Coliseum site into a mixed-use project that could include a tech campus, housing, a hotel, and retail”); Kevin Reichard, *Stewart Makes Bid for City Share of Oakland Coliseum Site*, Ballpark Digest, Jan. 17, 2021, <https://ballparkdigest.com/2021/01/17/stewart-makes-bid-for-city-share-of-oakland-coliseum-site/> (“once [the Howard Terminal] ballpark is done, redevelopment would begin at the East Bay Coliseum site, with the ballpark torn down and the area utilized as a mixed-use redevelopment.”)

⁶¹ Reichard, *supra* note 60 (“According to the A’s, both the downtown and Coliseum should be viewed in the same economic lens: proceeds of the Coliseum development will help fund the downtown development.”).

⁶² DEIR at 3-32.

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factors.⁶³ This is consistent with the notion that the Howard Terminal project plans an initial phase to relocate the A's to make way for Coliseum redevelopment, but also relies on Coliseum revenue to complete later phases of construction.

As such, approval of the Howard Terminal project presumes redevelopment of the Coliseum area. Because the City's approval of the Howard Terminal project assumes parallel redevelopment at the Coliseum, that parallel development should be described and analyzed along with the Howard Terminal impacts in this EIR. The Howard Terminal and the Coliseum developments are in essence two components of a single major mixed-use redevelopment plan. Each component relies on approval of the other to be possible. By omitting a description and analysis of Coliseum development, this DEIR improperly piecemeals and segments its analysis. This EIR is deficient until it is revised to describe proposed mixed-use redevelopment at the Coliseum and analyze the impacts of this proposed development under CEQA.

The prior CEQA review conducted for the Coliseum Area Specific Plan ("CASP") does not excuse the City from analyzing the impacts of this Project at the Coliseum site. The CASP EIR was adopted in April of 2015.⁶⁴ Among other things, the CASP EIR envisions three development scenarios depending on the decisions of Oakland's three professional sports franchises on whether to relocate elsewhere—notably, the CASP EIR only briefly considered a

⁶³ DEIR at 3-16 ("The proposed phasing for development of the Project is considered conservative from an impact perspective because it assumes development of non-ballpark uses within a relatively short period of time. *Actual build-out of non-ballpark uses would be influenced by market and financing considerations, and is likely to occur over a longer period of time than envisioned*") (emphasis added); DEIR at 3-55 ("For purposes of this Draft EIR, phasing of the balance of the Project site (Buildout) has conservatively been estimated to occur immediately following completion of Phase 1, with completion in four years. Site preparation (grading, utilities, remediation) would occur for nearly nine months, followed by three years of vertical construction. *However, the timing of construction of the remaining site development would be dependent on market conditions, and is likely to take longer than four years total.*") (emphasis added); DEIR at 3-32 (DEIR models build-out in the eighth year after construction begins, but states that "During and after Phase 1, the pace of building out the remainder of the site (Buildout) would be dependent on market demand, absorption, financial feasibility, and construction practicalities. Construction of Buildout could overlap with occupancy and use of Phase 1 buildings, and construction of multiple development parcels/blocks could occur concurrently. The analysis in this Draft EIR conservatively captures this possibility by modeling Buildout in the eighth year after construction begins (referred to as "Year 8").") (emphasis added); DEIR at 3-54 ("The analysis in this Draft EIR conservatively assumes that construction activities *would occur over seven years total*. The analysis also assumes the proposed Project would be developed in two phases, *though actually two or more phases or sub-phases could occur.*") (emphasis added); DEIR at 3-55 ("Phase 1 construction activity for the ballpark and the Phase 1 mixed-use development and hotel(s) would occur within four calendar years. Construction of the ballpark would overlap with concurrent construction of Phase 1 mixed-use development for approximately 24 months of the total duration. *However, as noted above, the construction of Phase 1 may take longer.*") (emphasis added).

⁶⁴ City of Oakland, *Coliseum Area Specific Plan*, Apr. 2015, <http://www2.oaklandnet.com/oakcaj/groups/ceda/documents/report/oak053757.pdf>.

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scenario where all three teams left the Coliseum area.⁶⁵ It assumes that each of these franchises will make “independent business decisions regarding whether to remain within the Plan Area.”⁶⁶ All three of these development scenarios include retaining the existing arena.⁶⁷ The CASP EIR states unequivocally that this “achievement of a regional Sports-Entertainment-Retail destination is critical to accomplishing the Specific Plan’s vision.”⁶⁸ Much of the analysis within the EIR revolves around Sub-Area A and the development of this sports-entertainment-retail destination at the current Coliseum location.⁶⁹ A lot has changed over the last six years, as the Coliseum site will now have zero professional sports teams. Therefore, the CASP EIR does not eliminate the need for new analysis of the development and new analysis is needed to reflect the changed circumstances.

V. The DEIR’s greenhouse gas analysis is fundamentally flawed, fails to adequately mitigate the project’s significant greenhouse gas impacts, and fails to consider reasonably available mitigation measures that may reduce the impacts to less than significant.

Greenhouse gas (“GHG”) emissions, such as CO₂, N₂O and methane,⁷⁰ contribute to global climate change and are considered pollutants under California and federal law.⁷¹ GHG emissions are an inherently cumulative impact problem, with significant impacts found where GHG emissions from a given project have a “cumulatively considerable” contribution to global climate change.⁷² This analysis may be done in accordance with statewide and local plans,⁷³ or it may deviate from such plans so long as there is substantial discussion explaining why the lead agency chose to deviate.⁷⁴

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Furthermore, AB 734, which was signed by the Governor in September of 2018, requires the A’s to demonstrate that the Project will not result in any net additional emissions of greenhouse gases.⁷⁵ In particular, “to maximize public health, environmental, and employment benefits,” the A’s shall

reduce the emissions of greenhouse gases *in the project area and in the neighboring communities of the baseball park.*

⁶⁵ *Id.* at 48-50; Coliseum Area Specific Plan Draft EIR, SCH# 2013014066 (Aug. 2014) at 5-17 (identifying a “no new sports venues” scenario as “sub-alternative” 2E); <http://www2.oaklandnet.com/oakcal/groups/ceda/documents/report/oak048830.pdf>.

⁶⁶ *Coliseum Area Specific Plan*, *supra* note 64, at 50.

⁶⁷ *Id.* at 48-50.

⁶⁸ *Id.* at 44.

⁶⁹ *See generally id.*

⁷⁰ CEQA Guidelines § 15364.5 (defining Greenhouse Gas).

⁷¹ Cal. Health & Safety Code § 43018.5 et seq; *Massachusetts v. EPA*, 549 U.S. 497 (2007) (finding GHG’s to be a pollutant under the Clean Air Act).

⁷² CEQA Guidelines §§ 15130(a), 15064.4.

⁷³ *See Ass’n of Irrigated Residents v. State Air Res. Bd.*, 206 Cal. App. 4th 1487 (2012) (upholding the adoption of CARB’s scoping plan in an EIR).

⁷⁴ *See, e.g., Cleveland Nat’l Forest Found. v. San Diego Ass’n of Governments*, 3 Cal. 5th 497, 515-16 (2017).

⁷⁵ Cal. Pub. Res. Code § 21168.6.7(3)(A)(ii).

O-62-25 The commenter’s general comments about greenhouse gas (GHG) emissions, the cumulative impact of climate change, and CEQA analyses done in accordance with statewide or local plans are noted. The Draft EIR evaluates the Project’s GHG emissions impacts consistent with these statements. The commenter’s statements regarding AB 734’s requirements are noted. See Response to Comment O-57-4 regarding the AB 734 certification process.

However, contrary to the commenter’s claim, the Draft EIR evaluates the Project’s GHG emissions consistent with CEQA requirements. The requirements of AB 734 related to GHG reductions, such as the local direct reduction requirements, are noted in the Draft EIR section. See Responses to Comments O-62-26, O-62-30, O-62-31, O-62-32, O-62-33, O-62-34, O-62-38, and O-62-39 for a discussion of these issues. See also Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*, for a discussion regarding the use of performance measures as a legitimate approach to mitigation measures, and not an improper “deferral.”

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O-62-26 The commenter’s citations are accurate, as presented in Draft EIR Table 4.7-7 (p. 4.7-55). No additional discussion is warranted.

O-62-27 See Consolidated Response 4.5, *Truck Relocation*.

Not less than 50 percent of the greenhouse gas emissions reductions necessary to achieve the requirements of this clause, excluding the greenhouse gas emissions from residential uses of the project, shall be from *local, direct greenhouse gas emissions reduction measures* that give consideration to *criteria air pollutant and toxic air contaminant emissions reductions*.⁷⁶

O-62-25

In other words, to ensure no net increase in GHG emissions from the proposed Project, the A’s must commit to at least 50% emission reduction from local, direct GHG reduction measures and may offset up to 50% of GHG emissions by other non-local measures.⁷⁷ The DEIR comments that this “no net additional threshold is an appropriate CEQA significance threshold for this Project given this special State legislation and the unique major league ballpark Project use.”⁷⁸

However, the DEIR fails to meet the requirements set out in AB 734 and adopted as significance thresholds.⁷⁹ The DEIR significantly underestimates GHG emissions, relies on unrealistic mitigation measures, impermissibly defers the vast majority of GHG mitigation, and fails to provide adequate information to sufficiently analyze and understand the potential impacts. These legal failings require recirculation of the DEIR in order to allow the public to adequately analyze the additional information needed to fix these shortcomings.

A. The DEIR significantly underestimates GHG emissions.

O-62-26

The DEIR calculates that the total emissions of GHGs during construction to be 32,529 metric tons (MT) of carbon dioxide equivalent (CO₂e).⁸⁰ The operational emissions for the full project buildout peak at 58,453 MT CO₂e, totaling 1,420,039 MT CO₂e for the 30-year project lifetime.⁸¹ When subtracting out the A’s related existing conditions emissions, the DEIR estimates the project’s total GHG emissions for the 30-year project lifetime as 1,266,567 MT CO₂e.⁸²

1. The DEIR fails to account for the relocation of existing uses at Howard Terminal.

O-62-27

At Howard Terminal, one would expect an analysis of the GHG emissions from the existing operations, as well as the surrounding activities related to the Port of Oakland that will

⁷⁶ *Id.* (emphasis added).

⁷⁷ And in purchasing such offset credits within *only* the United States, “place the highest priority on the purchase of offset credits that produce emission reductions within the City of Oakland or the boundaries of the Bay Area Air Quality Management District.” *Id.*

⁷⁸ DEIR at 4.7-37.

⁷⁹ Nor does the Governor’s certification of the Project for streamlining under AB 734 excuse the DEIR from a full and complete analysis of impacts. *Mission Bay Alliance v. Office of Cmty. Investment & Infrastructure*, 6 Cal. App. 5th 160, 198 n.26 (2016) (“[T]he Governor’s [streamlining] certification serves a distinct purpose and is not a substitute for a CEQA determination on the significance of greenhouse gas emissions.”).

⁸⁰ DEIR at 4.7-55.

⁸¹ *Id.*

⁸² *Id.*

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O-62-28 See Consolidated Response 4.5, *Truck Relocation*.

O-62-29 See Consolidated Response 4.5, *Truck Relocation*.

With respect to the comment on the A’s application under AB 734, see Response to Comment O-57-4 regarding the AB 734 certification process.

See also Consolidated Response 4.1, *Project Description*.

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be altered and potentially displaced by the Project. However, the DEIR assumes that the existing tenants and users will “move to other locations” either in the Seaport, the City of Oakland, or somewhere in the Bay Area.⁸³ The DEIR claims that the trucks currently making trips at Howard Terminal will be making “the same number of trips” from their new locations into the Seaport.⁸⁴ However, the DEIR declines to calculate whether emissions would decrease or increase because this calculation would be “speculative,”⁸⁵ as if that justifies omitting an analysis. The DEIR did not consider that the displacement of container storage activities, for example, to an even slightly less convenient location would very likely generate an increase in GHG’s from the transportation of shipping containers back and forth by heavy emitting trucks. By locating this high-density development project amidst the complex operations of the Port of Oakland, it is unimaginable that altering the existing activities at the site will have no GHG emissions impact.

The DEIR could have assumed that the relocation of existing activities at Howard Terminal would result in increased GHG emissions. However, it chose to instead omit any analysis or calculations, providing the public with no information regarding how the project might impact these current activities. The public and decision makers simply cannot assess the GHG impacts of the project without further analysis showing whether emissions will increase significantly and where they will be displaced in the region. The DEIR must be revised to include:

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- Analysis of the GHG emissions generated by existing activities on site, vaguely characterized in the DEIR as truck parking, container storage and staging, berthing vessels for maintenance and storage, and long-shore training facilities.⁸⁶
- Evaluation of whether the current parking and staging uses at Howard Terminal are stable or dynamic, and the implications for GHG emissions. This should include an analysis of other projects and developments ongoing at the Port and near-term Port operation plans. This is especially relevant given that the Port activities on site changed significantly as recently as 2014, when the Port stopped using the site as a shipping terminal.⁸⁷
- Spatial analysis of where displaced activities are likely to go, with a minimum specificity of understanding whether traffic will be displaced throughout local neighborhoods.

O-62-29

This basic first step is especially important here, where the existing activities are dynamic and include mobile emissions sources that produce co-pollutants harmful to human health. Displacement into the neighboring West Oakland community would increase the pollution burden for an already disproportionately burdened community, exposed to elevated levels of

⁸³ DEIR at 4.7-41.

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ DEIR at 4.7-10.

⁸⁷ DEIR at 4.10-2.

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O-62-29 particulate matter and ozone generated by ships, trucks and other industrial activities in and around the Port.⁸⁸

Notably, the A's AB734 application stated that the A's and the Port were continuing to gather information to develop a more complete analysis of the existing conditions at Howard Terminal.⁸⁹ Yet over two years of continued supplements and revisions to the GHG analysis, the A's have not supplemented the analysis of the existing activities and environmental setting. Further, in that time, the A's were provided with detailed stakeholder concerns related to how the project may impact Port operations, making the failure to provide adequate analysis particularly concerning.⁹⁰ Without a clear picture of the environmental setting, the public cannot evaluate the extent of impact to the physical environment posed by the Project.

2. The GHG analysis underestimates emissions because it uses an artificially short project lifetime.

Typically, under CEQA, an EIR must analyze foreseeable impacts, stopping where the analysis becomes too speculative.⁹¹ Throughout the DEIR, whether calculating emission factors or comparing with baseline emissions, the DEIR relies upon a thirty-year lifespan for the Project, but fails to provide sufficient information as to why it stops at thirty years. In fact, the Board of Port Commissioners approved a 66-year lease duration for the Project.⁹²

O-62-30 Instead, the Applicant should explain why emissions estimates for year thirty-one onward are too speculative to be included. The Coliseum, for example, was renovated about 30 years after initial construction. Do the A's anticipate major renovation at the thirty-year mark? What about the rest of the development, surrounding the ballpark? At a minimum, the anticipated GHG impacts from years thirty-one to sixty-six should be addressed in general terms to provide a complete analysis in the EIR. The DEIR provides no citation to support the claim that the 30-year project lifetime is consistent with CEQA guidance.

O-62-31 In their AB 734 application, the A's justify the 30-year lifespan with "OPR precedent" that other AB 900 projects have also used 30 years for their analysis.⁹³ AB 900 is a more general

O-62-30 As explained in Response O-47-10, GHGs have long atmospheric lifetimes of 100 years or more and the atmospheric warming impact of GHG emissions produced in one year persists for many years in the future. The long atmospheric lifetime and variation in GHG emissions produced over a project's lifespan necessitated the development and use of a standard approach for analyzing cumulative GHG emissions in CEQA analyses. As such, it is common CEQA practice to use a 30-year timeframe for GHG emissions; 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.³ The 30-year Project lifetime is also consistent with AB 734's requirement for the Project to achieve "no net additional" GHG emissions and is consistent with the CARB Determination for AB 734.

The 30-year lifetime of operation calculation identifies maximum GHG emissions from full buildout at year 9, which is highly conservative because the Project is likely to take longer to reach full buildout (and emission factors decline into the future due to improved vehicle efficiency, cleaner off-road construction equipment, more renewable electricity in the grid, etc.). The Project is required to meet the no net additional standard for all emissions produced by the project starting with the first day of construction and ending a full 30 years from buildout, which includes the maximum annual emissions (see Draft EIR Table 4.7-7).

Furthermore, Executive Order B-55-18 requires the State of California to achieve carbon neutrality by 2045 and maintain "net negative emissions thereafter".⁴ This is only 18 years after full Project buildout (conservatively estimated in the Draft EIR to occur by 2027). Assembly bill 1395, which codifies EO B-55-18 into law, is currently in assembly for consideration in the 2021-2022 legislative session. Carbon neutrality is anticipated to occur well before the Project reaches its 30-year operational mark, which was anticipated in the Draft EIR and the CARB Determination for AB 734 to be 2057.⁵ By 2045, the vast majority of the Project's emissions sources, including electricity use and mobile sources, are likely to be carbon free, as discussed below. CARB's Mobile Source Strategy anticipates that by 2045, 85 percent of passenger cars in the state will be zero-emission vehicles and plug-in hybrid electric vehicles, and 77 percent of the statewide heavy-duty vehicle fleet will

⁸⁸ See BAAQMD, *Owning Our Air: The West Oakland Community Action Plan* (2019) at 7-13, <https://www.baaqmd.gov/-/media/files/ab617-community-health/west-oakland/100219-files/final-plan-vol-1-100219-pdf.pdf?la=en>.

⁸⁹ See Ramboll, *Fourth Supplemental Memo Supporting AB 734 Certification, Oakland Sports and Mixed-Use Project at Howard Terminal* (Jul. 9, 2020) at 110, https://opr.ca.gov/ceqa/docs/ab900/20200710-AB734_Final_Application_Materials.pdf ("calculations provided in the application demonstrate methodology but may be updated with best available and current data at the time of Project implementation.")

⁹⁰ See Port of Oakland, *Draft Memorandum Re: Seaport Compatibility Measures Conference: Summary of Maritime Stakeholder Feedback*, Dec. 19, 2019, https://www.portofoakland.com/wp-content/uploads/StakeholderFeedback_SCM_Conference_19Dec2019-new.pdf.

⁹¹ CEQA Guidelines § 15064(d)(3).

⁹² Board of Port Commissioners Meeting, May 13, 2019.

⁹³ Letter from Mary Murphy, Gibson Dunn to Kate Gordon, Cal. Office of Planning & Research (Nov. 1, 2019) at 3, https://opr.ca.gov/ceqa/docs/ab900/20191105-AB_734_OaklandAthletics_Clarifications_on_Application.pdf; see also *id.* Attachment 3 (Table A: Treatment of Project Lifetimes from AB900 Applications).

³ SCAQMD, 2008. *Interim CEQA GHG Significance Threshold for Stationary Sources, Rules and Plans*, December 5, 2008.

⁴ State of California, 2018. Executive Order B-55-18 To Achieve Carbon Neutrality, September 10, 2018.

⁵ 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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be zero-emission vehicles.⁶ Executive Order N-79-20 established a goal for 100 percent of California sales of new passenger cars and trucks to be zero-emission by 2035, all drayage trucks to be zero-emission by 2035, all off-road equipment to be zero-emission where feasible by 2035, and the remainder of medium- and heavy-duty vehicles to be zero-emission where feasible by 2045.⁷ SB 100 requires all retail electricity sold in California to be carbon-free by 2045.⁸ Additional studies from CARB support a carbon-neutral California by 2045.⁹ Although EO N-79-20 has not been codified, California has a long history of codifying statewide greenhouse gas executive orders into law starting with EO S-3-05 in 2005 becoming law with Assembly Bill 32 in 2006.

This approach is also consistent with CEQA, which, as the commenter accurately notes, does not require speculation. (CEQA Guidelines Sections 15834(a) and 15064(d)(3)). All emissions modeling software tools, including those used for this analysis, become more uncertain the farther into the future they are used for analysis. Modeling emissions even 10–20 years in the future (let alone 30 years) is somewhat speculative because the models do not account for technology improvements, changes in behavior, market and economic conditions, future regulatory actions, new research on emission rates, and other nearly impossible-to-predict factors.

For a specific example, CARB’s EMFAC2017 model, which was used to generate emissions factors for mobile sources (Draft EIR p. 4.7-40 and Appendix AIR.1), only predicts emission rates out to the year 2050.¹⁰ The CalEEMod model has the same limitation and only models emissions out to 2050.¹¹ Thus, modeling emissions beyond the Project’s anticipated 30-year lifetime would be highly speculative and not consistent with CEQA.

O-62-31 With respect to the comment on the A’s application under AB 734, see Response to Comment O-57-4 regarding the AB 734 certification process. AB 900 is a separate statute from AB 734 and is not applicable to the Project. A’s analogy to AB 900 in its CARB application for explanatory purposes does not change this fact. See also Response to Comment O-62-30 regarding the use of a 30-year life span assumption for the GHG emissions analysis.

⁶ CARB, 2021. Revised Draft 2020 Mobile Source Strategy, April 23, 2021.

⁷ State of California, 2020. Executive Order N-79-20, September 23, 2020.

⁸ California Energy Commission, 2021. 2021 SB 100 Joint Agency Report, March 15, 2021.

⁹ E3, 2020. Achieving Carbon Neutrality in California, PATHWAYS Scenarios Developed for the California Air Resources Board, October 2020.

¹⁰ CARB, 2017. EMFAC2017 User’s Guide V1.0.1, December 22, 2017.

¹¹ Breeze Software, 2017. CalEEMod User’s Guide Version 2016.3.2, November 2017.

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O-62-32 See Responses to Comments O29-1-22 through O29-1-28 for a discussion of the link between EV charging infrastructure and EV travel and the emission quantification methods used in the Draft EIR, including for ballpark EV charging. Also refer to *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.¹²

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predecessor statute to the Howard Terminal specific AB 734 streamlining statute. Both statutes allow for streamlined environmental review when a series of requirements are met, importantly including that the project will not result in any net GHG emissions.⁹⁴ However, AB 734 added constraints on how GHG’s could be mitigated, requiring 50% of the GHG reductions to be done locally.⁹⁵ AB 900 projects, in contrast, were approved with simpler mitigation strategies, and allowed to simply purchase offsets. The evaluation that occurred in the AB 734 application streamlining effort is separate from the evaluation required under CEQA. CEQA requires that the agency “must use its best efforts to find out and disclose all that it reasonably can.”⁹⁶ Because this Project involves implementation with multiple phases at varying timescales, a flat 30-year lifespan oversimplifies the analysis, and the DEIR must be revised to expand the project’s lifetime or to adequately justify the current lifetime.

B. The DEIR makes unreasonable assumptions about electric vehicle charging as mitigation.

Under CEQA, mitigation measures must be supported by “substantial evidence.”⁹⁷ CEQA Guideline Section 21082.2 defines substantial evidence as including “facts, reasonable assumptions predicated upon facts, and expert opinion supported by facts.” However, the DEIR makes unjustified and unreasonable assumptions in quantifying the emissions reduced from electric vehicle charging.

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For example, the DEIR assumes that “[f]or land uses or events with high trip generation relative to available chargers (baseball games, hotel retail), the site would be charger limited and all chargers would be used.”⁹⁸ This assumption, however, seems unrealistic. The A’s provide no information regarding why they believe that 200 electric vehicle chargers will be fully used for every single baseball game. There is little discussion of the number of attendees that generally charge their vehicles at the ballpark, and even less discussion regarding the number of attendees that drive electric vehicles. Furthermore, the Air Appendix makes an even more unrealistic assumption regarding the miles charged by projected chargers per year:

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.⁹⁹

⁹⁴ Assembly Bill 900 § 1 (2011) (codified as Cal. Pub. Res. Code § 21183(c).)
⁹⁵ Assembly Bill 734; Cal. Pub. Res. Code § 21168.6.7(a)(3)(ii).
⁹⁶ CEQA Guidelines § 15144.
⁹⁷ Cal. Pub. Res. Code § 21081.5.
⁹⁸ DEIR at 4.7-49.
⁹⁹ DEIR Appendix AIR-1 at 147 n.8 (Table 38).

¹² Ramboll, 2021. *Electric Vehicle Assumptions for the Oakland Waterfront Ballpark District Project*, November 3, 2021.

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O-62-33 Mitigation Measure GHG-1 is valid, feasible and effective CEQA mitigation for the reasons explained in Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*.

Mitigation Measure GHG-1 stipulates that carbon offset credits shall be used as a reduction measure for construction and operational emissions only after the following conditions are satisfied:

- (1) AB 734’s commitment to reduce 50 percent of net new emissions associated with the ballpark and other non-residential uses through the implementation of local direct measures has been met.
- (2) For non-transportation-sector and non-ballpark and non-hotel uses only, physical design features or operational features located on the Project site or off-site within the city of Oakland have reduced Project emissions levels to at or below 0.6 metric tons carbon dioxide equivalent (MTCO₂e) per service population.

The figure of 0.6 MTCO₂e/service population is derived from City of Oakland Resolution No. 87183 to reduce community GHG emissions 56 percent below 2005 levels by 2030. The City’s 2030 target, in turn, is based on California’s SB 32 (which mandates a statewide GHG reduction to 40 percent below 1990 levels by 2030), as well as international guidance and recommendation by the International Panel on Climate Change, a body of the world’s most authoritative climate scientists, that industrialized countries reduce GHG emissions to levels 80–95 percent below 1990 levels by 2050.

Mitigation Measure GHG-1 includes an objective performance standard, “no net additional” GHG emissions as defined by AB 734, and requires the Project sponsor to achieve this requirement through all feasible measures. This can include both on-site and off-site measures (including carbon offsets) to reduce GHG emissions. Conditions (1) and (2) as described above are in place to ensure that carbon offsets are used only after achieving direct reductions consistent with the minimum requirements of both AB 734 and SB 32, and with authoritative international guidance.

As noted by the commenter, the Draft EIR lists the order of geographic priority from which GHG offset credits should be obtained, but CEQA does not require that offset credits be generated from local projects. The impact of the Project on climate change is global, and therefore, Impact GHG-1 is a global impact. This is discussed on Draft EIR p. 4.7-37 (see also Response to Comment O-63-56). Reducing GHG emissions locally has the same effect on global climate

O-62-32 The assumption above is just unrealistic: the A’s have not described any valet service that would be required to charge multiple cars in a single EV charger, nor have the A’s demonstrated that demand for EV charging at the stadium is such that the chargers would achieve full utilization for every single baseball game. Additionally, the A’s have not shown that such demand for electric vehicle charging during the baseball game even exists; it provides no evidence how new sports facilities, like the Chase Center in San Francisco, have faced from electric vehicle owners wanting to charge their vehicles during the sports event.

The DEIR must be revised to correct these unrealistic assumptions, or, in the alternative, to provide substantial evidence justifying why these assumptions are realistic.

C. The DEIR fails to demonstrate that mitigation is feasible because it does not evaluate the availability of sufficient GHG offset credits.

O-62-33 The DEIR states that the purchase of carbon offset credits will only be used as a GHG reduction measure when at least 50% net new GHG emissions have been reduced through the implementation of local direct measures.¹⁰⁰ However, even a project purporting to generate no net GHG emissions based on a commitment to purchase offsets may be inadequate if the promise of future offset purchases does not provide adequate assurance that adequate offsets can be purchased.¹⁰¹ Here, while the DEIR lists the order of geographic priority that offsets will be obtained,¹⁰² it contains no discussion regarding the availability of carbon offsets in the locations listed. Additionally, the DEIR contains no evidence, calculations, or information regarding the number of offsets that will be needed, which could end up being greater than 600,000 MT CO₂e. While carbon offsets are envisioned as a flexible mitigation measure, the DEIR must be revised to include information and substantial evidence regarding the projected availability of carbon offsets.

D. The DEIR defers mitigation by improperly relying on a future GHG reduction plan.

O-62-34 The DEIR fails to describe with specificity how the Project will reduce more than 1.2 million MT CO₂e to achieve no net increase in GHG emission. Instead, the DEIR identifies a single mitigation measure—the future development of a GHG reduction plan.¹⁰³ This mitigation measure lists a handful of reduction measures that will be included, and then lists a “menu of additional emission reduction measures” that may or may not be included in the plan.¹⁰⁴

¹⁰⁰ DEIR at 4.7-62. Additionally, the DEIR specifies that carbon offset credits will not be used for non-transportation sector, non-ballpark, and non-hotel uses until physical design features or operational features located on the project site or off-site within the City of Oakland have reduced project emissions levels to at or below 0.6 MTCO₂e/service population in keeping with the City’s GHG emission reduction target. *Id.*

¹⁰¹ See *Golden Door Properties v. Cnty. of San Diego*, 50 Cal. App. 5th 467, 518–25 (2020) (EIR’s carbon offset mitigation was not supported by substantial evidence and therefore the County abused its discretion in certifying a supplemental EIR).

¹⁰² DEIR at 4.7-63 (listing the following locations from highest to lowest priority: “(1) off-site within the neighborhood surrounding the Project site, including West Oakland; (2) the greater City of Oakland community; (3) within the San Francisco Bay Area Air Basin; (4) the State of California; and (5) the United States of America”).

¹⁰³ DEIR at 4.7-56.

¹⁰⁴ DEIR at 4.7-58 to -62.

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change as reducing GHG emissions on another continent.¹³ So long as offset credits meet objective performance criteria, as required by Mitigation Measure GHG-1, they are effective in reducing GHG emissions independent of location.

CEQA only requires that a project mitigate its potentially significant impacts, and mitigation must be proportional to the impact created (Section 15126.4(a)(4)(A); see also Response to Comment O-62-40). Therefore, mitigation to reduce Impact GHG-1 includes the purchase of GHG offset credits within the United States (with a priority for local offset projects), provided that the offset credits meet all of the standards identified in Mitigation Measure GHG-1 to effectively reduce GHG emissions. The location of mitigation for GHG emissions is irrelevant from a CEQA perspective.

The commenter asks for evidence regarding the projected availability of carbon offsets to meet the needs of the Project. A recent study published by Trove Research and University College London predicts that demand for carbon offsets will increase fivefold or even tenfold over the next decade as companies, governments, and projects seek to deliver on their net-zero emissions pledges.¹⁴ As demand for carbon credits increases, the costs of undertaking emission reduction projects will rise as lower cost projects are used up, raising the price of offsets up to \$50 per MTCO₂e by 2030 and \$100 per MTCO₂e by 2050. As with any market-based system, the resulting price increase will make a larger set of offset projects financially viable; the higher prices will drive real investment in new projects to reduce emissions. Also as the study notes, as the cost of using carbon credits rises, investing in direct GHG reduction measures, such as those listed in Mitigation Measure GHG-1, becomes more attractive.

Trove Research also conducted a voluntary carbon market quarterly update in April 2021, which found that global surplus carbon credits totaled 399 million in the first quarter of 2021.¹⁵ The Climate Action Reserve has issued nearly 165 million offset credits and has retired more than 48 million of the credits for projects within the U.S.; this suggests that more than 116 million offset credits are currently available for projects in the U.S. through the Climate

¹³ Association of Environmental Professionals (AEP), 2020. Environmental Monitor, Summer 2020.

¹⁴ Trove Research, 2021. Future Demand, Supply and Prices for Voluntary Carbon Credits – Keeping the Balance, June 1, 2021.

¹⁵ Ibid.

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Action Reserve.¹⁶¹⁷ The American Carbon Registry has issued nearly 188 million offset credits and has retired nearly 13 million of the credits for projects within the U.S, which suggests that more than 175 million offset credits within the U.S. are currently available through the American Carbon Registry.¹⁸¹⁹ Element Markets, an offset credit broker, has issued 50 million offset credits to date and currently represents more than 40 projects in the U.S.

This information indicates that sufficient offset credits are available to satisfy the Project’s obligation through Mitigation Measure GHG-1 and AB 734, with more offset credits being created in the future.

O-62-34 Mitigation Measure GHG-1 is valid under CEQA and does not defer mitigation. Mitigation Measure GHG-1 includes an objective performance standard—“no net additional” GHG emissions—and includes a list of mitigation measures, some mandatory, which are effective and feasible to meet the performance standard as documented in the Draft EIR. Please refer to Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*, for additional discussion on deferral and enforceability of Mitigation Measure GHG-1.

See Response to Comment O-62-38 for an explanation of how Mitigation Measure GHG-1 reduces the Project’s emissions to the “no net additional” threshold through a combination of on-site and off-site measures, and the conditions that must be met before carbon offset credits can be counted against the Project’s emissions.

Mitigation Measure GHG-1 calls for future studies because the magnitude of the impact to be mitigated is appropriately estimated in the Draft EIR, but the actual magnitude must be confirmed and adjusted depending on the pace of development. The mitigation measure also provides for flexibility because the availability and effectiveness of various mitigation strategies is likely to change over time.

¹⁶ Climate Action Reserve, 2021. Projects, July 16, 2021.

¹⁷ Climate Action Reserve, 2021. Map of Projects, July 16, 2021.

¹⁸ American Carbon Registry, 2021. Projects, July 16, 2021.

¹⁹ American Carbon Registry, 2021. Retired Credits, July 16, 2021.

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Nowhere does the DEIR provide evidence that some combination of these measures can reduce the Project's GHG emissions. The only reduction measures that the DEIR quantifies demonstrate that the Project's GHG emissions could be reduced by 1,300 to 6,300 MT CO₂e per year, leaving 1,125,315 MTCO₂e still to be mitigated.¹⁰⁵ The DEIR must be revised and recirculated to correct this impermissible deferred mitigation.

1. The DEIR describes an inadequate process for the creation of a future GHG reduction plan with no place for public input.

The DEIR provides a menu of additional emission reduction measures, both onsite and offsite, that will be included in the future GHG reduction plan "as necessary to meet the requirements of this mitigation measure and the 'no net additional' GHG emissions requirement for the Project."¹⁰⁶ However, the DEIR does not itself unveil such a GHG reduction plan that would demonstrate how these different mitigation measures will successfully meet the "no net additional" requirements. Instead, the DEIR proposes to develop a GHG Reduction Plan after the EIR is certified. This plan would be developed by a qualified air quality consultant who will identify GHG reduction measures sufficient "to reduce or offset these emissions" in accordance with CEQA and AB 734,¹⁰⁷ and the plan would be submitted to the City for approval before construction on the project begins.¹⁰⁸

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In the process proposed in the DEIR, the City would certify that the chosen GHG reduction measures will be implemented in the development of the project before issuing any permits.¹⁰⁹ The City would need to confirm that these measures are included as part of the final inspection for a Temporary Certificate of Occupancy ("TCO").¹¹⁰ In the case of the carbon offsets, the City would confirm receipt of the verification reports and serial numbers. Finally, the DEIR outlines that the A's would submit an annual report to the City, which shall have the power to review and request a Corrective Action Plan should the GHG Reduction Measures are either not taken or not successful.¹¹¹

At no point throughout this entire process is public input involved in reviewing the adequacy of this plan. During the EIR process, the public can submit a written comment as well as give an oral comment during the public hearing. However, the process described above allocates no place for the public to review. The public will have no opportunity to double check the calculations used to determine whether the proposed mitigation measures will succeed. The public will have no opportunity to suggest additional mitigation measures that might be more effective. The public will have no opportunity to recommend changes to the annual report. Public

O-62-35 See Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*, for a discussion of mitigation measures such as Mitigation Measure GHG-1 that use performance measures and an explanation of how these measures meet CEQA requirements. See also Responses to Comments O-62-33 and O-62-34.

The commenter also suggests that the GHG reduction plan created pursuant to Mitigation Measure GHG-1 would bypass the public decision-making process. However, the GHG reduction plan would be a matter of public record and available for review upon request. City decision makers may elect to create a process for soliciting additional public review of these documents, but this is not required by CEQA or necessary to ensure the adequacy and effectiveness of mitigation measures included in the EIR. As discussed in Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures* and response to comment O-62-35, all documents submitted to the City in compliance with adopted mitigation measures, including, for example, the GHG reduction plan required in Mitigation Measure GHG-1, would be a matter of public record and available for public review.

¹⁰⁵ DEIR Appendix AIR-1 at 183 (Table 58).

¹⁰⁶ DEIR at 4.7-59 to -62.

¹⁰⁷ DEIR at 4.7-56.

¹⁰⁸ DEIR at 4.7-63.

¹⁰⁹ DEIR at 4.7-64.

¹¹⁰ *Id.* In the case of carbon offsets, the City "shall confirm receipt of verification reports and serial numbers" prior to issuance of a building permit or a TCO. *Id.*

¹¹¹ DEIR at 4.7-65.

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O-62-36 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.

Communities for a Better Environment v. City of Richmond (2010) 184 Cal.App.4th 70, 92, does not prohibit the use of the GHG mitigation plans. See Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*. Also see response to comments A-11-8, O-56-4, O-59-4, O-62-33, and O-62-38 for additional discussion of deferral issues related to Mitigation Measure GHG-1.

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participation cannot be merely discarded but is an “essential part” that lies at the heart “of the CEQA process.”¹¹² This DEIR must be revised to give the public the opportunity to participate.

2. CEQA and California courts prohibit the deferred formulation of GHG mitigation plans.

The “formulation of mitigation measures shall not be deferred until some future time.”¹¹³ California courts have made it clear that deferred mitigation is not allowed under CEQA. As the First District Court of Appeal stated in *Communities for a Better Environment v. City of Richmond*, “[n]umerous cases illustrate that reliance on tentative plans for future mitigation after completion of the CEQA process significantly undermines CEQA’s goals of full disclosure and informed decisionmaking; and consequently, these mitigation plans have been overturned on judicial review as constituting improper deferral of environmental assessment.”¹¹⁴

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The DEIR identifies no legal authority to permit it to defer the creation of a GHG mitigation plan to a later date. That is because there is no legal authority that would permit this type of deferred mitigation. In *Communities for a Better Environment v. City of Richmond*, the court found that the mitigation plan at issue was inadequate to ensure no net increase in emissions from the Chevron refinery. The project would have increased production of gasoline by approximately 6%, or 300,0000 gallons per day.¹¹⁵ The DEIR at issue “explicitly declined” to state any conclusions about the extent of GHG impacts or potential mitigation.¹¹⁶ The Final EIR, in response to comments made by concerned parties, stated that Chevron would create a mitigation plan to achieve complete reduction of GHG emissions over the baseline no later than one year after approval of the conditional use permit.¹¹⁷ In creating this mitigation plan, Chevron would consider the implementation of a menu of measures designed to mitigate GHG emissions.¹¹⁸

In holding that this mitigation plan was deficient, the court reasoned that “[n]o effort is made to calculate what, if any, reductions in the Project’s anticipated greenhouse gas emissions

¹¹² CEQA Guideline § 15021; *see also* CEQA Guideline § 15200 (describing that the purposes for public review include sharing expertise, disclosing agency analyses, checking for accuracy, detecting omissions, discovering public concerns, and soliciting counter proposals).

¹¹³ CEQA Guidelines § 15126.4.

¹¹⁴ 184 Cal. App. 4th 70, 92–93 (2010); *see also Gentry v. City of Murrieta* 36 Cal. App. 4th 1359, 1396 (1995) (conditioning a permit on “recommendations of a report that had yet to be performed” constituted improper deferral of mitigation); *Defend the Bay v. City of Irvine* 119 Cal. App. 4th 1261, 1275 (2004) (deferral is impermissible when the agency “simply requires a project applicant to obtain a biological report and then comply with any recommendations that may be made in the report”); *Endangered Habitats League v. Cnty. of Orange*, 131 Cal. App. 4th 777, 794 (2005) (“mitigation measure [that] does no more than require a report be prepared and followed, . . . without setting any standards” found improper deferral); *Sundstrom v. City of Mendocino*, 202 Cal. App. 3d 296, 306–07 (1988) (future study of hydrology and sewer disposal problems held impermissible); *Quail Botanical Gardens Found. v. City of Encinitas*, 29 Cal. App. 4th 1597, 1605 n.4 (1994) (city is prohibited from relying on “postapproval mitigation measures adopted during the subsequent design review process”).

¹¹⁵ *Communities for a Better Environment*, 184 Cal. App. 4th at 76.

¹¹⁶ *See id.* at 90.

¹¹⁷ *Id.* at 91.

¹¹⁸ *Id.* at 92.

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O-62-37 See Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*. Also see response to comments A-11-8, O-56-4, O-59-4, O-62-33, and O-62-38 for additional discussion of issues related to Mitigation Measure GHG-1.

would result from each of these vaguely described future mitigation measures.”¹¹⁹ The court criticized the mitigation plan proposed because

- the plan was nonexclusive, undefined, and untested;
- the only criterion for success was the judgment of City Council; and
- the process for choosing the mitigation measures would occur between the project proponent and the lead agency after project approval and would not be an open process involving the public.¹²⁰

The court then articulated a three-part test, permitting a “lead agency to defer the formulation of specific mitigation measures” only if the lead agency:

- 1) Undertook a complete analysis of the significance of the environmental impact,
- 2) Proposed potential mitigation measures early in the planning process, and
- 3) Articulated specific performance criteria that would ensure that adequate mitigation measures were eventually implemented.¹²¹

The court distinguished the Chevron EIR from cases where mitigation was permissibly deferred for multiple reasons. First, the lead agency “offered no assurance that the plan for how the Project’s greenhouse gas emissions would be mitigated to a net-zero standard was both feasible and efficacious.”¹²² Additionally, the lead agency “created no objective criteria for measuring success.”¹²³

The court emphasized that the “the time to analyze the impacts of the Project and to formulate mitigation measures to minimize or avoid those impacts was during the EIR process, *before* the Project was brought to the Planning Commission and City Council for final approval.”¹²⁴ And while the available scientific information about GHGs is constantly expanding in this complex scientific field, this is not a shield that the lead agency can hide behind to prevent committing to a specific GHG reduction plan. The court notes that “once mitigation measures are publicly reviewed and identified, nothing prevents the City from incorporating guidelines to continue utilizing new scientific information as it becomes available.”¹²⁵

3. The sole GHG mitigation measure proposed in the DEIR is a textbook example of deferred mitigation.

The DEIR provides a menu of options of potential GHG mitigation measures, but it does not commit to which measures shall be used, nor does it demonstrate how these measures will help mitigate the substantial amount of GHG emissions produced during the lifetime of the project. Because it will be produced after completion of the Final EIR, it therefore constitutes an invalid form of deferred mitigation.

¹¹⁹ *Id.* at 93.
¹²⁰ *Id.* at 94.
¹²¹ *Id.* at 95.
¹²² *Id.*
¹²³ *Id.*
¹²⁴ *Id.*
¹²⁵ *Id.* at 96.

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The similarities between the DEIR at issue here and the EIR at issue in *City of Richmond* are striking. Both cases involved the proposal to create a GHG reduction plan after the final EIR. Both cases describe a process that excludes the public from participating in the creation of the plan. Both cases involve listing a menu of potential mitigation measures without demonstrating how those measures will effectively mitigate the GHG emissions. Finally, both cases involve inadequate information that prevents the public from adequately evaluating the strength and weaknesses of each potential mitigation measure.

For example, the DEIR's Air Appendix has some calculations regarding how the described mitigation measures might contribute to mitigating the project's substantial GHG emissions of 1,266,567 MT CO₂e. These calculations, however, are inadequate. Footnote 6 of Table 58 states that "the Project has quantified a number of potential additional reductions," which were included "as an example of how the threshold could be met."¹²⁶ However, Table 58 shows that reductions from EV charging stations, reduced emergency generator hours, obtaining 100% electricity from zero carbon resources, no natural gas in residential units, and constructing additional EV chargers will reduce the total GHG emissions to 1,125,315 MTCO₂e.¹²⁷ This decrease in GHG emissions is not enough to meet the "no net additional" threshold. Without additional information regarding the assumptions underlying these calculations or about the remaining mitigation reduction measures, the public cannot adequately evaluate how the GHG Reduction Plan will effectively mitigate the GHG emissions.

Additionally, the DEIR also states that it will consider mitigation measures not listed in the menu of options. It states that the GHG reduction plan will consider mitigation measures included in the 2030 Equity Climate Action Plan (ECAP) that was recently revised by the City of Oakland in 2020.¹²⁸ Additionally, the DEIR also states that the future GHG reduction plan will consider:

Pathways to Deep GHG Reductions in Oakland: Final Report (City of Oakland, 2018b), BAAQMD's latest CEQA Air Quality Guidelines (May 2017, as may be revised), the California Air Resources Board Scoping Plan (November 2017, as may be revised), the California Air Pollution Control Officers Association (CAPCOA) Quantifying Greenhouse Gas Mitigation Measures (August 2010, as may be revised), the California Attorney General's website, and Reference Guides on LEED published by the U.S. Green Building Council.¹²⁹

With such a large number of plans containing such a large number of mitigation measures, it is impossible to know exactly which measures the City is truly considering.

This uncertainty regarding the plethora of mitigation measures, coupled with the lack of public input into the process, the inadequacy of the DEIR's information regarding calculations,

¹²⁶ DEIR Appendix AIR-1 at 184 n.6 (Table 58).

¹²⁷ DEIR Appendix AIR-1 at 183 (Table 58).

¹²⁸ See City of Oakland, *2030 Equitable Climate Action Plan* (Jul. 2020),

<https://www.oaklandca.gov/projects/2030ecap>.

¹²⁹ See DEIR at 4.7-57.

O-62-38 Mitigation Measure GHG-1 is valid under CEQA and does not defer mitigation. Mitigation Measure GHG-1 includes an objective performance standard—"no net additional" GHG emissions—and includes a list of mitigation measures, some mandatory, which are effective and feasible to meet the performance standard as documented in the Draft EIR. Please refer to Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*, for additional discussion on deferral and enforceability of Mitigation Measure GHG-1.

The commenter is correct that the Draft EIR calculates GHG emission reductions from a number of measures, which total 6,314 MTCO₂e of annual emission reductions at full buildout (Draft EIR Appendix AIR.1, Table 58). To clarify how this reduction is achieved, and to respond to request to include additional onsite mitigation measures for both air quality and GHG impacts, the City has revised the EIR to include additional mitigation measures, a greater vehicle trip reduction performance standard than was included in the Draft EIR, building electrification, additional EV charging stations, and other actions which will result in a total of 3,945 MTCO₂e of additional annual emission reductions at full buildout beyond what was presented in the Draft EIR (see *CEQA Air Quality Technical Addendum* [Ramboll, 2021]Table 18).²⁰

However, these measures alone are not enough to achieve the "no net additional" performance standard requirement of Mitigation Measure GHG-1, as the commenter notes. Mitigation Measure GHG-1 requires that the Project meet the "no net additional" requirement through the preparation and implementation of a GHG reduction plan. The final list of measures to be implemented, which must include those identified as mandatory and will specifically identify those listed in the menu of additional measures in the mitigation measure that are needed to meet the performance standard, will be identified in the final plan. Implementation and compliance will be monitored by the City to assure that the performance standard is met. As noted by commenter, Mitigation Measure GHG-1 references other plans that contain measures that reduce GHG emissions that are effective and may be included in the Plan. As explained in Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*, this GHG reduction plan is permitted under CEQA and complies with its requirements.

²⁰ Ramboll, 2021. CEQA Air Quality Technical Addendum, November 2021.

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Mitigation Measure GHG-1 also includes the use of greenhouse gas offset credits to achieve the “no net additional” performance standard. For a discussion of offset credits and their validity as CEQA mitigation, as supported by AB 734 and the California Air Resources Board, see Responses to Comments A-11-8, I-95-1, O-47-10, O-62-33, O-62-34, and O-63-56.

With implementation of Mitigation Measure GHG-1, the Project would result in no net additional GHG emissions and the impact would be less than significant (see Draft EIR p. 4.7-66).

Regarding public participation in the GHG reduction plan created pursuant to Mitigation Measure GHG-1, see Response to Comment O-62-35.

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and the vagueness of whether the city’s GHG reduction plan will actually succeed, combine to create a flawed DEIR as it pertains to GHG emissions. The City must revise the DEIR to include a concrete, well-defined GHG mitigation plan, and to describe how and why that mitigation plan will ensure no net additional GHG emissions from the Project

E. The DEIR fails to consider feasible mitigation measures.

The DEIR declines to consider several mitigation measures that could reduce GHG emissions, while also mitigating air quality, transportation, and displacement impacts. As discussed above in Part I, including on-site or near-site affordable housing could reduce commute times for lower-income households, who might otherwise undertake long car commutes from exurban areas where housing is more affordably. Similarly, a local hire policy at the Project would mitigate GHG emissions by reducing commute distances and increasingly the likelihood that local employees would travel by public transit, bicycle, or by foot. Both of these mitigation measures would have the added benefit of reducing air pollution, traffic congestion, and displacement of low-income residents. The DEIR should be revised to include an analysis of these mitigation measures.

O-62-39

VI. The DEIR does not adequately analyze and mitigate air quality impacts on human health in an area already overburdened by harmful air pollution.

The DEIR does not adequately consider and mitigate air quality impacts that will exacerbate health problems in an historically burdened environmental justice community. While guidance documents from the Bay Area Air Quality Management District (“BAAQMD”) suggest standards and mitigation measures, these are not minimal requirements. Assessments of air quality impacts on human health consequences are crucial when considering mitigation measures and alternatives for projects. The California Supreme Court has held that “[w]hen reviewing whether a discussion is sufficient to satisfy CEQA, a court must be satisfied that the EIR . . . makes a reasonable effort to substantively connect a project’s air quality impacts to likely health consequences.”¹³⁰ Because West Oakland suffers from significantly greater toxic air pollution than the rest of the Bay Area, the DEIR must ascribe to higher standards and provide stricter mitigation measures than the threshold suggestions from BAAQMD and the City of Oakland.

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A. The DEIR must analyze the Project’s adverse impacts on environmental justice.

The DEIR estimates that the Project will have numerous significant and unavoidable adverse air quality impacts. These impacts will further burden an already disproportionately impacted community. Principles of environmental justice in California law impose a responsibility on the Project and the City to address concerns related to the unjust air quality impacts that the Project will inflict on West Oakland.

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1. The Project will bring even more pollution to a historically burdened environmental justice community.

West Oakland is one of the most historically polluted and disadvantaged communities in California. The communities living near the Project site in West Oakland have been subjected to numerous pollution sources and are disproportionately impacted in relation to the rest of the Bay Area. West Oakland is surrounded by several major highways, creating a high baseline

¹³⁰ *Sierra Club v. Cnty. of Fresno*, 6 Cal. 5th 502, 510 (2018).

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See Consolidated Response 4.12, *Affordable Housing*, which explains that there is no difference between the impacts (for example, GHG emissions) resulting from an affordable housing unit and those resulting from a market-rate unit. This is because both market-rate and affordable housing units are residential uses, occupied by individuals or families who would access jobs, schools, and public services, and generate traffic, air pollutant emissions, noise, and other impacts that have been fully considered in the Draft EIR. Even if there were differences in the impacts attributable to affordable and market-rate units, the Draft EIR’s use of average household sizes and regional projections in its impact analyses ensures that any differences are accounted for. Specifically, the use of average household sizes recognizes that some households will be larger and some will be smaller than the average, and the use of regional projections inherent in the transportation model means that vehicle trips, trip lengths, and the analyses that rely on these as inputs inherently recognize the diversity of households and housing types in the Bay Area.

In addition, regarding the commenter’s suggestion that a local-hire policy would reduce GHG emissions, there is insufficient specific information to include local hiring as a required GHG emission reduction measure. Doing so would require knowing more about the workforce that would be present at the site than is currently known. For example, while the Draft EIR estimates the number of employees who would be on-site, it cannot predict the wages or types of employment with any specificity, cannot anticipate where employees will live, how often they will work on-site versus telecommuting, how often they will take transit.

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The Draft EIR thoroughly evaluates health-related air quality impacts associated with the Project. Impact AIR-4 evaluates the Project’s health risk impacts on existing off-site sensitive receptors (e.g., residents) and Impact AIR-5 evaluates the Project’s health risk impacts on new on-site sensitive receptors. These impacts would be less than significant through implementation of Mitigation Measures AIR-1c, AIR-2c, AIR-2d, AIR-2e, AIR-3, AIR-4a, and AIR-4b.

As noted in Responses to Comments A-7-32, A-11-1, A-11-3, A-11-11, A-17-1, A-17-12, O-30-3, and others, Impact AIR-2.CU evaluates the Project’s health risk impacts from exposure of sensitive receptors to toxic air contaminants (TACs), within the context of the existing, background health risks in West Oakland. Because of the high existing background risks, the Project’s

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concentration of diesel particulate matter (“DPM”) in the community. In fact, West Oakland neighborhoods have the highest levels of DPM in the Bay Area.¹³¹ About 42 percent of local DPM impacts and cancer risk come from heavy-duty trucks and about 38 percent of PM_{2.5} (particulate matter less than 2.5 micrometers in diameter) impacts come from road dust.¹³² This Project’s introduction of additional diesel-burning vehicles, machines, and generators will only exacerbate the negative health impacts these communities are already burdened by. Facilities emitting toxic air contaminants (“TAC”) in West Oakland include manufacturing plants, a wastewater treatment plant, and the neighboring Schnitzer Steel. BAAQMD indicates that there are approximately 50 permitted TAC sources within a 1,000-meter radius of the Project site.¹³³ Other sources of pollution include waterborne vessels associated with the Port of Oakland, freight and passenger rail, and numerous industrial and commercial stationary sources.¹³⁴ The pollution local to West Oakland unjustly and disproportionately impacts communities of color and must be reduced.

West Oakland’s pollution burden has created significant and disproportionate negative health impacts for the community. West Oakland residents are 1.75 times more likely than other Alameda County residents to be hospitalized for asthma-related illnesses.¹³⁵ According to the California Department of Public Health, childhood asthma affects about eighteen percent of Oakland’s youth, which is twice the national average.¹³⁶ Twenty-five percent of students at the West Oakland Middle School have asthma or breathing problems.¹³⁷ Air pollution related diseases, including cancer, heart disease, stroke, and chronic lower respiratory disease, are some of the leading causes of death in the community.¹³⁸ Due to these cumulative health risks, life expectancy is almost seven years lower in areas of West Oakland when compared to Alameda County.¹³⁹ These severe health impacts stemming from air pollution make it imperative to mitigate the Project’s air quality impacts as much as possible.

¹³¹ Bay Area Air Quality Management District & West Oakland Environmental Indicators Project, *Owning Our Air: The West Oakland Community Action Plan – A Summary* (Oct. 2019) at 3, <https://www.baaqmd.gov/-/media/files/ab617-community-health/west-oakland/100219-files/owning-our-air-plan-summary-pdf.pdf?la=en> (hereinafter “Owning Our Air Summary”).

¹³² *Id.* at 4.

¹³³ DEIR at 4.2-9.

¹³⁴ DEIR at 4.2-2.

¹³⁵ Muntu Davis, *Air Pollution Risks & Vulnerability to Health Impacts: A Look at West Oakland* (Mar. 28, 2018) at 4, https://www2.arb.ca.gov/sites/default/files/2018-03/capp_consultation_group_march_2018_alameda_county_health_presentation.pdf.

¹³⁶ Casey Smith & Ali DeFazio, *Oakland’s Air Quality Problem: Can First-of-its-kind Legislation Solve it?*, OAKLAND NORTH (Dec. 11, 2018), <https://oaklandnorth.net/2018/12/11/oaklands-air-quality-problem-can-first-of-its-kind-legislation-solve-it/>.

¹³⁷ Ananya Roy, *Traffic Pollution Causes 1 in 5 New Cases of Kids’ Asthma*, Environmental Defense Fund (Apr. 29, 2019), <http://blogs.edf.org/health/2019/04/29/traffic-pollution-causes-1-in-5-new-cases-of-kids-asthma-in-major-cities-how-data-can-help/>.

¹³⁸ Davis, *supra* note 135, at 8-9.

¹³⁹ Muntu Davis, *Asthma & Cumulative Health Risks In West Oakland* (2018) at 3, <https://www.portofoakland.com/files/PDF/Air%20Pollution%20and%20Health%20Risks%20ACPIID.pdf>.

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cumulative impact would be significant and unavoidable and all feasible mitigation measures would be required (see Draft EIR pp. 4.2-10 and 4.2-156 through 4.2-159). Mitigation Measures AIR-1b, AIR-1c, AIR-2c, AIR-2d, AIR-2e, AIR-3, AIR-4a, AIR-4b, and AIR-2.CU, as well as Mitigation Measures TRANS-1a, TRANS-1b, TRANS-1c, TRANS-1d, TRANS-1e, TRANS-2a, TRANS-2b, TRANS-2c, TRANS-3a, and TRANS-3b are identified to reduce the Project’s contribution to cumulative air quality impacts. These mitigation measures go far beyond BAAQMD’s standards and recommended control measures and mitigation measures.²¹

Health risk impacts from criteria air pollutants were also evaluated in the context of recent judicial precedent, namely the California Supreme Court’s findings in *Sierra Club v. County of Fresno* (Friant Ranch). The Draft EIR provides information correlating Project-related mass emissions totals for certain criteria pollutants to estimated health-based consequences by preparing a quantitative health impact assessment. Methods for this analysis are explained on Draft EIR pp. 4.2-53 through 4.2-58, and results are presented on Draft EIR pp. 4.2-86 through 4.2-95.

Pursuant to CEQA Guidelines Section 15126.2(a), the Project evaluates any significant environmental effects the Project might cause or risk exacerbating by bringing development and people into the area affected:

The EIR shall also analyze any significant environmental effects the project might cause or risk exacerbating by bringing development and people into the area affected. For example, the EIR should evaluate any potentially significant direct, indirect, or cumulative environmental impacts of locating development in other areas susceptible to hazardous conditions (e.g., floodplains, coastlines, wildfire risk areas), including both short-term and long-term conditions, as identified in authoritative hazard maps, risk assessments or in land use plans addressing such hazards areas.

In the case of the Project, the affected area is the community of West Oakland, which is already burdened by poor air quality conditions (see Draft EIR pp. 4.2-8 through 4.2-12). This evaluation is prepared under Impact AIR-2.CU.

CEQA does not require an EIR to evaluate the effect of the environment on the project. (See *California Building Industry Association v. Bay Area Air Quality Management District* (2015) 62 Cal.4th 369.)

²¹ BAAQMD, 2017. *California Environmental Quality Act Air Quality Guidelines*, May 2017.

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Further, the character of the existing environment is not a valid rationale for applying stricter thresholds of significance or mitigation measures to a project. Pursuant to CEQA Guidelines Section 15126.4(a)(4)(A) and U.S. Supreme Court rulings, mitigation measures must be “proportional” to the impacts created by a project and there must be a “nexus” between the mitigation measure and the impact.

Although CEQA does not require more stringent thresholds of significance in areas with higher background health risks and poorer air quality, as persist at the existing Project site compared to other sites in the Bay Area, this is effectively what the cumulative health risk threshold embodies. For example, the cumulative threshold of significance for cancer is a risk of 100 in a million for all cumulative background sources plus the proposed project. Because the background cancer risk already exceeds 100 per million for all on-site receptor locations and all nearby off-site sensitive receptor locations, any additional health risk caused by the proposed Project would result in a significant impact. This is what the Draft EIR finds for Impact AIR-2.CU as discussed on pages 4.2-140 through 4.2-159. Please also refer to Response to Comment O-51-19 for an updated cumulative health risk map.

The City of Oakland has established thresholds of significance for CEQA impacts that are consistent with those in Appendix G of the CEQA Guidelines (Draft EIR pp. 4.2-34 through 4.2-35). CEQA Guidelines Section 15064.7(b) permits lead agencies to select their own significance thresholds based on substantial evidence:

Each public agency is encouraged to develop and publish thresholds of significance that the agency uses in the determination of the significance of environmental effects. Thresholds of significance to be adopted for general use as part of the lead agency’s environmental review process must be adopted by ordinance, resolution, rule, or regulation, and developed through a public review process and be supported by substantial evidence.

The City’s adopted thresholds are consistent with BAAQMD’s CEQA Guidelines significance thresholds for air quality impacts (pp. 4.2-34 through 4.2-35). These thresholds are supported by substantial evidence developed by BAAQMD, which are contained in Appendix D, *Thresholds of Significance Justification*, of the BAAQMD CEQA Guidelines.²² CEQA Guidelines Section 15064.7(c) allows lead

²² BAAQMD, 2017. *California Environmental Quality Act Air Quality Guidelines*, May 2017.

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agencies to adopt thresholds adopted or recommended by other public agencies, such as BAAQMD:

When adopting or using thresholds of significance, a lead agency may consider thresholds of significance previously adopted or recommended by other public agencies or recommended by experts, provided the decision of the lead agency to adopt such thresholds is supported by substantial evidence.

The Draft EIR is consistent with these requirements in its use of the City's adopted thresholds of significance for air quality impacts. The use of stricter thresholds or mitigation measures is not required under CEQA.

O-62-41 See Consolidated Response 4.14, *Environmental Justice*. The commenter is correct that the Project is located in a community disproportionately affected by air pollution that is also disadvantaged and low-income. The Draft EIR discusses the existing air quality setting on p. 4.2-2 through 4.2-13 and incorporates BAAQMD's health risk modeling prepared for the WOCAP. Impact AIR-2.CU discusses the major TAC sources in the Project vicinity that would affect future residents, including Schnitzer Steel, the Port of Oakland, railyards and locomotives, permitted stationary sources, and marine vessels (Draft EIR pp. 4.2-140 through 4.2-145).

As noted in Responses to Comments A-11-1, A-11-3, A-11-11, A-17-1, A-17-12, O-30-3, O-62-40, and others, the Draft EIR thoroughly evaluates the Project's health risk impacts within the context of the existing, background health risks in West Oakland under Impact AIR-2.CU.

The Draft EIR identifies numerous mitigation measures to reduce the Project's 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, and AIR-2.CU along with Mitigation Measures 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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2. The Project has a duty under California State Law and CEQA not to adversely impact environmental justice communities.

Under California state law, “environmental justice” means the fair treatment and meaningful involvement of people of all races, cultures, incomes, and national origins, with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations and policies.¹⁴⁰ This means that everyone should be able to benefit from a healthy environment, and that the impacts of pollution should not be concentrated on historically burdened and marginalized communities.¹⁴¹ California governmental entities have a crucial role to play in ensuring environmental justice for all of California’s residents. Because a project’s environmental impacts can burden some communities more than others, generalized policies are insufficient to achieve the environmental justice goals implied in California state law and CEQA. Instead, environmental justice requires a tactical approach to work collaboratively with the impacted communities to address existing and potential problems, apply solutions, and plan for the future.

Local governments also have an obligation under state law to ensure that environmental benefits and burdens are fairly distributed among California residents. California Government Code Section 11135, subdivision (a) states that no person in the state will be denied the benefits of or subjected to discrimination under any state administered or funded program on the basis of certain immutable characteristics.¹⁴² Under section 11135, the local governments have a responsibility to ensure that their actions do not “result in the unmitigated concentration of polluting activities near communities that fall into the categories defined in Government Code section 11135.”¹⁴³

In aiming to address environmental impacts, the California Environmental Quality Act also has an implied goal of achieving environmental justice. Vice President Kamala Harris, as Attorney General for the state of California, stated that “the importance of a healthy environment for all of California’s residents is reflected in CEQA’s purposes.”¹⁴⁴ In enacting CEQA, the Legislature determined that the government must “identify any critical thresholds for the health and safety of the people of the state and take *all coordinated actions necessary* to prevent such thresholds being reached.”¹⁴⁵

B. The DEIR should use stricter significance thresholds for air quality impacts.

CEQA requires that lead agencies consider how the environmental and public health burdens of a project might disproportionately affect low-income communities and communities of color.¹⁴⁶ It is well established that “[t]he significance of an activity [analyzed under CEQA]

¹⁴⁰ Cal. Gov. Code § 65040.12(e).

¹⁴¹ See Kamala Harris, Cal. Office of the Attorney General, *Environmental Justice at the Local and Regional Level – Legal Background* (2012) at 1, https://oag.ca.gov/sites/all/files/agweb/pdfs/environment/ej_fact_sheet.pdf.

¹⁴² Cal. Gov. Code, § 11135(a).

¹⁴³ Harris, *supra* note 141, at 2.

¹⁴⁴ Harris, *supra* note 141, at 2.

¹⁴⁵ Cal. Pub. Res. Code § 21000(d) (emphasis added).

¹⁴⁶ Harris, *supra* note 141, at 3.

O-62-42 See Consolidated Response 4.14, *Environmental Justice*.

O-62-43 CEQA does not require that lead agencies evaluate how a project’s impacts would affect individual communities based on their economic or ethnic characteristics, such as those classified as low-income areas. CEQA only requires that lead agencies evaluate a project’s environmental impacts within a project-specific and cumulative context (CEQA Guidelines Section 15126).

The commenter cites a 2012 legal background memorandum from then–Attorney General Kamala Harris titled “Environmental Justice at the Local and Regional Level: Legal Background” (Harris, 2012), which is discussed at length in Consolidated Response, 4.14, *Environmental Justice*.²³

The Draft EIR evaluates the Project’s impacts on existing off-site and new on-site sensitive receptors through Impacts AIR-4 and AIR-5.

The Draft EIR evaluates the Project’s cumulative air quality impacts through Impact AIR-2.CU. The impact is determined to be significant and unavoidable given the already high background health risk, and all feasible mitigation measures are identified to reduce this impact.

Additionally, the health impact assessment prepared for the Project correlates Project-related criteria pollutants to estimates of health-based consequences. Such health impacts include emergency room visits and hospital admissions related to asthma, hospital admissions related to cardiovascular and respiratory issues, mortality, and nonfatal acute myocardial infarction (heart attacks) (Draft EIR pp. 4.2-89 through 4.2-95). This analysis is based on existing rates of health impacts in the area.

The commenter states that the level of significance of a project’s impacts necessitates “stricter” significance thresholds. In other words, the more significant the impact, the stricter the threshold of significance. This represents a misunderstanding of CEQA and the Harris memorandum, which the commenter cites to support this claim. Environmental impacts are determined through the use of adopted thresholds of significance; significance thresholds are not adjusted depending on the impact (CEQA guidelines Sections 15126.2 and 15126.4). The Harris memorandum only states that cumulative impacts are more likely to be significant in communities with already high levels of air pollution, as cited above. This premise is consistent with the Draft EIR’s evaluation of Impact AIR-2.CU and the City’s

²³ California Department of Justice, Kamala Harris, Attorney General, *Environmental Justice at the Local and Regional Level Legal Background*, July 10, 2012.

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adopted threshold of significance for cumulative air quality impacts. See Response to Comment O-62-40 for additional discussion on this point.

The commenter correctly notes that AB 617 requires CARB to establish the Community Air Protection Program, the objective of which is to reduce human health risk levels by reducing air toxics exposure in the communities most affected by TAC emissions. West Oakland is a designated Community Air Protection Program community, and a steering committee has been formed consisting of the community, BAAQMD, and CARB, to develop the West Oakland Community Action Plan, or WOCAP (see Draft EIR pp. 4.2-18 and 4.2-30 through 4.2-33). For a discussion of this analysis and the resulting impacts, refer to Responses to Comments A-11-1, A-11-3, A-11-11, A-17-1, A-17-12, O-30-3, O-62-40, O-62-41, and others (also see Draft EIR pp. 4.2-10 and 4.2-156 through 4.2-159).

As discussed in Response to Comment O-62-40, the significance thresholds used in the Draft EIR and adopted by the City of Oakland are the significance thresholds currently adopted by BAAQMD, the agency that prepared the WOCAP itself.²⁴ The BAAQMD thresholds are based on detailed technical reports that provide substantial evidence to support the thresholds and their efficacy in reducing health impacts from emissions. Consequently, the significance thresholds used in the Draft EIR are not outdated.

Finally, as discussed in Response to Comment O-62-40, although CEQA does not require more stringent thresholds of significance in areas with higher background health risks and poorer air quality as persist at the existing Project site compared to other sites in the Bay Area, this is effectively what the cumulative health risk threshold embodies.

For additional discussion of environmental justice issues, see Consolidated Response 4.14, *Environmental Justice*.

²⁴ BAAQMD, 2017. *California Environmental Quality Act Air Quality Guidelines*, May 2017.

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depends upon the setting.”¹⁴⁷ Because West Oakland experiences higher-than-average rates of asthma and has historically been subjected to a disproportionate amount of toxic air pollution, the Project will produce greater health impacts than if it were located elsewhere. There is a strong correlation between greater sensitivity to pollution and a community’s low income levels and other socioeconomic factors.¹⁴⁸ Because a project’s impacts can be more significant based on where the project is located, a project should be held to a stricter significance threshold where it is disproportionately impacting an environmental justice community.¹⁴⁹

The DEIR states that cancer risk from DPM during construction and operation will be below the City’s significance threshold of ten in one million after mitigation.¹⁵⁰ Over 90 percent of cancer risk from local air pollution comes from DPM.¹⁵¹ Significance criteria must be “supported by substantial evidence.”¹⁵² Here, the DEIR uses the City of Oakland’s significance guidelines from 2016. Since 2016, the California Air Resources Board (“CARB”) has recognized West Oakland as a Community Air Protection Program (“CAPP”) community under Assembly Bill (“AB”) 617, which aims to reduce air pollution exposure in communities most impacted by air pollution. In 2019, BAAQMD adopted the West Oakland Community Action Plan to address the “unacceptably high” air pollution and poor health conditions in West Oakland.¹⁵³ As a CAPP community, West Oakland requires greater scrutiny regarding air pollution in the area. The CAPP designation indicates new evidence that must be considered in determining a significance threshold. Therefore, the 2016 guidelines are outdated and the cancer risk thresholds of significance for West Oakland must be lowered to hold projects polluting in West Oakland to a higher standard. Because West Oakland has been historically burdened with DPM pollution and the Project will release more DPM into the community, exacerbating negative health impacts, the Project must be held to a higher standard and be required to implement greater mitigation measures.

C. The DEIR does not adequately mitigate the Project’s air quality impacts.

AB 617 demonstrates the State’s environmental justice priorities by requiring a stronger focus on local air pollution in overburdened communities.¹⁵⁴ The legislation requires CARB to prepare community-led plans to reduce emissions of toxic air contaminants and criteria

¹⁴⁷ *Kings Cnty. Farm Bureau v. City of Hanford*, 221 Cal. App. 3d 692, 718 (1990) (citing CEQA Guidelines, § 15064(b)).

¹⁴⁸ Cal. Office of Environmental Health Hazard Assessment, *Cumulative Impacts: Building a Scientific Foundation* (Dec. 2010), Exec. Summary, p. ix, <http://oehha.ca.gov/ej/cipa123110.html>.

¹⁴⁹ See Harris, *supra* note 141, at 4.

¹⁵⁰ DEIR at 4.2-107.

¹⁵¹ *Owning Our Air* Summary at 4; see also DEIR at 4.2-10 (stating that “health risk from ambient concentrations of DPM are much higher than the risk associated with any other TAC routinely measured in the region”).

¹⁵² Ca. Pub. Res. Code §§ 21168, 21168.5; *Californians for Alternatives to Toxics v. Dep’t of Food & Agric.*, 136 Cal. App. 4th 1, 12 (2005).

¹⁵³ BAAQMD, *Owning Our Air: The West Oakland Community Action Plan – Volume 1: The Plan* (2019) at ES-1, <https://www.baaqmd.gov/-/media/files/ab617-community-health/west-oakland/100219-files/final-plan-vol-1-100219-pdf.pdf?la=en>.

¹⁵⁴ *Owning Our Air* Summary at 3.

O-62-44 The commenter accurately summarizes AB 617 in context with the community of West Oakland. The Draft EIR includes many mitigation measures to reduce emissions of criteria pollutants and TACs from Project construction and operation. As discussed in Consolidated Response 4.14, *Environmental Justice*, the Draft EIR meets the requirements of CEQA and the CEQA Guidelines by identifying all feasible mitigation measures that are capable of avoiding or reducing the magnitude of significant and unavoidable impacts of the proposed Project. Pursuant to CEQA, there is no basis for including measures beyond those already presented in the Draft EIR to address the environmental impacts of the Project. 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. In addition, see Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*, regarding the effectiveness of mitigation measures in the Draft EIR.

See Responses to Comments O-62-40, O-62-41, and O-62-43 for a discussion of mitigation measures within the context of existing background health risks. See also Responses to Comments A-11-1, A-11-3, A-11-11, A-17-1, A-17-12, O-30-3, and O-51-19 for a discussion of the relationship between the WOCAP and the Draft EIR.

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pollutants.¹⁵⁵ Due to its significant pollution burden, West Oakland was selected as one of the first communities to develop an emissions reduction plan.¹⁵⁶ The Project has a responsibility to adhere to the plan set forth by AB 617 and CARB as its environmental impacts will weigh on a recognized environmental justice community. To achieve the goals set forth by the West Oakland community through AB 617, the City should require that stricter mitigation measures be levied on the Project.¹⁵⁷

1. The DEIR defers mitigation by refusing to commit to specific mitigation measures.

The Project will further exacerbate the negative health effects of criteria air pollutants and TACs in the area. Even with mitigation, the Project's operational emissions will surpass the City's thresholds of significance for reactive organic gasses ("ROG"), nitrogen oxides ("NOx"), and PM_{2.5}. Evidence suggests that PM_{2.5} is the most harmful air pollutant in the Bay Area in terms of associated impact on public health.¹⁵⁸ During construction, the combined average Project emissions would exceed the City's significance thresholds for NOx in Years 2 through 8 and would exceed the City's significance thresholds for ROG in Year 3 and Year 6 through 8.¹⁵⁹ With mitigation, the Project's construction emissions will still surpass the City's thresholds of significance for NOx during Year 2.¹⁶⁰ NOx emissions can contribute to the development of asthma and increase susceptibility to respiratory infection requiring hospital admissions.¹⁶¹ Infants and children are particularly at risk for exposure to nitrogen oxides.¹⁶² ROG and NOx are precursor compounds for ozone, which can cause breathing problems for those exposed to it.¹⁶³

The DEIR should commit to specific mitigation measures that will reduce air quality impacts to less than significant levels. The West Oakland Community Action Plan ("WOCAP") includes proposed measures to reduce air pollution and resident exposure to TACs. The plan identifies eighty-nine potential community-level strategies and control measures intended to reduce criteria pollutant and TAC emissions to improve community health, such as replacing fossil-fuel generators with energy storage systems and adopting more stringent air quality construction and operation requirements.¹⁶⁴ While the DEIR lists many of the control measures mentioned in the WOCAP, it does not commit the Project to following them. Under CEQA the

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¹⁵⁵ BAAQMD, *San Francisco Bay Area Community Health Protection Program* (2019) at 1, https://www.baaqmd.gov/~media/files/ab617-community-health/2019_0325_ab617onepager.pdf?la=en.

¹⁵⁶ *Id.*

¹⁵⁷ See *Owning Our Air Summary* at 11 (stating the 2025 and 2030 targets for reduced pollution and health risk in West Oakland).

¹⁵⁸ DEIR at 4.2-7.

¹⁵⁹ *Id.* at 4.2-63.

¹⁶⁰ *Id.* at 4.2-69.

¹⁶¹ *Id.* at 4.2-6.

¹⁶² *Id.*

¹⁶³ *Id.* at 4.2-4.

¹⁶⁴ DEIR at 4.2-30; BAAQMD, *Owning Our Air: The West Oakland Community Action Plan – Volume 1: The Plan* (2019) at 6-22, 6-23, <https://www.baaqmd.gov/~media/files/ab617-community-health/west-oakland/100219-files/final-plan-vol-1-100219.pdf?la=en>.

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The Project's operational emissions of criteria pollutants would exceed the City's adopted thresholds of significance, and the impact would be significant and unavoidable with mitigation (Impact AIR-2, Draft EIR p. 4.2-61). The Project's construction emissions of criteria pollutants would also exceed the City's adopted thresholds of significance, and the impact would be significant and unavoidable with mitigation (Impact AIR-1, Draft EIR p. 4.2-70). The commenter is correct that compelling evidence suggests that particulate matter with a diameter of less than 2.5 micrometers (PM_{2.5}) is the most harmful air pollutant in Bay Area air in terms of associated impacts on public health (BAAQMD, 2017b; CARB, 2017). Exposure to both nitrogen oxides (NO_x) and ozone can result in health effects, as explained on Draft EIR pp. 4.2-4 and 4.2-6. A discussion of the health impacts of criteria pollutants and TACs is included on Draft EIR pp. 4.2-4 through 4.2-12.

Regarding the significant and unavoidable construction impact on air quality (Impact AIR-1); which includes net new emissions of ROG, NO_x, and PM₁₀; the Draft EIR identifies all feasible mitigation measures to reduce this impact. These include Mitigation Measures AIR-1a, AIR-1b, AIR-1c, and AIR-1d. Regarding the significant and unavoidable operational (and combined construction and operational) impact on air quality (Impact AIR-1), the Draft EIR identifies all feasible mitigation measures to reduce this impact. These measures include Mitigation Measures AIR-1b, AIR-1c, AIR-1d, AIR-2a, AIR-2b, AIR-2c, AIR-2d, and AIR-2e, as well as Mitigation Measures TRANS-1a, TRANS-1b, TRANS-1c, TRANS-1d, TRANS-1e, TRANS-2a, TRANS-2b, TRANS-2c, TRANS-3a, and TRANS-3b.

Because the Project's emissions are not reduced below the City's thresholds of significance through implementation of all other mitigation measures that have been quantified based on reasonable calculation methods, Mitigation Measure AIR-2e requires the Project sponsor to reduce construction-related and operational emissions of criteria pollutants to below the City's thresholds of significance, by implementing both on-site and off-site measures (including through the purchase of emissions reduction offsets if needed). 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. The measure includes a list of candidate programs, such as zero-emission trucks, upgrading locomotives with cleaner engines, replacing existing diesel stationary and standby engines with Tier 4 diesel or cleaner engines, or expanding or installing energy storage systems

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(e.g., batteries, fuel cells) to replace stationary sources of pollution (the City has incorporated WOCAP strategies into the Draft EIR’s mitigation measures to the extent feasible given the programmatic nature of the WOCAP and the lack of specific implementation details contained within; please also refer to response to comment A-11-2 and A-17-12.). This must be documented and submitted to the City for review and approval and will be enforced and monitored through the MMRP. The Final EIR requires additional emission reduction measures, including many of the measures listed as “recommended” in Draft EIR Mitigation Measure AIR-2e, and a number of additional measures suggested in several comment letters. See Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*, for revisions to Mitigation Measure AIR-2e.

As discussed in Response to Comment A-17-12, and as discussed on Draft EIR p. 4.2-30, the WOCAP actions are not direct project-level requirements, and none of the WOCAP strategies are the responsibility of private development projects to implement. The WOCAP actions direct the City, BAAQMD, and CARB to develop plans, requirements, programs, and funding sources to reduce TAC emissions in West Oakland. None of the WOCAP actions include requirements for individual projects. Many of the plans, programs, and requirements yet to be developed will likely include specific requirements for new development, and the proposed Project would comply with all requirements in place at the time of Project approval, construction, and occupancy. As discussed in Response to Comment A-11-4, Draft EIR Mitigation Measure AIR-2.CU requires the Project sponsor to incorporate applicable strategies from the WOCAP. Mitigation Measure AIR-2.CU attempts to place specific requirements on the Project, such as installing energy storage systems (e.g., batteries, fuel cells) instead of diesel backup generators, installing truck charging stations for electric vendor and delivery trucks serving the Project site, and providing incentives to future tenants to retrofit their truck fleets to zero-emission vehicles.

See Responses to Comments A-11-1, A-11-3, A-11-11, A-17-1, A-17-12, and O-30-3 for a discussion of the relationship between the WOCAP and the Draft EIR. See also Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*, for a discussion of mitigation measure deferral.

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“formulation of mitigation measures shall not be deferred until some future time.”¹⁶⁵ The DEIR must articulate specific performance criteria to ensure that adequate mitigation measures would be implemented.¹⁶⁶ Therefore, the Project should incorporate these strategies as mitigation measures to adequately reduce the Project’s air quality impacts.

2. The mitigation measures offered in the DEIR are not supported by substantial evidence.

While electric vehicle (“EV”) chargers are an important tool in reducing air pollution and tackling climate change, their benefit is improperly exaggerated in the DEIR. The DEIR states that ten percent of the parking spaces at the Project site will be equipped with EV chargers.¹⁶⁷ It further argues that these chargers will discourage the use of fossil fuel vehicles.¹⁶⁸ This assertion is presented without any supporting evidence. Mitigation measures must be supported by substantial evidence.¹⁶⁹ The DEIR must adequately analyze the potential impacts of EV chargers, demonstrating how the chargers will discourage fossil fuel passenger vehicle use. As described above in Part V.B, the DEIR makes unreasonable assumptions in its analysis of EV charging as mitigation. If the EV-charger-equipped parking spaces are reserved for EVs, then the EV parking spots will have the same impact on traditional vehicle use as simply constructing fewer parking spots. This does not actively discourage fossil fuel vehicle use. However, if EV-charger-equipped parking spaces are not reserved for EVs, then there would not be an influence on fossil fuel vehicle use at all. Instead, the availability of parking equipped with EV chargers will make EV use more convenient. This might incentivize people with EVs to drive to the Project, increasing traffic. This increase in traffic could increase emissions from fossil fuel vehicles in the vicinity of the Project and offset potential benefits from the EV-charger-equipped parking spaces. The DEIR must analyze these potential impacts to properly inform the public of the Project’s environmental burden.

3. Because of the Project’s significant and unavoidable impacts on environmental justice communities, the City should require greater mitigation for the Project.

“CEQA’s ‘substantive mandate’ prohibits agencies from approving projects with significant environmental effects if there are feasible alternatives or mitigation measures that would substantially lessen or avoid those effects.”¹⁷⁰ As discussed above, the Project will have multiple significant and unavoidable air quality impacts. Because these significant and unavoidable impacts to air quality will particularly harm a community and sensitive subgroup, the Project’s mitigation analysis should address strategies and mitigation measures to reduce or eliminate impacts to that community or subgroup.¹⁷¹

¹⁶⁵ CEQA Guidelines § 15126.4.

¹⁶⁶ See *Communities for a Better Env’y v. City of Richmond*, 184 Cal. App. 4th 70, 94 (2010).

¹⁶⁷ DEIR at 4.2-38.

¹⁶⁸ See *id.*

¹⁶⁹ Cal. Pub. Res. Code § 21081.5.

¹⁷⁰ Harris, *supra* note 141, at 4 (citing *Mountain Lion Found. v. Fish & Game Comm’n*, 16 Cal. 4th 105, 134 (1997)).

¹⁷¹ See Harris, *supra* note 141, at 4 (citing CEQA Guidelines § 15041(a)).

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See Responses to Comments O29-1-22 through O29-1-28 for a discussion of the link between EV charging infrastructure and EV travel and the emission quantification methods used in the Draft EIR, including for ballpark EV charging. Also refer to *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.²⁵

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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.

The commenter is correct that the Project would result in significant and unavoidable impacts on air quality; specifically, Impact AIR-1 (construction criteria air pollutants), Impact AIR-2 (combined construction and operational criteria air pollutants), Impact AIR-1.CU (cumulative criteria pollutants), and Impact AIR-2.CU (cumulative health risks) would all be significant and unavoidable with mitigation. CEQA’s substantive mandate requires that “public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects . . .” (Public Resources Code Section 21002). The EIR provides the foundation for complying with this mandate. All feasible mitigation has been identified in the Draft EIR to reduce these impacts and additions suggested by commenters have been considered for inclusion as revisions to the mitigation measures in this Final EIR. For further discussion, see Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*. Regarding the Project’s health risk impacts many of the required mitigation measures address specific sensitive receptors that would be affected more than others, as discussed in Response to Comment O-62-43. For example, Mitigation Measure AIR-3 incorporates health risk reduction measures to

²⁵ Ramboll, 2021. *Electric Vehicle Assumptions for the Oakland Waterfront Ballpark District Project*, November 3, 2021.

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reduce potential health risks from truck-related sources of TACs; Mitigation Measure AIR-2.CU 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.” However, it is infeasible to quantify the emission reductions associated with Mitigation Measure AIR-2.CU, and to determine when such emission reductions would occur, because the specific program details are not known at this time (see Draft EIR p. 4.2-159). Refer to responses to comments A-11-4 and A-17-12 for additional discussion of Impact AIR-2.CU and Mitigation Measure AIR-2.CU.

For additional discussion of CEQA’s requirements to analyze impacts on specific communities and identify mitigation within those communities, see Response to Comment O-62-43.

The MMRP will be adopted by City decision makers who can provide for additional public input or involvement if desired by the community.

For a discussion of environmental justice issues, see also Consolidated Response 4.14, *Environmental Justice*.

The City will choose to approve the project or not based on the Final EIR and the Findings document (CEQA Guidelines Section 15091). If it approves the Project, the City would also need to adopt a Statement of Overriding Considerations to address the Project’s significant and unavoidable impacts, pursuant to CEQA Guidelines Section 15093:

- (a) CEQA requires the decision-making agency to balance, as applicable, the economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a proposed project against its unavoidable environmental risks when determining whether to approve the project. If the specific economic, legal, social, technological, or other benefits, including region-wide or statewide environmental benefits, of a proposed project outweigh the unavoidable adverse environmental effects, the adverse environmental effects may be considered “acceptable.”
- (b) When the lead agency approves a project which will result in the occurrence of significant effects which are identified in the final EIR but are not avoided or substantially lessened, the agency shall state in writing the specific reasons to support its action based on the final EIR and/or

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other information in the record. The statement of overriding considerations shall be supported by substantial evidence in the record.

CEQA Guidelines Section 15021(d), cited by the commenter, states that “in determining whether and how a project should be approved, a public agency has an obligation to balance a variety of public objectives, including economic, environmental, and social factors and in particular the goal of providing a decent home and satisfying living environment for every Californian.” This provision is not triggered at this stage in the CEQA process; if the City decides to approve the Project and prepares a Statement of Overriding Considerations for the Project, it will fully comply with these requirements and include a consideration of all relevant factors.

Further, CEQA Guidelines Section 15021(a) states that lead agencies must “avoid or minimize environmental damage where feasible.” As discussed throughout the Draft EIR, all feasible mitigation measures to reduce the project’s air quality impacts are required. If the City adopts a Statement of Overriding Considerations for the project, the decision makers will consider “specific economic, environmental, legal, social, and technological factors” as permitted by CEQA Guidelines Section 15021(b).

Based on all public comments, the Final EIR, and the Findings, the City will make a determination and decide whether or not to approve the project. This process will meet all CEQA requirements.

As discussed in Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures* and response to comment O-62-35, all documents submitted to the City in compliance with adopted mitigation measures, including, for example; the documentation required in Mitigation Measure AIR-2e, and the health risk reduction measures included in the Project plans and the offset project verification required in Mitigation Measure AIR-2.CU; would be a matter of public record and available for public review. While the measures themselves do not specify a public review period, they are public documents and the City could elect to establish a process to ensure the public is aware of their availability and can provide comments.

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O-62-48 As discussed in Draft EIR Section 4.8.2, *Regulatory Setting*, under *Land Use Covenants*, and as explained further 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 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 the start 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; however, the requirements would be tailored to ensure protections appropriate for the anticipated construction activities and the types of 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 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 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. DTSC, the agency with jurisdiction under state law, 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 would determine the appropriate approach and would 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.

Additionally, the development of mitigation measures is meant to be an open process that involves other interested agencies and the public.¹⁷² Because the Project will have a disproportionate impact on the environmental justice community in West Oakland, the Project should implement supplemental mitigation measures proposed by this community. The community should also be involved in CEQA's monitoring and reporting requirements for the Project "to ensure that feasible mitigation measures will actually be implemented . . . and not merely adopted and then neglected or disregarded."¹⁷³

Finally, the City should not approve the Project without requiring further mitigation because the Project's detrimental air quality and health impacts outweigh any expected benefits to the region. Under CEQA, a local government must exercise its judgment to "balance a variety of public objectives, including economic, environmental, and social factors and in particular the goal of providing a decent home and satisfying living environment for every Californian."¹⁷⁴ If the City chooses to approve the Project, despite its environmental impacts, it must explain in a statement of overriding consideration why it chose to put a price on human life.¹⁷⁵ More specifically, why a new ballpark was more valuable than protecting the health of the diverse and resilient community of West Oakland. For these reasons, the DEIR should be revised and recirculated to commit the Project to stricter mitigation, reducing the expected harm on the historically burdened environmental justice community in West Oakland.

VII. The DEIR's analysis of hazards is legally insufficient.

The DEIR identifies upwards of 50 different hazardous contaminants in soils and groundwater at the Project site.¹⁷⁶ Of these, at least 22 were detected at concentrations in excess of safe exposure "screening levels" and are therefore identified as "constituents of particular concern."¹⁷⁷ Maps contained in the DEIR show that contamination in excess of screening levels is present across almost the entirety of the Project site.¹⁷⁸ Contamination at the site is so severe that in 2003, the Department of Toxic Substances Control (DTSC) and the Port of Oakland

¹⁷² *Communities for a Better Env't v. City of Richmond*, 184 Cal. App. 4th 70, 93 (2010).

¹⁷³ *Fed'n of Hillside and Canyon Assns. v. City of L.A.*, 83 Cal. App. 4th 1252, 1261 (2000).

¹⁷⁴ CEQA Guidelines § 15021(d).

¹⁷⁵ *See id.* § 15093.

¹⁷⁶ ENGeo, *Athletics Ballpark Development Human Health and Ecological Risk Assessment* (Aug. 24, 2020) at Table 2, https://s3-us-west-1.amazonaws.com/waterfrontballparkdistrict.com/16_ReferencesintheDraftEIR-Section4-8Haz/2020-0824-Engeo-HHRA.pdf. Though the specific chemicals are listed in the Risk Assessment, the DEIR is more circumspect, describing contamination by categories without specifying which materials are present. Compare DEIR at 4.8-9 to -10 (referring to "heavy metals (e.g., lead)" and "volatile organic compounds") with ENGeo 2020 at 26 (identifying three metals (arsenic, cobalt, and lead), TPH-g, TPH-d, TPH-mo, 1,2-dichloro-3-chloropropane, naphthalene, eleven SVOCs, and two PCB mixtures as constituents of particular concern).

¹⁷⁷ ENGeo Risk Assessment, *supra* note 176, at 26.

¹⁷⁸ DEIR at 4.8-12 to -14 (Figures 4.8-2, 4.8-3, and 4.8-4).

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entered into a land use covenant that prohibits the use of the site for several purposes, including residences, hospitals, schools, day care centers, or parks.¹⁷⁹

Despite this significant hazardous contamination and restrictions on use of the land for residential purposes, the DEIR concludes that a yet-to-be-developed Remedial Action Workplan (RAW) will mitigate any impacts to less than significant levels.¹⁸⁰ The DEIR appears to conclude that because the RAW will ultimately require DTSC approval, the RAW will be guaranteed to remediate the toxic contamination to safe levels.¹⁸¹ Given DTSC's poor enforcement history and the A's recent lawsuit against DTSC for failure to enforce state law,¹⁸² it is unreasonable for the DEIR to rely upon DTSC approval, and it unreasonable to expect the City and the public to trust that the site will be remediated on these grounds alone. The DEIR's conclusions are unsupported by evidence in the record, and the DEIR must be revised to correct for this.

A. The DEIR's hazards analysis is flawed and must be revised to allow the City and the public to evaluate the risks to human health.

The DEIR must be revised to include additional information about the risks to human health and the environment. The DEIR lists the contaminants present in the soil and groundwater but fails to provide any quantification in the DEIR or its appendices of the risks associated with those levels of contamination. The DEIR must be revised to quantify the risks to all users of the site—including construction workers who would have direct contact with contaminated soil, and residents or visitors who visit the open space to recreate or picnic.

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The DEIR's analysis relies primarily on a 2020 Human Health and Ecological Risk Assessment prepared by ENGEO, though this document is not attached as an appendix to the DEIR, nor are its findings clearly summarized in the DEIR. This Risk Assessment describes soil samples taken, identifies contaminants present in those samples, and establishes "target risk levels" for several contaminants which would reduce cancer risks to 1 in 1,000,000.¹⁸³

There are several flaws with the Risk Assessment's analysis. First, the Risk Assessment fails to provide any measure of the relative magnitude of risk of different exposure levels beyond the target risk levels. This amounts to a failure to quantify the unmitigated risks of the hazardous materials present at the site. Though DTSC recommended that the Risk Assessment be modified

¹⁷⁹ Port of Oakland & Cal. Dep't of Toxic Substances Control, *Covenant to Restrict Use of Property, Environmental Restriction: Charles P. Howard Terminal Site* (Mar. 3, 2003), Article 4.01, at 6, https://s3-us-west-1.amazonaws.com/waterfrontballparkdistrict.com/17_ReferencesintheDraftEIR-Section4-9WQ/2003-0303-dtsc-luc.pdf.

¹⁸⁰ DEIR at 4.8-50.

¹⁸¹ *Id.* at 4.8-50 to -52.

¹⁸² See Order on Demurrers and Petition for Writ of Mandate in *The Athletics Investment Group v. Cal. Dep't of Toxic Substances Control*, Alameda Superior Court Case No. RG20069917 (Mar. 23, 2021) (finding in favor of the Athletics in a case challenging DTSC for failure to enforce state law at the Schnitzer Steel facility).

¹⁸³ ENGEO Risk Assessment, *supra* note 176, at 31.

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The quantification of risks is discussed in Draft EIR Section 4.8, *Hazards and Hazardous Materials*, under *Environmental Setting, Current Nature and Extent of Onsite Contamination*. This section describes the chemicals of concern, compares concentrations of those chemicals to conservative preliminary screening levels, depicts the extent of chemicals at concentrations above the screening levels, and summarizes the human health and ecological risk assessment (HHERA) that developed the Target Cleanup Levels. The Target Cleanup Levels are the numeric action levels for a given chemical concentration at a given location. Exceedance of a Target Cleanup Level would trigger remediation. The HHERA is available in the administrative record for the Draft EIR and on the DTSC EnviroStor website at: https://www.envirostor.dtsc.ca.gov/public/profile_report?global_id=01440006.

The amount by which the chemical concentration in a given sample exceeds the Target Cleanup Level is not the critical factor in the analysis. If the chemical concentration in a given sample at a given location exceeds the Target Cleanup Level, the material at that location must be remediated, regardless of the amount by which it exceeds the Target Cleanup Level. Remediation would consist of either removal from the site or encapsulation to prevent exposure to people and the environment. Consequently, the risks posed by such material would be remediated.

The commenter notes that DTSC made comments on an earlier draft of the HHERA. DTSC and Enggeo, the consultant that prepared the HHERA, discussed the comments and revised the HHERA, which was approved by DTSC in its letter dated October 22, 2020. Further discussion regarding the HHERA is provided in Consolidated Response 4.16, *Remediation Plans, Land Use Covenants, and Human Health and Ecological Risk Assessment*.

Construction of the entire Project would require about eight years, but the period of time when ground-disturbing activities would occur would be on the order of about one year. Once the ground surface has been prepared, the underlying contaminated materials would be covered by clean engineered fill and hardscape, thus preventing exposure to people and the environment. As discussed in Consolidated Response 4.16, *Remediation Plans, Land Use Covenants, and Human Health and Ecological Risk Assessment*, DTSC is the regulatory agency with jurisdiction over remediation activities at the site, including review and approval of the design and implementation of remediation activities.

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As required by CEQA, the Project is analyzed for the change in conditions that would result from the project. CEQA does not require analyzing the risk posed by existing off-site conditions.

As explained in Consolidated Response 4.16, *Remediation Plans, Land Use Covenants, and Human Health and Ecological Risk Assessment*, and in the HHERA, the preliminary screening levels are purposely conservative to provide a preliminary assessment as to whether further action may be needed; they do not consider site-specific conditions. Chemicals with concentrations below the conservative preliminary screening levels are considered to not pose a risk and need not be considered further. Chemicals with concentrations above the conservative preliminary screening levels are evaluated further by conducting a risk assessment that considers site specific conditions, including whether there is a complete exposure pathway (i.e., source, migration pathway, and receptor). As a result of the consideration of site-specific conditions, the site-specific Target Cleanup Levels may differ from the conservative preliminary screening levels.

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O-62-50 This comment has several parts, addressed below.

As explained in Draft EIR Section 4.8, *Hazards and Hazardous Materials*, under *Cumulative Impacts*, cumulative projects would be subject to the same regulatory requirements as discussed for the Project, including the implementation of health and safety plans and soil management plans, as needed. That is, cumulative projects involving releases of or encountering hazardous materials would be required to remediate their respective sites to the same established regulatory standards. This would be the case regardless of the number, frequency, or size of the release(s), or the residual amount of chemicals present in the soil from previous spills. It is possible that the Project and cumulative projects could result in releases of hazardous materials at the same time and in overlapping locations; however, the party responsible for each spill would be required to remediate site conditions to the same established regulatory standards, causing the cumulative concentration of whatever chemical had been spilled to be below regulatory action levels.

The Target Cleanup Levels would be applied independent of whether the exceedance is caused by one source or multiple sources. Cleanup would result in chemical concentrations below the Target Cleanup Levels, which would be protective of people and the environment.

to include an estimate of the of the human health risk that each contaminant target level represents, the Risk Assessment was not modified in response to DTSC's recommendation.¹⁸⁴

Second, the Risk Assessment includes unrealistic assumptions that are unsupported (and in fact contradicted by) the record. The target risk level for residents during ongoing construction was calculated assuming only one year of exposure—given that the DEIR estimates Phase II buildout to take at least 8 years, a one-year exposure duration is unsupported by the record.¹⁸⁵ Additionally, as discussed below, the target risk levels fail to take into account existing cancer risk from toxic air contaminants in West Oakland, thereby underestimating the total cancer risk that workers, residents, and visitors would be exposed to.¹⁸⁶

Finally, in at least one case, the target risk levels established in the Risk Assessment appear to be *less protective* than screening levels set by state and federal regulators. The Risk Assessment found concentrations of antimony (a heavy metal) in excess of screening levels but concluded that antimony was not a chemical of particular concern because the concentrations of antimony present were lower than the target level established in the Risk Assessment.¹⁸⁷ The DEIR does not explain why the target clean up level is less protective than state or federal screening levels, nor does it provide any justification for this finding.

The DEIR must be revised to provide the above information in order to enable the City and the public to evaluate the impacts of the hazardous contamination at the Howard Terminal site.

B. The DEIR fails to analyze the cumulative impacts of exposure to hazardous materials.

The DEIR concludes that hazardous materials impacts are cumulatively considerable only if two or more hazardous materials releases occurred over the same time period before cleanup is completed, and also overlap the same location.¹⁸⁸ Because "[n]one of the other nearby hazardous materials sites have affected soils or groundwater at the Project site," the DEIR concludes that the Projects' impacts are not cumulatively considerable.¹⁸⁹

The DEIR should be revised to consider the cumulative impacts of on-site contamination and surrounding industrial activity, like the neighboring Schnitzer Steel facility. The DEIR appears to assume that hazardous materials from the Schnitzer Steel facility could not encroach upon the Howard Terminal site, but the DEIR does not explain why this is so, or provide any evidence to support this assumption.

Additionally, the Risk Assessment that the DEIR relies upon does not consider the additive or cumulative impacts of multiple sources of toxic exposures. The target risk levels identified in the Risk Assessment did not take into account existing cancer risk from toxic air

¹⁸⁴ *Id.* at Appendix A (Response to DTSC Comments, Comment 1).

¹⁸⁵ *Id.* at 32.

¹⁸⁶ *Id.* at 33.

¹⁸⁷ *Id.* at 26.

¹⁸⁸ DEIR at 4.8-56.

¹⁸⁹ *Id.* at 4.8-57.

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O-62-51 See Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*, and Consolidated Response 4.16, *Remediation Plans, Land Use Covenants, and Human Health and Ecological Risk Assessment*, regarding the health risk assessment that has been approved by DTSC, the agency with jurisdiction.

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contaminants in West Oakland.¹⁹⁰ In other words, the Risk Assessment set target risk levels without taking into account existing risks from ambient air. Since workers, residents, and visitors will undoubtedly be breathing the ambient air while coming into contact with potentially contaminated soil and groundwater, the DEIR must be revised to account for the cumulative effects of these exposures.

C. The DEIR's mitigation measures are vague, unclear, and impermissibly deferred.

The DEIR acknowledges that construction of the Project would require removing the asphalt cap that currently protects users of the site from contact with the hazardous materials in the soil and groundwater.¹⁹¹ Workers on the construction site would be directly exposed to these contaminated materials after the cap is removed. In addition, if the soil and groundwater are not sufficiently remediated, users of the project site—residents, workers, ballgame attendees, members of the public who visit the public open space—could be exposed to remaining hazardous materials, particularly in park and open space areas where direct contact with soil is likely.

To mitigate these impacts, the DEIR proposes Mitigation Measure HAZ-1a, which promises to prepare a Remedial Action Workplan and to submit the plan to DTSC for approval. This RAW will be prepared “[p]rior to Project-related grading or construction onsite.”¹⁹² Mitigation Measure HAZ-1a contemplates that the RAW will identify known areas with hazardous materials, describe “remedial methods” for each contaminant, describe procedures for removing contaminated materials, and describe cap restoration activities.¹⁹³ The DEIR then identifies a second mitigation measure, HAZ-1b, which stipulates that the A’s will comply with the RAW prior to issuance of any grading, building, or construction permit.¹⁹⁴

The proposed mitigation measures are vague, incomplete, and ill-defined, and are therefore impermissibly deferred. While the DEIR identifies types of clean-up activities that may be undertaken at the site, it does not commit to any specific remediation methods, instead deferring that until after the DEIR has been approved. “Impermissible deferral of mitigation measures occurs when an EIR puts off analysis or orders a report without either setting standards or demonstrating how the impact can be mitigated in the manner described in the EIR.”¹⁹⁵ Here, the DEIR has not demonstrated how the menu of options of remedial methods will mitigate the contamination at the Project site. Instead, the DEIR asserts that the yet-to-be-developed plan “would specify how the construction contractor(s) would remove, handle, transport, and dispose of all excavated materials in a safe, appropriate, and lawful manner.”¹⁹⁶ The effectiveness of a

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¹⁹⁰ ENGEO Risk Assessment, *supra* note 176, at 33.

¹⁹¹ DEIR at 4.8-48.

¹⁹² *Id.* at 4.8-51.

¹⁹³ *Id.*

¹⁹⁴ *Id.* at 4.8-52.

¹⁹⁵ *Preserve Wild Santee v. City of Santee*, 210 Cal. App. 4th 260, 280–81 (2012) (holding that mitigation was impermissibly deferred when the EIR contained measures to mitigate an impact but failed to specify performance standards or provide other guidelines for mitigation actions).

¹⁹⁶ DEIR at 4.8-49.

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Removal Action Workplan cannot be analyzed before the workplan has been developed, and the DEIR's reliance on this non-existent workplan constitutes deferred mitigation.

Further, the DEIR does not contain sufficient information to determine if these mitigation measures would be effective. As discussed above, the target risk levels identified in the Risk Assessment are not supported by substantial evidence. Mitigation Measures HAZ-1a and HAZ-1b rely on achieving those unsupported target risk levels. To the extent that these mitigation measures rely upon the target risk levels as a performance standard, the effectiveness of the mitigation measures is not supported by substantial evidence.

In *Sacramento Old City Association v. City Council*, the court found that "for kinds of impacts for which mitigation is known to be feasible, but where practical considerations prohibit devising such measures early in the planning process (e.g., at the general plan amendment or rezoning stage), the agency can commit itself to eventually devising measures that will satisfy specific performance criteria articulated at the time of project approval."¹⁹⁷ However, it is no longer early in the planning process. It is time to make a clear and feasible plan for the public to comment on. The DEIR does not identify specific "practical considerations" that prohibit devising clear and reliable mitigation measures, and as such should be revised to include the Removal Action Workplan.¹⁹⁸

D. The DEIR fails to address the possibility that DTSC may not approve an updated land use covenant.

The DEIR acknowledges that residential and open space uses are currently prohibited on the Howard Terminal site, but the DEIR does not acknowledge the possibility that these restrictions might remain in place. Instead, the DEIR assumes approval of a new set of land use covenants which will permit residential and open space use, and identifies those land use covenants as a mitigation measure for the hazardous contamination at the site.

The DEIR does contain enough information for the City and the public to determine if it is likely that the site can be sufficiently remediated so that housing and open space uses are safe. As discussed above, the Risk Assessment that the DEIR relies upon does not describe the relative risks levels of different levels of contamination, nor does the DEIR include any information about the effectiveness of various remediation methodologies. Consequently, the City and the public have no way to determine how likely it is that cleanup to target risk levels is feasible, nor do they have any way of determining what the risks to workers, residents, and visitors may be if remediation does not achieve the target risk levels. For these reasons, the DEIR fails as an informational document and must be revised.

The DEIR does not discuss or even acknowledge the possibility that updated land use covenants may not be approved, instead treating the updated land use covenants as if their approval is predetermined. The DEIR must be revised to acknowledge and analyze the possibility that DTSC may not approve an updated land use covenant, and that residential and open space use on the site may continue to be prohibited. If the project were to move forward without residential or open space use, it appears immensely unlikely that the Project's benefits to

¹⁹⁷ *Sacramento Old City Ass'n v. City Council*, 229 Cal. App. 3d 1011, 1028-29 (1991).

¹⁹⁸ *Id.* at 1029.

O-62-52 Draft EIR Section 4.8.2, *Regulatory Setting*, under *Land Use Covenants*, acknowledges that the Project site is subject to existing LUCs, operations and maintenance agreements, soil and groundwater management plans, and risk management plans, all enforced by DTSC, the regulatory agency with jurisdiction. Table 3-4 in Draft EIR Chapter 3, *Project Description*, identifies DTSC's oversight of remediation and amended use restrictions as approval actions required for the Project to proceed. CEQA does not require that the EIR analyze an alternative in which some but not all critical approval actions are granted. See Consolidated Response 4.9, *Alternative 3: The Proposed Project with Grade Separation Alternative*, for a discussion of CEQA's "rule of reason" in selecting alternatives for analysis in an EIR. Consolidated Response 4.16, *Remediation Plans, Land Use Covenants, and Human Health and Ecological Risk Assessment*, further explains the process for developing and implementing remediation plans to develop the site and be protective of people and the environment.

DTSC is a responsible agency under CEQA with the responsibilities and choices outlined in Section 15096 of the CEQA Guidelines. Thus, DTSC would have an opportunity to consider the adequacy of the EIR when it considers whether or not to approve the remediation plan and related documents within its jurisdiction.

Draft EIR Section 4.8.1, *Environmental Setting, Human Health and Ecological Risk Assessment*, describes the human health and ecological risk assessment, or HHERA, prepared using all testing results collected through August 2020 for the Project site. The HHERA developed specific target cleanup levels that would be protective of human health and the environment. Neither the HHERA nor the regulatory requirements outlined in the Draft EIR demonstrate that remediation and changes to existing land use restrictions are infeasible. Further explanation of the HHERA is provided in Consolidated Response 4.16, *Remediation Plans, Land Use Covenants, and Human Health and Ecological Risk Assessment*.

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the people of Oakland would outweigh the significant and unavoidable impacts on air quality and human health. The DEIR must be revised and recirculated to analyze this possibility.

E. The DEIR attempts to circumvent CEQA review by relying upon the City's certification of this EIR for future DTSC approvals.

The DEIR is clear that "[t]he objective is also for DTSC to rely on this Project EIR for CEQA compliance for its decision to approve the new RAW."¹⁹⁹ In other words, the DEIR contemplates that DTSC could avoid CEQA analysis for the forthcoming Removal Action Workplan, because that Workplan was approved in this DEIR. This flies in the faces of logic and CEQA precedent. How can DTSC rely on this DEIR for approval of the RAW, when the RAW is not analyzed in this DEIR, and will not be developed until after this EIR is certified?

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Additionally, Mitigation Measure HAZ-1a says the RAW will use Target Cleanup Levels developed in the Risk Assessment.²⁰⁰ As discussed above, there are several significant flaws with the target levels established in that Risk Assessment. Yet here, the DEIR seeks approval of those Target Cleanup Levels without providing any justification in the DEIR itself of why those levels are appropriate and sufficiently protective for this Project, relying instead on DTSC's approval of the Risk Assessment. The DEIR neglects to mention that DTSC expressed concern over the Risk Assessment's use of risk-based target levels and recommended that the Risk Assessment be modified to include an estimate of the human health risk that each contaminant target level represents.²⁰¹

If the A's plan to rely upon this City's certification of this EIR for DTSC's approval of the RAW, then the RAW must actually be developed and described in this DEIR.

VIII. The DEIR's transportation and circulation analysis contains insufficient detail, defers mitigation, and presents alarming, unavoidable impacts.

O-62-54

The Project will have significant and unavoidable transportation and circulation consequences that should be unacceptable to the City. There are four impacts related to commuter safety and congestion that the DEIR concedes will be significant and unavoidable. The DEIR also states an intention not to formulate a Construction Management Plan or Transportation Demand Management plan until after Project approval, thereby impermissibly deferring mitigation of otherwise-significant congestion and VMT impacts. Moreover, the DEIR concludes without sufficient analysis that the Project's conflict with local plans and restriction of existing commuter lanes will not result in significant impacts.

A. The Project creates several Significant and Unavoidable Impacts related to commuter safety and roadway congestion.

O-62-55

The DEIR concludes that four transportation impacts will be significant and unavoidable: impacts TRANS-3 and TRANS-3.CU (related to at-grade railroad crossings) and impacts TRANS-6 and TRANS-6.CU (related to increased congestion on important roadway

¹⁹⁹ DEIR at 4.8-38.

²⁰⁰ *Id.* at 4.8-51.

²⁰¹ ENGEO Risk Assessment, *supra* note 176, Appendix A (Response to DTSC Comments, Comment 1).

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This comment suggests that DTSC seeks to avoid CEQA analyses of the Removal Action Workplan (RAW) because the remediation plan and related documents have not been provided as part of the Draft EIR. However, Draft EIR Section 4.8, *Hazards and Hazardous Materials*, provides a detailed description of known contaminants on the Project site and regulatory requirements that would guide the remediation plan and related documents. Mitigation measures have been included to ensure that regulatory requirements must be met before the issuance of grading, building, or construction permits, and certificates of occupancy or similar operating permits for new buildings and uses. Also, the impacts of grading activities, off-hauling of contaminated soil, import of clean soil, and related site preparation activities have been analyzed throughout the EIR in its consideration of construction-related impacts. See Draft EIR p. 3-57 for the quantities and trips assumed.

DTSC, the agency with jurisdiction under state law, 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 is a responsible agency under CEQA with the responsibilities outlined in Section 15096 of the CEQA Guidelines. DTSC would determine to appropriate approach and would approve the required remedy selection document after certification of the Final EIR. Thus, DTSC would have an opportunity to consider the adequacy of the EIR when it considers whether to approve the remediation plan and related documents within its jurisdiction. DTSC also has its own public participation process, as described in Response to Comment O-55-19. See Consolidated Response 4.16, *Remediation Plans, Land Use Covenants, and Human Health and Ecological Risk Assessment*, regarding the health risk assessment that has been approved by DTSC, the agency with jurisdiction.

This comment also repeats concerns regarding the HHERA that have been addressed in the responses to previous comments in this comment letter.

O-62-54

The comment serves as an introduction to the comments that follow. As a result, no specific response is provided here. See Responses to Comments O-62-55 through O-62-62. See also Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*.

O-62-55

The commenter provides the opinion that the City should not approve the Project because it has significant and unavoidable transportation impacts. This comment raises neither significant environmental issues nor specific questions

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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 part of the record and made available to the decision makers prior to a final decision on the Proposed Project.

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segments).²⁰² The City should not approve a project that fails to reduce these impacts to less than significant.

1. The Project poses a significant and unavoidable public safety risk, by increasing at-grade traffic across the active railroad line on Embarcadero.

The DEIR states that “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.”²⁰³ The DEIR characterizes this impact as “Significant and Unavoidable with Mitigation.”²⁰⁴

O-62-56

All commuter routes to the Project site cross the railroad line at Embarcadero West. The Howard Terminal development would drastically increase the volume of traffic crossing the railroad at-grade, in turn increasing risk of accidents. This increased circulation will be a mix of pedestrian, bicycle, and vehicle traffic. The Market Street crossing is projected to be most significant point of vehicle traffic crossing the tracks (estimated at 2,200 vehicles for an at-capacity game).²⁰⁵ The Washington Street crossing is projected to be most significant point of pedestrian traffic crossing tracks (estimated at up to 4,300 people crossing hourly).²⁰⁶ Approximately 42 trains run through the area per day, which each can shut down the intersection for seven to nineteen minutes.²⁰⁷ The DEIR offers a mitigation measure that includes installing some additional fencing and signaling around the crossings, but even with this measure the DEIR characterizes the impact as significant and unavoidable.²⁰⁸ A revised EIR should consider additional mitigation measures that would reduce or avoid this public safety risk.

2. The Project would cause significant and unavoidable traffic congestion on several major roadways, in conflict with Alameda County Congestion Management Program.

O-62-57

The Project will cause the Posey Tube in the eastbound direction between Alameda and Oakland, and the Webster Tube in the westbound direction between Oakland and Alameda to become significantly more congested.²⁰⁹ Cumulatively, sections of I-880 (northbound between 23rd Avenue and Embarcadero), SR 24 (eastbound between Broadway and SR 13), Market Street (northbound between 12th and 14th, and southbound between Grand and 18th), and the Posey and Webster Tubes will become more congested.²¹⁰ These roadways will become more congested to a degree that conflicts with the county Congestion Management Program (CMP).²¹¹ This DEIR offers no mitigation measures for this impact. The DEIR explains that even with its Transportation Demand Management Plan (TDM) and Transportation Management Plan (TMP)

²⁰² DEIR at 4.15-233, 243, 246, 248.

²⁰³ DEIR at 4.15-233.

²⁰⁴ DEIR at 4.15-233, -247.

²⁰⁵ DEIR at 4.15-234.

²⁰⁶ DEIR at 234.

²⁰⁷ DEIR at 234.

²⁰⁸ DEIR at 4.15-235 to -236.

²⁰⁹ DEIR at 4.15-243.

²¹⁰ DEIR at 4.15-248.

²¹¹ DEIR at 4.15-243, -248.

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in place, increased traffic congestion on these roadways would still be "significant and unavoidable."²¹² Congestion on these segments would impact not only new commuters to the Project site, but also pre-existing commuters in the area. This impact should carry substantial weight in the City's review.

B. The DEIR is deficient with respect to transportation impacts related to Non-Ballpark development.

In Impact TRANS-1A, the DEIR states that VMT generated by the residential and commercial components of the Project will not exceed significance thresholds after the application not-yet-developed TDMs.²¹³ However, the DEIR underestimates transportation impacts and impermissibly defers mitigation of those impacts. The DEIR must be revised and recirculated to correct these errors.

1. The DEIR does not discuss or analyze VMT and VRT impacts related to proposed off-site affordable housing.

In the project description, the DEIR proposes affordable off-site residential units at some unidentified location, presumably in the surrounding community.²¹⁴ The DEIR's transportation and circulation discussion contains no mention or analysis of this potential off-site construction. In a revised EIR, this affordable housing proposal should be fully fleshed out, as discussed above in Part I of this comment. Impacts on traffic circulation—which could vary greatly depending on the specific location and scope actually proposed—should be analyzed as part of a revised EIR, along with adequate mitigation measures.

2. The DEIR defers mitigation by proposing that individual building owners independently formulate and seek approval on their own Transportation Demand Management (TDM) plans at a later date, after the Project is approved.

The DEIR presents Mitigation Measure TRANS-1A to ensure that the Project achieves a 20 percent VTR for non-ballpark development.²¹⁵ Mitigation Measure TRANS-1A is a Transportation and Parking Demand Management (TDM) Plan. However, the DEIR says that each individual building owner will formulate their own TDM Plan, separate from this DEIR, for review by the City at a later date after Project approval.²¹⁶

Under CEQA, it is legally improper to "defer the formulation of mitigation measures until after project approval."²¹⁷ Here, the DEIR says that each building owner must submit its plan before their respective building is occupied, but it appears that the individual plans can only be formulated after the project is approved, and in fact only after buildings are constructed and leased or sold out to individual owners. By proposing that each individual building owner create their own TDM plan for approval at some point in the future, the DEIR does not sufficiently

²¹² DEIR at 4.15-243, -249.

²¹³ DEIR at 4.15-178.

²¹⁴ DEIR at 3-26 n.10.

²¹⁵ DEIR at 4.15-183.

²¹⁶ DEIR at 4.15-183.

²¹⁷ *Cal. Native Plant Soc'y v. City of Rancho Cordova*, 172 Cal. App. 4th 603, 621(2009).

O-62-58

The first paragraph 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 Draft EIR's transportation analysis, including the analysis of vehicle miles traveled in Impact TRANS-1a, assesses the potential impacts of the Project described in Chapter 3 of the Draft EIR, which includes up to 3,000 dwelling units at the Howard Terminal site. As discussed in Consolidated Response 4.12, *Affordable Housing*, the location of any affordable housing that may be proposed off-site is not known, and any such housing would require separate entitlement following review under CEQA. It would be improper for this EIR to speculate regarding the site or sites that would be selected.

O-62-59

The Draft EIR does not improperly defer the formulation of mitigation measures. Mitigation Measure TRANS-1a sets forth a performance standard (20 percent vehicle trip reduction) and provides a list of required and possible strategies by which non-ballpark development at the Project site would achieve the performance standard. The TDM effectiveness memo included in Draft EIR Appendix TRA.2 demonstrates that the mitigation measure would be effective for a range of strategies. As explained in Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*, the effectiveness of various vehicle trip reduction strategies is likely to change over time in response to changes in transit services, parking supplies, and travel behavior and advances in technology; thus, it would be impractical to lock in place a list of discrete actions at the time the Project is approved. It is therefore appropriate to require approval of a TDM plan for each building prior to occupancy and approval of a TMP with 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 effectiveness and which additional strategies from the Draft EIR would likely be required for each building. Consolidated Response 4.23 also includes Draft EIR text changes to Mitigation Measures TRANS-1a and TRANS-1b.

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demonstrate that it will actually meet the 20% vehicle trip reduction required by AB 734.²¹⁸ A revised EIR must remedy this deferred mitigation.

C. The DEIR inadequately explains how decreasing existing commuter vehicle road lanes near the Project site would improve traffic circulation in the area.

The DEIR assumes without analysis that converting half of Broadway's lane capacity to bus-only lanes will cause a critical mass of commuters to switch to public transit; the DEIR also fails to analyze the more intuitive likelihood of bottleneck congestion. The DEIR presents Mitigation Measure TRANS-1d—*Implement Bus-Only Lanes on Broadway*—as a method to “improve transit reliability and improve transit connectivity.”²¹⁹ The measure calls for converting one motor vehicle lane in each direction on Broadway between Embarcadero West and 11th Street to bus-only lanes.²²⁰ The DEIR does not flesh out the ramifications of this proposal. One can assume that additional bus-only lanes would ease the commute into the Project site for bus riders and may encourage increased ridership on public transportation. However, this section of Broadway will continue to be a major thoroughfare for local commuters, and the DEIR does not actually analyze what proportion of would-be commuters would be compelled to switch to public transit due to implementation of a bus-only lane. This is relevant because those who continue to commute in personal vehicles, either to the Project site or simply to the surrounding area, would be compressed from two lanes into a single lane on Broadway.

O-62-60

Without additional information, it is impossible to know whether Mitigation Measure TRANS-1d would in fact be detrimental to transit reliability and connectivity. A revised EIR should concretely support the implied statement that implementing bus lanes will compel a major shift from personal vehicle use to public transportation, such that compressing personal vehicle traffic into a single lane would not create a serious traffic bottleneck. A revised EIR should consider the possibility of serious bottleneck congestion resulting from removing one of only two vehicle lanes in each direction on Broadway and converting them to bus-only lanes. Because impacts TRANS-1A,²²¹ TRANS-1B,²²² TRANS-5,²²³ and TRANS-5.CU²²⁴ all rely on the flawed mitigation measure TRANS-1d to be characterized as “less than significant,” the revised EIR should consider how increased congestion on Broadway would in turn affect this range of impacts. If increased congestion is found to be likely, the revised EIR should also offer further mitigation measures to alleviate this impact.

D. The Project will conflict with the Oakland Bike Plan.

O-62-61

The City of Oakland's 2019 Bike Plan calls for building bike lanes on several street segments near the Project site.²²⁵ However, the proposed Project precludes the construction of

²¹⁸ See DEIR at 4.15-183 to -187.
²¹⁹ DEIR at 4.15-129, -242.
²²⁰ DEIR at 4.15-198.
²²¹ DEIR at 4.15-198, -200.
²²² DEIR at 4.15-198, -200.
²²³ DEIR at 4.15-242.
²²⁴ DEIR at 4.15-248.
²²⁵ DEIR at 4.15-204 to -209.

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Traffic congestion or measures of vehicular delay are not an environmental impact under CEQA per State CEQA Guidelines Section 15064.3. 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 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 4.21, *AC Transit Congestion Impacts*, which addresses transit on Broadway.

The commenter incorrectly asserts that the Draft EIR assumes bus-only lanes on Broadway will “. . . cause a critical mass of commuters to switch to public transit.” See Draft EIR Tables 4.15-27 and 4.15-28, which show that the Project's bus and BART trips would increase from about 10,700 to about 14,400 daily trips after the Draft EIR Mitigation Measures are implemented and these increased transit trips would be spread across the three BART stations and the 12 AC Transit bus lines within a 10- to 15-minute walk of the Project.

The commenter also states that the Draft EIR failed to “. . . analyze the more intuitive likelihood of bottleneck congestion.” This is not required by CEQA as part of the Project evaluation. Nonetheless, the City of Oakland required an intersection operation analysis, which is provided in Draft EIR Appendix TRA.3. The analysis shows that intersection operations through the Broadway bottlenecks at 5th and 6th Streets would operate at similar levels without and with the Project including the bus-only lanes. This is consistent with the Draft EIR (p. 4.15-129), which states that the Broadway improvements maintain existing roadway capacity through the 5th and 6th Street intersections by removing the median, upgrading traffic signals, and prohibiting northbound left turning traffic at 6th Street.

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The commenter notes the potential conflicts raised in the Draft EIR with the Bike Plan, relative to existing, proposed, and planned bikeways within the vicinity of the Project. However, as noted in the Draft EIR (p.4.15-66), the Bike Plan recognizes that the ballpark may alter the bike infrastructure in the vicinity. 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

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several of these bike lanes, thereby conflicting with the Bike Plan. For example, the Bike Plan call for constructing a Class 2 bike lane on Adeline Street between 3rd and 7th Streets.²²⁶ The proposed Project construction would make this bike lane impossible, and instead would enhance Adeline Street for vehicle access, especially truck access to and from the seaport.²²⁷ Likewise, the Bike Plan calls for Class 2B buffered bike lanes on Broadway between Bay Trail and 6th Street.²²⁸ However the proposed Project instead plans to enhance Broadway for bus access and would make it impossible to build these bike lanes.²²⁹ Similarly, the Project calls for improving Market Street for auto and truck traffic, intended to improve vehicle traffic flow between the Project site and Schnitzer Steel.²³⁰ This makes impossible the Bike Plan's recommended Class 4 protected bike lanes on Market Street between Embarcadero West and 18th Street.²³¹ As one further example, the West Oakland Specific Plan calls for converting one existing traffic lane to a class 2 bike lane between 36th and 3rd Streets on Adeline Street.²³² Instead, the Project plans to prioritize the entire roadway on Adeline for truck traffic as the primary thoroughfare for seaport traffic.²³³

The DEIR suggests that this contradiction with the Bike Plan is insignificant because it is mitigated by measures TRANS-2a, 2b, and 2c. Each of these mitigation measures is simply the construction of another small segment of bike lane that the Bike Plan also prescribes on 7th Street, Martin Luther King, Jr. Way, and Washington Street.²³⁴ Constructing these other pre-planned bike lanes does not negate the fact that the Bike Plan explicitly calls for an even more extensive network of new bike lanes. The Bike Plan calls for construction of lanes not only on 7th, MLK, and Washington, but also on Broadway, Adeline, Market, and others. For that reason, it is unclear how constructing only the 7th, MLK, and Washington Street bike lanes can properly be offered as mitigation measures for making construction of the Broadway, Adeline, and Market Street bike lanes impossible.

Expanding ease and access to bike transit is a priority in Oakland. The Bike Plan indicates that 72% of West Oakland residents want to bike more, as do 68% of downtown residents.²³⁵ Yet the DEIR describes a Project that fails to comply with the City of Oakland's Bike Plan, and in fact directly conflicts with the Plan by precluding construction of a number of prescribed bike lanes. Nevertheless, the DEIR characterizes this contradiction with a local plan as less than significant.

²²⁶ DEIR at 4.16-206.

²²⁷ DEIR at 4.15-206.

²²⁸ DEIR at 4.15-206.

²²⁹ DEIR at 4.15-206.

²³⁰ DEIR at 4.15-208.

²³¹ DEIR at 4.15-208.

²³² DEIR at 4.15-215.

²³³ DEIR at 4.15-215.

²³⁴ DEIR at 4.15-230.

²³⁵ City of Oakland & Department of Transportation, *Let's Oakland: 2019 Oakland Bike Plan* (Jul. 2019) at 25, https://cao-94612.s3.amazonaws.com/documents/LBOakland_FinalDraft_20190807_web.pdf.

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." Consequently, there is no fundamental conflict with the Bike Plan.

The commenter also incorrectly states the extent of the impacts on the Bike Plan. Specifically, the Project would affect planned bike lanes on Market Street between Embarcadero West and 3rd Street, but not farther north to 18th Street as suggested by the commenter. The project would affect planned bike lanes on Adeline Street between 3rd and 7th Streets, but not farther north to 36th Street as suggested by the commenter. Last, the Project would affect planned bike lanes on Broadway between 4th and 6th Streets, but not farther south to the Bay Trail.

To clarify this issues, Impact TRANS-2 (Draft EIR p. 4.15-201, last paragraph) is modified to incorporate the language from the Bike Plan recognizing that the Project may alter the bike infrastructure:

There are three corridors, Adeline Street and Market Street and Broadway, where planned transportation improvements described in adopted plans would potentially conflict with the Project's transportation improvements, illustrated in **Figure 4.15-47**. In each case as noted in the table, the Project and its planned components include transportation improvements, i.e., Mitigation Measures that resolve the conflict by providing an alternative solution to the planned transportation improvement. These measures are also consistent with the intent of the Bike Plan, which 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 addition of this language to the mitigation measure does not affect or alter the analysis of impacts or conclusions identified in the Draft EIR.

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E. The Project improperly defers mitigation of construction-related congestion by relying on a future Construction Management Plan, which is yet-to-be formulated.

Under CEQA, it is legally improper to “defer the formulation of mitigation measures until after project approval.”²³⁶ Here, absent mitigation, construction-related congestion (Impact TRANS-4) is a significant Project impact. The DEIR asserts that a CMP will mitigate construction-related congestion to “less than significant.”²³⁷ However, no CMP is included with the DEIR. Rather, a CMP will be formulated at a later point, subject to agency approval.²³⁸

The DEIR identifies that construction around the Project site will take place over several years—though the duration is unknown and subject to change—and that related closures will extend out into surrounding area.²³⁹ Cumulatively, the DEIR notes that “the Project would be constructed in an area that is seeing additional construction, including housing and commercial development in Downtown and near the West Oakland BART, and street improvements throughout Downtown, and could contribute to a significant transportation hazard due to construction activity.”²⁴⁰ The DEIR says that a CMP will mitigate this otherwise significant impact. However, the CMP will only be formulated separately after approval, and this DEIR provides no Project-specific details about how the ongoing construction will be managed so as to mitigate roadway congestion over several years.²⁴¹ Rather, the DEIR provides abstract categories of measures that a future CMP may contain, but offers no Project-specific measures. For example, the DEIR explains:

The CMP *shall* provide project-specific information including descriptive procedures, approval documentation, and drawings (such as a site logistics plan, fire safety plan, construction phasing plan, proposed truck routes, traffic control plan, complaint management plan, construction worker parking plan, litter/debris clean-up plan, and others as needed) *that specify how potential construction impacts will be minimized* and how each construction-related requirement will be satisfied throughout construction of the project.²⁴²

Those components of the future CMP should be detailed as part of this document, and not deferred. Features like a construction phasing plan, site logistics plan, and others are relevant to this DEIR because they influence the degree of Impact TRANS-4 (construction-related congestion) and whether or not the mitigation measure will be sufficient. Mitigation Measure TRANS-4 (CMP) cannot be properly analyzed if no Project-specific components are described.²⁴³ This DEIR fails to provide a concrete basis from which to ascertain whether a hypothetical CMP is feasible and sufficient to mitigate extensive construction-related congestion.

²³⁶ *Cal. Native Plant Soc’y v. City of Rancho Cordova*, 172 Cal. App. 4th 603, 621 (2009).
²³⁷ DEIR at 4.15-241.
²³⁸ DEIR at 4.15-240 to -241.
²³⁹ DEIR at 4.15-240.
²⁴⁰ DEIR at 4.15-247.
²⁴¹ DEIR at 4.15-240 to -241.
²⁴² DEIR at 4.15-241 (emphasis added).
²⁴³ DEIR at 4.15-241.

O-62-62 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. See Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*.

Construction management plans are routinely required by the City of Oakland and other jurisdictions to address potential impacts of proposed construction and cannot be formulated with any specificity until specific construction activities, schedules, and locations are known. The practical effect of project construction is disruption to the movement of vehicles in areas near construction activities. This is not a quantitative impact, but rather a qualitative impact on the public attempting to access the areas where construction will take place. As a result, such an impact appropriately requires non-quantitative measures.

Construction-related impacts are also potentially short-term significant impacts of construction traffic related to roadway operations, temporary loss of bus stops or rerouting of bus lines, and temporary loss of on-street parking. These temporary impacts are typically and appropriately mitigated by the measures designated in the construction management plans that can adapt to site-specific issues. Such plans are intended to alleviate a qualitative impact (fluidity in construction) and the need to respond to developing conditions at many different construction methods and provide an iterative process and flexibility to be nimble to address these issues. Requiring precise performance levels would prevent dynamic responses and site-specific needs. Further, CEQA allows a lead agency to list specific elements that must be considered when formulating the required plan.

Thus, the Draft EIR requires preparation of a construction management plan prior to issuance of the first construction permit, specifies its required contents, cites relevant standards and guidance, and provides for City review and approval. (While not specified as a requirement, the City may also elect to require that the plan include measures like public outreach and public information campaigns to encourage the public to access the construction areas through non-automotive means; signage directing drivers to other parking facilities; coordination with other projects to minimize cumulative

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construction impacts on traffic; and creation of plans with the cities to reroute traffic around construction areas.) The following text has been added to Mitigation Measure TRANS-4 accordingly:

In order to minimize site grading, infrastructure and ballpark construction impacts on access for nearby residences, institutions, and businesses, the Project sponsor shall provide nearby residences and businesses with regularly-updated information regarding project construction, including construction activities, peak construction vehicle activities (e.g., concrete pours, excavation), and travel lane closures via a website and/or quarterly construction update meetings with neighbors.

Courts have found that these types of “best management practices” are proper mitigation under CEQA, especially where, as with the construction management plans, they are “widely employed.” (See *Friends of Oroville v. City of Oroville* (2013) 219 Cal.App.4th 832, 838 [no improper deferral of mitigation where water quality plan identified “widely employed” “Best Management Practices”].) The mitigation measure is also crafted to ensure compliance with the City's requirement described in the City's *Supplemental Design Guidance for Accommodating Pedestrians, Bicycles, and Bus Facilities in Construction Zones* that construction projects prepare a traffic control plan, receive City approval of that plan, and implement the plan during construction to address transportation issues, including traffic hazards. Accordingly, the construction management plan and traffic control plan are appropriate mitigation for construction impacts of the Project.

Please note that traffic congestion or measures of vehicle delay are not an environmental impact under CEQA per State CEQA Guidelines Section 15064.3.

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Because the DEIR fails to include this information, it defers mitigation of a significant impact and prematurely concludes that Impact TRANS-4 will be less than significant after mitigation. A revised EIR must expand upon the as-yet unformulated CMP, with a plan specific enough to apply to the Project and properly analyze the quality and feasibility of as a mitigation measure.

IX. The DEIR's analysis of the project's energy use is outdated and inaccurate.

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CEQA requires lead agencies to analyze whether a proposed project would result in wasteful, inefficient, or unnecessary consumption of fuel or energy.²⁴⁴ As part of this analysis, a lead agency must analyze proposed project's impacts on "local and regional energy supplies and on requirements of additional capacity," as well as the project's impacts on "peak and period demands for electricity and other forms of energy."²⁴⁵ The DEIR's analysis of these factors relies on broad generalizations and outdated information, and must be revised to correct these deficiencies.

A. The DEIR must provide additional information regarding PG&E's assurances that there will not be significant impacts on local and regional energy supplies.

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The DEIR concludes that the Project's energy use could result in a significant impact without mitigation,²⁴⁶ but dismisses any concerns about on local and regional energy supplies by stating that "PG&E has established contracts and commitments to ensure there is adequate electricity generation and natural gas capacity to meet its current and future energy loads."²⁴⁷ In support of this statement, the DEIR cites a September 17, 2019 "personal communication with Jordan Baculpo, PG&E Senior Account Manager, and Jeff Caton, ESA Senior Greenhouse Gases Analysis."²⁴⁸ This e-mail communication contains no supporting materials; rather, a PG&E representative simply states that there will be adequate capacity.²⁴⁹ Though this personal communication makes reference to an engineering survey prepared by PG&E, that survey does not appear in the materials appended to the DEIR.

A blanket statement made one-and-a-half years ago about PG&E's procurement policies is insufficient to address the question of whether adequate supply exists to serve the Project. The DEIR should be revised to include specific assurances that PG&E can serve the new load at the Howard Terminal site. As last summer's rolling blackouts showed, PG&E operates in increasingly extreme climate conditions, which are rapidly changing PG&E's ability to serve its customers.²⁵⁰ And as the DEIR notes, PG&E filed for Chapter 11 bankruptcy in January 2019,

²⁴⁴ Cal. Pub. Res. Code § 21100(b)(3); CEQA Guidelines § 15126.2(b).

²⁴⁵ CEQA Guidelines Appendix F, §§ II.C.2, II.C.3

²⁴⁶ DEIR at 4.5-37.

²⁴⁷ DEIR at 4.5-33.

²⁴⁸ DEIR at 4.5-33, 4.5-50.

²⁴⁹ Personal communication with Jordan Baculpo, PG&E Senior Account Manager, and Jeff Caton, ESA Senior Greenhouse Gases Analysis, Sept. 17, 2019, https://s3-us-west-1.amazonaws.com/waterfrontballparkdistrict.com/13_ReferencesintheDraftEIR-Section4-5Energy/2019-11-17-pge-personalcommunicationwithjordanbaculpo.pdf.

²⁵⁰ D. Kahn & C. Bernel, *California has first rolling blackouts in 19 years—and everyone faces blame*, Politico, Aug. 18, 2020, <https://www.politico.com/states/california/story/2020/08/18/california-has-first-rolling-blackouts-in-19-years-and-everyone-faces-blame-1309757>.

O-62-63 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.

Responses that address the commenter's statement that the Draft EIR energy analysis "relies on broad generalizations and outdated information" are addressed below in Responses to Comments O-62-64 and O-62-65.

O-62-64 The first paragraph of the comment refers to a sentence in the Draft EIR's energy analysis, inaccurately stating that support for the sentence was provided via a conversation with a Pacific Gas and Electric Company (PG&E) representative. The statement that PG&E has established contracts and commitments to maintain adequate electricity and natural gas capacity is based on fact and is documented in the Draft EIR's Energy section, in the regional and regulatory setting discussions (see Draft EIR pp. 4.5-7 and 4.5-13). The information obtained during the personal communication with the PG&E representative was not used to support the statement referenced in this comment.

Further, as stated in the Draft EIR, the impact conclusion—that the Project-related increase in electricity consumption would not cause adverse effects on local and regional energy supplies, or require additional generation capacity beyond the statewide planned increase to accommodate projected energy demand growth—is based on a comparison to the state's and Alameda County's annual energy demand and the projected demand growth rate. The conclusion is also based on input from PG&E's service planning and substation teams. As stated by the PG&E representative, those PG&E teams have reviewed the anticipated proposed electricity load, and they have indicated that the electric substation that would serve the Project has adequate capacity to support the proposed load. (See the end of the last full paragraph on Draft EIR p. 4.5-33, as well as Draft EIR reference PG&E, 2019.)

To clarify, the engineering survey referenced in the PG&E correspondence appears to be an internal PG&E survey prepared by PG&E's service planning and substation teams for the Project that was not provided to the City of Oakland for review. In addition, the statements regarding PG&E's ability to serve its customers are noted.

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For the purposes of this CEQA analysis, the information obtained from PG&E is sufficiently current (based on the PG&E engineering survey completed September 2019). This is consistent with the CEQA baseline for the Project, which has been properly established as the environmental conditions as they existed at the time that the Notice of Preparation (NOP) for the Project was published in November 2018 (see Draft EIR Appendix NOP). (See State CEQA Guidelines Section 15125.) The PG&E information is also site-specific as it is relative to the electrical load associated with the substation that would serve electricity to the Project (see end of the last full paragraph on Draft EIR p. 4.5-33). In July 2021, the City provided PG&E with the filed Tentative Tract Map (TTM8562) for review and comment during a 45-day review period. PG&E's response indicated that they would "review the submitted plans in relationship to any existing Gas and Electric facilities within the project area" but did not raise supply as an issue.²⁶

²⁶ PG&E, 2021. PG&E Plan Review Team, Land Management, Letter to Peter Vollmann, July 26, 2021.

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and the utility's reorganization plan was only recently approved.²⁵¹ Not only was PG&E held liable for multiple wildfires in recent years, but it has increasingly relied upon Public Safety Power Shutoff events to limit its liability. All of these factors indicate that the DEIR must provide more than general assurances about energy supply.

The DEIR must provide additional, up-to-date, site-specific information regarding PG&E's assurances that they can adequately provide enough energy to the proposed project. As the DEIR states, the proposed project's electricity, natural gas, and gasoline fuel impact will represent 0.55%, 0.19% and 0.55%, respectively, of Alameda County's total consumption from 2018.²⁵² These numbers are significant enough that additional information regarding any communication between the project sponsor and PG&E is needed to ensure this project is adequately supplied power.

B. The DEIR underestimates electricity use because it fails to comply with Oakland's ban on natural gas in new buildings.

An EIR must consider whether a proposed project will conflict or obstruct state or local plans for renewable energy or energy efficiency.²⁵³ Here, the DEIR acknowledges that the City of Oakland prohibits natural gas in new buildings,²⁵⁴ yet the proposed project has only committed to electrifying 50% of residential buildings.²⁵⁵ By not committing to electrifying 100% of residential buildings, the proposed project would conflict with multiple local plans. The City of Oakland Equitable Climate Action Plan (ECAP) Measure B-1 specifies that by 2023, Oakland must "prohibit new buildings and major renovations from connecting to natural gas infrastructure."²⁵⁶ Furthermore, City of Oakland Ordinance 13632, enacted in December 2020, prohibits newly constructed buildings from connecting to or rely on natural gas and propane, with a few exceptions.²⁵⁷

Here, the DEIR recognizes that the project would be required to comply with "any changes to the City's building code that eliminate the use of natural gas, including the provisions of Ordinance 13632 prohibiting most newly constructed buildings (both residential and commercial) from connecting to natural gas or propane as applicable."²⁵⁸ While the DEIR mentions that a waiver might be granted for restaurants and other land uses, the Ordinance seems to be clear: newly constructed buildings must be disconnected from the natural gas

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O-62-65 Since the release of the Draft EIR, Mitigation Measure GHG-1 has been revised to be consistent with the City's Ordinance 13632 regarding the prohibition of natural gas, which went into effect on December 16, 2020. The City's ordinance requires all newly constructed buildings to be all-electric and prohibits installation of natural gas or propane plumbing unless the building qualifies for a waiver under the ordinance. See Response to Comment I311-2-22 and Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*, for updates to Mitigation Measure GHG-1. Also see *CEQA Air Quality Technical Addendum* (Ramboll, 2021) for a quantification of these measures.²⁷

With regard to revised Project electricity consumption associated with implementation of Mitigation Measure GHG-1, the requirement that the Project to be fully electric would result in more electricity consumption and less natural gas consumption than presented in Section 4.5, *Energy*. The overall energy consumption of the Project would not change substantially and may actually decrease. Please refer to *CEQA Air Quality Technical Addendum* (Ramboll, 2021) for additional discussion of building electrification modeling results.²⁸

²⁵¹ DEIR at 4.5-5.

²⁵² DEIR at 4.5-33.

²⁵³ CEQA Guidelines, Appendix G, § IV.

²⁵⁴ DEIR at 4.5-20.

²⁵⁵ DEIR at 4.7-59 (GHG mitigation plan shall "electrify a minimum of 50% of the residential units as required by CARB).

²⁵⁶ City of Oakland, *2030 Equitable Climate Action Plan* (Jul. 2020) at 55.

<https://www.oaklandca.gov/projects/2030ecap>.

²⁵⁷ City of Oakland, Ordinance 13632 (Dec. 16, 2020),

https://library.municode.com/ca/oakland/ordinances/code_of_ordinances?nodeId=1065428.

²⁵⁸ DEIR at 4.5-34.

²⁷ Ramboll, 2021. CEQA Air Quality Technical Addendum, November 2021.

²⁸ Ramboll, 2021. CEQA Air Quality Technical Addendum, November 2021.

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infrastructure.²⁵⁹ Not only would this significantly lower impacts to the natural gas grid, but this would also help mitigate the indirect GHG impacts of the project's operations.

The DEIR's failure to comply with the City's ordinance is not only a conflict that must be addressed in the DEIR, but as a result the DEIR drastically underestimate's the Project's electricity use. The DEIR indicates that electrifying all residential development would increase the Project's residential energy use by 40 percent.²⁶⁰ The DEIR must be revised to reflect compliance with City law, and to analyze the Project's true impacts on local and regional energy supplies.

X. The DEIR fails to adequately analyze the Project's impacts related to biological resources.

The DEIR does not sufficiently analyze the significant environmental effects on biological resources in and around the Project site. The DEIR should be revised to ensure that the birds including the peregrine falcon (*Falco peregrinus anatum*), fish and aquatic mammals, bats, special status plants, and other species and sensitive resources are adequately protected.

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CEQA requires a lead agency to find that a project will have a significant impact on biological resources if the project will: "[1] substantially reduce the habitats of a fish or wildlife species; [2] cause a fish or wildlife population to drop below self-sustaining levels; [3] threaten to eliminate a plant or animal community; [or 4] substantially reduce the number or restrict the range of an endangered, rare or threatened species."²⁶¹ Upon finding any of these conditions will occur, the EIR must analyze the impact in depth, "discuss feasibility of alternatives or mitigation measures," and implement alternatives or mitigation measures where feasible.²⁶²

A. The DEIR fails to analyze special-status species and other sensitive receptors that could potentially occur within the Project study area.

The DEIR states that "[s]pecial-status species or other sensitive resources determined to . . . have [a] low potential to occur in the Project study area . . . are not considered in the impact analysis."²⁶³ This is inadequate. An EIR's standard of significance can be "impermissibly lenient" because it is narrower than the standards set forth in the CEQA guidelines.²⁶⁴ The DEIR provides no evidence to support the implied assertion that there will not be substantial impacts on protected species that have a low potential to occur in the Project study area.²⁶⁵ Therefore, the

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²⁵⁹ The Ordinance provides exceptions for buildings not deemed newly constructed buildings, accessory dwelling units, and projects that obtained vested rights through either a development agreement or a vesting map prior to the date of the ordinance. Oakland Mun. Code § 15.37.040. The Ordinance also includes an infeasibility waiver when circumstances make it infeasible to prohibit natural gas. Such circumstances include, but are not limited to, where there is a conflict with any other city regulations, when there is a lack of commercially available materials and technologies, and when applying this requirement would constitute an unconstitutional taking of property. *Id.* § 15.037.050.

²⁶⁰ DEIR Appendix Energy, Tables at 21 (Table 14).

²⁶¹ 14 Cal. Code Regs. § 15065(a)(1).

²⁶² *Id.* § 15065(c).

²⁶³ DEIR at 4.3-31.

²⁶⁴ *Endangered Habitats League v. County of Orange*, 131 Cal. App. 4th 777, 793 (2005).

²⁶⁵ See DEIR at 4.3-31.

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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.

The Draft EIR provides an in-depth analysis identifying potential impacts of Project construction and operation on special-status, resident and migratory birds (Impact BIO-1, p. 4.3-33), special-status and otherwise protected bats (Impact BIO-2, p. 4.3-43), special-status marine species (Impact BIO-3, p. 4.3-46), sensitive natural communities (Impact BIO-4, p. 4.3-52), jurisdictional wetlands and waters (Impact BIO-5, p. 4.3-53), wildlife movement (Impact BIO-6, 4.3-56), and tree protection ordinance conflicts (Impact BIO-7, 4.3-58). Where the Draft EIR identifies potential significant impacts on these resources, the analysis proposes appropriate mitigation measures to reduce the impact to a less-than-significant level. See Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*, for updates to Mitigation Measure BIO-1b, Bird Collision Reduction Measures, and see Response to Comment A-7-25 for updates to Mitigation Measure BIO-1c.

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The Draft EIR fully analyzes the special-status species and other sensitive receptors within the vicinity of the Project. With respect to those species not subject to further discussion, the Draft EIR explains the rationale and supporting substantial evidence for eliminating from the detailed impact analysis those special-status species determined to have low potential to occur on, or to be absent from (have no potential to occur on), the Project site (p. 4.3-14). Appendix BIO contains four tables listing individual special-status species; their protection status, habitat, and (for plants) blooming period; and their potential for occurrence in either the terrestrial or marine study areas. The criteria for assessing a species' potential for occurrence in the study area, and often whether they would be expected within the Project site based on baseline conditions, are explained as follows (Draft EIR p. 4.3-14, second paragraph):

In determining species' presence in the Project area, as identified in Appendix BIO, a species was considered to have "no potential" to occur if (1) its specific habitat requirements (e.g., serpentine grasslands, as opposed to grasslands occurring on other soils) are not present; or (2) it

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is presumed to be extirpated from the area or region based on the best scientific information available. A species was designated as having a “low” potential for occurrence if (1) its known current distribution or range is outside of the study area; or (2) only limited or marginally suitable habitat is present within the study area. A species was designated as having a “moderate” potential for occurrence if (1) there is low to moderate quality habitat present within the study area or immediately adjacent areas; and (2) the study area is within the known range of the species, even though the species was not observed during biological surveys. A species was designated as having a “high” potential for occurrence if (1) moderate to high quality habitat is present within the study area; and (2) the study area is within the known range of the species. A species was designated as “present” if it was observed within the Project site during reconnaissance or focused surveys.

Because of this screening process, it is reasonable to conclude that the Project would not significantly affect the species determined to be absent, or to have low potential to occur in the study area because the species’ known current distribution or range is outside the study area or only limited or marginally suitable habitat is present, to a degree that might jeopardize the continuance of any individual species population as a result.

Regarding the specific species identified in the comment, only the willet was determined, based on substantial evidence, to have a moderate potential to occur within the Project study area (Draft EIR Appendix BIO, p. BIO-14). As the Draft EIR appendix notes, this species does not nest locally, but it may be observed foraging among riprap armoring the Oakland-Alameda Estuary (Estuary) in the study area. In-water construction for the Project was determined to not have a significant impact on avian foraging activity, given the abundance of foraging habitat similar to that of the Project site in the immediate Estuary vicinity; this conclusion would also apply to willet. Because this species does not nest locally, it is not included in the discussion of Project impacts on nesting birds. Similar use of the Project site as a foraging area is expected by common urban birds after construction (Draft EIR p. 4.3-40). This conclusion also applies to willet, which could continue to forage within the riprap below the Project site during tidal periods when this area is exposed. Finally, measures to avoid or reduce impacts of bird collisions with Project buildings during operations (as described in Mitigation Measure BIO-1a) would protect migrating willets.

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The comment inaccurately states that the Draft EIR analysis fails to analyze impacts on the California clapper rail (Ridgway's rail), green sea turtle, delta smelt, and tidewater goby. Each of these species is included in the special-status species tables in Draft EIR Appendix BIO, which evaluate the potential for an individual species to occur within the Project study area. None of these species were determined to have, at the very least, moderate potential to occur in the Project study area based on the suitable habitat available and the species' range, and they were dismissed from further analysis for the reasons already explained in this response. For example, Draft EIR Appendix BIO, Table BIO-2 (p. BIO-9), states that Ridgway's rail has "No Potential" for occurrence because "Suitable habitat (Salt marsh wetlands with dense vegetation along the San Francisco Bay) is not present within the study area and the species is not known to travel long distances; therefore, this species is not expected on site." Hence, neither nesting nor foraging Ridgway's rails are expected at the Project site.

The comment does not present any evidence that special-status species with potential to occur in the study area would have a greater likelihood of occurring than was determined in the Draft EIR. Therefore, the comment's assertion that such species may be present on the Project site is speculative. Any further study of the species would not be consistent with CEQA because such impacts are speculative, given the lack of any evidence that such species are present or have ever occurred within the Project site (CEQA Guidelines Section 15064).

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DEIR must be revised and recirculated to explain why the Project will not substantially reduce the number or restrict the range of special-status species with a low potential to occur in the project study area.

The DEIR notes several special-status species that have potential to occur in the study area, but which the DEIR excludes from its analysis. Some of these species include: the bald eagle, the monarch butterfly, the tricolored blackbird, the black turnstone, the San Francisco common yellowthroat, the marbled godwit, the long-billed curlew, the Rufous hummingbird, and the willet.²⁶⁶ These species have either a low or a moderate potential to occur in the Project study area and are not included in the impact analysis. The DEIR should be revised to analyze impacts on these special-status species.

The DEIR also fails to analyze several species that are listed as threatened or endangered under the Federal Endangered Species Act. As the United States Fish and Wildlife Service informed the City in 2019, threatened or endangered species include the California clapper rail, the green sea turtle, the delta smelt, and the tidewater goby.²⁶⁷ The DEIR omits analysis of the California clapper rail and fails to explain why this species was excluded. While the DEIR mentions a few species listed above in the BIO appendix, it does not provide further explanation as to why those species were excluded from the analysis, and the DEIR must be revised to include this justification.

To remedy this oversight and inadequate analysis, the DEIR must be revised to include analysis and discussion of the potential impacts to all of the special-status species and other potential receptors that might occur within the Project site. Nothing less than this careful research and analysis is sufficient to uphold the goal of CEQA to "prevent the elimination of fish or wildlife species due to man's activities."²⁶⁸

B. The DEIR does not properly analyze the Project's impacts on protected birds.

The DEIR states that bird nesting is not expected in the interior of the ballpark or any areas that would be subject to extreme noise generated from events or concerts.²⁶⁹ This assumption is unwarranted. The ballpark is a large structure and there will be periods during the nesting season when birds will have the opportunity to nest somewhere within the ballpark. The DEIR states that the noise would deter birds from nesting. However, it is unlikely that there will be such a great amount of continuous noise such that birds will never enter the ballpark to forage on food scraps and food litter. During periods in between noisy games and concerts, birds will have an opportunity to enter the ballpark and find a place to nest.

The DEIR also states that nesting falcons and raptors would not be impacted by night-time fireworks displays as long as there is a reasonable spatial buffer between the fireworks and

²⁶⁶ DEIR at Appendix BIO-9 to -14.

²⁶⁷ U.S. Fish and Wildlife Service, *Letter regarding threatened and endangered species relevant to Oakland Waterfront Project* (May 9, 2019), http://waterfrontballparkdistrict.com.s3.amazonaws.com/11_ReferencesintheDraftEIR-Section4-3/BiologicalResources/2019-0509-USFWS-ThreatenedSpeciesList.pdf; see also DEIR at 4.3-1.

²⁶⁸ See Cal. Pub. Res. Code § 21001(c).

²⁶⁹ DEIR at 4.3-40.

O-62-68 See Consolidated Response 4.17, *Bird Impacts from Fireworks Displays*, which specifically addresses a number of items raised in this comment. This Consolidated Response also provides clarifications to Mitigation Measure BIO-1c: Peregrine Falcon Firework Display Surveys, Buffer, and Monitoring.

The commenter incorrectly identifies statements assessing bird responses to noise during Project construction and operations as being contradictory. As stated on Draft EIR p. 4.3-35, first paragraph: "As the Project construction progresses and the level of disturbance on the site increases with development, nesting birds are less likely to be attracted to the site, and the potential for construction-related impacts on birds and their nests would decrease." Draft EIR pp. 4.3-40 through 4.3-43 discuss operational noise impacts on birds from general operations and firework displays. This discussion concludes that birds that elect to nest within the Project site once construction is completed would be demonstrating a certain tolerance for (or habituation to) the new operational baseline conditions. Because these statements apply to different disturbance scenarios and circumstances associated with Project implementation, they are not contradictory.

The commenter misinterprets how biological resources surveys and monitoring, including video monitoring, may be implemented during Project operations. The comment suggests that biologists will survey and monitor the entire Project site for nests as a part of mitigation for potential Project impacts on birds, and questions the effectiveness of these methods. To clarify the approach to biological resources surveys, Mitigation Measure BIO-1c: Peregrine Falcon Firework Display Surveys, Buffer, and Monitoring specifies requirements for surveys, monitoring, and spatial buffers to protect active peregrine falcon nests that could be established on the Project site cranes and adversely affected by firework displays. Mitigation Measure BIO-1c, measure 3, specifies that video monitoring shall be used, if possible, to document peregrine falcon behavior in response to fireworks displays. Aside from these focused surveys and actions to protect peregrine falcons during Project operations, no other avian surveys were determined necessary to offset potential Project effects on nesting birds or are proposed during operations.

Consolidated Response 4.17, *Bird Impacts from Fireworks Displays*, provides further explanation of the conclusion that potential impacts of Project operation on common urban birds and their nests would be less than significant, with no mitigation required.

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nesting sites.²⁷⁰ The DEIR suggests a buffer of 500 feet.²⁷¹ Furthermore, the DEIR states that the firework displays would not adversely affect birds nesting beyond the Project site.²⁷² This unsubstantiated claim allows the Project to skirt responsibility related to its impacts beyond the immediate Project area. Instead, the DEIR should proceed on the side of caution and analyze potential impacts on bird populations that typically nest beyond the project site, but still within range of the impacts of fireworks. The study the DEIR cites in support of its conclusion that a spatial buffer would preclude fireworks from impacting nearby nesting falcons and raptors concedes that the birds may be agitated by the noise generated from the firework displays.²⁷³ If a bird has been agitated during nesting, then it has been disturbed. Disturbance could adversely affect bird breeding and nesting behavior, which could lead to significant impacts like reducing animal habitats, causing wildlife to fall below self-sustaining levels, or reducing the number of or restricting the range of a species. This disturbance must be analyzed more closely to determine whether it will have a significant impact on birds under CEQA and that it will not violate other avian protection statutes.²⁷⁴ The California Department of Fish and Wildlife shares this concern.²⁷⁵ The study relied upon in the DEIR also states that birds will habituate to the ballpark noise, however the DEIR states elsewhere that as project construction progresses and the level of disturbance increases, nesting birds are less likely to be attracted to the site. This is a contradiction that must be resolved. Either birds will habituate to the noise, or they will be disturbed enough such that their nesting in the area will decrease.

The DEIR states that a qualified biologist will survey and monitor the Project site, and video monitoring will assist in documenting bird behavior.²⁷⁶ While this monitoring may help mitigate impacts to these protected species, the DEIR does not provide sufficient evidence to demonstrate that the Project's impacts will be adequately mitigated. The Project site spans many acres and a single biologist along with several cameras will be not able to adequately document enough bird behavior to make educated decisions regarding mitigation. Without more information, there is a strong possibility that decisions will be made that will have a detrimental effect on protected bird populations.

²⁷⁰ *Id.* at 4.3-41.

²⁷¹ *Id.*

²⁷² *Id.*

²⁷³ *Id.* at 4.3-41 to -42; *see also* H.T. Harvey and Associates, Memorandum from Jeff Smith, Ph.D., Senior Raptor Ecologist, and Scott Terrill, Ph.D., Senior Ornithologist to Crescentia Brown, ESA, "Oakland A's Stadium Fireworks and Potential for Peregrine Falcon Disturbance, Project #4294-01, Oct. 10, 2019, https://s3-us-west-1.amazonaws.com/waterfrontballparkdistrict.com/11_ReferencesintheDraftEIR-Section4-3BiologicalResources/2019-1010-HTA-OaklandAFireworksDisturbance.pdf.

²⁷⁴ See 14 Cal. Code. Regs. § 15065(a)(1).

²⁷⁵ See Letter from Craig Shuman, Marine Regional Manager, Cal. Dep't of Fish and Wildlife, to Peterson Vollmann, Apr. 12, 2021, https://s3-us-west-1.amazonaws.com/waterfrontballparkdistrict.com/32_Documents%20Received%20between%20Publication%20of%20the%20Draft%20EIR%20&%20the%20NOD/2021-04-12_A-2_CDFW.pdf.

²⁷⁶ DEIR at 4.3-42 to -43.

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Lastly, the DEIR states that the Project will cease monitoring bird behavior if nesting within the Project site is not identified for more than three consecutive seasons.²⁷⁷ This policy creates incentives adverse to CEQA and bird-protection goals. It incentivizes inadequate monitoring so that monitoring can cease in the future. It also incentivizes the Project to pursue other actions that would deter bird nesting within the site. Furthermore, this policy assumes that birds will not return after more than three seasons. With a Project lifespan of over 30 years, using three seasons as a threshold to cease monitoring bird behavior is misleading and inadequate.

C. The DEIR does not adequately analyze the Project's impacts on fish and marine mammals.

The DEIR states that the limited scope of proposed in-water work makes a substantial impact to marine movement corridors unlikely.²⁷⁸ This analysis is inadequate because the DEIR fails to discuss the marine movement corridors and why the in-water work is unlikely to impact marine life during movement and migration. Without this information, the DEIR fails to adequately inform the public and decisionmakers about the impacts of the Project, frustrating the purpose of CEQA. The Project could potentially harm numerous protected aquatic species and could cause irreparable damage to Bay Area ecosystems.

O-62-69

Furthermore, the DEIR does not discuss the effect of increased commercial and recreational watercraft on fish. This is an improper oversight of the DEIR that must be remedied through a detailed discussion of how the Project will directly or indirectly increase the density of watercraft in the area and adversely impact marine life. If increased use of commercial and recreational watercraft due to the Project will not impact fish, the DEIR must explain why not instead of ignoring the issue. The DEIR must remedy this issue otherwise the public and decisionmakers will not have adequate information regarding the Project's impacts, violating CEQA.

XI. The DEIR fails to properly mitigate the Project's impacts on hydrology and water quality.

The DEIR does not sufficiently analyze the Project's impacts and potential harms associated with stormwater runoff at Howard Terminal and does not sufficiently analyze the Project's flood risks. The DEIR should be revised to ensure that these impacts are properly analyzed and mitigated.

O-62-70

A. The DEIR does not adequately mitigate Project impacts on surface water and groundwater quality.

The DEIR states that pesticides, cleaners, oil, grease, and other household products and mechanical compounds could enter stormwater runoff from the Project site.²⁷⁹ The chemicals in these products can create a significant pollution burden on surface water and groundwater quality. The DEIR states that the Project "shall not result in a substantial increase in stormwater runoff volume or velocity to creek or storm drains."²⁸⁰ However, the DEIR is impermissibly

²⁷⁷ *Id.* at 4.3-43.

²⁷⁸ *Id.* at 4.3-57.

²⁷⁹ *Id.* at 4.9-21.

²⁸⁰ *Id.* at 4.9-24.

O-62-69

As noted in Impact BIO-6, central San Francisco Bay is used as a migration corridor for anadromous fish, but the Project site does not fall within this area. The primary migration routes for special-status fish fall between the Pacific Ocean and the Sacramento and San Joaquin River watersheds. For the few fish that do migrate into south San Francisco Bay, few stray into the Oakland Inner Harbor. Additionally, Mitigation Measure BIO-3 outlines adherence to National Oceanic and Atmospheric Administration–approved work windows for in-water construction, which are designed to coincide with the periods in which migrating fish are least likely to occur.

Implementing the Project would result in light increases in vessel traffic; however, impacts on aquatic species are expected to be less than significant. Vessels traveling to and from the wharf area would not likely disturb bottom sediments to an extent that they would increase turbidity, as little evidence exists that significant levels of bottom disturbance and resuspension result from the types of crafts expected to dock along the wharf (e.g., shallow-draft vessels). Additionally, all vessels would operate at low speeds, which should further limit the potential for resuspension of sediment or benthic disturbance.

There is the potential that the vessel traffic would result in increased noise that may startle fish or marine mammals and result in their temporary exclusion from the project area. However, the San Francisco Bay Area Water Emergency Transportation Authority's observations of ferry operations on San Francisco Bay indicate that impacts of vessel traffic on fish are typically minor, localized, and limited to short time periods during ferry arrival and departure.²⁹ Under the proposed Project, only watercraft of a much smaller size than used in ferry operations would be present in the Project vicinity. Therefore, any potential impacts from vessel traffic would be less than those associated from ferry operations, and would be less than significant.

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See Responses to Comments A-12-43, I307-2-11, O-27-59, O-27-60, O-27-61, and O-27-62. See also Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*.

²⁹ National Marine Fisheries Service (NMFS). 2014. Biological Opinion – Downtown San Francisco Ferry Terminal Expansion Project, San Francisco, Ca. Issued June 30, 2014.

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vague because it does not explain why there will not be an increase in stormwater runoff during the operational phase of the project. Under CEQA, the “formulation of mitigation measures shall not be deferred until some future time.”²⁸¹ While the DEIR does state that a Creek Protection Plan will include site design measures as post-construction best management practices, the DEIR does not specify the kinds of design measures the plan will implement.²⁸² This is impermissible deferred mitigation. The DEIR must be revised, with remedied analysis so that the public and decisionmakers are informed regarding the Project’s proposed mitigation measures. Otherwise, unchecked toxic runoff from the Project could create drastic adverse impacts on human and biological resource health.

B. The DEIR’s refusal to propose a concrete flood contingency plan constitutes impermissible deferred mitigation.

The DEIR states that the Project sponsor shall develop a final adaptive management and contingency plan for sea level rise prior to the issuance of the first grading permit for the Project.²⁸³ The DEIR further states that the plan will “include enforceable strategies” and will “establish a monitoring and compliance program.”²⁸⁴ While these are commendable goals, the DEIR is impermissibly vague by not providing specific performance standards. Impermissible deferral of mitigation measures “occurs when an EIR puts off analysis or orders a report without either setting standards or demonstrating how the impact can be mitigated in the manner described in the EIR.”²⁸⁵ Here, the DEIR has not sufficiently demonstrated how the proposed adaptive management and contingency plan will mitigate future flood risks. The effectiveness of the proposed flood mitigation measures cannot be analyzed until it is clear to the public and decisionmakers what will be included in the DEIR’s proposed management and contingency plan. The DEIR’s reliance on this plan constitutes deferred mitigation. The DEIR must be revised to ensure that flood risks are mitigated and unnecessary damage is avoided in the future.

XII. The DEIR provides insufficient detail for an adequate comparative analysis of alternatives to the Project.

CEQA requires an EIR to include a detailed discussion of alternatives to a proposed project.²⁸⁶ In the California Supreme Court’s view, “the core of an EIR is the mitigation and alternatives sections.”²⁸⁷ The EIR should compile a range of alternatives sufficient to “foster informed decision-making and public participation.”²⁸⁸ The discussion of a given alternative must include sufficient concrete information that “a meaningful evaluation, analysis, and comparison with the proposed project” is possible.²⁸⁹ The EIR must provide a rationale for selecting the alternatives that do appear in the EIR, as well as identify and explain the reasoning

²⁸¹ 14 Cal. Code Regs. § 15126.4(a)(1)(B).

²⁸² DEIR at 4.9-24.

²⁸³ *Id.* at 4.9-36.

²⁸⁴ *Id.*

²⁸⁵ *Preserve Wild Santee v. City of Santee*, 210 Cal. App. 4th 260, 280-81 (2012).

²⁸⁶ Cal. Pub. Res. Code § 21100(b)(4).

²⁸⁷ *Citizens of Goleta v. Bd. of Supervisors*, 52 Cal. 3d 553, 565 (1990).

²⁸⁸ 14 Cal. Code Regs. § 15126.6(a).

²⁸⁹ *Id.* at § 15126.6(d).

O-62-71 See Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*, which responds to comments regarding deferred mitigation. Mitigation Measure HYD-3 would ensure compliance with AB 1191, a regulatory requirement, which requires the Project to plan for the medium-high risk aversion scenario through 2100. Possible strategies are described on Draft EIR p. 4.9-35. See also Response to Comment A-7-6 and Response to Comment A-12-39.

O-62-72 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.

See Consolidated Response 4.9, *Alternative 3: The Proposed Project with Grade Separation Alternative*, and Consolidated Response 4.10, *Alternative 2: The Off-Site (Coliseum Area) Alternative*. As explained in these Consolidated Responses, the Draft EIR was prepared in compliance with CEQA Guidelines Section 15126.6 and includes a reasonable range of alternatives that “could feasibly attain most of the basic objectives of the project” and that would “avoid or substantially lessen any of the significant effects of the project.”

Including an alternative (other than the No Project Alternative) that would avoid all significant environmental effects may be desirable, but that is not a CEQA requirement. It also was not feasible in this instance because any project of the scale being proposed (and therefore, any alternative that would achieve most of its basic objectives) would result in some significant impacts, when analyzed using the City’s adopted thresholds of significance. For example, impacts such as contributions to cumulative health risks from TAC emissions, effects on roadway segments included in the congestion management plan, and increased multimodal traffic traveling across at-grade railroad crossings would not be avoided by any project even close to the scale proposed, as demonstrated by impacts of the Reduced Project Alternative included in Draft EIR Table 6-4.

Regarding the comment for more information about the alternatives analyzed in the EIR, the Lead Agency is not required to describe and evaluate the environmental impacts of alternatives at the same level of detail as the proposed project. (State CEQA Guidelines Section 15126.6(d).) The information and analysis in Chapter 6 of the Draft EIR fulfills the requirement

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to provide "sufficient information... to allow meaningful evaluation, analysis, and comparison with the proposed project," using text as well as a matrix (Tables 6-4 and 6-5), as suggested in CEQA Guidelines Section 15126.6(d).

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O-62-73 See Consolidated Response 4.10, *Alternative 2: The Off-Site (Coliseum Area) Alternative*, which explains the use and relevance of the Coliseum Area Specific Plan EIR and the differences between Alternative 2 and the alternative analyzed in the Coliseum Area Specific Plan EIR.

O-62-72

for rejecting any alternatives from the discussion.²⁹⁰ Here, the DEIR is deficient because it does not provide enough information about each alternative and omits an alternative that may avoid significant Project impacts.

A. The DEIR improperly uses the Coliseum Area Specific Plan EIR Alternative 2C to represent impacts of the Off-Site Alternative 2.

The DEIR does not provide sufficient information to evaluate Alternative 2, the off-site alternative. Under this alternative, Howard Terminal would remain in its current use, and the A's would instead construct a new ballpark and their proposed mixed-use development at the site of the Oakland Coliseum. This off-site alternative would consist of demolishing the existing Coliseum ballpark and constructing a new ballpark for the A's in its place.²⁹¹ The alternative would redevelop the surrounding Coliseum site with the same mix and density of uses as planned for Howard Terminal, while retaining the existing Oakland Arena basketball stadium.²⁹²

In particular, the DEIR fails to adequately describe potential impacts of this alternative. The DEIR claims that potential impacts would mirror those identified in the Coliseum Area Specific Plan (CASP) EIR from 2015. It foregoes new analysis of the alternative's specific features and instead relies entirely on those impacts from the CASP EIR Alternative 2C.²⁹³ However, this alternative is sufficiently different from the CASP that it would require an amendment to that Plan, which was adopted by the City after an EIR process in 2015. The development mix and density would be different, warranting an independent impact analysis.

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The CASP addressed a much larger project area than just the existing ballpark: it also rezoned some of the surrounding neighborhood. The "Coliseum District" site analyzed in CASP EIR Alternative 2C is 253 acres, whereas this proposed off-site alternative sits on only 120 acres.²⁹⁴ Nevertheless, the DEIR uses the CASP Alternative 2C analysis to represent the off-site alternative, even though it would have nearly the same amount of development on half the lot size. The DEIR characterizes this as an "apples to apples" comparison, without explaining how this size discrepancy factors into its analysis.²⁹⁵ Additionally, the proposed off-site alternative includes constructing a 3,500 seat performance venue, whereas the CASP EIR Alternative 2C did not include or analyze the construction of a new performance venue.²⁹⁶ These are significant differences, such that impacts from CASP EIR Alternative 2C are not sufficiently similar to adequately represent the proposed alternative here. The off-site alternative could be a superior option to the proposed Project, but the current impact analysis is insufficient to ascertain this. A revised EIR must formulate an impact analysis specific to the proposed alternative, rather than relying on an analysis conducted several years ago for a different construction plan.

²⁹⁰ *Id.* at §15126.6(c).

²⁹¹ DEIR at 6-11.

²⁹² *Id.*

²⁹³ *Id.*

²⁹⁴ *Id.*

²⁹⁵ *Id.*

²⁹⁶ DEIR at 6-13.

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B. The DEIR's comparative analysis contains insufficient detail about significant impacts of each alternative and precludes a meaningful comparison to the Project.

The level of detail required in an EIR's alternatives analysis is subject to a rule of reason.²⁹⁷ The discussion need not be exhaustive,²⁹⁸ but it must "include sufficient information about each alternative to allow meaningful evaluation, analysis, and comparison with the proposed project."²⁹⁹ The analysis must contain concrete information about each alternative sufficient to allow a fact-based comparison of the alternatives with the project.³⁰⁰ Here, the DEIR's comparisons omit concrete comparative metrics for many significant impacts. Withholding this concrete information frustrates the City's ability to choose a potentially superior alternative.

This DEIR compares the alternatives to the Project impact-by-impact using a matrix table.³⁰¹ A matrix table "showing the major characteristics and significant environmental effects of each alternative" can be adequate for a comparative analysis,³⁰² but the table provided in this DEIR is not reasonably detailed enough for an adequate comparison. Many impacts are not quantified using any concrete metrics, which are essential for members of the public and public agencies to understand how much the alternatives' impacts will differ from the Project's impacts.³⁰³ The table often indicates that an impact *may* be "likely less than" the Project, but gives no indication, or even a range, of how much less.³⁰⁴ For example, impacts AIR-1 and AIR-4 (for Alternative 4), and impacts AIR-5 and AIR-2.CU (for both Alternative 4 and Alternative 2) are listed in the table as "not quantified" but also asserted as "likely less than the Project" without direct support.³⁰⁵ These impacts include significant and unavoidable Project impacts like cancer risk from emissions.³⁰⁶

In order to properly compare the merits of the alternatives to the proposed project, it is essential for members of the public—and the public agency ultimately deciding whether an alternative may be superior to the Project—to understand the degree of difference between the impacts. Is the impact only slightly less than the Project, or is it significantly less such the alternative may be a worthwhile option? Naturally, the project sponsor would prefer that none of the alternatives are approved instead of the Project. The alternatives analysis seems intentionally to withhold concrete comparative details, so as to obscure the public's full understanding about how much a given alternative may actually lessen significant Project impacts.

A revised EIR should quantify the impacts of each alternative using concrete metrics, even if it presents a range, so that the City has adequate grounds to identify an environmentally superior alternative. This quantification should be feasible using the same methodology the

²⁹⁷ *Laurel Heights Improvement Ass'n v. Regents of Univ. of Cal.*, 47 Cal. 3d 376, 407 (1988).

²⁹⁸ *Sierra Club v. City of Orange*, 163 Cal. App. 4th 523, 548 (2008).

²⁹⁹ 14 Cal. Code Regs. § 15126.6(d).

³⁰⁰ *Id.*

³⁰¹ DEIR at 6-42 to -56.

³⁰² 14 Cal. Code Regs. § 15126.6(d).

³⁰³ DEIR at 6-52, -54 to -56.

³⁰⁴ DEIR at 6-52, -54 to -56.

³⁰⁵ DEIR at 6-52, -54 to -56.

³⁰⁶ DEIR at 6-56.

O-62-74 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 comment on need for additional detail on alternatives, the Draft EIR's alternatives analysis complies with CEQA. CEQA Guidelines Section 15126.6(d) anticipates that "significant effects of the alternative[s] shall be discussed, but in less detail than the significant effects of the project as proposed." The Draft EIR meets its obligation to provide sufficient information and analysis about alternatives to allow for a meaningful comparison by indicating which impacts would be more or less severe, and which significant impacts of the Project would be avoided by the alternatives. See also Response to Comment O-62-72 and Consolidated Response 4,10, *Alternative 2: The Off-Site (Coliseum Area) Alternative*.

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DEIR uses to calculate the impacts of the actual Project, especially given that each alternative proposes a specific and concrete quantity and mix of development.

C. The DEIR should consider an alternative that avoids the significant and unavoidable impacts of the Project.

The purpose of an EIR's alternatives section is to identify ways to mitigate or avoid the significant effects that a project may have on the environment.³⁰⁷ For that reason, the CEQA guidelines dictate 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, even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly."³⁰⁸ In this DEIR, with a few exceptions in the Off-site Alternative, all of the Project's "significant and unavoidable" impacts—on air quality,³⁰⁹ wind hazards,³¹⁰ aesthetics,³¹¹ cultural resources,³¹² noise and vibration,³¹³ and transportation and circulation³¹⁴—are also "significant and unavoidable" in each of the three alternatives chosen for inclusion (setting aside the no-project alternative). The DEIR also seems to erroneously identify the reduced project alternative—rather than the off-site alternative—as the environmentally superior alternative, even though it reduces no significant impacts to "less than significant."³¹⁵ The alternatives analysis is deficient because the DEIR did not focus on including alternatives that avoid significant impacts of the project.

A revised EIR should at least discuss an alternative that avoids the significant and unavoidable impacts of the project. Because the alternatives section is meant to identify alternatives that would avoid the Project's significant impacts, as an informational document the section should have analyzed a reduced project alternative where development is decreased to a degree that avoids the significant impacts. It is crucial for members of the public and public agencies to know what level of development would be possible without producing significant impacts. If there is an option where some Project objectives can be met without producing major impacts, even if some other project objectives are left out, such an alternative would be valuable to include in the EIR as an informational document.

XIII. The DEIR does not demonstrate that the City complied with tribal consultation requirements.

AB 52 requires lead agencies to give notice in writing to California Native American Tribes that are traditionally and culturally affiliated with the geographic area of the project, and requires to the lead agency to engage in a consultation process with the tribe if the tribe requests consultation.³¹⁶ The DEIR notes that the City contacted eight Native American tribes in January

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³⁰⁷ 14 Cal. Code Regs. § 15126.6(d); Cal. Pub. Res. Code § 21002.1.
³⁰⁸ 14 Cal. Code Regs. §15126.6(d).
³⁰⁹ DEIR at 6-42 to -43.
³¹⁰ DEIR at 6-42.
³¹¹ *Id.*
³¹² DEIR at 6-44.
³¹³ DEIR at 6-47 to -48.
³¹⁴ DEIR at 6-49 to -50.
³¹⁵ DEIR at 6-60.
³¹⁶ Cal. Pub. Res. Code § 21080.3.1.

O-62-75 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.

See Consolidated Response 4.10, *Alternative 2: The Off-Site (Coliseum Area) Alternative*, regarding selection of an environmentally superior alternative. See also Response to Comment O-62-72 regarding the suggested inclusion of alternatives that would avoid all significant impacts of the Project.

O-62-76 On January 3, 2019, the Native American Heritage Commission (NAHC) responded to a request from the City's consultant, reporting that a search of the sacred lands file had negative results. The NAHC provided a list of eight Native American tribes and representatives to contact for additional information.

On January 7, 2019, the City sent letters to eight Native American tribes provided by the NAHC as potentially interested in projects in the city of Oakland. The letters provided a description of the Project, a map showing the Project's location, and an invitation to respond to a request for consultation within 30 days (as required by Public Resources Code Section 21080.3.1.d) and 90 days (as required by California Government Code Section 65352.3). No responses were received. Also see Response to Comment O-63-19.

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2019 offering consultation.³¹⁷ However, the Native American Heritage Coalition lists ten tribes that are culturally affiliated with the historical range of the Ohlone people, where the Howard Terminal site is located.³¹⁸ The DEIR should be revised to account for this discrepancy.

XIV. Conclusion

For the reasons described above, the undersigned organizations respectfully request that this DEIR be revised and recirculated.

Sincerely,

Communities for a Better Environment
Public Advocates
East Bay Alliance for a Sustainable Economy
East Bay Community Law Center
Causa Justa: Just Cause
Urban Peace Movement
Urban Habitat
Alliance of Californians for Community Empowerment
Faith in Action East Bay

³¹⁷ DEIR at 4.4-31.

³¹⁸ Native American Heritage Comm'n, Ohlone – NAHC Digital Atlas, <http://nahc.ca.gov/cp/p10ohlone/>;
see also Cal. Native American Heritage Comm'n, Digital Atlas of California Native Americans,
<http://nahc.ca.gov/cp/>

O-63 Oakland Chinatown Coalition

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This is a cover email 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 Consolidated Response 4.19, *Comment Period Extension*, regarding requests for comment period extensions.

From: Ener Chiu
To: zvonlimon@oaklandca.gov
Cc: [Cheuk Li \(cheuk@apen4ej.org\)](mailto:cheuk.li@apen4ej.org)
Subject: FW: Howard Terminal Draft EIR - Oakland Chinatown Coalition comment letter
Date: Wednesday, April 28, 2021 9:23:12 AM
Attachments: [Email Comments_Draft EIR A's Stadium at Howard Terminal.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,

Attached and below is the response letter we sent to Planning Commission in response to the DEIR. The letter was emailed just before the 4/27 at 4pm deadline. However, I realized later that you should have been cc'd on the letter.

Please let me know if you have any problems accepting it into the record now. Thanks,
Ener

From: Ener Chiu
Sent: Tuesday, April 27, 2021 3:59 PM
To: Tom Limon <tilimon.opc@gmail.com>; 'cmanusopc@gmail.com' <cmanusopc@gmail.com>; 'amandamonchamp@gmail.com' <amandamonchamp@gmail.com>; Jonathan Fearn <jfearnopc@gmail.com>; nhegdeOPC@gmail.com; sshiraziOPC@gmail.com; lraylynch@yahoo.com
Cc: officeofthemayor@oaklandca.gov; Fortunato Bas, Nikki (NFortunatoBas@oaklandca.gov) <NFortunatoBas@oaklandca.gov>; cflife@oaklandca.gov; 'atlarge@oaklandnet.com' <atlarge@oaklandnet.com>; Cummings, Veronica (VCummings@oaklandca.gov) <VCummings@oaklandca.gov>; Cheuk Li (cheuk@apen4ej.org) <cheuk@apen4ej.org>; mllok@ahschc.org; Alvina Wong (alvina@apen4ej.org) <alvina@apen4ej.org>
Subject: Howard Terminal Draft EIR - Oakland Chinatown Coalition comment letter

Hello Oakland Planning Commission,

On behalf of the Oakland Chinatown Coalition, we are pleased to submit this letter in response to the Draft EIR for the Howard Terminal Stadium project. We note that it has been difficult to fully comment on the DEIR due to the sheer amount of content (over 6,000 pages). We requested several extensions but received no affirmative or negative responses from staff. Nevertheless, thanks to an active community of concerned people who have shown love and care for Oakland Chinatown, we have managed to review the majority of the report and document this response.

If you have any questions about the enclosed letter, please direct them to Cheuk-Ning Li at cheuk@apen4ej.org, Ener Chiu at echiu@ebaldc.org, Mike Lok at mllok@ahschc.org, and Alvina Wong at alvina@apen4ej.org.

Sincerely,

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Ener Chiu
On behalf of Oakland Chinatown Coalition

This email has been scanned for email related threats and delivered safely by Mimecast.
For more information please visit <http://www.mimecast.com>

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RESPONSE

OAKLAND CHINATOWN COALITION

April 27, 2021

TO: City of Oakland Planning Commissioners and Planning Staff
CC: Mayor Libby Schaff; Council President Fortunato Bas; Councilmembers Fife and Kaplan; Veronica Cummings
FROM: Oakland Chinatown Coalition and Co-Writers
SUBJECT: Oakland A's Waterfront Ballpark District at Howard Terminal, Draft EIR Comments

Dear Planning Commissioners and Staff:

The organizational and individual members of the Oakland Chinatown Coalition have participated in many public meetings leading up to the release of the Draft EIR, only one of which was located within Chinatown pre-Covid. We have reviewed the Draft Environmental Impact Report (DEIR), and have the following comments. The purpose of this letter is to collect and catalogue as many Coalition and Chinatown community comments as possible on the DEIR for response by City and Planning staff. We note that it is difficult to fully comment on the DEIR due to the sheer amount of content (over 6,000 pages), and were frustrated to receive no further extension to the commenting period to the full, legally allowable time per CEQA, even after the DEIR itself was delayed by over a year. Overall, the Project excludes Chinatown from its analyses despite its location within one mile of the Project Site. It is not lost on us the inevitable situation Chinatown would find ourselves in becoming the Ballpark's de facto parking lot. The congestion caused by this Project, lowered air quality, and other inequities must be addressed, and significant, unmitigatable impacts need action as well beyond simply stating that these impacts will occur.

The Oakland Chinatown Coalition consists of AHS, AIWA, APILO, APEN, AYPAL, Buddhist Church of Oakland, Chinese American Citizens Alliance - Oakland Lodge, Chinese Community United Methodist Church, EBALDC, Family Bridges Inc, FAJ, Friends of Lincoln Square Park, Lincoln Elementary School, New Hope Chinese Cancer Foundation, OACC, Oakland Chinatown Lions Foundation, Wa Sung Community Service Club, Alan Yee, Evelyn Lee, Gilbert Gong, Heidi Kong, Hiroko Kurihara, Karolyn Wong, and Lailan Huan. Additionally, the following volunteers contributed sections and are co-writers of this comment letter: Annie Liu, George Foster, Gunseet Anand, Kirby Ung, Linda Liu Flores, Mu-Ping Cheng, and Sarah Estephan. If you have any questions about the comments below, please direct them to Cheuk-Ning Li at cheuk@apen4aj.org, Ener Chiu at echiu@ebaldc.org, Mike Lok at mlok@ahschc.org, and Alvina Wong at alvina@apen4aj.org.

Sincerely,
Oakland Chinatown Coalition

O-63-1 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 Consolidated Response 4.3, *Recirculation of the Draft EIR*; Consolidated Response 4.8, *Chinatown*; and Consolidated Response 4.19, *Comment Period Extension*.

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A's Ballpark DEIR Chapter (reference)	Oakland Chinatown Coalition Comments
General	Overall, the intent of these comments on the Draft EIR is to be neither in favor of the Howard Terminal Ballpark nor against it. We are simply attempting to respond to the Draft EIR, and to name areas in which it has not adequately named likely impacts to the surrounding neighborhoods (with a strong focus on Oakland Chinatown), or where we have disagreements with whether the impacts have been categorized as not significant, or where the named mitigations are not adequate. Where we have been able to, we have also named where we support the drafted mitigations.
1. Introduction	
1. Project Overview	
2. Environmental review process	<p><u>The geographic scope of the DEIR should have included Chinatown when evaluating the project impacts on the Traffic and Cultural Resources.</u></p> <p>Section 1.2.2, "Scope of the EIR and Level of Analysis" states that, "The geographic scope of the Draft EIR's analysis varies by topic, depending on the nature of potential impacts and where physical changes would occur. The appropriate projects and cumulative scope of analysis are described in the introduction to Chapter 4 and identified within the discussion of each topic in Chapter 4 and Chapter 5." We appreciate that using this approach, the City can better focus its analysis and proposed actions on the geographic areas in which protected environmental factors are located. The CEQA Guidelines, Appendix G, lists "Environmental Factors Potentially Affected." However, the DEIR's analysis improperly excludes the Oakland Chinatown from the geographic scope of study for a number of factors, including Transportation, Recreation, and Cultural Resources. As a result, the DEIR overlooks the significant negative effects of the project on the transportation and cultural resources within Chinatown, and fails to recommend mitigation measures for the City Council to adopt to protect the community. The extent of this oversight is discussed under the appropriate topics, below.</p> <p><u>Request for Mediation.</u></p> <p>Assembly Bill 734 enacted Public Resources Code Section 21168.6.7 (Pg. 1-5 to 1-7) as part of CEQA. (All citations are to the California Public Resources Code, unless stated otherwise.) Section 21168.6.7</p>

Oakland A's Waterfront Ballpark District Project Draft EIR Comments, 04/27/2021

O-63-2 This is a general comment that includes introductory remarks and serves to introduce the more specific comments that are responded to in detail below. As a result, no specific response is provided here.

O-63-3 See Consolidated Response 4.8, *Chinatown*, which addresses the appropriate consideration of transportation relative to Chinatown and response to comments regarding cultural resources in Chinatown. Also, the geographic scope applied to assess the potential cumulative impacts on recreation encompasses "all areas of the City, as recreation facilities are provided Citywide" (Draft EIR p. 4.14-17). No further response is required.

O-63-4 With respect to the request for mediation under Public Resources Code Section 21168.6.7(f)(5)(A), in response to this comment, the City engaged in and completed non-binding mediation with the commenter on certain issues raised in this comment letter.³⁰ See also Response to Comment O-57-2 and O-63-4.

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 CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available.

This comment also includes a summary of the provision of AB 734. 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. See also Response to Comment O-57-4 regarding the AB 734 certification process.

³⁰ Jams Mediation Case Reference No. 1130009423, Oakland Sports and Mixed-Use Project Mediation, May 25, 2021.

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	<p>provides for nonbinding mediation with commentors if commentors submit a written request for nonbinding mediation to the City within 5 days following the close of the public comment period of the Draft EIR. No procedure has been outlined. Please consider this written comment as a formal written request for nonbinding mediation by the Oakland Chinatown Coalition. The areas of dispute to be mediated are each of the disputed items raised and listed in this comment letter.</p> <p>The Project is not entitled to fast-track CEQA appeal because the Governor could not, and did not, make the required findings prior to issuing his certification.</p> <p>The Project was certified by the Governor on February 11, 2021 but the Certification fails to comply with the requirements of AB 734 and the Draft EIR should not be subject to the expedited procedures of AB 734. The determination of the Governor appears to have been done in error since a review of the Draft EIR shows the Project does not appear to have complied with conditions (3) and (4), and neither the City or Port have approved a CBA as required by condition (9) of Section 21188.6.7(d). The conditions for the Governor's certification were not met and the certification is therefore invalid and subject to judicial review. Section 21188.6.7 subdv, (a) states, "(1) Prior to certifying the project, the Governor shall make a determination that each of the conditions specified in subdivision (d) has been met. These findings are not subject to judicial review." Note that while <u>the findings</u> are not subject to judicial review, the statute does not state that <u>the certification</u> is not subject to judicial review.</p> <p>Section 21188.6.7. states: (d) The Governor may certify the project for streamlining pursuant to this section if it complies with all of the following conditions: (emphasis added – conditions are paraphrased for brevity, except for condition 9, which is stated in its entirety)</p> <p>(1) The project creates highly skilled jobs that pay prevailing wages, etc.; (2) All construction workers will be paid at least prevailing rate, subject to enforcement; (3) The project complies with energy efficiency, greenhouse gas abatement, and transportation management requirements; (4) The applicant complies with solid waste recycling requirements; (5) The applicant has agreed that environmental mitigation requirements will become enforceable conditions of City approval, (6) The applicant agrees to pay the</p>
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	<p>costs of judicial review under CEQA (7) The applicant agrees to bear the cost of preparing the judicial record; (8) Project design will comply with the City's Bird Safety Measures; and (9) The project meets the requirements of clauses (iv) and (v) of subparagraph (A) of paragraph (3) of subdivision (a).</p> <p>Subdivision (a), provides definitions for the purposes of Section 21168.6.7. Paragraph 3, subparagraph (A) defines "A baseball park that will become the new home to the Oakland Athletics ... that meets all of the following:" Clauses (iv) and (v) state:</p> <p>(iv) The project is located within a priority development area...</p> <p>(v) The project is subject to a comprehensive package of community benefits approved by the Port of Oakland or City Council of the City of Oakland, as applicable, which may include local employment and job training programs, local business and small business policies, public access and open space, affordable housing, transportation infrastructure, increased frequency of public transit, and transit accessibility and sustainable and healthy development measures for the surrounding community.</p> <p>It is a matter of public record that neither the Port or the City Council have approved a package of community benefits as described by AB 734.</p> <p>Section 21168.6.7, subdivision (e) (1) states in relevant part: "Prior to certifying the project, the Governor shall make a determination that each of the conditions specified in subdivision (d) has been met." Instead of finding that there is an existing approved package of community benefits, his certification letter avoids the issue by stating: "The project ... <u>will</u>... e. Provide a comprehensive package of community benefits (emphasis added, citations omitted.)</p> <p>Neither the Port nor City had approved a package of community benefits as of February 11, 2021, the date of the Governor's letter, and indeed, the Governor makes no such finding. Since all of the nine conditions provided by Section 21168.6.7 subdivision (d) are required for certification, the Governor's certification is invalid.</p>
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O-63-5 See Consolidated Response 4.1, *Project Description*.

O-63-6 Comments regarding the merits of the Project or 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 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 noted by the commenter, implementation of the Aerial Gondola Variant could mean that fewer patrons would access business along Washington Street than would do so if the ballpark is constructed without the Gondola Variant. However, these patrons would represent only a segment of those attending ballpark events, and the number of people walking along Washington Street on days when events at the ballpark occur would likely be greater than under existing conditions. Therefore, it is unlikely that implementation of the Aerial Gondola Variant would result in impacts to the existing street traffic in the area. The comment also raises an economic issue with respect to the Aerial Gondola Variant, which is not subject to CEQA and does not require a response.

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	<p>Some may claim that the certification would withstand judicial review, and is therefore valid, based on the provision that the Governor's findings that conditions have been met are not subject to judicial review. This cannot be argued because the Governor did not find that either the Port or the City have approved a package of community benefits.</p> <p>The Governor's certification is void because it could not, and did not, make all of the nine findings required by Section 21168.6.7.(d) The certification was premature because it preceded the approval of the Port or City of a CBA agreement as well as the conclusion of this environmental review, when the existence of agreements and conditions necessary to meet AB 734's requirements will be clear. Accordingly, the expedited CEQA review process provided by Section 21168.6.7.(g) is unavailable.</p> <p>To remedy this problem, the Governor may undertake a new certification review when the CBA has been approved, the City has concluded on the basis of its CEQA process that the environmental conditions have been met, and the City has incorporated the development-related conditions in its approval of the A's development and use permit.</p>
3. Organization of this Draft EIR	
2. Summary	
1. Project Summary	<p>This Draft EIR will essentially cover environmental impacts associated with a Project that is still not clearly defined. Among other issues, we are concerned about two variants described as the Parker Power Plant and the Aerial Gondola, which would seem to be able to move forward without further environmental review, even though they are not fully described in the Project Summary reviewed for this EIR.</p>
2. Environmental Impacts and Mitigation Measures	<p>Section 2.2.1, page 2-5: In particular, the Aerial Gondola Variant is described as having significant and unavoidable impacts on a historic resource. However, it would have real life impacts on existing neighborhood businesses and residents because it would take resources (approximately \$140M is our</p>

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O-63-6		understanding) to construct a fixed system that would essentially take people off the street level and fly them over the neighborhood to the ballpark. This would negate their presence on the street, creating less safety and vibrancy at the street level, fewer opportunities to patronize the businesses along the way, and move patrons via an unsightly, inflexible, expensive and essentially non-public transportation system to the park. This single purpose system would mimic the waste of resources that the Oakland Airport monorail has become, transporting very few passengers at a high cost in a manner that does not have spillover benefits to the surrounding neighborhoods.
O-63-7		Section 2.2.1, page 2-6: Regarding Traffic Safety Hazard and Consistency with Transportation Plans, this DEIR labels these as Significant and Unavoidable Impacts in part because there are no implementation strategies mandated that could make these impacts less significant. For instance, the goal to mitigate air quality impacts by implementing TDM or TMP measures that go beyond the 20 percent vehicle trip reduction (necessary because only 2,000 parking spaces will be created for a use that will generate many more thousands of vehicle trips to the area) is supported only by the requirement to create a TDM plan, as opposed to putting real resources into making our existing public transit systems more effective at solving the last mile problem to the stadium, and doing so in a way that can flexibly benefit non-ballpark users, as well as increasing pedestrians and vibrancy at the street level.
O-63-8	3. Summary of Alternatives	Sec. 2.3.1, Pg. 2-7: The most environmentally superior alternative named in the DEIR is Alternative 1. The Project as proposed has many MAJOR and SIGNIFICANT UNAVOIDABLE IMPACTS (Wind, Air Quality, Cultural Resources, Noise and Vibration, Traffic Safety Hazards, and impact on regional roadways), as documented by the DEIR, even with implementation of allegedly feasible mitigation measures (2.2.1, page 2-5 to 2-6). These significant impacts need to be addressed and mitigated, or they risk negatively impacting the existing communities of residents and workers in the West Oakland, Jack London, and Chinatown neighborhoods. We should accept nothing less, when the DEIR so clearly identifies the No Project Alternative as the environmentally superior one. Does the report need to document why an Environmentally Inferior Alternative is preferable if that is the one that moves forward?
O-63-9	4. Areas of Controversy Raised in Scoping	Section 2.4, page 2-7: There were many other areas of controversy that have been raised in public meetings and in public comment that are not adequately summarized in this section. For example,

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- O-63-7 See Consolidated Response 4.6, *Rail Safety, Grade Crossing, and Grade Separation*; Consolidated Response 4.8, *Chinatown*; and Consolidated Response 4.23, *Transportation and Parking Demand Management Plan and Transportation Management Plan Considerations*. The Draft EIR includes several mitigation measures that would benefit transit users through infrastructure improvements:
- Mitigation Measure TRANS-1c would implement a transportation hub adjacent to the Project site that would initially serve AC Transit Lines 72, 72M, and 72R (about 12 buses per hour) and up to six shuttle bus stops.
 - Mitigation Measure TRANS-1d would implement bus-only lanes on Broadway from Embarcadero to 11th Street, where they would connect to existing bus-only lanes to 20th Street.
 - Mitigation Measure TRANS-1e would implement sidewalk corridor improvements connecting the Project site to the West Oakland, 12th Street, and Lake Merritt BART stations.
 - Mitigation Measures TRANS-3a and TRANS-3b would implement railroad corridor improvements including fencing and at-grade railroad crossing improvements, as well as a pedestrian and bicycle bridge over the railroad tracks connecting the Transportation Hub to the Project site.
- O-63-8 In accordance with CEQA Guidelines Section 15091, any decision to approve the proposed Project or another alternative with significant impacts must be accompanied by findings that changes or alterations have been incorporated to avoid or substantially lessen significant environmental effects and/or findings that such changes or alterations are infeasible for specific reasons. These findings are likely to reference the EIR and other evidence, but they are not required to be part of the EIR itself. Furthermore, if the EIR identifies significant and unavoidable impacts of the project, then the lead agency must adopt a separate statement of overriding considerations that identifies the project benefits that outweigh those unavoidable impacts. See Response to Comment O-62-47 regarding the requirement for the lead agency to adopt a statement of overriding considerations
- O-63-9 This document recognizes and appropriately discusses numerous areas of controversy that were raised by the public in response to the Draft EIR and are outside the scope of the Project and CEQA. This is consistent with the purpose of the responses to comments in the Final EIR; all matters raised by comments

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received on the Draft EIR within the designated public review period are documented herein for future reviewers. As embodied in this document, all areas of controversy raised are included with all other comments received on the Draft EIR, and are provided for the decision makers to consider before they take action on the Project. No modifications to the Draft EIR are warranted.

Furthermore, comments regarding the merits of the Project 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 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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Comments	many economic issues around gentrification, financing of the stadium, the fiscal impacts of the mitigation measures, community benefits, the dislocation of Port jobs, and other very important issues were raised. They were not listed in this section. If they do not fall within the scope that should be covered by an EIR, then it would be appropriate to simply note that perspective, so that future reviewers can see that and concur with that legal determination of the exclusion from this document.
5. Issues to Be Resolved	<p>Sac. 2.5, Pg. 2-8: This DEIR does not adequately describe the environmental impacts of the Project. The DEIR fails to address the environmental compatibility of the existing industrial use and the proposed residential and non-industrial uses being proposed. There are significant impacts on the continued viability of the existing adjacent Commercial/Industrial use of the Port of Oakland Operations by building 3,000 residential units, 35,000 persons capacity ballpark, and 1.5 million square feet of commercial use and 270,000 square feet of retail uses (hotels, restaurants, conference facilities, etc.). There are no effective proposals to address the conflicts that will arise created by the Project. For example, conflicts with Port of Oakland Truck access cannot be addressed simply by "monitoring" driving delays through a TMP. "Monitoring" is not an appropriate migration measure. There is no demonstration that acceptable results can be achieved by any of the suggestions in the TMP. There is no reasonable basis to conclude that the impacts will be adequately mitigated by "monitoring" or any of the TMP suggestions or future programs. This is an impermissible deferral and inadequate.</p> <p>The traffic gridlock that will result on the regional roadways on Highways 880 and 980 and on the local roadways of Chinatown, West Oakland, Jack London, Old Oakland, Downtown and Port of Oakland neighborhoods and commercial areas, is not addressed by the EIR. Access to these areas is not addressed and overlooked. For example, Truck Access to the Port will simply be "monitored" by a TMP to maintain acceptable drive time levels (see e.g. Appendix TRA, page 102.)</p> <p>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. Traffic Access to these neighborhoods and areas is not addressed. These neighborhoods and areas</p>

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O-63-10 See Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*, and Consolidated Response 4.4, *Port Operations and Land Use Compatibility*.

O-63-11 See Consolidated Response 4.7, *Parking*; Consolidated Response 4.8, *Chinatown*; and Response to Comment A-10-1 regarding the Webster and Posey Tubes. The analysis of the added ballpark event traffic included the existing traffic volumes plus traffic from the ballpark events. As noted in the Chinatown Consolidated Response the additional motor vehicle traffic from ballpark attendees who drive is anticipated to add about one minute to a six-minute travel time through Chinatown. This added travel time would not cause drivers to divert from their primary routes through Chinatown.

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O-63-12 See Consolidated Response 4.18, *Effects of Light and Glare on Maritime Operations and Safety*.

O-63-13 The comment refers to the Draft EIR summary table (Table 2-1), which briefly summarizes the Project’s anticipated impacts. However, Draft EIR Section 4.1, *Aesthetics, Shadow, and Wind*, provides a comprehensive analysis of the Project’s potential wind effects, including a full explanation of the anticipated number of hours that winds would exceed the pedestrian hazard criterion for three separate scenarios—Project Phase I, Project buildout, and the potential Maritime Reserve Scenario. The analysis also includes existing conditions.

With respect to shadow, Draft EIR Section 4.1, *Aesthetics, Shadow, and Wind*, explains that shadow impacts would be significant if shadows would substantially impair the function of a building using passive solar heat collection, solar collectors for hot water heating, or photovoltaic solar collectors; substantially impair the beneficial use of any public or quasi-public park, lawn, garden, or open space; or shade an historic resource such that the shadow would materially impair the resource’s historic significance by materially altering those physical characteristics of the resource that convey its historical significance.

As explained further in Section 4.1, none of these scenarios would occur. Neither generalized sunlight nor property values are within the ambit of CEQA. Moreover, reflected and refracted sunlight would nearly always be available even to locations in direct shadow from Project structures. Finally, although shadows from Project structures would reach beyond the Project site, they would cover a small percentage of the West Oakland neighborhood—limited to the immediate Project vicinity—even at the worst-case time, late afternoon around the winter solstice in December (Draft EIR Figure 4.1-27). Additionally, because shadows are not static, most locations other than the block or two immediately north of the Project site would be shaded for relatively limited portions of the day.

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	<p>will be overwhelmed.</p> <p>The Draft EIR does not address the effect on Chinatown of gridlocked commuter traffic attempting to use the Webster and Posey Tubes at peak hours because it wrongly excluded Chinatown from the geographic scope of the study. Section 2.2.1 “Significant and Unavoidable Impacts” notes that the project would increase congestion on certain regional roadways included in the Alameda County Congestion Management Plan, exceeding the County’s standard on two roadway segments (Impact TRANS-6) and contributing to exceedances at six segments (Impact TRANS-6, CU). This “would be a Significant and Unavoidable Impact, even with implementation of feasible mitigation measures.” (DEIR pp. 2-5 and 2-6). The two roadway segments are the eastbound (towards Oakland) Posey Tube and the westbound (towards Alameda) Webster tube. (DEIR Table 2-1, Section 4-15, p. 2-93).</p> <p>The traffic access to and from both Tubes runs through the heart of the Chinatown neighborhood and commercial area, raising further health and safety concerns in a neighborhood already suffering from unaddressed and disproportionate inequities in traffic and pedestrian injuries and deaths in Oakland. The DEIR is incomplete because it failed to study how access to Chinatown would be choked off by the project traffic, what existing resources and institutions in Chinatown would be affected, and how attempts to mitigate the impact of increased traffic will not succeed. This lack of community-level analysis could enable decision makers to condone the significant traffic impacts of the project and approve it without understanding, appreciating, and weighing the impacts on Chinatown.</p> <p>The Draft EIR also fails to address the problem of cut-through traffic (especially truck traffic to the Port of Oakland) to the local streets of Chinatown, West Oakland, Jack London and Downtown when Highway 880 is congested as it often is.</p> <p>Table 2.1, Pg. 2-9, 2-10: Impact AES-3- Lighting – adverse effect on Port Operations and other harbor operations is not addressed.</p> <p>Table 2.1, Pg. 2-10, 2-11: Impact AES-5- Wind Impact – “Wind: Project-level and cumulative conditions</p>
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	<p>would create or contribute to winds that would exceed 36 miles per hour for more than one hour during daylight hours during the year." This vague finding is inadequate to provide the public with notice of the potential negative impacts of the wind -- there is no estimate of the amount of time each year that winds would exceed 36 mph, nor is there an estimate of the maximum wind speed. Moreover, the buildings, with heights of 200, 400, and 600 ft., max, are expected to cast long shadows and deprive the adjacent West Oakland neighborhood of sunlight. The combination of shade and powerful winds would make the streets inhospitable, discourage pedestrians, and stifle economic growth. The net effect could be to depress property values in West Oakland. These are social and economic impacts so directly connected to the environmental impacts of the project that they must be considered under CEQA. See, Pub. Res. Code Section 21082.2 "Significant Effect on Environment..." subdivision (c), "evidence of social or economic impacts which contribute to or are caused by physical impacts on the environment," may contribute to substantial evidence that a project may have a significant effect on the environment.</p> <p>More information is needed to gauge the potential wind impact of the project on the viability of the adjacent residential neighborhood and to seek alternatives, such as shorter buildings, less building surface area, reconfiguration, etc. to avoid permanent and devastating damage to the character of the neighborhood. Adverse effects on Port and surrounding communities must be addressed.</p> <p>Table 2.1, Pg. 2-11 to 2-15: First, we do not agree that the impacts should be accepted as "unavoidable". The impacts can be significantly mitigated if all of the mitigation practices are implemented and followed. The dust, diesel, and air pollutant mitigations listed are fine, but who/what agency will monitor? We have seen projects in West Oakland flout these dust control mitigations because the contractors believe no one is monitoring. Shortcuts are taken, and complaints are not addressed, but the significant generation of dust will impact neighbors. Harder penalties should be enforced. Residents can be trained (and paid through WOEIP) to monitor and report violations. The training is relatively simple if the criteria are simple (e.g. "no visible dust").</p> <p>Table 2.1, Pg. 2-19: Item VI on this page mandates that the project must incorporate additional TDM measures that go beyond the 20% vehicle trip reduction standard. But it references the plan as if writing a plan will solve this, which it will not. The only way to accomplish that reduction is to</p>
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O-63-14 The Draft EIR identifies four significant and unavoidable air quality impacts: Impacts AIR-1, AIR-2, AIR-1.CU, and AIR-2.CU. The Draft EIR also requires implementation of all feasible mitigation measures to reduce these impacts: Mitigation Measures AIR-1b, AIR-1c, AIR-1d, AIR-2a, AIR-2b, AIR-2c, AIR-2d, and AIR-2e, as well as Mitigation Measures TRANS-1a, TRANS-1b, TRANS-1c, TRANS-1d, TRANS-1e, TRANS-2a, TRANS-2b, TRANS-2c, TRANS-3a, and TRANS-3b. These mitigation measures would be monitored and enforced by the City through the Mitigation Monitoring and Reporting Program (MMRP), as required by CEQA (Section 15097). The public can report violations of mitigation measures to the City at any time.

Please see Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*, and Consolidated Response 4.23, *Transportation and Parking Demand Management Plan and Transportation Management Plan Considerations*, for a discussion of mitigation effectiveness, enforceability, and feasibility. These consolidated responses also contain revisions to mitigation measures in response to comments on the Draft EIR.

The Project sponsor would provide shuttle service from BART stations to the Project site on game days. Shuttle bus service connecting the ballpark's Transportation Hub to one or more of the three nearby BART stations (West Oakland, 12th Street, and Lake Merritt) on game days or for large concerts is identified as a component of the Transportation Demand Management (TDM) Plan (Mitigation Measure TRANS-1a, Draft EIR p. 4.15-187) and as a City priority measure in the Transportation Management Plan (TMP) (Mitigation Measure TRANS-1b, Draft EIR pp. 4.15-195 and p. 4.2-74). This service would be provided separately from AC Transit.

It should be noted that AC Transit has indicated in comment letter A-3 that it is unable to provide additional transit service during game days: "...we are unable to provide supplemental game day service. Weekday evening game times in particular occur at the same time as peak transit demand." However, the City and the Project sponsor are negotiating a public benefits package that may include funding for a variety of programs, including additional transit service. This package may support added service by AC Transit.

For a description of the Transportation Hub, see Draft EIR Section 4.15, *Transportation and Circulation* (pp. 4.15-118 through 4.15-119 and p. 4.15-197).

Regarding Mitigation Measure AIR-4b, the City is responsible for ensuring the Project sponsor's long-term care of the trees through the MMRP.

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	<p>significantly increase funding and programming to local transit agencies, specifically AC Transit in this case.</p> <p>Table 2.1, Pg. 2-20: Item c.i., we are glad to see this specific language around directly funding a specific offset project. We recommend that this specific project be support for AC Transit for bus service from either West Oakland BART or Lake Merritt BART stations to the Howard Terminal site. Bus service is more flexible than a fixed system, and it can serve non-ballpark goers as well, making it more than just an offset.</p> <p>Table 2.1, Pg. 2-22: Mitigation Measure Trans-1c. We want to understand what this transportation hub might be, it sounds like it will be defined further in Section 4.15.</p> <p>Table 2.1, Pg. 2-24: Mitigation Measure AIR-4b, Item 6. Please specify who will be responsible for irrigation and long term care of the trees. If they are street trees, will the City be budgeting for long term maintenance?</p> <p>Table 2.1, Pg. 2-27: Impact AIR-2.CU. We are supportive of Action 29, providing incentives to future tenants to retrofit their fleets to zero emission.</p> <p>Table 2.1, Pg. 2-35 to 2-39: The Draft EIR fails to identify Oakland's Chinatown District as a historical significant area and cultural resource under CEQA that will be directly and indirectly impacted by the Project. The Draft EIR fails to identify mitigation measures that, if feasible, may be considered to avoid or minimize the significant adverse impacts to Chinatown.</p> <p>Table 2.1, Pg. 2-43 to 2-52: Greenhouse Gas Emissions "net additional" cannot be mitigated with an unspecified Plan that may cause other significant and unavoidable impacts. The finding of "Less Than Significant" is unjustified and appears to be based on a TMP that fails to reasonably demonstrate vehicle trip reductions by 20%. The weakness of this analysis is further proof that the Governor's fast-track certification was not founded on any factual findings.</p>
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O-63-15 Please see Consolidated Response 4.8, *Chinatown*, and specifically Section 4.8.6.

O-63-16 Draft EIR Mitigation Measure GHG-1 requires that the Project meet the "no net additional" requirement by preparing and implementing a greenhouse gas reduction plan, and by complying with AB 734. After implementation of Mitigation Measure GHG-1, the impact would be less than significant (see Draft EIR p. 4.7-66). See Responses to Comments I-93-4, O-46-11, O-47-10, O-62-33, O-62-38, and others, along with Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*, for a thorough discussion of this issue.

Mitigation Measure TRANS-1b requires the Transportation Management Plan (TMP) to achieve a minimum of a 20 percent performance standard. This requirement would be enforced and monitored through the MMRP. The ability of the TMP to obtain this goal is supported by substantial evidence supplied in Draft EIR Table 4.15-13 and Appendix TRA. In addition, AB 734 requires the TMP to achieve the 20 percent performance standard, and the California Air Resources Board (CARB) has confirmed this in its AB 734 Determination for the AB 734 Oakland Waterfront Ballpark District Project.³¹

See Response to Comment O-63-14 for a discussion of game-day shuttle service and funding for AC Transit.

Regarding funding various programs to promote walking, Mitigation Measure TRANS-1b includes strategies to encourage and promote walking and pedestrian access to the ballpark, such as:

- Promote transit access to the ballpark by providing interactive trip-planning tools; transit maps with recommended stops/stations for accessing the site and best routes to the ballpark; walking directions from transit stations/stops; and information about event shuttles (including stop locations) between BART stations and the ballpark. Promote transit information on the ballpark website, on mobile apps, on the websites for events taking place at the site (to be required as a standard part of the event contract), and in event literature and advertisements, when appropriate.
- Develop means of ballpark, on-site, and/or neighborhood communication (e.g., radio, TV, mobile application) that provide real-time advisories about the status of the transportation system and event schedule to facilitate

³¹ 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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convenient transportation choices. Information provided may include the availability of public transit and shuttle bus service, the location and capacity of bike parking facilities, best walking paths, the locations of ridesourcing and taxi services, and the limited extent of—or high price for—available parking.

- Provide additional permanent and temporary wayfinding signage to direct people to and from the ballpark; also use wayfinding to direct people to nearby transit stops and ridesourcing and taxi pick-up zones. Pedestrian-scaled lighting could be provided along these walking routes where needed.
- Develop a transportation hub with bus shelters, wayfinding guidance, real-time transit information, pedestrian and placemaking amenities, and other elements (which may include restaurant/retail uses, a bike station, shared micromobility, restrooms, water fountains, Clipper Card vending machines, and/or other amenities) to enhance the transit experience for attendees. Implementation of a transportation hub on 2nd Street is required as EIR Mitigation Measure TRANS-1c.

In addition, Mitigation Measure TRANS-1e includes many pedestrian improvements, including sidewalk upgrades and traffic and/or parking control officers (Draft EIR p. 4.15-198).

The annual report that would be prepared under Mitigation Measure GHG-1 is required to ensure that the Project would comply with the “no net additional” performance standard requirement. The City would review the report and has the authority to require corrective actions if the Project is not meeting this requirement (Draft EIR p. 4.7-65):

The City or its third-party GHG emissions expert shall review the Annual Report to verify that the GHG Reduction Plan is being implemented in full and monitored in accordance with the terms of this mitigation measure. The City retains the right to request a Corrective Action Plan if the Annual Report is not submitted or if the GHG Reduction Measures in the Plan are not being fully implemented and/or maintained as appropriate over the Project’s 30-year lifetime, and to enforce provisions of that Corrective Action Plan if specified actions are not taken or are not successful at addressing the violation within the specified period of time.

Mitigation Measure GHG-1 would also be enforced by the City through the MMRP.

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	<p>Table 2.1, Pg. 2-47: Under item ii. on this page (On-site measures) or further down on the next page (Off-site measures), we recommend once again that the Project Sponsor provide direct resources AC Transit for increased bus service to the ballpark on game and event days from both West Oakland and Lake Merritt (Chinatown) BART stations.</p> <p>Table 2.1, Pg. 2-49: Under item ii.(c), one program that the Project Sponsor could fund to promote walking from communities neighboring the site would be a game or event day community safety ambassador program. Rather than paying expensive police overtime rates, the Project sponsor could pay local nonprofits that have a community safety ambassador program to have their staff walking and watching the main pedestrian corridor to the ballpark from the surrounding neighborhoods. This would be a positive and material employment program for local residents as well.</p> <p>Table 2.1, Pg. 2-52: Item 3, Annual Report Required. In theory, these reports are fine in documenting accountability, but in our experience, no one actually reads these reports. We recommend spending more money on implementation programs, and less money on generating paperwork. Reports should be very brief and simply be check boxes confirming that the Project Sponsor has implemented an agreed to program.</p> <p>Table 2.1, Pg. 2-83 to 2-89: Trans-1B Ballpark VMT (Vehicle Miles Travelled) – The Report incorrectly concludes that the Project VMT per attendee would be more than 15 percent below similar uses. The conclusion is based on a future draft TMP to be submitted to the City for review and approval. There is no reasonable basis to conclude that any of the items listed as priorities in the TMP (which have not been defined with specificity –see page 4.15-193) will accomplish the 20 percent reduction in vehicle trips required by AB 734. The analysis shows that the trip reduction estimate can be as low as 6% (See Table 15, page 37-38 of 46, Peter Vellmann and Nichole Ferrera Memorandum, December 1, 2020, appendix TRA.2.) The strategies are also based on forcing traffic and vehicle trips to the surrounding areas (e.g. by limiting parking at the ballpark and forcing attendees to park in Chinatown, West Oakland, and the surrounding neighborhoods; by making creating bus-only lanes on Broadway, forcing traffic to Webster Street and Franklin Street and Chinatown.)</p>
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O-63-17 The City acknowledges and understands the concerns that Project traffic would adversely affect the Chinatown neighborhood. See Consolidated Response 4.7, *Parking*, and Consolidated Response 4.8, *Chinatown*, for information about how ballpark-related traffic would be dispersed and not concentrated in Chinatown.

Draft EIR Mitigation Measure TRANS-1b (Transportation Management Plan or TMP) sets forth a performance standard—a 20 percent reduction in vehicle trips—and lists required and possible strategies by which ballpark events would achieve the standard. The TMP effectiveness memo in Draft EIR Appendix TRA.2 demonstrates that the mitigation measure would be effective. As explained in Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*, the effectiveness of various vehicle trip reduction strategies is likely to change over time in response to changes in transit services, parking supplies, and travel behavior and advances in technology; thus, it would be impractical to lock in place a list of discrete actions at the time the Project is approved. It is therefore appropriate to require that the TMP be a living document with ongoing monitoring, enforcement, and adjustment to reflect changing conditions and needs. The TMP requires that vehicle trip measurements include attendees who drive and park off-site.

Draft EIR Mitigation Measure TRANS-1c (p. 4.15-197) would implement the Transportation Hub on 2nd Street, and as stated in the mitigation measure, the hub would incorporate facilities for AC Transit operations. It is expected that AC Transit Lines 72, 72M, and 72R (12 buses per hour) would use the transportation hub at opening day. See Consolidated Response 4.21, *AC Transit Congestion Impacts*, for more information about bus transit service.

Note that traffic congestion or measurements of vehicular delay are not an environmental impact under CEQA per State CEQA Guidelines Section 15064.3. Thus, even if concerns about delay and congestion may raise community issues and policy concerns, they do not raise significant environmental issues or specific questions about the analyses or information in the Draft EIR that would require response pursuant to 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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	<p>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 and areas.</p> <p>Table 2.1, Pg. 2-19: Mitigation Measure TRANS-1c is the transportation hub described earlier. However it's not clear what this is other than some sidewalk improvements. Is this an AC Transit stop? If so, Project Sponsor should provide funding to AC Transit for increased service to this location from West Oakland and Lake Merritt (Chinatown) BART station.</p> <p>Table 2.1, Pg. 95-95: Impact TRANS-6 Posey Tube and Webster Tube – Mitigation required of the Project should include financial contribution to the Oakland-Alameda Access project.</p> <p>The Draft EIR fails to address the significant congestion and gridlock created by the Project on Chinatown and other adjacent neighborhoods and areas.</p> <p>The seriousness of the significant impacts on I-880 in the northbound direction between 23rd Avenue and Embarcadero, the Posey Tube, the Webster Tube, are not fully addressed. There will be serious impacts on the I-880 Jackson Street and Oak Street on-ramps, and the I-880 Oak Street and Broadway off-ramps. The significant impacts and gridlock created by the Project are not addressed.</p> <p>Appendix TRA pages 101-104: The Draft EIR fails to address effects on Port and Truck Access.</p> <p>There are no overriding considerations for creating gridlock congestion in the adjacent neighborhoods and the destruction of the viability of the Port of Oakland and its future expansion.</p> <p>The Draft EIR does not consider the 20.59 acres of the "Rancho Uplands" portion of the land "grant" and the highly likely dispute that will be mounted towards reparations for return of ownership to Indigenous Peoples groups. The Cultural Tribal 'history' does not include outreach or communications with current day Indigenous Peoples groups.</p>
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O-63-18 With regard to traffic congestion and measurements of vehicular delay, see Response to Comment O-63-17. 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.

Even though traffic congestion is not used in CEQA documents, the City of Oakland required a detailed traffic operations analysis (Draft EIR Appendix TRA.3) and a roadway segment analysis (Draft EIR Additional Transportation Reference Material). In addition, the City required a sensitivity analysis (Appendix TRA.7) to determine the impact on Port of Oakland operations if Port-related traffic were to avoid the Seaport's Adeline Street access on ballpark event days. From these and other analyses in Draft EIR Section 4.15 and Appendix TRA, transportation improvements were identified (Draft EIR Section 4.15.4, *Transportation Improvements*) and encompass the improvements included as part of the Project, required as CEQA mitigation, or recommended through the Non-CEQA analyses.

See also Consolidated Responses 4.4, *Port Operations and Land Use Compatibility*; 4.5, *Truck Relocation*; 4.7, *Parking*; and 4.8, *Chinatown*.

O-63-19 Although there have been no formal requests for consultation from any tribes according to the provisions of Public Resources Code Section 21080.3(b), the City sent letters to Native American tribes and individuals. No responses were received from the eight Native American tribes and individuals contacted. See Response to Comment O-62-76.

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	<p>The Draft EIR does not consider the impact of converting highly valuable manufacturing zoning for General Industrial uses. Advanced technology and traditional manufacturing jobs are one of the most stable and sustainable jobs compared to almost any other sector. Oakland has reduced it's non-port industrial zoning to 3-4% by converting to residential zoning. This project further exacerbates the loss of this vital economic sector.</p> <p>The Draft EIR states that there are no conflicts with the City's Planning Code and Zoning map because the lands that the proposed project are in 'trust' to the Port. (4.10-63)</p>
3. Project Description	
1. Project Location and Setting	<p>Sec. 3.1, Pg. 3-2 - 3-3: "Project site is bounded by Estuary on south; Jack London to east; Union Pacific Railroad tracks and Embarcadero West roadway on north; and heavy metal recycling center, Schritzer Steel, and Oakland Seaport on west." <i>The Project Site is about 1 mile from Chinatown. There is no mention of Chinatown in project description even though Project Site is in close vicinity of Chinatown. The DEIR states that the study area varies, based upon the environmental factor under consideration. The transportation and traffic study area should be expanded to include Chinatown because traffic "hot spots" in and around Chinatown will foreseeably be impacted by the Project and the resultant congestion will block access to Chinatown. These include the 980 and 880 freeway on-ramps, access between Oakland and Alameda on Broadway, Webster, and Harrison, all of which experience congestion that discourage traffic into Chinatown. The Project's impact on businesses, establishments, and residents within the Chinatown geographic area should not be ignored. The DEIR relies upon the Lake Merritt BART station to transport patrons to Howard Terminal, which will increase rideshare traffic, and Chinatown lies in the way. The Project's limited parking will force visitors to park further away from the stadium, and the competition for parking in Chinatown will discourage people from patronizing Chinatown establishments. Clearly, the potential transportation and traffic impact of the project on Chinatown must be identified and mitigated.</i></p>
2. Project Site Existing Conditions	<p>Sec. 3.2.1, Pg. 3-3: Existing uses include 1) truck parking/ container depot (23 acres); 2) Longshoreperson training facilities (5 acres); 3) Drayage truck yards (4 yds); 4) Vessel berthing (7</p>

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- O-63-20 Regarding the loss of industrial zoning, see Consolidated Response 4.22, *General Non-CEQA*. This comment will be forwarded to the decision makers, including the City Council, for consideration in their deliberations concerning approval of the proposed Project. As discussed in the Draft EIR, the proposed Project's uses would conflict with the existing zoning designations on the Project site. To resolve conflicts with existing zoning, the Project proposes to rezone the Project site and establish a new Waterfront Planned Development Zoning District as authorized by the proposed General Plan Amendment, described in Draft EIR Chapter 3, *Project Description*. With the Project's proposed amendments to the City of Oakland Planning Code and Zoning Map, the Project would not fundamentally conflict with the Planning Code and Zoning Map, and impacts would be less than significant (Draft EIR p. 4.10-63).
- O-63-21 See Consolidated Response 4.8, *Chinatown*.
- O-63-22 These existing uses are on the Howard Terminal portion of the Project site, which makes up approximately 50 acres of the approximately 55-acre Project site. See Draft EIR Section 4.8, *Hazards and Hazardous Materials*, which describes the existing setting of the Project site, including the Howard Terminal portion, with regard to any potential contamination on-site. See also Consolidated Response 4.5, *Truck Relocation*.

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O-63-23 See Consolidated Response 4.8, *Chinatown*.

O-63-24 The regulatory agencies with responsibility and jurisdiction over the management of hazardous materials are identified in Draft EIR Section 4.8, *Hazards and Hazardous Materials*, Section 4.8.2, *Regulatory Setting*. The primary regulatory agencies are the California Department of Toxic Substances Control (DTSC) and the Alameda County Department of Environmental Health. Mitigation measures included in Draft EIR Section 4.8 would allow the City to ensure that the Project sponsor has complied with regulatory requirements to the satisfaction of the agency with jurisdiction before permits are issued.

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	<p>acres); 5) Roadways, unused areas, truck repair, offices (11 acres). Are there toxic elements in this area? Will current parking usage impact surrounding neighborhoods?</p> <p>Sec.3.2.1, Pg. 3-5: "Project site includes approx 2.5-acre historic PG&E Station C facility located on the south side of Embarcadero West (aka "Peaker Power Plan") that supply power to electric grid at times of peak demand...also includes round fuel storage tank adjacent to Peaker Power Plan..." Would the power plant be eliminated? What will be done to take care of negative impacts from toxic elements?</p> <p>Sec.3.2.3, Pg. 3-7: "Project site has regional freeway access via both I-880 and I-980, with on-ramps to each within 1 mile of Project site." Traffic will increase in Chinatown and surrounding neighborhoods. How will impact on traffic be addressed? Transportation routes should direct traffic toward Chinatown only if Chinatown is part of the destination, and there are economic benefits to Chinatown. We do not want traffic only coming through our neighborhood, or to be treated as a satellite parking lot for the ballpark. The ballpark should encourage foot traffic and shopping in Chinatown before and after ballpark events.</p> <p>Sec. 3.2.3, Pg. 3-7: "3 BART stations including West Oakland (0.9 mi), 12th St. Oakland City Center (0.8 mi), and Lake Merritt (1.1 mi) exist within approx. 1 mile of Project site." We encourage developers and the A's to work with Chinatown merchants and CBOs to encourage pedestrians and tourists to direct food traffic to Chinatown.</p> <p>Sec. 3.2.3, Pg. 3-7 Existing Project Site Access: "Existing support facilities for pedestrian, bicycle and scooter uses are limited..." This provides good opportunities to design additional pedestrian ways, bike paths to direct foot traffic to Chinatown. Although the DEIR relies on existing traffic studies to provide solutions for congestion and specifically recommends the implementation of strategies in the West Oakland and Downtown areas, it fails to adopt that same strategy for Chinatown.</p> <p>Sec. 3.2.4, Pg.3-8 Site Conditions: "Project site has a history of handling hazardous and potentially</p>
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	<p>hazardous materials as part of industrial uses for decades, as do sites in the surrounding area..." Which groups or city entities will monitor how haz mat will be handled?</p> <p>Sec. 4.10, Pg. 11: Community Access room/space provided for in the legs concerned about Assembly Bill (AB) 1191 (Stats. 2019, Chap. 752), also known as the Oakland Waterfront Sports and Mixed-Use Project, Waterfront Access, Environmental Justice, and Revitalization Act, "...was enacted. AB 1191 authorizes CSLC (CA State Lands Commission) to take certain actions related to the development of the Howard Terminal property and the Project, including, among other things: Authorizes CSLC to approve an exchange (potentially in phases) at the Howard Terminal property and settle any dispute as to the boundary or title status of the 1852 Tidelands, 1923 Tidelands, and Rancho Uplands on the site if certain findings can be made, including that the exchange will not substantially interfere with public trust uses and purposes, and that the final trust lands will provide a significant benefit to the public trust and be useful for public trust purposes..." There is hardly a discussion of the Pre-Rancho Uplands stewardship/ownership.</p>
<p>3. General Plan</p>	
<p>4. Project Objectives</p>	<p>Sec 3.4, Pg. 3-14 Project Objectives: There is no objective that speaks to building upon and respecting the history/maritime industry of the project site. This is a critical consideration if the project intends to transform the waterfront from its original use to a new mixed-use neighborhood. Indicate how the proposed project intends to accomplish this (strong recommendation to maintain existing cranes, express through materiality and character of architectural spaces, etc.).</p> <p>Sec 3.4, Pg. 3-14 Project Objectives #2: "Provide sufficiently dense, complementary mixed-use development with a range of flexible uses, including residential, office/commercial, retail, and entertainment, to create a vibrant local and regional visitor-serving waterfront destination that is active year round..." Project Objectives seem to amplify the proposed project as a regional/visitor serving destination; there is a lack of specific language around creating a local neighborhood that will serve existing surrounding neighborhoods.</p> <p>Sec. 3.4, Pg.3-14 Project Objectives #6: "Construct high-quality housing..." Plan needs detail about</p>

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O-63-25 The Draft EIR recognizes that the Project site and vicinity was occupied by the Native American group known as the *Ohlone* prior to Euroamerican contact and settlement (Draft EIR p. 4.4-5).

O-63-26 With respect to the comment that the City should consider different Project objectives, 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 CEQA Guidelines Section 15088. The City, as the lead agency, has discretion in drafting the Project's objectives to address the key purposes of the Project (*California Oak Foundation v. Regents of University of California* 2010 [finding that an agency has broad discretion to formulate project objectives]). 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 Responses 4.9, *Alternative 3: The Proposed Project with Grade Separation Alternative*, and Consolidated Response 4.10, *Alternative 2: The Off-Site (Coliseum Area) Alternative*, for more discussion of CEQA requirements related to project objectives.

With respect to the general issues referred to in the comment, see Section 4.1, *Aesthetics, Shadow, and Wind*; Section 4.4, *Cultural and Tribal Cultural Resources*; and Section 4.10, *Land Use, Plans, and Policies*. The comment recommends that the Project maintain existing cranes and architectural characteristics. Draft EIR p. 3-31 explains that the Project sponsor intends to retain these cranes on site as non-operational elements in the waterfront parks and open space areas; however, the impact analysis also evaluates removal of the cranes in case retention is not feasible.

O-63-27 See Consolidated Response 4.12, *Affordable Housing*, and Consolidated Response 4.13, *Gentrification and Indirect Housing Displacement*.

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	<p><i>new housing affordability requirements to accommodate current Oakland residents, and avoid gentrification.</i></p>
<p>5. Site Plan and Project Characteristics</p>	<p>Sec 3.5.2, Pg 3-26 Major Project Components, Parks and Open Space Amenities: "The proposed Project would include a network of approximately 18.3 acres of accessible open spaces..." <i>Distinguish the amount of truly publicly accessible open space (open at all times of day) from public space that would have controlled access during specific hours of the day.</i></p> <p>Sec 3.5.2, Pg 3-26 Major Project Components, Parks and Open Space Amenities: "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..." <i>Public open space programming should be in synergy with and complement nearby neighborhoods such as Chinatown and Jack London Square. Public open space should also aim to restore wetlands and riparian life to increase open spaces, adhere to OSCAR, Pedestrian, Bicycle and Energy and Climate Change Plans. Any use for "park amenities" space here should not just mimic an extension of consumerist destinations like Jack London Square.</i></p> <p>Sec 3.5.2, Pg 3-29, Figure 3-14 View Approach to Ballpark from Jack London Square - Water Street: <i>All rendering views are either located within project site or an aerial view, and do not give a sense of how buildings will relate with surrounding context or impact key view corridors. Requesting additional views to understand how Proposed Project, Maritime Reservation Scenario, and Alternatives would look and feel, as well as impact views from surrounding neighborhoods (Chinatown, Jack London, Downtown Oakland, Alameda) and key view corridors (880 and 980 Freeways, Market St, MLK Jr Way, Adeline St, Embarcadero West).</i></p> <p>Sec 3.5.2, Pg 3-30, Figure 3-15 Bay Trail Connection: <i>Regarding Bay Trail path within Athletics' Way - What happens when Athletics Way is partially closed for events? Ensure the entire path is maintained publicly accessible at all times.</i></p> <p>Sec 3.5.2, Major Project Components, Ship to Shore Container Cranes: "The Project sponsor intends to retain these cranes on site as non-operational elements in the waterfront parks and open space areas."</p>

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O-63-28 As specified on Draft EIR p. 3-26 and Table 3-1, the Project proposes 18.3 acres of publicly accessible open space, as illustrated in Draft EIR Figure 3-13, p. 3-27. Of those spaces, Athletics' Way is a social promenade and concourse that would round the ballpark and would be intended for everyday use while also managing a large volume of users during games. In areas directly related to the new ballpark, Athletics' Way would be open to the public on non-event days (subject to periodic closures for security, safety, maintenance, and/or repairs) and would be reserved for ticketed attendees during event days at the ballpark. Also, the public would be able to access the elevated Rooftop Park on non-event days, while the area would be reserved for ticketed attendees during event days at the ballpark (Draft EIR p. 3-28). None of the proposed open space would be located on the shoreline, creating opportunities or needs to restore wetlands or riparian areas. The Project, including its open space, would not conflict with any existing policies in the Open Space, Conservation and Recreation Element of the City of Oakland General Plan, or with policies and plans related to pedestrians, bicycles or the City's Equitable Climate Action Plan; see the impact analysis discussions under *Consistency with Land Use Plans and Policies*, starting on Draft EIR p. 4.10-52. Regarding the Bay Trail, see Response to Comment A-12-58.

O-63-29 The cranes on the Project site would be retained under the applicant's preferred design for the Project. However, their removal is also considered as part of the proposed Project and under the Maritime Reservation Scenario. See Response to Comment H-1-19 for further discussion of the subject of retaining the cranes on the Project site.

As presented in the Draft EIR, out of an abundance of caution, Crane X-422 is considered a historic resource. The other three cranes—X-415, X-416, and X-417—are not considered historic resources because they do not currently meet the 45-year minimum age criterion, nor do they appear to qualify for consideration as a resource achieving significance in less than 50 years because of its exceptional importance (National Register Bulletin 15, 25; California Technical Assistance Series #7, 12). See Draft EIR Appendix CUL.1 and Appendix CUL.2 for a more in-depth presentation of the historical status of these cranes.

Under the Maritime Reservation Scenario, Cranes X-416 and X-422 would be removed from the site. Cranes X-417 and X-415 would remain on the Project site as part of the baseline design for the Maritime Reservation Scenario. The loss of Crane X-422 would require implementation of Mitigation Measure

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CUL-3c: Interpretive Displays. These displays would be installed on the site and would commemorate the transformation of the port in 1963–1977, the role played by early container cranes in this transformation, the physical context of the site, and the unique characteristics of the low-profile design of Crane X-422 compared to its neighbors.

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	However, it may not be feasible to maintain the cranes in the long term and therefore this EIR assumes their removal and analyzes associated impacts. Also, if the Port chooses to exercise its option to take back all or a portion of the Maritime Reservation Area (see Section 3.7), one or two of the cranes in the affected area would be demolished. <i>If existing cranes are not maintained, how will the legacy and history of the place be integrated into the project design? Highly encourage a stronger strategy for retention of existing cranes and/or alternative solutions to pay homage to the history and culture of the place. Losing the existing cranes completely would be considered a significant loss for the community and cultural retention.</i>
6. Development Phasing and Intensity	Sec 3.6.1 Phasing, Pg 3-32: <i>Which aspects of transportation and connectivity improvements will be included as part of Phase 1? Prioritize build out of the entire Bay Trail including off-site links in order to promote walkability and bikeability in an earlier stage of the project.</i>
7. Maritime Reservation Scenario	Sec 3.7 Maritime Reservation Scenario, Page 3-37 – If the Port exercises this option, the Project site plan would be modified, and the proposed development would be more dense as a result of fitting the same development program (i.e., the same ballpark and mix of other uses proposed) onto the smaller site with less open space area. <i>In the event that either the Project or the Maritime Reservation Scenario is implemented, the Coalition supports prioritizing improvements to existing parks and cultural assets, rather than the development of new public space.</i> Sec 3.7 Maritime Reservation Scenario, Pg 3-39, Figure 3-18 Illustrated Buildout Site Plan - Maritime Reservation Scenario: <i>Concern for the taller building heights (250'-400' max heights) abutting waterfront edge with minimum setbacks in the Maritime Reservation Scenario, compared to 100' and even 60' in the proposed project. How will these high rises impact the experience along the waterfront park/promenade? Additionally, it is unclear how this scenario contemplates sea level rise and its impacts on the waterfront park and promenade given its minimal setback.</i>
8. Transportation and Circulation	Sec 3.8.1 Transportation Management Plan, Pg 3-42: <i>Supplemental shuttle service (provided by AC Transit or a private operator) to 12th Street BART station. Include shuttle or AC Transit service to and from Lake Merritt Station. Currently many A's fans travel from East Oakland and areas even further east and south, which is mostly served by the Dublin/Pleasanton BART line and directly connected only up to Lake Merritt station without requiring a train transfer. By only serving 12th</i>

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O-63-30 As discussed on p. 3-32 of the Draft EIR, the proposed Project would build-out over time, and certain areas of the site and certain features of the development are described as being “Phase 1.” These include the area largely east of Market Street and involve development of the ballpark and parts of the proposed residential and mixed use development (commercial office, retail and restaurant, and hotel uses). Phase 1 would also include approximately 67 percent (12.3 acres) of the total publicly accessible open space proposed for the Project (18.3 acres), which includes the east half of Waterfront Park and on-site Bay Trail improvements (Draft EIR Figure 3-7). Mitigation Measures included in the Draft EIR analysis of Transportation impacts would require specific off-site improvements to be built prior to opening the first building or ballpark, and providing a connection to the on-site facilities and specifically to the Bay Trail at Martin Luther King Jr. Way. Specifically, Phase 1 of the proposed Project would construct a continuation of the Bay Trail Connection offsite, north on Martin Luther King Jr. Way to 3rd Street where it would continue west along Brush Street; development after Phase 1 will include on-site Bay Trail improvements as part of the west portion of Waterfront Park (Draft EIR Figure 3-15).

O-63-31 Comments regarding the Project’s merits or scenarios 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 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-63-32 The primary effect of the Maritime Reservation Scenario on the proposed Waterfront Park would be to decrease the park’s size to about 6.9 acres, compared to about 10.3 acres under the proposed Project, as stated on Draft EIR p. 3-40. The park would be particularly constrained adjacent to the Maritime Reservation area and, as noted by the commenter, taller buildings would be closer to the Estuary, which would be expanded onto the Project site to increase the size of the turning basin. It might be anticipated, therefore, that a greater percentage of park users would congregate along the wider, eastern portion of the park, adjacent to the ballpark. However, even in the smaller western portion, park users would likely focus most of their attention toward the Estuary, rather than the buildings behind them. Nevertheless, it can be anticipated that, at least for some park users, the

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Waterfront Park under the Maritime Reservation Scenario could be less desirable than the same, albeit larger, park under the proposed Project.

See Draft EIR p. 4.1-70 for further discussion of non-CEQA aesthetic impacts of the Project under the Maritime Reservation Scenario.

O-63-33 The Project’s proposed approach to addressing sea level rise is described in Section 3.11.1 of the Project Description (Draft EIR p. 3-49). The approach is to raise the Project site’s ground surface elevations and structures such that most of the ground surface would be at least 6 feet above the current 100-year base flood elevation. A few portions of the site where existing structures would remain, and which are constrained by the elevations of parcels on adjoining non-Project parcels, are located above—but not as high above—the current 100-year base flood elevation. Draft EIR Section 4.9, *Hydrology and Water Quality*, discusses site elevations and the Project’s resilience to flooding exacerbated by sea level rise in more detail, including the requirements of AB 1191. In addition to these sections of the Draft EIR, supplemental details are provided regarding the design basis for the Project’s proposed adaptation to sea level rise for Phase 1 and full Buildout. In the event that sea level rise exceeds the Project’s built-out resistance to coastal and/or groundwater flooding, strategies and measures have also been identified to adapt to higher sea levels.³² See also Response to Comment A-12-39 and Response to Comment A-12-45.

The wharf is at approximately 7 feet above the City of Oakland Datum, which is above the base flood elevation for up to 3 feet sea level rise.³³ 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 to become frequent enough to substantially impair public access, adaptation measures would be used, such as installing parapet walls along the wharf edge or changing the programming and user experience to accommodate the infrequent and temporary inundation.

O-63-34 Mitigation Measure TRANS-1b would implement a transportation management plan (TMP). The mitigation measure (Draft EIR p. 4.15-195) lists 22 City priorities for the TMP. One of the priorities for opening day of the ballpark is to provide supplemental shuttle service to the 12th Street BART station, and a secondary priority is for shuttle service to the West Oakland

³² 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.

³³ 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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and/or Lake Merritt stations. The wayfinding elements as currently described in the Draft EIR focus on wayfinding for the ballpark, to make the walking environment more comfortable for ballpark attendees walking from the West Oakland, 12th Street, and Lake Merritt BART stations. Please see Consolidated Response 4.23, *Transportation and Parking Demand Management Plan and Transportation Management Plan Considerations*, for revisions to Mitigation Measures TRANS-1b incorporated in response to comments.

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	<p><i>Street BART station, the project promotes accessible transit from San Francisco, but in turn creates a disadvantage for current existing fans residing in East Bay.</i></p> <p>Sec 3.8.1 Transportation Management Plan, Pg 3-42: "Wayfinding between the West Oakland BART station and the ballpark via 7th Street, between the 12th Street BART station and the ballpark via Broadway and Washington Street, and between the Lake Merritt BART station and the ballpark via 8th Street." <i>Include wayfinding elements along key areas in Chinatown (e.g. Pacific Renaissance Plaza, Lincoln Square Park, Madison Square Park). Include these key Chinatown plazas and parks destinations as part of wayfinding/signage plan, in multiple languages.</i></p>
11. Sustainability and Resilience	<p>Sec 3.11.1 Sea Level Rise – The current elevation of the wharf is lower than the proposed ground surface in the site's interior and would not be elevated during buildout of the proposed Project. This would be consistent with the wharf's intended use as shoreline public open space and access, and could change in the future as sea levels rise, and flooding occurs more often. <i>Confirm if the intention is to rebuild or provide equivalent shoreline public open space and access in the future, when wharf elevation no longer meets the sea level rise threshold. In general there is a lack of information regarding the proposed open space strategy as it relates to sea level rise and resiliency. Check with the Energy and Climate Action Plan.</i></p>
12. Utility Infrastructure and Service	<p>Sec 3.12.2 Stormwater, Pg 3-53 New Piles for Crane Stabilization: If needed, such support work is anticipated to require approximately 0.01 acre (500 square feet) of new in-water piles. <i>Consider textural and other treatments of new in-water piles for ecological benefits.</i></p>
13. Construction	<p>Sec. 3.13.1: Pg. 54-56 – DEIR conservatively assumes that construction activities would occur over <u>seven years total</u>, likely over two phases. <i>Language is very careful/vague about timeline and only briefly addresses where equipment will be staged, implications of increased activity of construction vehicles over multi-year, multi-phase buildout (emissions, primary routes and wear and tear on roads, where vehicles will be parked), etc.</i></p> <p>Pg. 56 – The level of site remediation that has been completed as of today at the Project Site does not allow for the types of uses planned, therefore further remediation will need to be undertaken according</p>

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O-63-35 The proposed Project would not involve reconstruction of the existing wharf or new shoreline public open space and access. This is not a "lack of information" in the Draft EIR. The Draft EIR describes the condition and use and conservatively assumes the possibility that the Project may involve installing stabilization piers for the wharf (p. 3-53). Also, Draft EIR p. 3-49 states, "The current elevation of the wharf is lower than the proposed ground surface in the site's interior and would not be elevated during buildout of the proposed Project. This would be consistent with the wharf's intended use as shoreline public open space and access, and could change in the future as sea levels rise, and flooding occurs more often." (Draft EIR Section 4.9, *Hydrology and Water Quality*, discusses site elevations and sea level rise in more detail, including requirements of AB 1191.) The information in the Draft EIR is sufficient and no further response is warranted. See also Response to Comment A-12-52.

O-63-36 In response to the comment, the following text has been added on p. 3-53 and similarly to page 4.3-32 of the Draft EIR:

New Piles for Crane Stabilization

In addition to possible in-water work for the temporary stormwater and drainage improvements described above, the retention of the wharf and cranes in overwater areas (wharf) may require reinforcement of waterfront areas with the limited addition of in-water piles to support the wharf, improvements, and the cranes. If needed, such support work is anticipated to require approximately 0.01 acre (500 square feet) of new in-water piles. Although the Project is anticipated to be designed to avoid the need for new in-water piles, the potential need for these new in-water piles, and the associated impacts of construction, are analyzed in this document should this work be necessary. If needed, piles would be vibrated during the allowable fish windows, and impact hammers shall only be used after piles have reached the point of refusal with vibratory methods. With regard to habitat suitability for marine species, in-water piles function much like natural rocky intertidal and subtidal habitat. Without the need for any textural treatments, both concrete and steel piles provide an appropriate substrate for immediate colonization by marine invertebrates such as small barnacles, mussels, hydroids, crabs, and sea stars, among others.

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The revised text does not provide new information that would result in any new significant impact not already identified in the Draft EIR and does not change the analysis.

O-63-37 The Draft EIR (p. 3-55) describes the anticipated construction timeline with a reasonable level of specificity for each phase:

Phase 1 (Generally East of Market Street)

Phase 1 construction activity for the ballpark and the Phase 1 mixed-use development and hotel(s) would occur within four calendar years. Construction of the ballpark would overlap with concurrent construction of Phase 1 mixed-use development for approximately 24 months of the total duration. However, as noted above, the construction of Phase 1 may take longer.

Remainder of Project Site – Buildout (Generally West of Market Street)

For purposes of this Draft EIR, phasing of the balance of the Project site (Buildout) has conservatively been estimated to occur immediately following completion of Phase 1, with completion in four years. Site preparation (grading, utilities, remediation) would occur for nearly nine months, followed by three years of vertical construction. However, the timing of construction of the remaining site development would be dependent on market conditions, and is likely to take longer than four years total.

Regarding the location of construction equipment staging, the Project description explains further that "The Project sponsor plans to stage construction equipment in the Project area west of Market Street during Phase 1. Construction equipment for portions of Buildout construction may be staged on-site, and equipment for other portions may be staged off-site" (Draft EIR p. 3-55).

This level of specificity is appropriate, given the information known at this time (which includes exactly what structures would be constructed when, at a level more detailed than the timelines stated). Lastly, as stated on p. 3-43 of the Draft EIR, the Project would involve preparation and implementation of a construction management plan (CMP), as Mitigation Measure TRANS-4. The plan is required since "the Project would be constructed over several years and include on-site construction activities, construction along the railroad corridor, and off-site infrastructure construction such as the transportation improvements" (Draft EIR p. 3-43). Implementation of the plan would

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minimize potential construction impacts, including through measures to comply with all construction-related conditions of approval, and through mitigation measures addressing dust control, construction emissions, hazardous materials, construction days/hours, construction traffic control, waste reduction and recycling, stormwater pollution prevention, noise control, complaint management, and cultural resource management. See the specific measures in the CMP in Mitigation Measure TRANS-4, starting on p. 2-92 of the Draft EIR.

- O-63-38 The nature and extent of contamination at the Project site is described in Draft EIR Section 4.8, *Hazards and Hazardous Materials*, Section 4.8.1, *Environmental Setting*, under *Current Nature and Extent of Onsite Contamination*. Redevelopment of the Project site would be led by the Project sponsor, the Oakland A's, under the jurisdiction of the California Department of Toxic Substances Control (DTSC). The Project sponsor would develop a remediation plan and related documents for review and approval by DTSC. Should DTSC not be satisfied with the documents, DTSC would return the plan to the Project sponsor and identify deficiencies that would require correcting. Note that until DTSC approves the remediation plan and changes to the existing land use restrictions, the Project would not proceed. For additional explanation of the development and implementation of remediation plans, see Consolidated Response 4.16, *Remediation Plans, Land Use Covenants, and Human Health and Ecological Risk Assessment*.

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O-63-38		to a work plan approved by the DTSC (Department of Toxic Substances Control). <i>Many details are missing - what hazardous materials were at the site/what was the extent of contamination (possibly addressed in 4.8)? Who will lead further remediation/next steps? What does the DTSC approval process look like?</i>
O-63-39		Sec. 3.13.3: Pg. 58 – DEIR estimates peak employment of approx. 1,200 to 1,300 construction workers. <i>Will these workers be hired locally, in living wage union jobs, using affirmative action hiring, etc.?</i>
O-63-40	14. Proposed General Plan and Planning Code Amendments	
	15. Other Plan and Jurisdictional Amendments and Compliance	<i>How does this interface with the stalled Downtown plan? How does this project produce resources to implement the desired benefits in the Lake Merritt Station Area Plan and the Downtown Plan?</i>
	16. Seaport Compatibility Measures	
O-63-41	17. Existing Howard Terminal Tenants	Pg. 61 – Based on growth scenarios, an anticipated 30.5 acres of overnight parking will be needed by 2050. <i>What is the current capacity? Where would 30.5 acres be accommodated? Would be useful to see this diagrammed on site plans.</i> Pg. 62-63 – Outside of the Seaport or the former OAB (Oakland Army Base), trucking related uses are only allowed in the “T-overlay” zone, most of which is currently occupied. Existing truck parking inside this zone either is illegal or cannot be expanded. There are also references to the West Oakland Truck Management Plan, intended to “reduce the effects of transport trucks on local streets.” <i>As described, it sounds like this area is already at capacity for truck parking. What strategies from the Truck Management Plan (TMP) have been implemented already? How does this plan cover anticipated growth? Is there any scenario where parking is reduced?</i>
O-63-42	18. Project Variants	Sec 3.18.2 Aerial Gondola Variant: <i>“The aerial gondola would travel overhead and along Washington Street, extending from 10th Street in downtown Oakland to Jack London Square.” Significant concern for gondola concept and its impacts to the economy/business growth and vitality in surrounding neighborhoods including Old Oakland and Chinatown. The location of the gondola</i>

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O-63-39 See Response to Comment O-62-24. Considerations related to construction worker hiring do not have a bearing on the environmental effects of the Project.

O-63-40 The proposed Project is not within the boundary of an adopted specific plan. The potential interfacing and respective benefits of the proposed Project, the Downtown Oakland Specific Plan, and the Lake Merritt Station Area Plan will be a policy consideration for the City to take into account when the City Council takes action on the Project.

As stated on Draft EIR p. 3-15, the Project does include objectives to:

[C]reate a lively, continuous waterfront district with strong connections to Jack London Square, West Oakland, and Downtown Oakland by extending and improving existing streets, sidewalks, bicycle facilities and multi-use trails through and near the Project site to maximize pedestrian and nonmotorized mobility and minimize physical barriers and division with nearby neighborhoods.

The Project also includes objectives to:

[I]ncrease 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.

These comments will be forwarded to the decision makers, including the City Council, for consideration in their deliberations concerning approval of the proposed Project. Also see Response to Comments O-41-6 and O-29-113 regarding the Project’s relationship to the DOSP.

O-63-41 See Consolidated Response 4.5, *Truck Relocation*.

O-63-42 See Response to Comment O-62-24. Comments regarding the merits of the Project or variants of the Project do not raise a significant environmental issue or specific questions about the analyses or information in the Draft EIR that

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would require response pursuant to 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 Response to Comment O-63-6 for a discussion of the Gondola Variant on businesses in the vicinity.

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O-63-42		<i>would impact residents and operations in nearby , and literally fly visitors over Chinatown rather than encouraging foot traffic through Chinatown. We have written comments on the gondola variant above in Section 2.2 of this letter.</i>
	19. Discretionary Actions and Other Planning Considerations	
O-63-43	20. Maritime Reservation Scenario Exhibits for Comparison with the Proposed Project	Sec 3.20, Pg 3-72, Figure 3-13.MRS – Parks, Plazas and Open Space Program and Design – Maritime Reservation Scenario: <i>Significantly less open space in the southwestern portion of the site in the Maritime Reservation Scenario. The design of open space in this area reads more as a buffer than a public-serving open space, failing to satisfy the project objective #9 which boasts the project's welcoming and inviting waterfront park and promenade for the public. Request to revisit the parcel layout in this scenario, particularly on the west side of the site, in order to maintain quality open space and unique conditions along the waterfront.</i>
O-63-44		Sec 3.20, Pg 3-75, Figure 3-16.MRS – 3D Maximum Massing Program – Maritime Reservation Scenario: <i>Concern for the taller building heights (250'-400' max heights) abutting waterfront edge with minimum setbacks in the Maritime Reservation Scenario, compared to 100' and even 60' in the proposed project. How will these high rises impact the experience along the waterfront park/promenade? Request for renderings at pedestrian/ground level along the waterfront to convey the experience.</i>
	4. Introduction to Analysis	
O-63-45	1. Aesthetics, Shadow, and Wind	Pg. 4-1.1: Under CEQA Section 21099(d), "Aesthetic and parking impacts of a residential, mixed-use residential, or employment center project on an infill site located within a transit priority area shall not be considered significant impacts on the environment." 1 Accordingly, aesthetics is no longer considered in determining if a project has the potential to result in significant environmental effects for projects that meet all three of the following criteria: The project is in a transit priority area. 2 The project is on an infill site. 3 The project is residential, mixed-use residential, or an employment center.

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O-63-43 The 14.9 acres of publicly accessible open space under the Maritime Reservation Scenario would be well above (more than two times greater than) the requirements for usable group open space for Downtown projects. This acreage would also exceed the open space requirements for group usable open space per dwelling unit in the City's residential zones (e.g., RD-1, RH-1, RH-2, and RH-3) for planned unit developments. Therefore, as described in the Draft EIR, the Project under the Maritime Reservation Scenario would continue to provide publicly accessible open space on approximately one-third of the site that would still be expected to absorb a substantial part of the demand from new residents, employees, and visitors (Draft EIR p. 4.14-17).

O-63-44 See Response to Comment O-63-32.

O-63-45 The comment cites the Draft EIR's explanation as to why the proposed Project's aesthetic impacts, including those related to light and glare, are not considered significant under CEQA. This does not mean, however, that the City would have no discretion outside of the framework of CEQA to review the Project design. As stated on Draft EIR p. 3-59, among the Project approvals would be creation of a Waterfront Planned Development Zoning District that would, among other things, establish a process for administrative review of Project phases and design review. In addition, as explained in Draft EIR Section 4.10, *Land Use, Plans, and Policies*, the Project would be subject to design review by the San Francisco Bay Conservation and Development Commission.

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	<p>"Thus, this section does not consider aesthetics, including the aesthetic impacts of light and glare in determining the significance of Project impacts under CEQA." Design is accepted as a matter of course due to the criteria and not subject to required mitigation measures for aesthetics including light.</p> <p>Pg. 4.1-9: San Francisco Bay Trail will turn toward downtown Oakland. Opportunity to call for signage indicating Chinatown proximity/location.</p> <p>Pg. 4.1-12: Based on wind statistics measured at the Oakland International Airport, located approximately six miles southeast of the Project site, wind speeds greater than 15 miles per hour (mph) occur 11.5 percent of the time annually, and 63.3 percent of winds are between 6 and 15 mph. Of the 16 primary wind directions, four occur most frequently: west, west-northwest, west-southwest, and northwest.</p> <p>Pg. 4.1-12: Winds from 8 to 12 mph will disturb hair, cause clothing to flap, and extend a light flag mounted on a pole. Winds from 13 to 18 mph will raise loose paper, dust, and dry soil, and will disarrange hair. For winds from 19 to 24 mph, the force of the wind will be felt on the body. With 25 to 31 mph winds, umbrellas are used with difficulty, hair is blown straight, there is difficulty in walking steadily, and wind noise is unpleasant. Winds over 31 mph cause noticeable inconvenience due to the effort expended during walking.</p> <p>Localized wind conditions on the site will be a factor in comfort. As buildings are constructed mitigation measures on the wind for specific buildings will be designed according to the report.</p> <p>Pg. 4.1-19: "Create a new source of substantial light or glare which would substantially and adversely affect day or nighttime views in the area (informational discussion; not subject to CEQA)." The ballpark will create light, the extent of which and whether it might be a nuisance for Chinatown and other nearby neighborhoods is difficult to determine and not discussed. Light is discussed as to how it might appear at the property line and a handful of locations off-site. Generally, the effect of light is downplayed, i.e. light fixtures are pointed down or shielded.</p>
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O-63-46 This comment primarily quotes from the Draft EIR setting regarding wind, on p. 4.1-12. The only text not extracted from the Draft EIR states, "Localized wind conditions on the site will be a factor in comfort. As buildings are constructed mitigation measures on the wind for specific buildings will be designed according to the report." Both of the commenter's statements are true and essentially summarize a portion of the Draft EIR's wind analysis. Wind is a factor in pedestrian comfort, and the Draft EIR does include mitigation, Mitigation Measure AES-1: Wind Impact Analysis and Mitigation for Buildings 100 Feet or Greater in Height (Draft EIR p. 4.1-69), which would require that each individual building undergo wind tunnel testing based on detailed building designs.

O-63-47 Concerning light effects in Chinatown, because Chinatown is north and east of the most distant light and glare receptors analyzed in the Draft EIR, effects of light and glare in Chinatown would be less substantial than those reported for any of the Draft EIR receptors. None of the field lighting standards, whether behind the first-base or third-base lines or behind the outfield wall, would be angled directly toward Chinatown receptors and, because field lighting would be narrowly focused on the playing field, spill light reaching as far as Chinatown would likely be imperceptible. As shown in Figure 367 (p. 278) of the Project's Technical Lighting Analysis (Appendix AES.1), spill light in Chinatown would be less than 1 vertical lux,³⁴ or less than the light from a 60-watt incandescent (traditional) light bulb at a distance of about 25 feet lux. As for glare, because of intervening structures, including buildings and the elevated I-880 freeway, only the relatively small number of sufficiently elevated receptors in Chinatown would have unobstructed views of the Project, and nearly all of these are distant enough from the Project site that glare generated by the Project would not be obtrusive.

Regarding the significance of lighting impacts, as explained on Draft EIR p. 4.1-1, in accordance with CEQA Section 21099(d), which was added by Senate Bill (SB) 743 (2013), the 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 21099(d). Thus, the EIR does not consider aesthetics, including the aesthetic impacts of light and glare, in determining the significance of Project impacts

³⁴ Vertical illuminance is the amount of light that would strike a vertical plane (e.g., building wall) at a given location.

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under CEQA. The Draft EIR on p. 4.1-52 therefore states that “it cannot be stated with certainty that [Project lighting impacts] could be reduced to a less-than-significant level. Therefore, this impact would be conservatively determined to be significant and unavoidable if the proposed Project’s aesthetics impacts were subject to CEQA” (emphasis added). However, because, as stated above, the EIR does not consider aesthetics, including the aesthetic impacts of light and glare, in determining the significance of Project impacts under CEQA, no mitigation measures are required. The measure noted by the commenter on p. 4.1-51 and the measure on p. 4.1-43, for construction, are not mitigation measures, but improvement measures; these improvement measures may be adopted by the Project sponsor or required by the City as conditions of approval, but are not required to reduce the severity of or avoid a significant impact.

Concerning fireworks, the Draft EIR’s analysis is based on the best available information from the Project sponsor as to the anticipated frequency of fireworks shows. For information, it is noted that, during the second half of the 2021 baseball season, the Oakland A’s scheduled three post-game fireworks shows at the Oakland Coliseum—one each in July, August, and September. Projected over an entire baseball season, that frequency would equate to six fireworks shows over the course of the six-month season. Accordingly, the EIR’s analysis appears to be conservative. Regarding notification, fireworks shows are publicized in advance on the A’s website.

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O-63-48 For responses associated with transportation-related comments, see Responses to Comments O-63-80 through O-63-85.

The Draft EIR does estimate the effectiveness of mitigation measures to reduce the Project’s air quality impacts. Although these emission reductions are not guaranteed, the Draft EIR uses the most current information and modeling methods. Further, the MMRP for the EIR would ensure that all mitigation measures are enforced and monitored. Please refer to the “Effectiveness of Mitigation Measures” sections of the Draft EIR for each impact, and also refer to Chapter 7, *City-Initiated Updates and Errata in the Draft EIR*, for updated mitigation measures and effectiveness discussion.

The commenter correctly notes that the Project’s construction criteria pollutant emissions would result in a significant and unavoidable impact on air quality (see Impact AIR-1). For discussion of the Project’s significant and unavoidable air quality impacts, including the adoption of all feasible mitigation measures to reduce these impacts, and the nexus between the effects of the Project and the required mitigation measure, refer to responses to comments A-11-1, A-11-3, A-11-8, A-11-11, A-17-1, A-17-8, A-17-9, A-17-12, O-30-3, O29-1-21, O-57-21, O-62-40, O-62-41, O-62-44, O-62-45, and others.

O-63-49 As discussed on Draft EIR p. 4.2-45, the Project is not expected to require additional ferry service; this is not anticipated to be a direct or indirect reasonably foreseeable effect of the Project. CEQA does not require an EIR to speculate on consequences that are not reasonably foreseeable, like additional ferry service. (Section 15064(d)(3)): “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.”) The paragraph that follows the commenter’s citation states that according to the San Francisco Bay Area Water Emergency Transportation Authority (WETA), the existing terminal will be fully utilized and no ballgame-specific service is possible:

According to the San Francisco Bay Area Water Emergency Transportation Authority (WETA), during peak periods, the existing terminal will be fully utilized by the planned service expansion contemplated in the Downtown San Francisco Ferry Terminal Expansion Project Draft EIR, and no ballgame-specific service is possible during peak commute hours (URS Corporation, 2013). WETA ferries currently have capacity on regular commuter boats coming from SF on weeknights pre-game, and WETA may be able to run a dedicated return boat after week-day games and consider some weekend

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	<p>Pg. 4.1-42 Impact AES-3: The Project would create a new source of substantial light or glare which could substantially and adversely affect day or nighttime views in the area. (Criterion 4) (Significant and Unavoidable, but not a CEQA Consideration) – <i>Mitigation measures pg. 4.1-51, impact is still significant according to the report pg. 4.1-52.</i></p> <p>Pg. 4.1-50 – Fireworks: 7 shows a year. <i>Highly unlikely that there would be merely 7 shows a year given how many fireworks happen at the Coliseum currently, during games, concerts, and other shows. Will there be outreach and notification to Chinatown that these are occurring for each occasion? Noise would be jarring to the elder population if unexpected.</i></p>
<p>2. Air Quality</p>	<p>(General) <i>While air quality and transportation planning are intrinsically connected for this project, transportation and TOD-specific comments from the Oakland Chinatown Coalition are noted in 4.15.</i></p> <p>(General) <i>High estimates for pollutant modeling explained well, but countered with high estimates for reduction efficacy, which places populations subjected to air quality issues in situations of even higher vulnerability if emissions and pollutants exceed estimates.</i></p> <p>(General) <i>Demolition, construction, and operation of the project would result in Significant and Unavoidable with Mitigation average daily emissions for ROG, NOX, PM2.5, or PM10 for nearly a decade of construction. While there are efforts to mitigate these emissions, the project needs clear efforts for localized offsetting to neutralize the effects for the project’s immediate neighbors.</i></p> <p>Pg. 4.2-45 Operational Emissions: “The Project is not expected to require additional ferry or excursion vessel service for ballgames...” <i>The project should anticipate increased ferry needs given the waterfront location and distance from other modes of public transportation. Project commitment to parking reduction is a start towards TOD, but this has to be paired with increasing access through other means, and realistically estimating the effects of those efforts.</i></p>

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service. Any potential service to the ballpark is expected to fall within the regional service levels analyzed in WETA's EIR.
Thus, the Draft EIR does not evaluate additional ferry service.

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	<p>Pg. 4.2-64 Mitigation Measure AIR-1a – Dust Controls: Basic Controls #1, 3, & 6 and Enhanced Control #5 require significant municipal water use in a water-constrained locality subject to drought adjacent to an estuary ecosystem. These controls would be difficult to implement and enforce, and their inclusion in modeled calculations is problematic.</p> <p>Pg. 4.2-79 Mitigation Measure AIR-2e: Criteria Pollutant Mitigation Plan>>2. Criteria Pollutant Emission Reduction Measures>>a. Recommended On-Site Emission Reduction Measures>>i. Electrify all residential development AND ii. Electrify all nonresidential development.) “Residential AND Nonresidential buildings shall be 100 percent electric and not include any natural gas appliances, including water heaters, clothes washers, HVAC systems, and stoves.” This recommended commitment of 100% electrification does not align with earlier commitment of only 50% electric buildings (4.2-38), nor the City of Oakland’s Municipal Code prohibition of the use of fossil fuel gas in all newly constructed buildings (4.2-26).</p> <p>Pg. 4.2-94 to 4.2-95 Context of Results AND Conclusion – “It is also worth noting that the City of Oakland itself has some of the highest health incidence rates [asthma-related emergency room visit rates] in both the County and the State...The very small increase in health effects incidence, relative to the substantially larger number of background health effects incidences, demonstrates that the Project would have a very small impact on specific health effects.” As an environmental justice, public health, and racial equity issue, a project of this scale in Oakland must have an air quality plan that not only mitigates, but actively reverses exacerbated poor air quality levels. Although the increase in health incidence rates is small relative to current rates, the current rates are extremely high and that issue needs redress. It is therefore imperative that any offsetting is localized, and not purchased outside of the immediate neighborhoods most affected including but not limited to Chinatown, West Oakland, Jack London, and Old Oakland.</p>
<p>3. Biological Resources</p>	
<p>4. Cultural and Tribal Resources</p>	<p>Section 4.4.4 Impacts of the Project, Pg. 4.4-22 to 4-31: The Draft EIR is deficient because Oakland’s Chinatown District should have been included in the scope of the EIR for the purpose of evaluating the Project’s impact on Cultural Resources. It fails to identify Oakland’s Chinatown District as a historical</p>

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O-63-50 The commenter is correct that the dust control requirements of Mitigation Measure AIR-1a typically require the use of water to implement. These are standard dust control measures, known as “best management practices,” as recommended by the Bay Area Air Quality Management District (BAAQMD) in its CEQA Guidelines.³⁵ These controls are also standard conditions of approval for all projects in the city (SCA #20) and are required through the City of Oakland Municipal Code, Title 15 Buildings and Construction, Chapter 15.36 Demolition Permits, 15.36.100.³⁶ During drought conditions, operators generally follow wise water use for dust control. This measure also would be monitored and enforced by the City through the MMRP.

The commenter is not correct that the Draft EIR included the benefits of these measures in the emissions modeling. On the contrary, construction-related dust emissions were not quantified, in conformance with the BAAQMD CEQA Guidelines (BAAQMD, 2017) (Draft EIR pp. 4.2-42 and 4.2-61 through 4.2-62).

Mitigation Measure AIR-2e has been revised to require that the Project achieve 100 percent electrification for all uses at the Project site except food services (such as restaurants). This is consistent with the City’s natural gas ban pursuant to Ordinance 13632. See Chapter 7, *City-Initiated Updates and Errata in the Draft EIR*, for the revised mitigation measure language.

O-63-51 As discussed in Response to Comment O-62-43, CEQA does not require analyzing environmental justice impacts. For additional discussion of environmental justice issues, see Consolidated Response 4.14, *Environmental Justice*.

The commenter cites the results of the Draft EIR’s health impact assessment, which was conducted under Impact AIR-2 (construction and operational regional criteria pollutant emissions). The health impact assessment correlates Project-related criteria pollutants to estimated health-based consequences and accounts for the existing background health incidences. This type of analysis is not specifically required by the BAAQMD CEQA Guidelines; it was done as an informational analysis pursuant to the California Supreme Court’s recent ruling in *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502. As discussed on Draft EIR p. 4.2-58, “there are currently no guidance or thresholds for significance determination regarding health effects from criteria pollutant emissions,” and further, “the analyses do not conclude

³⁵ BAAQMD, 2017. *CEQA Air Quality Guidelines. Final*. May 2017.

³⁶ City of Oakland, 2020. Standard Conditions of Approval, Adopted by City Council on November 3, 2008 (Ordinance No. 12899 C.M.S.), Revised December 16, 2020.

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whether the predicted health effects are significant for CEQA purposes; rather, the predicted health effects are provided for informational purposes so as to enhance the understanding of the effects of impacts determined to be significant (e.g., Impacts AIR-1 and AIR-2) based on other measurable criteria.”

The analysis also concludes that the results of the health impact assessment embody many uncertainties, and the “calculated health effects for the Project are conservatively estimated, and may in fact be zero.” The Draft EIR concludes (p. 4.2-95):

In summary, the estimated health effects from the Project are low relative to existing health risks and represent only a very small fraction of the total background health incidence. Nonetheless, as disclosed in Table 4.2-9 above, the average daily and total annual operational criteria air pollutants emissions associated with the Project represent a significant and unavoidable impact to regional air quality, because they exceed the BAAQMD’s mass emission thresholds.

The commenter claims that because the background health incidences are so high, the Project must “actively reverse exacerbated poor air quality levels.” CEQA does not require an EIR to evaluate the effect of the environment on the project (CEQA Guidelines Section 15126.2(a)): “An EIR shall identify and focus on the significant environmental effects of the proposed project on the environment” (emphasis added). As discussed in Response to Comment O-62-40, the California Supreme Court confirmed in *California Building Industry Assoc. v. Bay Area Air Quality Management District* (2015) 62 Cal.4th 369 (referred to here as “*CBIA v. BAAQMD*”) that CEQA does not require that a lead agency evaluate environmental impacts on a project: “In light of CEQA’s text and structure, we conclude that CEQA generally does not require an analysis of how existing environmental conditions will impact a project’s future users or residents.” Although Public Resources Code Section 21083(b)(3) states that “a project may have ‘a significant effect on the environment’” if “[t]he environmental effects of a project will cause substantial adverse effects on human beings, either directly or indirectly,” the court found that Section 21083 “does not contain language directing agencies to analyze the environment’s effects on a project” and that “[r]equiring such an evaluation in all circumstances would impermissibly expand the scope of CEQA.”

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Moreover, CEQA does not require Project or alternatives to address “preexisting environmental problems.” (See *In re Bay-Delta Programmatic Env'tl. Impact Report Coordinated Proceedings* (2008) 43 Cal.4th 1143, 1167.)

CEQA does not permit a lead agency to require a project to mitigate an impact the project does not cause (CEQA Guidelines Section 15126.4(a)(4)(A)): “The mitigation measure must be ‘roughly proportional’ to the impacts of the project.” Mitigation measures cannot be imposed on a project to minimize existing impacts unrelated to the project itself. In *CBIA v. BAAQMD*, the court determined that “the implementation of mitigating measures” cannot be required “based solely on the impact the existing environment will have on future users or occupants of a project.” Therefore, the commenter’s demand that the project must “reverse exacerbated poor air quality” is not supported by the CEQA Guidelines or by case law.

The Draft EIR found that Impact AIR-2 would be significant and unavoidable with mitigation and identified all feasible mitigation measures to reduce this impact. Notably, Mitigation Measure AIR-2e requires the Project to reduce emissions below BAAQMD’s thresholds of significance. This measure allows the Project sponsor to “Directly fund or implement a specific offset project within the City of Oakland” and states that “[a] preferred offset project would be one implemented locally within West Oakland or the surrounding community.” The measure also allows the Project sponsor to “Pay mitigation offset fees to the Air District Bay Area Clean Air Foundation or other governmental entity” that would fund programs within the San Francisco Bay Area Air Basin. Because Impact AIR-2 is a regional impact, the location of the criteria pollutant reductions need only be within the San Francisco Bay Area Air Basin, pursuant to CEQA Guidelines Section 15126.4(a)(4)(A) and U.S. Supreme Court rulings. (Mitigation measures must be “proportional” to the impacts created by a project and there must be a “nexus” between the mitigation measure and the impact; see Response to Comment O-62-40.)

Further, as noted in *CBIA v. BAAQMD*, an EIR must assess the effects of current conditions upon a project’s future residents and analyze whether the project would exacerbate existing hazards. Therefore, the Draft EIR evaluates the health risk impact of siting new receptors in 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 evaluates whether the Project, combined with cumulative development and existing background TAC sources, would contribute to

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cumulative health risk impacts on sensitive receptors. This analysis uses BAAQMD's citywide health risk modeling data prepared for the West Oakland Community Action Plan (WOCAP) to determine the background cumulative cancer risk and PM_{2.5} concentrations at all receptor locations in the modeling domain. The methods for this analysis are explained on Draft EIR pp. 4.2-59 through 4.2-60, and the results are presented on Draft EIR pp. 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.

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 off-site TAC exposure reduction projects.

O-63-52 See Consolidated Response 4.8, *Chinatown*.

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	<p>significant area and cultural resource under CEQA that will be both directly and indirectly impacted by the Project. The Draft EIR fails to identify mitigation measures that, if feasible, may be considered to avoid or minimize the significant adverse impacts of the project on Chinatown.</p> <p>Section 4.4: Section 4.4 describes the existing environmental setting as it relates to cultural resources and then evaluates potential significant impacts of the project on cultural resources, identifies feasible mitigation measures to ensure potentially significant impacts associated with these resources would be avoided or minimized "to the greatest extent feasible."</p> <p>The Cultural and Tribal Cultural Resources Study Area was defined by considering the geographic area within which the Project may directly or indirectly impact the character or use of significant cultural resources. The Study area generally includes parcels within a 1/4 block of the Project site. This narrow perspective was wrong because Oakland Chinatown is a historic resource. The appropriate inquiry under Appendix G of the CEQA Guidelines, "V. Cultural Resources" is, "Would the project cause adverse change in the significance of a historical resource pursuant to Section 15064.5?" (Guidelines, p. 316). The process for determining the significance of impacts to historical resources is laid out in Section 15064.5.</p> <p>The term "historical resources" includes "Any...place...which a lead agency determines to be historically significant or significant in the ... social, political,... or cultural annals of California may be considered to be an historical resource, provided the lead agency's determination is supported by substantial evidence in light of the whole record" (Section 15064.5 (a)(3)). The CEQA Guidelines set out the criteria by which a lead agency shall determine the resource to be historically significant. They also provide that a lead agency may determine that the resource may be a historical resource under the above-quoted qualification. (Section 15064.5(a)(4)). The City of Oakland should recognize that Oakland Chinatown has existed for decades as a portal between America and China through which generations of Chinese and other people from Asia have immigrated to begin a new life and contribute to the multicultural fabric of Oakland. Oakland Chinatown retains cultural authenticity as it has enabled</p>
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O-63-53 See Consolidated Response 4.7, *Parking*, and Consolidated Response 4.8, *Chinatown*.

O-63-54 With respect to proposals to allow outside food purchases and to provide a community room for Chinatown residents, these comments raise neither significant environmental issues nor specific questions about the analyses or information in the Draft EIR that would require response pursuant to CEQA Guidelines Section 15088. However, these comments 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 4.8, *Chinatown*, for further discussion of issues raised by the commenters.

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	<p>Chinese Americans to retain cultural ties with newcomers, to build a unique Asian-American culture, and to fight racial injustice. The City should formally confirm that Oakland Chinatown is a historical resource, and the Developers have a responsibility to take leadership and acknowledge Oakland Chinatown's historicity as well.</p> <p>If Chinatown incurs a substantial adverse change in its significance as a historical resource due to the Howard Terminal Project, the project will be deemed to have a significant effect on the environment, and appropriate mitigation measures will be needed to protect Chinatown to avoid degrading its value as a historical resource (Section 15064.5(b).) Section 4.4.3 of the Draft EIR relies on the Oakland Cultural Heritage Survey to identify historical resources. However, its application is limited to "Architectural Resources." The Final EIR should include Chinatown as an identified historical resource and include mitigation from the impacts of the project on Chinatown in Section 4.4.4. "Impacts of the Project."</p> <p>One impact of the proposed project on Chinatown is the reduction in visits to Chinatown caused by increased traffic on the streets that border and transect Chinatown, especially on game days. Traffic delays and less parking for Chinatown residents and visitors will mean that Chinatown will experience a drop in patronage, and businesses will suffer. If the lead agency wishes to approve the project despite the Draft EIR's findings that significant unmitigated impacts will occur, the following mitigation measures should be adopted:</p> <ol style="list-style-type: none"> 1. <i>To protect access to Chinatown, traffic should be reconfigured as recommended in section 15, "Transportation and Circulation", below.</i> 2. <i>Effective wayfinding signs should indicate the routes to Chinatown destinations, such as grocery stores, restaurants, Asian Health Services, Lincoln Recreation Center, Madison Square Park, the Pacific Renaissance Plaza, the Asian Library, Oakland Asian Cultural Center etc.</i> 3. <i>The project developers should agree as a condition of certification of the Final EIR that</i>
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O-63-54		<p>food purchased from outside the 55 acre project site may be brought in and consumed anywhere in the project, including in the sports complex.</p> <p>4. To avoid the isolation of Chinese and Asian culture from the project, a community room should be available for free or low cost to organizations and individuals from Chinatown to use for the benefit of the community. This request is based on Assembly Bill 1191, Bonta (Ch. 752, Stats. 2019), Section 7(a)(10), which states, "A public community room will be made available within the ballpark project for free or low cost to the statewide public, without preference to local residents or organizations, if the commission or BCDC finds that there is a demand or need for those facilities." Although the community room would be required by the State Lands Commission as a condition of approving the exchange of lands for the Ballpark and Public Lands Development, the Chinatown Coalition hereby requests that a community room be made available on the public record, or that alternatively, the Project resource existing cultural/recreational space in the Chinatown neighborhood, for instance at either Oakland Asian Cultural Center or Lincoln Rec Center.</p>					
O-63-55		<p>Finally, protecting Chinatown from negative impacts of the project should not be contingent on the City's designation of the neighborhood as a historical resource. For example, we previously explained how the significant and unavoidable traffic impacts will harm Chinatown. The City should address the negative impacts of the project on the social and economic character of Chinatown, regardless of official City determination of Chinatown as a historical resource or not.</p>					
O-63-56		<table border="1" style="width: 100%;"> <tr> <td style="width: 100px;">5. Energy</td> <td></td> </tr> <tr> <td>6. Geology, Soils, and Paleontological Resources</td> <td></td> </tr> <tr> <td>7. Greenhouse Gas Emissions</td> <td>General - AB 734 SEC. 2.A.ii: "The project does not result in any net additional emissions of greenhouse gases, including greenhouse gas emissions from employee transportation..." <i>It is of the</i></td> </tr> </table>	5. Energy		6. Geology, Soils, and Paleontological Resources		7. Greenhouse Gas Emissions
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O-63-55 CEQA does not require an analysis of social and economic impacts, which may, however, inform the determination that a certain physical change to the environment shall be considered significant. (See CEQA Guidelines Section 15064(e).) Regarding the Draft EIR's consideration of traffic impacts on Chinatown and the City's recognition of the historic and cultural significance of Chinatown, see Consolidated Response 4.8, *Chinatown*.

O-63-56 For a discussion of the location of off-site greenhouse gas reduction measures and offsets, refer to responses to comments A-11-8, O-62-33, O-62-34, O-62-38, and others.

For a discussion of the menu of actions to reduce GHG emissions pursuant to Mitigation Measure GHG-1, refer to responses to comments A-11-8, I-93-5, O-46-11, O-47-10, O-57-47, O-62-33, O-62-34, O-62-38, I-93-4, and others. Also See Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*, for revisions to Mitigation Measure GHG-1.

For a discussion of the availability of offsets in the United States, refer to response to comment O-62-33.

According to the American Climate Registry and the Climate Action Reserve websites, there don't appear to be any current offset projects in Alameda County. The VERRA website does not list projects by County, so the City was unable to determine if there are no VERRA projects in Alameda County. Both Climate Action Reserve and the American Climate Registry have several projects within the Bay Area (Climate Action Reserve, 2021).^{37,38} However, offset projects are constantly being created and verified, and may become available in the future. If so, the Project sponsor would be able to purchase local GHG offset credits. The first offset credits for construction emissions would be purchased prior to issuance of the first grading and/or permit for horizontal construction, which will likely take a few years. There may be local offset projects available at that time.

³⁷ Climate Action Reserve, 2021. Projects, July 16, 2021.

³⁸ American Climate Registry, 2021. Projects, July 16, 2021.

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O-63-57 See Response to Comment O-63-33.

O-63-56		<p><i>utmost priority that the project strives to allocate 100% of the reductions towards net zero GHG for the project in the neighborhoods adjacent to the project in Oakland, and not only 50% of said reductions locally, as defined in AB 734. It is not enough to not contribute net additional GHG emissions.</i></p> <p>Fig. 4.7-61 Menu of Additional Emission Reduction Measures: Off-Site – <i>We appreciate the "menu" of off-site emission reduction measures, but it is unclear what the threshold of significance will be for investment. To what extent would these community-based projects be funded and implemented in order to be considered accomplished?</i></p> <p>Fig. 4.7-62 Standards for Carbon Offset Credits: "As described in the CARB Determination for AB 734, all carbon offset credits shall be purchased from a carbon offset registry approved by CARB, which at present include the following: the American Climate Registry, Climate Action Reserve, and Verra (formerly Verified Carbon Standard). ...Carbon offset credits shall be obtained from GHG reduction projects that occur in the following locations in order of priority to the extent feasible: (1) off-site within the neighborhood surrounding the Project site, including West Oakland; (2) the greater City of Oakland community; (3) within the San Francisco Bay Area Air Basin; (4) the State of California; and (5) the United States of America." <i>None of the offsetting opportunities on any of the three registries listed are even in Alameda County, let alone West Oakland, undermining efforts to mitigate the effects of GHG on vulnerable local community members. This standard is lip-service without any possibility of execution.</i></p> <p><i>(See notes below from the Bicycle Master Plan (2019) and Energy and Climate Change Plan (2020) and GHG requirements.)</i></p>
	8. Hazards and Hazardous Materials	
O-63-57	9. Hydrology and Water Quality	<i>How will this Project anticipate and build for predicted flood zones at the waterfront?</i>
	10. Land Use, Plans, and	PUBLIC LANDS:

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Policies	
	<p>Pg. 4.10- pg. 11: Assembly Bill (AB) 1191 (Stats. 2019, Chap. 752), also known as the Oakland Waterfront Sports and Mixed-Use Project, Waterfront Access, Environmental Justice, and Revitalization Act, "...was enacted. AB 1191 authorizes CSLC (CA State Lands Commission) to take certain actions related to the development of the Howard Terminal property and the Project, including, among other things:</p> <p>*Authorizes CSLC to approve an exchange (potentially in phases) at the Howard Terminal property and settle any dispute as to the boundary or title status of the 1852 Tidelands, 1923 Tidelands, and Rancho Uplands on the site if certain findings can be made, including that the exchange will not substantially interfere with public trust uses and purposes, and that the final trust lands will provide a significant benefit to the public trust and be useful for public trust purposes..."</p> <p>Indigenous Peoples' groups are underrepresented in this review process (another reason for extension).</p> <p>WATERFRONT POLICIES:</p> <p>Policy W2.1: Linking Neighborhoods with the Waterfront.</p> <p>Policy W2.6: Providing Maritime and Aviation Viewing Access. Safe access to areas for viewing maritime and aviation activities without interfering with seaport and airport activities should be encouraged.</p> <p>Policy W2.10: Making Public Improvements as a Part of Projects. Physical improvements to improve the aesthetic quality of the waterfront, and increase visitor comfort safety, and enjoyment should be incorporated in the development of projects in the waterfront area. The Amenities may include landscaping, lighting, public art, comfort stations, street furniture, picnic facilities, bicycle racks, signage, etc. These facilities should be accessible to all persons and designed to accommodate the elderly and physically disabled persons.</p>

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O-63-58 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 CEQA Guidelines Section 15088. The type and extent of Indigenous Peoples' participation opportunities in the legislative process that produced AB 1191 and any administrative review processes that may ensue are beyond the scope of this EIR. 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-63-59 The Project proposes a network of approximately 18.3 acres of accessible open spaces (Draft EIR p. 3-26). No part of the Bay Trail or other open spaces would be closed to the public on game/special event days. All facilities would be constructed and designed in accordance with Americans with Disabilities Act requirements. See Figure 4.15-15, On-Site Mobility Access Plan, which delineates pedestrian access on game days and non-game days. Also, access to the ticketed zones would require an event ticket. The public would be able to access to the security zone without an event ticket but would be required to pass through security screening before entering.

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	<p>Land Use and Transportation Element (LUTE), pg. 4.10 – pg. 18-19:</p> <p>Policy I/C.4.1, pg. 4.10 – pg. 17: Protecting Existing Activities. Existing industrial, residential, and commercial activities and areas which are consistent with long term land use plans for the City should be protected from the intrusion of potentially incompatible land uses. <i>The City of Oakland has reduced its (non-port) industrially zoned lands to 3-4% decimating the manufacturing sector which holds the best opportunity for advanced technology and traditional manufacturing jobs. The creative economy and industrial fabrication sector must also be protected, and prevent further displacement of these industries.</i></p> <p><i>Retain as much of the industrial zoned lands designations as possible. Develop mitigation measures such as incorporating or replacing industrial uses in ground floor "retail" spaces. Eliminate the word/concept/land use designation of "retail" for ground floor and decrease the dependency of "retail" and use instead "flexible" (and neighborhood, not just destination) ground floor designations. Ensure that all commercial products generated (including food) are manufactured by local artisans and fabricators.</i></p> <p>DOWNTOWN POLICIES:</p> <p>Oakland's 2019 Master Bike Plan, pg. 4.10-pg. 21 – Access Goal, Objective A: Increase access to jobs, education, retail, park and libraries, schools, recreational centers, transit, and other neighborhood destinations.</p> <p>Action A2: Increase the supply of bicycle parking at neighborhood destinations like schools, medical centers, grocery stores, and government offices.</p> <p><i>Action A3: Evaluate the potential to combine transportation-impact fees for new developments within the same neighborhood to provide continuous, high-quality bicycle facilities.</i></p>
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O-63-60 See Response to Comment O-63-20. This comment primarily concerns the merits of the proposed Project and does not address the adequacy or accuracy of the Draft EIR. 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. These comments will be forwarded to the decision makers, including the City Council, for consideration in their deliberations concerning approval of the proposed Project.

O-63-61 The comment describes actions in the Bike 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 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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	<p>Access Goal, Objective C: Support public transit service.</p> <p>Action C1: Design bikeways that provide first and last mile connections to transit</p> <p>Health & Safety Goal, Objective C: Reduce air pollution, asthma rates and greenhouse gas Emissions.</p> <p>Meet the City's 2018 Energy and Climate Action Plan and reduce GHG by reducing vehicle miles traveled by 20%.</p> <p>Action C1: Build a bicycle network that encourages Oaklanders to choose modes of transportation.</p> <p>Reduction of GHG is imperative in this project because the traffic and congestion impact has not been fully calculated. Implementing the city's bike plan is vital. Community benefit could be an economic development project where the A's sponsor youth operated and owned bicycle based businesses (delivery of people and goods) with living wages.</p> <p>OSCAR, pg. 4.10 - pg. 22: Policy OS-7.2, Dedication of Shoreline Public Access: Support the BCDC requirements which mandate that all new shoreline development designate the water's edge as publicly accessible open space where safety and security are not compromised, and where access can be achieved without interfering with waterfront maritime and industrial uses.</p> <p>We must consider shoreline preservation that doesn't just mimic Jack London Square's concretized consumerism. The lack of open green space in Chinatown and Downtown is lower per capita than many other cities our size, and even just in neighboring districts. Educative restoration of wetlands would be more appropriate.</p> <p>A Public Fishing Pier is Needed to Provide True Public Access:</p>
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- O-63-62 As discussed in other responses to comments, the Project would achieve “no net additional” GHG emissions through implementation of Mitigation Measure GHG-1. The Project would also not preclude the implementation of or conflict with the City’s bike plan (Impact TRANS-2, Draft EIR p. 4.15-201).

The Project also includes many bicycle-related improvements and strategies in the TDM plan (implemented through Mitigation Measure TRANS-1a), in the TMP (implemented through Mitigation Measure TRANS-1b), and in the Transportation Hub (implemented through Mitigation Measure TRANS-1c).
- O-63-63 As discussed in the Draft EIR, a 10.3-acre Waterfront Park would extend along the Estuary for the length of the existing wharf on the Project site. The park would accommodate retention of the cranes previously used for containerized shipping if feasible and would be landscaped and furnished to enable wide view corridors to the Bay (Draft EIR p. 3-28).

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. 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. These comments will be forwarded to the decision makers, including the City Council, for consideration in their deliberations concerning approval of the proposed Project.

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O-63-64 See Response to Comment A-12-59.

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	<p>The Draft EIR correctly acknowledges that the BCDC has jurisdiction to determine whether the conversion of the project site from Priority Port Use to a Sports Stadium mixed-use facility would be consistent with the public trust. BCDC's decision must consider whether public access to trust lands will continue under the new use. Although BCDC's policies accept the provision of bay views as a form of access, BCDC and the City have discretion to require a more engaging form of public access.</p> <p>Fourteen members of the Oakland Chinatown Coalition and community members and representatives of West Oakland have submitted a letter to BCDC's Design Review Board requesting that the project proponent construct and maintain a public fishing pier at the project as a suitable form of public access. A copy of that letter is attached to these comments. A fishing pier would provide interactive public access with the bay's natural resources. This improvement in public access is needed to serve the local communities of West Oakland and Chinatown, which historically have been denied access to the water.</p> <p>Despite the project description, which includes walks and landscaped spaces, one look at the site plan reveals that the project is designed to turn its back on the community. Along West Embarcadero, at buildout there will be buildings that are 200', 400', and 600' in elevation (the 600' buildings are not in the "center" of the site creating a "pyramid" effect as the project proponent represented to the BCDC Design Review Board at its April 5, 2021 meeting). This wall of concrete, steel and glass is a barrier against entry by those who do not have a specific reason to go to the shoreline. The uses deemed to be consistent with the public trust are generally a form of paid entertainment, such as restaurants, meeting/exhibit spaces, etc. While there is an access walkway and open areas planned, those are amenities that are likely to be occupied by the occupants of the site, rather than local neighbors. This Project should add to truly open and public land access for all visitors, and not just those who can afford to pay for entrance to its amenities and entertainment.</p> <p>The City is well aware that West Oakland and Chinatown residents are among the most economically impacted in the City and could benefit greatly from additional outdoor recreational opportunities. A fishing pier would be a gathering spot for the free enjoyment of fishing as an intergenerational, cultural activity for the people of West Oakland and Chinatown. Fishing is extremely popular for families at Lake</p>
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	<p>Temescal – a spot inside one of Oakland’s more affluent neighborhoods. Equity demonstrates that the City should provide a focal point, to draw local neighbors to the bay waters so that they will derive some measure of benefit from this project, which if it proceeds, will impose unavoidable impacts on their neighborhoods.</p> <p>Policy OS-9.2, Use of Natural Features to Define Communities: Use open space and natural features to define city and neighborhood edges and give communities within Oakland a stronger sense of identity. Maintain and enhance city edges, including the greenbelt on the eastern edge of the city, the shoreline, and San Leandro Creek. Use creeks, parks, and topographical features to help define neighborhood edges and create neighborhood focal points.</p> <p>Fig. 4.10-27: Oakland Planning Code and Zoning Ordinance – “The Planning Code serves to implement General Plan policies and is found in the Oakland Municipal Code, Title 17. The Planning Code governs land uses and development standards, such as building height, bulk and setback, for specific zoning districts within Oakland. As noted above, the City and the Port are cooperating to establish a shared regulatory framework under which the City will apply all relevant provisions of the Oakland Planning Code to the Project site. Under this anticipated shared regulatory framework, permits to construct new buildings or to alter or demolish existing ones may not be issued unless the proposed Project conforms to the Planning Code or an exception is granted pursuant to provisions of the Planning Code.” What are the terms of this “shared regulatory framework”? Is the Planning Commission the oversight entity?</p> <p>The majority of the Project site, located between Jefferson and Linden Streets south of Embarcadero West, is located within the (IG), General Industrial Zone as shown in Figure 4.10-6 (City of Oakland, 2013). The IG Zone is intended to create, preserve and enhance areas of the City that are appropriate for a wide variety of businesses and related commercial and industrial establishments that may have the potential to generate offsite impacts such as noise, light/glare, odor, and traffic. The IG zone allows heavy industrial and manufacturing uses, transportation facilities, warehousing and distribution, and similar and related supporting uses. Uses that may inhibit such uses, or the expansion thereof, are prohibited. The IG district is applied to areas with good freeway, rail, seaport, and/or airport access. A</p>
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O-63-65 As discussed in the Draft EIR, 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). The MOU describes a contemplated shared regulatory framework that, if ultimately approved, would, among other things, apply relevant provisions of the Oakland Planning Code (Oakland Municipal Code Title 17) 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 would 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). The 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>. See also Response to Comment O-27-25.

Regarding the comment about the existing conditions related to zoning regulations, the Port of Oakland is a department of the City with the exclusive authority to control and manage certain lands of the city, referred to as the Port Area, in conformity with the City’s General Plan. The Port’s land use regulations and the City’s General Plan both apply to the Project site (Draft EIR p. 3-11). Typically, a Port Building or Development Permit is issued for alteration of property within the Port Area, and the Port Building Permit is issued in lieu of the City’s Planning and Zoning Permit for properties within the Port Area.

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	<p>small portion of the Project site is located within the M-40 Heavy Industrial Zone. The M-40 Zone is intended to create, preserve, and enhance areas containing manufacturing, industrial, or related establishments that are potentially incompatible with most other establishments, and is typically appropriate to areas which are distant from residential areas and which have extensive rail or shipping facilities.</p> <p>Fig. 4.10-p27: "To date, City's zoning regulations have not been enforced, nor has the Port developed any zoning regulations, for the approximately 50-acre portion of the Project site located with the Port Area." Where is the accountability on this lack of enforcement? How will communities be assured of any future accountability?</p> <p>Fig. 4.10-30, 4.10.4 Impacts of the Project – Physical Division of an Established Community: The Draft EIR does not consider the established community of the original peoples prior to the Rancho Uplands Land "grant" as a community that was indeed disrupted. Therefore, the project does indeed "constitute a typical example of a physical division of an established community." (4.10-31)</p> <p>"The Project would involve the conversion of Howard Terminal from maritime service use to mixed-use commercial and residential." (4.10-31) This project needs to retain and expand as much industrial and light industrial spaces in commercial ground floor spaces, and not confine activities to retail and commercial uses.</p> <p>Fig. 4.10-32, Land Use Compatibility – Impact LUP-2: "The Project could result in a fundamental conflict with adjacent or nearby land or water-based uses. . . 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." The Analysis does not offer a relative comparison between the \$60B Seaport economy with 27,000 jobs with the proposed economic impact and number of jobs that the new stadium and development would provide.</p> <p>Consistency with Land Use Plans and Policies, Impact LUP-3: The Project would not conflict with</p>
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O-63-66 As discussed in the Draft EIR, for the purpose of the impact analysis in Impact LUP-1, physically dividing an established community means creating barriers that prevent or hinder the existing flow of people or goods through an established community, or placing development in such a manner that it physically separates one portion of an established community from the remainder of that community. Constructing a new major highway through an existing residential neighborhood would constitute a typical example of a physical division of an established community (Draft EIR pp. 4.10-30 and 4.10-31).

The Draft EIR recognizes that the Project site and vicinity were occupied by the Native American group known as the *Ohlone* prior to Euroamerican contact and settlement (Draft EIR p. 4.4-5). However, the environmental setting or baseline conditions are described as they existed when the Notice of Preparation (NOP) for the Draft EIR was published. An environmental setting establishes the baseline physical conditions or point of reference from which the environmental impacts of the proposed Project are measured to determine whether an impact would be significant (Draft EIR pp. 4.0-1 and 4.0-2). Thus, as described under Impact LUP-1, the Project would not physically divide an established community, although it would move the boundary between Port-related industrial uses and the Jack London Square commercial-entertainment district to the west (Draft EIR p. 4.10-32).

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. 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. These comments will be forwarded to the decision makers, including the City Council, for consideration in their deliberations concerning approval of the proposed Project.

O-63-67 See Consolidated Response 4.4, *Port Operations and Land Use Compatibility*.

O-63-68 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 CEQA Guidelines Section 15088. The bases of prospective challenges to potential future acquisition or improvement of lands within the Project area, and the bases for the composition of the Public Trust Doctrine are beyond the scope of this EIR. 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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	<p>public trust restrictions. (Criterion 3) (Less than Significant). <i>"However, to the extent the 1852 Tidelands and Rancho Uplands were acquired or improved with trust funds, the Port holds and operates these lands as assets of the trust and the Port has a duty to manage them accordingly."</i> (4.10-52) <i>Acquisition or improvement could be challenged by Indigenous Peoples groups and may have deliberately been left out of the original Public Trust Doctrine to accommodate such action.</i></p> <p>Current land deal (Original lands, Rancho Uplands, is 20.59 acres):</p>
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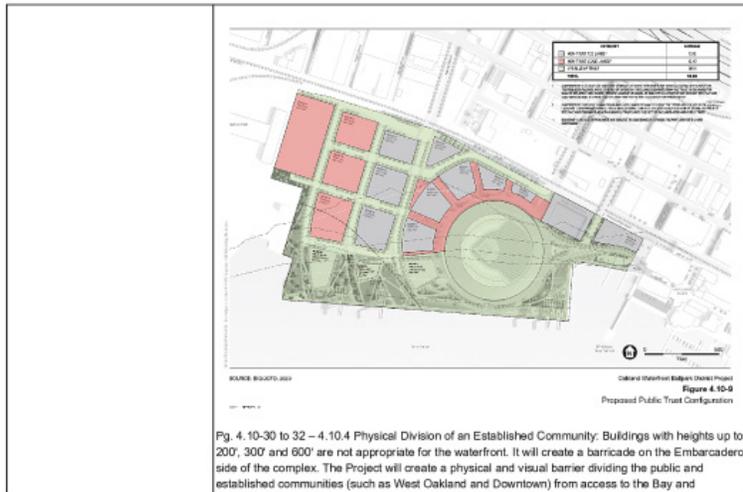
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O-63-69 Response to Comment O-63-66 explains how impacts related to a physical division of an established community were determined in the Draft EIR. As described in the Draft EIR, the Project would reduce barriers and extend public connections to the waterfront. The Project would develop Athletics' Way, an extension of Water Street from Jack London Square that would be a pedestrian promenade leading to and encircling the ballpark and connecting the Project site to Jack London Square. The Project would also develop a Waterfront Park, which would provide public access to the shoreline in the Project site, further extending the existing shoreline access located along Jack London Square (Draft EIR pp. 4.10-31 and 4.10-32). Thus, the Project would increase access to the waterfront, including from West Oakland and Downtown Oakland.

The remainder of the comment expresses a preference for Alternative 4, the Reduced Project Alternative. 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. These comments will be forwarded to the decision makers, including the City Council, for consideration in their deliberations concerning approval of the proposed Project.



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	waterfront, both visually and physically. This is a significant and major impact that must be mitigated with the heights reduced appropriately for waterfront developments. A reduction in density is needed to reduce the traffic, air quality, and noise impacts of the project.
11. Noise and Vibration	<p>To characterize the noise environment within the Project site and surrounding area, both long term (48 hours or more) and short-term (20 minute) noise monitoring was conducted and resulting data are presented in Appendix NOI. Long-term noise monitoring was conducted at three locations on the Project site that were selected on the basis of their proximity to existing receptors and one location at the nearest sensitive receptor (which also borders the existing UPRR tracks), while short-term noise monitoring was conducted at multiple off-site locations near sensitive land uses and primary roadways that would be used to access the Project site. <i>The surrounding area of 0.5 miles is inadequate when considering the noise generated from the ballpark, concert events, and fireworks. Neither long-term noise monitoring or short-term noise monitoring was conducted in residential areas and other sensitive land uses within 1 mile of the Project Site. This excludes significant portions of West Oakland and Chinatown. Chinatown, in particular, would be significantly negatively impacted as its residential and schools are particularly sensitive to ambient noise and they are located adjacent to primary roadways, such as the 880 freeway, that would be used to access the Project Site.</i></p> <p>Pg. 4.11-26: The study area for evaluation of noise and vibration impacts from construction encompasses the Project site and the nearest potentially affected sensitive receptors to the proposed facilities. Applying a worst case daytime noise level (pile driving at 101 dBA at 50 feet) and the most restrictive daytime noise threshold (65 dBA, Leq) and accounting for 5 dBA of shielding for intervening structures at distances beyond 1,500 feet results in a maximum potential impact distance of 1,500 feet without mitigation. Beyond this distance, all daytime construction noise impacts would be less than significant. <i>This approach to analysis is inadequate. Nearby Oakland estuary sites have required pile driving to 75 feet, thus extending the maximum potential impact distance.</i></p> <p>Appendix NOI – NOI.3 Traffic Noise Calculations: <i>Clarify when these calculations were conducted. Calculations prior to March 2020 would be more appropriate as the pandemic's shelter-in-place</i></p>

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O-63-70 The analysis of both construction-related impacts and operational noise impacts in the Draft EIR demonstrated that the geographical scope of the analysis is adequate. First, with respect to construction-related impacts, it can be seen from Table 4.11-13 on Draft EIR p. 4.11-30 that at a distance of 1,800 feet (approximately one-third of a mile), noise from the noisiest construction activity would be attenuated to 67 A-weighted decibels (dBA). Thus, at a distance of one-half mile, the noise level would be further attenuated to 64 dBA, which is below the 65 dBA criterion of the City of Oakland Noise Ordinance, thus demonstrating the validity of using a one-half mile geographical scope for construction.

With respect to operational impacts, the validity of using a one-half mile geographical scope is most conveniently demonstrated by reviewing Figure 4.11-4 on Draft EIR p. 4.11-49, which shows the noise contours associated with a concert event at the proposed ballpark. In this figure, the 60 dBA noise contour extends approximately one-half mile to the east of the Project site.

The one operational impact that examines noise impacts at a distance greater than one-half mile is the traffic noise impact, which assesses noise increases on roadways up to 14th Street, as far as eight-tenths of a mile away, inclusive of West Oakland and Chinatown.

O-63-71 The comment that pile driving extends to 75 feet (presumably in depth) has no relationship to the attenuation of pile-driving noise with distance. The noise from impact pile driving is generated as the hammer hits the top of the pile. This noise is attenuated with horizontal distance in an inverse square relationship, with noise levels decreasing approximately 6 dBA with each doubling of distance, as stated on p. 4.11-5 of the Draft EIR. The establishment of the geographical scope of construction noise impacts is based on physical noise propagation relationships; thus, from a point source with the noisiest activity, it provides an adequate estimate of the focused area of potential impact from construction noise.

O-63-72 As stated on p. 4.11-52 of the Draft EIR, estimates of traffic noise were developed from the transportation analysis and were based on existing traffic conditions in year 2018, before the implementation of shelter-in-place orders associated with COVID-19.

Measured noise levels were processed to estimate noise per game attendee. Estimated noise levels were applied to the new stadium configuration and

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maximum number of attendees. For a concert event, it was assumed that the people would generate the same degree of noise as at baseball games. However, loudspeaker noise in the field was added to reflect both crowd noise and amplified sound. As stated on Draft EIR p. 4.11-45, the potential for noise impacts associated with A's baseball games and concerts was assessed using the CadnaA noise propagation software. The CadnaA model accounts for local topographic conditions, including the attenuation provided by the bowl of the proposed ballpark and intervening structures. The model also considers meteorological conditions such as temperature, humidity, and wind speed and direction.

With respect to noise impacts of the Project variants, the discussion of noise and vibration impacts associated with the Power Plant Variant is presented on p. 5-54 of the Draft EIR, while the discussion of noise and vibration impacts of the Aerial Gondola Variant is presented on Draft EIR p. 5-130.

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	orders significantly reduced traffic and vehicle trips post-March 2020.
	Appendix NOI – NOI.4 Field Noise Measurement: <i>These measurements were conducted based on a single game held mid-day on a weekend in 2019. Justify that this game represents the historical average attendance of weekday and weekend games and of mid-day and night games and concerts. Sound travels differently based on weather conditions, including air temperature and wind. Factor in the additional attendees and better sound systems that a new ballpark would draw in and utilize.</i>
	(General) <i>Comment: this section does not include noise and vibration studies on the project variants. The Aerial Gondola project variant would be particularly impactful to the Old Oakland and Chinatown communities and the Project Variant section does not include short-term and long-term noise monitoring. Without this data, the Draft EIR is incomplete as it does not adequately address the environmental impact that noise and vibration would have on the Aerial Gondola's project site and surrounding areas. This Environmental document should not cover the project variants named (Gondola and Power Plant).</i>
12. Population and Housing	4.12.4, Pg. 4.12-15: Project proposes up to 3000 new residential units. <i>Unknown how Project sponsor intends to meet affordable housing obligations, on-site inclusionary, off-site, and/or in-lieu fees. There are valid concerns that Project sponsor will try to meet affordable housing obligations by developing most of the affordable units at Coliseum site rather than have mixed-income units on the new stadium site. Additionally, this mixed-use development may create housing that would put further upward pressure on housing prices in nearby Oakland Chinatown's naturally occurring affordable housing stock as those seeking housing geographically closer to the new stadium site. As a note, over 95% of the newly built housing in the Downtown and Chinatown areas are market rate. The vacancy rates in those new buildings are significantly higher than in older buildings, and although demand for the units has been soft in Covid, landlords have not been lowering rents far enough to fill their vacancies. EBALDC is happy to provide corroborating market analyses that show these trends in late 2020, early 2021.</i>
	4.12.4, Pg. 4.12.-18: Draft EIR contemplates that socio economic impacts, i.e. gentrification and

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O-63-73 The analysis of the potential environmental impact of the variants is presented in Chapter 5 of the Draft EIR. More specifically, the analysis of the potential noise and vibration impacts of the Peaker Power Plant Variant is presented on Draft EIR p. 5-54. This analysis found that this variant would result in similar noise impacts and the same mitigation measures as identified for the proposed Project.

The potential noise and vibration impacts of the Aerial Gondola Variant are presented on pp. 5-130 and 5-131 of the Draft EIR. This analysis found that noise from construction of the Aerial Gondola Variant, including construction noise in the vicinity of the Convention Center Station, would not be more severe than impacts identified as significant and unavoidable for the Project. The Project with the Aerial Gondola Variant would be subject to the same Project mitigation measures related to construction noise (Mitigation Measures NOI-1a, NOI-1b, NOI-1c, NOI-1d, NOI-1e, and CUL-2) that would reduce construction noise and vibration to the extent feasible.

With the Aerial Gondola Variant, operational noise would be generated by stationary equipment (e.g., drive units, motors, cooling fans) and by gondola operation when the gondola passes over lift towers and into the stations, as the gondola cabin's arms pass over cable wheels and other discontinuities. Because no on-board motor would be required for the individual cabins (ETSAB, 2018), stationary equipment would generate noise only at the station points. Operations would be subject to the restrictions of Chapter 17.120 of the Oakland Planning Code and Chapter 8.18 of the Oakland Municipal Code, as required by Mitigation Measure NOI-2c: Operational Noise. This measure would apply to the variant so that after completion of the Project (i.e., during Project operation), such sources would comply with the performance standard. Engineering enclosures around the lift towers and full enclosure of the gondola docking stations could serve to achieve compliance with the standards of the City's noise ordinance.

O-63-74 See Consolidated Response 4.12, *Affordable Housing*, and Consolidated Response 4.13, *Gentrification and Indirect Housing Displacement*.

O-63-75 See Consolidated Response 4.13, *Gentrification and Indirect Housing Displacement*.

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	<p>displacement, are out of scope, and that the new stadium site does not constitute a significant change as a neighborhood development, displacement is too widespread to be attributed to one site, and gentrification are not physical changes to the environment.</p> <p>4.12.5, Pg. 4.12-21: Additionally, the Draft EIR states that, "Since there are no existing housing units and limited employees located on the Project site, the Project would not have a considerable contribution to a cumulative impact related to the displacement of existing people or housing units necessitating the construction of replacement housing elsewhere". <i>All these assumptions diminishes and overlooks tangible spillover impacts to low-income and working class Chinatown, West Oakland, and Downtown residents. The new stadium development is site specific and direct impacts would be minimized in terms of no displacement will occur, but this does not fully acknowledge that the project would have a ripple effect and impact on housing in neighboring communities.</i></p> <p>4.12.5, Pg. 4.12-20: Draft EIR states that the new stadium as a mixed use development would not contribute to cumulative substantial unplanned population growth in the City or the region. <i>However, this does not address the resulting development growth pressure to the immediate surrounding neighborhoods of Chinatown, West Oakland, Old Oakland, Jack London, Downtown, and Uptown. These tangible physical impacts would be what another EIR would have to address.</i></p>
13. Public Services	
14. Recreation	<p>4.14.1, Pg. 4.14-1: <i>We appreciate the explanation of the OSCAR classifications, but we note that some parks (like Lincoln Square Park in Chinatown) may be classified as a Neighborhood Park based on their size when in reality, more accurately function as a Region-serving park, in the number and geographic origin of actual park-goers. The residents who use Lincoln come from all over the City of Oakland and beyond, and we have consistently advocated CEQA and other analyses should focus not only on the detrimental impacts of new development, but how new development can bring new resources that should be prioritized to improve existing well-used community assets. The ideal urban park is not an empty space that is not full of people. The ideal urban park is a bustling place of activity where many different people can find space to do</i></p>

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O-63-76 Consistent with CEQA, the Draft EIR evaluates foreseeable impacts of implementing the Project as well as significant cumulative impacts of implementing the Project in conjunction with planned development, such as the Downtown Oakland Specific Plan. Regional and City planning have identified areas in Oakland (including some of the neighborhoods mentioned in the comment) as priority development areas. The impacts of buildout in priority development areas have been evaluated at a regional scale in the Plan Bay Area 2040 EIR. See Responses to Comments O-29-111 and O-29-113 regarding growth inducement.

O-63-77 The comment regarding the General Plan Open Space, Conservation and Recreation (OSCAR) Element classifications is not related to the proposed Project or the adequacy of the Draft EIR.

The comment also requests that the descriptions of parks be expanded to identify which parks are used by many groups of Oakland residents. The City notes that the Draft EIR's descriptions of City parks already include descriptions of programming and unique physical attributes. While this comment is appreciated, no specific suggestions are presented, and any expansion of these descriptions would be editorial changes that would not alter the analysis or conclusions of the EIR.

In response to the comment requesting that Draft EIR Table 4.14-1 (p. 4.14-5) include the Service Level designation for each park listed, the table has been revised as shown below, with new text underlined:

TABLE 4.14-1
SURVEYED CITY PARK MAINTENANCE CONDITIONS NEAR THE PROJECT SITE

Park ^a	Park Classification ^b	2016 Park Overall Rating	2018 Park Overall Rating	<u>Service Level^c</u>
Jefferson Square Park	Neighborhood Park	B	D	<u>2</u>
South Prescott Park	Neighborhood Park	D	B	<u>2</u>
Lafayette Square Park	Special Use Park	C	D	<u>2</u>
Lowell Park	Neighborhood Park	B	C	<u>1</u>
Lincoln Square Park	Neighborhood Park	B	B	<u>1</u>

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Park ^a	Park Classification ^b	2016 Park Overall Rating	2018 Park Overall Rating	Service Level ^c
Wade Johnson Park	Neighborhood Park	C	D	2
DeFremery Park	Community Park	B	B	1

NOTES:

- a Includes parks surveyed in the *2018 Report on the State of Maintenance in Oakland Parks*. The report involved a limited survey of OPRYD parks and did not include all City parks in the Project vicinity.
- b Per the OSCAR Element
- c As defined on page 4.14-4 of the Draft EIR.

This data is based off of an independent survey submitted to OPRYD by the non-profit organization, the Oakland Parks and Recreation Foundation.

SOURCE: Oakland Parks and Recreation Foundation, 2018; OPRYD, 2016

The comments related to using turf for playing fields are not related to the proposed Project or the adequacy of the Draft EIR.

With regard to the comments about the Quimby Act, the City of Oakland does not have a parkland dedication requirement pursuant to the Quimby Act (Draft EIR p. 4.14-8). Although it is an action to adopt the Quimby Act as part of the Open Space, Conservation and Recreation Element of the City of Oakland General Plan, the City instead chose to charge an impact fee for parks and recreation; this is included as part of the Capital Improvements Impact Fees.³⁹

³⁹ City of Oakland, 2019. *Downtown Oakland Specific Plan Draft Environmental Impact Report*, August 2019.

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O-63-78 The comment largely provides commentary about City General Plan policies and other policies. However, the commenter is incorrect regarding Policy REC-3.1 "mandat[ing] new park space as part of this project." Policy REC-3.1 identifies an overall service goal for the city's parks, but does not require development projects to provide new park space. The comment does not address the adequacy or accuracy of the Draft EIR and no further response is required under CEQA. The comment will be forwarded to the decision makers for their consideration during deliberations on the proposed Project.

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	<p><i>their preferred recreational activity with other people who have a similar interest. We should be using this opportunity to strengthen those places with proven active use by a diversity of Oaklanders.</i></p> <p>4.14.1, Pg. 4.14-2 to 4.14-4: <i>The descriptions of the parks should be expanded to identify which parks are used by many different groups of Oakland residents and visitors.</i></p> <p>4.14.1, Pg. 4.14-5: <i>Table 4.14-1 could include the Service Level designation for each park, so that readers can understand which parks can be prioritized for a higher level of service that might result in more usage of the park. Please also consider how playing fields in these areas might be altered in order to avoid becoming repositories of goose feces, which also discourages human use. Birds should have riparian habitats as part of our park system, but birds should be actively discouraged from congregating on fields intended for sports, play, etc. This can be done by using turf for most play fields.</i></p> <p>4.14.2, Pg. 4.14-8: <i>Please be more specific about how the Quimby Act applies to this project. Is Quimby applicable here, and is the project sponsor obligated to provide a dedication of land or in-lieu fees?</i></p> <p>4.14.2, Pg. 4.14-9: <i>Policy OS-4.1 should be amended to encourage less private outdoor space for the building residents, and instead encourage contribution and maintenance of outdoor public space that can be shared by building residents and community members. This is an issue that we will raise in the next General Plan amendment.</i></p> <p>4.14.2, Pg. 4.14-9: <i>Policy REC-3.1 appears to mandate new park space as part of this project. That is fine, but we would prefer that this new open space be more modest, emphasize connection to other nearby existing parks and projects such as the West Oakland Walk (WOW), and prioritize resources to improve those existing parks for the community members who live in Oakland now. This is an issue that we will raise in the next General Plan amendment.</i></p>
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O-63-79 The comment regarding tax assessments raises neither significant environmental issues nor specific questions about the analyses or information in the Draft EIR that would require response pursuant to CEQA Guidelines Section 15088 because it concerns economic rather than environmental issues. 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 discusses potential recreation impacts related to the accelerated substantial physical deterioration of recreational facilities and the construction/expansion of recreational facilities, as directed by the City of Oakland’s CEQA Thresholds of Significance (Draft EIR p. 4.14-11). This includes analyzing impacts that could result in the potential expansion of existing facilities and the construction of new facilities, as CEQA is concerned with the physical environmental impacts of a project.

The Project's parks and open spaces would be privately owned and maintained, not dedicated to the City. Thus, the Project would not result in a reallocation of Oakland Parks, Recreation & Youth Development (OPRYD) resources from existing facilities as the commenter asserts.

Regarding the comment expressing a preference for the expansion of existing recreational facilities, the Draft EIR found that the Project’s impacts related to accelerated substantial physical deterioration of parks and recreation resources would be less than significant and no mitigation would be required (Draft EIR p. 4.14-11-15). The Project would cause an increase in residential, employee, and visitor populations; however, there is no evidence to suggest that the potential increase in recreational users would substantially increase or accelerate the physical deterioration or degradation of nearby recreational facilities, such that mitigation would be required for physical impacts related to the construction/expansion of existing recreational facilities.

The remainder of the comment pertains to the Downtown Oakland Specific Plan and does not address the adequacy or accuracy of the Draft EIR; no further response is required under CEQA. The comment will be forwarded to the decision makers for their consideration during deliberations on the proposed Project.

	<p>4.14.2, Pg. 4.14-10: <i>City of Oakland LLAD is a fine policy and tax assessment as long as it is on top of the City's normal resourcing of parks and rec and lighting programming. This additional assessment should not give the City flexibility to reduce or replace its general fund obligation towards these programs.</i></p> <p>4.14.3, Pg. 4.14-11: <i>As stated earlier, the Significance Criteria are understandable, but inadequately framed by CEQA. An increase in the use of existing neighborhood and regional parks is not necessarily undesirable, as long as those parks are prioritized for expansion or improvement to accommodate the new people, in which case improvements can be shared and enjoyed by long-time residents and newcomers, which is important to social cohesion and connection. The framing by CEQA implies that if existing parks see more usage, the response should be to build new parks. That may be appropriate in some cases, but in general we prefer prioritization of resources towards modernization, improvement, upkeep, and expansion of existing recreational resources, rather than adding new responsibilities and liabilities to our OPRYD in the form of new open space that further stretches their limited resources.</i></p> <p>4.14.4, Pg. 4.14-12 to 4.14-13: <i>As stated in the paragraph above, the operational impacts are generally not honestly considered or accounted for because OPRYD's budget does not expand proportionally to handle new responsibilities, and the public is burdened by long term obligations that are often not fiscally supported in the budget. Therefore, we recommend a smaller dedication than the 18.3 acres described in this section, and a higher allocation of fiscal support that can be prioritized for existing parks within our existing neighborhoods. Otherwise, contrary to the assertion in this section, the Project will substantially accelerate the degradation of existing general recreational resources by pulling away resources from maintenance of those facilities to maintenance of a shiny new park that serves a new neighborhood with new residents, but not our pre-existing residents and community members.</i></p> <p>4.14.4, Pg. 4.14-15: <i>We recommend expansion of existing recreational facilities, in particular, of Lincoln Square Recreation Center, which has the highest daily usage in the City of Oakland pre-Covid. That mitigation measure would improve Downtown Oakland's only public recreation</i></p>
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O-63-80 See Consolidated Response 4.7, *Parking*, and Consolidated Response 4.8, *Chinatown*. See Response to Comment A-10-1 for additional information about the Webster and Posey Tubes. Traffic congestion is also discussed in Responses to Comments O-63-17 and O-63-18.

Please note that traffic congestion or measures of vehicular delay are not an environmental impact under CEQA per State CEQA Guidelines Section 15064.3. Even so, the City required that the intersection and road segment analyses be completed. Draft EIR Appendix TRA.3 includes the intersection analysis and the Draft EIR’s Additional Transportation Reference Material includes the road segment analysis.

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	<p><i>center for all, and adequately resource the staff to manage the site and maintain it as a safe place for many different types of uses and activities. Existing parks in West Oakland (in particular Lowell Park) should also be prioritized for improvements and staffing, in order to be a safe place for all ages to mingle and play.</i></p> <p>4.14.5, Pg. 4.14-18: <i>We continue to advocate against spending City resources on new “Green Loops” at the expense of improving actual nodes of existing recreational activity (specifically, existing parks and rec centers). Do not expand the Downtown Oakland Specific Plan proposal for a Green Loop with an additional new Green Loop.</i> See this linked article for an analysis of the disparity between who wants and uses loops, versus who wants and uses urban parks in Houston (which we find applicable to Oakland): https://www.bloomberg.com/news/articles/2016-03-23/in-texas-houston-s-bayou-greenways-2020-parks-project-aims-to-meet-the-needs-of-people-of-color</p> <p>4.14.5, Pg. 4.14-19: <i>The conclusion of this section finds Less than Significant impact after mitigation. This might be true, but we believe that the types of mitigations outlined in this DEIR are not adequate or correctly framed to make the impacts less than significant to existing community members of Oakland. We require more prioritized fiscal support for existing parks and rec centers in our community, not shiny new open spaces designed to attract new residents to the area.</i></p>
<p>15. Transportation and Circulation</p>	<p>Pg. 4.15-1: <i>Impact Area must be expanded beyond the ½ mile radius because of the unique nature of the proposed Project, which heavily depends on off-street and on-street parking in the adjacent neighborhoods and surrounding areas, including in Chinatown and the Pacific Renaissance parking garage. The impact area should include the Chinatown area from Broadway to Oak, and from 6th Street to 11th Street. The impact area should include Jackson and 6th Street on-ramp and the Oak and 5th Street on-ramp, as well as the Oak and 6th Street off-ramp. The study area should also include the Broadway & 5th Street and Webster & 6th Street entry to the Webster Tube. Parking garages within 1 mile of the project, page 4.15-36, include several major garages in Chinatown. The impact on the intersections adjacent to these Parking</i></p>

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O-63-81 This comment makes incorrect assertions about mode of travel for the Howard Terminal ballpark and the resulting vehicle miles traveled. Draft EIR Table 4.15-39 notes that the percentage of ballpark event attendees who would drive would range from 49 to 54 percent, while the percentage of attendees using transportation network companies would be 15 percent to 17 percent.

The commenter asserts that major parking garages in Chinatown were not considered. This is incorrect. The analysis considered all parking within a 1-mile walking distance to the ballpark, which, in Chinatown, is the area generally bounded by Broadway, 12th Street, Harrison Street, and the I-880 freeway structure. See Consolidated Response 4.7 *Parking*, and Consolidated Response 4.8, *Chinatown*.

None of the transportation improvements cited by the commenter are part of the Project. The transportation analyses presented in Draft EIR Section 4.15 and its supporting documents do not show that these improvements are necessary to support the Project. In addition, the traffic congestion or measures of vehicular delay alluded to by the commenter are not an environmental impact under CEQA per State CEQA Guidelines Section 15064.3.

Mitigation Measure TRANS-1b 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 and the performance standard could be met. The calculations account for automobile traffic generated by ballpark attendees, including those who park off-site in underutilized parking garages. In addition, the mitigation measure has a performance standard that must be met, or the City can take enforcement action necessary to ensure that the trip reduction is met.

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 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-63-80

O-63-81

	<p><i>facilities should be addressed. The Project is dependent on on-street parking in Chinatown and adjacent neighborhoods. This impact is ignored by the Draft EIR.</i></p> <p>Pg. 4.15-23, Figure 4.15-7: <i>Existing Pedestrian Network should include Chinatown, which is heavily traveled by pedestrians.</i></p> <p>Pg. 4.15-28: <i>The 14 freeway segments and six ramps and special freeway segments within the vicinity of the Project site operate as LOS F during PM peak hours. Why is there no analysis as to the impact of the project when it brings in 32,000 additional vehicles trips during this time period? See 4.15-167.</i></p> <p>Pg. 4.15-29: <i>LOS E on Webster, Webster-Posey Tubes, etc. during both morning and evening peak hours appear to be erroneous and based on an expanded definition of peak hours. 5th and Broadway and 9th and Oak are already at level F. Description excluded plan area road segments to operate at level F. For example, 9th and Webster currently operate at level E during PM peak hours. It will be heavily impacted by the Project and will be F and gridlock. 4th and Broadway and 5th and Oak Street are currently F during PM peak hours and will be gridlock with the new project. See Oakland Alameda Access Project Draft EIR, page 2-66 to 2-67. What is the rationale for not including Chinatown intersection, especially Webster Street and the effects on the traffic trying to access the Webster Tube at PM peak hours?</i></p> <p><i>LOS for specified intersections must be discussed in the text and presented in a table showing Existing and Existing plus Project, as well as projects nearby under construction. See City of Oakland Transportation Impact Review Guidelines, page 29.</i></p> <p>Pg. 4.15-35: <i>At Coliseum, attendee mode of access is 76% vehicle on weekday evenings, 78% on weekday days, 81% on weekends, and 80% for arena events. See Appendix TRA, page 33-34. Anticipated mode of travel for Howard terminal ballpark is 75% vehicle on weekday evenings,</i></p>
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	<p>76% on weekday days, 80% on weekends. Vehicle Trips per attendee is 93% on weekday evenings, 94% on weekday days, 97% on weekends. See also pg. 4.15-189 to 200, for VMT (vehicle miles traveled) Ballpark analysis.</p> <p>Pg. 4.15-36 – Existing Parking Characteristics: <i>Several major garages are in Chinatown, e.g. Webster-Franklin and 11th-9th. This should be accounted for in the EIR.</i></p> <p>Pg. 4.15-42 to 4.15-45 – Port Access: <i>Port trucks and traffic utilize local streets in Chinatown, between Oak Street and Port when I-880 is congested (which often occurs), including 7th Street, 8th Street, 9th Street. This impact on Chinatown must be addressed.</i></p> <p>Pg. 4.15-47 to 48 – Planned Transportation network Changes: <i>The Oakland Alameda Access Project is not fully funded, and is a mitigation for the impacts of this Project. This Project should contribute funds for its construction as mitigation. Other projects that would mitigate traffic congestion include the re-conversion of streets such as Webster, Harrison, 7th, and 8th from one-way to two-way streets. For example, the congestion created by diverting parking to the Pacific Renaissance Plaza Parking lot should be mitigated by re-converting 9th Street between Webster and Franklin to a two-way street so that traffic would not have to circle through Chinatown and 8th Street to enter into the parking lot. See also, Lake Merritt Station Area Plan, pages 4.15-50 to 51. These are mitigations to which the Applicant should pay its fair share. Project should pay its fair share for these necessary infrastructure improvements. The Oakland-Alameda Access Project is described on Page 4.15-56. Phase II includes the study to provide additional off-ramp on-ramps for 880 between 23rd Ave and MLK. This Project should include paying its fair share of the OAAC Project as mitigation. Traffic management of impacts should be linked to these specific mitigation programs.</i></p> <p>Pg.4.15-57 to 58 – AB 734: <i>There is not a 20 percent reduction in vehicle trips. The analysis shows that the TMP estimated reduction can be as low as 7%, and is based on forcing traffic</i></p>
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O-63-82 See Consolidated Response 4.8, *Chinatown*. See also Consolidated Response 4.7, *Parking*, which describes how ballpark attendees who drive would be managed to disperse drivers to underutilized parking garages in Downtown Oakland and at the BART overflow parking lots near the West Oakland BART station.

The commenter incorrectly states the auto mode share for ballpark attendees. The correct mode shares used in the vehicle miles traveled analysis are provided in Draft EIR Table 4.15-39 and include those who would drive and park in underutilized parking garages.

Traffic congestion or measures of vehicular delay are not an environmental impact under CEQA per State CEQA Guidelines Section 15064.3. Although they are not required for the Project’s CEQA analysis, the City of Oakland required intersection analyses, which are provided in Draft EIR Appendix TRA.3. The analyses show that intersection operations through the Broadway bottlenecks at 5th and 6th Streets would operate at similar levels without and with the Project, including the bus-only lanes. This is consistent with the Draft EIR (p. 4.15-129), which stated that the Broadway improvements would maintain existing roadway capacity through the 5th and 6th Street intersections by removing the median, upgrading traffic signals, and prohibiting northbound left-turning traffic at 6th Street. The City also required road segment analyses, which are provided in Draft EIR Additional Transportation Reference Material, under “CMP and MTS Analysis.”

See the Draft EIR’s Additional Transportation Reference Material, which contains the collision history analysis.

into the adjacent neighborhoods, e.g. an 11% reduction is based on limiting parking at the ballpark to 2000 spaces, forcing traffic into the surrounding neighborhoods for off-street and on-street parking. (Page 37, Appendix TRA.2)

4.15.3 Project Transportation Characteristics. (Pg. 41.5-79 et seq.)

Pg. 4.15-80: *Further reduction of parking at Ballpark from 3,500 to 2,000 will force more vehicle traffic to park in neighborhoods, overwhelming on-street and off-street parking in Chinatown, West Oakland, Old Oakland, and Jack London. Providing 2,000 parking spaces for 35,000 attendees when there is no adjacent BART station as currently provided at the Coliseum will destroy the Port, Chinatown, and the adjacent neighborhoods. The Coliseum currently has 9,100 parking spaces and an adjacent BART station. The project is expected to generate 32,000 vehicle trips.*

See Appendix TRA, page 33-34: *Anticipated mode of travel for Howard terminal ballpark is 75% vehicle on weekday evenings, 76% on weekday days, 80% on weekends. Vehicle Trips per attendee is 93% on weekday evenings, 94% on weekday days, 97% on weekends.*

Pg. 4.15-129-130 – Broadway Corridor: *The creation of the “Ballpark Opening” Improvement calls for removing one motor vehicle lane in each direction on Broadway between 2nd and 11th Street. This will force traffic onto Webster, Franklin and other streets west of Broadway, creating gridlock, air quality impacts, etc. for Chinatown. This is unacceptable. A mitigation of this traffic congestion problem for Chinatown would be to reconvert Webster Street from a one-way street to a two-way street between 12th Street and 6th Street. Unfortunately, the failure of the Draft EIR to address the impact of the Project on Chinatown traffic and congestion has resulted in the failure to provide adequate mitigation measures for these impacts.*

Removal of the separate westbound right-turn lane from 6th street at Broadway cannot be done

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	<p>without full implementation of the Oakland Alameda Access-Project. The Project needs to contribute its fair share fee for the project, which is not fully funded.</p> <p>Bus-only lanes with transit priority do not connect the 12th Street BART station to Chinatown since riders already walk to Chinatown only a block away.</p> <p>Pg. 4.15-130 – Table 4.15-20: The conclusion in section “Drivers-autos and Trucks” that “Local Drivers are not expected to divert to other streets but would continue to use Broadway to access Downtown, Chinatown, and Jack London” is unsupported and is contrary to common sense as well as routing algorithms used by drivers, such as Google Maps. Drivers attempting to access the Webster Tube from Broadway will be diverted to Webster Street into the heart of Chinatown, creating gridlock.</p> <p>Pg. 4.15-133 – Collision Analysis: There is no “Howard Terminal – Collision History analysis Included Appendix TRA. This must be provided for review along with the Draft EIR.</p> <p>Pg. 4.15-134 to 136: The eleven intersections do not include any Chinatown intersections, where Oakland’s highest number of Pedestrian-involved Accidents occur. See Oakland Alameda Access Project Draft EIR pg. 2-52.</p> <p>Pg. 4.15-136, Transportation Management – AB 734, pg. 14.5-192: There is no analysis as to how the TMP will reduce vehicle trips by 20 percent. The analysis is wishful thinking that does not justify Table 4.15-39. The conclusion is based on a future draft TMP to be submitted to the City for review and approval. There is no reasonable basis to conclude that any of the items listed as priorities in the TMP (which have not been defined with specificity –see page 4.15-193) will accomplish the 20 percent reduction in vehicle trips required by AB 734. The analysis shows that the trip reduction estimate can be as low as 6% (see Table 15, page 37-38 of 46, Peter Veilmann and Nicole Ferrera Memorandum, December 1, 2020, appendix TRA.2). The strategies are also based on forcing traffic and vehicle trips to the surrounding areas (e.g., by limiting</p>
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O-63-83 See Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*. As described on Draft EIR p. 4.15-80, the overall strategy for ballpark parking is to reduce parking on-site over time from 3,500 spaces under Phase 1 to no more than 2,000 spaces at build-out; the site would also contain up to 6,900 parking spaces associated with non-ballpark development. The limited parking supply on-site would be key to achieving the goal of a 20 percent trip reduction. As described on Draft EIR p. 4.15-88, the limited on-site supply would also mean that many drivers would park off-site in available parking garages or on-street parking spaces, potentially as far as 1 mile from the ballpark, making transit an equal or more attractive travel alternative. See Consolidated Response 4.7, *Parking*.

Also, as shown in Draft EIR Table 4.15-31, with the TMP, about 17,100–18,800 attendees to a ballpark event would arrive in private automobiles and park, which would translate to 7,500–8,200 parking spaces, either on-site or off-site in one of the underutilized off-site parking garages. Whether the attendees park on-site or off-site, these automobile trips are considered vehicle trips associated with the ballpark event.

O-63-84 See Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*, and Response to Comment O-63-83. Mitigation Measures TRANS-1a and TRANS-1b set forth a performance standard (20 percent vehicle trip reduction) and provide a list of required and possible strategies by which non-ballpark development and the ballpark at the Project site would achieve the performance standard. The TDM effectiveness memo included in Draft EIR Appendix TRA.2 demonstrates that the mitigation measures would be effective. The effectiveness of various vehicle trip reduction strategies is likely to change over time in response to changes in transit services, parking supplies, and travel behavior and advances in technology; thus, it would be impractical to lock in place a list of discrete actions at the time the Project is approved.

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O-63-85 See Draft EIR p. 4.15-200, which acknowledges that the pedestrian improvements would require California Department of Transportation (Caltrans) approval, but that without that approval, the pedestrian corridor improvements along Broadway—outside Caltrans jurisdiction—would still be effective.

Traffic congestion or measures of vehicular delay are not an environmental impact under CEQA per State CEQA Guidelines Section 15064.3. Should the pedestrian improvements at 6th Street not be installed, the City of Oakland, with its authority over the Transportation Management Plan (TMP), would have the ability to require the Project sponsor to allocate traffic control officers (or other personnel acceptable to the City) to manage pedestrian movements through the 6th Street intersection.

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 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-63-83

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	<p><i>parking at the ballpark and forcing attendees to park in Chinatown, West Oakland, and the surrounding neighborhoods; by creating bus-only lanes on Broadway, forcing traffic to Webster Street and Franklin Street and Chinatown.) The intent of AB 734 was an actual reduction of vehicle trips, not pushing the vehicle problem into adjacent neighborhoods.</i></p> <p><i>Pg. 4.15-142: Mitigation measures shown on table 4.15-23 are speculative and not shown to meet the 20 percent reduction in vehicle trips. Estimated Reduction can be as low as 6%. The Strategy and Measures that do no more than force traffic into the surrounding neighborhoods or create unmitigated congestion in the adjacent neighborhoods should be prohibited and rejected.</i></p> <p><i>Pg. 4.15-162, Trip Generation – Ballpark: Automobile Trip Generation for Ballpark – 32,000 vehicle trips. Even with the alleged 20% reduction, there will be 26,000 vehicle trips. How will visitors park 20,000 vehicles with only 2000 parking spaces?</i></p> <p><i>Pg. 4.15.167-168, Tables 4.15-29, 30, 31: Even if all on-street and off-street parking within 1 mile of the ballpark (12,979 parking spaces) are used only for the ballpark and no one else, there would not be sufficient parking spaces to accommodate the ballpark. See Table 4.15-8, page 4.15-36. (Only 7,603 off-street and on-street parking spaces are available.)</i></p> <p><i>Pg. 4.15-193: The Draft EIR admits that “the TMP relies in part on strategies that have not been defined with specificity and would require continued monitoring and adjustment. . .” There is no demonstration that acceptable results can be achieved by any of the suggestions in the TMP. There is no reasonable basis to conclude that the Impacts will be adequately mitigated by “monitoring” or any of the TMP suggestions or future programs. Mitigation Measure TRANS-1b is an impermissible deferral and inadequate.</i></p> <p><i>Pg. 4.15-200: Removal of the westbound right-turn lane from 6th street at Broadway, i.e. the Broadway off-ramp, would cause backup of I-880 traffic and traffic going to Chinatown and the</i></p>
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	<p><i>Webster tube to City of Alameda. This is an off-ramp and appears to be beyond the powers conferred by law on the City of Oakland.</i></p> <p>Pg. 4.15-243, 248: <i>There is no overriding consideration that would justify allowing the Project to impose the significant impacts identified in Impact TRANS-6 and Impact TRANS-6.CU.</i></p>
16. Utilities and Service Systems	
17. Effects Found Not Significant	
5. Project Variants	
1. Peaker Power Plant Variant	<p>Sec. 5.1.2, Pg. 5: The Peaker Power Plant Variant involves the planned conversion of the existing Peaker Power Plant to a battery energy storage system. <i>What are the potential impacts/risks of proximity to a battery storage site?</i></p>
2. Aerial Gondola Variant	<p>Sec. 5.2.1 Description "The Aerial Gondola Variant includes the proposed Project as well as a new aerial gondola above and along Washington Street, extending from 10th Street in downtown Oakland to Jack London Square (location 2 in Figure 5-1). The gondola would be a transit option for people going to the Project site on a daily basis and for events." <i>Request for the DEIR to include a more compelling description for the need to build a gondola, versus investing in existing infrastructure that exists at ground level. Though the aerial gondola may result in extremely limited traffic mitigation, it generally localizes the economic growth only to the vicinity of stations, and does not contribute to area-wide shared economic growth. Additionally, clarify if the gondola will be accessible by the general public or only event attendees. Clarify if the gondola will be available for the general public to ride at all times or only at certain times.</i></p> <p>Sec 5.2.2, Study Area and Setting Pg 5-73: "The southern gondola station would be at the foot of Washington Street, approximately two blocks west of the Project site boundary; and the northern station, the Convention Center Station, would be 10 blocks north of Embarcadero West, the northern boundary of the Project site. Therefore, the study area for this variant is extended to include this</p>

O-63-86 Section 5.1.4 of the Draft EIR describes the impacts of the Peaker Power Plant Variant. This variant would result in reduced emissions of toxic air contaminants (TACs) associated with the shutdown of existing fossil fuel power generation. This would also result in reduced health risks at both the on-site and off-site maximally exposed individual receptor (MEIR) (Draft EIR p. 5-26).

O-63-87 Comments regarding the merits of the Project or variants 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 CEQA Guidelines Section 15088. The comments regarding effects on economic growth also do not address an environmental topic considered under 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. The gondola would be a transit option for people going to the Project site on a daily basis and for events. The gondola would be open to the public, but the hours of gondola operation have not been defined (Draft EIR p. 5-68).

O-63-88 See Response to Comment O-63-89, below.

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	<p>10-block corridor along Washington Street, as shown in Figure 5-20." <i>The DEIR study area of the gondola impacts are limited to one-half the block east and west of the gondola proposal. The inherent impacting nature of a large infrastructure such as a gondola should consider at a minimum 3-4 blocks radius (1/4 mile, a comfortable walking distance). Without a proper study area, the impacts listed in this DEIR fail to acknowledge the inevitable impact on Chinatown neighborhood, which is only 1 block away from the proposed location of the Gondola.</i></p> <p>Sec 5.2.2, Pg 5-75 Historical Resources Setting: "This subsection describes the study area and setting for the Aerial Gondola Variant, focusing on historic resources near or surrounding the location of this variant. Notable new context considered with this variant is the Old Oakland API, with numerous historic architectural resources and I-880, for example. The relevant characteristics of the expanded scope implications of the expanded study area are discussed under each environmental topic below, because it varies by topic." <i>The DEIR states that the study area focuses on 'historic resources near or surrounding the location' and that expanded scope implications 'vary by topic'. The logic used to conclude the study area boundary and impacted historic resources is vague. In line with the comment above, the Project should consider including Chinatown and notable landmarks such as the Pacific Renaissance Plaza as relevant surrounding historic resources.</i></p> <p>Sec 5.2.3, Pg 5-81 Aesthetics, Shadow, and Wind: "Views of these scenic resources would be available to the public while traveling on the gondola. Therefore, this variant, in combination with the proposed Project, would not have a substantial adverse effect on a scenic vista or substantially damage scenic resources." <i>Clarify if the gondola will be free or will require a price to ride. Clarify if the gondola will be available for the general public to ride at all times or only at certain times. The Project would not have adverse effects on scenic vistas as long as it would be accessible by all, available at low to no cost, and no restrictions for the general public to ride alongside event attendees. Our general experience with these fixed, limited function transportation projects is that they are inflexible and expensive, and serve relatively few people. The BART Oakland Airport Connector is an example of this. The ridership is very limited, it is expensive, and it does not benefit any of the surrounding community by allowing interim stops to increase the attractiveness to other riders. We do not want to take people off the street level. We want them</i></p>
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- O-63-89 Section 5.2.2 of the Draft EIR describes the study area and setting for the Aerial Gondola Variant (Draft EIR pp. 5-73 through 5-80). The study area boundary was selected to identify the resources that could be directly and indirectly affected by construction and operation of the Aerial Gondola. Chinatown and any individual resources in that neighborhood are outside of this boundary. The commenter has not identified any specific reason (i.e., specific potential impact) that would warrant altering or expanding this boundary. See Responses to Comment O-63-15 and Consolidated Response 4.8, *Chinatown*, for further discussion regarding Chinatown and the Project analysis of impacts on historic resources.
- O-63-90 The hours of gondola operation, the cost of a ride, and the personnel needed to operate the system have not been defined (Draft EIR p. 5-68). The remaining comments raise neither significant environmental issues nor specific questions about the analyses or information in the Draft EIR that would require response pursuant to CEQA Guidelines Section 15088. Comments regarding the merits of the Project 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 CEQA Guidelines Section 15088. The comments 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 Comment O-63-6.

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O-63-93

	<p><i>to walk through our neighborhoods and contribute eyes on the street to improve all of our safety. Supporting programs such as Chinatown's existing Community Ambassador Program would be a much better use of resources to make safe passage to the ballpark.</i></p> <p>Sec 5.2.3, Visual Character/Visual Quality (Non-CEQA). Pg 5-82: "Development of the gondola would change the area's character by adding a new vertical and horizontal feature overhead, contrasting with the low- to mid-rise commercial character of the area. The gondola stations would become prominent features of the visual landscape at both ends of the gondola alignment," and Figure 5-21 and Figure 5-22. <i>The visual quality of the gondola feature is not in line with the area's neighborhood character, and will also likely negatively impact the quality and nature of the existing public realm. Introducing a direct mode of travel from the downtown area directly to the ballpark will reduce foot traffic at the ground level. This will inevitably have a negative impact on the businesses in the surrounding area, including Chinatown and Old Oakland.</i></p>
3.	Impacts of the Project plus Both Variants
4.	Maritime Reservation Scenario
5.	References
6.	Alternatives
1.	<p>Factors Considered in Selection of Alternatives</p> <p>Impact TRANS-6 and Impact TRANS-3.CU: <i>Posey and Webster Tube and 980 and 880 Freeway entrance and exit congestion directly impacts Oakland Chinatown. Therefore, in considering improving existing streets, sidewalks, bicycle facilities through and near the project site to maximize pedestrian and non-motorized mobility and minimize physical barriers and division with nearby neighborhoods, Chinatown must also be considered in the analysis of alternatives 3 and 4.</i></p> <p>Sec 6.1.1 – Project Objectives: <i>There is no objective that speaks to building upon and respecting the history/maritime industry of the project site. This is a critical consideration if the project intends to transform the waterfront from its original use to a new mixed-use neighborhood.</i></p>

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O-63-91 The comment states that the Aerial Gondola Variant would adversely affect the visual character of the surrounding area and adversely affect Chinatown and Old Oakland businesses by reducing foot traffic. However, as explained on Draft EIR p. 4.1-1, in accordance with CEQA Section 21099(d), which was added by Senate Bill (SB) 743 (2013), the aesthetic impacts of a mixed-use project that includes residential uses and is on an infill site in a transit priority area "shall not be considered significant impacts on the environment." Aesthetics is not considered in identifying the Project's significant environmental effects because it meets the applicable criteria identified in Section 21099(d). Thus, the 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 information about aesthetics for informational purposes.

The Draft EIR acknowledges (p. 5-82) that the gondola "would change the area's character by adding a new vertical and horizontal feature overhead, contrasting with the low- to mid-rise commercial character of the area." However, it should be noted that the majority of the gondola's physical presence would be limited to the aerial rope line (cable) on which the cabin would ride. The gondola would include a tower about 230 feet tall—anticipated to be of steel lattice work and thus minimally obtrusive—and one station at each end of the route, in Old Oakland and near the waterfront. The taller station, in Old Oakland, would rise to a total height of about 105 feet, about the height of the rope line along much of its travel path. The Old Oakland station would be supported on concrete columns and not by a solid structure, thereby reducing the apparent mass at ground level.

Concerning the statement about effects on local business from decreased pedestrian traffic, CEQA does not require consideration of social or economic impacts in the determination of significant impacts (CEQA Guidelines Section 15131). However, it should be noted that the vast majority of gondola passengers would be attending baseball games or otherwise visiting the proposed ballpark, and therefore, would not be present if not for the Project. Accordingly, little or no effect on existing pedestrian traffic is anticipated.

O-63-92 The analysis of alternatives in Draft EIR Chapter 6 appropriately focuses on specific impacts and locations where significant unavoidable impacts have been identified. See also Consolidated Response 4.8, *Chinatown*, regarding how the impacts of the Project were analyzed with respect to Chinatown.

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O-63-93 See Response to Comment O-63-26. In addition, regarding the comment requesting details about housing affordability requirements and gentrification, see Consolidated Response 4.12, *Affordable Housing*, and Consolidated Response 4.13, *Gentrification and Indirect Housing Displacement*, respectively.

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O-63-94 See Consolidated Response 4.9, *Alternative 3: The Proposed Project with Grade Separation Alternative*. Regarding the relationship to Bay Trail improvements, the Bay Trail would follow the Bay Trail alignment for the Project through the site along the Martin Luther King Jr. Way alignment up to 3rd Street, where it would connect with the existing Bay Trail alignment along 3rd Street.

O-63-95 The Reduced Project Alternative, described and analyzed in Chapter 6 of the Draft EIR, was crafted to achieve "most of the basic objectives of the project" while avoiding or substantially lessening significant impacts of the Project, as called for in CEQA Guidelines Section 15126.6(a). As discussed in Consolidated Response 4.10, *The Off-Site (Coliseum Area) Alternative*, a key goal of this alternative was to lessen the significant air quality impacts of the Project by including less construction and less overall development. Also, the maximum height of 100 feet (for all buildings except the hotel and ballpark) was selected to avoid or substantially lessen significant wind hazards. Reuse of the Project's site plan, including the quantity of open space it provides and placement of the hotel on a block close to the waterfront, was intended to ensure that the alternative would achieve "most of the basic objectives of the project."

Shading on the Project's open spaces has not been identified as a significant impact (see Draft EIR p. 4.1-62) and views/visual character are non-CEQA impacts (see Draft EIR p. 4.1-18). For these reasons, the alternatives presented in Chapter 6 of the Draft EIR were not defined with reduction of related effects in mind.

See Response to Comment I307-3-7 concerning the viewpoints used in the Draft EIR's visual simulations.

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O-63-95

	<p><i>Indicate how the proposed project intends to accomplish this (strong recommendation to maintain existing cranes, express through materiality and character of architectural spaces, etc.).</i></p> <p>Sec 6.1.1, Pg. 6-2 Project Objectives #2: "Provide sufficiently dense, complementary mixed-use development with a range of flexible uses, including residential, office/commercial, retail, and entertainment, to create a vibrant local and regional visitor-serving waterfront destination that is active year round..." <i>Project Objectives seem to amplify the proposed project as a regional/visitor serving destination; there is a lack of specific language around creating a local neighborhood that will serve existing surrounding neighborhoods.</i></p> <p>Sec 6.1.1, Pg. 6-3 Project Objectives #6: "Construct high-quality housing..." <i>Plan needs detail about new housing affordability requirements to accommodate current Oakland residents, and avoid gentrification.</i></p>
<p>2. Alternatives Selected for Consideration</p>	<p>Sec 6.2.3, Alternative 3 – Proposed Project with Grade Separation Alternative, Pg 6-25: "In addition to the same approvals required from the City, the Port, and other agencies for the proposed Project, Alternative 3 would also require additional approvals by those entities, as well as other organizations, agencies, and private parties." <i>Include language that assures a future coordinated transportation plan that will prioritize safe and alternative routes for pedestrians and bicyclists, and considers anticipated growth of this area.</i></p> <p>Sec 6.2.3 Transportation and Circulation, Pg 6-33: <i>There are impacts on the connectivity on the Bay Trail Brush Street - off-site Bay Trail improvements. The DEIR should propose an alternative route that maintains design specifications and considers pedestrian experience and visual character. Safe intersection design should be part of the TIS, with major crossings at Market and Brush at 3rd Streets with the entry points to grade separation meeting the existing Bay Trail.</i></p> <p>Sec 6.2.4, Alternative 4 – The Reduced Project Alternative, Pg 6-34: "However, only the ballpark and the hotel(s) would be taller than 100 feet tall and both the amount of construction and the intensity of use of the site would be less than with the proposed Project." <i>Clarify the logic for 100' max height</i></p>

Oakland A's Waterfront Ballpark District Project Draft EIR Comments, 04/27/2021

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RESPONSE

O-63-95

	<p><i>and reduction to 700 dwelling units. The DEIR should consider a Reduced Project Alternative that incorporates a more reasonable level of density (more housing) and height (between 100' and 600' maximum heights, that would remain economically feasible).</i></p> <p>Sec 6.2.4, Alternative 4 – Reduced Project Alternative, Pg 6-35: "Alternative 4 would provide the same amount of open space as the proposed Project, and parking would be provided within parking structures, on street, and within mixed-use buildings, as envisioned with buildout of the proposed Project. With significantly less residential units in this scenario, less open space would be needed. Consider investing and providing more space for other uses (e.g., commercial space that could include cultural or educational space for local community organizations, PDR or other industrial uses that would be appropriate given existing context).</p> <p>Sec 6.2.4, Alternative 4 – Reduced Project Alternative, Pg 6-36: "This would make the site less visible from many viewpoints than the proposed Project." All rendering views in DEIR are either located within project site or an aerial view, and do not give a sense of how buildings will relate with surrounding context or impact key view corridors. Requesting additional views to understand how Proposed Project, Maritime Reservation Scenario, and Alternatives would look and feel, as well as impact views from surrounding neighborhoods (Chinatown, Jack London, Downtown Oakland, Alameda) and key view corridors (880 and 980 Freeways, Market St, MLK Jr Way, Adeline St, Embarcadero West).</p> <p>Sec 6.2.4 Alternative 4 – The Reduced Project Alternative, Figure 6.5: Concern for tower creating shade on made promenade park open space in the morning hours. Consider another location for high rise in this scenario.</p>
3. Comparative Analysis	
4. Alternatives Considered but Not Analyzed in Detail in the EIR	
5. Environmentally	

Oakland A's Waterfront Ballpark District Project Draft EIR Comments, 04/27/2021

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Superior Alternative	
6. References	
7. Impact Overview and Growth Inducement	
1. Significant and Unavoidable Environmental Impacts	7.1. Significant and Unavoidable Environmental Impacts – Pg.7-1 et. seq.: <i>The Project will create significant impacts that cannot be mitigated, many of which are not described in the Draft EIR but are outlined above. The Wind Hazards, Air Quality, and Transportation Circulation impacts are discussed above. There are no overriding considerations that would justify creating gridlock in the adjacent neighborhoods and destroying the viability of the Port of Oakland and its future expansion. The comments regarding Chapter 2 and Chapter 4 are therefore incorporated herein as though fully set out.</i>
2. Significant Irreversible Environmental Effects	7.2.3. Changes in Land Use or Impacts that Commit Future Generations – Pg. 7-7: <i>The change in land use of Howard Terminal will harm the Port of Oakland which is currently using the terminal for maritime support uses, including truck parking. There are no identified replacement facilities for the truck parking, which is essential for the Port operations and the ability of the Port of Oakland to expand its facilities as the demand for Port operations continue. Trade with Asia continues to expand and the projected demand for services at the Port of Oakland has been projected by many studies. The Port of Oakland has few or no options for expansion because of the current land uses surrounding the Port.</i> The project creates a major conflict with the continued viability of the existing Commercial/Industrial use of the Port of Oakland Operations. Building 3,000 residential units, 35,000 persons capacity ballpark, and 1.5 million square feet of commercial use and 270,000 square feet of retail uses (hotels, restaurants, conference facilities, etc.) adjacent to the Port of Oakland will severely restrict the ability of the Port of Oakland to continue and grow as a viable Port Operations serving the West Coast and the nation. Building residential housing and other non-industrial uses adjacent to the Port will create numerous environmental conflicts impacting ongoing operations and future expansion. The numerous,

O-63-96

O-63-97

O-63-96 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 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 incorporates previous comments by reference. See Responses to Comments O-63-5 through O-63-20 pertaining to the comments referring to Chapter 2, and Responses to Comments O-63-45 through O-63-85 pertaining to those referring to Chapter 4.

O-63-97 See Consolidated Response 4.4, *Port Operations and Land Use Compatibility*. See also Consolidated Response 4.5, *Truck Relocation*, and Consolidated Response 4.8, *Chinatown*.

Oakland A's Waterfront Ballpark District Project Draft EIR Comments, 04/27/2021

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O-63-98 The comment's concerns regarding the impact of the Project on local traffic and commercial neighborhoods like Chinatown are acknowledged. As indicated in the Draft EIR (pp. 4.15-201 through 4.15-240), the Project could potentially conflict with policies related to traffic safety and the performance of the circulation system. To reduce these impacts, the Draft EIR contains several mitigation measures to reduce this impact; see Mitigation Measures TRANS-2a, TRANS-2b, TRANS-2c, TRANS-3a, and TRANS-3b on pp. 4.15-230 and 4.15-235 through 4.15-239.

O-63-97

O-63-98

	well-paid blue collar jobs, which are quickly becoming extinct, will be lost forever. Oakland Chinatown is still trying to understand how those Port impacts will spill over into our neighborhood. <i>Will a decrease in Port business affect our businesses? What alternatives are available for those Port activities and their connections to Chinatown?</i>
3. Growth-Inducing Impacts and Urban Decay	7.3.1. Growth Inducement – Pg. 7-7- to 7-9: <i>The Project will irreparably impact the direct and/or indirect growth potential of the Port of Oakland and Chinatown, and the other surrounding neighborhoods such as Old Oakland, Downtown, and Jack London Square. By creating gridlock for local traffic and the regional roadways that are already congested, the Project will impact local businesses.</i> <i>Commercial neighborhoods such as Chinatown, already struggling to survive, will struggle to compete with similar businesses in other neighborhoods which are more easily accessed in the Bay Area. The gridlock created by the ballpark congestion on game days will choke-off the Chinatown customer base. The City of Oakland will be required to substantially subsidize local businesses and/or implement other alternatives in order for them to survive.</i>
4. References	
8. Report Preparers	
1. Lead Agency	
2. Responsible Agency	
3. EIR Consultants	
Appendices	
1. Public Resources Code	
2. Notice of Preparation	

Oakland A's Waterfront Ballpark District Project Draft EIR Comments, 04/27/2021

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3. Oakland Major Development Projects List (March 2019)	
4. Aesthetics, Shadow and Wind Supporting Information	
5. Air Quality Supporting Information	
6. Biological Resources Supporting Information	
7. Cultural Resources Supporting Information	
8. Energy Supporting Information	
9. Geotechnical Conditions Report	
10. HYD (Part 1): Civil Infrastructure Technical Report	
10. HYD (Part 2)	
10. HYD (Part 3)	
11. Noise Supporting Information	See Comments in Chapter 4.
12. Construction Noise Reduction Plan	
13. Transportation	

Oakland A's Waterfront Ballpark District Project Draft EIR Comments, 04/27/2021

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Supporting Information (Part 1): Draft Transportation Management Plan (TMP)	
13. Transportation Supporting Information (Part 2): Existing Plus Full Buildout Non-Ballpark Development Plus Midday Game Results	
Other	

Oakland A's Waterfront Ballpark District Project Draft EIR Comments, 04/27/2021

O-64 Sailors' Union of the Pacific

COMMENT

RESPONSE

From: [Dave Conolly](mailto:dave.conolly@oaklandca.gov)
To: zvolimarc@oaklandca.gov
Subject: SUP- Letter of Opposition to Env Review File ER 18-016.pdf
Date: Tuesday, April 27, 2021 4:07:10 PM
Attachments: [SUP- Letter of Opposition to Env Review File ER 18-016.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,

I've been trying to file the attached public comments on the above reference file on the website link all day. Didn't work.

Copying you on it now.

Thanks,

Dave

O-64

COMMENT

RESPONSE



April 27, 2021

Oakland Planning Commission
City of Oakland
250 Frank Ogawa Plaza, Suite 3315,
Oakland CA 94612

Re: Oakland A's Waterfront Ballpark Environmental Review, Case File No. ER18-016

Dear Commissioners,

This is to object to the findings of the Draft Interim Environmental Review of the project to build a major league ballpark on the Oakland waterfront at Charles P. Howard Terminal. There are many reasons for our objection, including but not limited to the rejection of a Coliseum rebuild as a genuine alternative (especially on an environmental basis), the unquestionable traffic and transportation snarls, the serious public maritime and rail safety concerns, and other too rosy assessments of local impact. But the permanent loss of rare industrial waterfront terminal property is chief among our concerns.

The plan's maritime "accommodation" is related to a theoretical increase of turning basin size but it's a deliberate distraction from the far larger loss. Oakland is one of only three major container ports on the U.S. West Coast. As a vast engine of good jobs for regular workers, thus one of the last remaining generators of economic equality, a working port is about wages and paying bills, not entertainment. At best the report assumes a working port will persist and thrive on its own, without relationship to the actual waterfront terminals on which the work is done. Starting from a maritime blind spot the near and long-term ramifications of luxury real estate deal disguised as an event venue are unnecessary to the authors. But the port's present and future is degraded by the project, and to ignore it – as this report does – gambles with a sensitive and irreplaceable asset. It renders the report defective.

Maritime industrial waterfront capable of handling large oceangoing shipping is scarce and rapidly diminishing. Our present problem of widespread port congestion will be exacerbated could become a permanent feature of commercial maritime activity. Integral to more than the basic supply chain, the port is infrastructure fundamental to employment throughout the regional and national economy. Howard Terminal's loss will lead as it always does to the loss of ships, cargo, and jobs. We should not encourage ports both foreign and domestic to aid our demise. Nor

O-64-1 This is a general comment and does not identify specific issues other than general objections to the proposed Project and assertions of inadequacy. As a result, no specific response is provided here. See the following Consolidated Responses:

- Consolidated Response 4.4, *Port Operations and Land Use Compatibility*, regarding maritime concerns.
- Consolidated Response 4.6, *Rail Safety, Grade Crossing, and Grade Separation*, regarding rail concerns.
- Consolidated Response 4.10, *Alternative 2: The Off-Site (Coliseum Area) Alternative*, regarding the analysis of the Coliseum Area Alternative in the Draft EIR.
- Consolidated Response 4.22, *General Non-CEQA*, regarding the opposition to the proposed Project as stated in the comment.

Potential traffic-related impacts are also discussed in Draft EIR Section 4.15. The comment will be forwarded to the decision makers for their consideration during deliberations on the proposed Project.

O-64-2 See Consolidated Response 4.4, *Port Operations and Land Use Compatibility*.

O-64-1

O-64-2

O-64

COMMENT

RESPONSE

O-64-2

should we strive to capture the defunct maritime future that comes to ports not interested in ships, like the one just across the Bay.

Please reject the report and start over.

Sincerely,



DAVE CONNOLLY
President/Secretary-Treasurer

O-65 The Herbert Enterprise Group, LLC

COMMENT

RESPONSE

From: jabari.j.herbert
To: Evollmann@oaklandca.gov
Subject: EIR letter
Date: Wednesday, April 28, 2021 10:28:38 AM
Attachments: [Oakland A's EIR.com.merits.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.

Mr. Vollmann see attached letter

Jabari J. Herbert
Managing Member
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<http://www.theherbertenterprisegroupllc.com>

O-65

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

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

O-65-1

My name is Jabari J. Herbert and I live in West Oakland. I am owner and co-manager of the West Oakland Development Group, LLC, owner of 1357 5th Street, Oakland, CA 94607. As a 25+ resident of West Oakland I am 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, cultural impacts, and hazards which understate the costs of these impacts on my community.

O-65-2

I have been involved in West Oakland community development since June 1995. I am a founding member of the Alliance for West Oakland Development, Inc. and the Mandela Village Project at the West Oakland BART Station. We began acquiring and master planning West Oakland with our partnership with Bank of America and the parcel at 1357 5th Street Oakland, CA 94607. I am still a direct owner in this parcel and the years of community planning and building to create Mandela Village. This project creates significant negative cultural impacts to our work over the past 25 years.

O-65-3

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

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- O-65-1 This is a general comment that includes introductory remarks and serves to introduce the more specific comments that are responded to below. As a result, no specific response is provided here.
- O-65-2 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 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-65-3 See Consolidated Response 4.5, *Truck Relocation*.

O-65

COMMENT

RESPONSE



O-65-3

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.

O-65-4

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 they aren't planning to provide parking for, just conceptual ideas for bus lines, 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.

O-65-5

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.

O-65-6

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 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.

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O-65-4

See Consolidated Response 4.7, *Parking*.

O-65-5

Traffic congestion or measures of vehicular delay are not an environmental impact under CEQA per State CEQA Guidelines Section 15064.3. 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 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 Draft EIR Section 4.15.4, *Transportation Improvements* (pp. 4.15-86 through 4.15-149), which discusses the transportation improvements that would be incorporated into the Project, would be imposed as Project mitigation measures under CEQA, or are recommended for implementation before or during the Project's development. The improvements include both infrastructure and operational changes that support the Project's transportation needs; some may also support the Port and the surrounding neighborhoods within about 1 mile of the Project site. The infrastructure and operational changes reflect the City's desire through its plans and policies to prioritize transit, walking, and biking to the Project site to achieve the vehicle trip reduction goals for the Project.

Draft EIR Section 4.15.4, *Transportation Improvements*, has the following primary sections and page numbers addressing the transportation plan:

- Site Access Routes and Circulation Overview (pp. 4.15-86 through 4.15-93).
- Railroad Crossing Improvements (pp. 4.15-93 through 4.15-94).
- Off-Site Transportation Improvements (pp. 4.15-94 through 4.15-98).
- Graphics of Off-Site Transportation Improvements (pp. 4.15-99 through 4.15-116).
- Description of Corridor Improvements (pp. 4.15-117 through 4.15-133).
- Collisions and Improvements (pp. 4.15-133 through 4.15-136).
- Transportation Management for Ballpark (pp. 4.15-137 through 4.15-143).
- Transportation Management for Non-Ballpark (pp. 4.15-143 through 4.15-148).

O-65

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- Considered and Discarded Strategies (pp. 4.15-148 through 4.15-149).

Besides the CEQA analysis of the Project (see Draft EIR Sections 4.15.6, 4.15.7, and 4.15.8), the City of Oakland as part of the Project analysis requested a detailed intersection operation analysis, which, while not required for CEQA, is provided for informational purposes. The results informed the transportation improvements described in Section 4.15.4. The intersection operation analysis is documented in Draft EIR Appendix TRA.3.

The City also requested that a draft Transportation Management Plan (TMP) be prepared for ballpark events and be provided in the Draft EIR (See Appendix TRA.1), and that the TMP (and the TDM Plan for non-ballpark development) be evaluated to determine whether the plans contain a sufficient number of improvements and strategies to achieve a 20 percent reduction in vehicle trips over conditions without a plan. The effectiveness analysis is provided in Draft EIR Appendix TRA.2.

In addition, the City requested completion of a transit analysis (see Appendix TRA.6) to identify recommendations to accommodate additional transit usage by the Project.

O-65-6 See Consolidated Response 4.12, *Affordable Housing*, and Consolidated Response 4.13, *Gentrification and Indirect Housing Displacement*.

O-65

COMMENT

RESPONSE



O-65-6

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.

I am 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.

O-65-7

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-65-8

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,

Jabari J. Herbert
Managing Member
The Herbert Enterprise Group, LLC
1305 Franklin Street 310
Oakland, CA 94612

401 Roland Way • Suite 205 • Oakland, CA 94621

O-65-7

As discussed in Draft EIR Section 4.8.2, *Regulatory Setting*, under *Land Use Covenants*, and explained further 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 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 would require approval by DTSC before the start of construction to account for the changes to the Project site.

The substantive requirements of these replacement documents would be similar to those of the existing documents, but would be tailored to ensure protections appropriate for the types of anticipated construction activities and uses, including allowing residential use (which is currently prohibited) under specified conditions. Similar to the existing plans, the remediation plans 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 the 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 DTSC and the chief 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 DTSC and the chief building official have approved the various actions required by the mitigation measures.

O-65-8

This is a general comment and does not identify specific issues other than general assertions of inadequacy. As a result, no specific response is provided here. Required cleanup actions and mitigation are discussed in Draft EIR Section 4.8, *Hazards and Hazardous Materials*; and traffic 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-65

COMMENT

RESPONSE

www.theherbertenterprisegroupllc.com



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O-66 International Longshore and Warehouse Union Local 91

COMMENT

RESPONSE

O-66-1 See Consolidated Response 4.4, *Port Operations and Land Use Compatibility*.

From: [Christine Semenero](#)
To: [Jillan Feys-Money](#)
Subject: Fwd: Draft EIR For Oakland waterfront ball park district at Howard Terminal.
Date: Monday, May 10, 2021 2:24:12 PM

Sent from my iPhone

Begin forwarded message:

From: Christine Semenero <csonthedock@gmail.com>
Date: April 26, 2021 at 4:22:00 PM PDT
To: ILWU Local 91 <ilwu91@yahoo.com>
Subject: Draft EIR For Oakland waterfront ball park district at Howard Terminal.

Peterson Vollmann
City of Oakland Bureau of planning
250 Frank H Ogawa Plaza, Suite 2214
Oakland, CA 94612

To the city planner,

On behalf of local #91 and its members we are urging all city planners to protect our working waterfront. Oakland is the third largest port on the west coast. We must have access to all available port property for the Maritime industry.

Howard Terminal is usable maritime property, do not mix un-used with usable as described in the DEIR project description. The Oakland A's ball park and it's planned luxury condominium development can easily remain at its current location. The Oakland A's can use this development to improve the existing community and continue to provide jobs for the current residence.

Port property needs to be preserved for the Maritime industry. The port cannot be moved or replicated elsewhere.

Local #91

Sent from my iPhone

O-66-1

O-67 Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun

COMMENT

RESPONSE

From: [Vollmann, Peterson](#)
To: [Jillan Feys-Minay](#)
Subject: Fw: Board of Pilot Commissioners
Date: Tuesday, May 4, 2021 8:31:04 AM
Attachments: [BOPC DEIR comments.pdf](#)

Jill-

I just received this DEIR comment letter last night.

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: Manasse, Edward <EManasse@oaklandca.gov>
Sent: Monday, May 3, 2021 6:34 PM
To: Vollmann, Peterson <PVollmann@oaklandca.gov>
Subject: FW: Board of Pilot Commissioners

Edward Manasse, Deputy Director / City Planner | City of Oakland | Bureau of Planning | 250 Frank H. Ogawa, Suite 3315 | Oakland, CA 94612 | Phone: (510) 238-7733 | Fax: (510) 238-6538 | Email: emanasse@oaklandca.gov | Website: www.oaklandca.gov

* COVID-19 Update: Please check our webpage for regular updates.

From: Garfinkle, Allen@BOPC [mailto:Allen.Garfinkle@bopc.ca.gov]
Sent: Friday, April 30, 2021 2:35 PM
To: Manasse, Edward <EManasse@oaklandca.gov>
Subject: Board of Pilot Commissioners

[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 day Mr. Manasse,

Attached please find the Board of Pilot Commissioner comments on the draft EIR for the Howard Terminal Ballpark project.

While I realize the deadline for submitting comments was April 27th, 2021, due to a clerical error in our office, this letter was not submitted in the time frame for comments. I am sending this to you in any case, hoping that it can be considered at some point.

O-67

COMMENT

RESPONSE

Thank you.

Respectfully,

Allen Garfinkle
Executive Director

Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun
660 Davis Street, San Francisco, California 94111

allen.garfinkle@hopc.ca.gov

Phone: 415-397-2253

Fax: 415-397-9463

O-67

COMMENT

RESPONSE

State of California
Board of Pilot Commissioners for the Bays of
San Francisco, San Pablo, and Suisun
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Govin Newsom, Governor



April 23, 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 Board of Pilot Commissioners for the Bays of San Francisco, San Pablo, and Suisun (Board) submits this comment on the Draft EIR's Mitigation Measure LUP-1a: Boating and Recreational Water Safety Plan and Requirements. The Board is the state agency that trains, licenses, and exercises regulatory supervision over the pilots who navigate vessels in the Oakland Inner Harbor adjacent to the proposed ballpark. The Board's principal function is to ensure the safe navigation of piloted vessels within the pilotage grounds subject to the Board's jurisdiction.

Mitigation Measure LUP-1a requires development of a safety protocol for boating and water recreation adjacent to the project site. The Draft EIR provides that the protocol "shall specify measures intended to minimize conflicts with maritime navigation resulting in safety hazards and ship delay." The first paragraph of the mitigation measure provides that the Harbor Safety Committee of the San Francisco Bay Region is one of six approving entities that must approve the protocol initially proposed by the project sponsor. Farther down page 4.10-38, the mitigation measure also provides that the "approving parties" shall meet periodically to review "the effectiveness of the protocol in preventing non-compliant boating activity, shipping delays, and water safety hazards." Further, the measure requires the "approving parties" to "make good faith efforts to regularly revise the initial protocol based on the effectiveness and feasibility of the protocol in preventing noncompliant boating activity, shipping delays and water safety hazards."

The Board's concern is that the second reference to "approving parties," at the bottom of page 4.10-38, calls out only three entities as being "approving parties," not the six that are listed in the first paragraph of the mitigation measure, higher up on the same page. That first paragraph lists the project sponsor, the City of Oakland, the Port of Oakland, the San Francisco Bay Area Water Emergency Transportation Authority (WETA), the Harbor Safety Committee of the San Francisco Bay Region, and the U.S. Coast Guard as those who must approve the initial protocol. Without explanation, the last paragraph on page 4.10-38 lists only three entities as approvers of the initial protocol: "the Project sponsor, the City of Oakland, and the Port of Oakland (collectively, the 'Approving Parties')." And it is only these three entities that, reading this latter

O-67-1 See Consolidated Response 4.4, *Port Operations and Land Use Compatibility*. The City has clarified the Harbor Safety Committee's role as a "Consulting Agency" for the protocol in Mitigation Measure LUP-1a (see Consolidated Response 4.4 for the corresponding text changes to the Draft EIR).

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language literally, are charged with undertaking periodic review of the protocol’s effectiveness and making any revisions to the initial protocol.

The Board asks that the mitigation measure make clear that the Harbor Safety Committee of the San Francisco Bay Region is one of the “approving parties,” and that it is charged both with approving the initial protocol and charged as well with periodically reviewing the protocol for effectiveness and joining in any future revisions of the protocol.

The Harbor Safety Committee comprises various Bay Area maritime stakeholders, including the San Francisco Bar Pilots, the U.S. Coast Guard, WETA, commercial tug and ship operators, and recreational boaters. The Harbor Safety Committee meets frequently to discuss matters bearing on safe navigation and has historically formulated suggested policy and guidance for transmission to concerned agencies. The Committee receives diverse input from entities concerned with all aspects of commercial and recreational navigation on the Bay. Accordingly, the Board respectfully requests that Mitigation Measure LUP-1a expressly provide that the Harbor Safety Committee shall be included in all three aspects of the protocol: initial adoption of the protocol, periodic reviews of the protocol’s effectiveness, and approval of any future revisions of the protocol.

Thank you for consideration of the Board’s views on this matter.

Sincerely,



Allen Garfinkle
Executive Director

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