CHAPTER 5
Responses to Individual Comments

5.0 Introduction

This chapter includes copies of the written comments received electronically via **https://comment-tracker.esassoc.com/oaklandsportseir/index.html** by email, or by mail during the public review and comment period on the Draft EIR. Specific responses to the individual comments in each correspondence are provided side-by-side with each letter.

As described in Chapter 3, *Roster of Commenters*, each correspondence is identified by an alphabetic designation that corresponds to the category of commenter, such as "A" for public agencies, and a number follows the alphabetic designation to designate the sequence of the comment submissions (e.g., "A-7" for the seventh agency comment letter). Specific comments within each correspondence also are identified by a numeric designator that reflects the numeric sequence of the specific comment within the correspondence (e.g., "A-7-3" for the third comment in Comment Letter A-7).[1]

Responses focus on comments that pertain to the adequacy of the analysis in the EIR or to other aspects pertinent to the potential effects of the Project on the environment pursuant to CEQA. Comments that address topics beyond the purview of the EIR or CEQA are noted as such for the public record. Where comments have triggered changes to the Draft EIR, these changes appear as part of the specific response and are consolidated in Chapter 7, *City-Initiated Updates and Errata to the Draft EIR*, where they are listed in the order that the revision would appear in the Draft EIR document. Some of the topics raised are addressed in the consolidated responses in Chapter 4, *Consolidated Responses,* as referenced in the responses below.

[1] Some submissions are separated into parts due to the large size of the submission. This applies to submissions O-29, O-57, I-307, I-311, and I-332. The parts of these submissions are coded slightly differently; for example, submission O-29 contains five parts – O-29 (Part 1), O29-1 (Part 2), O29-2 (Part 3), O29-3 (Part 4), and O29-4 (Part 5). As a result, Comment "O29-2-3" is designated as the third comment in Part 3 of the submission.

5.1 Public Agencies

A-1 California Highway Patrol (CHP)

COMMENT RESPONSE

From: Perea, Stephen@CHP
To: pvollmann@oaklandca.gov
Cc: Novosel, Michael@CHP; Lopez, Steve@CHP; Enciso, Blanca@CHP; state.clearinghouse@opr.ca.gov
Subject: EIR SCH# 2018112070/ Review and Response
Date: Friday, April 9, 2021 12:33:53 PM
Attachments: MX-5070V_20210405_183626.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 Mr. Vollmann,

Please see attached Environmental Document Review and Response regarding the proposed Oakland A's Waterfront Ballpark.

Regards,

Steve

Captain Stephen Perea
Commander
California Highway Patrol, Oakland Area
Office: (510) 457-2875
Cell: (707) 373-5994

"The future doesn't belong to the light-hearted. It belongs to the brave. – Ronald Reagan

A-1

COMMENT

RESPONSE

State of California-Transportation Agency GAVIN NEWSOM, Governor

DEPARTMENT OF CALIFORNIA HIGHWAY PATROL
3601 Telegraph Avenue
Oakland, CA 94609
(510) 450-3821
(800) 735-2929 (TT/TDD)
(800) 735-2922 (Voice)

April 5, 2021

File No.: 370.17274

Peterson Vollmann
City of Oakland
250 Frank H. Ogawa Plaza, Suite 3315
Oakland, CA 94612

Subject: SCH #2018112070 – Oakland Waterfront Ballpark District

The Oakland Area of the California Highway Patrol recently received the referenced 'Notice of Completion' environmental impact document from the State Clearinghouse (SCH).

A-1-1

Our concerns relate to the proposed construction of a 35,000-person, open-air waterfront multi-purpose Major League Baseball (MLB) ballpark, 3,500-person, performance venue and up to 3,000 residential units. The location of these proposed projects is just south of Interstate I-880, I-980, and I-80. At this location, these interstates serve as major arteries between north and south Alameda County residents, and the cities of Oakland and San Francisco. At full buildout, the proposed project plans to have a "maximum of approximately 8,900 total parking spaces," to be shared amongst the two venues. The current Oakland A's stadium has approximately 11,000 parking spots as well as direct access from Bay Area Rapid Transit (BART), into the stadium, which the new proposed location does not. Additionally, the Port of Oakland, which is located just west of the proposed construction site is served by I-880 and I-80 and is the 5th busiest port in the United States.

Based on the increased number of vehicles associated with the proposed development, lack of parking and public mass transit, this project will have a negative impact on Department operations due to increased traffic congestion, response times, collisions, enforcement activities, and related service calls.

If you have any additional questions, you may contact Lieutenant Mike Novosel at (510) 450-3821.

Sincerely,

S. D. PEREA, Captain
Commander
Oakland Area

Enclosure

Safety, Service, and Security *An Internationally Accredited Agency*

A-1-1 Traffic congestion or measures of vehicular delay are not an environmental impact under CEQA per State CEQA Guidelines Section 15064.3. Potential direct impacts to public services in the Draft EIR are discussed relative to potential 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, as directed by the City of Oakland's *CEQA Thresholds of Significance*. The Project could have a significant impact on public services if: (1) it would require the construction of new or physically altered governmental facilities in order to maintain acceptable levels of public services; and (2) the construction or alteration of such facilities would result in a substantial adverse physical impact on the environment (Draft EIR p. 4.13-22). Accordingly, traffic congestion in relation to CHP response times and enforcement activities are not subject to CEQA. This comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft EIR that would require response pursuant to 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. Additional detail on the Project's transportation characteristics and their relation to the CHP is provided below:

The proposed Project would redevelop a site within a Planned Development Area (PDA) included in Plan Bay Area 2040, the regional plan prepared by the Metropolitan Transportation Commission (MTC), and would undoubtedly result in additional investments and activities on the Project site. However, the Project would be designed to reduce vehicle trips below what would normally be expected from a project of the same size/scale. As described on Draft EIR p. 4.15-80, at buildout the proposed Project would provide 2,000 parking spaces on-site (3,500 spaces at opening day) for the ballpark, compared to 9,100 parking spaces at the Coliseum. With substantially less parking for the proposed ballpark, attendees would be more likely to use one of the three BART stations, each within about 1 mile of the Project site, compared to the Coliseum where there is substantially more parking and a single BART station. Other transit options for the Project include 12 local AC Transit bus lines the Broadway "B" shuttle all within a 10-minute walk, a ferry terminal within about 1,000 feet of the Project, and an Amtrak rail station.

Providing less parking for the ballpark under the proposed Project is intentional, to disperse automobile traffic to the many underutilized parking garages within 1 to 1.5 miles of the Project site. There is adequate parking

A-1

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supply within 1 to 1.5 miles of the Project site to fully accommodate ballpark attendees who would drive. This approach would minimize traffic congestion by dispersing it throughout the Downtown Oakland street grid, rather than concentrating traffic at a single location like the Coliseum site. Drivers would use the freeway access nearest to their reserved parking spaces: I-980 interchanges at 17th/18th, 11th/12th, and Jackson Streets; and I-880 interchanges at Union, Adeline, Market, Broadway, Jackson, and Oak Streets. The proposed Project would also provide limited on-site parking for the ballpark and the automobile traffic generated by these spaces would access I-880 via 5th and 6th Streets while traffic destined for I-980 would access the freeway via Brush and Castro Streets. With the Project's ballpark event traffic dispersed over 9 freeway on- and off-ramps the level of traffic congestion at any one location will be substantially less than experienced at the Coliseum and likely result in less impact to CHP services compared to similar events at the Coliseum.

A Transportation Management Plan (TMP) to manage transportation before, during, and after events would be required by Mitigation Measure TRAN-1b, and a draft TMP is provided in Appendix TRA.1. The CHP is identified in the draft TMP as a key stakeholder in coordinating ballpark events. A required component of the TMP would be a Parking Management Plan (PMP), a draft of which is provided in the Additional Transportation Reference Materials (*Toward a High-Performance Parking Management System for a Thriving Oakland: A Plan*).[1] The PMP would implement an advanced parking reservation system that ballpark attendees would use to reserve a parking space prior to an event. In this way, attendees would drive directly to their reserved space rather than driving and circulating in neighborhoods looking for an available space. In addition, to protect residential neighborhoods and limit the duration of parking by non-residents, residential parking permits would be provided; for other on-street parking in the area would be metered, with the City able to control meter duration to manage the number of ballpark attendees who park on-street. See also Consolidated Response 4.7, *Parking*.

The 6,800 parking spaces that would be provided for the non-ballpark development at buildout would be provided at similar ratios of parking to existing development in Downtown Oakland and West Oakland, and a Transportation Demand Management (TDM) program to reduce vehicle trips

[1] Primus Consulting, 2020. Toward a High-Performance Parking Management System for a Thriving Oakland: a Plan, January 2020.

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is required by Mitigation Measure TRANS-1a. To promote non-automobile travel, Mitigation Measure TRANS-1c includes construction of a transportation hub adjacent to the Project site that would serve at least three bus routes including the 72, 72M, and 72R (12 AC Transit buses per hour) to support non-automobile travel to and from the Project site. The hub could be expanded on ballpark event days to handle up to six shuttle bus stops, and each shuttle stop could handle up to 12 shuttles per hour.

Overall, while the Project proposes less ballpark parking than exists at the Coliseum, the reduced parking would encourage a shift to transit, and the Project includes a TMP and Transportation Demand Management (TDM) program that would ensure vehicle trip reductions. The TMP and TDM program called for in Draft EIR Mitigation Measures TRANS-1a and TRANS-1b would be living documents in that the trip reduction programs would be modified as necessary to achieve the 20% vehicle trip reductions. In addition, the TMP called for in Mitigation Measure TRANS-1b would also be amended if necessary to address traffic safety, congestion, and other possible outcomes referenced in the comment.

A-2 California Department of Fish and Wildlife (CDFW)

COMMENT

RESPONSE

From: Aarreberg, Arn@Wildlife
To: pvollmann@oaklandca.gov
Cc: Ota, Becky@Wildlife; Brenda Blinn; Grefsrud, Marcia@Wildlife; Amezcua, Fleyma@BCDC; Fernandez, Xavier@Waterboards; Wildlife CEQA Comment Letters; state.clearinghouse@opr.ca.gov
Subject: CDFW Comment Letter - Waterfront Ball District at Howard Terminal DEIR
Date: Monday, April 12, 2021 5:20:00 PM
Attachments: ltr_DEIR_WaterfrontBallpark_210412.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.

Mr. Vollman,

Please see attached comment letter regarding the Waterfront Ballpark District at Howard Terminal Draft Environmental Impact Report (sch. Number 2018112070). Please let me know if you have any questions.

Arn Aarreberg
Environmental Scientist
Marine Environmental Review and Water Quality Project
California Department of Fish and Wildlife - Marine Region
3637 Westwind Blvd., Santa Rosa, CA 95403
Office: (707) 576-2889 Cell Phone: (707) 791-4195
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www.wildlife.ca.gov

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SaveOurWater.com

A-2

COMMENT

RESPONSE

State of California – Natural Resources Agency
DEPARTMENT OF FISH AND WILDLIFE
Marine Region
1933 Cliff Drive, Suite 9
Santa Barbara, CA 93109
www.wildlife.ca.gov

GAVIN NEWSOM, Governor
CHARLTON H. BONHAM, Director

April 12, 2021

Peterson Vollmann
City of Oakland
250 Frank H. Ogawa Plaza, Suite 2114 Bureau of Planning
Oakland, CA 94612
pvollmann@oaklandca.gov

Dear Mr. Vollmann:

Subject: Waterfront Ballpark District at Howard Terminal Draft Environmental Impact Report (SCH Number 2018112070)

The California Department of Fish and Wildlife (Department) received a Draft Environmental Impact Report (DEIR) from the City of Oakland for the Project pursuant the California Environmental Quality Act (CEQA) and CEQA Guidelines.[1]

A-2-1

Thank you for the opportunity to provide comments and recommendations regarding those activities involved in the Project that may affect California fish and wildlife. Likewise, we appreciate the opportunity to provide comments regarding those aspects of the Project that the Department, by law, may be required to carry out or approve through the exercise of its own regulatory authority under the Fish and Game Code.

DEPARTMENT ROLE

A-2-2

The Department is California's **Trustee Agency** for fish and wildlife resources and holds those resources in trust by statute for all the people of the state. (Fish & G. Code, Section711.7, subd. (a) & 1802; Pub. Resources Code, § 21070; CEQA Guidelines Section 15386, subd. (a).) The Department, in its trustee capacity, has jurisdiction over the conservation, protection, and management of fish, wildlife, native plants, and habitat necessary for biologically sustainable populations of those species. (*Id.*, Section 1802.) Similarly, for purposes of CEQA, the Department is charged by law to provide, as available, biological expertise during public agency environmental review efforts, focusing specifically on projects and related activities that have the potential to adversely affect fish and wildlife resources. The Department is also responsible for marine biodiversity protection under the Marine Life Protection Act in coastal marine waters of California, and ensuring fisheries are sustainably managed under the Marline Life Management Act.

The Department is also submitting comments as a Responsible Agency under CEQA. (Pub. Resources Code, § 21069; CEQA Guidelines, § 15381). The Department may need to exercise regulatory authority as provided by the Fish and Game Code. Implementation

[1] CEQA is codified in the California Public Resources Code in section 21000 et seq. The "CEQA Guidelines" are found in Title 14 of the California Code of Regulations, commencing with section 15000.

A-2-1 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. 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.

A-2-2 The City acknowledges CDFW's role as a Trustee Agency and a Responsible Agency (for its role in having approval responsibility for the sound attenuation reduction and monitoring program [Mitigation Measure BIO-3] and required concurrence with modifications to nest buffer distances [Mitigation Measures BIO-1a and BIO-1c]). The first part of this comment is a summary of CDFW's Department's jurisdiction and authority. The comment also contains a summary of the proposed Project. This comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft EIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Project.

A-2

COMMENT

of the Project as proposed may result in take[2] as defined by State law of any species protected under the California Endangered Species Act (Fish & Game Code, § 2050 et seq.), related authorization as provided by the Fish and Game Code will be required. Pursuant to our jurisdiction, the Department has the following comments and recommendations regarding the Project.

PROJECT DESCRIPTION SUMMARY

Proponent: The Oakland Athletics Investment Group, LLC.

A-2-2 **Objective:** The purpose of the proposed Project is to construct a new waterfront Major League Baseball ballpark with mixed use development including residential units, retail/office space, indoor venue, hotels space, and public open space. The proposed Project would demolish all existing structures with the exception of four shipping container cranes and an existing wharf. Work within the waters of San Francisco Bay may occur at the existing wharf and existing outfalls.

Location: The Project site is located on the Oakland waterfront at the Charles P. Howard Terminal within the City of Oakland.

MARINE BIOLOGICAL SIGNIFICANCE

The San Francisco Bay-Delta is the second largest estuary in the United States and supports numerous aquatic habitats and biological communities. It encompasses 479 square miles, including shallow mudflats. This ecologically significant ecosystem supports both state and federally threatened and endangered species and sustains important commercial and recreational fisheries.

State and Federally Listed and Commercially/Recreationally Important Species Protected species under the State and Federal Endangered Species Acts that could potentially be present near Project activities include:

A-2-3

- Chinook salmon (*Oncorhynchus tshawytscha*), state and federally threatened (Spring-run), state and federally endangered (Winter-run)
- Steelhead (*Oncorhynchus mykiss*), federally-threatened (Central California Coast and Central Valley ESUs)
- Green sturgeon (*Acipenser medirostris*), federally-threatened (southern DPS)
- Longfin smelt (*Spirinchus thaleichthys*), state-threatened
- Brown pelican (*Pelecanus occidentalis californicus*), state fully protected
- California least tern (*Sternula antillarum browni*), state and federally endangered and state fully protected
- American peregrine falcon (*Falco peregrines anatum*), state fully protected

[2] Take is defined by Fish and Game Code Section 86 as to "hunt, pursue, catch, capture, or kill, or attempt to hunt, pursue, catch, capture, or kill."

RESPONSE

A-2-3 The same species identified in the comment as state and federally listed and Commercially/Recreationally Important Species Protected are identified in the Draft EIR analysis as among special-status species with at least a moderate potential to be present in the Project area. Each of these species and their known presence in the terrestrial and marine study areas are discussed in detail in the environmental setting on Draft EIR pp. 4.3-15 through 4.3-17 (bird species) and pp. 4.3-19 through 4.3-21 (fish species). 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.

A-2

COMMENT

Several species with important commercial and recreational fisheries value that could potentially be impacted by Project activities include:

A-2-4

- Dungeness crab (*Cancer magister*),
- Pacific herring (*Clupea pallasii*),
- Rockfish (*Sebastes* spp.),
- California halibut (*Paralichthys californicus*)
- Surfperches (*Embiotocidae*).

COMMENTS AND RECOMMENDATIONS

The Department offers the comments and recommendations below to assist the City of Oakland in adequately identifying and/or mitigating the Project's significant, or potentially significant, direct and indirect impacts on fish and wildlife (biological) resources. Editorial comments or other suggestions may also be included to improve the document.

A-2-5

I. In-Water Work Windows
The Department recommends a number of in-water work windows specific to various species that inhabit San Francisco Bay. The work windows are based on Department and other partner agency input to the San Francisco Bay Long Term Management Strategy program. Although this program is more focused on dredging work, the Department applies these same work windows to a broader range of in-water work activities. The Department recommends the following in-water work windows for the Project.

- The work window for salmonids is June 1 through November 30.
- The work window for Pacific herring is March 16 through November 30.
- The work window for least terns is August 1 through February 28.

The Final Environmental Impact Report (FEIR) should discuss the proposed Project timeline in detail and highlight whether any conflicts could arise with these work windows.

A-2-6

II. Impacts to Marine State Listed and Commercially/Recreationally Important Species
The Department recognizes that in-water work associated with the stormwater outfalls and wharf restoration may not be needed according to the DEIR. However, the Department noted that the DEIR states that some repair work to the wharf may be needed. If in-water work is to occur, the Department has the following concerns regarding potential impacts to state listed and commercially/recreationally important species. Depending on the proposed methods and time of the year work is conducted, there is potential for take of state listed species to occur. The Department may recommend that a 2081(b) Incidental Take Permit be issued for the Project. Additionally, in-water work could impact habitat for spawning fish in which case further

RESPONSE

A-2-4 Potential construction impacts on aquatic species are primarily limited to the hydroacoustic effects of pile installation and the short-term increases in turbidity (discussed in detail under Impact BIO-3). The potential for operational impacts of the proposed Project on aquatic species would be extremely limited because no new overwater structures or midday shadows over water would result from the Project. Additionally, no eelgrass or nursery habitat for the recreational and commercial fisheries occur within the Project site or are documented or known to occur within the Project's marine study area. Because the marine species listed above share the habitat and life history of aquatic species already considered within the Draft EIR, no additional impacts beyond those discussed in the document would be expected to result.

A-2-5 In response to other comments on the Draft EIR, the text of Mitigation Measure BIO-3 has been amended to require the Project sponsor to develop a sound attenuation reduction and monitoring program meeting specific standards, rather than a "plan" prior to the onset of construction. Mitigation Measure BIO-3 on Draft EIR p. 4.3-49 has been amended as follows:

Mitigation Measure BIO-3: Management of Pile Driving in the Water Column for Protection of Fish and Marine Mammals

Prior to the start of any in-water construction that involves the construction of piles, the Project sponsor shall develop a NOAA Fisheries and CDFW-approved sound attenuation reduction and monitoring ~~plan~~ program to avoid significant impacts to special status fish and marine mammals, including acute damage or mortality. This ~~plan~~ program shall provide detail on the sound attenuation system, detail methods used to monitor and verify sound levels during pile driving activities, and all BMPs to be taken to reduce impact hammer and/or vibratory hammer pile-driving sound in the marine environment to an intensity level of less than 183 decibels (dB). The ~~plan~~ program shall incorporate but not be limited to the following:

- Steel piles shall be installed using vibratory hammers. Impact hammers shall only be used after piles have reached the point of refusal with vibratory methods.
- Any impact hammer installed steel piles shall be conducted in strict accordance with the Long Term Management Strategy (LTMS)

A-2

COMMENT

RESPONSE

defined work windows of June 1 to November 30, during which periods the presence of special-status species in the Project Site is expected to be minimal. (USACE et al., 2001).

- A contingency plan using bubble curtains or an air barrier will be implemented to attenuate sound levels to acceptable levels.
- Other BMPs may be implemented in coordination with NOAA Fisheries or CDFW, such as working at low tides, reducing steel-to-steel contact through the use of a wooden block, or use of double-walled piles, as appropriate to reduce underwater noise levels to acceptable levels.

This required program would include adherence to the Long Term Management Strategy (LTMS) work windows for in-water work within San Francisco Bay. The LTMS windows were designed to provide guidance on how to avoid impacts on special-status aquatic species within the San Francisco Bay/Sacramento–San Joaquin Delta (Delta) by timing in-water construction to avoid periods in which these species may be present in different geographic regions. Because no spawning or rearing habitat exists for Pacific herring within the Project's marine study area, only adherence to the salmonid in-water work window is necessary. By adhering to this in-water work window, the potential for impacts on aquatic species from construction would be reduced to less than significant.

A-2-6 The comment correctly notes that in-water work associated with outfalls and wharf restoration may result in significant impacts unless protective measures for aquatic species are implemented. (See the discussion of Impact BIO-3 starting on Draft EIR p. 4.3-46.) To avoid hydroacoustic impacts on aquatic species, the proposed Project would be required to adhere to the conditions outlined in Mitigation Measure BIO-3. These include the development of a NOAA and CDFW-approved sound attenuation reduction and monitoring program. Elements within the program would require adherence to established in-water work windows for the San Francisco Bay and include measures aimed at reducing underwater noise levels generated during pile installation. If necessary, the Project sponsor would be required to obtain incidental take authorization from NOAA Fisheries and CDFW.

Project construction would be unlikely to result in impacts on Pacific herring spawning habitat. No eelgrass is present within the study area or immediate

A-2

COMMENT

RESPONSE

vicinity, and thus, spawning or juvenile eelgrass would be unlikely to be affected. While herring often use in-water pilings for spawning, no records of spawning, as documented within CDFW's annual monitoring program, have been found along the portion of the waterfront in the vicinity of the Project site. Thus, no impacts on herring spawning are expected to result from construction or operation of the proposed Project.

A-2

COMMENT

RESPONSE

consultation with the Department would be recommended. The Department has concerns regarding the following:

A-2-6

- Hydroacoustic impacts caused from impact pile driving during wharf rehabilitation and stormwater outfall construction.
- Construction outside of approved work windows.
- Potential impacts to Pacific herring spawning habitat.

III. Impacts to State Fully Protected Birds and Raptors

A-2-7

American peregrine falcons and California least terns could be present in the general area of the Project. Although the minimization measures do address nesting impacts and monitoring, the Department has additional concerns regarding the potential impacts caused by firework detonations to these two species. The Department recommends that the 500-foot buffer of nesting birds, particularly nesting falcons and other raptors and terns, be further analyzed in the FEIR. The Project should consider adjusting this distance if monitoring indicates disturbance of the nest has occurred and/or new information becomes available suggesting detonations occur at greater distance from nesting falcons or terns.

ENVIRONMENTAL DATA

A-2-8

CEQA requires that information developed in environmental impact reports and negative declarations be incorporated into a data base which may be used to make subsequent or supplemental environmental determinations. (Pub. Resources Code, § 21003, subd. (e).) Accordingly, please report any special status species and natural communities detected during Project surveys to the California Natural Diversity Database (CNDDB). The CNNDB field survey form can be found at the following link: http://www.dfg.ca.gov/biogeodata/cnddb/pdfs/CNDDB_FieldSurveyForm.pdf. The completed form can be mailed electronically to CNDDB at the following email address: CNDDB@wildlife.ca.gov. The types of information reported to CNDDB can be found at the following link: http://www.dfg.ca.gov/biogeodata/cnddb/plants_and_animals.asp.

FILING FEES

A-2-9

The Project, as proposed, would have an impact on fish and/or wildlife, and assessment of filing fees is necessary. Fees are payable upon filing of the Notice of Determination by the Lead Agency and serve to help defray the cost of environmental review by CDFW/Department. Payment of the fee is required in order for the underlying project approval to be operative, vested, and final. (Cal. Code Regs, tit. 14, § 753.5; Fish & G. Code, § 711.4; Pub. Resources Code, § 21089.)

CONCLUSION

The Department appreciates the opportunity to comment on the DEIR for the Waterfront Ballpark District at Howard Terminal. If you have any questions or comments, please

A-2-7 See Consolidated Response 4.17 regarding bird impacts from firework displays, and the adequacy of the proposed 500-foot buffer between detonation sites and bird nests.

A-2-8 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 City would report observed special-status species and/or sensitive natural communities to the California Natural Diversity Database (CNDDB) if encountered during Project construction and operation when surveys for such species are required under the Project. For example, with implementation of Mitigation Measure BIO-1c: Peregrine Falcon Firework Display Surveys, Buffer, and Monitoring, observations of peregrine falcon would be reported to the CNDDB as required.

A-2-9 All required fees associated with filing the Notice of Determination will be paid. 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.

A-2

COMMENT

RESPONSE

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Peterson Vollmann
City of Oakland
April 12, 2021
Page 5

contact Arn Aarreberg, Environmental Scientist, Marine Region at (707) 791-4195, Arn.Aarreberg@wildlife.ca.gov or Marcia Grefsrud, Environmental Scientist, Bay-Delta Region at (707) 644-2812, Marcia.Grefsrud@wildlife.ca.gov.

Sincerely,

DocuSigned by:
[signature]
Craig Shuman, D. Env
Marine Regional Manager

ec: Becky Ota, Program Manager
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Habitat Conservation Program Branch CEQA Program Coordinator
California Department of Fish and Wildlife
ceqacommentletters@wildlife.ca.gov

State Clearinghouse (SCH No. 2018112070)
(state.clearinghouse@opr.ca.gov)

A-3 Alameda-Contra Costa Transit District (AC Transit)

COMMENT

Good morning,

Please find the attached letter from AC Transit, regarding the Draft EIR, Waterfront Ballpark District at Howard Terminal.

Thanks,

AC Transit

RESPONSE

A-3

COMMENT

RESPONSE

Alameda-Contra Costa Transit District — Michael Hursh, General Manager

April 16, 2021

City of Oakland (submitted electronically)

Re: **Draft Environmental Impact Report (EIR), Waterfront Ballpark District at Howard Terminal**

Dear Sirs/Madams:

Introduction: This letter transmits AC Transit's comments on the Draft EIR for the Waterfront Ballpark District at Howard Terminal. The EIR is being reviewed under a streamlined process created by Assembly Bill 734.

A-3-1 AC Transit is not yet supportive of the proposal to move the Athletics' ballpark to Howard Terminal. While we recognize the benefits of the central location, Howard Terminal should make it possible for fans to arrive by sustainable modes of transportation. We have significant concerns the transportation plan and proposed mitigations lack both detail and in particular how necessary transportation improvements and operations funding will be provided. The central location also allows construction of an entire new neighborhood near Downtown Oakland, with residential, office, retail, hotel and other uses. We understand that there is concern about effective reuse of the Coliseum site. However, the Coliseum site has excellent access for goods movement, and reuse should be possible.

A-3-2 **Parking:** At full buildout, the site would have 8,900 parking spaces—2,000 of which would be reserved for the ballpark and the remainder for the rest of the project. The Project anticipates starting with approximately 3,500 parking spaces for the ballpark at opening, then gradually reducing them to the 2,000-space target. This approach would require a travel model where—during popular games—most attendees would have to arrive by means other than driving. Some would presumably be expected to use parking space elsewhere in Downtown Oakland. At the Coliseum, 70-75% of attendees arrive by car, with 19-24% coming by BART. AC Transit hopes that Howard Terminal could meet or exceed this non-driving mode split.

A major project such as this raises several broad types of concern for AC Transit. One is the demand on AC Transit as a service provider. The other is the effect on existing and planned AC Transit service, and as previously mentioned a lack of developer commitment to provide funding for transit improvements as well as a long term commitment to provide operations funding.

A-3-1 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. To the extent the comment relates to the merits of the Project it is forwarded to the decision makers for consideration.

A-3-2 See Consolidated Response 4.7, *Parking*. See Consolidated Response 4.21, *AC Transit Congestion Impacts*.

A-3

COMMENT

AC TRANSIT AS A SERVICE PROVIDER

Shuttles: AC Transit is named in the EIR as a potential provider of supplemental game time transit service. This bus service would connect the ballpark with nearby BART stations, especially the 12th Street BART station.

We appreciate that the EIR considers AC Transit as a potential service provider. We have asked that Oakland and other cities consider AC Transit when the EIR includes shuttle service.

A-3-3

However, in this instance, we are unable to provide supplemental game day service. Weekday evening game times in particular occur at the same time as peak transit demand. Supplemental service would require that we purchase additional buses to provide the service. It will also require either new bus drivers or additional working hours for existing bus drivers. This need for drivers/driving hours would be exist not only for weeknight but also for weekend games. Other operating costs would also need to be funded by the developers.

BALLPARK IMPACTS ON AC TRANSIT

AC Transit Routings: The proposed routing of AC Transit bus service and the proposed bus hub on 2nd Street are consistent with discussions AC Transit has had with the City and other project stakeholders.

A-3-4

Street Improvements: The proposed street-level improvements are acceptable to AC Transit in conjunction with bus lanes discussed below.

Bus Lanes—Broadway: The EIR includes the extension of red bus only side running bus lanes on Broadway from 11th Street to 2nd Street. AC Transit supports this action on our busiest corridor. However, we are concerned that the lanes, as currently designed will not effectively support fast or reliable service. The lanes are designed with right turns across them at most intersections between 11th and 2nd. This will

A-3-5

create bus-car conflicts in this segment, which is already affected by traffic movements to and from the Alameda tubes. One approach would be removing the median in this section, to provide more room for bus lanes and other vehicle movements.AC Transit requests that the City work with the District to design effective, efficient bus lanes on Broadway.

Bus Lanes—7th/8th Street: Because of the high traffic volume which the ballpark project will bring, it is important to designate bus lanes to preserve the travel times for existing bus routes and to continue to provide reliable bus travel. The EIR shows bus lanes on Broadway from 2nd St. to 20th St., a mixture of existing and new lanes. However, despite AC Transit's previous request, no lanes are shown on 7th Street (or 7th & 8th as a couplet) east of Martin Luther King (boarding islands are noted to the west as part of

A-3-6

another project). In fact, on 7th St. at Adeline, the EIR recommends conversion of one travel lane in each direction to bike lanes. Indeed, Table 4.15-14 acknowledges that bus passengers will experience delays on 7th St. to West Oakland BART. AC Transit strongly recommends bus lanes on 7th Street between Broadway and West Oakland BART and on 7th and 8th between Broadway and Oak Street (Lake Merritt BART). These streets have some of the most frequent combined AC Transit service in the District and link critical Disadvantaged Communities to mobility options.

1600 Franklin Street - Oakland, CA 94612 - **TEL** (510) 891-4793 - www.actransit.org

RESPONSE

A-3-3 This comment expresses a concern about AC Transit's ability to provide supplemental ballpark event day service without funding to pay for additional buses and drivers.

As noted in the Draft EIR (p. 4.15-195), the supplemental shuttle service, if provided through Mitigation Measure TRANS-1b, could be provided by either AC Transit or a private operator. Transit service funding responsibilities, whether for supplemental game-day shuttles or for new AC Transit service, would be established through the Project's Conditions of Approval. It is noted that AC Transit has indicated that it is unable to provide supplemental game-day service at this time.

See also Consolidated Response 4.21, *AC Transit Congestion Impacts*.

A-3-4 This comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft EIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Project.

A-3-5 See Consolidated Response 4.21, *AC Transit Congestion Impacts*.

A-3-6 See Consolidated Response 4.21, *AC Transit Congestion Impacts*.

A-3

COMMENT

A-3-6 Adding game traffic, increased delays are likely on these streets. Among other problems, fans traveling by bus from Lake Merritt to the ballpark would be delayed. We request that the bus lanes be added as a traffic mitigation to this corridor.

A-3-7 **2nd and 3rd Street:** The EIR states that "The Transportation Hub on 2nd St. would connect to bus only lanes on Broadway." (4.15-119). Does this mean that there would be a fully - only path between the two? Given congestion likely to occur on game days – as well as year-round at full build-out, reliable access to the bus hub should be a priority and AC Transit recommends bus lanes on 2nd and 3rd streets between Jefferson and Broadway.

A-3-8 **Bus Stops at BART Stations:** The EIR anticipates shuttle service and other vehicular activities at the three nearby BART stations—12th St., Lake Merritt, and West Oakland. AC Transit is concerned about the potential impact of shuttle pick-up and drop-off on our non-ballpark service. There could be numerous additional vehicles seeking to use these bus stops.

Multiple AC Transit routes serve each of these stations. West Oakland and Lake Merritt are route terminals and layover points and are already being impacted by planned developments on those sites. 12th Street is the BART station with the most AC Transit service, and some routes lay over nearby. Loss of convenient bus stops with reliable operations at these stations could result in substantial delays and disruptions for AC Transit. The EIR should commit to providing well-located bus stops that allow reliable operations on all days, at the BART stations.

A-3-9 **Cost of Delays and Disruption to Regular Service:** In addition, regular bus service in the vicinity of the ballpark is likely to be delayed on game days. The City should institute a traffic control plan on game days which prioritizes transit operations. If transit operations are delayed, AC Transit requests funding to compensate additional costs.

Cost of New Regular Service: The EIR anticipates the creation of a new, high-density downtown neighborhood adjacent to the ballpark. We support this approach as a planning matter, but it will require additional transit service on both game days and non-game days. Transit service in North America does not recover its costs from fares, and therefore requires other forms of subsidy. AC Transit requests that operating subsidies to support new service be identified and committed for the life of the Ballpark.

A-3-10 **Transportation Management Plan and Transit Subsidies:** We support the EIR's requirement for a Transportation Management Plan (TMP) that will be in place by opening day. We are disappointed, however, that the initial plan does not cover transit costs for game attendees. Transit subsidies have proven effective in increasing transit mode share to sports and should be included here. The Chase Center—the Warriors arena in San Francisco—allows fans to ride SFMTA (Muni) for free with a game ticket. We believe a similar program should be instituted here. TDM programs should be put in place for employees and season ticket holders. AC Transit recommends transit subsidies be a part of the initial phase of the development as well as a requirement for future phases, including an EasyPass requirement for residents, commercial and office tenants. Some major developments in the service area charge transit fees for new buildings.

A-3-11 **Gondola:** We note that the EIR includes a gondola to the ballpark as a Variant. We are skeptical that the gondola can be built in this complex environment and will be able to provide a substantial number of trips

RESPONSE

A-3-7 The commenter recommends bus-only lanes on 2nd and 3rd Streets between Jefferson Street and Broadway to ensure reliable bus access during congested periods.

The curb-to-curb width on 2nd Street is 44 feet. Within this width there is one vehicular lane in each direction, one bike lane in each direction, and on-street parking in each direction. To provide bus-only lanes, the bike lanes and all of the on-street parking would need to be removed. Bike lane removal would be inconsistent with both the City's Bike Plan and the Draft Downtown Oakland Specific Plan. Bus-only lanes on 2nd Street are not identified in any planning documents reviewed for the consistency analysis in the Draft EIR. As such, providing bus lanes on 2nd Street would be inconsistent with planning documents.

The curb-to-curb width on 3rd Street is 56 feet. Within this width there is one vehicular lane in each direction and on-street angle parking. The City's Bike Plan and the Draft Downtown Oakland Specific Plan both call for protected bike lanes on the 3rd Street corridor. The planned protected bike lanes would physically separate auto/truck traffic from bicycle traffic providing more efficient vehicle flows with fewer conflicts between drivers and bicycle riders. Providing bus-only lanes on 3rd Street would require removal of all on-street parking and provision of striped bike lanes between the curb and the bus-only lanes, which represents a less safe and less comfortable facility for bicycle riders than protected bike lanes. Striped bike lanes would also be inconsistent with both the City's Bike Plan and the Draft Downtown Oakland Specific Plan. Bus-only lanes on 3rd Street are not identified in any planning documents reviewed for the consistency analysis in the Draft EIR. As such, providing bus lanes on 3rd Street would be inconsistent with planning documents.

See Mitigation Measure TRANS-1b, which would implement a Transportation Management Plan (TMP) to manage transportation systems before, during, and after ballpark events. One of the requirements in the mitigation measure is "enforcement of local access restrictions to limit circulation of vehicles other than local traffic within the neighborhoods adjacent to the Project site before, during, and after ballgames. A draft TMP is included in the Draft EIR (Appendix TRA.1), and AC Transit is identified as a key stakeholder to be consulted during plan implementation and ongoing plan management and monitoring to address transit operation issues that arise from ballpark events. Several strategies have also been identified in the draft TMP to prioritize transit operations on 2nd and 3rd Street when ballpark events occur. Traffic

A-3

COMMENT

RESPONSE

control strategies in the Draft TMP (see Chapter 11) would limit traffic on Jack London District streets west of Broadway to local traffic only before, during, and after ballpark events, and this action would optimize bus service between the Broadway bus-only lanes and the transportation hub on ballpark event days. Traffic control officers (or other personnel acceptable to the City) would manage the movement of people through intersections with high pedestrian flows to ensure that vehicular traffic, including buses, flows efficiently. Chapter 8 of the draft TMP addresses on-street parking management, which is intended to minimize vehicle recirculation as drivers look for available parking spaces. One of the strategies is to have time-limited meter parking (such as two-hour parking) enforced within several blocks of the Project site to ensure that parking is not used by attendees to a ballpark event. In consideration of the comment Mitigation Measure TRANS-1b (Page 4.15-196) is modified adding an additional mandatory requirement to establish the TMP intent regarding Traffic Control Officers:

> **25. Provide Traffic Control Officers or other personnel acceptable to the City of Oakland to manage pre- and post-event attendees to ensure safe and efficient access for all people traveling to and from ballpark events.**

Also see Consolidated Response 4.21*, AC Transit Congestion Impacts*.

A-3-8 See Consolidated Response 4.21, *AC Transit Congestion Impacts.*

A-3-9 The comment raises an economic issue, not an environmental issue, which is not subject to CEQA. The comment is acknowledged for the record and will be forwarded to the decision-making bodies as part of the Final EIR for their consideration in reviewing the Project and EIR. Please also see Consolidated Response 4.22 regarding non-CEQA issues. See also Consolidated Response 4.21, *AC Transit Congestion Impacts*.

A-3-10 The commenters request to have the Project Sponsor pay transit subsidies is consistent with the Draft EIR Mitigation Measure TRANS-1a which would implement a Transportation Demand Management (TDM) Plan for the non-ballpark development and, as noted on Draft EIR p. 4.15-187, the TDM Plan could provide a transit subsidy to employees or residents in the form of an AC Transit EasyPass or Clipper Card loaded with the equivalent of half of an AC Transit unlimited monthly pass. Draft EIR Mitigation Measure TRANS-1b would implement the Transportation Management Plan (TMP) for the ballpark. Among the measures that could be implemented are transit subsidies to

A-3

COMMENT

RESPONSE

provide free or reduced-cost transit for ballpark attendees and/or employees, particularly at the Transportation Hub on 2nd Street. Each mitigation measure has a performance requirement that the implemented measures result in a 20% reduction in vehicle trips compared to the baseline vehicle trip generation in the Draft EIR. The Project Sponsor would be required to continue to adjust and add measures until the performance standard is met and the Project Sponsor would be required to show that the standard is met each year of operation for the ballpark. The TDM Plans for non-ballpark development are required to include a program for ongoing monitoring and enforcement, and an annual compliance report is required each year through the fifth year following buildout of the non-ballpark development. Refer to Consolidated Response *4.23, Transportation and Parking Demand Management Plan and Transportation Management Plan Considerations* for more information regarding the programs to reduce vehicle trips generated by the Project.

A-3-11 This comment raises skepticism that the Gondola can be built and that it can provide a substantial number of trips. Draft EIR p. 5-56, the Project sponsor is considering construction of an aerial gondola extending from 10th Street to Jack London Square as a Project Variant. DEIR Section 5.2 describes the Gondola Variant. If proposed and approved for implementation, the gondola would include including the physical features shown engineering and environmental affects, and was based on the conceptual engineering studies prepared by SCJ Alliance titled *Oakland A's Ball Park Access Gondola, Conceptual Design Summary*.[2] There is no reason to believe that such features cannot be constructed, although approval of the gondola system would be required from multiple agencies, including Caltrans (for passing over the freeway), the CPUC (for passing over the railroad), the Port (for the Jack London Square Station), and the City (for the 10th Street Station, tower, and Washington Street alignment.

As described on p. 5-132 of the Draft EIR and in the SCJ Alliance study the Gondola is designed to transport a maximum of 6,000 passengers per hour which can be accomplished with cabin headways of 20 to 25 seconds. While it is difficult to calculate changes in VMT it is reasonable to assume some reduction in vehicle trips and associated VMT because of the limited available

[2] SCJ Alliance, *Oakland A's Ball Park Access Gondola, Conceptual Design Summary*, April 2019.

A-3

COMMENT

RESPONSE

parking downtown, parking management strategies proposed at the Project site, and the readily available transit near the proposed 10th Street Station.

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

A-3

COMMENT

A-3-11 to a 35,000-seat ballpark. The gondola should be funded privately using no monies which could otherwise be available for bus, rail, or ferry transportation.

A-3-12 **Partner Agencies:** We note that Capitol Corridor and the Union Pacific Railroad are concerned about the safety of fans crossing the railroad tracks at grade. They argue that the degree of pedestrian grade crossings is unusual among Major League stadiums. We urge the City and the Athletics to take all reasonable steps to ensure that this location is safe for pedestrians.

A-3-13 Finally, we urge the City to take all reasonable steps to support the ongoing operation of industrial businesses currently in the Howard Terminal area. While businesses may need to be relocated, their continued operation should be supported. This will avoid what has been called "commercial gentrification."

Thank you for your interest; we look forward to discussing this project with you further.

Sincerely,

Michael A. Hursh
General Manager

CC: Robert del Rosario, AC Transit
Ramakrishna Pochiraju, AC Transit

RESPONSE

A-3-12 See Consolidated Response 4.6, *Rail Safety, Grade Crossing, and Grade Separation,* for responses to issues raised in the comment.

Mitigation Measure TRANS-3a (Draft EIR pp. 4.15-235 through 4.15-236) and Mitigation Measure TRANS-3b (Draft EIR pp. 4.15-236 through 4.15-239) of the Draft EIR outline a set of safety enhancements at the at-grade crossings, such as pedestrian gates, fencing, vehicular quad gates and updated signaling, to improve safety for all road users that extend along the Project's frontage to the Broadway at-grade railroad crossing. As noted in Consolidated Response 4.6 the Mitigation Measure TRANS-3a has been expanded to also include at-grade railroad corridor upgrades between Broadway and Oak Street.

A-3-13 CEQA does not require an analysis of commercial business displacement or other economic issues, except to the extent that these issues may result in secondary environmental impacts. The comment will be forwarded to the decision-makers for their consideration during deliberations on the proposed Project. See Consolidated Response 4.13, *Gentrification and Indirect Housing Displacement*, for a discussion of the consideration of social and economic effects under CEQA. Also see Consolidated Response 4.4, *Port Operations and Land Use Compatibility*.

A-4 San Joaquin Joint Powers Authority (SJJPA)

COMMENT

San Joaquin
Joint Powers Authority

April 26, 2021

Peterson Vollman, Planner IV
City of Oakland
Planning & Building Department

Dear Mr. Vollman,

As the managing agency of the San Joaquins intercity passenger rail service, the San Joaquin Joint Powers Authority (SJJPA) appreciates the opportunity to submit comments on the City of Oakland's Waterfront Ballpark District Project Draft Environmental Impact Report (DEIR).

SJJPA currently operates 10 train trips within the corridor where the Waterfront Ballpark District Project is being proposed. SJJPA is concerned that the proposed project alternative does not adequately address public safety with respect to accessing the new ballpark. The DEIR describes exposing roadway users to a "permanent or substantial transportation hazard" via the at-grade railroad crossings on Embarcadero West. The DEIR identifies that TRANS-3a and TRANS-3b the hazard as being significant and unavoidable. Based on a 2019 analysis conducted by the Capitol Corridor Joint Powers Authority (CCJPA) of all 30 North American Major League Baseball (MLB) stadiums, all other MLB stadiums that have entrances adjacent to an active railroad corridor utilize a combination of grade separations (for auto and pedestrians), pedestrian overpasses, and fencing to prevent possible conflicts between trains, vehicles, and pedestrians/bicyclists. For the Waterfront Ballpark, which would have five railroad crossings adjacent the site, efforts to mitigate transportation hazards related to the crossings should follow the best safety practices from other stadiums.

A-4-1

SJJPA is concerned about the safety of motorists, pedestrians, bicyclists, and other roadway users crossing the railroad tracks along Embarcadero West and requests that the City thoroughly evaluate the potential for railroad crossing incidents on both passenger and freight rail operations in the area. SJJPA strongly recommends that the proposed project adequately addresses public safety. Further analysis to study a combination of grade separations, and permanent road closures of railroad crossings near and adjacent to the Ballpark, should be conducted to mitigate for the transportation hazards related to railroad crossings. The DEIR's efforts to study grade-separated overcrossings and Market Street and Brush Street for vehicle-only use are inadequate as presented, and without a combination of grade-separation for all

949 East Channel Street Stockton, CA 95202 (800) 411-RAIL (7245) www.sjjpa.com

RESPONSE

A-4-1 See Consolidated Response 4.6, *Rail Safety, Grade Crossing, and Grade Separation,* for responses to the issues raised in this comment.

The Draft EIR describes the existing railroad corridor conditions including crossing volumes, gate downtimes, and collision history (Draft EIR pp. 4.15-39 through 4.15-42). The railroad corridor improvements included by the proposed Project are described on Draft EIR pp. 4.15-93 and 4.15-94, and include a combination of corridor fencing, at-grade improvements such as quad gates, pedestrian and bicycle gates, and a pedestrian and bicycle grade separation. The proposed Project's impacts on the railroad corridor are described in Impact TRANS-3 on Draft EIR pp. 4.15-233 through 4.15-240. The impacts are considered significant and unavoidable, although Mitigation Measures TRANS-3a and TRANS-3b would lessen the magnitude of, but not eliminate, the impacts.

With respect to CCJPA's 2019 analysis of Major League Baseball stadiums, this has not been provided to the City.

A-4

COMMENT

RESPONSE

A-4-1 ground transportation modes and permanent closures at the nearby crossings, the Project would be imprudent from our perspective.

Sincerely,

Stacey Mortensen
Managing Director
San Joaquin Joint Powers Authority

A-5 East Bay Municipal Utility District (EBMUD)

COMMENT

From: McGowan, Timothy
To: pvollmann@oaklandca.gov
Cc: Rehnstrom, David; Chi, Vanessa
Subject: Oakland Waterfront Ballpark District Project - ER18-016
Date: Friday, April 23, 2021 3:31:58 PM
Attachments: sb21_073 Oakland Waterfront Ballpark District.pdf

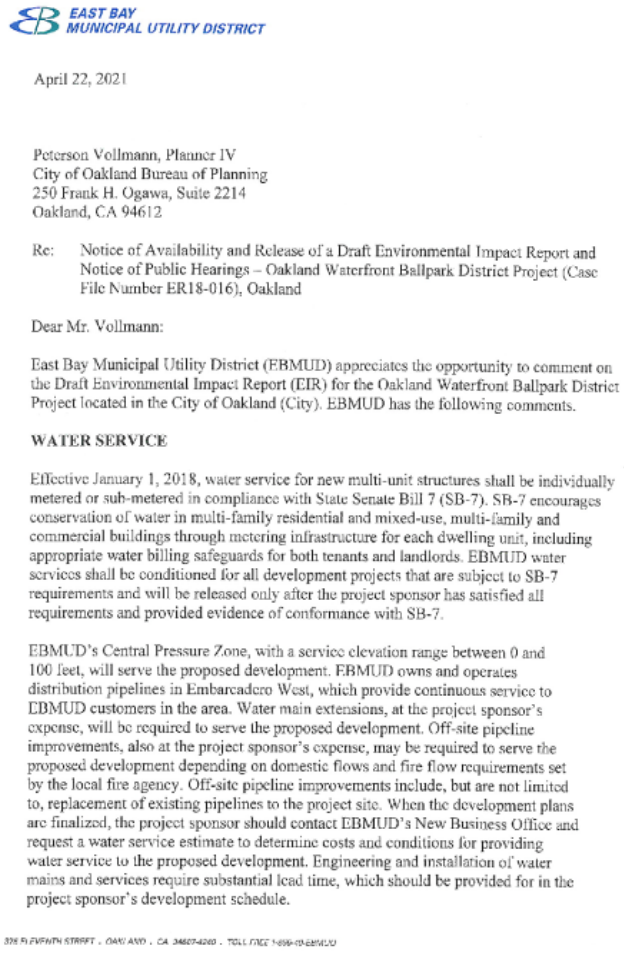
[EXTERNAL] This email originated outside of the City of Oakland. Please do not click links or open attachments unless you recognize the sender and expect the message.

Please find EBMUD comment letter for the subject DEIR attached.

RESPONSE

A-5

COMMENT



EAST BAY MUNICIPAL UTILITY DISTRICT

April 22, 2021

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

Re: Notice of Availability and Release of a Draft Environmental Impact Report and Notice of Public Hearings – Oakland Waterfront Ballpark District Project (Case File Number ER18-016), Oakland

Dear Mr. Vollmann:

East Bay Municipal Utility District (EBMUD) appreciates the opportunity to comment on the Draft Environmental Impact Report (EIR) for the Oakland Waterfront Ballpark District Project located in the City of Oakland (City). EBMUD has the following comments.

WATER SERVICE

A-5-1

Effective January 1, 2018, water service for new multi-unit structures shall be individually metered or sub-metered in compliance with State Senate Bill 7 (SB-7). SB-7 encourages conservation of water in multi-family residential and mixed-use, multi-family and commercial buildings through metering infrastructure for each dwelling unit, including appropriate water billing safeguards for both tenants and landlords. EBMUD water services shall be conditioned for all development projects that are subject to SB-7 requirements and will be released only after the project sponsor has satisfied all requirements and provided evidence of conformance with SB-7.

A-5-2

EBMUD's Central Pressure Zone, with a service elevation range between 0 and 100 feet, will serve the proposed development. EBMUD owns and operates distribution pipelines in Embarcadero West, which provide continuous service to EBMUD customers in the area. Water main extensions, at the project sponsor's expense, will be required to serve the proposed development. Off-site pipeline improvements, also at the project sponsor's expense, may be required to serve the proposed development depending on domestic flows and fire flow requirements set by the local fire agency. Off-site pipeline improvements include, but are not limited to, replacement of existing pipelines to the project site. When the development plans are finalized, the project sponsor should contact EBMUD's New Business Office and request a water service estimate to determine costs and conditions for providing water service to the proposed development. Engineering and installation of water mains and services require substantial lead time, which should be provided for in the project sponsor's development schedule.

[illegible]

RESPONSE

A-5-1 The proposed Project would adhere to all applicable permitting requirements and conditions that pertain to EBMUD's provision of water services. Furthermore, the proposed Project would also adhere to mandatory measures of the California Green Building Standards Code (CALGreen Code) for residential and nonresidential uses, which include measures for water conservation, discussed on Draft EIR p. 4.7-22.

A-5-2 The City acknowledges EBMUD's conditions of approval for water service as stated in the comment. The City would require the Project sponsor to adhere to the conditions of approval of such service, including the request for a water service estimate to further determine the costs and conditions of providing water service for the proposed Project. As stated on Draft EIR pp. 4.16-25 and 4.16-26, analyses of the effects of Project construction as a whole (e.g., air quality and noise impacts from trenching for pipeline routes, grading, use of construction equipment) are presented throughout the other technical sections in the Draft EIR.

A-5

COMMENT

A-5-3

A minimum 20-foot wide right-of-way is required for installation of new and replacement water mains. Utilities to be installed in the right-of-way with the water mains must be located such that the new water mains meet the minimum horizontal and vertical separation distances with other utilities as set forth in the California (Waterworks Standards) Code of Regulations, Title 22, Section 64572 (Water Main Separation) and EBMUD requirements for placement of water mains within a right-of-way. These minimum horizontal separation distance requirements include, but are not limited to, 10 feet between the water main and sewer, 5 feet between the water main and storm drain, 7 feet from the face of curb, and 5 feet from the edge of the right-of-way. In addition, water mains must be vertically located a minimum of one foot above sewers and storm drains.

CONTAMINATED SOILS

A-5-4

EBMUD's Standard Site Assessment Report indicates the potential for contaminated soils or groundwater to be present within the project site boundaries. The project sponsor should be aware that EBMUD will not install piping or services in contaminated soil or groundwater (if groundwater is present at any time during the year at the depth piping is to be installed) that must be handled as a hazardous waste or that may be hazardous to the health and safety of construction and maintenance personnel wearing Level D personal protective equipment. Nor will EBMUD install piping or services in areas where groundwater contaminant concentrations exceed specified limits for discharge to the sanitary sewer system and sewage treatment plants. The project sponsor must submit copies to EBMUD of all known information regarding soil and groundwater quality within or adjacent to the project boundary and a legally sufficient, complete and specific written remediation plan establishing the methodology, planning and design of all necessary systems for the removal, treatment, and disposal of contaminated soil and groundwater.

EBMUD will not design piping or services until soil and groundwater quality data and remediation plans have been received and reviewed and will not start underground work until remediation has been carried out and documentation of the effectiveness of the remediation has been received and reviewed. If no soil or groundwater quality data exists, or the information supplied by the project sponsor is insufficient, EBMUD may require the project sponsor to perform sampling and analysis to characterize the soil and groundwater that may be encountered during excavation, or EBMUD may perform such sampling and analysis at the project sponsor's expense. If evidence of contamination is discovered during EBMUD work on the project site, work may be suspended until such contamination is adequately characterized and remediated to EBMUD standards.

WASTEWATER SERVICE

A-5-5

EBMUD's Main Wastewater Treatment Plant (MWWTP) and interceptor system are anticipated to have adequate dry weather capacity to accommodate the proposed wastewater flows from this project and to treat such flows provided that the wastewater

RESPONSE

A-5-3 If approved, the proposed Project would be required to adhere to all applicable permitting requirements and conditions that pertain to EBMUD's provision of water services, including rights-of-way and separation requirements as stated in the comment. The City would require the Project sponsor to adhere to the conditions of approval of these right-of-way and separation requirements.

A-5-4 As discussed in Draft EIR Section 3.11.1, *Sea Level Rise*, imported fill would be placed across the Project site to raise the finished floor elevation of residential buildings to 10 or more feet above the City of Oakland Datum (COD). Consequently, the majority of utilities would be installed in imported clean fill at depths above the existing contaminated materials currently encapsulated under the hardscape cap (i.e., asphalt pavement and concrete building foundations) that covers the entire site. In addition, and as discussed in Draft EIR Section 4.16, *Utilities and Service Systems,* Impact UTIL-1, the proposed Project would be required to comply with EBMUD design standards, which would include that the design not result in EBMUD having to handle hazardous materials. For those utilities that require deeper emplacement and the involvement of EBMUD, the EBMUD design standards would require that the hazardous materials be removed prior to EBMUD involvement and that documentation of that removal be provided to EBMUD for its review and approval.

A-5-5 The City acknowledges EBMUD's approval of the replacement of old wastewater conveyance pipelines with the proposed impervious wastewater collection system to prevent inflow and infiltration from entering the wastewater collection system. The City and the Project sponsor would coordinate with EBMUD to review and inspect the new infrastructure to ensure that infiltration and inflow into the wastewater conveyance system would be prevented.

A-5

COMMENT

Peterson Vollmann, Planner IV
April 22, 2021
Page 3

A-5-5 generated by the project meets the requirements of the EBMUD Wastewater Control Ordinance. The Draft EIR describes that all sewer collection infrastructure will be replaced with "a completely new impervious conveyance system" and that the parcel is subject to EBMUD's Regional Private Sewer Lateral Ordinance. The Draft EIR also states that "regulatory and permitting review by…EBMUD would ensure that wastewater conveyance system would be designed to not exceed capacities," and that "the Project's wastewater design features would meet the City's and EBMUD's design standards to ensure the Project would not result in exceeding the available conveyance and treatment capacity of the MWWTP and would not result in I/I discharged to the MWWTP during wet weather conditions." The East Bay regional wastewater collection system experiences exceptionally high peak flows during storms due to excessive infiltration and inflow (I/I) that enters the system through cracks and misconnections in both public and private sewer lines. Replacing the existing infrastructure with new and providing EBMUD an opportunity to review and approve the design of this new infrastructure will ensure that I/I into the system will decrease overall, and EBMUD is pleased to see these improvements included as part of the project.

EBMUD has the following comments on the Draft EIR relevant to wastewater infrastructure.

A-5-6
- In Chapter 3 – Project Description, the text should include mention that the project site is served directly by the Port of Oakland's wastewater collection system, which then flows to the City of Oakland's wastewater collection system, followed by EBMUD's interceptor system. The project description should describe the need to replace existing sewer collection infrastructure to handle the increased flows resulting from the project.

A-5-7
- In Chapter 4.16 – Utilities and Service Systems, Section 4.16.2 Regulatory Setting, under the heading Regional, the document should include EBMUD's Wastewater Control Ordinance, which requires any new connection to EBMUD's interceptor system must file an application, including submittal of design details of the new connection. As stated in Appendix HYD, the two existing sewer mains that serve the Howard Terminal parcel will require replacement to increase capacity to handle the peak flows from the development. Those new pipelines will require new connections to the EBMUD interceptor system, which must go through the application and approval process required by EBMUD's Wastewater Control Ordinance.

A-5-8
- In Chapter 4.16 – Utilities and Service Systems, Section 4.16.2 Regulatory Setting, the Regional Private Sewer Lateral Ordinance is correctly referenced but the Port of Oakland adopted 2018 Ordinance No. 4474, which governs private sewer lateral compliance for properties owned by the Port, may also be applicable and should then be included.

A-5-9
- In Chapter 4.16 – Utilities and Service Systems, Section 4.16.4 Impacts of the Project, under Wastewater Conveyance and Treatment, the Draft EIR states that "the City would require the Project sponsor to submit a final design Sanitary Sewer Impact

RESPONSE

A-5-6 The text addressed in the comment is initially described on Draft EIR p. 4.16-4, as part of the local setting regarding wastewater utilities. The description of existing utility infrastructure on or serving the Project site, presented at the top of Draft EIR p. 3-11, is revised to read:

> The Project site is served by the Port of Oakland's wastewater collection system that discharges into the City's collection system prior to discharging into East Bay Municipal Utility District's (EBMUD's) interceptor. The nearest existing ~~East Bay Municipal Utility District~~ ~~(~~EBMUD~~)~~ sewer interceptor is located north of the Project site, running east-west within 2nd and 3rd Streets, connecting between the two diagonally between Filbert and Myrtle Streets (see Figure 3-4).

The proposed Project would replace the existing wastewater conveyance system, as stated on Draft EIR p. 4.16-26 and illustrated in Figure 4.16-4 on p. 4.16-27. The text at the top of Draft EIR p. 3-51 is revised to read:

> The proposed Project would replace the existing wastewater conveyance system. Specifically, t~~T~~he Project would install sealed and impervious wastewater pipelines to convey wastewater and would comply with required regulations to prevent inflow and infiltration from entering the system.

Neither of these text additions to the Draft EIR's Project Description chapter affect or alter the analysis of impacts or identification of mitigation measures in the Draft EIR.

A-5-7 As requested in the comment, the text of the Draft EIR is revised to include reference to EBMUD's Wastewater Control Ordinance. The third paragraph on Draft EIR p. 4.16-14 is revised to read:

> For new development or redevelopment, the ordinance requires the installation and testing of sewer laterals to document that no I/I enters the wastewater flows. In addition, new development or redevelopment must meet the requirement of EBMUD's Wastewater Control Ordinance (Ord. No. 355-11 as amended by Ord. No. 358-13 on August 22, 2013) to go through an application and approval process to ensure the compliance of the quantity, quality, and flow of wastewater and industrial water entering EBMUD's wastewater conveyance system.

A-5

COMMENT

RESPONSE

This text addition to the Draft EIR's EIR Utilities and Service Systems section does not affect or alter the analysis of impacts or identification of mitigation measures in the Draft EIR.

A-5-8 As requested in the comment, the text of the Draft EIR is revised to include reference to EBMUD's Wastewater Control Ordinance. On Draft EIR p. 4.16-21, the text below the Port of Oakland Ordinance No. 4311 discussion is added to read:

Port Ordinance No. 4474

Port Ordinance No. 4474 adopts by reference Oakland Municipal Code Sections 13.08.590 through 13.08.620, with certain modifications that require Port tenants to comply with the private sewer lateral regulations established by the City and EBMUD whenever a Port tenant's actions trigger the application of those ordinances, including the responsibilities of inspecting, maintaining, repairing, and replacing sewer laterals.

This text addition to the Draft EIR's Utilities and Service Systems section does not affect or alter the analysis of impacts or identification of mitigation measures in the Draft EIR.

A-5-9 The City would require the Project sponsor to submit a Sanitary Sewer Impact Analysis, including collection system modeling, to EBMUD before the start of construction of the proposed Project. See Response to Comment A-5-10 regarding implementation of Mitigation Measure UTIL-1 for enforcing the requirements of the City's and EBMUD's Sanitary Sewer Impact Analysis and Wastewater Control Ordinance, respectively.

A-5

COMMENT

A-5-9

Analysis to the City for review and approval…." The specific impacts of the new sewer flows added to the regional wastewater collection system are unknown without modeling the entire system. EBMUD requires that the Project sponsor submit the Sanitary Sewer Impact Analysis, including any collection system modeling, to EBMUD for review and approval as part of the interceptor connection application that will be required for the two new interceptor connections that are required due to the Project.

A-5-10

- Mitigation Measure UTIL-1: Preparation and Approval of Final Design Wastewater Conveyance System Plans and Analysis includes a description of the procedure for the City of Oakland to review and approve the design of such sewer collection system infrastructure but does not describe an opportunity for EBMUD to review those features which directly affect EBMUD. As part of the interceptor connection application that is required for the two new interceptor connections resulting from the Project, the Project sponsor shall submit design plans and specifications for facilities directly affecting EBMUD's interceptor system, as well as the Sanitary Sewer Impact Analysis and modeling results for EBMUD review and approval.

WATER RECYCLING

A-5-11

The proposed project is within the boundaries of EBMUD's East Bayshore Recycled Water Project. EBMUD's Policy 9.05 requires "…that customers…use non-potable water for non-domestic purposes when it is of adequate quality and quantity, available at reasonable cost, not detrimental to public health and not injurious to plant life, fish, and wildlife" to offset demand on EBMUD's limited potable water supply. The proposed project has a potential for significant recycled water demand, and the applicant would be responsible for installation of all recycled water main extensions to and within the proposed development per EBMUD regulations as well as any supporting infrastructure facilities such as storage if needed. The nearest existing recycled water main that the project can connect to is located a few blocks away along 7th Street between Adeline and Jefferson Streets. EBMUD requests all plumbing for feasible recycled water uses be plumbed separately from the on-site potable system in order to accept recycle water for applicable uses. Feasible recycled water uses may include, but are not limited to, landscape irrigation, commercial and industrial process use, and toilet and urinal flushing in non-residential buildings. EBMUD also requests that an estimate of expected water demand for feasible recycled water uses be provided in the EIR and that the applicant coordinate closely with EBMUD regarding specifications and infrastructure requirements for the recycled water system. When the development plans are finalized, the project sponsor should contact EBMUD's New Business Office and request a water service estimate to determine costs and conditions for providing recycled water service to the proposed development. Engineering and installation of recycled water mains and services require substantial lead time, which should be provided for in the project sponsor's development schedule.

RESPONSE

A-5-10 Mitigation Measure UTIL-1 has been revised to reflect the comment to include EBMUD's review of the Sanitary Sewer Impact Analysis.

Mitigation Measure UTIL-1 on Draft EIR p. 4.16-37 is revised to read:

> Prior to approval of any construction related permits, the Project sponsor shall prepare and submit a Sanitary Sewer Impact Analysis to the City and EBMUD for review and approval in accordance with the City of Oakland Sanitary Sewer Design Guidelines and EBMUD's Wastewater Control Ordinance, respectively. The Impact Analysis shall include an estimate of pre-project and post-project wastewater flow from the Project site. In the event that the Impact Analysis indicates that the net increase in Project wastewater flow exceeds City- or EBMUD-projected increases in wastewater flow in the sanitary sewer system, the Project sponsor shall pay the Sanitary Sewer Impact Fee in accordance with the City's Master Fee Schedule for funding improvements to the sanitary sewer system.

This text addition to the Draft EIR's Utilities and Service Systems section does not affect or alter the analysis of impacts or identification of mitigation measures in the Draft EIR.

A-5-11 Current estimates of recycled-water use were not calculated in the Water Supply Assessment prepared and approved by the EBMUD Board on September 24, 2019. Estimates of total potential recycled water were calculated based on irrigation and flushing fixtures used for the entire development. The calculated total recycled-water use for irrigation of landscaping would be approximately 7.32 million gallons per year. Recycled-water use for all developed uses would be up to a maximum of 550,000 gallons per day, depending on the final building program.

The fourth paragraph on Draft EIR p. 3-50 has been revised to read:

> Pipe size upgrades would occur at the mains in Market Street and Martin Luther King Jr. Way, and an additional new water pipeline would extend from the Project site east to connect with an existing EBMUD water pipeline in Water Street, as well as other various improvements within the City right-of-way. Recycled-water pipelines would be installed for use in landscape irrigation and flushable fixtures with mains connected to EBMUD recycled water mains. If EBMUD Recycled Water Master Plan Phase 1B is not installed prior to the construction of water supply infrastructure on the Project site, recycled-water mains would be

A-5

COMMENT

RESPONSE

installed and temporarily connected to the proposed Project's domestic water system until EBMUD Phase 1B improvements are complete, after which the proposed Project's water system would be connected to the Phase 1B water main and disconnected from the domestic water system.

The second paragraph on Draft EIR p. 4.16-40 is revised to read:

In addition, CALGreen standards, the City of Oakland Green Building Ordinance, Sustainable Green Building Requirements for Private Development and Water Efficient Landscape Requirements found in Chapter 18.02 of the Oakland Municipal Code would further reduce water demand from the proposed Project. Considering all of this information, EBMUD has determined that the additional water demand from the proposed Project would be within the forecasted planning horizon and that water demands would be met with existing and future water rights and entitlements. Further, recycled water pipelines would be installed for use in landscape irrigation and flushable fixtures with mains connected to EBMUD recycled water mains. If EBMUD Recycled Water Master Plan Phase 1B is not installed prior to construction of water supply infrastructure on the Project site, recycled water mains would be installed and temporarily connected to the proposed Project domestic water system until EBMUD Phase 1B improvements are complete, after which the proposed Project water system would be connected to the Phase 1B water main and disconnected from the domestic water system.

Neither of these text additions to the Draft EIR's Utilities and Service Systems section affect or alter the analysis of impacts or identification of mitigation measures in the Draft EIR.

A-5

COMMENT

WATER CONSERVATION

A-5-12

The proposed project presents an opportunity to incorporate water conservation measures. EBMUD requests that the City include in its conditions of approval a requirement that the project sponsor comply with Assembly Bill 325, "Model Water Efficient Landscape Ordinance," (Division 2, Title 23, California Code of Regulations, Chapter 2.7, Sections 490 through 495). The project sponsor should be aware that Section 31 of EBMUD's Water Service Regulations requires that water service shall not be furnished for new or expanded service unless all the applicable water-efficiency measures described in the regulation are installed at the project sponsor's expense.

If you have any questions concerning this response, please contact Timothy R. McGowan, Senior Civil Engineer, Major Facilities Planning Section at (510) 287-1981.

Sincerely,

David J. Rehnstrom
Manager of Water Distribution Planning

DJR:VDC:djr
s521_073.doc

cc: Oakland Athletics Investment Group, LLC d/b/a The Oakland Athletics
7000 Coliseum Way
Oakland, CA 94621

RESPONSE

A-5-12 The proposed Project would comply with EBMUD's and the City's water use efficiency regulations, including the use of recycled water, when available. Compliance with these regulations would meet the requirement of AB 325. In addition, see Response to Comment A-5-11.

A-6 California Public Utilities Commission (CPUC)

COMMENT

From: Mozaffari, Siavash
To: pvollmann@oaklandca.gov
Cc: "state.clearinghouse@opr.ca.gov"
Subject: Oakland Waterfront Ballpark SCH 2018112070
Date: Friday, April 23, 2021 4:47:25 PM
Attachments: image001.png
image002.png
2021-04-23 SCH 2018112070 Oakland Waterfront Ballpark.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. Vollman

Please find CPUC's comments to the DEIR for the Oakland Waterfront Ballpark project.

Regards

Sia Mozaffari
Utilities Engineer
Rail Crossings & Engineering Branch - Rail Safety Division
California Public Utilities Commission
505 Van Ness Avenue | San Francisco, CA 94102
☎ (415) 703-1815 | Cell (415) 471-4129

RESPONSE

A-6

COMMENT

RESPONSE

STATE OF CALIFORNIA — Edmund G. Brown Jr., *Governor*

PUBLIC UTILITIES COMMISSION
505 VAN NESS AVENUE
SAN FRANCISCO, CA 94102-3298

April 23, 2021

Peterson Vollmann
City of Oakland
250 Frank H. Ogawa Plaza, Suite 3315
Oakland, CA 94612

Re: Notice of Preparation
Oakland Waterfront Ballpark District
SCH # 2018112070

Dear Mr. Vollmann,

As the state agency responsible for rail safety within California, the California Public Utilities Commission (CPUC or Commission) recommends that development projects proposed near rail corridors be planned with the safety of these corridors in mind. CPUC appreciates the early coordination of the project with both CPUC and Union Pacific Railroad (UPRR) and hopes to continue building on the previous plans presented to identify potential project impacts and appropriate mitigation measures, and thereby improve the safety of motorists, pedestrians, railroad personnel, and railroad passengers.

The project is located near multiple at-grade highway-rail crossings, including:

Crossing Name	CPUC No.	DOT No.
Market St	001D-6.20	749580R
Martin Luther King Way	001D-6.40	749571X
Clay St	001D-6.50	749583L
Washington St	001D-6.60	749584T
Broadway	001D-6.70	749585A
Franklin St	001D-6.75	749586G
Webster St	001D-6.80	749587N
Oakland Jack London Square Station	001D-7.00-D	Unknown

Please ensure the nearby crossings and tracks comply with applicable federal and state requirements. Applicable state requirements include:

- California Manual on Uniform Traffic Control Devices – Chapter 8 (http://www.dot.ca.gov/hq/traffops/engineering/mutcd/)
- CPUC General Order 26-D, Clearances on railroads and street railroads as to side and overhead structures parallel tracks and crossings,
- CPUC General Order 72-B, Construction and maintenance of crossings
- CPUC General Order 75-D, Warning devices for at-grade railroad crossings
- CPUC General Order 88-B, Alterations of railroad crossings
- CPUC General Order 118, Construction, reconstruction and maintenance of walkways and control of vegetation adjacent to railroad tracks

A-6-1

A-6-1 The City acknowledges CPUC's role with respect to rail safety. and that changes made to the railroad corridor must comply with state and federal requirements. The remainder of this comment is a summary of Project location details and federal and state provisions related to rail safety. 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 4.6, *Rail Safety, Grade Crossing, and Grade Separation*, for responses to the issues raised in the comment.

See also Draft EIR pp. 4.15-39 through 4.15-42, which describe the existing railroad corridor conditions including crossing volumes, gate downtimes, and collision history. The railroad corridor improvements included in the proposed Project are described on Draft EIR pp. 4.15-93 and 4.15-94, and include a combination of corridor fencing, at-grade improvements such as quad gates, pedestrian and bicycle gates, and a pedestrian and bicycle grade separation. The proposed Project's impacts on the railroad corridor are described in Impact TRANS-3 on Draft EIR pp. 4.15-233 through 4.15-240. The impacts are considered significant and unavoidable, although Mitigation Measures TRANS-3a and TRANS-3b would lessen the magnitude of, but not eliminate, the impacts.

A-6

COMMENT

A-6-1 A link to the Commission's General Orders and Public Utilities Code can be found here http://www.cpuc.ca.gov/crossings.

According to Chapter 4.15.7, the increase in pedestrian usage of area by an order of 35,000 pedestrians per weekday or evening ball game.

A-6-2 The adjacent rail line is part of Union Pacific Railroad's (UP) Niles Subdivision and is heavily used by vehicular, pedestrian, and rail traffic. There are currently 62 trains per day, including 42 Amtrak passenger trains. The adjacent Port of Oakland leads to heavy freight rail traffic. The track along this segment becomes street running with the majority of the crossings having three tracks. The area around the track is commercial, with restaurants, stores, hotels, bars, and a theater on either side of the tracks. The public crosses the tracks to access Jack London Square, located south of the tracks. The public will also be required to cross the tracks to access the proposed ballpark. UP has a future plan to reconnect the third track. Use of this third track by trains will completely prevent use of Embarcadero by vehicles. Activation of the third track will greatly hinder access to and from the proposed ballpark.

A-6-3 Over the past ten years there have been multiple vehicular and pedestrian incidents involving trains along this segment of track. Constructing the ballpark will greatly add to both vehicular and pedestrian traffic in the area. Safety of the public must be addressed by the environmental documents.

The CPUC has the following comments on the ballpark project:

- A-6-4 The DEIR states that there will be 8,900 additional parking spaces. This volume of traffic will be entering the development by using an at grade crossing. CPUC would require grade separation of one or more at grade crossings to ensure safe access to the ballpark. The only grade separated vehicular access mentioned in the DEIR is for emergency vehicles only.
- A-6-5 The DEIR should evaluate traffic conditions outside of the ball game peak conditions due to the mixed use nature of the development.
- A-6-6 Due to the multi-track nature of the crossings, the DEIR should analyze the risk of multiple trains occupying the same crossing and causing a "second train incident" with pedestrian.
- A-6-7 Table 4.15-42 demonstrates pedestrian, bicycle, and vehicular traffic for arrival to the game. A study into the departure of the traffic after a game would be needed due to patrons of the game leaving in masses in a short amount of time and potentially after consuming alcohol.
- A-6-8 The proposed pedestrian overpass concept described in the DEIR requires climbing stairs on both sides. This is not accessible to wheelchairs and may be seen as too much effort for most pedestrians.
- A-6-9 Any new pedestrian or vehicular crossings (i.e. 7th Street west as stated in the DEIR) added as part of this project must be authorized via CPUC's formal application process.
- A-6-10 All railroad crossing modifications must be approved via CPUC's GO 88-B application process that will include concurrence from the railroad.
- A-6-11 Any crossing that is not grade separated will need to be equipped with pedestrian automatic gate arms, and emergency exit swing gates on all sides.
- A-6-12 CPUC will need to review a stadium management plan to address traffic and crowd control for game events along the corridor. The CPUC recommend staff and law enforcement supervise the crossings during a game event.

RESPONSE

A-6-2 See Responses to Comments A-6-3 through A-6-17. The impacts associated with a fence and is relation to the third track is discussed in Section 4.6.5 of Consolidated Response 4.6, *Rail Safety, Grade Crossing, and Grade Separation*.

A-6-3 See Consolidated Response 4.6, *Rail Safety, Grade Crossing, and Grade Separation*.

A-6-4 See Consolidated Response 4.6, *Rail Safety, Grade Crossing, and Grade Separation,* and Consolidated Response 4.9, *Alternative 3: The Proposed Project with Grade Separation Alternative,* for responses to the issues raised in the comment.

See the discussion in Draft EIR pp. 4.15-39 through 4.15-42, which describes existing railroad corridor conditions including crossing volumes, gate downtimes, and collision history. The railroad corridor improvements included in the proposed Project are described on Draft EIR pp. 4.15-93 and 4.15-94 and include a combination of corridor fencing, at-grade improvements such as quad gates, pedestrian and bicycle gates, and a pedestrian and bicycle grade separation. The impacts of the proposed Project on the railroad corridor are described in Impact TRANS-3 on Draft EIR pp. 4.15-233 through 4.15-240. The impacts are considered significant and unavoidable, although Mitigation Measures TRANS-3a and TRANS-3b would lessen the magnitude of, but not eliminate, the impacts. The commenter is also directed to Draft EIR Chapter 6, Alternative 3, which addresses the Project with a grade separation alternative for motor vehicle traffic.

A-6-5 Draft EIR Appendix TRA.3 addresses traffic operations at the Embarcadero West intersections including Market Street, Martin Luther King Jr. Way, Clay Street, Washington Street and Broadway. The intersection analysis was completed for the weekday AM and PM commute peak hours with buildout of the Project and no ballpark event. A multimodal (motor vehicles, pedestrians, and trains) operations analysis was also conducted for two weekday scenarios to and from the Project site for each hour between 3 PM and 8 PM. One weekday scenario considered buildout of the Project plus an afternoon ballpark event ending at 3:30 PM with 35,000 attendees and the other scenario considered a similar evening ballpark event starting at 7 PM. Collectively, these analyses informed the Draft EIR Impact TRANS-3 and resulting Mitigation Measures TRANS-3a and TRANS-3b.

A-6

COMMENT

RESPONSE

A-6-6 See Consolidated Response 4.6, *Rail Safety, Grade Crossing, and Grade Separation*.

A-6-7 Draft EIR Table 4.15-42, p. 4.15-233, illustrates the substantial increase in pedestrian, vehicle, and bicycle traffic that would cross the railroad tracks before a weekday evening ballpark event. As noted in the paragraph preceding Table 4.15-42, similar crossing demands would occur for weekday day games as well as weekend games. The quantity of pedestrian, vehicle, and bicycle traffic that would cross the railroad tracks is the basis for Mitigation Measures TRANS-3a and TRANS-3b. The measures are intended to enhance safety along and across the railroad tracks for pedestrian, vehicle, and bicycle traffic that would cross the tracks.

The commenter is correct that transportation operations arriving and leaving a ballpark event may vary depending on the day and time of the event. Transportation operations are a non-CEQA consideration evaluated in compliance with the City of Oakland *Transportation Impact Review Guidelines*.[3] The operational analysis of the ballpark was completed and is documented in Draft EIR Appendix TRA-3, which includes a technical memorandum titled *Howard Terminal—Operations Analysis*.[4] Section 3 of the technical memorandum addresses transportation operations between 3 p.m. and 8 p.m. for both a weekday day game (i.e., ballpark departures) and a weekday evening game (i.e., ballpark arrivals). Section 1.1 of the memorandum lists the transportation improvements recommended to the City of Oakland to support the ballpark.

Mitigation Measure TRANS-1b would implement a Transportation Management Plan (TMP) to manage transportation before, during, and after ballpark events such as that described by the commenter. A draft TMP is provided in Draft EIR Appendix TRA.1 and its primary goal is to ensure safe and efficient access for all people traveling to and from the site within the constraints inherent to a large public event. For example, as noted in Chapter 11 of the draft TMP pre- and post-event management strategies may vary based on event size and need. Both Union Pacific Railroad and California Public Utilities Commission are identified in the draft TMP (Table 1.1) as key stakeholders who would participate in developing, implementing, monitoring,

[3] City of Oakland, 2017. *Transportation Impact Review Guidelines*, April 14, 2017.

[4] Fehr & Peers, 2020. *Howard Terminal—Operations Analysis,* December 1, 2020

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and adjusting operational strategies related to the railroad corridor to ensure safe access for ballpark event attendees and workers.

A-6-8 As stated in the second paragraph on Draft EIR p. 4.15-239 under the subheading "Mitigation Measure TRANS-3b: Pedestrian and Bicycle Overcrossing," "the overcrossing could include some combination of stair and elevator system potentially with ADA-compliant ramping that could also be used by bicycle riders." Providing elevators and/or Americans with Disabilities Act (ADA)–compliant ramping would support ADA access to the overpass and would reduce the level of effort required to access the overpass for all walking abilities.

A-6-9 As noted in the Draft EIR, Mitigation Measure TRANS-3a and TRANS-3b, changes to the railroad corridor require all necessary permits / approvals including those from the CPUC. 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.

A-6-10 Mitigation Measure TRANS-3a (Draft EIR pp. 4.15-235 through 4.15-236) states that the Project sponsor would be responsible for obtaining all necessary CPUC permits and approvals, including a GO 88-B Request (Authorization to Alter Highway Rail Crossings).

A-6-11 Mitigation Measure TRANS-3a (Draft EIR pp. 4.15-235 through 4.15-236) describes several potential safety features that could enhance at-grade railroad crossing safety, including gates for pedestrians and bicyclists as described by the commenter. Inclusion of these or other specific gate features would be determined through the CPUC permit and approval process.

A-6-12 Mitigation Measure TRANS-1b would require the development and implementation of a Transportation Management Plan (TMP) to manage transportation to and from ballpark events. A draft TMP is provided in Draft EIR Appendix TRA.1, and CPUC is identified in the draft TMP as a key stakeholder overseeing railroad crossings and railroad safety in California. As a key stakeholder the CPUC will participate in developing, implementing, monitoring, and adjusting the TMP to ensure safe and efficient access for all

A-6

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people traveling to and from the site within the constraints inherent to a large public event.

CPUC's recommendation to have staff and law enforcement supervise the crossings during ballpark events is consistent with the draft TMP, Chapter 11, which describes pre- and post-event management strategies that include traffic and / or parking control officers or other personnel acceptable to the City for managing and directing traffic. Currently, traffic control officers in Oakland are law enforcement officers. To provide clarification regarding pre- and post-event management strategies the following mandatory requirement has been added to the Mitigation Measure TRANS-1b (Page 4.15-196)

> **25. Provide Traffic Control Officers or other personnel acceptable to the City of Oakland to manage pre- and post-event attendees to ensure safe and efficient access for all people traveling to and from ballpark events.**

The draft TMP is provided in Draft EIR Appendix TRA.1. This comment will be forwarded to the City of Oakland, which would be responsible for approval and oversight of the implementation of the TMP.

A-6

COMMENT

A-6-13

- Designing for bicyclists should be done in a manner that prevents bicyclists from being entrapped by automatic gate arms. Cycle tracks must be protected from train events and entrapments.

A-6-14

- The CPUC recommends grade separating the existing Market St and Martin Luther King Jr. Way at-grade crossings as part of the project. The existing crossings are not designed to accommodate the heavy pedestrian and vehicular traffic a ballpark will bring.
  - Heavy train traffic will prevent ingress/egress from the ballpark should the at-grade crossings remain. Both long freight trains and Amtrak passenger trains frequently travel through this rail line, resulting in constant crossing activations. Frequent crossing activations in combination with inebriated fans may increase the likelihood of rail incidents.
  - Any railroad incident in the vicinity will completely block access to the stadium while the train is stopped for the investigation should the crossings remain at-grade.

A-6-15

- Further attention to details is required for the placement of vandal resistant fencing, so that it does not violate clearance requirements from the tracks per GO 26-D and it does not impede visibility of the trains by the crossing users if an at grade crossing is present.

A-6-16

- Analyzing the location of parking lots and pedestrian travel paths to the stadium is critical. The CPUC recommends minimizing pedestrian exposure to the railroad tracks as much as possible.

A-6-17

- Should any of the crossings remain at-grade, the CPUC will require:
  - A diagnostic review of all of the nearby at-grade highway-rail crossings.
  - Signalizing all the intersections along Embarcadero with railroad preemption.
  - Installing raised concrete medians on the railroad crossing approaches.
  - Installing Americans with Disabilities Act compliant curb ramps at all intersections.
  - Full and bicyclist treatments

A-6-18

- Train horn noise will increase during events due to the increase in the volume of pedestrians along the tracks.

Thank you for your consideration of these comments. If you have any questions in this matter, please call me at (415) 703-1815 or email me at siavash.mozaffari@cpuc.ca.gov.

Sincerely,

S.mozaffari

Sia Mozaffari
Senior Utilities Engineer
Rail Crossings and Engineering Branch
505 Van Ness Ave
San Francisco, CA 94102

RESPONSE

A-6-13 Mitigation Measure TRANS-3a (Draft EIR pp. 4.15-235 through 4.15-236) describes several potential safety features to enhance at-grade railroad crossing safety, including gates for pedestrians and bicyclists. These gate features would be determined through the CPUC permit and approval process and would include known features to improve bicyclist safety approaching and crossing the tracks as well as waiting at an activated automatic gate.

A-6-14 See Consolidated Response 4.6, *Rail Safety, Grade Crossing, and Grade Separation* and Consolidated Response 4.9, Alternative 3: The Proposed Project with Grade Separation Alternative.

A-6-15 This comment expresses a concern regarding the fencing specifications.

See Mitigation Measure TRANS-3a, which would require implementation of at-grade railroad corridor improvements, including the fencing referenced in the comment. The specific design of the fence would be determined as part of the CPUC permit/approval process, including a GO 88-B Request (Authorization to Alter Highway Rail Crossings), and the fence would be part of the at-grade improvements constructed prior to opening day of the ballpark.

A-6-16 Impact TRANS-3 (Draft EIR pp. 4.15-233 through 4.15-240) addresses at-grade railroad crossing impacts by the proposed Project's motor vehicle, pedestrian, and bicycle traffic at all affected crossings. The associated Mitigation Measures TRANS-3a and TRANS-3b identify several potential safety features that would enhance safety at at-grade railroad crossings, such as fencing along the corridor, gates for pedestrians and bicyclists at the at-grade crossings, and a pedestrian and bicycle bridge over the railroad tracks connecting the transportation hub to the ballpark site. The specific design of the features would be determined through the CPUC permit and approval process. Although the mitigation measures would improve railroad crossing safety, Impact TRANS-3 would remain significant and unavoidable.

A-6-17 Mitigation Measure TRANS-3a would implement railroad corridor fencing and at-grade crossing improvements. As described on Draft EIR p. 4.15-236, the mitigation measure would require the Project sponsor to undertake the necessary diagnostic study based on the suite of improvements described above; to coordinate with the City, CPUC, and affected railroads and obtain all necessary permits/approvals, including a GO 88-B Request (Authorization to Alter Highway Rail Crossings); and to construct the at-grade improvements prior to opening day of the ballpark. The design elements listed by the

A-6

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RESPONSE

commenter will be considered as part of the Diagnostic Study which will determine the elements to carry forward into the final design for the at-grade railroad crossing improvements.

A-6-18 Train noise is a feature of the existing environment in the vicinity of Howard Terminal, as explained on p. 4.11-7 of the Draft EIR. The proposed Project is not anticipated to result in an increase in train operations. The degree to which the Project would result in an increase in the sounding of train horns would depend on the likelihood of pedestrians or vehicles trespassing along the restricted rail line. Mitigation Measure TRANS-3a calls for fencing, quad gates, pedestrian gates, and other safety features to minimize (to the extent feasible) the presence of any pedestrians or vehicles walking or driving along the tracks. With these safety improvements, the presence of pedestrians and vehicles along the tracks is expected to be infrequent. This mitigation measure is consistent with the quiet zone measures in the Final Report Oakland Railroad Quiet Zone Study prepared for the City of Oakland in June 2011 and is anticipated to reduce (or at least not increase) the use of train horns. Train engineers ultimately determine when the use of a train horn is appropriate; however, the increase in pedestrian volumes referenced in the comment would occur concurrently with rail corridor improvements that would increase safety, and in doing so, would likely result in a decrease rather than an increase in train horn noise. See Consolidated response 4.11 *Quiet Zone*.

A-7 California State Lands Commission (SLC)

COMMENT

STATE OF CALIFORNIA — GAVIN NEWSOM, *Governor*

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April 27, 2021

File Ref: SCH # 2018112070
Case File: ER18-016

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VIA ELECTRONIC MAIL ONLY
*(*https://comment-tracker.esassoc.com/oaklandsportseir/index.html*)*

Subject: Comments on Draft Environmental Impact Report (EIR) for Oakland A's Waterfront Ballpark District Project, Alameda County

Dear Peterson Vollmann:

The California State Lands Commission (Commission) staff has reviewed the Draft EIR for the Oakland A's Waterfront Ballpark District Project (Project) that is being prepared by the City of Oakland (City). The City, as the public agency proposing to carry out the Project, is the lead agency under the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.). The Commission is a trustee agency for projects that could directly or indirectly affect State sovereign land and their Public Trust resources or uses. Additionally, because the Project requires Commission approval to proceed, the Commission will act as a responsible agency.

A-7-1

Commission Jurisdiction and Public Trust Lands

The Commission has jurisdiction and management authority over all ungranted tidelands, submerged lands, and the beds of navigable lakes and waterways. The Commission also has certain residual and review authority for tidelands and submerged lands legislatively granted in trust to local jurisdictions (Pub. Resources Code, §§ 6009, subd. (c); 6009.1; 6301; 6306). All tidelands and submerged lands, granted or ungranted, as well as navigable lakes and waterways, are subject to the protections of the common law Public Trust Doctrine.

RESPONSE

A-7-1 This is a general comment that includes introductory remarks and serves to introduce the more specific comments that are responded to in detail below. As a result, no specific response is provided here.

The remainder of the comment provides a summary of the State Lands Commission's jurisdiction and management authority. 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.

A discussion related to the jurisdiction of the State Lands Commission relevant to the Project site is included in Draft EIR Section 4.10, *Land Use, Plans, and Policies*, pp. 4.10-10 through 4.10-13, including Figure 4.10-3, p. 4.10-12, which depicts the configuration of public trust lands within the Project site. See also Chapter 7, *City-Initiated Updates and Errata in the Draft EIR*, for updates to the Draft EIR made in response to comments in this letter identified in the responses below.

A-7

COMMENT

A-7-1

As background, the State acquired sovereign ownership of all tidelands and submerged lands and beds of navigable lakes and waterways when it was admitted to the United States in 1850. The State holds these lands for the benefit of all people of the state for statewide Public Trust purposes, which include but are not limited to, waterborne commerce, navigation, fisheries, water-related recreation, habitat preservation, and open space. On tidal waterways, the State's sovereign fee ownership extends landward to the mean high tide line, except for areas of fill or artificial accretion or where the boundary has been fixed by agreement or a court. On navigable non-tidal waterways, including lakes, the State holds fee ownership of the bed of the waterway landward to the ordinary low-water mark and a Public Trust easement landward to the ordinary high-water mark, except where the boundary has been fixed by agreement or a court. Such boundaries may not be readily apparent from present day site inspections.

The majority of the Project is proposed to be located on lands held by the City and managed by the Port of Oakland, as trustee for the statewide public, subject to the protections of the common law Public Trust Doctrine and statutory limitations on their use and management. If you have any questions specific to jurisdiction, please contact Reid Boggiano (contact information provided at the end of the letter).

Project Description

A-7-2

The City proposes to approve development of the Waterfront Ballpark District at Howard Terminal to meet the proponent's objectives and needs as follows:

- Construct a new, Major League Baseball (MLB)-compliant sports facility for the Oakland A's that also hosts entertainment events and expands the City's tourist, hotel, and convention business. The sports facility would be built within a timeframe to maintain the Oakland A's competitive position within the MLB.
- Construct a mixed-use development (residential, commercial, retail, and entertainment) to provide increased housing, business, and employment opportunities.
- Minimize existing and anticipated future conflicts with existing and reasonably anticipated Port uses within or adjacent to the Project site, or in the general area.
- Open the south and southwestern shores of the Project site to the public with a shoreline waterfront park and waterfront promenade that features multiple public open spaces.

From the Project Description, Commission staff understands that the Project would include the following components that would be considered as part of any future Commission action:

- Phase 1. Demolition of existing structures and hazardous substances remediation cap, site grading, and construction of the ballpark as well as hotel(s) and a portion of the residential/commercial/retail and open-space amenities, generally being east of and including Market Street. All developed uses would have limited, associated parking.
- Phase 2. Continued demolition, as necessary, of existing structures and hazardous substances remediation cap, site grading, and construction of the

RESPONSE

A-7-2 The comment accurately summarizes the proposed Project, as it is described in detail in Chapter 3 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. 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.

A-7

COMMENT

remainder of the residential/commercial/retail development and open-space amenities, generally being west of Market Street. All developed uses would have limited, associated parking.

- Maritime Reservation Scenario. The Port has established a "Maritime Reservation Area" at the southwest corner of Howard Terminal until May 2029. During this period, the Port of Oakland may elect to terminate the Project sponsor's development rights to any of approximately 10 acres to expand the Port's Inner Harbor turning basin. If this occurs, then the area would no longer be part of the Project, and the proposed Project would fit the same ballpark and mix of uses onto a smaller site with less open space.

A-7-2

The Draft EIR identifies Alternative 1: The No Project Alternative as the Environmentally Superior Alternative. The second most environmentally superior alternative would be Alternative 4: The Reduced Project Alternative that would include a reduced commercial and residential development at lower densities than the proposed Project. The site plan for Alternative 4 would be the same as for the proposed Project, with commercial, residential, and mixed-use development. 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.

Environmental Review

Commission staff requests that the City consider the following comments on the Project's Draft EIR to ensure that impacts to State sovereign land and resources are adequately analyzed for use of the Final EIR to inform the Commission's consideration of the Project, including a land exchange and a trust consistency determination.

General Comments

1. CEQA and AB 1191 (Bonta; Stats. 2019, ch. 752): The focus of the Draft EIR and this comment letter is a thorough analysis of potentially significant environmental impacts from the Project pursuant to CEQA. The findings required by AB 1191 are not solely related to potential environmental impacts of the Project and will not be supported solely by the information and analysis in the Draft EIR. For instance, AB 1191 asks for an evaluation of the kinds of public events and amenities provided by the Project and their consistency with the common law Public Trust Doctrine, and not only what effects those may have on the existing environment. Commission staff therefore expects to require additional information outside the Draft EIR to make recommendations to the Commission on the findings required by Sections 6 and 7 of AB 1191. Staff looks forward to continuing discussions with the Project sponsor on these topics. Nevertheless, because the Draft EIR presents information related to the Public Trust Doctrine and consistency with the Public Trust (largely in Chapter 3, *Project Description*, and Chapter 4.10, *Land Use*), staff has commented on certain non-CEQA aspects of the Project in this letter.

A-7-3

RESPONSE

A-7-3 The comments regarding AB 1191 and non-CEQA-related comments are noted. A final exchange agreement and configuration of trust and non-trust lands remains subject to the approval of the State Lands Commission pursuant to Sections 6 and 7 of AB 1191. AB 1191 is discussed in detail in several locations in Draft EIR Section 4.10, *Land Use, Plans, and Policies*: on p. 4.10-11 with respect to the Public Trust Doctrine; on p. 4.10-15 in regard to San Francisco Bay Conservation and Development Commission (BCDC) jurisdiction, the San Francisco Bay Plan (Bay Plan), and the San Francisco Bay Area Seaport Plan (Seaport Plan); and in Impact LUP-4 on p. 4.10-53 (public trust) and pp. 4.10-55 and 4.10-56 concerning BCDC, the Bay Plan, and the Seaport Plan. See also Section 1.1, *Intended Use of the Final EIR*, of this document, noting that Responsible Agencies would be expected to use the certified EIR to support their decisions via State CEQA Guidelines Section 15096.

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COMMENT

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2. Project Description:

A-7-4
a. The Draft EIR proposes a performance venue and hotel with ancillary conference facilities (page 3-26, Chapter 3, *Project Description*). Staff understands that these may be among the uses anticipated to be located on lands subject to the Public Trust following a land exchange. Commission staff will require additional information on facility design and programming before a trust consistency finding could potentially be recommended to the Commission for a performance venue or conference facilities.

A-7-5
b. "Athletics' Way … would be reserved for ticketed attendees during event days at the ballpark." (page 3-28, Chapter, 3, *Project Description*) Staff understood from discussions with the Project sponsor that the public would not need a ticket to be able to access Athletics' Way during events. Please confirm whether that is correct. If Athletics' Way is planned to be closed to the public during game and event days, please have the Final EIR clarify how else the public can readily access the tide and submerged lands at this location, the waterfront park, and associated open space areas.

A-7-6
A-7-7
A-7-8
c. Project Objective 10 (page 3-16, Chapter 3, *Project Description*) states that the Project sponsor will "construct a project that meets high-quality urban design and high-level sustainability standards, including but not limited to green building design and construction practices, walkability features, and *sea level rise adaptability standards*." (emphasis added) The sea-level rise adaptability standards are not identified or articulated explicitly anywhere in the Draft EIR. Please have the Project Description include information about the Project's elements (or features) that constitute 'adaptability standards', organized in a way that reviewers can clearly evaluate. Adaptive measures could be selected from BCDC's Adapting To Rising Tides: Adaptation Responses or a similar framework. The Project Description should also include some baseline information such as the lifespan of the Project, the current elevation of the entire shoreline that borders the Project area, and a description of Project elements (or features) that are designed to adapt to sea-level rise. This information would provide the basis to understand how the project will be designed in consideration of sea-level rise. The Final EIR should include any additional features that may be constructed or implemented in Phase 1 or Phase 2 to respond to triggers and thresholds occurring from progressively higher total water conditions. Impacts, and any appropriate mitigation measures associated with these related features, should then be evaluated in the appropriate impact analysis sections of a recirculated Draft or Final EIR, as appropriate.

A-7-9
d. The Final EIR should include the following State Lands Commission approval in Table 3-4, found on page 3-66: "Approval of a Ballpark and Public Lands Development pursuant to Section 7 of AB 1191".

RESPONSE

A-7-4 The comment accurately summarizes some features of the proposed Project, as it is described in detail in Chapter 3 of the Draft EIR. This comment relates to a trust consistency finding by SLC and 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.

A-7-5 Athletics' Way would be open to all on event days and public access to the shoreline would be preserved at all times. Portions of Athletics' Way would require security screening for access on event days because of Major League Baseball and Homeland Security requirements. Figures 4.14-2 and 4.14-2.MRS have been added to the Draft EIR to clarify and illustrate proposed event-day ticketed and security zones surrounding the ballpark. The public would be able to access the security zone without an event ticket but would be required to pass through security screening before entering.

The first paragraph of Draft EIR p. 3-28 is revised to read:

Athletics' Way

Athletics' Way would extend Water Street, the largely pedestrianized spine of Jack London Square, west and encircle the ballpark, functioning as the main point of arrival for pedestrians accessing the ballpark and the Waterfront Ballpark District or Project site (see Figure 3 13). A total of 5.0 acres in size, Athletics' Way would consist of a pedestrian promenade with adjacent retail uses and landscaping around the ballpark. Athletics' Way is envisioned as a social promenade and concourse that would be intended for everyday use while also managing a significant volume of users during games. Athletics' Way would be open to the public on non-event days (subject to periodic closures for security, safety, maintenance and/or repairs) and portions of Athletics' Way would require security screening for access ~~be reserved for ticketed attendees~~ during event days at the ballpark. Public access to the shoreline would remain on event days. The promenade would be designed to accommodate up to 35,000 fans and spectators on game day and provide a continuous pathway with a diverse mix of settings – including places to dine, stroll, and play. **Figure 3-14, View Approach to Ballpark from Jack London Square/Water Street,** provides an Illustrated image of Athletics' Way.

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RESPONSE

The second full paragraph of Draft EIR p. 4.14-12 is revised to read:

> As described in Chapter 3, *Project Description*, the Project includes the construction of a network of publicly-accessible open spaces, and the extension of the pedestrian and bicycle network from West Oakland to the waterfront. The network of publicly accessible open spaces would include sidewalks and plazas, landscaped areas at the western and northern periphery of the Project site, and the junction of Market Street and Martin Luther King Jr. Way. The Project also includes large-scale publicly-accessible open spaces, including Athletics Way, an approximately 5.0-acre pedestrian promenade that would be an extension of Water Street leading to and encircling the ballpark.[4] Athletics Way would be designed to accommodate up to 35,000 visitors and spectators on ballpark event days (approximately 244 days per year[5]) with café terraces and beer gardens. Athletics Way would include seating areas, picnic spaces, children's play spaces, and lawns that would be open to the public on non-event days (approximately 121 days per year). An approximately 2.5-acre Rooftop Park would be located on top of the seating areas of the proposed ballpark that would gradually ramp down to the ground-level and connect to Athletics Way.[6] The Rooftop Park would include a tree-lined walkway and passive spaces, would provide views of the waterfront and ballpark, and would be accessible to the public on non-event days. **Figures 4.14-2** and **4.14-2.MRS** illustrate proposed event-day ticketed and security zones surrounding the ballpark. 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.

A-7-6 Exposure of a project to future changes in environmental conditions is an "impact of the environment on the project," which was excluded from analysis under CEQA in the *CBIA v. BAAQMD* case by the California Supreme Court; the 2015 Supreme Court opinion supported the earlier 2011 opinion from the 2nd District Court of Appeal in *Ballona Wetlands Land Trust v. City of Los Angeles* 201 Cal.App.4th 455, which addressed specifically the question of whether an EIR needed to consider potential exposure of a project to future sea level rise (and concluded that it did not). Thus, while questions about how the Project is planning for sea level rise are important from a planning and policy point of view, they are not relevant under CEQA based on the 2015 direction of the California Supreme Court.

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Draft EIR Section 4.9, *Hydrology and Water Quality*, discusses in more detail site elevations and the proposed Project's resilience to flooding exacerbated by sea level rise, including requirements of AB 1191. In addition to this section of the Draft EIR, supplemental details are provided regarding the design basis for the proposed Project's approach to adaptation to sea level rise for Phase 1 and full Buildout[5].

Draft EIR, Section 4.9.4, states, "Since AB 1191 requires that the Project use the medium-high risk aversion for the high-risk emissions scenario through 2100, this EIR uses that measure for determining whether the Project's impact due to sea level rise are significant under CEQA."

The proposed Project's approach to addressing sea level rise is described in Section 3.11.1 in Draft EIR Chapter 3, *Project Description* (p. 3-49) and is consistent with BCDC's 2021 *San Francisco Bay Plan Climate Change Policy Guidance*.[6] The primary approach for adapting to sea level rise would be to raise the ground surface elevation of the Project site and the proposed new 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 are constrained by the elevations of parcels on adjoining, non-Project parcels, and are above—but not as high above—the current 100-year base flood elevation. Strategies and measures are identified to adapt to higher sea levels in the event sea level rise exceeds the resistance to coastal and/or groundwater flooding built into the proposed Project[7]. See Mitigation Measure HYD-3, as revised in this document in Response to Comment A-7-8.

In response to the comment, and to clarify the Project's approach to sea level rise, the first paragraph of Section 3.11.1, *Sea Level Rise*, on Draft EIR p. 3-49 has been modified as follows:

> In accordance with state guidance and AB 1191, the Project's design basis for sea level rise resilience extends to 2100 (Moffatt & Nichol 2021a). For the proposed residential buildings and ballpark structure, the Project at its Buildout phase will accommodate more than 6.0 feet of sea level rise with minimal adaptations. For the streets and open space areas, the

[5] 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.

[6] BCDC, 2021. *San Francisco Bay Plan Climate Change Policy Guidance*, July 2021.

[7] 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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Buildout phase will accommodate at least the upper range of 2050 sea level rise projections of 1.9 feet. For portions of the site that are not initially resilient to potential 2100 sea level rise, a Sea Level Rise Final Adaptive Management and Contingency Plan will be developed based on Moffat & Nichol (2021a) which identifies specific adaptation measures that would be used to address sea level rise. Moffat & Nichol (2021a) augments Moffat & Nichol (2019) and has been included as part of the Final EIR (Final EIR Appendix SLR). The Final Plan will address the sea level rise conditions that may occur in the future based on information available at that time and will describe the specific monitoring, triggers, and implementation of adaptation measures that will provide resilience to the portions of the Project site which become exposed to flood hazard due to future information on actual and projected sea level rise. See Mitigation Measure HYD-3 as revised in this document.

Elevating the Project site to reduce flood exposure due to future sea level rise is the Project's primary adaptation measure. The Project's proposed grading plan involves adding soil throughout much of the Project site to raise the ground surface elevations at least several feet ~~to~~ above the base flood elevation of 3.9 feet COD. ~~to reduce flood exposure due to future sea level rise.~~ Overall, the Project creates a large area of raised ground along the shoreline. The Project sponsor proposes finished floor elevations of all residential buildings on the site to be at or above 10 feet COD to accommodate future increases in the base flood elevation due to future sea level rise. The one exception would be on development block at the corner of Embarcadero West and Clay Street, which would have a finished floor elevation of 6.0 feet COD, higher than the base flood elevation, based on the preliminary grading plan. Proposed roadway elevations on the Project site would be approximately 9–14 feet COD ~~above the City of Oakland Datum~~ for most internal roads and 4.9 feet COD~~ity of Oakland Datum~~ on the north edge of the Project site to match with the existing grade of adjacent properties. The majority of the proposed ballpark structure would be at elevations of 5–10 feet COD ~~City of Oakland Datum~~ and higher, with the potential for lower elevations at field level suites and adjacent areas.

A-7-7 Life span is not specified in the Draft EIR's Project Description chapter because the Project site includes multiple buildings with a range of life spans. For purposes of the sea level rise analysis, Section 4.9 in the Draft EIR considers

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the performance and adaptation of the Project site for sea level rise projections through year 2100 (see Draft EIR pp. 4.9-30 through 4.9-36). Consideration of medium-high risk and H++ sea level rise projections to year 2100 are in accordance with state guidance (OPC 2018) and AB 1191, which placed conditions on sea level rise assessments for the authorized exchange of some of the Project site from the public trust (and managed by the California State Lands Commission) to the City of Oakland (see Draft EIR pp. 4.9-13 through 4.9-14). By 2100, many of the buildings within the Project area would be more than 70 years old.

The current and future flood hazards that threaten the shoreline bordering the Project area were assessed by the City of Oakland's *Preliminary Sea Level Rise Road Map*, the City's *Hazard Mitigation Plan*, and the Port of Oakland's *Sea Level Rise Assessment*. All three of these studies are summarized in the Draft EIR in relation to the Project area (see Draft EIR pp. 4.9-16 through 4.9-17).

See also Response to Comment A-7-6 and A-7-8 regarding how the Project would be designed to address and adapt to consider sea level rise.

A-7-8 The Draft EIR analyzes impacts associated with importing soil to raise the elevation of the Project site, which is the primary strategy proposed for adapting to sea level rise. The estimated quantities used to calculate the amount of grading and truck trips are described on Draft EIR p. 3-57, which indicates that there would be 233,000 cubic yards of soil movement for general grading.

Draft EIR Section 4.9 (pp. 4.9-30 through 4.9-36) discusses the performance of the proposed Project's adaptation features that would be constructed in Phase 1 and the second Buildout phase in relation to flooding exacerbated by sea level rise, including requirements of AB 1191. In addition to the discussion in Draft EIR Section 4.9, supplemental details are provided regarding the design basis for the proposed Project's approach to adaptation to sea level rise for Phase 1 and full Buildout. Strategies and measures are also identified to adapt to higher sea levels in the event sea level rise exceeds the Project's resistance to coastal and/or groundwater flooding[8]. This approach to adapting to sea level rise would be further detailed in the Project's Sea Level Rise Final Adaptive Management and Contingency Plan, as called for in Mitigation

[8] 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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Measure HYD-3 (Draft EIR p. 4.9-36), which has been further revised to address this comment. Specifically, the adaptation plan would include monitoring, trigger thresholds, and methods for implementation. Potential adaptation measures and their triggers would be developed to be suitable for the site's different components. Examples of possible triggers and measures are described[9] and mapped[10].

The text of Mitigation Measure HYD-3 on Draft EIR p. 4.9-36 has been modified as follows:

> **HYD-3: Sea Level Rise Final Adaptive Management and Contingency Plan.**
>
> Prior to the issuance of the first grading permit for the Project, the Project sponsor shall develop a final adaptive management and contingency plan for sea level rise using the strategies identified in the Tidal Datums and Sea Level Rise Design Basis Memorandum prepared for the Project (Moffat & Nichol, 2019 and 2021) or other equivalent strategies that will be implemented to address the medium-high risk aversion scenario through 2100, subject to approval of the City and the State Lands Commission pursuant to AB 1191. The final adaptive management and contingency plan shall, at a minimum, include enforceable strategies incorporating an adaptive management approach to sea level rise for the duration of ground lease term for the final trust lands. The plan shall establish a monitoring and compliance program providing for regular review and enforcement by the City, including actual measured sea level rise adjacent to the Project site, and strategies that have been implemented, or are required to be implemented in the future, to address then-current projections of sea level rise.
>
> The framework for such a plan will be based on *monitoring* flooding events, sea level rise, and groundwater levels; establishing *triggers* for management actions that include planning and design of adaptations; and *implementing* adaptation measures. The objective of the plan will be to identify specific thresholds when responses to sea levels and groundwater levels higher than those built into the initial Project design need to be initiated, which adaptation measures best meet the flood

[9] 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.

[10] Moffat & Nichol, 2021. Potential Extents of Inundation, Oakland Athletics Howard Terminal Project, September 27, 2021.

A-7

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protection objectives and site use constraints, and how to fund and implement the measures.

The Project's adaptation strategy will vary in different areas based on levels of acceptable risk, requirements to maintain existing uses and connectivity to adjacent streets, and the desire to provide a variety of user experiences. The decision on which adaptations to implement will be based on a variety of factors, including applicable sea level rise guidance at the time, consultation with agencies, regulatory requirements, and industry best practices at the time of adaptation. Adaptation measures would be tailored for each component of the site, as described in more detail in Moffat & Nichol (2021a). The type, location, and residual inundation extent for a potential adaptation pathway to provide sea level rise resilience for the Project site is shown in two stages, for 2050 and 2100 (Moffat & Nichol 2021b).

See also Response to Comment A-12-44 regarding adaptation of the wharf.

A-7-9 In Table 3-4 on Draft EIR p. 3-66, in the third row entitled "State Lands Commission," the following bullet is added to the right column:

- Approval of a Ballpark and Public Lands Development pursuant to Section 7 of AB 1191.

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3. Project EIR versus Program EIR: CEQA Guidelines section 15165 sets forth an agency's environmental review requirements when undertaking a phased project, such as the Phase 1 and Phase 2 activities described in the Draft EIR. In such a case, the lead agency "…shall prepare a single program EIR for the ultimate project as described in Section 15168." A program EIR would allow for a detailed analysis of the Project's Phase 1 activities but accommodate a less detailed approach to Phase 2 because of information gaps related to activities set further into the future. For example, Commission staff notes that truck operations data to quantify criteria pollutant and diesel particulate matter (DPM) emissions is not included for Phase 2 operations, because "heavy-duty delivery truck activity associated with other development is not known." (page 45, Section 4.2, *Air Quality*) While the Draft EIR appears to dismiss these potential impacts as speculative, page 46 first re-emphasizes that the CEQA analysis does not include "specific pollutant-generating activities by future tenants" but then notes that "a detailed quantification of operations-related criteria air pollutant emissions was conducted…upon Project buildout operations in Year 8." In addition, page 86 of Chapter 4.15, *Transportation and Circulation*, as well as page 41 of Chapter 4.7, *Greenhouse Gas Emissions*, determines that the vehicle miles traveled (VMT) and greenhouse gas (GHG) emission calculations associated with the change in existing Howard Terminal users was too speculative, and would not be analyzed and potentially mitigated. Commission staff requests that the Final EIR provide the worst-case scenario for future tenant operational emissions and changes to the existing Howard Terminal user operations as part of a Project EIR (100 percent of the available office, commercial, and/or retail area to be used by the highest-polluting potential tenants in addition to feasible locations that would result in the maximum VMT and GHG emissions). In sum, the City should modify the document to be a combined program EIR, with a project-level EIR analysis for Phase 1 of the Project, and a program-level EIR analysis for Phase 2, with any necessary future environmental review to be tiered from the program EIR. A programmatic approach could also potentially address Project uncertainty caused by the Maritime Reserve scenario.

A-7-10

A-7-11

4. Mitigation Measures: The DEIR sets forth mitigation measures that purport to address a potential impact, but do not appear to create an enforceable condition that reduces the impact's severity. A mitigation measure must minimize significant adverse impacts and be fully enforceable through permit conditions, agreements, or other legally binding instruments (CEQA Guidelines, §15126.4, subds. (a)(1) and (a)(2)).

A-7-12

For example, Mitigation Measures (MMs) AIR-1b and AIR-1c claim to reduce sensitive receptor impacts related to criteria air pollutants and DPM from construction activities, respectively. MM AIR-1b requires that the Project sponsor reduce idling times for construction vehicles as well as maintain and properly tune them. MM AIR-1c requires the Project sponsor to use Tier 4-compliant engines where commercially feasible, thus potentially reducing the severity of the DPM impact but leaving open the option for the Project sponsor to use lower tier emissions equipment and minimizing or eliminating the DPM reduction measure.

A-7-13

RESPONSE

A-7-10 See Consolidated Response 4.1, *Project Description*, particularly Section 4.1.1, regarding the type of EIR prepared for the proposed Project.

Related to specific issues associated with the analysis of air quality impacts, the two specific examples raised in the comment are responded to as follows. As context for both, regarding air quality, the comment appears to misinterpret how the Draft EIR evaluates specific emissions sources associated from future tenant activity. This comment addresses three emission sources:

1. Mobile-source criteria pollutant and toxic air contaminant (TAC) emissions associated with future tenant trucks.
2. Stationary-source criteria pollutant and TAC emissions associated with future tenant truck transportation refrigeration units (TRUs).
3. Stationary-source TAC emissions associated with specific future operational activities.

The comment also suggests a "worst case" analysis of VMT and GHG emissions associated with the change in tenants at Howard Terminal.

Regarding item #1, the comment is incorrect that the Draft EIR does not quantify criteria pollutant and diesel particulate matter (DPM) emissions associated with truck operations. The comment cites footnote 18 on Draft EIR p. 4.2-45, the full text of which is as follows:

> Only truck operations data for the ballpark and performance venue events were available; heavy-duty delivery truck activity associated with other development is not known. TRU emissions from non-ballpark land uses of the Project were not included since it is not yet known what tenants will be included in these land uses. Therefore, for the ballpark and performance venue, emissions associated with heavy-duty delivery truck idling and TRU operation were based on specific ballpark-related truck activity. For the non-ballpark uses, heavy-duty delivery truck emissions are based on EMFAC2017 default values, and no TRU-related emissions were included due to lack of data.

As explained, the only emissions that the Draft EIR omits are those associated with TRUs (transportation refrigeration units) for non-ballpark uses, because of lack of available data and because estimating these TRU emissions would be speculative. This is emissions source item #2 above. However, the Draft EIR does include emissions associated with non-ballpark truck operations, including travel and idling emissions, based on EMFAC2017 truck emission

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rates and anticipated truck travel activities. This is emissions source #1 above. See Draft EIR pp. 4.2-44 through 4.2-45 and Appendix AIR.1 pp. 19-20 and 19-26 for a discussion of the calculation methods used to estimate these emissions.

The second citation in the comment pertains to item #3 above. For complete context, the full text of the citation is on Draft EIR p. 4.2-46:

> Operational emissions associated with specific pollutant-generating activities by future tenants were not estimated because the future tenants and their activities are currently not known. It would therefore be speculative to predict these activities and their emissions. Such activities may include truck-related businesses (like shipping and delivery services), dry cleaning, and other light industrial uses that may generate criteria pollutant and TAC emissions. Because it would be speculative to attempt to quantify emission associated with future activities like these, they were not quantified in this EIR.

This text refers to stationary source emissions of TACs from specific, onsite operational activities by future tenants. Since it is currently not known what tenants will occupy the project site in the and for what duration, it would be speculative to predict their potential stationary source TAC emissions. The emissions modeling was conducted with the CalEEMod model using both project-specific data and default model values for the general land use categories expected with the project (including high-rise apartment, general office building, regional shopping center [for retail], arena, hotel, restaurant, and parking garage). However, as noted above, onroad truck emissions for future tenants are estimated and included in the Draft EIR. See Consolidated Response 4.5*, Truck Relocation,* for additional discussion of the Draft EIR consideration of the relocation of trucking activity from the Project site to other locations. Also refer to Appendix AIR for a detailed discussion of the emissions modeling methods and assumptions for all land use types.

The final citation by the commenter is accurate; the Draft EIR performs a comprehensive analysis of operational emissions from future tenants. This includes onroad vehicle travel (for all vehicle types, including trucks), fuel combustion, consumer product use, architectural coatings, landscaping, and other activities. Please see Draft EIR p. 4.2-41 through 4.2-60 and Appendix AIR.1 p. 17 through 27 for a discussion of all operational emissions sources included in the impacts analysis.

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Regarding the request for analysis of VMT and GHG emissions associated with relocation of existing tenants, please see Consolidated Response 4.5, *Truck Relocation*.

A-7-11 See Consolidated Response 4.1, *Project Description,* for a specific discussion of the maritime scenario.

A-7-12 See Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*.

A-7-13 See Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures,* for a discussion of Mitigation Measure AIR-4b, which calls for health risk reduction measures to supplement those required by Mitigation Measure AIR-4a (use of MERV16 filtration). The original text of Mitigation Measure AIR-4b was derived from a Standard Condition of Approval that the City applies to all projects. Text changes to the mitigation measure have been included in the Consolidated Response and in Chapter 7, *City-Initiated Updates and Errata in the Draft EIR.* The Consolidated Response clarifies the relationship of Measure AIR-4b to Mitigation Measure AIR-4a (i.e., that the impact would be less than significant with the required implementation of Mitigation Measure AIR-4a without the additional measures in Mitigation Measure AIR-2b) and the measure has been amended to include only those requirements that are relevant to the proposed Project. In addition, Mitigation Measure AIR-1c has been revised to require that all construction equipment meet Tier 4 Final emission standards except for limited selected pieces of specialty equipment for which such engines are not available at the start of a construction phase requiring that equipment. The "compliance step down schedule," as presented in Table M-AIR-1c (Draft EIR p. 4.2-66), would only apply to these specific equipment pieces.

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This is similar to MM AIR-4b that contains six actions to reduce a sensitive receptor's potential exposure to toxic air contaminants. But all six are only to be incorporated "as feasible" into the Project's design (page 114, Chapter 4.2, *Air Quality*) and therefore do not constitute an enforceable condition that would minimize the adverse impact. As another example, MMs AIR-1b "Enhanced Controls" as well as AIR-1c(2.a.), and (2.b.) simply require a Construction Emission Minimization Plan, to be applied to all the identified criteria pollutant measures and identified DPM reduction measures, if any (page 66-67, Chapter 4.2, *Air Quality*). Therefore, as staff understands, the sole purpose of these MMs is to create a list showing that the Project sponsor has complied with MM AIR-1b and MM AIR-1c (1.a.). Finally, MM BIO-1b requires the Project sponsor to create a Bird Collision Reduction Plan to "…reduce potential bird collisions to the maximum feasible extent." (page 38, Chapter 4.3, *Biological Resources*). A list of "mandatory measures" follow, but include conditions such as condition vi., which *discourages* upward beams of lights during spring and fall migrations, but notes that upward beams will in fact occur during nighttime programming at the ballpark. Commission staff is concerned that mitigation measures such as MM BIO-1b cannot be determined to mitigate a potential impact to less than significant, as their language is permissive and, in certain instances, explicitly acknowledges that the potential impact will continue to occur. A-7-14

Commission staff recommends that the Final EIR resolve all mitigation measures that do not meet the regulatory definition by incorporating reporting requirements into the body of the enforceable condition and identifying these other actions as "minimization measures" or, more appropriately, Project design features. For those measures that contain permissive conditions, such as MM AIR-4b and portions of MM BIO-1b, the Final EIR should state objective standards to define what is or is not "feasible," present alternate mitigation that can be used when the primary mitigation is not feasible, or analyze the Project activities as if those measures were not implemented to ensure that the worst-case scenario is evaluated. A-7-15

5. Deferred Analysis: CEQA requires a lead agency to disclose and analyze all that it feasibly can in order to ensure informed decision-making. The studies and analyses listed in the Draft EIR should provide critical information related to the potential for, and significance of, environmental effects resulting from the Project. For example, Chapter 4.3, *Biological Resources*, fails to calculate and analyze underwater noise impacts based on the acoustic thresholds established for marine mammals, fish, and birds that may occur within the Project site. Chapter 4.3 also relies upon a technical lighting analysis to reduce special-status avian species collision impacts to less than significant, but both this analysis and the Draft EIR fail to evaluate or disclose the collision impact and how the recommended measures reduce the impact's severity. For example, the lighting analysis on page 51 of the Draft EIR is inconsistent with the lighting discussion on page 37. The amount of light generated by the Project would be substantially greater than previously stated, and the conclusion that the project lighting impacts on birds would be negligible is not supported and does not appear to consider nesting bird impacts. In addition, the Draft EIR does not analyze A-7-16 A-7-17 A-7-18

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A-7-14 Mitigation Measure BIO-1b has been revised to clarify requirements of the measure (including restrictions on upward beams of light) and to remove references to "the maximum extent feasible." See Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures,* as well as Final EIR Chapter 7, *City-Initiated Updates and Errata in the Draft EIR*, for the revised mitigation measure language.

A-7-15 See Response to Comment A-7-14 above and Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures,* for a discussion of related issues.

A-7-16 The commenter is introducing a request for studies regarding underwater noise impacts, a desire for more information about lighting effects and mitigation related to avian species collision impacts, and potential noise impacts on nearby nesting birds. These specific comments are addressed in Responses to Comments A-7-17, A-7-18, and A-7-19 below, as well as Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*, and Consolidated Response 4.17, *Bird Impacts from Fireworks Displays*. While supplemental information has been provided to the extent deemed necessary, the conclusions of the Draft EIR remain valid, and no new or more severe impacts have been identified requiring recirculation pursuant to State CEQA Guidelines Section 15088.5. The City acknowledges the State Lands Commission's role as a Responsible Agency and its ability to exercise its own judgment regarding the adequacy of the Final EIR in accordance with State CEQA Guidelines Section 15066I.

A-7-17 The proposed Project's design and construction methods are generally described in the Draft EIR; however, the design has not progressed such that specifications regarding the size, number, and material of piles, or the proposed Project's installation method (i.e., vibratory, impact hammer), are known. Given this uncertainty, the Draft EIR, beginning on p. 4.3-47, discusses potential acoustic impacts associated with a "worst-case" scenario of using large steel piles, which are typical for the use proposed under the Project, and driven using a combination of vibratory and impact hammer installation methods. In-water pile installation would occur in support of an approximately 75-foot-wide wharf structure, with a total pile footprint of approximately 0.01 acres. Under these "worst-case" assumptions for the Project impacts, there is a potential for significant impacts on aquatic species and habitat from pile installation. As such, Mitigation Measure BIO-3 is included to reduce the potential impact from pile installation to a less-than-

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significant level. This measure sets a performance standard of a maximum noise level, and requires specific measures to be included in a NOAA-approved sound attenuation and monitoring plan that would provide final detail on the sound attenuation system's use would detail the methods used to monitor and verify sound levels during pile installation activities. Adherence to this mitigation measure would reduce hydroacoustic impacts on aquatic species to a less-than-significant level.

A-7-18 The portion of the analysis in Section 4.3 that addresses the Project's operational lighting impacts on biological resources is informed in part by findings in the HLB Technical Lighting Analysis (presented in Section 4.1, *Aesthetics*, Table 4.1-3), in which the baseline conditions are compared with anticipated operations scenarios. The Draft EIR thoroughly describes the potential effects of operational lighting associated with those results both as they relate to birds (on pp. 4.3-36 through 4.3-38) and as they relate to marine species (on p. 4.3-51). Operational lighting impacts on marine species are determined to be less than significant with no mitigation required.

A potentially significant impact on birds was identified to result from Project operations because of the type of special-purpose lighting often used around stadiums and to highlight special events (e.g., architectural feature lighting and spotlights). Mitigation Measure BIO-1b: Bird Collision Reduction Measures describes measures the Project sponsor would be required to implement to avoid or reduce the magnitude of avian collisions with Project buildings to a less-than-significant level (such as specific design elements proven effective at reducing avian collisions). These include measures appropriate to limit light and glare spillover into to the night sky that might otherwise affect birds during migration.

The comment states that there are inconsistencies between the operational lighting analysis for birds (see Draft EIR p. 4.3-37) and marine species (see Draft EIR p. 4.3-51). Upon reconsideration, one inconsistency was identified in the second paragraph of Draft EIR p. 4.3-51, and has been revised to read:

> Measurements of existing conditions were 1.2 lux at the center of the turning basin at ~~approximately 159~~ 190 feet above the surface of the water, and 5.7 lux at the center of the turning basin at ground level (line of sight).

The comment incorrectly states that the amount of light generated by the proposed Project would be substantially greater than previously stated. As

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described in the Draft EIR analysis, although the proposed Project would incrementally increase the overall amount of lighting along the Oakland Inner Harbor waterfront or light trespass into the Oakland-Alameda Estuary as a whole, and would change the character and height of light sources, the light spill into the Estuary would still be less than that of the nearby Port of Oakland active shipping terminal and thus not expected to adversely affect marine species that occupy the Estuary or birds resting on the water.

As already discussed, potential impacts from Project's light spill into the night sky that could affect migrating birds would be reduced to a less-than-significant level with implementation of Mitigation Measure BIO-1b. See Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures,* regarding updates to Mitigation Measure BIO-1b. See Consolidated Response 4.17, *Bird Impacts from Fireworks Displays*, for additional discussion of Project operations on nesting birds and an explanation of why certain common species are expected to continue to nest within the Project site following construction without any disturbance that would require identification of mitigation.

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the Project's operational noise on nearby nesting birds. Instead, page 40 first notes that "concert event noise levels are expected to exceed existing daytime and nighttime levels with an increase of 5 dBA [level of sound as perceived by the human ear] or more, which is significant under the Section 4.11, Noise and Vibration, thresholds, and requiring mitigation…" but then simply states that bird nesting is not expected in the interior of the ballpark or any areas that would be subject to severe noise generated from events or concerts and thus the impact is less than significant. There does not appear to be an analysis or rationale that connects the concert or event noise levels to an impact threshold for nesting birds, nor an explanation as to how the nesting peregrine falcons on the existing crane structures would not be impacted from this activity.

A-7-20

Unless conducting these analyses is truly infeasible at this time, which the City does not state is the case, they should be conducted, and the Draft EIR revised and recirculated to provide an opportunity for full public disclosure and review. Without complete impact analyses in the Final EIR, meaningful review of the impacts and adequacy of the mitigation by Commission staff may be precluded. New or more severe impacts identified as a result of these analyses, may result in the need for additional information to be submitted or additional environmental review under sections 15096, subdivision (e) and 15162 of the State CEQA Guidelines prior to Commission action.

Aesthetics

A-7-21

6. Wind: The DEIR discloses that wind sensors in the vicinity of the Project have recorded existing wind at an average of 27 miles per hour (mph). In addition, the document notes that "with 25 to 31 mph winds, … there is difficulty in walking steadily, and wind noise is unpleasant." (page 4.1-12, *Aesthetics*) Once full buildout is complete, the Project area will have average wind speeds of 32 mph and will exceed 36 mph, a speed at which it is nearly impossible to walk into the wind, pedestrians and bicyclists have increased difficulty with balance, and stronger gusts can blow people over. While the wind tunnel studies indicate that high wind speed locations would be mostly gathered around the corners of Project-area buildings, Figure 4.1-39 depicts public hazards within public use spaces during both Phase 1 and Phase 2 operations. Please include in the Final EIR a discussion of wind impacts to the public users of the proposed waterfront park and other open recreational spaces.

Air Quality

A-7-22

7. Renewable Diesel: On page 68 of Section 4.2, *Air Quality*, the Draft EIR evaluates using renewable diesel fuel for all diesel engines to further reduce the significant and unavoidable impact from nitrous oxide (NOx) emissions. The analysis concludes that because MM AIR-1c would require Tier 4 off-road engines, which have diesel filter particulate technology, there could be a limited to negligible benefit from having a renewable diesel mitigation measure. Commission staff notes, however, that MM AIR-1c only requires Tier 4 engines where commercially feasible and provides for a

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A-7-19 See Consolidated Response 4.17, *Bird Impacts from Fireworks Displays*, which includes a discussion of operational noise impacts on common urban bird species expected to occupy or nest within the Project site. While the discussion focuses on noise associated with fireworks displays, the same explanation for a less-than-significant impact on birds also applies to elevated concert and event noise levels. See also Response to Comment A-7-29, paragraphs 3 and 4, which discuss potential noise impacts on nesting birds from concerts and high-capacity ballgames, concluding that these events would have a less-than-significant impact because the anticipated noise levels for these events would not differ substantially from baseline conditions and would result in less severe responses by birds than fireworks displays.

A-7-20 See Responses to Comments A-7-17, A-7-18, and A-7-19. The supplemental information provided clarifies and expands upon analyses included in the Draft EIR, and the conclusions of the Draft EIR remain valid. The comment refers to State CEQA Guidelines Section 15162, which addresses the conditions that may require supplemental environmental review in the event of changes to the project or the circumstances of the project after EIR certification. The considerations related to recirculation of a draft EIR when "significant new information" is introduced after the public comment period are addressed in State CEQA Guidelines Section 15088.5. Pursuant to Section 15088.5(a), significant new information includes a new significant impact, a substantial increase in the severity of a significant impact, or identification of a new feasible mitigation measure or alternative that the project sponsor declines to adopt. Because the information provided "merely clarifies or amplifies or makes insignificant modifications" to the Draft EIR,[11] the information is not considered significant new information, and does not require recirculation pursuant to State CEQA Guidelines Section 15088.5. The City acknowledges the State Lands Commission's role as a Responsible Agency and its ability to exercise its own judgment regarding the adequacy of the Final EIR in accordance with State CEQA Guidelines Section 15096(e).

A-7-21 As explained on Draft EIR p. 4.1-19, the significance of wind impacts is determined based on whether a project involving building(s) 100 feet or greater in height and in certain locations, including along the Oakland-Alameda Estuary, would result in "winds that exceed 36 mph for more than one hour during daylight hours during the year." Therefore, the measurement

[11] State CEQA Guidelines, Section 15088.5(b).

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of such hazardous winds is based on the wind speed exceeded one hour per year at any given location, and all of the wind speeds presented in the Draft EIR's analysis of project wind impacts are based on this wind hazard speed—the wind speed exceeded one hour per year, or approximately 0.3 percent of the time, based on approximately 3,000 hours of daylight annually.[12]

A 26 mph hourly average wind speed would generate a 3-second gust of wind at 20 meters per second (the equivalent of approximately 44 mph).[13] The wind hazard threshold speed is described as "dangerous, with the probability of people being blown over, particularly if they are old or infirm."[14]

It is important to note that a separate set of wind criteria are commonly used in wind analyses to describe pedestrian comfort, as opposed to hazardous winds. In contrast to the one-hour-per-year wind hazard standard, wind comfort speeds are most commonly evaluated as the 90th or 95th percentile wind speed—that is, the wind speed that is exceeded 10 percent or 5 percent of the time, respectively (in the case of the proposed Project's wind study, the 90th percentile wind speed is used for the measurement of wind comfort speeds).[15] Thus, the wind comfort speed for a given location occurs with approximately 300 times the frequency as the wind hazard speed for the same location. As a result, the comfort speed is considerably lower than the hazard speed, because the latter occurs with much less regularity. Accordingly, the 90th percentile wind speed (speed exceeded 10 percent of the time, and *not* exceeded 90 percent of the time) is more akin to a true average wind speed, because it covers 90 percent of the winds that blow at a given location. Put another way, the wind comfort speed is exceeded approximately 300 hours per year—or less than one hour per day, on average, based on the same 3,000 hours of annual daylight.

It is the wind hazard speed (speed exceeded one hour per year) that averages 27 mph under existing conditions on the Project site, as shown in Draft EIR Table 4.1-6, p. 4.1-64. However, the average of the 90th percentile wind speed (the speed exceeded 10 percent of the time) is 12 mph, as explained in

[12] The 36 mph wind hazard threshold is based on one-minute averaging of measured wind speeds; when converted to a one-hour average, the equivalent wind speed is 26 mph, because when winds are measured over a shorter period of time, there is less likelihood of a higher speed being reached than during a longer time period.

[13] Lawson, T. V., and A. D. Penwarden. 1976., The Effects of Wind on People in the Vicinity of Buildings. Pages 605–622 in," *Proceedings of the Fourth International Conference on Wind Effects on Buildings and Structures*, *London, 1975.* Cambridge, UK: Cambridge University Press.

[14] Penwarden, A. D. 1973. Acceptable Wind Speeds in Towns. *Building Science* 8:259–267.

[15] Both the wind comfort speed and the wind hazard speed account for turbulence, which can increase the effective force of the wind.

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Draft EIR Appendix AES.2, *Pedestrian Wind Study* (p. 11 of Appendix AES.2). It is this 12 mph existing wind speed that is properly compared to the "average wind speeds" for which effects on people are set forth on Draft EIR p. 4.1-12. As stated there, wind speeds from 8 to 12 mph will disturb hair, cause clothing to flap, and extend a light flag mounted on a pole, and this is the existing prevailing wind condition at the Project site. With the proposed Project, the average comfort speed would increase to 13 mph, which could raise loose paper, dust, and dry soil, and disarrange hair. Neither wind speed would be considered hazardous.

The wind hazard speeds reported in the Draft EIR (a maximum of 49 mph, one hour per year, with an average hazard speed among all test points of up to 33 mph) would occur very infrequently and would likely be avoidable by most observers in that they would typically occur in connection with storms. Nevertheless, based on the criteria set forth above, wind hazard speeds with implementation of the proposed Project would result in a significant impact even with mitigation, because, as stated on Draft EIR p. 4.1-70, "[s]ince it cannot be stated with certainty that no such localized wind hazard exceedances would result, the impact could be significant with development of Phase 1, with buildout, and/or during the interim period, even with mitigation."

For clarification, the second sentence of the paragraph beneath the heading "Existing Wind Conditions at the Project Site and in the Vicinity" on Draft EIR p. 4.1-13 is revised to read:

> The Wind Technical Report prepared by RWDI (see Appendix AES) determined that existing <u>hazard</u> wind speeds <u>(the wind speed exceeded one hour per year)</u> at the Project site average 27 mph.

As explained on Draft EIR p. 4.1-68, the wind analysis, like the visual simulations and shadow analysis, "was based on a simple massing plan of the proposed Project and not on actual building designs," which are not yet available. "In particular, the model includes generally rectilinear building forms (except for the proposed ballpark) without setbacks, podiums, or building articulation that would reduce pedestrian-level wind speeds. Therefore, the analysis presents a conservative evaluation of potential Project wind effects and likely overstates the changes in wind speeds that would result from the Project." Nevertheless, based on the wind tunnel testing conducted for the Project, the Draft EIR appropriately determined that wind

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impacts would be significant because wind speeds, based on the conservative Project massing model, would exceed the wind hazard criterion at a number of locations under both Phase 1 and Full Buildout conditions.

However, in terms of wind effects on users of the proposed waterfront park and other open space, as can be seen in Draft EIR Figures 4.1-31 and 4.1-32, pp. 4.1-66 and 4.1-67, respectively, wind speeds at a large majority of locations in the Project's proposed open spaces would meet the wind hazard criterion. This is because most of the wind hazard exceedances were identified immediately adjacent to or very near to the proposed Project towers, and because the open spaces would be concentrated along the Oakland-Alameda Estuary and thus would be upwind from nearly all Project buildings during prevailing westerly and northwesterly winds.

There are no publicly accessible parks or open spaces on the Project site today, and thus, the Project could have no effect on the use of such facilities. However, compared to existing conditions, the proposed Project would actually decrease wind comfort speeds (speeds exceeded 10 percent of the time) at many locations along the waterfront. This can be seen in Figures 2A, 2B, and 2D of Appendix AES.2, *Pedestrian Wind Study*. These figures show that under existing conditions, the wind comfort speed exceeds 11 mph at nearly all locations on the Project site. However, under both Phase 1 and Full Buildout conditions, wind comfort speeds would be below 11 mph at many open space locations. In particular, nearly all locations east of the proposed ballpark would have wind comfort speeds below 11 mph under both scenarios, as the ballpark would provide shelter from northwest winds.

A-7-22 As noted in Response to Comment A-7-13, Mitigation Measure AIR-1c has been revised to require that all construction equipment meet Tier 4 Final emission standards except for selected pieces of specialty equipment for which such engines are not available at the start of a construction phase requiring that equipment. The "compliance step down schedule," as presented in Table M-AIR-1c (Draft EIR p. 4.2-66), would only apply to these specific equipment pieces. In addition, the revised mitigation measure would require the use of alternative fuels such as renewable diesel, biodiesel, natural gas, propane, or electricity on all equipment that cannot meet the Tier 4 Final requirement, should the Project sponsor find that a specific piece of Tier 4 Final equipment is not available. The effectiveness of renewable diesel on emissions was not analyzed because emission reductions depend on the specific equipment type, engine model year, and emissions controls present in

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the piece of equipment, as discussed on Draft EIR p. 4.2-68.[16] See Final EIR Chapter 7, *City-Initiated Updates and Errata in the Draft EIR*, for the revised mitigation measure language. See also Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures.*

[16] Gladstein, Neandross & Associates (GNA), 2017. *Renewable Diesel as a Major Heavy-Duty Transportation Fuel in California: Opportunities, Benefits, and Challenges*, August 2017. https://www.gladstein.org/gna_whitepapers/renewable-diesel-as-a-major-transportation-fuel-in-california-opportunities-benefits-challenges/, accessed May 2019.

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A-7-22 step-down schedule that could ultimately permit Tier 2 engine usage. As such, the Final EIR should evaluate a renewable diesel fuel mitigation measure if Tier 4 engines would not be used under MM AIR-1c, including an analysis of renewable diesel fuel's effectiveness in Tier 3 and Tier 2 engines.

A-7-23 8. Fugitive Dust: MM AIR-1a, Enhancement Control measure 5, notes that the Project sponsor shall ensure that all exposed surfaces are watered at a frequency adequate to maintain minimum soil moisture of 12 percent. This soil moisture content can be determined and verified by lab samples or by moisture probe. However, MM AIR-1a lacks a metric to ensure this verification is performed frequently enough to maintain the 12 percent moisture requirement. Commission staff recommends that the Final EIR establishes a reasonably consistent schedule for verifying the moisture content of exposed surfaces when setting forth the mitigation monitoring and reporting program.

Biological Resources

A-7-24 9. Special-Status Species Presence and Impacts: Table BIO-2 in Appendix BIO, *Biological Resources Supporting Information*, lists special-status birds and their likelihood to be present at the Project site. However, the Draft EIR fails to clearly identify the potentially affected species, discuss the likelihood of their presence or absence, include information related to Project site surveys, or provide a map indicating the species' proximity to Project construction and operations. Appendix BIO should also include, at a minimum, a copy of the California Natural Diversity Database record search and accompanying maps.

There are several State fully protected species that have a high likelihood of being present on or near the project site. (Fish & G. Code, § 3511; EIR App. 6, Table BIO-2.1) The Draft EIR simply states that some sensitive species and nesting and foraging birds "may" be present on or within the vicinity of the Project site and provides for pre-construction site surveys and mitigation "if" found. As discussed above, the document must include a discussion of the sensitive and nesting or foraging bird species impacts that would or are likely to occur from Project construction and operation activities. The City should ensure that the Final EIR appropriately evaluates any potential destruction of birds, nests, and eggs as protected by federal and state laws, depending upon the species affected.

A-7-25 10. Peregrine Falcon Nests: American peregrine falcons, a State "fully protected species" under Fish and Game Code section 3511, subdivision (b), have nested on the easternmost crane closest to the ballpark for the last 6 years. The Fish and Game Code prohibits a "take" of these species that includes their nests, eggs and young. MM BIO-1c includes surveys of cranes at the Project site for peregrine falcon nests prior to the start of the regular baseball season (approximately late March or early April), and states that if no nests are noted, no further action is required. However, given that the nesting season extends through May, surveys should continue through the nesting season in the event nests occur after the initial survey is conducted. Additionally, MM BIO-1c states that annual surveys will not be

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A-7-23 Mitigation Measure AIR-1a includes all "best management practices" for dust control included in the BAAQMD CEQA Guidelines.[17] The language regarding soil moisture content is directly from the BAAQMD CEQA Guidelines (see p. 8-5; Table 8-3). The measure sets a performance standard for the construction contractor to maintain instead of specifying the frequency of watering, which would depend on the amount of soil movement and on wind and weather conditions that vary from day to day. The Mitigation Monitoring and Reporting Program (MMRP) would ensure that this mitigation measure is enforced and its effectiveness monitored. Courts have found that these types of "best management practices" are proper mitigation under CEQA, especially where they are "widely employed," as here. (See *Friends of Oroville v. City of Oroville* (2013) 219 Cal.App.4th 832, 838.)

A-7-24 Appendix BIO, Table BIO-2, Special-Status Animal Species that May Occur in the Terrestrial Study Area, identifies special-status bird species of the region; lists their federal or state protective status and habitat requirements; and indicates whether the individual species is known to be present or has a low, moderate, or high potential to occur in the terrestrial study area based on the presence of suitable habitat, and whether these areas are within the species' range. Some of the descriptions for potential species occurrence note whether Project site conditions provide suitable habitat. Species determined to have at least a moderate potential to occur in the terrestrial (or marine) study areas were discussed in detail in the environmental setting, where their documented presence in the Project study areas was further described. Potential impacts of the proposed Project on those species determined to have at least a moderate potential to occur were assessed in the impact analysis. This approach results in a focused evaluation of potential impacts of the proposed Project on an individual species based on their potential to be present in the Project study areas.

Special-status bird species determined in the Draft EIR to have at least a moderate potential to occur include American peregrine falcon, osprey, California gull, California brown pelican, double-crested cormorant, Caspian tern, California least tern, black oystercatcher, Clark's grebe, and red-throated loon (see Draft EIR pp. 4.3-15 through 4.3-18). Other non-special-status resident and migratory birds expected in the Project study areas are listed on Draft EIR p. 4.3-18. Potential project impacts on these bird species are evaluated under Impact BIO-1, Draft EIR pp. 4.3-33 through 4.3-43, where it

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was determined that proposed Project impacts would be less than significant with the following mitigation incorporated:

- Mitigation Measure BIO-1a, Disturbance to Birds during Nesting Season
- Mitigation Measure BIO-1b, Bird Collision Reduction Measures
- Mitigation Measure BIO-1c, Peregrine Falcon Firework Display Surveys, Buffer, and Monitoring

See Consolidated Response 4.17, *Bird Impacts from Fireworks Displays*, for modifications to Mitigation Measures BIO-1b and BIO-1c. The above-referenced measures would protect birds and their nests as required by state regulations.

The comment requests a figure depicting special-status species records proximate to the Project site. The Draft EIR includes such a figure in Appendix BIO, Figure BIO-1. This figure lists the names and depicts the locations of special-status species occurrences within five miles of the Project site as recorded in the California Department of Fish and Wildlife's Natural Diversity Database in January 2019. Figure BIO-1 also identifies the location of the Project site and marine and terrestrial study area boundaries.

A-7-25 As the comment states, Mitigation Measure BIO-1c specifies that pre-season surveys would be initiated in late March/early April, before the first fireworks display, to identify any active peregrine falcon nest sites on the Project site cranes, and that if none are identified, no further action is required. The comment correctly notes that peregrine falcons inhabiting the region may establish nests into May, especially if attempting to nest again after a failed attempt earlier in the breeding season. In response to the timing consideration identified in the comment, Mitigation Measure BIO-1c on Draft EIR pp. 4.3-42 and 4.3-43 is revised to read:

Mitigation Measure BIO-1c: Peregrine Falcon Firework Display Surveys, Buffer, and Monitoring.

1. During the first operational year, a qualified biologist shall survey cranes on the Project site for nesting peregrine falcons prior to start of the regular baseball season (approximately late March/early April)

[17] BAAQMD, 2017. *California Environmental Quality Act Air Quality Guidelines*, May 2017. http://www.baaqmd.gov/~/media/files/planning-and-research/ceqa/ceqa_guidelines_may2017-pdf.pdf?la=en, accessed April 2019.

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to identify active peregrine falcon nest sites. Additional surveys~~The survey~~ shall be conducted prior to the first fireworks display to occur within the peregrine breeding season if the initial survey results are negative. If survey results are still negative, pre-event surveys to identify active peregrine falcon nests on the Project site cranes will continue through May. If survey results are negative through May 31, then no further action would be required under this measure for that season.

2. Should an active peregrine falcon nest be identified on the Project site cranes during surveys, a 500-foot buffer shall be maintained between the nest site and the fireworks aerial detonation location. This initial starting buffer distance may be adjusted based on site conditions, with concurrence from the California Department of Fish and Wildlife. For example, if the nest is shielded from potential impacts, then a smaller buffer distance may be warranted.

3. The nest site shall be monitored by a qualified biologist immediately prior to and the morning after the first five ballpark fireworks events to examine bird responses to the fireworks event. Surveys shall examine the stability patterns of the nest and evaluate the effectiveness of the 500-foot buffer. The monitor will document peregrine falcon behavioral disturbance at the nest site associated with the fireworks display and confirm if flushed adults return to the nest site following the display. If possible, video monitoring shall assist in documenting bird behavior at the cranes during the firework displays. The qualified biologist will review the nest site the morning after the display to document the presence or absence of adults at the nest site.

4. Following nest monitoring events, the qualified biologist shall determine if the nesting stage (i.e., egg incubation, nestling, fledgling) and level of disturbance observed warrant temporary adjustments to future fireworks displays at the ballpark (e.g., adjustments to the 500-foot buffer), to avoid potential take of an egg, nest, or nestling resulting from fireworks disturbance. If such monitoring suggests that falcons have abandoned a nesting attempt the morning after an event, a nestling rescue effort and transfer to a qualified rehabilitation center shall be required to prevent a take

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event. Nest monitoring would also inform adaptive management to further protect nesting falcons during future shows by, for example, adjusting the timing and/or location of the fireworks shows to further reduce effects on bird behavior.

5. Should nesting within the Project site on the container cranes not be identified during surveys for 3 more consecutive seasons, it will be assumed that local peregrine falcons, have selected another nesting location and annual surveys and monitoring in advance of ballpark firework displays shall no longer be necessary to avoid or minimize disturbance to this species and their nests.

The comment additionally states that the Draft EIR should discuss the potential removal of nesting habitat in the context of peregrine falcons in the region. Peregrine falcons are known to nest regionally, including on buildings in San Francisco and possibly in Oakland, as well as on a variety of other human-built structures in the greater Bay Area (e.g., the Campanile at the University of California, Berkeley, and the Fruitvale Bridge). The cranes are not unique or protected habitat for peregrine falcon for which destruction or loss of the cranes would result in decline of the species' population overall.

Three years of nest monitoring with negative survey findings is sufficient to avoid impacts on peregrine falcon. Once the crane is deemed inactive (i.e., not hosting an active peregrine falcon nest), measures may be taken to reduce the likelihood of peregrine falcon nesting on the cranes in the future. Following three years of monitoring with negative survey findings, any exclusion measures employed on the Project site cranes would be deemed successful. The only protection measures for active bird nests that are required to remove or modify the crane and thereby reduce its potential use as nesting habitat are provided in Mitigation Measure BIO-1a. No compensatory mitigation is required because the waterfront cranes are not protected nesting habitat for peregrine falcon or any other bird, which would prohibit removal of the cranes. See also Consolidated Response 4.17, *Bird Impacts from Fireworks Displays*

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A-7-25 necessary if nests are not located for three or more consecutive seasons within the Project site, "…as it can be assumed that local peregrine falcons have selected another nesting location…" Finally, MM BIO-1c does not propose any mitigation for the loss of the peregrine nesting site if the easternmost crane is removed and allows that the cranes may be removed during the nesting season "if necessary." The Draft EIR assumes that any displaced birds would find suitable nesting habitat elsewhere. The Final EIR should 1) further discuss this potential removal of nesting habitat in the context of cumulative impacts on peregrine falcons in the region, 2) explain why MM BIO-1c's recommendation to cease nesting surveys is an appropriate action to take in the event nests are not observed for three consecutive seasons, and 3) include appropriate mitigation or other actions for the loss of the peregrine falcon nest if the eastern crane is removed.

A-7-26 11. Fireworks: The proposed Project would include nighttime fireworks displays over the ballpark. The Draft EIR notes that "for a bird nesting within the Project site, noise associated with display fireworks at the ballpark could flush birds from active nests depending on the ambient noise environment when fireworks occur, where the fireworks are directed relative to the nest, and the tolerance of the particular birds to disturbance." (page 41, Chapter 4.3, *Biological Resources*) However, the document then concludes that there will not be an adverse impact upon nesting birds around the Project area. Regarding the effects of noise associated with fireworks displays at the ballpark, please provide an analysis of the sound levels anticipated to occur at, for example, the California least tern colony located on Alameda Island, approximately 1.5 miles southwest of the ballpark. Simply stating that "[d]ue to the rate of sound level dissipation over distance, firework displays at the ballpark would not adversely affect birds nesting beyond the immediate vicinity of the Project site" (page 41, Section 4.3, *Biological Resources*) based on sound levels recorded in a different location at a greater distance from the source is not a sufficient analysis. Please also see the comment immediately below (Special-Status Species Noise Impacts) regarding the in-air acoustic thresholds used to assess impacts for birds.

A-7-27 The Draft EIR appears to rely upon an analysis performed by H.T. Harvey (2019) to conclude that there would be a less than significant impact of fireworks displays on the nesting peregrine falcons as long as there is a buffer of 500 feet between the fireworks launch area and a potentially affected nest. However, according to the Draft EIR, a fireworks display contains different stimuli than the existing conditions because there are discrete flashes of light accompanied by sound levels as high as 150-175 decibels (dB) near the launch platform (existing nest area conditions are 58 to 59 dBA). The Final EIR should analyze these additional stimuli and include the H.T. Harvey analysis within Appendix BIO to justify the less-than-significant impact determination. Commission staff concurs with CDFW's comment letter dated April 12, 2021, which also requests that the Final EIR provide further analysis and justification for the 500-foot buffer proposed on page 41, Chapter 4.3, *Biological Resources*, to reduce impacts to nesting peregrine falcons.

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A-7-26 See Consolidated Response 4.17, *Bird Impacts from Fireworks Displays*.

A-7-27 See Consolidated Response 4.17, *Bird Impacts from Fireworks Displays*

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In addition, MM BIO-1c requires that any abandoned active nest where the parent peregrines have been flushed due to the firework displays have a rescue operation for the nestlings, purportedly to avoid a take. But the parents' abandonment of the nest and subsequent rescue operation may itself be a prohibited "take."

12. Special-Status Species Noise Impacts: Impact BIO-3 on page 46 of Chapter 4.3, *Biological Resources*, should include an analysis of in-air and underwater noise impacts based on the acoustic thresholds established for marine mammals, fish, and birds that may occur within the Project site. The Final EIR should also specify what is meant by smaller and larger fish with respect to noise thresholds. For example, fish are separated into two hearing groups based on weight: fish that are greater than or equal to 2 grams and fish that weigh less than 2 grams. There are two thresholds for avoiding acute physical damage or mortality: peak SPL and cumulative SEL. Both hearing groups have a threshold of 206 dB (peak), while the cumulative SEL is based on weight, where the threshold for fish greater than or equal to 2 grams is 187 dB (cumulative SEL) and for fish less than 2 grams is 183 dB (cumulative SEL). In addition, the National Oceanic and Atmospheric Administration (NOAA) and the U.S. Fish & Wildlife Service have used 150 dB (RMS) as the threshold for behavioral effects for both hearing groups. While these thresholds are specific to impulsive noise sources, they are also commonly applied in the absence of specific thresholds for non-impulsive/continuous noise. Please refer to the Caltrans Technical Guidance for the Assessment and Mitigation of the Hydroacoustic Effects of Pile Driving on Fish for more information: https://dot.ca.gov/-/media/dot-media/programs/environmental-analysis/documents/env/bio-tech-guidance-hydroacoustic-effects-110215-a11y.pdf.

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For marine mammals, please refer to NOAA's Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing for the onset of permanent and temporary threshold shifts (PTS and TTS, respectively): https://media.fisheries.noaa.gov/dam-migration/tech_memo_acoustic_guidance_(20)_(pdf)_508.pdf. Please note that there are underwater acoustic thresholds for behavioral effects. For impulsive noise (e.g., from impact pile driving) the threshold is 160 dB (RMS) (unweighted) and for non-impulsive/continuous noise (e.g., from vibratory pile driving) the threshold is 120 dB (RMS) (unweighted) for all cetaceans (whales, dolphins, and porpoises) and pinnipeds (seals and sea lions/fur seals). NOAA also has in-air acoustic thresholds specific to pinnipeds: 90 dB (RMS) (unweighted) for harbor seals and 100 dB (RMS)(unweighted) for non-harbor seals.

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For birds, while there are no official criteria for in-air or underwater acoustic thresholds, Caltrans has recommended interim in-air guidelines to assess noise effects, which are 125 dBA for PTS and 93 dBA for TTS. For additional information, please see the Caltrans Technical Guidance for the Assessment and Mitigation of the Effects of Traffic Noise and Road Construction Noise on Birds: https://dot.ca.gov/-/media/dot-media/programs/environmental-analysis/documents/env/noise-effects-on-birds-jun-2016-a11y.pdf. Regarding

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A-7-28 Established hydroacoustic pile installation thresholds for fish and marine mammals are discussed in Draft EIR Impact BIO-3. These thresholds provide the regulatory basis for the sound attenuation and monitoring program that would be developed as required by Mitigation Measure BIO-3. This approach is warranted because the specifications (i.e., size, number, material) and installation method (i.e., vibratory, impact hammer) for piles used to construct the proposed Project has not been determined. Given this uncertainty, the potential exists for significant impacts on aquatic species and habitat from pile installation. The commenter is correct to note that injury and harassment thresholds for underwater noise generation vary by organism (fish or marine mammal), organism size (small fish or large fish), marine mammal hearing group (pinniped or cetacean), and installation methodology (vibratory or impact hammer usage). While the exact specifications for pile installation have not been determined, the Draft EIR does include a discussion of the type of marine mammal and special-status fish species that may occur within the water adjacent to the project site.

As mentioned above, impacts to fish from underwater noise are shown to vary by the weight of the organism (+/- 2 grams in body mass). Green sturgeon and listed anadromous fish spawn in freshwater and will rear within this habitat, growing in size, before migrating through San Francisco Bay. Therefore, young of listed species weighing less than 2 grams are not expected within the waters adjacent to the project site. However, juvenile Pacific herring or longfin smelt weighing under 2 grams may occur. Thus, both the 183 dB SEL criterion for fish of less than 2 grams and the 206 dB peak level and 187 dB SEL for fish greater than 2 grams are relevant. Additionally, as both cetacean (harbor porpoise) and pinipped (e.g., harbor seal) species occur regionally both groups will need to be analyzed individually based on their requisite hearing thresholds. Under the sound attenuation and monitoring program the exact specifications of pile type and installation methodology will be analyzed within the context of the relevant NOAA-established underwater noise thresholds for fish and marine mammals. As such, Mitigation Measure BIO-3 is included to reduce the potential impact from pile installation to a less-than-significant level.

A-7-29 As the commenter notes, there are no formally adopted criteria for in-air acoustic thresholds from federal or state resource agencies to assess the potential impacts of elevated human-generated sounds or human activities near active bird nests during the breeding season.

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The commenter provides reference to the California Department of Transportation (Caltrans) interim guidelines for assessing effects of traffic noise and road construction noise on birds. This document provides a thorough review of literature and discussion of stress and physiological effects of traffic and road construction noise on birds, the resulting hearing loss or damage from overexposure, the masking effects of continuous noise on birds, behavioral and population effects, extrapolation of data from humans to birds and other species, and data gaps that would improve the scientific understanding of how noise affects birds and other animals. The concluding guidelines document different levels of effects or responses to construction or traffic noise sources associated with noise level thresholds when the noise reaches the bird, including hearing damage, temporary threshold shift (TTS), masking, and potential behavioral and physiological effects.

The commenter notes that the guidelines are 125 A-weighted decibels (dBA) for a permanent threshold shift (PTS) and 93 dBA for a TTS; however, there is more nuance to these thresholds than the commenter explains. The 125 dBA threshold is associated with multiple impulse noises like a jackhammer or pile driver, and the threshold is noted as an estimate based on bird data from one of the document references and other impulse noise exposure studies in small mammals. The 93 dBA threshold is noted as an estimate based on the study of TTS by continuous noise in the budgerigar (a species of parakeet) and similar studies in small mammals. The guidelines note that species can vary considerably in how they hear in the presence of noise and respond accordingly and that traffic noise characteristics are heavily influenced by transmission through the environment.

Because the guidelines focus on traffic and construction noise *on roadways*, the conclusions provided in the guidelines are not readily applicable to the Project conditions, and to deviation in noise levels anticipated during construction and operation. The following explanation discusses the approach taken in the Draft EIR analysis to assess the Project's noise impacts on birds and makes note of the Caltrans guideline thresholds where they might be applied, even though the guidelines are presented in the context of traffic and construction noise.

To assess construction noise impacts on birds, the analysis focuses on anticipated changes to the noise environment relative to the baseline. As discussed in Draft EIR pp. 4.3-33 through 4.3-35, Project construction activities such as vegetation removal, tree trimming or removal, ground-disturbing

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activities (excavation and grading), and pile driving for building foundations could result in direct impacts on nesting birds, if present on or near the Project area. However, the implementation of standard mitigation measures to identify nesting birds near the Project site (Mitigation Measure BIO-1a) would identify any active nest and provide protective buffers that would allow birds to successfully complete nesting. Observations of behavioral responses by the nesting bird to elevated construction noise sources would inform the protective buffer distances between the nest and noise source. With this measure, potential impacts on nesting birds would be reduced to a less-than-significant level.

To assess operational noise impacts on birds, the Draft EIR analysis focuses on potential impacts from operational noise events that would substantially change the noise environment from baseline conditions (Draft EIR pp. 4.3-40 through 4.3-43). These include firework displays, concerts, and high-capacity baseball games. Disturbances to common bird species that might nest in Project landscaping or structures in the urban setting of the Project site from these elevated noise events were determined negligible, as such species readily adapt to brief disturbances (i.e., fireworks) and are more tolerant of human noise disturbance through the ambient noise environment of the Project site. The discussion focuses on potential effects of these elevated noise events on peregrine falcon, which has the potential to nest on the cranes in the southwest portion of the Project site. A more in-depth discussion of potential impacts on this species is warranted because peregrine falcon is a fully protected bird species under the California Endangered Species Act and therefore is afforded more protection than other non-special-status (common) resident and migratory birds that might occur within the Project site. See Consolidated Response 4.17, *Bird Impacts from Fireworks Displays.*

The Draft EIR identifies the baseline noise levels at the on-site noise monitoring location (LT-1), which is located on the wharf at the south site boundary, as averaging between 58 and 59 dBA (Draft EIR p. 4.11-7). As discussed on Draft EIR p. 4.11-45 and depicted on Figure 4.11-3, a high-capacity baseball game would produce elevated noise levels within the Project site and immediate vicinity. Under this scenario, the noise level contour containing the southeast portion of the site where two of the four cranes would be permanently positioned during Project operations is 60 dBA, which is not substantially different from baseline conditions. Therefore, noise generated from ballpark high-capacity games would have a less-than-

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significant impact on nesting peregrine falcon. At this same location, modeled concert event noise could produce noise levels up to 75 dBA during the peak evening period of the event (9 to 11 p.m.) (Draft EIR p. 4.11-49, Figure 4.11-4). This noise level is within the range comparable to a noisy urban area or gas lawn mower at 100 feet (70–80 dBA) (Draft EIR p. 4.11-2, Table 4.11-1). Concerts are described in the Draft EIR as occurring nine times per year, primarily Friday and Saturday, between 7:30 and 11 p.m., not all of which would occur during the peregrine falcon nesting season (p. 3-36, Table 3-2).

Although temporary elevated noise levels at the Project site cranes could reach up to 75 dBA for up to two hours during each concert event, these infrequent, sustained elevated noise levels would be expected to have less severe effects on and elicit less response from nesting peregrine falcons on the Project site cranes than impulse noise bursts with levels greater than 100 dB, associated with firework displays (as high as 150–175 dB at the detonation site). This is because the anticipated noise levels of up to 75 dBA during concert events would be substantially less than noise levels associated with firework displays, which would be increased gradually rather than as an abrupt burst of sound substantially greater than the baseline. Even if this elevated noise level were sustained for up to two hours, the level would not be substantially different than the baseline levels recorded throughout the Project site, consistent with the comparison for this noise level to noisy urban environments, and under conditions that have supported nesting peregrine falcons in the past. For comparison, the baseline daytime and nighttime noise levels recorded at the receptor along the north Project site boundary on Embarcadero West and adjacent to the Union Pacific Railroad (UPRR) tracks (LT-4) averaged 74 dBA (Draft EIR p. 4.11-8, Table 4.11-2).

As discussed in Consolidated Response 4.17, *Bird Impacts from Fireworks Displays,* the H. T. Harvey memorandum (analyzing the stadium fireworks and potential for nesting peregrine falcon disturbance) indicated that even abrupt noise bursts from fireworks displays may not cause nesting peregrine falcons to flush from an active nest on the Project site at night (H. T. Harvey 2019; see Final EIR Appendix BIO). For these reasons, it is reasonable to conclude that concert noise levels up to 75 dBA would elicit less severe responses from nesting peregrine falcons than might occur in response to firework displays.

If the Caltrans guidelines were applied to noise conditions expected at the crane site during concerts or high-capacity ball games, the conditions would be well below the 93 dBA threshold for continuous noise sources that could

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initiate a temporary threshold shift response. The Caltrans guidelines identify 125 dBA as the threshold associated with multiple impulse noise sources that could result in hearing damage. Noise levels at the crane site during a fireworks display would depend on the distance from the detonation site and obstructions that attenuate the noise level over distance. The fireworks detonation sites are described in the Draft EIR as being within the ballpark or on a barge in the Oakland-Alameda Estuary, but specific noise levels expected at the Project site cranes from fireworks launched from these locations are not discussed because of the uncertainty of location and variation in noise levels associated with fireworks that could be used during operations (Draft EIR p. 4.10-43). Nonetheless, the Draft EIR presumed a "worst case scenario" with the fireworks launch site and detonation site located outside of the minimum buffer area. Therefore, the anticipated noise levels would remain below the minimum thresholds stated in Caltrans guidelines discussed in Consolidated Response 4.18, *Effects of Light and Glare on Maritime Operations and Safety*, the orientation of the proposed ballpark, with the "opening" in the outfield wall being oriented toward the southeast corner of the Project site (i.e., behind right-center field), means that to maximize the visibility of the fireworks to ballpark attendees, the most likely location for a pyrotechnic-launching barge would be generally offshore of Jack London Square.

Consolidated Response 4.17, *Bird Impacts from Fireworks Displays,* describes the published studies or guidelines relevant to the Project for assessing potential impacts from firework displays on birds. These source documents are based on observations of behavioral responses to fireworks displays from birds and marine mammals in a coastal setting or within San Francisco Bay. These source documents are more applicable to the project analysis than the Caltrans guidelines because they focus on fireworks noise and avian response in similar shoreline environments as the Project and describe specific distances between detonation sites and birds where responses were observed. See Consolidated Response 4.17 for a detailed discussion of the published studies or guidelines used in the analysis for assessing potential impacts on birds from fireworks displays during Project operations.

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underwater acoustic thresholds, the US Navy assembled a Marbled Murrelet Science Panel to examine the potential impacts from underwater noise and identified acoustic thresholds for underwater noise impacts that are often applied in lieu of official criteria. The panel concluded that the acoustic threshold for auditory injury would be 202 dB (cumulative SEL) and for non-auditory injury would be 208 dB (cumulative SEL). For more information, please see: https://www.fws.gov/wafwo/documents/MAMUConferenceSummary090711.pdf.

Hazards and Hazardous Materials

A-7-31

13. Removal Action Work Plan vs. Remedial Action Plan: The Draft EIR repeatedly states that the Project's site cleanup mitigation obligations will require a "removal action work plan" (RAW). Commission staff notes that the Department of Toxic Substances Control (DTSC) has an iterative process to approve a remedy selection document. This process is consistent with the National Contingency Plan, and there is significant public participation involved with remedy selection. Projects requiring more than $2 million in mitigation utilize a Remedial Action Plan (RAP) decision document (Health & Saf. Code, § 25356.1, subd. (h)), while less expensive projects use a RAW. If the EIR assumes that site mitigation work required will use a RAW, then the document expects DTSC to approve spending less than $2M on remediation within this historically overburdened community. Given that DTSC has not finalized or approved a decision document, this assumption is inappropriate. The Final EIR should consider a RAP if the existing cleanups for the different portions of the Project Site will be consolidated, as developers indicate in the Draft EIR on page 4.8-38. In addition, a RAP requires additional public participation allowing input regarding equity and Public Trust lands enhancement.

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14. Offsite Contamination Sources: Several hazardous materials and hazardous waste sites are potentially emitting contamination upgradient and upwind of Howard Terminal. For example, it has been reported that Schnitzer Steel discharges airborne, potentially toxic dust into the estuary and beyond the Schnitzer facility fence line. Also, upgradient sites such as shuttered-electroplater E-D Coat have not yet been fully characterized to determine the potential contaminant migration through groundwater to the Project site. The Final EIR should analyze whether the Project will exacerbate potential impacts of offsite contamination by, for instance, altering groundwater drainage or wind patterns.

Hydrology and Water Quality

A-7-33

15. Project Design and Flooding: On page 4.9-29, MM HYD-2 states that "the Project shall be designed to ensure that new structures within the 100-year flood zone do not interfere with the flow of water or increase flooding." However, the language that follows in this mitigation measure only ensures that people or structures are not subjected to loss, injury, or death regarding flooding. The Draft EIR fails to show how raising the Project site grade and building elevations guarantees that these buildings will not interfere with the flow of water or increase flooding in the Project area. The

A-7-30 Because Mitigation Measure BIO-3 outlines adherence to the 183-decibel (dB) threshold (designed to be protective of marine mammal hearing), commensurate adherence with the underwater noise threshold identified by the U.S. Navy for marbled murrelet on the Northwest coast would also result. As such, no impact from in-water pile driving would be expected to result if fish and marine mammal underwater noise thresholds were observed, as is currently proposed.

A-7-31 In compliance with state law, the California Department of Toxic Substances Control (DTSC) is responsible for ensuring the safety and effectiveness of remediation and associated activities. See Consolidated Response 4.16, *Remediation Plans, Land Use Covenants, and Human Health and Ecological Risk Assessment*. Draft EIR Section 4.8, *Hazards and Hazardous Materials*, Impact HAZ-2, would provide further description of the remediation steps. In all cases, DTSC would require that the plans result in the protection of human health and the environment.

As further explained in Consolidated Response 4.16, the Project sponsor has elected to prepare a Remedial Action Plan (RAP) to provide a more conservative approach. Finally, the Draft EIR does not limit the necessary mitigation measures to address potentially significant impacts related to public health and safety based on any particular financial limit or other constraint.

Consolidated Response 4.16 provides revisions to the text of Section 4.8, *Hazards and Hazardous Materials*, to incorporate the above-provided further explanatory information.

A-7-32 Please see Draft EIR Section 4.8.5 for a discussion of cumulative impacts related to hazards and hazardous materials.

In Draft EIR Section 4.2, *Air Quality*, Impact AIR-2.CU analyzes the Project's health risk impacts combined with all existing off-site health risks and health risks from other cumulative development. This includes toxic air contaminant (TAC) emissions from Schnitzer Steel, including fine particulate matter ($PM_{2.5}$). This cumulative health risk assessment (HRA) relies on the Bay Area Air Quality Management District's (BAAQMD's) own modeling for Schnitzer Steel and other existing off-site TAC sources within the entire West Oakland community. This analysis already goes beyond what the BAAQMD CEQA Guidelines require (see Draft EIR pp. 4.2-59 through 4.2-60). The Draft EIR finds that Impact AIR-2.CU would be significant and unavoidable with

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mitigation and includes all required feasible mitigation measures to reduce this impact. Finally, Mitigation Measure HAZ-1c, *Health and Safety Plan*, in Section 4.8, *Hazards and Hazardous Materials*, includes the requirement that the Health and Safety Plan include procedures for dust mitigation to prevent the generation of dust during remediation activities and prevent exposing construction workers, the public, and the environment to dust.

The Draft EIR also analyzes building downwash effects associated with the Project's high-rise buildings, as discussed at Appendix AIR.1 p. 40. The Project would locate residential uses as far away from Schnitzer Steel as possible and would utilize the buildings to create a buffer between Schnitzer Steel and on-site sensitive receptors.

For additional discussion of the Project's potential to alter wind patterns and this effect on Schnitzer's emissions, see Response to Comment A-11-11.

As discussed in Draft EIR Section 4.9, *Hydrology and Water Quality*, under *Local Setting, Groundwater*, p. 4.9-4, the direction of groundwater flow at the Project site is to the southwest. As shown in Draft EIR Section 4.8, *Hazards and Hazardous Materials*, Figure 4.8-5, p. 4.8-16, and as explained in the subsection on E-D Coat on pp. 4.8-22 and 4.8-23, the E-D Coat site is located about 700 feet north of the Project site. The southwest direction of groundwater flow from the E-D Coat site is cross gradient of the Project site, and therefore, groundwater does not flow from the E-D Coat site to the Project site. As further explained in the discussion of the E-D Coat site, the listed metals from this former plating shop are not highly mobile in groundwater nor as air particulates, and are unlikely to have migrated to the Project site.

Because groundwater does not flow from the Project site toward the E-D Coat site, and because there is no indication of the types of contamination associated with the historic uses of that site, there is no evidence in the record to support a conclusion that the proposed Project could adversely affect conditions related to contamination at or remediation of the E-D Coat site.

As explained in Draft EIR Section 3.12.2, *Stormwater*, a new stormwater drainage system would be installed that would capture and treat all stormwater. After treatment, the stormwater would be routed to the Oakland-Alameda Estuary, as it is now. Stormwater would not be discharged to adjacent properties and would not affect groundwater levels or flow directions.

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Temporary dewatering may be necessary to construct and install subsurface utilities. However, this temporary activity would pull groundwater in toward the locations of the excavations being dewatered, which would be in the interior of the Project site. The temporary result would be a short-term, localized change in groundwater flow direction toward the interior of the Project site, and not to adjacent properties. Therefore, dewatering activities would not affect adjacent off-site properties.

The proposed Project does not include the injection or extraction of groundwater, other than the short-term dewatering discussed above. Therefore, the Project would not change the current direction of groundwater flow, which is southwest toward the Oakland-Alameda Estuary, as explained in Draft EIR Section 4.9, *Hydrology and Water Quality,* Section 4.9.1, *Environmental Setting, Groundwater*. Therefore, the proposed Project would not result in changing groundwater flow directions toward upland off-site properties.

A-7-33 Impacts of the proposed Project on sea level rise related to stormwater flooding were analyzed on Draft EIR pp. 4.9-30 through 4.9-36. Impacts were found to be less than significant with Mitigation Measure HYD-3. Impacts related to the proposed Project's changes in site elevation on the Flood Emergency Management Agency (FEMA) flood map zones, and to impedance or redirection of flood flows, were analyzed on p. 4.9-29. The Draft EIR concluded that with implementation of Mitigation Measure HYD-2, impacts would be less than significant. In addition, the only area of the Project site within a FEMA-identified Special Flood Hazard Area (SFHA) is a small portion at the northeast corner of the Project site. This area of the Project site is isolated and would be removed from the SFHA through elevation of the interior portion of the Project site. This would not impede or redirect flood flows from the Estuary to flood adjacent areas with current elevations well above the SFHA criteria for the 100-year flood. Therefore, the proposed Project would not impede or redirect flows inland to areas surrounding the Project site.

In response to this comment, the following text on Draft EIR p. 4.9-29 is revised to read:

> ...Converted to Oakland datum (OCD), the BFE would be approximately 3.9 feet (Moffatt & Nichol, 20<u>2</u>1<u>a</u>~~9~~).The Project proposes new mixed use development on this portion of the Project site. Given parts of development block #18 are within the SFHA, future surveys are warranted

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to verify that the building floor levels are above the base flood elevation. The surveys would factor in more specificity known in the future about the location of the future residential or commercial-serving mixed uses, the design proposal, specific site flooding characteristics and refined grading. This evaluation only considers the Project sponsor's preliminary grading plan in Figure 4.9-1. Figure 4.9-1 shows that the building on development block #18 would have a finished floor elevation of at least 6.0 feet, which would be higher than the BFE of approximately 3.9 feet. Proposed grading and elevations within the proposed Project site would not result in changes to flood flows adjacent and inland, as the source of flooding at block #18 is from the Estuary (Moffatt & Nichol, 2021a).

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A-7-33 analysis and its associated mitigation measures must clearly describe how the Project area and structures shall be designed to not interfere or increase waterflow.

Land Use, Plans, and Policies

16. Land Status and Determination:

A-7-34 a. On page 10 of Chapter 4.10, *Land Use, Plans, and Policies*, the Draft EIR states that the 1923 Tidelands are "filled, formerly submerged lands." Staff believes that some portion of these lands remain unfilled, with a pile-supported wharf over water.

A-7-35 b. Page 11 states with respect to the Rancho Uplands that, "If the Port were to determine the property was no longer needed for trust purposes, however, the Port could, among other things, lease the lands for an economically productive non-trust use …" Staff reminds the City that the Port cannot lease the Rancho Uplands for the non-trust uses proposed as part of this Project, as Commission staff explained in a letter to the Port dated April 10, 2020. Please correct this portion of the Final EIR.

A-7-36 c. Figure 4.53 displays a Public Trust land configuration following a proposed land exchange. An exchange has not yet been negotiated, and the final site configuration could vary significantly from the diagram in the Draft EIR.

A-7-37 17. Seaport Operations: Impact LUP-2 identifies a potential fundamental conflict with existing Seaport uses because of, among other issues, Project traffic. MMs TRANS-1a and TRANS-1b are intended to reduce vehicle traffic generated by the Project by 20 percent, and therefore the Draft EIR acknowledges that the Project will generate additional traffic over baseline conditions. The resulting potential conflicts would be addressed by Seaport Compatibility Measures, to be negotiated between the Project sponsor and the Port. However, any compatibility measures that have already been negotiated should be incorporated into the Final EIR as Mitigation Measures, in addition to sample, proposed, or foreseeable Seaport Compatibility Measures. Staff recommends that Seaport Compatibility Measures be written as adaptive standards, which could then evolve, to ensure Seaport uses remain unimpacted over the Project's Phase 1 and 2 buildout and operations. Otherwise, the Draft EIR's conclusion that Port-related traffic, Seaport operations, and rail access will not fundamentally conflict with the Project's traffic does not appear to be well supported.

A-7-38 Another potential fundamental conflict with Seaport uses would be caused by increased recreational boating in the Estuary. The Draft EIR notes on page 36, Chapter 4.10, *Land Use, Plans, and Policies* that this conflict could create "transportation inefficiencies that could require several days or more to return the Port to normal operations and ultimately lead to the risk of shipping companies terminating their business with the Port." This is a severe potential impact for the Seaport and the regional economy. MM LUP-1a proposes to mitigate this potential

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A-7-34 Consistent with this comment, the last sentence on Draft EIR p. 4.10-10 is revised to read:

- **1923 Tidelands.** This portion of the Project site consists of formerly submerged lands that were filled or upon which a wharf structure was constructed and was granted by the State to the City of Oakland by a 1923 legislative trust grant (Stats. 1923, Chap. 174, as amended by Stats 1981, Chap. 1016). This approximately 10-acre portion of the Project site is public trust land, subject to public trust and legislative grant restrictions. Per the legislative grant, the City is required to establish a harbor on the granted lands and is permitted to use the granted lands for wharves, docks, piers, slips, quays and other utilities, structures and appliances necessary or convenient for the promotion and accommodation of commerce and navigation. The Port may lease this portion for public trust uses for periods not to exceed 66 years.

A-7-35 The City acknowledges this discrepancy in the Draft EIR and has corrected the statement. The second full paragraph on Draft EIR p. 4.10-11 is revised to read:

- **Rancho Uplands.** This approximately 20-acre portion of the Project site consists of upland areas that are generally located landward of the ordinary high-water mark in its last natural location. These lands were never owned by the State and were within the rancho grant confirmed and patented by the United States to Vincente and Domingo Peralta. As such, they were not subject to the public trust or included in any legislative grants. However, to the extent that these portions of the Project site were acquired or improved with trust funds, they are considered an asset of the trust and to be used for public trust purposes. If the Port were to implement a trust exchange with the approval of the State Lands Commission as authorized under AB 1191 based upon a finding that the property was no longer needed for trust purposes and the trust has received lands having an equal or greater value to the terminated lands, ~~determine the property was no longer needed for trust purposes, however,~~ the Port could, among other things, ~~lease the lands for an economically productive non-trust use or~~ sell them for fair market value, to

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generate revenue for the trust (see, e.g., Harbors and Navigation Code Section 6294).

A-7-36 As noted in the comment, an exchange has not yet been negotiated. Any final exchange agreement and configuration of trust and non-trust lands remains subject to the approval of the State Lands Commission pursuant to Section 6 of AB 1191. The diagram shown in Figure 4.10-9 is intended to reflect the proposed trust and non-trust uses proposed for the Project site (designated as Legislative Trust lands for trust uses and non-trust fee lands and non-trust lease lands for non-trust uses) and not necessarily the final Public Trust land configuration.

A-7-37 See Consolidated Response 4.4, *Port Operations and Land Use Compatibility.* See also Consolidated Response 4.1, *Project Description*, regarding Seaport Compatibility Measures.

A-7-38 See Consolidated Response 4.4, *Port Operations and Land Use Compatibility*.

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impact by installing signs, educating the public, and increasing water-based patrols during ballgames and events. Commission staff recommends that MM LUP-1a increase patrols at any time the turning basin is in use, rather than only during events. The MM should also include measurable performance criteria to ensure that container traffic is not disrupted. In addition, none of the listed protocols would require changes in Project operations in case of impacts. In light of the potentially critical impact, the EIR must include equally critical protections to ensure that the impact is mitigated to the maximum extent feasible.

A-7-39

18. Errata: MM LUP-1c states that "City planning staff shall review and accept the Project sponsor's plans and specification…" Staff recommends revising this to read "City planning staff shall review, and at their discretion, approve the Project sponsor's plans and specification…"

Transportation and Circulation

A-7-40

19. Parking: MM TRANS-1b incorporates the City's Parking Management Plan, apparently referring to "Toward a High-Performance Parking Management System for a Thriving Oakland: A Plan", available in the *Additional Transportation Reference Materials*). This City-wide plan appropriately acknowledges that parking within Port of Oakland jurisdiction can be managed by OakDOT under an agreement with the Port. While staff appreciates the value City-wide parking consistency could bring, Port and City staff must consider different priorities in the Port area, an area of statewide rather than municipal concern. For instance, the parking needs of employees engaged in maritime commerce may differ from local interest needs. Most importantly, the Port as trustee must balance the considerations and determine the best approach. In addition, parking revenue from Public-Trust lands should be accounted for separately from other parking revenue, and revenue generated in excess of management costs should be deposited in the Port Revenue Fund, rather than a City municipal fund.

Tribal Cultural Resources

A-7-41

20. Tribal Engagement and Consideration of Tribal Cultural Resources: As written, Section 4.4, *Cultural and Tribal Cultural Resources*, presents a combined review of potential impacts to prehistoric and historic era archaeological resources, significant architectural resources, historic properties, and tribal cultural resources. Commission staff believes this format obscures important distinctions among those types of resources and provides an incomplete picture of the unique contributions of the Bay Area's indigenous people and their enduring heritage. With the vast majority of the section devoted to explaining western architectural and historic-era structures through the lens of the National and California register eligibility criteria, which have historically discounted cultural values, practices, and sacred places, in favor of academic scientific value, the Draft EIR neglects to include a robust discussion of the Project site's importance to the local Ohlone community, both with respect to physical artifacts as well as with respect to intangible heritage. Commission staff recommends the City revise the EIR to separate the Cultural Resource and Tribal

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A-7-39 The City appreciates the suggestion and has incorporated this change into Mitigation Measure LUP-1c. The last partial paragraph on Draft EIR p. 4.10-49 is revised to read:

> City planning staff shall review, and at their discretion, approve ~~accept~~ the Project sponsor's plans and specification, together with their proposed timing and phasing strategies prior to issuance of any construction-related permit. Accepted plans, specifications, and phasing shall be referenced on all subsequent construction-related plans submitted to the City's building official, who shall determine compliance prior to permit issuance and upon final inspection.

A-7-40 The commenter's observations regarding characteristics of the Port that may warrant deviation from a City-wide parking management strategy are noted. The City's Parking Management Plan will largely address off-site parking during ballgames and other special events. With regard to on-site parking, specifics of any agreement between the City and the Port regarding parking management would address the policy and revenue allocation issues cited and would be negotiated by the parties and inform development of the Parking Management. With its focus on parking operations and revenue, 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. Parking is not an environmental impact issue 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.

A-7-41 Pursuant to State CEQA Guidelines Section 15120, "Environmental Impact Reports shall contain the information outlined in this article, but the format of the document may be varied." As such, the City of Oakland, as CEQA lead agency, has exercised its discretion to organize the Draft EIR in a manner that, based on its judgment, presents the required elements in the most clear and understandable fashion. In this case, the State CEQA Guidelines require consideration of tribal cultural resources separately from archaeological resources and human remains. The City of Oakland has established thresholds of significance for CEQA impacts that incorporate Appendix G of the State CEQA Guidelines.[18] The Draft EIR includes a distinct and thorough examination, discussion and analysis of tribal cultural resources consistent

[18] City of Oakland, 2016. City of Oakland CEQA Thresholds of Significance Guidelines, October 17, 2016.

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with updates to the State CEQA Guidelines, including Appendix G, since establishment of the City's thresholds.

To provide additional information in Response to Comment A-7-41, the text under "Prehistoric Background and Archaeological Sensitivity" on Draft EIR p. 4.4-5 has been revised as follows:

Prehistoric Background and Archaeological Sensitivity

The natural marshland communities along the edges of bays and channels were the principal source for subsistence and other activities during the prehistory of the San Francisco Bay Area region. Surveys of archaeological sites yielded the initial documentation of nearly 425 "earth mounds and shell heaps" along the littoral zone of the bay (Nelson, 1909). Notable sites in the region include the Emeryville shellmound (CA-ALA-309), the Ellis Landing Site (CA-CCO-295) in Richmond, the Fernandez site (CA-CCO-259) in Rodeo Valley, and the West Berkeley site (CA-ALA-307) (Moratto, 1984).

Categorizing the prehistoric period into cultural stages allows researchers to describe a range of archaeological resources with similar cultural patterns and components during a given time frame, creating a regional chronology. Milliken et al. (2007) provide a framework for the interpretation of the San Francisco Bay Area and have divided human history in California into three major periods: the *Early Period* (10000–6000 B.C.), the *Middle Period* (6000–1750 B.C.), and the *Late Period* (1750 B.C.–A.D. 1776). In many parts of California four periods are defined; the fourth being the *Paleoindian Period* (11500–8000 B.C.), characterized by big-game hunters occupying broad geographic areas. Evidence of human habitation during the Paleoindian Period has not yet been discovered in the San Francisco Bay Area. Economic patterns, stylistic aspects, and regional phases further subdivide cultural periods into shorter phases. Such periods and phases are differentiated by technological types, socio-politics, trade networks, population density, and variations of artifact types.

Before Euroamerican contact, the area of present-day Contra Costa ~~Oakland~~ and Alameda ~~County~~ Counties was occupied by the *Ohlone* (also known by their linguistic group, *Costanoan*). Politically, the Ohlone were organized into groups or tribelets. A tribelet constituted a sovereign entity that held a defined territory and exercised control over its

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resources. It was also a unit of linguistic and ethnic differentiation. Oakland, as well as a large part of the East Bay, were within the territory of the Huchiun people, who spoke the Chochenyo dialect.

The Ohlone economy was based on fishing, gathering, and hunting, with the land and waters providing a diversity of resources, including acorns, various seeds, salmon, deer, rabbits, insects, and quail. The acorn was the most important dietary staple of the Ohlone. The acorns were ground to produce a meal that was leached to remove the bitter tannin. Technologically, the Ohlone crafted tule balsa, basketry, lithics (stone tools) such as mortars and metates (a mortarlike flat bowl used for grinding grain), and household utensils. The Ohlone, like many other Native American groups in the Bay Area, likely lived in conical tule thatch houses.

In 1770, the Costanoan-speaking people lived in approximately 50 separate and politically autonomous nations or tribelets, and the number of Chochenyo speakers reached 2,000, substantially more than the typical size of a tribelet, which ranged from 40 to 200 members.

During the Mission Period (1770–1835), native populations, especially along the California coast, were brought—usually by force—to the missions by the Spanish missionaries to provide labor. The missionization caused the Ohlone people to experience cataclysmic changes in almost all areas of their life, particularly a massive decline in population caused by introduced diseases and declining birth rate. Following the secularization of the missions by the Mexican government in the 1830s, most Native Americans gradually left the missions and established Rancherias in the surrounding areas (Levy, 1978; Moratto, 1984).

Today, the Ohlone still have a strong presence in the San Francisco Bay Area and are highly interested in their historic and prehistoric past. There are eight Ohlone representatives of tribal groups or individuals listed on the Native American Heritage Commission list for the Oakland area. On January 7, 2019, the City of Oakland sent letters to each representative requesting information about the project area and an opportunity to consult. No responses were received.

The NWIC records search results indicate that no previously recorded prehistoric archaeological resources are listed in the databases at the NWIC within the Project site or within the 0.25-mile records search

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radius. The nearest prehistoric archaeological resources to the Project site are over 1 mile to the northeast near Lake Merritt or several miles to the north near Emeryville and Berkeley.

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A-7-41 Cultural Resource sections, consistent with the 2018 updates to Appendix G of the CEQA Guidelines, and with particular attention paid to the Project area's cultural value to the Ohlone people who were displaced from this location by colonial settlement and development.

A-7-42 Commission staff also recommends that the City expand the discussion of Tribal engagement and consideration of Tribal cultural resources to demonstrate compliance with AB 52 (Gatto; Stats. 2014, ch. 532). Commission staff notes that the Draft EIR does not contain sufficient information as to how the City has complied with AB 52 provisions, which provide procedural and substantive requirements for lead agency consultation with California Native American Tribes, consideration of effects on Tribal cultural resources (as defined in Pub. Resources Code, § 21074), and examples of mitigation measures to avoid or minimize impacts to these resources. In the Draft EIR's discussion of Impact CUL-7, the City states that it sent letters to the eight Native American Tribes identified by the Native American Heritage Commission (NAHC), and states that no responses were received. Commission staff finds this discussion inadequate. Please provide additional detail including, but not limited to: (1) whether the NAHC indicated a positive or negative result of its search of the Sacred Lands File and how the City responded to the result if it was positive; (2) whether the City made any additional attempts beyond the January 7, 2019 letters to contact and coordinate with Tribes (e.g., additional letters, emails, or phone calls); and (3) what specific surveys or records were used to support the City's independent determination of "low potential to uncover previously undiscovered tribal cultural resources." While mailing a single letter may meet the lowest possible legal standard of compliance, staff does not agree that it is adequate to determine no Tribal interest or that there are no Tribal Cultural Resource concerns.

A-7-43 Staff also notes that even if no Tribe has submitted a consultation notification request for the Project area covered by the Draft EIR or has responded to project notification letters, the City must disclose and analyze potentially significant effects to Tribal cultural resources and avoid impacts where feasible, utilizing a broader set of resources that are more inclusive of the Native American perspective than the limited archaeological record search conducted by the City.[1] Since the Draft EIR does not disclose the extent of notification efforts to potentially interested Tribes, document their response, or include meaningful research into the cultural significance of the area to the Ohlone people, Commission staff recommends that the City revise the EIR to include a more robust accounting of the project's effects on Tribal Cultural Resources, including the effects on local tribal heritage and efforts to revitalize the cultural landscape of the East Bay.

[1] For instance, (1) the Sogorea Te' Land Trust hosts a website with a large amount of information on the importance of the East Bay to the Lisjan (Ohlone), including a list of priorities and projects for protecting their shellmounds and other sensitive heritage sites. https://sogoreate-landtrust.org/#; (2) the Bay Area Equity Atlas contains an overview of Indigenous populations in the Bay Area, along with projects, articles and reports, key trends, and other data. https://bayareaequityatlas.org/about/indigenous-populations-in-the-bay-area

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A-7-42 The City has fully complied with the requirements of AB 52 as articulated in Public Resources Code (PRC) Sections 21080.3.1 and 21080.3.2. On January 2, 2019, the City's consultant requested a search of the Native American Heritage Commission (NAHC) sacred lands file and a list of tribes with interest in the Project vicinity. On January 3, 2019, the NAHC responded that the search of the sacred lands file had negative results and provided a list of eight Native American tribes and representatives to contact for additional information. The City contacted the tribes and representatives and no response was received. The results of the background research at the Northwest Information Center of the California Historical Resources Information System indicate that no prehistoric Native American cultural resources have been recorded within a one-mile radius of the Project site. Because no response was received from the eight tribes and representatives contacted, pursuant to PRC Section 21080.3.1(e), the City did not initiate formal consultation. See Response to Comment A-7-43 for further discussion of how tribal cultural resources were fully and adequately addressed in the Draft EIR.

A-7-43 Although there were no formal requests for consultation from any tribes or tribal representatives contacted pursuant to the provisions of PRC Section 21080.3.1(b), the City sent letters to Native American tribes and individuals. No responses were received from the eight Native American tribes and individuals. The results of the background research indicate that no prehistoric Native American recorded cultural resources are in or within a 1-mile radius of the Project site. In addition, the Project site is constructed on artificially placed fill and is in a highly disturbed industrial complex that has been modified significantly in the historic and modern periods. As such, there is no evidence in the record to support an argument that the proposed Project would adversely affect tribal cultural resources, or that the Draft EIR analysis and conclusions are inadequate or flawed.

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21. Unanticipated Discovery Measures: The Draft EIR states that because the project site is situated on Bay fill, the likelihood of inadvertent discovery of cultural materials is low. The City acknowledges that past placement of imported fill south of the historic shoreline occurred during various construction events beginning in the early 1900s and range in depth from 5 to 40 feet below the existing surface, with deeper fill deposits closer to the channel. In characterizing the significance of materials that may be in both the fill and the underlying Bay sediment, the City states on page 6 of Chapter 4.4, *Cultural and Tribal Resources*, that in order "to possess research potential, archaeological materials must have adequate physical integrity in the form of what James Deetz (1988) has called archaeological 'focus'… Offsite derived purposeful fill lacks integrity of setting, location, feeling, and association, and therefore does not retain focus because there are not specific individuals, groups, or events associated with the fill that would convey association or significance." Later, the City states on page 31 that "[p]urposeful fill, such as that in the Project site, is not conducive to contain previously unrecorded archaeological resource that could be considered Tribal cultural resources." Commission staff respectfully disagrees. In the Central Valley, for example, soils used to construct levees have commonly been excavated from locations containing cultural artifacts and ancestral remains that are then discovered during levee projects that expose those displaced materials. While a traditional academic approach may be appropriate for determining impacts to historic properties such as Crane X-422, the Southern Pacific Railroad Industrial Landscape District and Pacific Gas &Electric Station C Areas of Primary Importance, the Draft EIR's proposal to evaluate Native American-affiliated archaeological materials discovered during construction against significance criteria that value "research potential" and "adequate physical integrity" fails to understand and appropriately address a discovery's value to the living Native American community. Staff offers the following suggestions on the MMs CUL-4a and CUL-4b:

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The Draft EIR states that MMs CUL-4a and CUL-4b would reduce impacts to Tribal cultural resources by requiring that work halt in the vicinity of a find until it is evaluated by a Secretary of the Interior-qualified archaeologist and a Native American representative. However, the MMs do not include a Native American representative as a monitor during any excavation, nor do they require the City, the Project sponsor, or a qualified archaeologist to continue Tribal outreach efforts prior to remediation, grading, or construction activities. The Final EIR should revise MMs CUL-4a and CUL-4b to ensure that any unanticipated discovery of Tribal cultural resources is addressed, and that any affected Tribe is consulted or coordinated with to determine the resource's significance and the Project's next steps. In addition, the Project would include extensive grading and utilization of fill material. It is imperative that cultural artifacts from other locations are not inadvertently brought to the Project area, and therefore Commission staff recommends that DTSC's 2001 Clean Imported Fill Material Guidance be incorporated into MMs CUL-4a and CUL-4b.

Cumulative Impacts

22. Current and Future Projects: Appendix DEV of the Draft EIR contains the City's project list as of 2018–19 but does not include other projects from the Port or other

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A-7-44 The Draft EIR discloses that the area consists of disturbed artificially placed fill and that there are no previously recorded prehistoric Native American archaeological sites within a 1-mile radius of the Project site. While there is a low sensitivity for prehistoric archaeological resources to be in the Project site, the Draft EIR recognizes that there remains the potential for the inadvertent and unexpected discovery of cultural materials during ground-disturbing activities associated with the Project. In the event of such a discovery, an archaeological research design and treatment plan would be developed that would "identify how the proposed data recovery program would preserve the significant information the archaeological resource is expected to contain." The City recognizes that the mitigation should also require a Native American representative if the find is Native American–related. Therefore, Mitigation Measure CUL-4a on Draft EIR p. 4.4-28 is revised to read:

> During construction, pursuant to CEQA Guidelines section 15064.5(f), in the event that any historic or prehistoric subsurface cultural resources are discovered during ground disturbing activities, all work within 50 feet of the resources shall be halted and the Project sponsor shall notify the City and consult with a qualified archaeologist, as applicable, to assess the significance of the find. If the find is prehistoric or Native American-related, a Native American representative will be notified to assess the find.

Similar text changes are included in Mitigation Measure CUL-4b on Draft EIR p. 4.4-29:

> If the results of the study indicate a high potential presence of historic-period or prehistoric archaeological resources on the Project site, or a potential resource is discovered, the Project sponsor shall hire a qualified archaeologist to monitor any ground disturbing activities on the Project site during construction and prepare an ALERT sheet pursuant to Provision B below that details what could potentially be found at the Project site. If the resource is prehistoric, a Native American representative will be notified of the find.

The DTSC's 2001 fact sheet provides guidance intended to ensure that inappropriate fill material is not introduced onto sites largely because of concerns about "instances where contaminated soil had been brought onto an otherwise

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clean site."[19] In this case, the site at Howard Terminal contains contamination that is proposed for removal and remediation as described in Draft EIR Section 4.8. New fill would be brought in to raise the elevation of the site.

The DTSC guidance contains a recommended fill sampling schedule (i.e. number of samples), documentation regarding the source of fill and any previous testing performed, and additional analysis if needed based on the source of the fill and knowledge of the prior land use. Overall, the frequency of sampling needed to assess incoming fill material is subject to consultation with DTSC and is dependent on the source of the material.

Because the proposed Project would involve extensive consultation and oversight by DTSC due to existing contamination and land use controls, additional reference to DTSC guidance is not warranted. See Mitigation Measure HAZ-1a for more information regarding DTSC's oversight and required measures.

A-7-45 Section 4.0.4 of the Draft EIR (starting on Draft EIR p. 4.0-8) details the approach, geographic scope, and assumptions applied to establish the overall cumulative setting (referred to in the Draft EIR as "cumulative development") applied in the environmental analysis. Consistent with State CEQA Guidelines Section 15130(b), the City's adopted thresholds describe a combination of both the forecast method (i.e., a projection or model) and the list method (i.e., a list containing past, present, and reasonably foreseeable future projects). The City's "List of Major Development Projects, March 2019" describes the key characteristics of each project. See Consolidated Response 4.5, Truck Relocation for a discussion of the cumulative projections used for the transportation analysis, including how they relate to the Tioga Report's forecast.

Pursuant to State CEQA Guidelines Section 15125, the March 2019 List represents the cumulative baseline, representing conditions that existed when the Notice of Preparation (NOP) for the Draft EIR was published (November 2018). The cumulative projects on the March 2019 List are citywide and are assumed to be incorporated into the 2018 transportation model and Association of Bay Area Governments (ABAG) land use database—the projections that underlie the cumulative setting applied in the analysis (Alameda County Transportation Commission's Countywide Travel Model, released May 2018, consistent with Metropolitan Transportation Commission [MTC] Plan Bay Area 2040) (see Draft EIR pp. 4.0-8 and 4.0-9).

[19] DTSC web page accessed September 21, 2021. See https://dtsc.ca.gov/information-advisory-clean-imported-fill-material-fact-sheet/.

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Because the cumulative projects on the March 2019 List are located throughout the city, with the majority located in and around Downtown, the Draft EIR also specifies key cumulative projects near the Project site or otherwise relevant to the proposed Project (starting on p. 4.0-10 of the Draft EIR). Pursuant to the recently updated State CEQA Guidelines Section 15125, the cumulative setting in the Draft EIR "give[s] the public and decision makers the most accurate and understandable picture practically possible of the project's likely near-term and long-term impacts."

No requirement in CEQA suggests that the applicable "List of Major Development Projects, 2019" is inadequate and needs to be expanded. Further, CEQA does not prescribe a geographic radius or mapping requirement for the cumulative development. However, for each environmental topic addressed throughout the impact analysis in Chapter 4 of the Draft EIR, the geographic scope used to assess cumulative impacts is described and varies depending on the topic being analyzed. For informational purposes, a July 2021 version of the City's List of Major Development Projects is included in Final EIR Appendix DEV 2021 to demonstrate that there have not been any substantive changes that would change the cumulative impact analysis in the Draft EIR.

Moreover, the EIR preparers are not aware of any new major cumulative projects that did not exist when the Draft EIR was initiated and that would substantially alter the cumulative impact analysis in the Draft EIR. During preparation of this Final EIR, the U.S. Army Corps of Engineers issued a public notice for "Schnitzer Steel Maintenance Dredging (Corps ID: SPN-2010-00246)." The Schnitzer Steel facility abuts the west border of the proposed Project site (see Draft EIR Figures 3-2 and 3-3). Generally, this future cumulative project would involve dredging to maintain navigable depths for commercial vessels, and would dispose of or beneficially reuse the dredged sediment at specified locations. The Draft EIR describes annual dredging that has occurred historically and currently to maintain a depth of approximately 50 feet mean high-water mark to support shipping operations within the Middle and Inner Harbors (see Draft EIR pp. 4.3-8 and 4.3-9). Therefore, the project noticed by the U.S. Army Corps of Engineers is part of prior, and reasonably foreseeable activity already factored into the cumulative setting and analysis in the Draft EIR. No changes are warranted to the analysis in the Draft EIR. In any event, the Project would not contribute to any cumulative dredging impact because it does not involve dredging.

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A-7-45 regional entities. In addition, the list in Appendix DEV only identifies the location, square footage of development (including a catch-all for construction that is not residential, office, retail, or industrial), and permitting status. The Final EIR must be consistent with State CEQA Guidelines section 15130, subdivision (b) and should therefore contain both an expanded Appendix DEV and a cumulative impact analysis that identifies or maps the current and reasonably foreseeable future projects within the identified project site radius (5 miles).

Other Commission Considerations – Sea-Level Rise

A-7-46 23. Shoreline Management - Wharf: The south-facing portion of the Project site, which includes the majority of the site's shoreline, is bordered by riprap and a pile-supported 75-foot-wide wharf. Page 49 of Section 3, *Project Description*, states that the wharf shoreline will not be elevated to the same height as the site's interior. Even though the wharf shoreline will not be raised, the Draft EIR states that it is intended to serve as "shoreline public open space and access, and could change in the future as sea levels rise, and flooding occurs more often." As the Draft EIR has acknowledged future sea level rise and flooding effects on the wharf shoreline, staff recommends that Section 3.2, *Project Site Existing Conditions*, include information related to the current structural integrity and condition of the wharf in addition to its age and projected lifespan. The Final EIR should also include this information for the riprap structure. If upgrades, improvements, repairs, or replacement activities are reasonably foreseeable as needed to ensure the continued use of the wharf edge for pedestrian use and public access, the Final EIR should evaluate related impacts and any feasible mitigation measures. On page 53, the Draft EIR briefly mentions that new support piles and vegetation may be added to the wharf. If those activities could occur during the Project's Phase 1 or Phase 2 activities, please include the relevant impact evaluation and mitigation measures, if necessary, in a revised Draft EIR or Final EIR.

A-7-47 24. Shoreline Management – Southeast Shoreline: Page 17 of Section 4.9, *Hydrology and Water Quality*, briefly references a potential shoreline management and flood control strategy from Page 29 of the Port of Oakland's Sea Level Rise Assessment (submitted to the Commission in compliance with AB 691 (Muratsuchi; Stats. 2013, ch. 592) and available through the Port's page on the Commission's website). The shoreline that lies between Clay Street and Jefferson Street is the area within the Project site that is the most low-lying and vulnerable to sea-level rise and flooding hazards. The Port of Oakland's Sea Level Rise Vulnerability Assessment describes potential seawall construction between Clay Street and Jefferson Street that would protect the Project site and adjacent Port and City assets (fire department on Clay Street, eastbound rail lines, maritime substations, Jack London Square, and maritime roadways and substations). The Vulnerability Assessment also identifies that flood exposure to the shoreline between Clay Street and Jefferson Street is likely to occur as early as 2030 from a combination of sea-level rise and extreme tidal events (King Tides) and/or storms. This area is within the Project site and serves as a main transportation corridor for the Project site and its facilities. If the seawall could be constructed prior to 2030, then the Final EIR should analyze any

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A-7-46 Information about the current structural integrity, condition, age, and projected life span of the wharf and riprap dike are summarized[20], based on a preliminary structural review. The preliminary structural review indicated that the wharf, which is less than 40 years old, "was designed to meet relatively modern-era building code requirements that also include seismic criteria" and confirmed that the structure "is in relatively good condition with no visible signs of structural distress" and "should be able to withstand the code forces resulting from the change in occupancy, with minor retrofits, as long as the proposed design does not introduce a significant amount of new additional loading or higher risk category uses such as emergency egress or large public assembly on the deck."

As indicated in additional analysis[21], "Detailed structural evaluations would be conducted during the final design phase to achieve a balance between desired park elements, structural performance, and amount of seismic retrofit such that compliance with applicable codes can be demonstrated." The extent of required retrofits, if any, has not been specified, and thus no related impacts have been identified.

The wharf is at approximately 7 feet City of Oakland Datum (COD), which is above base flood elevation (BFE) for up to 3 feet sea level rise.[22] 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, then adaptation measures may be necessary such as constructing parapet walls along the wharf edge or changing the programming and user experience to accommodate the infrequent and temporary inundation. The impacts from such measures would be relatively minor and would be addressed at the time of their implementation[23]. See Response to Comment A-7-8 related to sea level rise adaptation and the requirements of Mitigation Measure HYD-3.

If cranes are retained on the wharf or other substantial additions are added to the wharf, then additional structural retrofit may be needed. This could include the addition of new support piles. Potential impacts of new support piles are analyzed in Draft EIR Section 4.3 for biological resources (for birds,

[20] 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.
[21] 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.
[22] 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.
[23] 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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p. 4.3-34; marine species, p. 4.3-37; wetlands and waters, p. 4.3-54; and cumulative, p. 4.3-63) and Section 4.6 for paleontological resources or sites or unique geologic features (p. 4.6-23).

A-7-47 Seawall improvements in the area specified are not part of the Project proposed by the Project sponsor. If and when the Port or the City propose a seawall project, that project will be evaluated pursuant to the requirements of CEQA. The Draft EIR does not assume that a seawall will be constructed and has insufficient information about a future seawall project to include seawall improvements as a reasonably foreseeable project to be considered in the context of a cumulative analysis. Because a future seawall is not part of the Project and is not part of the cumulative context, it would be speculative to consider it in this EIR.

As discussed in Draft EIR Chapter 3, *Project Description*, the cutoff wall would largely isolate groundwater from the area beneath the ballpark; however, some groundwater may seep through or under the cutoff wall, requiring a separate collection system and drain where water can be pumped out by sump pumps as needed. As described on Draft EIR p. 3-53, the pumped groundwater would be tested to assess the appropriate treatment and disposal method, which could include discharge to the stormwater drainage system or sewer system. Adaptation to changing flood conditions with sea level rise is required through implementation of Mitigation Measure HYD-3, in the form of an adaptive management plan. Analysis of future sea level rise effects on groundwater levels in the long-term future (i.e., greater than 50 years from now) would be speculative and is beyond the scope of analysis required under CEQA.

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direct or cumulative impacts from the seawall construction or explain why the proposed seawall is not reasonably foreseeable as part of the EIR's analysis.

25. Shoreline Management – Quay Wall: Underlying the site is an existing quay wall that runs east-west. Page 8 of Chapter 4.9, *Hydrology and Water Quality*, indicates that it diverts contaminated groundwater to the southwest end of the site. The groundwater table under the site is currently measured at 5 to 9 feet below the surface of the site, however recent research and modeling is emerging to show that California groundwater tables within 1 kilometer of the coast will rise and spread significantly due to the influence of sea-level rise (see Befus, et al., "Increasing Threat Of Coastal Groundwater Hazards From Sea-Level Rise In California", published in *Nature Climate Change*, VOL 10 | October 2020 | 946–952). As this occurs, stormwater drainage infrastructure will be inundated with more saline water, and nuisance (or daily) flooding will become more frequent. The Draft EIR states that the quay wall will remain in place but does not give further details on its condition or how groundwater diversion will change as the groundwater table rises. In light of recent information, the Project's shoreline management has to be conceptually expanded to consider the influx of seawater into the groundwater system. Seawater may cause flooding at the Project site by overtopping the built shoreline due to sea-level rise, and it will also likely permeate laterally into the groundwater table through the Project site's submerged edge. Staff recommends that the recirculated Draft or Final EIR consider whether the design of the Project needs to be augmented to include a more robust dewatering pump system for the ground under the Project site. It is unclear if the installation of the cut-off wall around the ballpark, the existing quay wall, and temporary or permanent dewatering measures/pump usage (described briefly on page 53, Chapter 3, *Project Description*) would adequately divert contaminated groundwater and maintain stormwater drainage infrastructure functionality.

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26. Sea-Level Rise Scenarios: One of the most critical flood factors to consider in the Project's design will be sea-level rise. Different sea-level rise scenarios, corresponding with different risk aversion categories from the 2018 OPC State Sea-Level Rise Policy Guidance, are described on pages 6 through 8 of Chapter 4.9, *Hydrology and Water Quality*. However, little information is given about how the Project is designed in relationship to sea-level rise scenarios, or how the design of the project will result in a less-than-significant environmental impact after evaluating the design's responsiveness to and careful consideration of sea-level rise. If any impacts cannot be reduced to less than significant, mitigation measures would be needed. Adaptation strategies could include protecting the shoreline with a seawall made of bio-concrete or incorporating more natural infrastructure into the stormwater drainage system. Commission staff notes that the 2018 OPC Guidance renders the low-risk aversion scenario inapplicable to this Project.

Projected sea-level rise and associated Base Flood Elevations (BFEs) are underestimated in Table 4.9-1 because the table states that there has been no sea-level rise between year 2000, the baseline level, and 2019. Sea level has risen since

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A-7-48 As noted above, exposure of a project to future changes in environmental conditions is an "impact of the environment on the project," which was excluded from analysis under CEQA (*CBIA v. BAAQMD*, *Ballona Wetlands Land Trust v. City of Los Angeles* 201 Cal.App.4th 455 (potential exposure of a project to future sea level rise not required under CEQA.)

See Response to Comments A-7-6 through A-7-8.

Draft EIR Section 4.9, *Hydrology and Water Quality* (pp. 4.9-30 through 4.9-36) discusses the performance of the proposed Project adaptation features that would be constructed in Phase 1 and the second Buildout phase in relation to flooding exacerbated by sea level rise, including requirements of AB 1191. In addition to Draft EIR Section 4.9, supplemental details are provided regarding the design basis for the proposed Project adaptation to sea level rise for Phase 1 and full Buildout. In the event that sea level rise exceeds the resistance of the proposed Project to coastal and/or groundwater flooding, several strategies and measures are identified to adapt to higher sea levels[24], which include the following:

- Monitoring, trigger thresholds, and methods for implementation.
- Potential adaptation measures and their triggers that will be developed to be suitable for the site's different components.

Examples of possible triggers and measures are described[25] and mapped[26]. This approach to adapting to sea level rise would be further detailed in the proposed Project's Sea Level Rise Final Adaptive Management and Contingency Plan, as called for in Mitigation Measure HYD-3 (Draft EIR p. 4.9-36), which has been further revised. See Final EIR Chapter 7, *City-Initiated Updates and Errata in the Draft EIR*, for the revised language of Mitigation Measure HYD-3.

Nature-based adaptation strategies[27] have been and would be further considered as part of adaptation designs. Details of shoreline protection measures, such as the option to use bio-concrete, would be evaluated when designs are further developed from those analyzed in the Draft EIR. The

[24] 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.

[25] 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.

[26] Moffat & Nichol, 2021. Potential Extents of Inundation, Oakland Athletics Howard Terminal Project, September 27, 2021.

[27] Actions to protect, sustainably manage, and restore natural or modified ecosystems, that address societal challenges effectively and adaptively, simultaneously providing human well-being and biodiversity benefits.

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proposed design for the Project site would reduce impervious area and would include bioretention in stormwater gardens and flow-through planters.[28]

Most of the proposed Project would be designed and analyzed in relation to the California Ocean Protection Council's (OPC's) medium-high risk aversion sea level rise projections. Low risk aversion is still pertinent to provide context about the likely range of sea level rise, and for consideration for portions of the proposed Project, such as open space, which are more risk tolerant. Portions of the Project site that are lower than the medium-high risk aversion range would be adapted to sea level rise in accordance with the revised Mitigation Measure HYD-3: Sea Level Rise Final Adaptive Management and Contingency Plan.

The differences between the 2000 baseline for water levels and sea level rise in relation to 2019, the starting year used for the Project analysis, are insignificant. The water levels used to inform the design of the proposed Project[29] are from regional FEMA hydrodynamic modeling[30,31]. This modeling adjusted observed water levels used for hindcast modeling from 1973–2008 to account for observed relative sea level rise trends. The model output used to calculate the proposed Project's baseline water levels incorporate relative sea level rise through 2008. The 1973–2008 period overlaps the 1990–2009 period that was reported in OPC (2018) footnote 22 as the averaging period used to develop the 2000 baseline for the sea level rise projections. The starting year of 2019 reported in Draft EIR Table 4.9-1 was selected as the reference point corresponding to the start of initial Project planning and design. The relative sea level rise trend from the Alameda station #9414750 is 0.87 millimeter per year.[32] Therefore, between 2000 and 2019, the accumulated relative sea level rise can be approximated as 0.05 foot. This change of less than one-tenth of 1 foot is not significant relative to the base flood elevations shown in Draft EIR Table 4.9-1, which are only reported to the tenth of a foot, and to the uncertainty of several feet in the sea level rise projections.

[28] BKF. 2021. *Howard Terminal – Preliminary Storm Drainage Study.* August 5, 2021.

[29] 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.

[30] AECOM, 2016. San Francisco Bay Tidal Datums and Extreme Tides Study.

[31] DHI (DHI Water and Environment), 2011. Regional Coastal Hazard Modeling Study for North and Central San Francisco Bay. Final Draft Report. Prepared for Federal Emergency Management Agency.

[32] NOAA, 2021. NOAA Tides & Currents, Sea Level Trends, Relative Sea Level Trend 9414750 Alameda, California. Available at: https://tidesandcurrents.noaa.gov/sltrends/sltrends_station.shtml?id=9414750.

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A-7-48 2000, and Commission staff notes that the baseline description should be revised for accuracy: the baseline is not in reference to the sea level *from* the year 2000; rather, it is the 20-year average of sea level taken from the years 1990-2009 (see Page 22 of the 2018 State Sea Level Rise Guidance). The current relative sea level at the nearest tide gauge, Alameda Station, can be found at the National Oceanic and Atmospheric Administration's Tides and Currents webpage here.

A-7-49 Using the Bay Shoreline Flood Explorer to evaluate the medium-high risk aversion sea-level rise scenarios at the Project site, staff found the flooding hazards from sea-level rise combined with storm and extreme tide scenarios could occur as early as 2030. If the total water level rises 1 foot higher than the baseline average (which could occur by 2030 when sea-level rise coincides with a 100-year storm event or extreme tide), then the water level along the shoreline could reach a height of 12 feet. Page 5 of Chapter 4.9, *Hydrology and Water Quality*, states that the BFE for the Project site is approximately 10 feet. This means that water levels by the year 2030 could temporarily exceed the BFE by 2 feet. These anticipated conditions could affect the Project's construction activities, the amount of fill that is necessary to raise the elevation of the site, and other shoreline management strategies to control flooding and maintain public access (e.g., raising the elevation of the wharf or constructing the sea wall between Clay Street and Jefferson Street). Any changes made to the Project in response to the sea-level rise projections, such as the construction of additional shoreline structures, should be accompanied by an analysis of the impacts of those structures and any necessary associated mitigation measures.

Other Commission Considerations – Environmental Justice

A-7-50 Environmental justice is defined by California law as "the fair treatment and meaningful involvement of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies." (Gov. Code, § 65040.12.) This definition is consistent with the Public Trust Doctrine's principle that management of trust lands is for the benefit of all people.

The Commission adopted an updated Environmental Justice Policy and Implementation Plan in December 2018, found at https://www.slc.ca.gov/envirojustice/, to ensure that environmental justice is an essential consideration in the agency's processes, decisions, and programs. Through its policy, the Commission reaffirms its commitment to an informed and open process in which all people are treated equitably and with dignity, and in which its decisions are tempered by environmental justice considerations. More directly, any land exchange the Commission approves for the Project must be consistent with the Commission's Environmental Justice Policy (AB 1191).

Although not legally required in a CEQA document, staff suggests including a section describing the community outreach and engagement the City undertook in developing the Draft EIR and the results of such outreach. In this manner, the CEQA

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A-7-49 The base flood elevation (BFE), as defined by FEMA,[33] includes the temporary increase in water levels that is associated with the 1 percent annual chance (100-year) storm event. The current BFE at the Project site is 3.9 feet City of Oakland Datum (COD) (which is approximately 10 feet when converted to the North American Vertical Datum of 1988 [NAVD88])[34]. OPC's medium-high risk aversion projection for 2030 is 0.8 foot. Thus, the projected 2030 BFE is 4.7 feet COD (approximately 10.8 ft NAVD88).

As noted on Draft EIR p. 4.9-28, construction activities would follow best management practices. Because construction is a temporary activity, these practices are not typically designed for the BFE, which is an event with a 1 percent annual chance of occurring. Rather, the practices consider and attenuate risk from smaller events, such as the 10 percent annual chance (e.g. 10-year event).

To account for sea level rise at the time of construction, some elements such as temporary shoring or water control measures would need to be incrementally higher (in the case of a sheet pile wall) or powerful (in the case of pumping). These temporary elements would be specified at final design and incorporate best management practices and mean sea level at the time of construction.

Most of the proposed Project elements that would be permanent would be designed for medium-high risk aversion sea level rise projection for 2050 or beyond (see Responses to Comments A-7-7, A-7-46, and A-7-47). Therefore, these elements would also be resilient to the lower amounts of sea level rise projected for 2030. See also response to Comment A-7-6 regarding how the Project would be designed to address operational issues and adapt to flood hazards that consider sea level rise.

A-7-50 See Consolidated Response 4.14, *Environmental Justice*. The City appreciates the additional information and offer to work with the City. 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 4.14, Section 4.14.5, *Community Outreach and Engagement*.

[33] https://www.fema.gov/node/404233

[34] 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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A-7-50 public comment process can provide an opportunity for the public to provide input relating to environmental justice. Commission staff also recommends incorporating or addressing opportunities for community engagement in mitigation measures, such as the example presented below. Commission staff is also available to work with the City and stakeholders to address these concerns.

A-7-51 Adverse health disparities overwhelmingly affect the marginalized communities adjacent to the Port, and this Project may augment such disparities by increasing air pollution. According to the West Oakland Community Action Plan, "neighborhoods near the Port of Oakland experience nearly three times the cancer risk from local pollution sources, compared to neighborhoods farther away" (https://www.baaqmd.gov/~/media/files/ab617-community-health/west-oakland/100219-files/owning-our-air-plan-summary-pdf.pdf?la=en). For decades, disadvantaged communities near the Port have endured poor health and poor air. As stated in the Air Quality section of the Draft EIR "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". Based on the information from CalEnviroScreen 3.0 (found at: https://oehha.ca.gov/calenviroscreen/report/calenviroscreen-30), the Project is located within a high pollution area relative to the rest of the State, with a pollution burden percentile of 74 percent. In addition, the Census Tracts closest to the Project (Census Tracts 6001402500, 6001403000, 6001403100, 6001403300, and 6001401700) have pollution burden percentiles ranging from 61 percent to 89 percent relative to the rest of the State, depending on the Census Tract. In other words, communities near the Project are disproportionately impacted by various sources of pollution, health hazards, and socioeconomic burdens including diesel emissions, toxic releases, presence of hazardous waste, and groundwater threats. Furthermore, children, the elderly, and minority populations are affected by health hazards that include asthma, cardiovascular irregularities, and low birth weights.

A-7-52 Commission staff is also concerned about the location of the Project in relation to its proximity to Interstates I-880, I-980, and I-80. These interstates are the primary highways between north and south Alameda County, as well as between the cities of Oakland and San Francisco. The Project has the potential to increase traffic congestion in an area that is already heavily burdened by traffic. Additionally, the Draft EIR indicates that at full buildout, the Project would have approximately 8,900 parking spaces, many reserved for specific uses onsite (i.e., not open to the public). In contrast, the Oakland Coliseum has approximately 10,000 public parking spaces. This lack of parking has the potential to create a burden of increased parking demand on adjacent communities.

A-7-53 During construction and throughout its operation, the Project could generate substantial levels of toxic air contaminants and impact off-site receptors. The Draft EIR acknowledges on page 39, Chapter 4.2, *Air Quality*, that the existing Project site users would need to find other locations for their businesses, in particular for container depot facilities. Commission staff agrees that the air quality impacts

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A-7-51 The comment is correct that the existing neighborhoods near the Port of Oakland and the Project site experience greater health risks associated with exposure to TAC emissions and other air pollutants than other populations in the Bay Area and state, as discussed in the West Oakland Community Action Plan (WOCAP).[35] The Draft EIR describes this (see for example, pp. 4.2-2 and -3, and pp. 4.2-18 and 4.2-30) and for this reason, used two different methodologies for analyzing cumulative health risks: one using the BAAQMD CEQA Guidelines and one using background results from the Draft EIR for the WOCAP (see the text starting on Draft EIR p. 4.2-59).

Draft EIR pp. 4.2-4 through 4.2-8 explain the health effects known to occur as a result of exposure to criteria air pollutants and ozone, which is a secondary pollutant. Impact AIR-2 includes a health impact assessment that correlates proposed Project–related criteria pollutants to estimated health-based consequences. Such health impacts include asthma-related emergency room visits, asthma-related hospital admissions, cardiovascular-related hospital admissions, respiratory-related hospital admissions, mortality, and nonfatal acute myocardial infarction (see Draft EIR pp. 4.2-89 through 4.2-95).

See also Consolidated Response 4.14, *Environmental Justice,* Section 4.14.3.1.

A-7-52 See Consolidated Response 4.7, *Parking,* which addresses how parking for ballpark events would be managed and dispersed to underutilized parking garages within 1 to 1.5 miles of the Project site. This is intentional to minimize the concentrated levels of congestion that occur when parking is located at one location like the Coliseum. The proposed Project would redevelop a site within a Planned Development Area (PDA) included in Plan Bay Area 2040, the regional plan prepared by the Metropolitan Transportation Commission (MTC), and would undoubtedly result in additional investments and activities on the Project site. However, the Project would be designed to reduce vehicle trips below what would normally be expected from a project of the same size/scale. As described on DEIR page 4.15-80, at buildout the proposed Project would provide 2,000 parking spaces on-site (3,500 spaces at opening day) for the ballpark compared to 9,100 parking spaces at the Coliseum. With substantially less parking for the proposed ballpark, attendees would be more likely to use one of the three BART stations, each located within about one mile of the Project site, compared to the Coliseum where there is substantially

[35] BAAQMD and WOEIP, 2019. *Owning Our Air: The West Oakland Community Action Plan – Volume 1: The Plan,* October 2019. http://www.baaqmd.gov/community-health/community-health-protection-program/west-oakland-community-action-plan, accessed December 2019.

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more parking and a single BART station. Other transit options for the Project include 12 local AC Transit bus lines the Broadway "B" shuttle all within a 10-minute walk, a ferry terminal within about 1,000 feet of the Project, and an Amtrak rail station.

As previously noted, providing less parking for the ballpark at the proposed Project is intentional to disperse automobile traffic to the many under-utilized parking garages within 1 to 1.5 miles of the Project site. There is adequate parking supply within 1 to 1.5 miles of the Project site to fully accommodate ballpark attendees who would drive. This approach would minimize traffic congestion by dispersing it throughout the Downtown Oakland street grid rather than concentrating traffic at a single location like the Coliseum site. Drivers would use the freeway access nearest to their reserved parking space including: I-980 interchanges at 17th / 18th, 11th / 12th, and Jackson Streets; and I-880 interchanges at Union, Adeline, Market, Broadway, Jackson, and Oak Streets. The proposed Project would also provide limited on-site parking for the ballpark and the automobile traffic generated by these spaces would access I-880 via 5th and 6th Streets while traffic destined to I-980 would access via Brush and Castro Streets. With the Project's ballpark event traffic dispersed over 9 freeway on- and off-ramps the level of traffic congestion at any one location will be substantially less than experienced at the Coliseum and likely result in less impact compared to similar events at the Coliseum.

A Transportation Management Plan (TMP) to manage transportation before, during, and after events would be required per Mitigation Measure TRAN-1b, and a draft TMP is provided in the Draft EIR (Appendix TRA.1). A required component of the TMP would be Parking Management Plan (PMP), a draft of which is provided in the Additional Transportation Reference Materials (Toward a High-Performance Parking Management System for a Thriving Oakland: A Plan).[36] The PMP would implement an advanced parking reservation system that ballpark attendees would use to reserve a parking space prior to an event. In this way, attendees would drive directly to their reserved space rather than driving and circulating in neighborhoods looking for an available space. In addition, to protect residential neighborhoods and on-street parking in the vicinity, Residential Parking Permits would be provided and to limit the time duration of parking for non-residents and other

[36] Primus Consulting, 2020. Toward a High-Performance Parking Management System for a Thriving Oakland: a Plan, January 2020.

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on-street parking in the area would be metered with the ability for the City to control meter duration to manage the number of ballpark attendees that park on-street.

The 6,800 parking spaces that would be provided for the non-ballpark development at buildout would be provided at similar ratios of parking to existing development in Downtown Oakland and West Oakland, and a Transportation Demand Management (TDM) program to reduce vehicle trips would be required by Mitigation Measure TRANS-1a. To promote non-automobile travel, Mitigation Measure TRANS-1c would construct a transportation hub adjacent to the Project site that would serve at least three bus routes including the 72, 72M, and 72R (12 AC Transit buses per hour) to support non-automobile travel to and from proposed Project with the ability to expand the hub on ballpark event days to handle up to six shuttle bus stops and each shuttle stop could handle up to 12 shuttles per hour. Other transportation elements to minimize motorized vehicle trips include Mitigation Measure TRANS-1d which would construct bus only lanes on Broadway, Mitigation Measure TRANS-1e which would construct pedestrian improvements between the Project and the three nearby BART stations, Mitigation Measure TRANS-2a, 2b, and 2c which would construct bicycle corridor improvements connecting the Project to the City of Oakland bicycle network, and Mitigation Measures TRANS-3a and 3b which would construct extensive safety improvements along the railroad corridor between Schnitzer Steel, west of the Project, through the Jack London District to Oak Street.

A-7-53 The comment is correct that the Project could generate toxic air contaminants and affect off-site receptors. Criteria pollutant emissions associated with existing activities at Howard Terminal are not subtracted from the proposed Project emissions despite tenant relocations because these existing activities would continue elsewhere in the region, and would therefore still produce criteria air pollutant emissions within the air basin (see Draft EIR pp. 4.2-39 through 4.2-41). See Consolidated Response 4.5*, Truck Relocation,* for additional discussion of the Draft EIR consideration of the relocation of trucking activity from the Project site to other locations.

Regarding health risks associated with relocated trucks currently operating at Howard Terminal, the analysis presented in Draft EIR Impact AIR-4, pp. 4.2-70 through 4.2-96, presents the results of a health risk assessment (HRA) that considers whether the proposed Project would result in localized increases in toxic air contaminants (TACs) such that existing sensitive receptors near the

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Project site would experience increased health risks above the Bay Area Air Quality Management District (BAAQMD) thresholds of significance. The HRA appropriately subtracts health risks associated with TAC emissions from existing activities at Howard Terminal consistent with the significance threshold and because they would no longer occur at that location with implementation of the proposed Project.

For the localized analysis of TAC emissions and health risks, the Draft EIR analyzes the Roundhouse site, based on information from Port staff. In order to conservatively evaluate the impacts of relocated truck parking to sensitive receptors onsite at the Project and offsite in the neighboring community, the Draft EIR evaluated a scenario where all Howard Terminal truck activity would be relocated to the 15-acre Roundhouse area. Selection of the Roundhouse site for this analysis is also intended to provide a "worst-case" analysis of localized TAC emissions and health risks that would occur if all truck-related uses were relocated from Howard Terminal to another site at the Seaport. This conservatively assumes that 100% of the activity at the Howard Terminal site would be sited at only 56% of the area of the original activity. This provides a conservative picture of the maximum potential impacts that this relocation would have on existing off-site and new on-site receptors. This is conservative for purposes of health risk assessment because, in reality, it is unlikely that all trucks parking at Howard Terminal currently would relocate to the Roundhouse and the Roundhouse is closer to the Maximally Exposed Individual Residential Receptors (MEIRs) identified in the Project's health risk assessment than other potential sites in the Seaport (see Consolidated Response 4.5, *Truck Relocation* section 4.5.5).

The geographic scope of the criteria pollutant analysis is the San Francisco Bay Area Air Basin, while the geographic scope of the health risk assessment is West Oakland (see Draft EIR pp. 4.2-42 through 4.2-53).

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A-7-53 associated with the existing users should be included in the California Emissions Estimator Model (CalEEMod) calculations when evaluating regional emissions. However, when evaluating the localized health impacts from toxic air contaminants, the document states that the impact analysis is more conservative ("worst case") if truck parking could be relocated to the Roundhouse (a location close to the Project site) than if the existing users relocated to other, more distant areas. The Final EIR should identify the geographic scope of each evaluation (criteria air pollutant emissions versus health risk assessment) and clarify the rationale for concluding that the Project's operational impacts plus the relocated truck activity would result in a greater impact than if the relocated users were to operate, for example, near Emeryville or communities northeast of the Oakland International Airport. These two areas also have high existing pollution impacts with vulnerable communities and would be affected by a new, localized toxic air contaminant source.

A-7-54 In addition, MM AIR-3 identifies that the Project Sponsor shall incorporate health risk reduction measures into the design of the ballpark and non-residential uses to reduce health risks associated with truck-related sources for toxic air contaminants. The Project Sponsor should allow full opportunities for public and community engagement on these plans prior to the City's approval. For example, one of the identified measures is to locate proposed truck loading docks as far from nearby sensitive receptors as feasible. Design features, such as the location of loading docks for heavy-duty trucks, would benefit from public input to ensure transparency, accountability, and consistency with community needs. Identifying additional opportunities for public involvement is consistent with goals and objectives in the Port of Oakland's Seaport Air Quality 2020 and Beyond Plan.

A-7-55 Finally, in selecting a site remediation plan, staff urges the Project sponsor to consider not only the initial costs of the remedy, borne by the sponsor or developers, but also the ongoing costs of operations and maintenance, likely to be borne by later users of the Project. Removing contaminants during site buildout may cost more upfront but could reduce the overall costs. For instance, digging in "clean" utility corridors will reduce later costs each time a utility must be repaired or upgraded, decreasing the environmental burden and providing a benefit to future residents and public users. On the other hand, some remedies can shift costs onto future residents and users of the site, reducing opportunities for lower-income people to live, work, or recreate on the Project site.

A-7-56 Thank you for the opportunity to comment on the Draft EIR for the Project. As a responsible and trustee agency, the Commission will use the Final EIR to inform its consideration of the Project, including a land exchange and a trust consistency determination.

Please send copies of future Project-related documents, including electronic copies of the Final EIR, Mitigation and Monitoring Program, Notice of Determination, CEQA Findings and, if applicable, Statement of Overriding Considerations when they become available. Please refer questions concerning environmental review to Alexandra Borack, Senior Environmental Scientist, at (916) 574-2399 or Alexandra.Borack@slc.ca.gov. For

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A-7-54 See Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures,* for a discussion of Mitigation Measure AIR-4b, which calls for health risk reduction measures to supplement those required by Mitigation Measure AIR-4a (use of MERV16 filtration). The original text of Mitigation Measure AIR-4b was derived from a Standard Condition of Approval that the City applies to all projects. Text changes to the mitigation measure have been included in the Consolidated Response and in Chapter 7, *City-Initiated Updates and Errata in the Draft EIR.* The Consolidated Response clarifies the relationship of Mitigation Measure AIR-4b to Mitigation Measure AIR-4a (i.e., that the impact would be less than significant with the required implementation of Mitigation Measure AIR-4a without the additional measures in Mitigation Measure AIR-2b) and the mitigation measures has been amended to include only those requirements that are relevant to the proposed Project. The measure does not require community engagement regarding required strategies because such engagement is not required for the measure's effectiveness. Nonetheless, the commenter's suggestion will be shared with City decision makers, who could elect to establish a process for community engagement throughout Project implementation.

A-7-55 As explained in Consolidated Response 4.22*, General Non-CEQA,* analysis of financial impacts and costs of a project is outside of the purview of CEQA. See also Consolidated Response 4.14, *Environmental Justice*. See Response to Comment A-5-4 regarding remediation and utility placement.

A-7-56 The City acknowledges the State Lands Commission's role as a Trustee Agency and a Responsible Agency. Required actions from the State Lands Commission are listed in Draft EIR Table 3-4. This comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft EIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the Proposed Project.

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questions concerning archaeological or historic resources, please contact Jamie Garrett, Staff Attorney, at (916) 574-0398 or Jamie.Garrett@slc.ca.gov. For questions concerning Commission jurisdiction, please contact Reid Boggiano, Granted Lands Program Manager, at (916) 574-0450 or Reid.Boggiano@slc.ca.gov.

Sincerely,

Nicole Dobroski, Chief
Division of Environmental Planning
and Management

cc: Office of Planning and Research
R. Boggiano, Commission
A. Borack, Commission
A. Kershen, Commission
Y. Ramirez, Commission
S. Pemberton, Commission

A-8 Capitol Corridor Joint Powers Authority (CCJPA)

COMMENT

A-8-1

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April 27, 2021

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

Dear Mr. Vollman,

As the managing agency of the Capitol Corridor intercity passenger rail service, Capitol Corridor Joint Powers Authority (CCJPA) appreciates the opportunity to submit comments to the City of Oakland Draft Environmental Impact Report (DEIR) for the Waterfront Ballpark District Project. While the proposed Waterfront Ballpark at Howard Terminal ("Project") would create robust development potential in the Jack London Square area, the Project as proposed would also pose significant and unavoidable safety risks to those who wish to access the Ballpark across active railroad tracks via at-grade railroad crossings. CCJPA is extremely concerned about the safety risks to motorists, pedestrians, bicyclists, and other roadway users crossing the railroad tracks along Embarcadero West and the negative impacts of potential railroad crossing incidents on both passengers and freight rail operations in the area. The DEIR describes exposing roadway users to a "permanent or substantial transportation hazard" via the at-grade railroad crossings on Embarcadero West, and even with the proposed mitigation measures, the hazard would be significant and unavoidable. For a project of this scale and importance, this level of transportation safety risk to essentially everyone accessing the Ballpark should be unacceptable to the City of Oakland.

Based on a 2019 analysis of all 30 North American Major League Baseball (MLB) stadiums that CCJPA conducted, all other MLB stadiums that have entrances adjacent to an active railroad corridor utilize a combination of grade separations (for auto and pedestrians), pedestrian overpasses, and fencing to prevent possible conflicts between trains, vehicles, and pedestrians/bicyclists. For the Waterfront Ballpark, which would have five railroad crossings adjacent to the site, efforts to mitigate transportation hazards related to the crossings must go above and beyond what other MLB stadiums have done in order to reduce significant and unavoidable impacts to railroad safety, but that is not what is shown in this DEIR. An existing example of an MLB stadium that has one at-grade crossing and a grade-separated pedestrian bridge is Petco Park in San Diego, CA. Even in this scenario, which has but one at-grade crossing compared to the proposed Waterfront Ballpark, there is observed risky human behavior at the at-grade crossing. This video (https://youtu.be/zW9RrPUu6j0) captures people attempting to cross the Fifth Street at-grade crossing in San Diego, CA to access the adjacent Petco Park by crawling underneath, between, and over a freight train that temporarily blocked the at-grade crossing. Fencing did not prevent those who were determined to get across the at-grade crossing from entering the railroad right-of-way and navigate around an active freight train that could move at any moment. This is a scenario that could play out at any of the at-grade crossings adjacent to the Waterfront Ballpark if the Project is developed as presented in the DEIR. The only feasible mitigation for this risk while also allowing adequate access to the Project site is a combination of grade separation or closure of the railroad crossings.

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A-8-1 This is a general comment that includes introductory remarks and serves to introduce the more specific comments that are responded to in detail below. As a result, no specific response is provided here.

With respect to CCJPA's 2019 analysis of Major League Baseball stadiums, this has not been provided to the City. With respect to conditions at Petco Park in San Diego, see Consolidated Response 4.6, *Rail Safety, Grade Crossing, and Grade Separation*, for response

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A-8-2

The CCJPA acknowledges that the existing conditions with mainline rail operations intersected by numerous city streets and in the very same right-of-way are less than optimal today. Solutions to address the existing deficiencies have been complicated by competing interests for many years. Solutions to even existing conditions would require road access closure and the ability to eliminate as much unfettered access as feasible through a well-considered plan that addresses the competing needs of this area. Adequate design for a ballpark in this area would recognize human behavior before and after sporting and entertainment events, vehicle access, and the operations of freight and passenger rail in a corridor that borders the Project. The only feasible response to the existing safety condition coupled with a ballpark district in these conditions is to separate vehicles, pedestrians, and bicyclists from trains by purposeful design. The DEIR has dismissed the very design features, grades, and transitional design that can separate other modes from rail, and substantial evidence has not been shown to support these decisions. Unfortunately, the footprint of the Project and the economic considerations in the DEIR dismiss analysis and further disclosure of potential design ideas which have the real chance to be evaluated for their ability to reduce or eliminate such transportation impacts to less than significant. CEQA Guidelines § 15126.6(b) states, "Purpose. Because an EIR must identify ways to mitigate or avoid the significant effects that a project may have on the environment (Public Resources Code Section 21002.1), 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." "The question is . . . whether the marginal costs of the alternative as compared to the cost of the proposed project are so great that a reasonably prudent [person] would not proceed with the [altered project]." (Uphold Our Heritage v. Town of Woodside (2007) 147 Cal.App.4th 587, 600.

A-8-3

We strongly recommend that the City expand the Project boundary and study a combination of grade separation and permanent closure of all railroad crossings near and adjacent to the Ballpark (Market Street, Martin Luther King Jr. Way, Clay Street, Washington Street, and Broadway) to mitigate for the transportation impacts and safety hazards related to railroad crossings. The DEIR's efforts to study grade-separated overcrossings and Market Street and Brush Street for vehicle-only use are inadequate as presented, and without a combination of grade-separation for all ground transportation modes and permanent closures at all five (5) railroad crossings as listed previously, the Project would be imprudent from our perspective. In our experience, the California Public Utilities Commission has a proclivity to recommend grade-separated railroad crossings in instances where large amounts of motorists, pedestrians, and bicyclists are expected to cross active railroad tracks, so it would be in the Project's interest to thoroughly analyze grade-separated crossings. We understand there are challenges associated with implementing grade-separations and crossing closures and would gladly welcome future opportunities to work collaboratively with the City and the Oakland A's to collaboratively design comprehensive railroad crossing features for the Project that can mitigate the significant impacts and hazards.

A-8-4

There are several aspects of the DEIR that we deem inadequate according to CEQA, as described below.

The conclusion in the DEIR that the Project would have a significant and unavoidable impact related to rail safety does not excuse the DEIR from evaluating additional, feasible mitigation. *See* CEQA Guidelines § 15091(f). CEQA requires the adoption of mitigation measures to avoid or lessen environmental impacts whenever feasible. See Pub. Res. Code §§ 21002, 21081(a); CEQA Guidelines § 15002(a)(2), (3). This obligation is not limited to measures that entirely avoid a project's environmental impacts; it also extends to measures that would "substantially lessen the significant environmental effects" of a project. Pub. Res.

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A-8-2 See Consolidated Response 4.6, *Rail Safety, Grade Crossing, and Grade Separation* and Consolidated Response 4.9, *Alternative 3: The Proposed Project with Grade Separation Alternative*.

The remainder of this comment is a summary of CEQA 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.

A-8-3 See Consolidated Response 4.6, *Rail Safety, Grade Crossing, and Grade Separation* and Consolidated Response 4.9, *Alternative 3: The Proposed Project with Grade Separation Alternative*.

A-8-4 See Consolidated Response 4.6, *Rail Safety, Grade Crossing, and Grade Separation* and Consolidated Response 4.9, *Alternative 3: The Proposed Project with Grade Separation Alternative*, for responses to the issues raised in the comment.

Contrary to the implication of the comment, the City has not labeled Impact TRANS-3 as significant and unavoidable in an attempt to avoid its legal requirement under State CEQA Guidelines Section 15126.4(a)(1)(A) to "describe all feasible measures which could minimize significant adverse impacts." The effects of the proposed Project on safety related to the physical relationship of the site to at-grade railroad crossings are addressed in two Project-specific impacts, TRANS-3 and TRANS-4 (see Draft EIR pp. 4.15-233 through 4.15-241), and two cumulative impacts, TRANS-3.CU and TRANS-4.CU (see Draft EIR pp. 4.15-246 through 4.15-247). The EIR described Mitigation Measure TRANS-3a: Implement At-Grade Railroad Crossing Improvements and Mitigation Measure TRANS-3b: Pedestrian and Bicycle Overcrossing, each of which include a substantive discussion articulating the measures, and provide provision figures describing the location of potential future bicycle and pedestrian overpasses of Jefferson and Clay Streets (see Draft EIR Figures 4.15-48 and 4.15-49, pp. 4.15-247 and 4.15-248).

The Draft EIR includes a thoughtful and thorough explanation of the efficacy of Mitigation Measures TRANS-3a and TRANS-3b, and explains the reasons that the City determined the impact to be significant and unavoidable. Those reasons are that "the site would continue to use numerous existing at-grade crossings along Embarcadero West" and that both mitigation measures "are

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subject to the review and approval of another agency," and thus the implementation of such measures cannot be guaranteed by the City of Oakland.

These discussions of these impacts, including data on railroad crossing volumes provided in Table 4.15-42, constitute a substantive analysis. Such discussions are not a mere labeling of an impact as significant, and meet the requirements for adequacy of analysis under State CEQA Guidelines Section 15126.2(a),) reinforced in *Berkeley Keep Jets Over the Bay Committee v. Board of Port Commissioners,* (2001) 91 Cal.App.4th 1344. Thus, the comment that the Draft EIR's EIR evaluation of rail crossing safety impacts and the description of associated feasible mitigation measures are lacking and insufficient under CEQA and relevant case law is incorrect.

The remainder of this comment is a summary of CEQA case law and provisions related to mitigation measures. 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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Code § 21002 (emphasis added). Even if the significant impacts cannot be entirely mitigated, CEQA requires that the agency must reduce them to the extent feasible. *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 524-25 ("Even when a project's benefits outweigh its unmitigated effects, agencies are still required to implement all mitigation measures unless those measures are truly infeasible.").The CEQA Guidelines thus encourage not only avoidance measures, but also mitigation through minimization, preservation, and other measures. Guidelines §§ 15370(d)-(e). Absent either project modifications to mitigate the significant impacts or a determination that the mitigation is infeasible accompanied by a statement overriding considerations supporting approval of the project, an agency is prohibited from moving forward. Pub. Res. Code § 21081.

"[S]imply labeling the effect 'significant' without accompanying analysis of the project's impact … is inadequate to meet the environmental assessment requirements of CEQA." *Berkeley Keep Jets Over the Bay Committee v. Board of Port Commissioners* (2001) 91 Cal.App.4th 1344, 1371. The DEIR is required to evaluate and implement mitigation for significant impacts that are legally, economically, and environmentally feasible. See Pub. Res. Code §§ 21061.1 (defining "feasible"), 21081 (listing findings necessary to reject mitigation measure as infeasible); CEQA Guidelines § 15126.4(a); *San Franciscans for Livable Neighborhoods v. City & Cty. of San Francisco* (2018) 26 Cal.App.5th 596, 636. CEQA does not allow an agency to avoid mitigation of significant impacts absent substantial evidence of infeasibility. *Uphold our Heritage v. Town of Woodside* (2007) 147 Cal.App.4th 587, 600.

A-8-5

The DEIR limits its consideration of mitigation measures to reduce significant rail safety impacts to implementing at-grade improvements (MM TRANS-3a) and a single overcrossing (MM TRANS-3b). The final EIR must consider a far broader range of mitigation measures, specifically:

- Grade separations for all ground transportation modes at each of the five railroad crossings,
- Pedestrian overpasses at each of the five (5) railroad crossing, and
- Fencing to prevent possible conflicts between trains, vehicles, and pedestrians/bicyclists.

These specific measures have already been implemented at other MLB stadiums, so they are unlikely to be "facially infeasible," and the City cannot be excused from considering them. *Residents Against Specific Plan 380 v. County of Riverside* (2017) 9 Cal.App.5th 941, 970 ("an adequate EIR must respond to specific suggestions for mitigating a significant environmental impact unless the suggested mitigation is facially infeasible"). The City cannot disregard such measures solely because of the expense; feasibility "is not measured by increased cost or lost profit, but upon whether the effect of the proposed mitigation is such that the project is rendered impractical." *Uphold Our Heritage v. Town of Woodside* (2007) 147 Cal.App.4th 587, 600; *Citizens of Goleta Valley v. Board of Supervisors* (1988) 197 Cal.App.3d 1167, 1180-81; *Center for Biological Diversity v. County of San Bernardino* (2010) 185 Cal.App.4th 866, 884-85.

A-8-6

Similarly, the City is obligated to fully analyze an alternative involving permanent closure of the five at-grade railroad crossings. This alternative was impermissibly eliminated from full consideration in the DEIR. The alternatives analysis is the "core of an EIR." *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal. 3d 553, 564. An EIR is required to analyze a range of alternatives that "would avoid or substantially lessen" the significant effects of the project. Pub. Resources Code §§ 21002, 21002.1; CEQA Guidelines § 15126.6(a); *Laurel Heights Improvement Ass'n v Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 400. "A potentially feasible alternative that might avoid a significant impact must be discussed and analyzed in an EIR so as to provide information to the decision makers about the alternative's potential for reducing environmental impacts." *Habitat and Watershed Caretakers v. City of Santa Cruz* (2013) 213 Cal.App.4th 1277, 1304 (emphasis in original). In the absence of such analysis, the agency's conclusions are "purely

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A-8-5 See Response to Comment A-8-4 and Consolidated Response 4.6, *Rail Safety, Grade Crossing, and Grade Separation* and Consolidated Response 4.9, *Alternative 3: The Proposed Project with Grade Separation Alternative*. Also, the commenter is referred to Draft EIR, Chapter 6, Alternative 3 which addresses the Project with grade separation at either Market or Brush Streets.

Regarding the requested mitigation measures, the pedestrian overpass included in Mitigation Measure TRANS 3b would complement two existing overpasses in the Jack London Square area, one serving the Washington Street Parking Garage and the other serving the 55 Harrison Parking Garage. Both garages connect upper level parking garages on the north side of the tracks with upper level office buildings on the south side. Additional pedestrian overcrossings were not deemed necessary because the crossing provided under Mitigation Measure TRANS 3b would be sited to maximize use by ballpark patrons. Also, the rail safety measures included in Mitigation Measure TRANS 3a would include fencing to prevent possible conflicts between trains, vehicles, and pedestrians/bicyclists. See Consolidated Response 4.9 (cited above) for discussion of multiple vehicular grade separations. See also discussion of revision to Mitigation Measure TRANS 3a to extend fencing and other rail safety improvements to Oak Street in Consolidated Response 4.6, *Rail Safety, Grade Crossing, and Grade Separation*.

The remainder of this comment is a summary of CEQA case law and provisions related to mitigation measures. 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.

A-8-6 See Consolidated Response 4.6, *Rail Safety, Grade Crossing, and Grade Separation*, for a discussion regarding grade separation alternatives, including an explanation of why the closure of all at-grade crossings would be infeasible as either a mitigation strategy or an alternative. See also Consolidated Response 4.9, *Alternative 3: The Proposed Project with Grade Separation Alternative*.

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

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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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A-8-6

speculative." *Id.* Reasonable alternatives are feasible and must "attain most of the basic objectives" of the project. Pub. Res. Code § 21061.1; CEQA Guidelines § 15126.6(a) (emphasis added). The agency may only eliminate an alternative from consideration if the alternative would not meet most of the basic project objectives, is infeasible, or would not reduce significant environmental impacts. CEQA Guidelines § 15126.6(c); *Save Round Valley Alliance v. County of Inyo* (2007) 157 Cal.App.4th 1437, 1457. As courts have made clear, "[a] potential alternative should not be excluded from consideration merely because it would impede to some degree the attainment of the project objectives or would be more costly." *Id.* at 1456–57.

A-8-7

Additionally, the agency has an obligation to demonstrate that the mitigation it implements will be effective. *Sierra Club v. County of San Diego* (2014) 231 Cal.App.4th 1152, 1168-1176 (agency violated CEQA by failing to adopt mitigation measures proposed by Sierra Club when record demonstrated EIR's measures were likely ineffective); *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 522 (EIR violates CEQA when it contains no facts or analysis to support the inference that the mitigation measures will be effective). An EIR's fundamental purpose is "to identify the significant effects on the environment of a project ... and to indicate the manner in which those significant effects can be mitigated or avoided." Pub. Res. Code § 21002.1. To that end, an EIR is required to identify feasible and effective mitigation that can reduce the project's significant impacts. *Id.* at § 21061. Mitigation measures are inadequate if their effectiveness is uncertain or unproved. *King & Gardiner Farms, LLC v. County of Kern* (2020) 45 Cal.App.5th 814, 866; *Sierra Club v. County of San Diego* (2014) 231 Cal.App.4th 1152, 1168 (GHG reduction recommendations were unenforceable, ineffective mitigation measures); *Communities for a Better Env't v. City of Richmond* (2010) 184 Cal.App.4th 70, 95 (GHG mitigation measures rejected as "nonexclusive, undefined, untested and of unknown efficacy").

A-8-8

Lastly, CEQA requires the lead agency to consult with transportation planning agencies and public agencies that have transportation facilities within their jurisdictions that could be affected by the project (Cal. Pub Res. Code section 21092.4). Consultation provides the lead agency with information concerning the project's effect on public transit (within 5 miles of the project site), and rail transit service (within 10 miles of the project site). The City and the Project Sponsor failed to consult with CCJPA while drafting the DEIR. If CCJPA was invited to meetings to discuss the scope and content of the DEIR that affects public transit and rail transit service, we could have assisted in preparing a scope that would allow for the review and/or design of grade separation and permanent closure of all railroad crossings near and adjacent to the Ballpark (Market Street, Martin Luther King Jr. Way, Clay Street, Washington Street, and Broadway) to mitigate for the transportation impacts and hazards related to railroad crossings. As the Project advances, we would like to see more efforts to invite railroad owner and operator perspectives (e.g., CCJPA, Union Pacific Railroad) to refine railroad safety mitigation measures.

CCJPA's other comments and concerns about the Project are described below.

A-8-9

CCJPA Vision Implementation Plan

In our January 7, 2019 NOP comment letter, we noted the existence of a CCJPA Board adopted Vision Implementation Plan, which describes future Capitol Corridor passenger rail service levels through Oakland Jack London Square and various rail infrastructure improvements immediately adjacent to the Project. The DEIR is deficient in the review and consideration of the CCJPA Vision Implementation Plan, as references to the document do not appear in Chapter 4.15, Transportation and Circulation, or Chapter 7, Impact Overview and Growth Inducement. Transportation analysis relative to the information in the CCJPA Vision Implementation Plan should be presented in the Final EIR.

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A-8-7 This comment is a summary of CEQA case law and provisions related to mitigation measures. 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 4.6, *Rail Safety, Grade Crossing, and Grade Separation* and Consolidated Response 42. *Formulation, Effectiveness and Enforceability of Mitigation Measures* for discussion of legal principles applicable to mitigation measures.

A-8-8 CEQA requires the lead agency for a project of statewide, regional, or areawide significance to consult with transportation planning agencies and public agencies that have transportation facilities within their jurisdictions (including rail transit service within 10 miles of the project site) that could be affected by the project (Public Resources Code, Section 21092.4). CCJPA is a partnership among the six local transit agencies in an eight-county service area, but is not itself a transportation planning agency or a public agency that has transportation facilities of its own. Therefore, CEQA Section 21092.4 did not obligate the City to consult with CCJPA prior to release of the Draft EIR. Nonetheless, the City did consult with participating agencies including Alameda CTC, AC Transit, WETA, and BART, and with agencies and organizations with an interest in the rail corridor, including the CPUC and the UPRR. The City also considers the CCJPA's comments submitted on the Draft EIR.

The City of Oakland issued a Notice of Preparation (NOP) (of a Draft EIR) on November 30, 2018, and provided the notice to interested parties. A notice was published in the newspaper, and a copy of the NOP was sent to the State Clearinghouse to solicit statewide agency participation in determining the scope of the EIR. Public scoping meetings were held at the Oakland Landmarks Preservation Advisory Board on December 17, 2018, and the Oakland Planning Commission on December 19, 2028. The CCJPA provided a response to the Notice of Preparation in a letter dated January 7, 2019. The CCJPA also provided comments on the Draft EIR in a letter dated April 27, 2021. The City has considered each letter in its CEQA process.

The purpose of consulting with transportation planning agencies and public agencies that provide rail transit service within 10 miles of a project site is for the lead agency to obtain information about the project's potential impacts on rail transit service (among other things) within those agencies' jurisdiction

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		(Public Resources Code, Section 21092.4). When such an agency provides information to the lead agency, it thereafter shall be notified of, and provided with copies of, environmental documents pertaining to the project. Here, although notification was not required under Section 2192.4, the City seeks CCJPA's continued input on the proposed Project and its potential impact on rail transit services.
	A-8-9	The CCJPA Vision Implementation Plan envisions a 2-mile tunnel through Jack London Square, potentially under 2nd Street, which would completely separate passenger and freight rail traffic from automotive, pedestrian, and bicycle circulation in the area. This tunnel has an estimated cost of $1.2 billion and would not be complete for 20–25 years. The operating plan assumes that up to four trains per hour would pass through the area, but these would pass through the tunnel rather than along the at-grade right-of-way. At this time, the tunnel has not been approved or funded, meaning that it would not be appropriate for it to be considered reasonably foreseeable in the context of the cumulative analysis in the Draft EIR. Further, given the time frame for construction of this tunnel, the plans outlined in the CCJPA Vision Implementation Plan would not alter Draft EIR Impact TRANS-3, the associated mitigation measures, or the conclusion that Impact TRANS-3 would result in a significant and unavoidable impact on rail safety. See also Consolidated Response 4.9, *Alternative 3: The Proposed Project with Grade Separation Alternative*, regarding grade separation alternatives considered in the Draft EIR and addresses a proposal to place the tracks along Jack London Square below grade.

A-8

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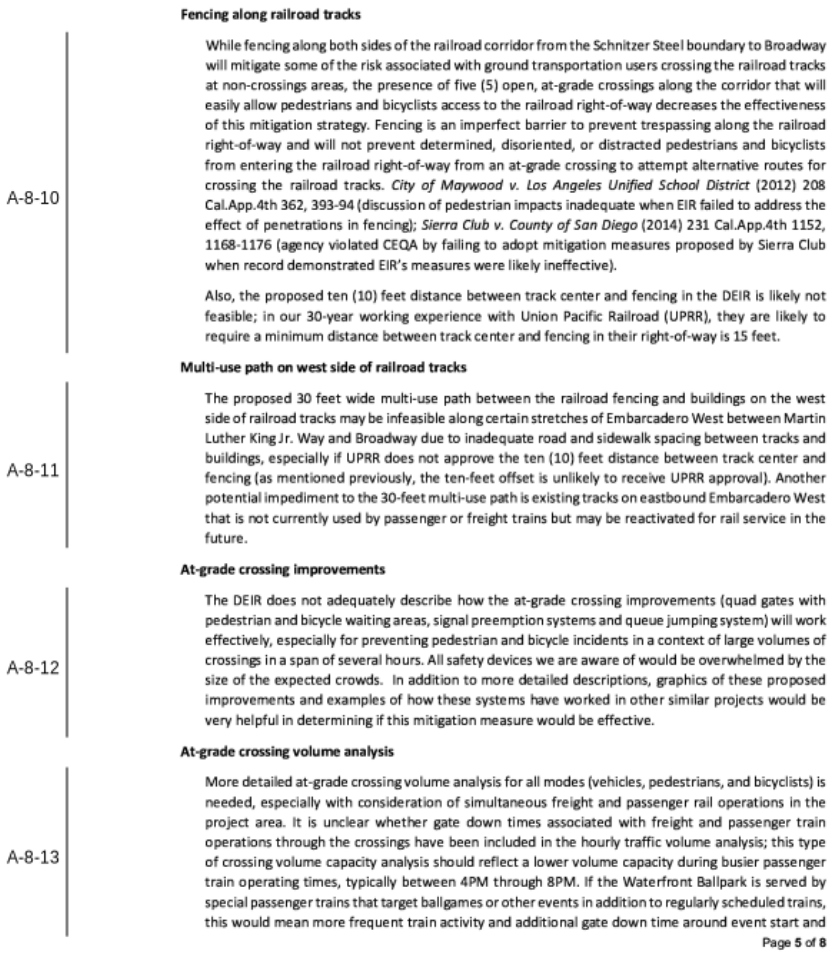

Fencing along railroad tracks

While fencing along both sides of the railroad corridor from the Schnitzer Steel boundary to Broadway will mitigate some of the risk associated with ground transportation users crossing the railroad tracks at non-crossings areas, the presence of five (5) open, at-grade crossings along the corridor that will easily allow pedestrians and bicyclists access to the railroad right-of-way decreases the effectiveness of this mitigation strategy. Fencing is an imperfect barrier to prevent trespassing along the railroad right-of-way and will not prevent determined, disoriented, or distracted pedestrians and bicyclists from entering the railroad right-of-way from an at-grade crossing to attempt alternative routes for crossing the railroad tracks. *City of Maywood v. Los Angeles Unified School District* (2012) 208 Cal.App.4th 362, 393-94 (discussion of pedestrian impacts inadequate when EIR failed to address the effect of penetrations in fencing); *Sierra Club v. County of San Diego* (2014) 231 Cal.App.4th 1152, 1168-1176 (agency violated CEQA by failing to adopt mitigation measures proposed by Sierra Club when record demonstrated EIR's measures were likely ineffective).

A-8-10

Also, the proposed ten (10) feet distance between track center and fencing in the DEIR is likely not feasible; in our 30-year working experience with Union Pacific Railroad (UPRR), they are likely to require a minimum distance between track center and fencing in their right-of-way is 15 feet.

Multi-use path on west side of railroad tracks

The proposed 30 feet wide multi-use path between the railroad fencing and buildings on the west side of railroad tracks may be infeasible along certain stretches of Embarcadero West between Martin Luther King Jr. Way and Broadway due to inadequate road and sidewalk spacing between tracks and buildings, especially if UPRR does not approve the ten (10) feet distance between track center and fencing (as mentioned previously, the ten-feet offset is unlikely to receive UPRR approval). Another potential impediment to the 30-feet multi-use path is existing tracks on eastbound Embarcadero West that is not currently used by passenger or freight trains but may be reactivated for rail service in the future.

A-8-11

At-grade crossing improvements

The DEIR does not adequately describe how the at-grade crossing improvements (quad gates with pedestrian and bicycle waiting areas, signal preemption systems and queue jumping system) will work effectively, especially for preventing pedestrian and bicycle incidents in a context of large volumes of crossings in a span of several hours. All safety devices we are aware of would be overwhelmed by the size of the expected crowds. In addition to more detailed descriptions, graphics of these proposed improvements and examples of how these systems have worked in other similar projects would be very helpful in determining if this mitigation measure would be effective.

A-8-12

At-grade crossing volume analysis

More detailed at-grade crossing volume analysis for all modes (vehicles, pedestrians, and bicyclists) is needed, especially with consideration of simultaneous freight and passenger rail operations in the project area. It is unclear whether gate down times associated with freight and passenger train operations through the crossings have been included in the hourly traffic volume analysis; this type of crossing volume capacity analysis should reflect a lower volume capacity during busier passenger train operating times, typically between 4PM through 8PM. If the Waterfront Ballpark is served by special passenger trains that target ballgames or other events in addition to regularly scheduled trains, this would mean more frequent train activity and additional gate down time around event start and

A-8-13

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A-8-10 See Consolidated Response 4.6, *Rail Safety, Grade Crossing, and Grade Separation*.

Contrary to the comment, the railroad corridor improvements including the five at-grade crossings along the corridor would not easily allow pedestrians and bicyclists access to the railroad rights-of-way. The railroad corridor improvements contemplated by the proposed Project and required in Mitigation Measures TRANS-3a and TRANS-3b (Draft EIR pp. 4.15-235 and 4.15-240) would include a combination of corridor fencing, at-grade improvements such as quad gates, pedestrian and bicycle gates, and traffic signalization and a pedestrian and bicycle grade separation. For example, when in the down position, the gates would hinder pedestrians and bicyclists from crossing the railroad tracks.

The remainder of this comment is a summary of CEQA case law related to mitigation measures. 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 comment notes that the mitigation measure references the fence line offset from the active track or third track by approximately 10 feet. The wording continues noting "…or the minimum allowable by UPRR." The fencing offset and other design elements would be determined through the necessary diagnostic study and through all necessary permits/approvals, including a GO 88-B Request (Authorization to Alter Highway Rail Crossings). See also Consolidated Response 4.6, *Rail Safety, Grade Crossing, and Grade Separation*.

A-8-11 See Consolidated Response 4.6, *Rail Safety, Grade Crossing, and Grade Separation*.

A-8-12 See Consolidated Response 4.6, *Rail Safety, Grade Crossing, and Grade Separation*, for responses to the issues raised in the comment. Section 4.6.4 Safety Impacts of Additional Demand in the Consolidated Response was based on the Federal Railroad Administration's (FRA) Accident Prediction, and Severity (APS) model that was updated in October 2020. The effectiveness of quad gates is documented in the FRA report titled *Evaluation of the School Street Four-Quadrant Gate/In-Cab Signaling Grade Crossing System*, a study developed by FRA, that reported railroad crossings with quad gates had a higher effectiveness at reducing the probability of a collision than crossings

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equipped with flashing lights, bells, and dual gates. The probability of collisions is reduced around 80% with quad gates.

Current practice in crossing treatment selection utilizes the diagnostic study method which is incorporated into Mitigation Measures TRANS-3a and TRANS-3b and required by the CPUC. The diagnostic study uses a "Diagnostic Team" composed of experienced individuals knowledgeable in key disciplines including crossing design, safety engineering, rail operations and signaling, and traffic engineering. This approach considers all known measures to improve at-grade crossings and is intended to ensure that site-specific features are considered in adapting guidance and standards for treatments to address the issues at the crossings. The diagnostic study also provides an interdisciplinary approach which reflects all the technical considerations in selection of treatment alternatives. The diagnostic study method, supported by additional engineering analyses conducted offsite, provides a structured approach which satisfies the various requirements for "Engineering Study" as defined in the MUTCD.

See Response to Comment A-8-4 for a discussion of the adequacy of the presentation of mitigation measures related to rail safety.

A-8-13 See Consolidated Response 4.6, *Rail Safety, Grade Crossing, and Grade Separation*, for responses to the issues raised in the comment.

See Draft EIR Appendix TRA.3, which includes a technical memorandum describing the transportation operations analysis. Section 3 of the memorandum describes the multimodal microsimulation modeling that was completed to establish transportation operations at Project buildout after a weekday daytime ballpark event and prior to a weekday evening ballpark event. As noted on p. 18 of the memorandum, the microsimulation analysis incorporated train data collected for the Draft EIR including 20 train events, 17 passenger trains, and three freight trains, during the analysis time period of 3 p.m. to 8 p.m. with a range of gate down times from one to five minutes. Multiple railroad crossing closures and longer delays referenced by the comment were not observed between 3 and 8 p.m., although they were observed and documented in Draft EIR Impact TRANS-3. Passenger trains are required to follow a fixed schedule pre-approved by Union Pacific because the passenger trains share tracks with freight trains, so adjusting schedules to accommodate a variable ballpark event end time is likely not possible and so was not assumed in the Draft EIR.

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A-8-13

end times. UPRR operates an average of 30 freight trains daily between Port of Oakland and Jack London Square, with approximately ten (10) of them stopping adjacent to Howard Terminal for switching activity, which can block multiple railroad crossings for as long as 45 minutes; even though freight trains have variable schedules, the potential simultaneous blockage of multiple grade crossings should be accounted for in crossing volume analyses. We encourage the Project to reach out to UPRR for their signal records for accurate gate down time data. Lastly, Table 4.15-42 presents a snapshot of estimated pre-game traffic volumes at various railroad crossings, but it does not present estimated post-game traffic volumes, which may be more peaked than pre-game volumes.

Grade separation analyses

A-8-14

Alternative 3: Proposed Project with Grade Separation Alternative (Section 6.2.3 of the DEIR) presents two potential vehicle-only grade-separated overcrossings at Market Street and Brush Street and notes that other grade separation crossings were studied but rejected. First, we assert that any grade separation constructed for this Project should be for all ground transportation modes, not just motor vehicles. Pedestrians and bicyclists are comparatively more vulnerable to fatal incidents and exhibit more unpredictable behavior at railroad crossings (refer to video noted above) and should have more grade-separated crossing routes to access and egress from the ballpark than just the one being proposed by the DEIR. Second, the reasons cited for dismissing those other grade-separated crossings (MLK Jr. Way, Chestnut Street, Linden Street, Myrtle Street, Jefferson Street, Clay Street, and Castro Street) are not adequate and substantial evidence was not presented to support the DEIR's findings. Impacts to additional properties and utilities from additional grade-separated crossings are not impossible obstacles to overcome. If additional grade-separated crossings render the Project impractical due to economic unviability, then it must be more clearly demonstrated in the Final EIR.

Finally, there does not appear to be any feasibility analysis of undergrounding the railroad tracks in an open-trench tunnel through the project area so that railroad crossings can remain at adjacent street levels but be grade-separated for all ground transportation users. As a valid mitigation measure to the transportation hazards presented by railroad crossings, this concept to underground the railroad tracks to facilitate grade-separated crossings should be analyzed and evaluated in the EIR.

Pedestrian and bicycle overcrossing

A-8-15

The Project proposes a 20 feet wide pedestrian and bicycle overcrossing that has 26 feet of clearance over the railroad, with vertical circulation elements (some combination of stair and elevator system, or additional ADA-compliant ramping) on both sides of the overcrossing. This grade-separated crossing would mitigate for pedestrian and bicyclist (if ADA-compliant ramping is included) safety hazard, but how much usage it might get is uncertain. *City of Maywood*, 208 Cal.App,4th at 394 (discussion of pedestrian impacts inadequate when EIR failed to address pedestrian preference for at-grade crossing). To use the overcrossing, users would need to first go up 26 feet and then down 26 feet; the extra time spent on going up and down will likely discourage some users from utilizing the overcrossing and instead use one of the nearby at-grade crossings. At a minimum, measures to encourage use of the overcrossing will be necessary considering normal human proclivity to seek the fastest way from one side of the railroad tracks to another. The most effective and safest way to preclude the possible use of at-grade crossings is by closing them, whether temporarily or permanently.

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A-8-14 See Consolidated Response 4.9, *Alternative 3: The Proposed Project with Grade Separation Alternative*.

A-8-15 The commenter correctly notes the basic design parameters for the pedestrian and bicycle bridge (Mitigation Measure TRANS-3b) which includes a 20-foot wide bridge with some combination of stair and elevator system or additional ADA-compliant ramping so the bridge is accessible to pedestrians with all levels of mobility. Draft EIR Figure 4.15-46 shows the number of pedestrians anticipated to cross the railroad tracks prior to a ballpark event. About 26,000 pedestrians would cross the railroad tracks at an at-grade railroad crossing even with the pedestrian and bicycle bridge over the railroad tracks (Mitigation Measure TRANS-3b). As explained in Response to Comment A-8-4, Impact TRANS-3 is considered significant and unavoidable even after implementation of Mitigation Measures TRANS-3a and TRANS-3b because the use of the at-grade railroad crossings would continue after implementation of the mitigation measures, and because those measures require approval by agencies other than the City of Oakland, meaning that the City alone cannot guarantee their implementation.

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Impacts on railroad operations

The location of the Waterfront Ballpark District Project, bounded on the west by San Francisco Bay and on the east by UPRR right-of-way, makes crossing the tracks almost inevitable to access the site. Safety for those who are crossing the tracks, then, should be a priority for the Project Sponsor and all responsible CEQA reviewing and approving agencies. As proposed, the Project would "generate additional multimodal traffic traveling across the at-grade railroad crossings on Embarcadero that would cause or expose roadway users (e.g. motorists, pedestrians, bus riders, bicyclists) to a permanent or substantial transportation hazard". This transportation hazard is "significant and unavoidable" even with the proposed mitigation measures because they cannot adequately mitigate the significant negative transportation impact.

A-8-16

The high volume of at-grade railroad crossings generated by the Project magnifies the safety risk to roadway users. According to Table 4.14-42 (Project-Related Railroad Crossing Volumes Buildout Plus Weekday Evening Ballgame), almost 47,000 pedestrians, bicyclists, and motorists are expected to use the at-grade railroad crossings over a span of five (5) hours, with approximately 73% of them (~34,000) pedestrians and bicyclists. It takes just one distracted or disoriented pedestrian, bicyclist, or motorist to cause a serious or even fatal accident at a railroad crossing, imagine multiplying that chance by 47,000, spread out over five crossings.

When an incident occurs at a railroad crossing, investigations at the site may require the crossing and other affected crossings to be closed for multiple hours, which could complicate and delay access to the Ballpark for an extended period. In addition to first responders at the incident site, railroad track inspectors are called to inspect the condition of the tracks and the County Coroner is called if there has been a fatality. The employees staffing the train (engineer and conductors) will need to be relieved of their duties by a replacement train crew. All the personnel required to investigate the incident and resume normal train operations need time to get to the crossing site, and that travel time could be a couple hours in typical Bay Area traffic and longer during peak travel times. In our experience, an incident at a railroad crossing could take between two to four hours to resolve, with the train stopped at the crossing the entire time and disrupting nearby pedestrian and vehicle traffic. Blocked railroad crossings between Market Street and Broadway for multiple hours during an event start or end time would be disastrous for transportation in the project area, with very limited alternative access or egress routes.

A-8-17

The consequences of a serious incident at a railroad crossing to normal train operations is significant: a hypothetical incident in the railroad right-of-way in Jack London Square can cause hours-long delays to both passenger and freight trains, who share the use of the tracks, and the delays cascade across the greater railroad network area, negatively impacting passengers as far away as Sacramento and crucial goods movement in and out of the Port of Oakland. Oakland Jack London station is a major hub station for passenger trains – the Capitol Corridor and San Joaquins intercity passenger rail services as well as Amtrak's long-distance Coast Starlight all serve the station – so the effects of train delays in and around the station could be felt by many across Northern California. Jack London Square is a busy area for train traffic; in 2019, the daily train volume (passenger and freight, including non-revenue train movements for operational purposes) adjacent to the Project site was approximately 88. A high volume of train traffic paired with a high volume of at-grade railroad crossings creates an extremely high-risk situation for railroad crossing incidents, as even the best at-grade crossing safety improvements are not infallible. The only solutions that would significantly mitigate this risk would include grade separated crossings coupled with complete closures of existing at-grade crossings.

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A-8-16 The comment provides information about the potential closures of rail lines and associated crossings in the event of rail accidents. The comment provides information that enhances and augments the discussion of rail accidents under Impact TRANS-3 on Draft EIR p. 4.15-234, but does not provide a basis for changing the conclusion that the impact would be significant. To reflect the input contained in the comment, the third paragraph on Draft EIR p. 4.15-234 is revised to read:

> <u>According to the Capitol Corridor Joint Powers Authority, when an accident occurs at a railroad crossing, response by emergency and other medical responders, as well as railroad track inspectors, can result in closure of tracks and crossings for multiple hours.</u> According to Federal Railroad Administration Highway-Rail Grade Crossing Accident/Incident Reports (n.d.), there was a cluster of collisions (18) at the at-grade crossings and Embarcadero West in the 1970s followed by an extended period, 1980 through 1998, where there were only a few collisions (5). Between 1999 and 2009 there was another cluster of collisions (13) with few collisions (2) occurring since 2009. The historic crash frequency is no guarantee of future trends. The lack of crashes for extended periods is not indicative of the heightened safety concerns raised by railroad operators and people working in, living in, and visiting Jack London District. The railroad segment through Jack London District is unique in California in that passenger and freight trains operate within an urban street sharing the rail right-of-way with motor vehicles, bicycles, and pedestrians; where railroad crossing controls and protection are minimally provided at public street at-grade crossings but no features exist that preclude people from crossing mid-block or turning left across the railroad tracks even when crossing controls are activated.

See Consolidated Response 4.6, *Rail Safety, Grade Crossing, and Grade Separation*, for responses to issues raised in the comment regarding crash frequencies and alternatives for grade crossings. As noted in Table 4.6-4 of the Consolidated Response there is little change in the expected annual collisions along the railroad corridor that coexists with Embarcadero West through Jack London District (0.800 annual train collisions under existing conditions versus 0.810 collisions with the Project Plus Mitigation Measures TRANS-3a and TRANS-3b). In addition, see Draft EIR Alternative 3, which incorporates a grade-separated vehicular crossing at the railroad tracks. The grade separated vehicular crossing would reduce the annual train collisions to 0.796. These

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changes in collision level would have no noticeable effect on track closures due to collisions.

A-8-17 The comment about safety hazards and the potential for train delays if an accident occurs is appreciated. The Draft EIR acknowledges the existing safety hazards associated with at-grade railroad crossings in the vicinity of the Project site (beginning on p. 4.15-39), and acknowledges that—even with implementation of Mitigation Measure TRANS-3a: At-Grade Crossing Improvements—the additional at-grade crossing activity by pedestrians, bicyclists, and vehicles accessing the site would constitute a significant and unavoidable impact (Draft EIR p. 4.15-235). See also Consolidated Response 4.6, *Rail Safety, Grade Crossing, and Grade Separation* and Consolidated Response 4.9, *Alternative 3: The Proposed Project with Grade Separation Alternative*, regarding grade-separation alternatives. As noted in Table 4.6-4 of the Consolidated Response there is little change in the expected annual collisions along the railroad corridor that coexists with Embarcadero West through Jack London District (0.800 annual train collisions under existing conditions versus 0.810 collisions with the Project Plus Mitigation Measures TRANS-3a and TRANS-3b). In addition, refer to Draft EIR Alternative 3 which incorporates a grade separated vehicular crossing at the railroad tracks. The grade separated vehicular crossing would reduce the annual train collisions to 0.796. These changes in collision level would have no noticeable effect on track closures due to collisions.

The commenter is also directed to Table 4.6-2 in the Consolidated Response that includes updated information from UPRR. UPRR provided two months of train data (January and February 2020), which showed 70 trains per day on weekdays and 60 trains per day on weekends which is lower than the 88 daily trains referenced by the commenter. Nevertheless, whether the daily train volume is 60, 70 or 88 trains passing by the Project site the Draft EIR analysis and findings would remain the same.

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We fully acknowledge the challenges of designing and constructing grade-separated railroad crossings in urban areas such as Oakland Jack London Square, where existing properties, roadways, and utilities need to be taken into consideration as well as the nearby residents and businesses that may be impacted. However, for a project of this scale and development opportunity to the City of Oakland, overcoming these challenges in the Project design should be well worth the effort. If the Project site boundaries are expanded to include additional areas of Jack London Square west of I-880, we believe more creative and comprehensive solutions to mitigate the transportation hazard related to railroad crossings can and should be found. CCJPA would enthusiastically participate in a collaborative forum with the City of Oakland, the Project Sponsor, and other Project stakeholders to explore more comprehensive strategies that provide safe and accessible access to the ballpark that avoid crossing active railroad tracks at grade.

A-8-18

The Capitol Corridor has been serving sports games and other major events at the Oakland Coliseum since 2005 via the Oakland Coliseum train station, and we're committed to continue serving the City of Oakland in this capacity. In the same way, we're committed to ensuring safety for everyone who comes in contact with our service, whether directly or indirectly. The Waterfront Ballpark District Project as proposed will present very significant safety hazards for roadway users, especially pedestrians and bicyclists, who will have to cross active railroad tracks to access the Waterfront Ballpark District. The risks and dangers posed by the railroad crossings as presented in the DEIR should not be part of the Oakland A's experience. At-grade railroad crossings, even with the best grade crossing improvements, will be inadequate to mitigate the safety hazards. We strongly urge the City of Oakland to work with the Project Sponsor to evaluate the feasibility of a combination of grade separation and permanent closures for all railroad crossings near or adjacent to the Waterfront Ballpark District. We welcome any opportunities to provide input or feedback as part of the ongoing development of this Project.

Sincerely,

Robert Padgette
Managing Director, CCJPA

CC: CCJPA Board of Directors
Bob Powers, General Manager, BART
Stacey Mortensen, Executive Director, San Joaquin Joint Powers Authority

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A-8-18 This comment provides a summary of issues raised in comment letter. See above responses to comments for this letter, Consolidated Response 4.6, *Rail Safety, Grade Crossing, and Grade Separation* and Consolidated Response 4.9, *Alternative 3: The Proposed Project with Grade Separation Alternative*. The City encourages CCJPA's continued input on the proposed Project and its potential impact on rail transit services.

A-9 San Francisco Bay Area Water Emergency Transportation Authority (WETA)

COMMENT

WETA WATER EMERGENCY TRANSPORTATION AUTHORITY

April 27, 2021

Ed Manasse, Environmental Review Officer
City of Oakland, Bureau of Planning
250 Frank H. Ogawa Plaza, Suite 2214
Oakland, CA 94612

Subject: WETA Comments on the Draft Environmental Impact Report for the Oakland Waterfront Ballpark District Project (Case File No. ER18-016)

Dear Mr. Manasse,

A-9-1 Thank you for the opportunity to comment on the Draft Environmental Impact Report ("DEIR") issued by the City of Oakland ("City") for the Oakland Waterfront Ballpark District Project ("Project"). The Project represents an exciting opportunity to revitalize the Oakland waterfront by creating a new world class home for the storied Oakland Athletics baseball team alongside other critically needed residential and mixed-use development. Given the potential of this project to generate a substantial number of new trips to the project area, it will be essential that the project sponsors coordinate with public transit operators to minimize potential traffic congestion impacts.

A-9-2 The Water Emergency Transportation Authority (WETA) has a strong interest in the Project as the operator of ferry service from the Jack London Square (Oakland) terminal, located adjacent to the proposed project, and as the regional agency mandated by the State to oversee the provision of new water transit services on San Francisco Bay. WETA presently operates service from the Oakland terminal to Downtown San Francisco, the City of South San Francisco, and across the estuary to the City of Alameda. Prior to the COVID-19 pandemic, ridership on the Oakland/Alameda service had increased by 115%, placing significant strain on the current system. Many peak period trips on the Oakland/Alameda route to San Francisco operated at full capacity, resulting in passengers left behind at the dock. As the region recovers from the pandemic, ridership is beginning to increase and will eventually return to pre-pandemic levels.

As stated in the *WETA Scoping Comments on the Draft Environmental Impact Report for the Oakland Waterfront Ballpark District Project (Case File No. ER18-016)* letter, dated January 7, 2019, WETA plans to operate 15-minute peak period frequencies on the Oakland/Alameda-San Francisco route and 30-minute peak period frequencies on the Oakland/Alameda-South San Francisco route. With these planned service expansions, the Oakland terminal will be at capacity prior to completion of the Project.

A-9-3 In addition, the letter states that if the City or Project Sponsor desires to serve the Project with WETA service from new markets, such as Vallejo, Richmond and/or Marin, the Project must include the construction of adequate new terminal infrastructure. Furthermore, if new ferry

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RESPONSE

A-9-1 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. This 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.

A-9-2 The City acknowledges existing and planned ferry services along with associated capacity constraints, and that information was considered in the Draft EIR. See Responses to Comments A-9-3 through A-9-6.

A-9-3 As indicated on p. 4.2-45 of the Draft EIR, the proposed Project is not expected to require additional ferry or excursion vessel service for ballgames, although some weekend and post-game service could be requested and provided if ferries are available. This statement was developed based on outreach to WETA staff and recognizes that during peak periods, the existing terminal adjacent to Howard Terminal would be fully utilized by the planned service expansion contemplated in WETA's Downtown San Francisco Ferry Terminal Expansion EIR.

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A-9-4

service to the Project is anticipated, the City and Project Sponsor shall coordinate these plans with WETA as required by Senate Bill 976, the State legislation establishing WETA as the regional agency responsible for operating public ferry services in the Bay Area, planning new service routes, and coordinating ferry transportation responses to emergencies.

A-9-5

Table 4.15-23 *Transportation Management Plan Strategies and Effectiveness – Ballpark* of the DEIR lists "event-day ferry service between the Oakland Jack London Square ferry terminal and San Francisco, Alameda, Richmond and/or Marin" as a piece of the "Better Transit Options" strategy.

A-9-6

WETA is concerned that the EIR overlooked WETA's comment that service from new markets, such as Vallejo, Richmond and/or Marin, will require the construction of adequate new terminal infrastructure. In addition, the EIR should clarify who will be providing these services, whether it is WETA, Golden Gate Ferry, or a private operator. Private operators could potentially serve these new markets via the public marina docks at Jack London Square without impacting capacity constraints at the Jack London Square Ferry Terminal, but reliance on the expansion of the region's established network of public ferry operations will require coordination and improvements that are not addressed in the DEIR.

Thank you for considering our comments. WETA looks forward to continuing working with the City and Project Sponsor.

Sincerely,

Kevin Connolly
Manager, Planning & Development

Cc: Seamus Murphy, WETA Executive Director
Michael Gougherty, WETA
Taylor Rutsch, WETA

RESPONSE

A-9-4 See Response to Comment A-9-3.

A-9-5 The potential ferry services listed in the Draft EIR (see Table 4.15-23, p. 4.15-142) are examples of transit improvements that could be implemented as part of a Transportation Demand Management Plan intended to reduce trip generation. Expanded WETA ferry service is one of a number of possible options to improve transit service that the table notes could result in a reduction of vehicle trips ranging from 1 to 10 percent. Other types of strategies include encouragement of walking and bicycling, improved connections to Downtown, parking supply management, and reduced vehicle and/or trip demand. The table illustrates the range of strategies available to reduce trip generation and the range of effectiveness if one or more strategies within a grouping were implemented. The remaining options listed in Table 4.15-23 are sufficient to reduce trip generation 20 percent as required by Mitigation Measure TRANS-1b if additional ferry service is not pursued as an option or is not available.

A-9-6 See Responses to Comment A-9-3 and A-9-5 above. Any decisions to use the ferry terminal or marina docks for expanded services would be coordinated with responsible agencies including WETA.

A-10 City of Alameda

COMMENT

City of Alameda • California

April 27, 2021

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

Subject: Oakland Waterfront Ballpark Draft Environmental Impact Report

Dear Mr. Vollman:

Thank you for the opportunity to comment on the draft Environmental Impact Report (DEIR) for the Oakland A's and the City of Oakland's plan for a 35,000-seat waterfront stadium and regional entertainment center at Jack London Square. Located less than 1,000 feet from the City of Alameda and within blocks of the Broadway and Jackson Street on/off-ramps to the Webster and Posey Tubes, the stadium will be an exciting new regional venue, but it will also significantly impact the regional transportation system that serves the two cities and the region.

A-10-1

As documented on page 4-15-243 of the DEIR, the proposed project will cause a ***significant degradation*** and ***significant and unavoidable impacts*** to the regional transportation facilities (State Highway 61) in the northbound direction between Alameda and Oakland (the Posey Tube connection to I-880) and in the southbound direction between Oakland and Alameda (the Webster Tube). As documented in the DEIR, the existing regional roadway infrastructure is already at capacity. The adjacent segment of I-880 is one of the most congested segments of freeway in the Bay Area and serves Downtown Oakland and West Alameda. The Broadway and Jackson on and off ramps have been in a state of "deficiency" for over 20 years and getting worse each year. As the I-880 on-ramps and off-ramps become more congested, access from West Alameda to Oakland and the regional transportation system becomes more congested and less effective.

A-10-2

What the DEIR fails to discuss or disclose is that the existing pedestrian and bicycle facilities between downtown Oakland/Jack London Square and West Alameda, in the Posey and Webster Tubes, are inadequate, unhealthy and unsafe. The DEIR also fails to acknowledge that this significant degradation in the regional transportation facilities will also result in a significant degradation of AC Transit service between the two cities. The DEIR fails to disclose that the significant transportation impact to the regional roadway system, and the lack of walking, bicycling or transit alternatives to avoid the congestion will force people in cars to find alternative routes to avoid the game-day congestion. Those alternative routes will increase vehicle miles travelled and greenhouse gas emissions associated with the construction and operation of the stadium, for both Alameda and Oakland.

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RESPONSE

A-10-1 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.

With respect to the comment on the transportation impacts of the proposed Project, consistent with state law (Senate Bill [SB] 743, which was enacted in September 2013 and went into effect July 1, 2020), the City of Oakland no longer evaluates intersection traffic operations for CEQA. However, the City's *Transportation Impact Review Guidelines* (TIRG) (April 14, 2017) state that intersection operations analysis may be recommended at the City's discretion (TIRG, Section 3.1.5). The analysis is typically undertaken to ensure that local streets can reasonably accommodate day-to-day traffic loads from the project being studied. The impacts of Project traffic on the Webster and Posey Tubes was analyzed in the Draft EIR under Impact TRANS-6 and TRANS-6.CU: Project impacts on Regional Congestion Management Program (CMP) or MTS Roadway Segments.

Pursuant to City direction, an intersection analysis was completed for 76 intersections during the a.m. and p.m. commute periods including intersections on 7th Street at Webster Street and at Harrison Street near the Webster and Posey Tubes. The Posey and Webster Tubes currently operate at degraded conditions without Project traffic, and the proposed Project traffic volumes would cause a significant degradation of the Posey and Webster Tubes between the cities of Alameda and Oakland (Draft EIR Impact TRANS-6 and TRANS-6.CU on pp. 4.15-243 and 4.15-248). The level of proposed Project impact is documented in the technical memorandum titled *Howard Terminal—CMP and MTS Analysis*.[37] The proposed Project would cause a.m. and p.m. peak-hour traffic through the tubes to increase by 2.2 percent in Year 2020 and 1.8 percent in Year 2040.

This level of change in traffic volumes, while deemed significant in the Draft EIR under the City's applicable significance threshold, is within the day-to-day variation in traffic volumes on many freeways in the Bay Area, and thus would not be noticeable to the average driver; but when combined with existing traffic volumes and traffic from other development planned to occur in Oakland and Alameda, it would result in noticeable traffic degradation.

[37] Fehr & Peers, 2020. *Howard Terminal—CMP and MTS Analysis,* December 1, 2020.

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The analysis used to determine the volume-to-capacity degradation was completed using the Alameda County Transportation Commission (Alameda CTC) travel demand model. The model includes a formula for estimating travel time on road segments. The formula was used to establish a corresponding travel time for the volume-to-capacity results, thereby establishing the increased travel time with the project and with a ballpark event. With the proposed Project, p.m. peak-hour travel times through the Webster Tube would increase from 5.1 to 5.4 minutes with the Project and to 7.6 minutes after one of the 14 weekday daytime ballpark events. Travel time through the Posey Tube would increase from 2.4 to 2.5 minutes with the Project and to 3.5 minutes before one of the 50 weekday evening events (41 ballgames, nine concerts). The 14 weekday daytime events and 50 weekday evening events was used in Table 4.15-40 which summarized the ballpark event annual VMT per attendee.

The intersection analysis results show these intersections to operate at Level of Service (LOS) D or better (see Draft EIR Appendix TRA.3, *Intersection Operation Technical Draft Memorandum*). This is an indication that the Webster and Posey Tubes' traffic degradation is associated with the tubes themselves and not the intersections near the tubes.

It is not feasible to add additional automobile lanes through the Webster and Posey Tubes, and therefore the Draft EIR finds that Impacts TRANS-6 and TRANS-6.CU would be significant and unavoidable. However, the Draft EIR identifies several mitigation measures that prioritize non-automobile travel, either through programs to reduce automobile trips or through infrastructure improvements that prioritize transit, walking, and bicycling, which would contribute to minimizing the proposed Project's vehicle traffic, and could potentially reduce impacts on the volume to capacity degradation of the traffic segments for the Webster and Posey Tubes. These mitigation measures include:

1. Draft EIR Mitigation Measure TRANS-1a (pp. 4.15-183 through 4.15-189), which includes a Transportation Demand Management (TDM) Plan for the non-ballpark development with a performance metric to reduce vehicle trips 20 percent from a baseline condition without a TDM program.

2. Draft EIR Mitigation Measure TRANS-1b (pp. 4.15-193 through 4.15-197), which includes a Transportation Management Plan (TMP) for the ballpark events with a performance metric to reduce vehicle trips 20 percent from a baseline condition without a TMP. A draft TMP is provided in Appendix TRA.1 and includes the nearby transit providers, i.e., AC Transit, BART,

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Capitol Corridor, and WETA, as key stakeholders in coordinating ballpark events.

3. Mitigation Measure TRANS-1c (p. 4.15-197), which would include construction of a transportation hub adjacent to the Project site that would serve at least three bus routes (12 AC Transit buses per hour) to support non-automobile travel to and from the Project site. The hub could be expanded on ballpark event days to handle up to six shuttle bus stops, with each shuttle stop handling up to 12 shuttles per hour.

4. Mitigation Measure TRANS-1d, which would implement bus-only lanes on Broadway between Embarcadero West and 11th Street by converting one motor vehicle lane in each direction to a bus-only lane. There are existing bus-only Lanes north of 11th Street to 20th Street on Broadway.

5. Mitigation Measure TRANS-1e, which would implement pedestrian improvements such as sidewalk widening and repair, pedestrian lighting, and intersection and driveway safety measures to promote first- and last-mile connections to BART and AC Transit bus stops as well as walking connections serving Downtown and West Oakland neighborhoods.

6. Mitigation Measures TRANS-2a, TRANS-2b, and TRANS-2c, which would implement bicycle improvements consistent with Oakland's Bike Plan that connect the Project to Oakland's bike network.

7. Mitigation Measures TRANS-3a and TRANS-3b, which would implement railroad corridor improvements including fencing along the corridor and at-grade crossing improvements such as quad gates, as well as gates for pedestrians and bicycles and a pedestrian and bicycle bridge over the railroad tracks connecting the transportation hub on 2nd Street at Jefferson Street to the Project.

The existing deficiencies at the Broadway and Jackson Street on- and off-ramps to I-880 are being separately addressed by the Alameda CTC through the Oakland Alameda Access Project (OAAP), which is currently under environmental review with final design expected to start in 2022 and construction to occur between 2024 and 2027. The OAAP includes two-way cycletracks, i.e., protected bike lanes, on Oak Street between the Lake Merritt BART station and 3rd Street and on 6th Street between Oak Street and Washington Street. These bike facilities would provide a comfortable bike

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	network connecting the Lake Merritt BART station and the Project via Washington and Water Streets. See also Consolidated Response 4.8.1 and 4.8.4.
A-10-2	Draft EIR p. 4.15-1 explains that the transportation analysis was conducted in compliance with the City of Oakland *Transportation Impact Review Guidelines* (TIRG).[38] The TIRG direct that transportation analyses should generally include a study area 500 feet to one-half mile or more surrounding a project site, depending on the size and nature of the project, the travel mode, and the topic. The distance between the Project site and Willie Stargell Avenue—the first local street intersection that pedestrians or bicycle riders would reach in the city of Alameda—is about 1.8 miles and most people in West Alameda would need to walk or bike up to an additional 1 mile to reach the Willie Stargell Avenue intersection and many Alamedans live beyond West Alameda out as far as Bay Farms Island. The determination of the study area for each mode of travel—motor vehicles, transit, bicycles, and pedestrians—is described in the Draft EIR (see Draft EIR pp. 4.15-1 through 4.15-7). To determine the study area for each mode, the proposed Project trips were generated, distributed, and assigned to the existing transportation network. The proposed Project's non-ballpark development trips for bicycles and pedestrians are shown on Figures 4.15-42 and Figure 4.15-43, respectively, and the proposed Project's ballpark trips are shown on Figures 4.15-45 and Figure 4.15-46. The proposed Project's trip generation, distribution, and assignment process concluded that negligible Project bicycle or pedestrian trips would use the Webster and Posey Tubes to access the city of Alameda because of the long distances connecting Alamedans to the Project via walking and bicycling modes of travel. In addition, the existing condition of the bike and pedestrian path in the Posey Tube is not an impact of the Project. See Response to Comment A-10-1 for information regarding the Project's impact on the regional transportation network between the cities of Oakland and Alameda. See also Consolidated Response 4.7, *Parking*, which describes the management of parking to disperse ballpark attendees who would drive to underutilized parking garages to reduce game-day congestion.

[38] City of Oakland, 2017. *Transportation Impact Review Guidelines*, April 14, 2017.

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A-10-3

A-10-4

A-10-5

The DEIR states that adding auto travel lanes in the Webster and Posey Tubes is not a feasible mitigation. We agree. We disagree with the statement on page 243 that *"No other feasible mitigation measures are available to reduce the effect that the Project would have on the adversely affected roadway segments."* Given the regional nature of this project, the existing inadequacies of the regional transportation facilities that connect and serve the two cities, and the commitments that both cities have made to reducing greenhouse gas emissions, supporting climate friendly, active modes of transportation (bicycling and walking), and "Transit First" policies, the City of Alameda recommends that the City of Oakland amend the recommended mitigation measures to include:

- **Transit:** Construction of bus priority lanes entering the Webster Tube and exiting the Posey Tubes on the Oakland side to facilitate the efficient and timely movement of AC Transit between the two cities on game days and during construction. As you know, Alameda does not have a BART station, and transit access to and through the Tubes is critical to core transit lines serving Alameda residents and workers.
- **Bicycle and Pedestrian Access:** Funding for supplemental bus, land shuttle, and/or water shuttle services between West Alameda (College of Alameda) and Jack London Square during construction and on game/event days to maintain connectivity for transit riders, bicyclists, and pedestrians during these times of peak congestion.
- **Bicycle-Pedestrian Bridge Easement**. Reservation of a public easement in Oakland for a future bicycle-pedestrian bridge between the City of Alameda and the planned "Pedestrian and Bicycle Overcrossing" required by Mitigation Measure TRANS-3b, the planned "Transit Hub" on 2nd Street, or some other feasible location within this area. The recently published *Estuary Crossing Study: Detailed Feasibility and Travel Demand Analysis* identifies the "Jack London Square/Alameda Landing" alignment ("A") as one of the top bridge alignment alternatives, and the one that would have the highest ridership, even without accounting for a stadium/regional entertainment facility nearby. More specifically, the Oakland landing option in Alignment A4 (p. 42) demonstrates the potential feasibility of a bridge landing in this location. The City of Alameda has already preserved an easement for this alignment on the Alameda side. The Alameda CTC recently allocated $1.55 million to the City of Alameda to prepare the Project Study Report for the Oakland-Alameda Bicycle Pedestrian Bridge, to advance this critical project. This broadly-supported bridge is specifically identified and recommended in the:
  - Caltrans District 4 Bicycle Plan,
  - Alameda Countywide Transportation Plan,
  - Alameda County Transportation Commission's 10-Year Capital Improvement Plan,
  - Alameda Countywide Active Transportation Plan,
  - Oakland Downtown Specific Plan,
  - Oakland Bicycle Plan,
  - Alameda Transportation Choices Plan, and
  - Alameda Bicycle Plan.

The City of Alameda is committed to working with the City of Oakland, Alameda CTC, Caltrans and the Oakland A's organization to design and build convenient, safe, greenhouse-gas-emission-reducing, multi-modal regional transportation facilities necessary to support Oakland, Alameda, and a world class waterfront ball park.

Sincerely,

RESPONSE

A-10-3 Draft EIR p. 4.15-243 states ". . . the Project includes policies and strategies that encourage walking, biking, and transit, including a TDM Plan for the non-ballpark development and a TMP for the ballpark. These policies and strategies would reduce the Project's vehicle trip generation, which would reduce but not eliminate this impact." See also Response to Comment A-10-1, which summarizes the mitigation measures in the Draft EIR that prioritize non-automobile travel, either through programs to reduce automobile trips or through infrastructure improvements that prioritize transit, walking, and bicycling.

Regarding the potential to add bus priority lanes to the Webster Tube, the Oakland Alameda Access Project (OAAP) is being led by the Alameda CTC in partnership with the Cities of Alameda and Oakland as well as Caltrans. It is a $130 million investment that includes a number of infrastructure improvements between the Webster and Posey Tubes, Oakland's street network, and access to I-880 and I-980 freeways. In reviewing the current OAAP design, it does not incorporate bus priority lanes approaching the Webster Tube. The OAAP is under environmental review with final design expected to start in 2022 and construction to be completed in 2027. It is possible that through Alameda's participation in the OAAP process, the bus priority lanes entering the Webster Tube could be incorporated into the OAAP design. Bus priority lanes approaching the Webster Tube would address existing and projected future conditions with or without the Project analyzed in this EIR. The priority lanes would need to be planned and coordinated with the OAAP design. OAAP is a $130 million transportation investment that will reconfigure the local street system and its interface with the Tubes and I-880. Other factors to consider for bus priority lanes include the implications to Chinatown transportation circulation and curb management needs of local merchants. The draft Downtown Oakland Specific Plan identifies bus only lanes on either 7th or 8th Streets depending on whether the existing one-way streets are converted to two-way streets.

A-10-4 See Response to Comment A-10-2 addressing the extent of the study area for pedestrian and bicycle travel modes which does not include Alameda because event attendees are not expected to walk or bike from Alameda given distance and other issues. See Response to Comment A-10-1, which summarizes mitigation measures and addresses the level of expected traffic congestion through the Webster and Posey Tubes. The Draft EIR analysis (Figure 4.15-44) identified between 500 and 650 automobiles traveling

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between the Project and Alameda representing up to 1,500 people. As noted in Response A-10-2 very few of these people would choose to walk or bicycle to the Project. Bus transit ridership for ballpark attendees to and from Alameda is expected to be low to moderate because they would need to walk about 0.7 miles between the nearest bus stop and the Project site. In addition, ballpark attendees on buses through the Tubes would experience similar levels of congestion as those who drive. As a result, the advantage to using the bus versus driving is likely to be parking pricing which would mean that bus use would provide only a marginal benefit over driving. Given these circumstances non-motorized transportation impacts and mitigation measures were not identified between the City of Alameda and the Project.

A-10-5 A bicycle and pedestrian bridge connecting Oakland and Alameda is not part of the waterfront project or identified in the Draft EIR as a mitigation measure for the proposed Project because there is no nexus between the impacts of the proposed Project on bicyclists and pedestrians from Alameda and the proposed bridge would greatly exceed any potential impacts of the proposed Project. Specific to landing option Alignment A4 as depicted in the *Estuary Crossing Study: Detailed Feasibility and Travel Demand Analysis*, even at this early feasibility phase, the landing located between Fire Station No. 2 and the Peaker Power Plant would block pedestrian access between the proposed ballpark and Water Street. Up to 16,000 ballpark attendees would be anticipated to walk along a 40-foot-wide path between the fire station and power plant to access the proposed ballpark. With the A4 landing, the available width for ballpark pedestrians would be less than 20 feet. The landing shown in the feasibility study appears to block fire truck access to the back of the fire station and the bridge alignment appears to affect the fire station building and the walkway between the building and the waterfront, blocking waterfront access. The stairway at Clay Street and the bridge alignment appears to block emergency vehicle access to Water Street from the fire station.

The feasibility study suggests six alignments within the greater Jack London District, with 11 options for bridge landings, including the one referenced by the commenter. The feasibility study (p. 4) notes that the next phase of planning would be a project study report (PSR) that would define the alternatives, identify costs, funding sources, ownership, maintenance, and preliminary environmental analysis. Without at least a PSR document, it would be premature to assume the reservation of a future public easement.

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In addition, some of the suggested alignments in the feasibility study, including Alignment A4, pose navigational safety risks to ships serving the Port and would conflict with Seaport operations.[39]

[39] Port of Oakland, 2019. *Memo to Coast Guard District re: Proposed Pedestrian Drawbridge over Oakland Inner Harbor from City of Alameda to City of Oakland, Alameda County, California.* December 9, 2019.

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COMMENT

RESPONSE

Andrew Thomas, City of Alameda Planning, Building and Transportation Director

Cc: Eric Levitt, City Manager

face

A-11 Bay Area Air Quality Management District (BAAQMD)

COMMENT

BAY AREA AIR QUALITY MANAGEMENT DISTRICT

April 27, 2021

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

RE: Oakland Waterfront Ballpark District– Draft Environmental Impact Report

Dear Mr. Vollmann,

Bay Area Air Quality Management District (Air District) staff has reviewed the Draft Environmental Impact Report (DEIR) for the Waterfront Ballpark District Project (Project). The Project would construct a new open-air waterfront multi-purpose Major League Baseball (MLB) ballpark with a capacity of up to 35,000-persons (Ballpark); mixed use development including up to 3,000 residential units, up to 1.5 million square feet of office/commercial, and up to approximately 270,000 square feet of retail uses; an approximately 50,000 square foot indoor performance venue with capacity of up to 3,500 persons; up to approximately 280,000 square feet of hotel space including up to 400 rooms in one or more buildings and supportive conference facilities; a network of approximately 18.3 acres of privately-owned, publicly-accessible open spaces; and a maximum of approximately 8,900 total parking spaces at full buildout.

A-11-1

Air District staff acknowledges the Project sponsor's stated intent to develop a Project that would generate transformative economic and community benefits for Oakland. The Project is located in a community the State of California has identified as disproportionately impacted, disadvantaged and low-income under Senate Bill 1000 and by CalEPA's CalEnviroScreen tool. Therefore, it is imperative that the Project does not adversely impact air quality and community health.

The Air District and the West Oakland Environmental Indicators Project (WOEIP) worked with a community Steering Committee to develop the West Oakland Community Action Plan (WOCAP), adopted by the Air District Board of Directors and the California Air Resources Board in 2019. The WOCAP sets goals and targets for reducing exposure to fine particulate matter ($PM_{2.5}$), diesel emissions and cancer risk from toxic air contaminants. Any increases in local $PM_{2.5}$, diesel emissions or cancer risk would be inconsistent with the WOCAP and would hinder progress toward the agreed upon targets set by the West Oakland Steering Committee and the Air District. The Air District believes additional on-site mitigation measures are feasible, and that the City should require the Project to commit to incorporating all "recommended" mitigation measures specified in the DEIR, along with additional measures detailed in this letter.

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RESPONSE

A-11-1 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 noted in the comment, the Project site is located in an overburdened community, disproportionately affected by air pollution, and is also disadvantaged and low-income. The Draft EIR assesses the proposed Project's health risks in conformance with the BAAQMD CEQA Guidelines and thresholds of significance for project-level health risks and cumulative health risks. Based on the BAAQMD CEQA Guidelines and thresholds of significance, the Draft EIR finds that the Project-level health risks would be less than significant with mitigation (see Impact AIR-4, Draft EIR p. 4.2-97) and the cumulative health risks would be significant and unavoidable with mitigation (see Impact AIR-2.CU, Draft EIR p. 4.2-140).

The cumulative health risk analysis in the Draft EIR was developed in consultation with BAAQMD, relies heavily on modeling data provided by BAAQMD for the West Oakland Community Action Plan (WOCAP), and follows the same modeling approach that BAAQMD used to develop the WOCAP. Because the existing background health risks already exceed the BAAQMD cumulative thresholds of significance, any additional toxic air contaminant (TAC) emissions associated with a project of any size would result in a significant and unavoidable impact, as is the case for the proposed Project (see Draft EIR p. 4.2-149).

It is currently infeasible for the proposed Project (or any development project for that matter) to result in zero TAC emissions and produce no impact on human health risks, without substantial advances in technology and regulations (such as 100 percent zero emission automobiles and trucks, fire department–approved alternatives to diesel emergency generators, and roadways that are completely dust-free). CEQA does not require a finding of no impact or less than significant; it requires that a project's environmental impacts be fully disclosed based on substantial evidence, that measures to mitigate potentially significant impacts be identified, and that significant and unavoidable impacts be reduced in magnitude by implementing all feasible mitigation. The Draft EIR satisfies these requirements in Section 4.2, *Air Quality*. It should also be noted that the BAAQMD significance thresholds, contained in the BAAQMD CEQA Guidelines, are not zero-emission, zero-health-risk, or zero-impact thresholds. Instead, they are non-zero-impact

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thresholds developed based on substantial evidence documented by BAAQMD.[40]

The City has reviewed the entire BAAQMD letter and assessed the feasibility of the additional mitigation measures suggested therein. This Final EIR requires additional mitigation measures, including many of the measures listed as "recommended" in Draft EIR Mitigation Measure AIR-2e and other mitigation measures, and many of the measures suggested in the BAAQMD letter are included as mitigation. See Chapter 7, *City-Initiated Updates and Errata in the Draft EIR*, for the revised mitigation measure language.

[40] BAAQMD, 2010. *Revised Draft Options and Justification Report, California Environmental Quality Act Thresholds of Significance*, June 2, 2010.

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COMMENT

Construction and Operational Impacts and Consistency with the West Oakland Community Action Plan

The Air District is concerned that additional emissions associated with the construction and operations of the Project may adversely impact local residents. In addition, the Air District is concerned about the cumulative construction and operational impacts to the Community from this and other nearby projects that may occur simultaneously. The DEIR anticipates that Project construction and operational-related reactive organic gases (ROG), nitrogen oxides (NOx), and particulate matter (PM_{10}) emissions will be significant even after incorporating all best available on-site emission reduction measures. To address this, the Project is seeking to potentially fund off-site emissions reduction projects as part of the Criteria Pollutant Mitigation Plan (Mitigation Measure AIR-2e).

The Air District strongly supports the implementation of all available on-site emission reduction measures before relying on off-site measures. Such measures are technically feasible and commonly practiced, and should be required. Therefore, the Air District recommends the City require the Project to commit to incorporating all "recommended" mitigation measures and the following additional measures to further reduce $PM_{2.5}$, diesel emissions and cancer risk:

A-11-2

- Require all shuttles to be zero-emissions, and offer regular shuttle service between BART and residential units/hotels;
- Increase electric vehicle charging infrastructure to at least 50% of all parking spaces;
- Provide a car-share station;
- Require tenant lease agreements to specify that all heavy-duty trucks and fleets entering the Project site are model year 2014 or later and transition to fully electric by 2035;
- Implement a non-motorized zone around the ballpark during game days;
- Implement additional TDM and TMP measures to go beyond the 20 percent vehicle trip reduction requirement and encourage mode shift from vehicles to other modes of transportation including transit, biking, walking, and ride-sharing.
- Fund additional public transportation infrastructure to achieve a maximum of 15-minute headways for all transit routes;
- Provide a bike-share station;
- Install fully protected, class 4, bicycle lanes to and from BART and other nearby activity centers;
- Install an adequate number of showers and locker room facilities in commercial buildings to further encourage tenants to use bicycling;
- Require the use of alternatives to diesel power generators such as battery storage or hydrogen fuel cells whenever possible;
- Ensure exhaust stacks for cooking, boilers and generators, and any other polluting equipment are at heights that would not impact sensitive receptors.

A-11-3

To minimize construction impacts, the Air District believes additional on-site emission reduction measures are possible beyond the proposed mitigation measures (AIR-1a, AIR-1b, and AIR-1c) to control fugitive dust, engine idling, and emissions from off-road equipment during construction. The Air District recommends the following measures be incorporated:

- Work with the City of Oakland and the Port of Oakland to ensure that large construction projects that overlap in time with Project construction do not overburden the West Oakland Community;
- Adopting a less intensive and overlapping Project buildout schedule;

RESPONSE

A-11-2 As explained in Consolidated Response 4.2 regarding mitigation, the Final EIR identifies modifications to Draft EIR Mitigation Measure AIR-2e, including changes that would require many of the measures previously listed as "recommended." The revised mitigation measure also includes additional emission reduction strategies that were suggested by commenters and found to be feasible and effective at reducing emissions. These new strategies included the following:

1. Require a zero-emission shuttle-bus service connecting the ballpark's Transportation Hub to one or more of the three nearby BART stations on game days and for large concerts unless the City determines that zero-emission vehicles of the size and type required by the TMP are not available from vendors at the start of the baseball season.

2. Install electric vehicle (EV) chargers on at least 13 percent of total parking spaces, which is the maximum deemed feasible and effective in the year 2027 (the Draft EIR requires 10 percent). Also provide electrical panel capacity sufficient to supply 29 percent of total parking spaces with EV charging in the future, and install inaccessible raceway (conduit) to all permanent parking spaces at the Project site. See Response to Comments O29-1-22 through O29-1-28 for a discussion of the basis for this change.

3. Implement additional Transportation Demand Management (TDM) measures to achieve the maximum feasible reduction of at least 22 percent for the non-ballpark development by encouraging a mode shift from vehicles to other modes of transportation. (The Draft EIR requires a 20 percent reduction for transportation mitigation. Mitigation Measure AIR-2e in the Draft EIR included a recommended measure to implement TDM measures that go beyond the 20 percent vehicle trip reduction.)

4. Implement additional Transportation Management Plan (TMP) measures to achieve the maximum feasible reduction of at least 23 percent for the ballpark by encouraging a mode shift from vehicles to other modes of transportation. This requirement shall be waived if the Project as a whole can be shown to get below the threshold of significance via other required emission reduction measures and offsets. (The Draft EIR requires a 20 percent reduction for transportation mitigation. Mitigation Measure AIR-2e in the Draft EIR included a recommended measure to implement TMP measures that go beyond the 20 percent vehicle trip reduction.)

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5. Alternatives to diesel power emergency backup generators such as battery storage or hydrogen fuel cells whenever possible when technology is approved for use by Fire Department.

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 revisions to Mitigation Measure AIR-2e included in the Final EIR.

Some of the other mitigation measures suggested by the commenter are already included in mitigation measures included in the Draft EIR. This includes carshare stations, bikeshare stations, fully protected Class 4 bicycle lanes, and showers and locker room facilities, which are all elements of the Transportation Management Plan (TMP) and TDM program and Mitigation Measures TRANS-1a and TRANS-2b (see Draft EIR p. 4.15-183 and p. 4.15-193). Specifically:

- Mitigation Measure TRANS-1a would require car share parking at specified ratios with regular monitoring and adjustment as needed. This includes free designated parking spaces for on-site car sharing programs and/or car-share membership for employees or tenants.
- A bikeshare station is recommended in Mitigation Measure TRANS-1a and bicycle and micromobility parking for up to 1,000 parking space is s a requirement of Mitigation Measure TRANS-1b.
- Mitigation Measure Trans-2a includes bike lanes on 7th Street connecting to the West Oakland BART station and the City has received a grant to upgrade these to protected (Class 4) bike lanes. Mitigation Measure TRANS-2b also includes Class 4 bike lanes on Marin Luther King Jr. Way per the City's bike plan.
- Mitigation Measure TRANS-1a includes provision of long-term and short-term bicycle parking and (for commercial uses) shower and locker facilities as set forth in chapter 17.117 of the Planning Code.

There are also bicycle connections between the Project site and the 12th Street and Lake Merritt BART stations. The City, as part of a separate project, would construct protected (Class 4) bike lanes on 14th Street through downtown Oakland which would connect Lake Merritt Boulevard and the 12th Street BART station with the Project site via Martin Luther King Jr. Way.

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Today, there are existing Class 2 bike lanes on Oak and 2nd Streets connecting the Lake Merritt BART station with the Project site. Once completed, the Oakland Alameda Access Project (OAAP) would provide two-way protected (Class 4) bike lanes on both Oak Street and 6h Street connecting the Lake Merritt BART station to the Project site via Washington Street.

Regarding the suggestion that tenant lease agreements specify that all heavy-duty trucks and fleets entering the Project site are model year 2014 or later and transition to fully electric by 2035, neither the Project sponsor nor the City would have control over the various future vendor truck fleets. Future tenants and vendors at the Project site are currently unknown. Requiring all future tenant and vendor trucks to meet specific technology requirements is not considered feasible at this time, given the unknowns in future technology and the limitations this may place on future tenants and vendors. Building tenants typically do not have control over the delivery vehicles bringing goods and materials to their business locations, and enforcing lease contract stipulations would be extremely difficult or impossible for the City or the Project sponsor. Nevertheless, all trucks entering the Project site must comply with BAAQMD and CARB regulations and rules. Please see response to comment A-17-9 for additional discussion.

Regarding a non-motorized zone around the ballpark during game days, Athletics' Way would be closed during game days. Closing all other local roads would be infeasible because local businesses and residences require regular vehicular access.

Regarding funding for additional public transportation infrastructure to achieve a maximum of 15-minute headways for all transit routes, the Project includes substantial on- and off-site transportation infrastructure, some of which could improve access and efficiency for transit vehicles. However infrastructure alone cannot achieve 15 minute headways and Mitigation Measure TRANS-1a has been modified to provide ongoing contribution to transit service to the area between the Project and nearest mass transit station prioritized as follows: (1) Contribution to AC Transit bus service such as extending Line 6 to the Project; (2) Contribution to an existing area shuttle or streetcar service; or (3) Establishment of new shuttle service with 10 minute headways during peak demand periods.

Regarding locating exhaust stacks of TAC emissions sources as far from sensitive receptors as feasible, see Mitigation Measure AIR-4b, which has

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been amended to clarify its relationship to Mitigation Measure AIR-4a (that it is not required to support the less than significant conclusion and is included because part of City SCAs) and to list requirements. (See Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*.) As amended, Mitigation Measure AIR-4b would require the Project to place sensitive receptors as far as possible from the Project's sources of air pollution.

After implementation of Mitigation Measures AIR-1c, AIR-2c, AIR-2d, AIR-2e, AIR-3, and AIR-4b, Impact AIR-4 would be less than significant; therefore, no additional mitigation is required. See also Mitigation Measure LUP-1c, in the section of the Draft EIR regarding potential land use conflicts, which contains requirements regarding land use siting and buffers (Draft EIR p. 4.10-49).

A-11-3 Regarding the suggestion that the City and the Port avoid overlap of other large construction projects with the proposed Project's construction schedule, this is not an action that reduces the proposed Project's individual impact but addresses cumulative impacts. It is not considered feasible given the lengthy construction period of the proposed Project and other major projects in the vicinity. Specifically, it would not be possible for the City to enforce a moratorium on other projects during this time. In addition, each other future project would be subject to separate and independent construction and operational permits, construction buildout schedules, financing requirements, market demands, project objectives, mitigation measures, and other characteristics that are unknown at this time. This requirement would be impossible for the City to enforce given the uncertainties and complexities associated with future project buildout schedules.

Impact AIR-4 addresses the proposed Project's health risk impacts, which are independent of the impacts of other projects. Although Impact AIR-2.CU addresses the health risk impacts of the proposed Project combined with other cumulative development, minimizing the overlap of the proposed Project's construction activities with other large construction projects would not result in a greater impact than was already identified (significant and unavoidable with mitigation). The cumulative health risk assessment prepared for Impact AIR-2.CU, which is based on BAAQMD's modeling conducted for the WOCAP, does not include construction emissions of current or future projects (see Draft EIR p. 4.2-58 to 4.2-60 and Appendix AIR for a discussion of the cumulative health risk assessment methods). Impact AIR-2.CU was found to be significant and unavoidable with mitigation, independent of other

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project's construction emissions, and all feasible mitigation has been required. See Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures* for a discussion of mitigation feasibility. In addition, the construction schedule of future development projects is currently unknown, and the construction of both the proposed Project and future development projects would be subject to changes because of market conditions and other unanticipated factors that would be speculative to analyze and impossible to predict at this time. Furthermore, City cannot mandate specific construction timing requirements of other potential future construction projects as a mitigation measure or condition of approval for the proposed Project.

Regarding a less-intensive and overlapping buildout schedule, as discussed on Draft EIR p. 4.2-43, the analysis conservatively assumed that construction activities would occur over seven years total, the most compressed period over which the proposed Project could be constructed. It is likely that construction would occur over a longer time frame, which would result in average daily and maximum annual emissions that would be less than those estimated in the Draft EIR. Nonetheless, the significant impact associated with construction emissions derives from activities in early years of construction when site remediation/grading and ballpark construction would overlap. This initial horizontal construction work; including demolition, geotechnical work, grading, site prep, and excavation; must be done quickly and concurrently across the site to enable vertical construction of the ballpark and other project buildings. This is also necessary to ensure that the Phase 1 Ballpark is operational for opening season. In addition, later phases of vertical construction are likely to take longer than assumed in the modeling, which would potentially reduce annual emissions and exposure of sensitive receptors to TAC emissions. Extending the schedule for the key activities early in the overall construction process would have negative effects on nearby receptors and was deemed infeasible, given the Project sponsor's objective to complete construction, together with necessary infrastructure, within a desirable time frame. (See Draft EIR p. 3-15.)

In addition, the Draft EIR assumes that Phase 1 of construction would begin in 2020, which represents a conservative estimate because construction is now anticipated to start two years later (2022 instead of 2020). Emission estimates presented in the Draft EIR do not account for the benefits of technological advances, fuel efficiency improvements, and building code updates likely to

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occur in the future during the later years of construction, which would reduce the construction emissions intensity from that contained in the analysis. As such, impacts are determined based on these conservative assumptions, and mitigation measures are applied to reduce these impacts (See Draft EIR p. 4.2-43, 4.2-63 to 4.2-67, 4.2-104 to 4.2-105, 4.2-113 to 4.2-115, 4.2-138 to 4.2-139, and 4.2-156 to 4.2-158).

Also as noted above, construction of the proposed Project would be subject to and affected by changes caused by market conditions and other unanticipated factors; thus, it is not feasible to require a specific construction schedule at this time. Draft EIR p. 4.2-68 also reflects the City's conclusion that these actions would be infeasible because they would not meet the buildout schedule objectives of the proposed Project and other financial and operational considerations.

Regarding the commitment to use to zero-emissions construction, if available, and equipment with the best available particulate matter (PM) and nitrogen oxides (NOx) control technology offered at the time of construction, this is already required in Mitigation Measures AIR-1b and AIR-1c. In addition, Mitigation Measure AIR-1c is amended in this Final EIR to require all off-road construction equipment to meet Tier 4 Final engine standards, except selected pieces of specialty equipment for which such engines are not available at the start of construction; a "compliance step-down schedule" would apply to these specific equipment pieces to reduce their emissions. See Section 4.2.6 in Consolidated Response 4.2, *Formulation, Effectiveness and Enforceability of Mitigation Measures*, or Chapter 7, *City-Initiated Updates and Errata to the Draft EIR*, for the updated mitigation language.

Regarding the use of electric construction equipment and grid power, this is already required in Mitigation Measure AIR-1b. As discussed in further detail in response to comment A-17-9, only small equipment types are currently available with electric motors. According to the BAAQMD *Diesel Free by '33* initiative, zero emission small construction equipment is in the "early commercialization" stage and zero emission large construction equipment is in the "not yet available" stage.[41] Consequently, it is not feasible to require all off-road construction equipment to zero emission during the proposed construction period.

[41] BAAQMD, 2018. *Diesel Free by '33: Summary of Available Zero-Emission Technologies and Funding Opportunities*.

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Regarding monitoring on-site particulate matter and ceasing construction activities during high-wind events, fugitive dust impacts from the proposed Project, as analyzed under Impact AIR-1, were found to be less than significant with mitigation through the implementation of Mitigation Measure AIR-1b. This measure includes all "best management practices" or BMPs for dust control included in the BAAQMD CEQA Guidelines, which stipulate that any project that implements these actions would have a less-than-significant fugitive dust impact from construction activities (BAAQMD, 2017):[42]

> For fugitive dust emissions, staff recommends following the current best management practices approach which has been a pragmatic and effective approach to the control of fugitive dust emissions. Studies have demonstrated (Western Regional Air Partnership, U.S. EPA) that the application of best management practices at construction sites have significantly controlled fugitive dust emissions. Individual measures have been shown to reduce fugitive dust by anywhere from 30 percent to more than 90 percent. In the aggregate best management practices will substantially reduce fugitive dust emissions from construction sites. These studies support staff's recommendation that projects implementing construction best management practices will reduce fugitive dust emissions to a less than significant level.

As stated above, the BAAQMD's CEQA Guidelines stipulate that impacts from fugitive dust emissions from construction activities would be less than significant through implementation of best management practices; these BMPs are required in Mitigation Measure AIR-1b.

For the reasons described above, the proposed additional mitigation measures to reduce construction-related fugitive dust are either included as mitigation, not required under CEQA or not recommended in the BAAQMD CEQA Guidelines. In addition, particulate matter monitoring systems would not reduce the proposed Project's impact, but would simply provide measurement of pollutants in the ambient air. Monitoring is not one of BAAQMD's listed BMPs to reduce impacts to less-than-significant levels.

The Final EIR requires additional mitigation measures including implementing a number of the recommended actions listed in Draft EIR Mitigation Measure

[42] BAAQMD, 2017. *California Environmental Quality Act Air Quality Guidelines*, May 2017. http://www.baaqmd.gov/~/media/files/planning-and-research/ceqa/ceqa_guidelines_may2017-pdf.pdf?la=en, accessed April 2019.

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AIR-2e. See Response to Comment A-11-2 for additional discussion; see also 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.

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- Committing to use zero-emissions construction equipment including trucks, if available, otherwise use equipment with the best available PM and NOx control technology offered at the time of construction;
- Require construction operations use grid power whenever possible;
- Reducing the potential for offsite migration of fugitive dust by installing on-site particulate matter (PM) monitoring along the construction perimeter and ceasing construction activities when measured PM concentrations exceed agreed health thresholds or during high wind events; and
- Committing to implement "recommended" mitigation measures in AIR-2e by including these as Project design elements to avoid deferred mitigation.

A-11-3

A-11-4

The Air District acknowledges the Project's efforts to incorporate certain WOCAP strategies and enforcement measures as part of the mitigation strategy, however, the Air District is concerned that some of the mitigation measures lack specificity and do not provide enough detail about how they will be implemented. The Air District recommends that for all WOCAP strategies proposed as mitigation measures, the DEIR specify the amount of funding or other resources dedicated to implement the mitigation actions, the amount (in lbs./day or tons/year) of each pollutant to be reduced, and the timing for achieving the expected reductions.

A-11-5

In addition, during Project construction, interruptions to trucks headed to the Port may cause delays in the truck entry time to the terminals resulting in additional truck traffic, congestion and idling. The queuing and idling of trucks could result in potential violations of California Air Resources Board (CARB) regulations and/or excess emissions. The Air District recommends that plans be in place to ensure truck traffic to the Port is not impeded in any way by Project construction activity.

Criteria Pollutant Offsets

A-11-6

Please be aware the Air District does not currently have a fee program for offsetting regional criteria pollutant emissions. Offsets are occasionally provided by the Air District's support foundation, the Bay Area Clean Air Foundation, on a case-by-case basis, depending on project availability. The Air District recommends that references to BAAQMD under Mitigation Measure AIR-2e: Criteria Pollutant Mitigation Plan ["…funding the implementation of an emission reduction project through payment of a mitigation offset fee to the BAAQMD's Bay Area Clean Air Foundation, or a combination of the two approaches…"] be replaced with "an independent third-party approved by the City, such as the Bay Area Clean Air Foundation." This will clarify that Project will need to seek other options if the Bay Area Clean Air Foundation has no available projects.

A-11-7

In addition, the DEIR reduced the estimated operational emissions associated with the Project by subtracting the emissions from existing conditions at the Coliseum to determine "net emissions". The Air District recommends that emissions from activity at the Coliseum that are netted out from the analysis for this Project cannot be used as baseline for future project assessments in the area.

Greenhouse Gas Offsets

A-11-8

Under AB 734, the Project may obtain offset credits for up to 50% of greenhouse gas emissions reductions. The Air District recommends that more onsite GHG reductions be built into the Project design to minimize the need for the purchase of carbon offsets. Additionally, per Oakland's Equity and Climate Action Plan (ECAP) and the Project DEIR, purchase of carbon offsets should prioritize frontline communities, followed by the City of Oakland, the Bay Area, California and the U.S. The DEIR cites the CARB-approved registries

RESPONSE

A-11-4 Mitigation Measure AIR-2e has been revised to include the option for the Project sponsor to directly fund or implement a specific offset project within the City of Oakland, including programs to implement strategies identified in the West Oakland Community Action Plan. (See Response to Comment A-11-2 for additional discussion; see also Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures,)* In addition, Draft EIR Mitigation Measure AIR-2.CU requires the Project sponsor to incorporate applicable strategies from the WOCAP. However, the WOCAP does not include actions that identify specific project-level requirements. To rectify this issue, Mitigation Measure AIR-2.CU establishes specific requirements for the proposed 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. 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-17-12.

It is currently not feasible to identify the specific amounts of funding the Project sponsor would commit to each of these actions, given that the specific program details are not known at this time (which is also consistent with the WOCAP itself, which also does not identify funding amounts or financial costs of each of its actions). Also, specifying funding amounts for mitigation measures is not required under CEQA and not addressed as a required element of mitigation measures in State CEQA Guidelines Section 15126.4.

Further, 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. As discussed in Draft EIR p. 4.2-159, "… the exact amount of TAC emission reductions and associated health risks from implementation of Mitigation Measure AIR-2.CU is not currently known, because specific feasible emission reduction measures identified in Mitigation Measure AIR-2.CU have not yet been identified or quantified. Although the WOCAP provides city-wide emission reduction estimates for all actions in the plan, it does not include action-level emission or health risk reduction estimates or a means by which to estimate emission reductions associated with the Project's contribution to these actions. In addition, implementation of offsite community TAC emission

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reduction project(s) could be conducted by BAAQMD or other governmental entities and would therefore be outside the jurisdiction and control of the City and not fully within the control of the Project sponsor." 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 total health risk impact of the proposed Project to zero, through implementation of all relevant and feasible WOCAP actions, other feasible measures and technology, and offsite TAC exposure reduction projects.

A-11-5 Draft EIR Figure 4.15-20 depicts the proposed Project's construction truck traffic routes to and from I-880. As illustrated in the figure, only the Adeline Street access to the Seaport would have the potential to be affected by construction trucks traveling to and from the Project site. Appendix TRA.7 includes a technical memorandum titled "Port of Oakland Intersection Operation Sensitivity Analysis." This analysis tested the effects on Port access of shifting trucks destined to the Port away from the Adeline Street Seaport access. The analysis concluded that intersections at the other Seaport accesses (i.e., 7th Street and Maritime Street) would operate at acceptable Level of Service (LOS) D or better even if 50 percent of the Seaport traffic were to shift away from Adeline Street because of unforeseen traffic congestion caused by the proposed Project. LOS D represents a moderate level of congestion and delays that are common in the vicinity. As stated in the TMP included as Mitigation Measure TRANS-1b, should Port-related performance standards for travel time not be met—for example, as a result of increased ballpark traffic that further diverts trucks from Adeline Street—additional measures would be implemented, such as additional road closures or use of traffic control personnel.

Further, Impact TRANS-4 addresses construction-related transportation impacts, and includes Mitigation Measure TRANS-4, which would require preparation of a construction management plan (CMP). The CMP will contain measures to minimize potential construction impacts including measures to comply with all construction-related Mitigation Measures (and additional conditions of approval if applicable) such as dust control, construction emissions, construction days/hours, construction traffic control, and complaint management. Among other things, the CMP would be required to

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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 cleanup plan, and others as needed) that specify how potential construction impacts would be minimized and how each construction-related requirement would be satisfied throughout construction of the proposed Project. The Project sponsor would be required to implement the approved Plan during construction and coordinate with the City and the Port to adjust, if necessary, to respond to transportation-related issues that arise out of the implementation.

A-11-6 The quotation of the Draft EIR included in the comment is not accurate. The description of Mitigation Measure AIR-2e in the Draft EIR provides a comprehensive description of a required criteria pollutant mitigation plan (CPM Plan). The Final EIR includes revisions to Mitigation Measure AIR-2e which replace the CPM Plan with documentation of compliance. In describing two optional methods of funding of emissions offsets (in Mitigation Measure AIR-2e(c), Draft EIR p. 4.2-81 states, "*Pay mitigation offset fees* to the Air District Bay Area Clean Air Foundation or other governmental entity." It then goes on to state that "[w]hen paying a mitigation offset fee under paragraph (c)(ii), the Project sponsor shall enter into a memorandum of understanding (MOU) with the Air District Clean Air Foundation or other governmental entity."

The City understands that BAAQMD does not currently have a fee program in place for offsetting regional criteria pollutant emissions, and that offsets are provided only on a case-by-case basis pending offset project availability. The Final EIR has revised Mitigation Measure AIR-2e as shown in Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures,* and in Chapter 7, *City-Initiated Updates and Errata in the Draft EIR*, for the revised mitigation measure language.

A-11-7 The comment is noted. Any required CEQA review for future development at the Coliseum complex would take into account existing conditions as the appropriate baseline. If the A's have relocated or their relocation has been approved, then the baseline for future development at the Coliseum would not include the emissions "netted out" by the shift of operations to the proposed Project site.

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A-11-8 Mitigation Measure GHG-1 describes mandatory measures and a suite of on-site actions to further reduce greenhouse gas (GHG) emissions, including zero-net-energy buildings, on-site solar, renewable electricity use, refrigerant emission reductions, additional electric vehicle (EV) charging infrastructure, additional TDM and TMP measures, solid waste reduction, water use efficiency, and new technologies (Draft EIR pp. 4.7-57 through 4.7-61). 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 identified, specific measures that would include those on-site and off-site measures in Mitigation Measure GHG-1 to reduce GHG emissions that have been determined to be feasible and alternatives that may be feasible in the future based on future technology. In accordance with CEQA, the measures are listed as a menu of measures, which demonstrates that it is feasible to achieve the performance standard identified in the mitigation—"no net additional" from the project—from some combination of the measures identified in the mitigation. The structure of the mitigation, with an identified performance standard and a menu of identified, effective and feasible options that can meet the performance standard, complies with CEQA requirements and does not constitute improper deferral.

Mitigation Measure GHG-1 also prioritizes GHG offset credits based on location consistent with the preference expressed in the comment: (1) off-site in 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. The City therefore would prioritize local GHG offset credits to meet the obligations of Mitigation Measure GHG-1.

CEQA requires that a project mitigate its potentially significant impacts, and mitigation must be proportional to the impact created (see State CEQA Guidelines Section 15126.4(a)(4)(A); see also Response to Comment O-62-40). CEQA does not require that the proposed Project mitigate its GHG emissions entirely through on-site measures, or maximize the use of onsite measures, and does not require that GHG offset credits be purchased from local projects. As discussed on Draft EIR p. 4.7-37, climate change is global and the earth's atmosphere is global. GHG emissions are well-mixed in the atmosphere and have a lifetime of 100 years or more.[43] The location of mitigation for GHG

[43] IPCC, 2013. *Climate Change 2013: The Physical Science Basis. Contribution of Working Group I to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change*, 2013.

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emissions is irrelevant from a CEQA perspective. Although the California Fourth District Court of Appeal in *Golden Door Properties v. County of San Diego* (50 Cal. App. 5th 467) expressed skepticism about the effectiveness of out-of-state offsets to reduce a project's GHG emissions, the ruing generally supported the use of offsets that meet specific and enforceable criteria to ensure emission reductions have occurred. However, in accordance with the City's policy, the Energy and Climate Action Plan and the requirements of AB 734, mitigation measures for Impact GHG-1 include the location preference and order of priority described above.

The comment asserts that only three offset projects are available in the Bay Area. A review of the American Carbon Registry's projects indicates that there are three projects located in Sonoma, Solano, and Contra Costa Counties.[44] According to the Climate Action Reserve, 30 current projects are available in Sonoma, Napa, Solano, and Santa Clara counties.[45] Verra has more than 100 current projects in the United States, but it is not clear whether any are located in the Bay Area.[46]

However, offset projects are being created and verified on a frequent basis, and more may become available in the Bay Area in the future. If so, the Project sponsor may be able to purchase local GHG offset credits. The first offset credits for construction emissions would have to be purchased before the issuance of the first grading and/or permit for horizontal construction. The purchase of carbon offset credits for operational emissions must occur before the issuance of a Temporary Certificate of Occupancy for each building. Local offset projects may be available at these points in the future.

Mitigation Measure GHG-1 has been revised to be consistent with the City's natural gas ban, which went into effect on December 16, 2020, via Ordinance 13632, requiring all newly constructed buildings to be all-electric and prohibiting installation of natural gas or propane plumbing. The revised mitigation measure requires the Project to be fully electric, except for certain businesses, such as food service uses, that may seek a waiver for exemption pursuant to Ordinance 13632. See Chapter 7, *City-Initiated Updates and Errata in the Draft EIR*, for the revised mitigation measure language. Mitigation Measure GHG-1 is valid CEQA mitigation, does not defer action and

[44] American Carbon Registry, 2021. *Projects Report*. https://acr2.apx.com/myModule/rpt/myrpt.asp?r=111, accessed July 2021.

[45] Climate Action Reserve, 2021. *Projects Report*. https://thereserve2.apx.com/myModule/rpt/myrpt.asp?r=111, accessed July 2021.

[46] Verra, 2021. *Verified Carbon Standard Project and Credit Report*. https://registry.verra.org/app/search/VCS/All%20Projects, accessed July 2021.

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provisions for implementation and monitoring are included in the measure and the MMRP. See Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures,* for a discussion of mitigation measure deferral generally and as it relates to Mitigation Measure GHG-1.

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from which carbon offset projects may be selected, and currently only three projects are available in the Bay Area – two in Sonoma County and one in Napa County. The lack of available offset projects in or near Oakland increases the importance of maximizing on-site mitigations.

A-11-8

The DEIR includes Mitigation Measure GHG-1: Preparation and Implementation of a GHG Reduction Plan, which includes a "Menu of Additional Emission Reduction Measures" detailing the types of measures that shall be included in a yet-to-be-developed GHG Reduction Plan for the Project. The Air District believes that all additional on-site emission reduction measures must be specific, effective, and actionable, must clearly identify the party(ies) responsible for implementation, must be required, and must be included as design or programmatic elements of the Project, rather than as potential future measures, to avoid deferred mitigation. This will ensure that the Project will align with critical measures in the City of Oakland's Equity and Climate Action Plan (ECAP), including 100 percent carbon-free electricity and no natural gas uses in all buildings and the Ballpark.

Peaker Power Plant Variant

A-11-9

The DEIR identified a Peaker Power Plant variant that has the as potential to become part of the Project depending on cost and feasibility. Under this variant, the existing Peaker Power Plant would be converted from using jet fuel-powered electric turbines to battery storage. Due to the Project's significant generation of ROG, NOx, PM_{10}, and GHG's, Air District staff strongly encourages the Project to include conversion of the Peaker plant, as battery storage can serve as backup for all electrical end uses, including electrical vehicle charging stations, in case of a power outage. This would make the Project more resilient and aid in the transition from fossil fuels to renewable energy.

Displacement of Current Howard Terminal Operations

A-11-10

The Air District is concerned about potential impacts to West Oakland residents of rerouted truck trips and/or parking if current truck parking at Howard Terminal is eliminated. The DEIR includes an assessment of potential changes in cancer risks and other health impacts stemming from the loss of 25 acres of truck parking at Howard Terminal. The assessment looks at changes in risk from relocating all current parking to the nearby, smaller Roundhouse facility. However, the Roundhouse facility is already at capacity, and there are no known plans to develop new or additional parking facilities. Additionally, there is a potential for additional constraints on truck parking due to the proposed Eagle Rock Sand and Gravel Facility. Therefore, it is imperative to carefully consider the cumulative impacts of losing truck parking at Howard Terminal, and to assure that there is no potential for increased truck parking on local streets, resulting in truck emissions closer to residents.

The Air District acknowledges the City of Oakland's Truck Management Plan (TMP) efforts to address truck travel and parking in West Oakland, and we support the City's continued implementation of the TMP. To ensure effective implementation of the TMP, the Air District recommends that the DEIR list out specific measures that will prohibit trucks from traveling and parking on residential streets. In addition, to provide a conservative analysis, the health risk assessment should include a scenario where one to three drayage trucks are regularly parked in front of or otherwise adjacent to the off-site maximum exposed individual receptor. The assessment of impacts from dispersed truck parking that is closer to residents, combined with a more conservative assessment of the Roundhouse site, will provide decision makers with a better understanding of potential impacts from any truck relocation, and the need for further mitigation as part of the Project.

RESPONSE

A-11-9 The comment expresses support for the Peaker Plant Variant, recognizing its potential environmental benefits. 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.

A-11-10 See Consolidated Response 4.5*, Truck Relocation*.

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Exposure to Toxic Air Contaminants

The Project proposes to construct buildings near the property boundary immediately adjacent to the Schnitzer Steel facility which are much higher than the current stack height at Schnitzer. The DEIR states the proposed high-rise buildings are expected to create winds exceeding 36 mph during the daylight hours. There is a potential that the current design could result in the modification of air flow resulting in changes to local pollution levels in the area, possibly creating potential health impacts to nearby receptors from Schnitzer Steel emissions. As such, Air District staff recommends modeling local pollution concentrations and health impacts to nearby receptors based on building downwash effects associated with the Project's high-rise buildings.

A-11-11

Air District is also concerned that Ballpark attendees who will be approximately at the same height as the roof line of the adjacent mixed-use buildings may be exposed to the diesel exhaust from the proposed rooftop generators while testing. The Air District recommends replacing diesel back up generators with battery storage or hydrogen fuel cells. Alternatively, at a minimum, the Project should restrict the hours of testing to non-game.

The Air District supports the City of Oakland's Standard Conditions of Approval requiring that the Project sponsor install MERV-16 filters, or the most protective level of filtration should the proposed building exceed health risk thresholds based on an updated HRA during final design of the proposed building. This will ensure further protection to future residents at the Project site from cumulative impacts resulting from present and future Port operations, vehicle congestion, Schnitzer Steel operations, rail operations, and Interstate 880.

Compliance with BAAQMD Rules and Permitting Requirements

The Air District recommends that the DEIR discuss measures that would be taken to ensure compliance with the following Air District Rules and Regulations that may pertain to the Project:

A-11-12

- Regulation 1, Section 301, Public Nuisance from odors resulting from multiple sources including the use of diesel-powered heavy machinery, such as loaders, excavators, pile drivers, etc.
- Regulation 6, Rule 1, Visible Emissions from construction activities such as demolition and excavation.
- Regulation 6, Rule 6: Prohibition of Trackout for construction sites where the total land area covered by construction activities and/or disturbed surfaces at the site are one acre or larger.
- Regulation 8, Rule 3 Limiting quantity of volatile organic compounds in architectural coatings.
- Regulation 9, Rule 7, Nitrogen Oxides and Carbon Monoxide from Industrial, Institutional, and Commercial Boilers, Steam Generators, and Process Heaters.
- Regulation 9, Rule 8, Nitrogen Oxides and Carbon Monoxide from Stationary Internal Combustion Engines.
- Regulation 11, Rule 2, Asbestos Demolition, Renovation and Manufacturing, which entails, but is not limited to, a thorough asbestos survey by a certified asbestos consultant, removal of all regulated asbestos if present, and make a renovation and/or demolition notification.
- Regulation 12, Rule 4, Visible emissions from sand blasting operations.

A-11-13

The following Air District Rules and Regulations may apply for removal of the current Howard Terminal soil remediation cap and if the Project decides to incorporate the Peaker Power Plant Variant:

- Regulation 8, Rule 40 Aeration of Contaminated Soil and Removal of Underground Storage Tanks
- Regulation 8, Rule 47, Air Stripping and Soil Vapor Extraction Operations

RESPONSE

A-11-11 The Draft EIR analyzes building downwash effects associated with the proposed Project's high-rise buildings, as discussed in Appendix AIR.1, p. 40. The proposed Project would prohibit residential uses west of Myrtle Street, as required by Mitigation Measure LUP-1c, a mitigation measure that would also require solid barriers and vegetated buffers along the western perimeter of the site. These requirements were designed to create a buffer between Schnitzer Steel and on-site sensitive receptors.

The project-level health risk assessment (HRA) (Impact AIR-4) was conducted in conformance with the BAAQMD CEQA Guidelines and other accepted protocols; these do not recommend or require modeling existing off-site TAC sources as part of the project-level analysis. According to the BAAQMD CEQA Guidelines, only a project's operational TAC sources are required to be analyzed:

> The Lead Agency shall determine whether operational-related TAC and PM2.5 emissions generated as part of a proposed project siting a new source or receptor would expose existing or new receptors to levels that exceed BAAQMD's applicable *Thresholds of Significance* (BAAQMD, 2017; p. 5-3).[47]

With regard to projects that site new receptors, the BAAQMD CEQA Guidelines state:

> When siting a new receptor, a Lead Agency shall examine existing or future proposed sources of TAC and/or PM2.5 emissions that would adversely affect individuals within the planned project. A Lead Agency shall examine:
>
> - the extent to which existing sources would increase risk levels, hazard index, and/or PM2.5 concentrations near the planned receptor,
> - whether the existing sources are permitted or non-permitted by the BAAQMD, and
> - whether there are freeways or major roadways near the planned receptor (BAAQMD, 2017; p. 5-8).[48]

The Draft EIR meets all three requirements by analyzing the impact of existing sources on new on-site receptors (see Impact AIR-2.CU), identifying permitted

[47] BAAQMD, 2017. *California Environmental Quality Act Air Quality Guidelines*, May 2017. http://www.baaqmd.gov/~/media/files/planning-and-research/ceqa/ceqa_guidelines_may2017-pdf.pdf?la=en, accessed April 2019.

[48] BAAQMD, 2017. *California Environmental Quality Act Air Quality Guidelines*, May 2017. http://www.baaqmd.gov/~/media/files/planning-and-research/ceqa/ceqa_guidelines_may2017-pdf.pdf?la=en, accessed April 2019.

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existing sources such as Schnitzer Steel (see Draft EIR p. 4.2-141), and analyzing the health risks of freeways or major roadways near the new on-site receptors (see Draft EIR p. 4.2-143) as part of the Project-level impact analysis.

The cumulative HRA (Impact AIR-2.CU) analyzes the proposed Project's health risk impacts combined with all existing off-site health risks and health risks from other cumulative development and relies on BAAQMD modeling for Schnitzer Steel and other existing off-site TAC sources within the entire West Oakland community. This analysis is more comprehensive than required under the BAAQMD CEQA Guidelines for analyzing cumulative health risks (see Draft EIR pp. 4.2-59 through 4.2-60). The Draft EIR finds that Impact AIR-2.CU would be significant and unavoidable, and includes all feasible mitigation measures available to reduce the magnitude of the impact.

Review of the existing Schnitzer site using publicly available information (e.g., BAAQMD Form P's, aerial imagery, and building height estimates) indicates that the existing stacks at Schnitzer are currently already subject to downwash due to the existing structures onsite. The listed stack height for Schnitzer emission units P-14 and P-15 are 60' above grade (BAAQMD Form P for P-14 and P-15). Each of these stacks has adjacent structures that are generally the same height, which means that the stacks are already less than their Good Engineering Practice (GEP) stack height and subject to downwash. GEP stack height is defined by the USEPA as "the height necessary to ensure that emissions from the stack do not result in excessive concentrations of any air pollutant in the immediate vicinity of the source as a result of atmospheric downwash, eddies or wakes which may be created by the source itself, nearby structures or terrain obstacles" (Section 123 of the Clean Air Act).

The GEP stack height is calculated as:

$$Hg = H + 1.5L$$

where H is the height of a nearby structure and L is the lesser of the height or projected width of a nearby structure.[49] In order to be above the downwashed flow, the stack heights would need to be raised to the value of Hg. As seen in the Figure 5.1-1 below, the stack heights are approximately only the height of the nearby structures (H), thus will do not meet the definition of GEP.

[49] U.S. EPA, 1985. Guideline for Determination of Good Engineering Practice Stack Height, June 1985. Available at: https://www.epa.gov/sites/default/files/2020-09/documents/gep.pdf.

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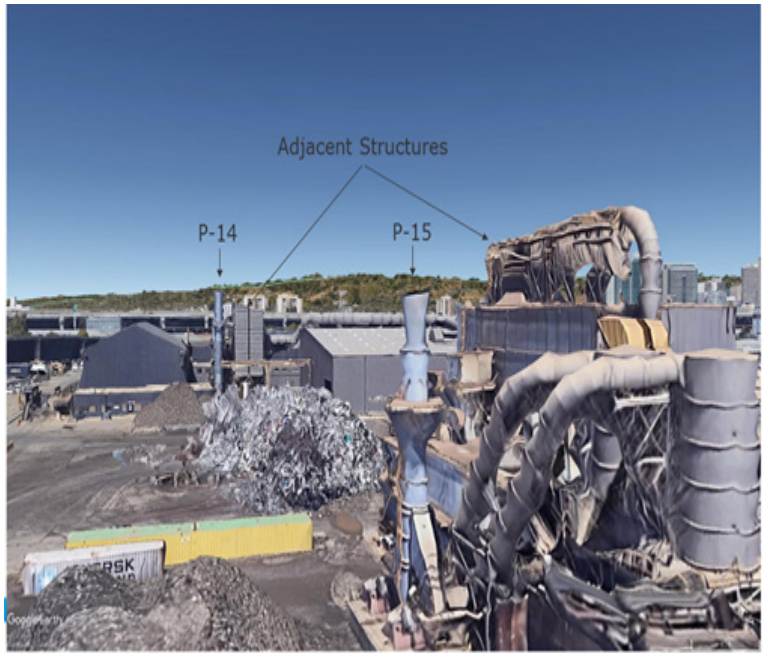

Figure 5.1-1: Google Earth 3-dimensional building image of Schnitzer P-14 (back) and P-15 (front) stacks as viewed from the south.

During Full Buildout, tall Project buildings will be adjacent (to the east) to the Schnitzer property. Review of the climatological wind direction in the area demonstrates a predominant wind flow from the west to the east (see Figure 5.1-2). Based on this climatology, the Schnitzer property is predominately upwind of the Project site and the effect of downwash from the Project buildings on the Schnitzer property is expected to be infrequent as explained below. The EPA guidance on downwash, and its implementation through the Building Profile and Input Program (BPIP), limits the influence of buildings to 2L in the upwind direction, where L is the lesser of the height or projected width of a nearby structure.[50] Therefore, downwash effects due to the Project buildings are expected to be limited to eastern portion of the Schnitzer property during the predominant wind flows as shown in Figure 5.1-2.

[50] U.S. EPA, 1995. User's Guide to the Building Profile Input Program, October 1993; revised February 1995. Available at: https://gaftp.epa.gov/Air/aqmg/SCRAM/models/related/bpip/bpipd.pdf.

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When winds are from the north or south, the wind flow is deflected within 0.5L, so that the effect on the Schnitzer property will even further limited to the easternmost portion of the Schnitzer property. When winds are from the east, the Schnitzer property is downwind of the Project buildings, which will have an influence out to 5L. However, winds from the east occur very infrequently, and as noted above, the existing stacks on the Schnitzer property are already downwashed due to the existing structures onsite. Since the Schnitzer stacks are already subject to downwash when winds are from the east, the presence of the Project buildings will not introduce a new air quality issue (the potential for "excessive concentrations") that is not already present on the Schnitzer site. Based on this analysis, it is expected that any tall Project buildings will have an infrequent and limited effect on the Schnitzer sources based on climatology and already-existing downwash conditions, respectively.

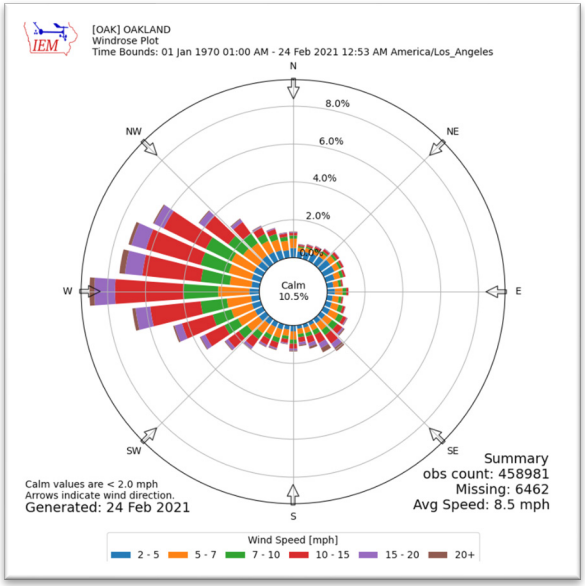

Figure 5.1-2: Climatological Windrose from Oakland Airport (1970-2021).

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Regarding potential exposure of ballpark attendees to emergency diesel generator exhaust, the BAAQMD CEQA Guidelines do not list event attendees as sensitive receptors, which are defined as: "facilities or land uses that include members of the population that are particularly sensitive to the effects of air pollutants, such as children, the elderly, and people with illnesses. Examples include schools, hospitals and residential areas".[51] Ballpark attendees would be present at the Project site for a few hours on game days (which are only 81 days per year and most fans do not attend every game); therefore, their exposure to the proposed Project's diesel generator testing TAC emissions (and all other project-related TAC emissions) would be far less than that of the new on-site sensitive receptors (residents), who are assumed to be present at the Project site 24 hours per day, 350 days per year, for 30 continuous years (see Draft EIR p. 4.2-50).

The Final EIR requires the Project sponsor to install non-diesel-fueled generators where feasible, and to restrict generator testing to non-ballgame hours. The text of Mitigation Measure AIR-2c has been amended as follows:

Mitigation Measure AIR-2c: Diesel Backup Generator Specifications.

To reduce NO_X associated with operation of the proposed Project, the Project sponsor shall implement the following measures. These features shall be submitted to the City for review and approval and be included on the Project drawings submitted for the construction-related permit or on other documentation submitted to the City:

1. If non-diesel-fueled emergency generator technology is approved for use by the City fire department for safety purposes, non-diesel-fueled generators shall be installed in new buildings, provided that alternative fuels used in generators, such as biodiesel, renewable diesel, natural gas, or other biofuels or other non-diesel emergency power systems, are demonstrated to reduce ROG, NO_X, and PM emissions compared to diesel fuel. ~~If feasible, non-diesel fueled generators shall be installed to replace diesel-fueled generators. Alternative fuels used in generators, such as biodiesel, renewable diesel, natural gas, or other biofuels or other non-diesel emergency power systems, must be demonstrated to reduce NO_x emissions compared to diesel fuel.~~

[51] BAAQMD, 2017. *California Environmental Quality Act Air Quality Guidelines*, May 2017. http://www.baaqmd.gov/~/media/files/planning-and-research/ceqa/ceqa_guidelines_may2017-pdf.pdf?la=en, accessed April 2019.

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2. All new diesel backup generators shall have engines that meet or exceed California Air Resources Board Tier 4 off-road Compression Ignition Engine Standards (title 13, CCR, section 2423) which have the lowest NO_X emissions of commercially available generators. If the California Air Resources Board adopts future emissions standards that exceed the Tier 4 requirement, the emissions standards resulting in the lowest NO_X emissions shall apply.
3. All new diesel backup generators shall have an annual maintenance testing limit of 20 hours, subject to any further restrictions as may be imposed by the Air District in its permitting process. Testing shall be limited to non-ballgame hours.
4. All diesel backup generator exhaust shall be vented on the rooftops of each building where the generators are located. This could be achieved by either placing the diesel backup generators themselves on the rooftops, or by constructing exhaust stacks from the diesel backup generator locations to the rooftops. Alternatively, the generators or exhaust stacks could be located in areas where the Project sponsor can quantitatively demonstrate that these locations would not result in health risks that exceed those associated with rooftop placement for both existing offsite and future onsite sensitive receptors. This analysis must consider health risks from the Project as a whole at full buildout, including all 17 generators installed at the Project site, and including emissions from off-site sources of TACs under cumulative conditions, and the impact of all existing offsite or new onsite sensitive receptors.
5. For each new diesel backup generator permit submitted to the Air District for the Project, the Project sponsor shall submit the anticipated location and engine specifications to the City for review and approval prior to issuance of a permit for the generator from the City of Oakland Department of Building Inspection. Once operational, all diesel backup generators shall be maintained in good working order for the life of the equipment and any future replacement of the diesel backup generators shall be required to be consistent with these emissions specifications. The operator of the facility at which the generator is located shall be required to maintain records of the testing schedule and all other non-testing operations for each diesel backup generator for the life of that diesel backup generator and to

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provide this information for review to the planning department within three months of requesting such information.

Please also refer to response to comments O29-1-10 through O29-1-12 for additional discussion of the generator modeling performed in the HRA.

Mitigation Measure AIR-4a would require the installation of MERV16 filtration at all residential building locations. This measure is anticipated to reduce health risks by 76 percent. Mitigation Measure AIR-4a also would allow the Project sponsor to retain a qualified air quality consultant to prepare an updated HRA for the proposed Project to determine the health risk of exposure of future Project residents/occupants/users to TAC emissions once final design for the proposed building(s) or phase is complete and when the exact level of TAC exposure is known. If the approved (by the City) updated HRA concludes that health risks are at or below the City's project-level and cumulative thresholds of significance for new on-site sensitive receptors with a filtration system alternative to MERV16, then the alternative MERV filtration system identified in the approved updated HRA may be allowed rather than MERV16. See Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*, for revisions to Mitigation Measure AIR-4a.

A-11-12 Based on the comment's recommendation, the second full paragraph on Draft EIR p. 4.2-20 has been amended and expanded as follows:

> …Several project components may be subject to BAAQMD rules and regulations governing criteria pollutants, toxic air contaminants, and odorous compounds, even though permits may not be required. Stationary sources, such as generators, are required to have permits from the BAAQMD before constructing, changing, or operating the source. If the project is subject to BAAQMD permit requirements, the sources would need to comply with BAAQMD Regulation and proceed through the two-stage Authority to Construct and Permit to Operate process. <u>These include, but are not limited to:</u>
>
> <u>**Regulation 1–Section 301, Public Nuisance:** Prohibits discharge of air contaminants or other materials (such as odors) from any source that could cause nuisance or annoyance to the public, endanger the safety of the public, or cause injury or damage to business or property.</u>

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Regulation 2–Rule 1, Permits: Requires any sources of air pollutants subject to BAAQMD permit requirements to first secure written authorization from the Air Pollution Control Officer in the form of an authority to construct and a Permit to Operate before operation of the source. In general, any equipment or operation that emits pollutants into the atmosphere requires a Permit to Operate from BAAQMD unless it is excluded from District Regulations per Regulation 1 or exempted from District permit requirements by a specific section of Regulation 2 Rule 1. Sources associated with the project that would be subject to this regulation include emergency generators, boilers, coating operations, coffee roasting operations, dry cleaners, etc.

Regulation 6, Particulate Matter–Rule 1: Limits the quantity of particulate matter in the atmosphere through limits on emission rates, emission concentrations, visible emissions, and opacity.

Regulation 6–Rule 6: Prohibition of Trackout: Limits the quantity of particulate matter in the atmosphere through control of trackout of solid materials onto paved public roads outside the boundaries of construction sites where the total land area covered by construction activities and/or disturbed surfaces at the site are 1 acre or larger.

Regulation 8–Rule 3, Architectural Coatings: Limits the quantity of volatile organic compounds in architectural coatings.

Regulation 8–Rule 40, Aeration of Contaminated Soil and Removal of Underground Storage Tanks: Limits the emission of organic compounds from soil that has been contaminated by organic chemical or petroleum chemical leaks or spills and identifies acceptable procedure for controlling emissions from underground storage tanks during removal or replacement.

Regulation 8–Rule 47, Air Stripping and Soil Vapor Extraction Operations: Limits emissions of organic compounds from air stripping and soil vapor extraction equipment used for the treatment of groundwater or soil contaminated with organic compounds.

Regulation 9–Rule 7, Nitrogen Oxides and Carbon Monoxide from Industrial, Institutional, and Commercial Boilers, Steam Generators, And Process Heaters: Limits the emissions of nitrogen oxides (NOx) and

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carbon monoxide (CO) from industrial, institutional and commercial boilers, steam generators, and process heaters.

Regulation 9–Rule 8, Nitrogen Oxides and Carbon Monoxide from Stationary Internal Combustion Engines: Limits the emission of nitrogen oxides and carbon monoxide from stationary internal combustion engines with an output rated by the manufacturer at more than 50 brake horsepower.

Regulation 11–Rule 2, Asbestos Demolition, Renovation and Manufacturing: Before demolition of structures, requires a thorough asbestos survey by a certified asbestos consultant, removal of all regulated asbestos if present, and a renovation and/or demolition notification.

Regulation 12–Rule 4, Visible Emissions from Sandblasting Operations: Establishes standards that apply to sandblasting operations other than permanent abrasive blasting operations or equipment.

A-11-13 See Response to Comment A-11-12, which includes a summary of these and other BAAQMD rules and regulations to which Project components may be subject.

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A-11-13

For more information on the above rules and regulations, and for requesting an inspection to use portable engine equipment registered under California Air Resources Board Portable Equipment Registration Program (PERP), please contact the Air District's Compliance and Enforcement Division at (415) 749-4795 or compliance@baaqmd.gov.

A-11-14

Furthermore, the DEIR states that Air District permits will be required for all diesel backup generators at the Project site. In addition to generators, Air District permits/registrations may be required for the following equipment:

- Natural gas fired boilers;
- Any soil vapor extraction and/or air stripping operations associated with the proposed site remediation;
- All future tenants (e.g., restaurants, coffee roasters, dry cleaning operations, etc.) should be informed that owners/operators of air polluting equipment must apply for all required BAAQMD permits/registrations prior to installation.

For more information on applying for an Air District Permit, please visit the following webpage for further instructions: https://www.baaqmd.gov/permits/apply-for-a-permit or contact Barry Young, Senior Advanced Projects Advisor, at byoung@baaqmd.gov or (415) 940-9641 to discuss permit requirements.

We encourage the City to contact Air District staff with any questions and/or to request assistance during the environmental review process. If you have any questions regarding these comments, please contact Areana Flores, Environmental Planner II, 415-749-4616 aflores@baaqmd.gov or Matthew Hanson, Environmental Planner at 415-749-8733 mhanson@baaqmd.gov.

Sincerely,

Greg Nudd
Deputy Air Pollution Control Officer

cc: BAAQMD Chair Cindy Chavez
BAAQMD Secretary John J. Bauters
BAAQMD Director Pauline Russo Cutter
BAAQMD Director David Haubert
BAAQMD Director Nate Miley
CARB Executive Officer Richard Corey
BCDC Executive Director Larry Goldzband
Ms. Margaret Gordon, WOEIP
Brian Beveridge, WOEIP

RESPONSE

A-11-14 All equipment requiring BAAQMD permits would obtain permits in accordance with regulatory requirements. See also Response to Comment A-11-12.

A-12 San Francisco Bay Conservation and Development Commission (BCDC)

COMMENT

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San Francisco Bay Conservation and Development Commission

375 Beale Street, Suite 510, San Francisco, California 94105 tel 415 352 3600 fax 888 348 5190
State of California | Gavin Newsom – Governor | info@bcdc.ca.gov | www.bcdc.ca.gov

Transmitted Via Electronic Mail

April 27, 2021

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

SUBJECT: Comments on the Waterfront Ballpark District Project Draft Environmental Impact Report (City of Oakland Case File Number ER18-016; SCH 2018112070)
BCDC Inquiry File No. MC.MC.7415.025

Dear Mr. Vollmann:

Thank you for the opportunity to comment on the Draft Environmental Impact Report (DEIR) for the Waterfront Ballpark District Project (Project), State Clearinghouse No. 2018112070, published on February 26, 2021, by the City of Oakland. The Notice of Availability and DEIR were received by our office on February 26, 2021.

A-12-1 The San Francisco Bay Conservation and Development Commission (BCDC or Commission) is providing the following comments as a responsible agency, for purposes of the California Environmental Quality Act (CEQA), with discretionary approval power over aspects of the Project, as described below. BCDC will rely on the Final EIR when considering its approvals for the project, and we appreciate this opportunity to comment on information, analyses, and findings in the DEIR that are relevant to BCDC's jurisdiction and authority. The Commission itself has not reviewed the DEIR; these comments have been prepared by staff and are based on the McAteer-Petris Act (Title 7.2 of the California Government Code [Government Code]), the *San Francisco Bay Plan* (Bay Plan), and the *San Francisco Bay Area Seaport Plan* (Seaport Plan) in relation to CEQA requirements for the Project.

SAN FRANCISCO BAY CONSERVATION AND DEVELOPMENT COMMISSION

A-12-2 BCDC is a State planning and regulatory agency with permitting authority over San Francisco Bay, the Bay shoreline, and Suisun Marsh, as established in the McAteer-Petris Act and the Suisun Marsh Preservation Act. Per the McAteer-Petris Act, BCDC is responsible for granting or denying permits for any proposed fill; extraction of materials; or substantial changes in use of any water, land, or structure within the Commission's jurisdiction (Government Code Section 66632(a)). Additionally, BCDC establishes land use policies for the Bay as a resource and for development of the Bay and shoreline in the Bay Plan, which provides the basis for the

RESPONSE

A-12-1 The City acknowledges BCDC's role as a Responsible Agency. The comment is noted and responses to comments in this letter are provided below. Anticipated required permits and approvals anticipated by BCDC are listed in Draft EIR Table 3-4 (see Draft EIR p. 3-66).

A-12-2 This comment is a summary of BCDC's jurisdiction and authority. 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. BCDC's role and regulatory authority are summarized on Draft EIR p. 4.10-13. The comments regarding the setting of the Project site are noted and are consistent with the discussion in Section 4.10, *Land Use, Plans, and Policies*, of the Draft EIR.

A-12

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Commission's review and actions on proposed projects. BCDC also maintains the Seaport Plan, a special area plan incorporated by reference into the Bay Plan, that coordinates regional port planning and development within designated port priority use areas along the Bay shoreline.

The Project site is partially located within two areas of BCDC's permitting jurisdiction:

- Bay Jurisdiction: In the San Francisco Bay, being all areas subject to tidal action, including tidelands (land lying between mean high tide and mean low tide) and submerged lands (Government Code Section 66610(a)); and
- Shoreline Band Jurisdiction: In the shoreline band consisting of all territory located between the shoreline of the Bay, as described above, and 100 feet landward of and parallel with the shoreline (Government Code Section 66610(b)).

A-12-2

BCDC's Bay jurisdiction includes all areas formerly subject to tidal action that have been filled since September 17, 1965. Since 1965, BCDC has authorized fill at Howard Terminal for the provision of water-oriented port facilities, including much of the current wharf; these filled areas are considered to be within the Bay jurisdiction (see also 14 CCR § 10710). The shoreline band jurisdiction includes all areas within 100 feet landward of the Bay jurisdiction.

Additionally, the Project site is located within BCDC's Oakland port priority use area, as designated in the Bay Plan and Seaport Plan. BCDC has designated areas determined necessary for future port development as port priority use areas to reserve them for cargo handling or related uses. Within port priority use areas, sites for marine terminals are identified and reserved specifically for cargo handling operations. Howard Terminal is designated in the Seaport Plan as a container terminal.

PROJECT UNDERSTANDING

The Project has been proposed by the Oakland Athletics and would include the construction of a new multi-purpose waterfront Major League Baseball stadium and mixed-use development that includes residential, office/commercial, retail, performance venue, and hotel components, as well as public recreation and open space areas. Development of the Project would involve the demolition of all existing buildings and structures on the Project site, with the exception of Fire Station 2 and four cranes, which would be incorporated into the Project.

A-12-3

The Project would be constructed in two phases. Phase I would include the stadium and the residential, office, retail, restaurant, hotel, and recreation and open space uses proposed east of Market Street. Phase II would include the remainder of the site. Construction is anticipated to involve fill to raise the elevation of the site, stabilization of new and existing fill, and hazardous material remediation and mitigation.

In addition to Phases I and II of the proposed Project, the Project proponent is considering a Maritime Reservation Scenario (MRS), which, if it occurs, would take the place of the proposed Phase II development. As part of the Exclusive Negotiation Term Sheet between the Oakland Athletics and the Port, the Port has established a 10-acre "Maritime Reservation Area" at the

RESPONSE

A-12-3 The comments regarding the components of the proposed Project are noted and are consistent with the discussion in Chapter 3, *Project Description*, 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.

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A-12-3

southwest corner of Howard Terminal for up to approximately 10 years from the approval date of the Exclusive Negotiating Agreement (May 13, 2019). At any point during the reservation period, the Port may terminate the Project proponent's development rights to some or all of the reservation area for the expansion of the Inner Harbor Turning Basin. In the MRS, up to 10 acres of the Maritime Reservation Area would be removed from the Project site to accommodate the expansion of the Inner Harbor Turning Basin. Although the Project site's footprint would be smaller, the development itself would still consist of the same mix of uses, number of units, and building square footage as the proposed Project, but with less open space area.

A-12-4

Required BCDC Actions

The Project would require two separate actions from the Commission. The Commission would need to remove the port priority use designation from the Project site in order for the Project to proceed, as the proposed uses are not consistent with the current designation's requirements. If the designation is removed, the Project would then require a Major Permit from the Commission. The permitting process would require the Commission to consider the Project's consistency with the Bay Plan and McAteer-Petris Act, following review by the Commission's Design Review Board (DRB) and Engineering Criteria Review Board (ECRB). The permit application would be heard by the Commission at a publicly noticed hearing.

A-12-5

Significance of Assembly Bill 1191

The Commission's decisions regarding the Project are also subject to the provisions of Assembly Bill (AB) 1191 (Bonta, 2019). Per AB 1191, the Commission must determine whether the Project site is no longer required for port priority use and deemed free of the port priority use area designation within 140 days following the certification by the City of Oakland of a project-level EIR for the Project. Additionally, AB 1191 provides that if the Oakland Athletics have not entered into a binding agreement with the Port by January 1, 2025 that allows for the construction of the proposed development, then the port priority use designation shall be automatically reinstated on the site.

AB 1191 specifies conditions under which the Commission may approve a permit for the Project and some conditions which modify certain requirements which would otherwise apply to the Commission's consideration of the permit application for the Project under the McAteer-Petris Act. AB 1191 allows the Commission to find that the Project is a water-oriented use within the meaning of Section 66605(a) of the McAteer-Petris Act if it meets certain conditions related to the use of the Bay as a design asset for the proposed stadium and other buildings proposed in BCDC's Bay jurisdiction. AB 1191 also allows the Commission to authorize a permit for the Project if it would provide a substantial quantity of high-quality open space and public access and significant onsite and offsite bicycle and pedestrian improvements, notwithstanding the findings and declarations established in subdivisions (b), (c), (d), and (f) of Section 66605 of the McAteer-Petris Act or Bay Plan policies "Fills in Accord with Bay Plan," "Fill for Bay-Oriented

A-12-4 The comment regarding BCDC's decision-making process is noted. This comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft EIR that would require response pursuant to State CEQA Guidelines Section 15088. Anticipated required permits and approvals are listed in Draft EIR Table 3-4 (p. 3-66).

A-12-5 The comments regarding AB 1191 are noted and are consistent with the discussion in Section 4.10 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.

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A-12-5

Commercial Recreation and Bay-Oriented Public Assembly on Privately-Owned or Publicly-Owned Property," and "Filling for Public Trust Uses on Publicly-Owned Property Granted in Trust to a Public Agency by the Legislature," so long as the Project is otherwise consistent with all other applicable BCDC laws and policies.

COMMENTS ON THE DEIR

A-12-6

Staff has prepared the following comments on the contents of the DEIR. Comments are focused on providing points of information related to BCDC policies and procedures cited in the DEIR, comments on analyses and findings related to resources under BCDC's authority, comments on the overall analysis presented in the DEIR in terms of CEQA requirements, and notes on additional information that will be expected from the Project proponents as part of BCDC's permitting process. Note that BCDC previously submitted a response to the City of Oakland's Notice of Preparation for the Project during the public scoping period, dated January 14, 2019, and comments herein may note the DEIR's responsiveness to issues raised in that letter.

General Comments

A-12-7

PHASE II AND THE MARITIME RESERVATION SCENARIO

Discussion of Phases I and II of the Project, as well as of the MRS, in relation to one another raises concerns about the adequacy of the environmental analysis for both Phase II and the MRS. An EIR must include an analysis of the environmental effects of a future phase of a project if: (1) it is a reasonably foreseeable consequence of the initial project; and (2) the future phase will likely change the scope or nature of the initial project or its environmental effects. (*Laurel Heights Improvement Ass'n v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 396.)

In relation to the Project, Phase II and the MRS satisfy both of these conditions. The MRS is a reasonably foreseeable consequence of the Project should the Port exercise its right to utilize the Maritime Reservation Area for the Inner Harbor Turning Basin expansion that it is currently studying. The fact that authorization for the MRS would be required of the Port rather than the City should not be dispositive of whether the MRS is a reasonably foreseeable consequence of the Project or not. Given that implementation of the MRS, if it occurs, would result in up to 10 acres being removed from the current Project footprint, it seems self-evident that the MRS would change the scope and nature of the Project and its environmental effects, especially with respect to the provision of open space and recreational public access.

However, the extent and level of environmental impacts analysis with respect to the MRS, and the evidence upon which this analysis is predicated, appears to be inadequate to justify the conclusion reached for many of the resource areas analyzed within the DEIR that environmental impacts under the MRS would be essentially the same as under the "baseline" Project proposal. This is particularly so for Section 4.8 Hazards and Hazardous Materials and 4.14 Recreation, as discussed more specifically within those sections of this comment letter.

RESPONSE

A-12-6 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. Comments received on the Notice of Preparation from BCDC (see Draft EIR Appendix NOP) informed the scope of the analysis in the Draft EIR.

A-12-7 This comment contains a summary of CEQA case law regarding program and project EIRs. 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 comments on whether a program or project-level EIR is appropriate for the Project and adequately analyzed, see Consolidated Response 4.1, *Project Description,* and Section 4.1.3 related to the Maritime Reservation Scenario.

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COMMENT

The project-level of analysis of Phase I of the Project compared to the less-detailed analysis of both Phase II (also referred to as "Buildout" in the DEIR) and the MRS within the DEIR suggests that the City has taken the approach of preparing a Program EIR for Phases I and II, and the MRS variant of the Project. However, the City has not clearly indicated that it has taken such an approach, and as currently drafted the DEIR does not appear to fully satisfy the requirements for undertaking a Program EIR under CEQA. In light of the above, BCDC staff believes the DEIR should be revised to make clear that it constitutes a "first-tier," project-level EIR for purposes of Phase I and that the City and the Port will subsequently tier their later environmental review for Phase II and the MRS, respectively, off of the DEIR when entitlements are necessary for these phases of the Project (Pub. Res. Code § 21094; 14 CCR § 15152(h)(3)).

A Program EIR is appropriate for, among other things, "a series of actions that can be characterized as one large project" and are related either geographically or "as logical parts in the chain of contemplated actions." (14 CCR § 15168(a)(1)-(2).) Furthermore, "A program EIR will be most helpful in dealing with later activities if it provides a description of planned activities that would implement the program and *deals with the effects of the program as specifically and comprehensively as possible*." (*Id.* § 15168(c)(5) (emphasis added).)

A-12-7

Importantly, "where individual projects are, or a phased project is, to be undertaken and where the total undertaking comprises a project with significant environmental effect, the lead agency *shall prepare a single program EIR* for the ultimate project as described in Section 15168." (14 CCR § 15165 (emphasis added).) Additionally, "where an individual project is a necessary precedent for action on a larger project, or commits the lead agency to a larger project, with significant environmental effect, *an EIR must address itself to the scope of the larger project*." (*Id.* (emphasis added).)

Given that Phase I is a necessary precedent for and would commit the City to Phase II of the proposed Project, the City should make clear that the DEIR is to be understood as a Program EIR and further must evaluate the cumulative effect of the environmental changes that will result from the combined or ultimate Project (comprising Phases I and II). While Phases I and II of the Project will not necessarily commit *the City* to the MRS, Phases I and II are a necessary precedent for action on the MRS (that is, the MRS only exists at all on account of the proposed Project). On this basis, the Program EIR should also evaluate the cumulative effect of the environmental changes that will result from the combined or ultimate project of Phases I and II and the MRS.

MITIGATION MEASURES

A-12-8

Over the course of our review, staff has noted a number of mitigation measures that, while they may have a reducing effect on a given impact, are phrased in such a way that the reductions cannot be ensured, enforced, or quantified. Staff identifies some specific examples of these measures below but may have missed similar instances in topics outside our areas of focus.

RESPONSE

A-12-8 This comment contains a summary of CEQA case law and provisions regarding mitigation measures. 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 comments on the enforceability, effectiveness, and timing of mitigation measures for the Project, see Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures,* including a discussion of Mitigation Measures BIO-1b and LUP-1a. See also Consolidated Response 4.4, *Port Operations and Land Use Compatibility*, regarding Mitigation Measure LUP-1a.

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COMMENT

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This comment regarding mitigation measures actually pertains to three related, but distinct, issues. First, mitigation measures "must be fully enforceable" (Pub. Res. Code § 21081.6(b); 14 CCR § 15126.4(a)(2)). Second, distinct from the requirement that the mitigation measures actually be enforceable, they must also be *effective* in reducing the identified impact to a less than significant level (see generally Pub. Res. Code §§ 21002, 21100(b)(3)). However, as referenced above, due to hedging, non-binding, and/or 'aspirational' language, it is not apparent that at least some mitigation measures will actually be effective because implementation of the mitigation measures cannot be shown to be guaranteed. An example of a mitigation measure for which this deficiency was identified is Mitigation Measure BIO-1b, intended to address hazards from daytime light and glare, as further discussed in the Navigational Safety section of this comment letter.

A-12-8

Third, development of mitigation measures cannot be deferred to a future time (14 CCR § 15126.4(a)(1)(B)). While specific details of a mitigation measure may be developed subsequent to project approval when it is impractical or infeasible to include those details during the project's environmental review, in such a situation the mitigation measure must at least identify both specific achievable performance standards and the types of potential actions that can achieve those performance standards (*Id*). These standards are not met for at least some mitigation measures – for example, the proposal under Mitigation Measure LUP-1a requiring development of a Boating and Recreational Water Safety Plan and Requirements to address potential hazards posed by recreational watercraft, as further discussed in the Navigational Safety section of this comment letter.

BCDC recommends that the City review the mitigation measures in this DEIR with these issues in mind. If decision-makers and the public cannot be confidently assured through the wording of a given measure that it will be implemented successfully to reduce an impact, then the DEIR should not rely on that measure to make a finding of a less than significant impact.

AB 1191

A-12-9

Page 4.10-15 contains the following statement. "BCDC reviews permits for proposed projects in the shoreline band for consistency with the McAteer-Petris Act, the Bay Plan and the Seaport Plan, as amended by AB 1191." This is not an accurate interpretation of the effect of AB 1191, as the bill did not amend either the Bay Plan or the Seaport Plan. This statement can be corrected by striking "as amended by AB 1191."

CURRENT VERSION OF THE BAY PLAN

A-12-10

On page 4.14-8, the DEIR references the Bay Plan with a citation of "BCDC, 2011." Note that the most current version of the Bay Plan is the May 2020 version,[1] which includes new Environmental Justice and Fill for Habitat Restoration policies adopted by the Commission in 2019. Prior to the revision, the most recent version available on the BCDC website was dated March 2012.

[1] https://www.bcdc.ca.gov/pdf/bayplan/bayplan.pdf.

RESPONSE

A-12-9 Per the comment, the second full paragraph of Draft EIR p. 4.10-15 is revised to read:

> BCDC reviews permits for proposed projects in the shoreline band for consistency with the McAteer-Petris Act, the Bay Plan and the Seaport Plan~~, as amended by AB 1191~~. In addition, AB 1191 authorizes BCDC to take certain actions related to the development of the Howard Terminal property and the Project notwithstanding certain Bay Plan policies that might otherwise be applicable to the Project~~, including, among other things~~:

A-12-10 The updated version of the Bay Plan is noted and the text on p. 4.14-8 of the Draft EIR has been amended to include a citation to the 2020 version of the Bay Plan. See also Consolidated Response 4.14, *Environmental Justice*. This text revision to the Draft EIR's Recreation section does not affect or alter the analysis of impacts or identification of mitigation measures in the Draft EIR.

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COMMENT

Land Use Compatibility

Section 66602 of the McAteer-Petris Act declares seaports to be among certain water-oriented land uses along the Bay shoreline that are essential to the public welfare of the Bay Area, and requires the Bay Plan to provide for adequate and suitable locations for these uses to minimize the future need to use Bay fill to create new sites for these uses. Thus, the Bay Plan designates areas for various water-oriented priority land uses within its shoreline band jurisdiction, including sites designated for port priority use. Future development proposed in priority use areas must be consistent with policies in the Bay Plan related to those areas.

A-12-11

Consistent with the Bay Plan, the Seaport Plan designates areas determined necessary for future port development as port priority use areas to reserve them for cargo handling or related uses. Port priority use areas are reserved for regional maritime port use and include within their premises marine terminals and directly related ancillary activities such as container freight stations, transit sheds and other temporary storage, ship repairing, support transportation uses including trucking and railroad yards, freight forwarders, government offices related to port activity, chandlers, and marine services. Given the regional importance of seaports and the limited amount of suitable land available to serve this land use, the Seaport Plan calls for preserving the viability of areas designated for port priority use to continue to operate and grow as needed. For example, Seaport Plan General Policy 1 states, "Local governments and the Bay Area ports should protect port priority use areas for marine terminals and other directly related port activities through their land use planning and regulatory authority."

A-12-12

BCDC has established a port priority use area at the Port of Oakland, and the Project site is included in this area. BCDC recognizes that the Port of Oakland plays a critical role in the region's economy and supply chain and that it is the only port in the Bay Area that handles container cargo. Given the Port's significance, and the limited supply of land in the Bay Area suited for marine terminal development, particularly container terminal development, any development near the Port should not impede the Port's ability to operate safely and efficiently or hinder the Port's ability to increase its capacity over time to accommodate future increases in cargo flows. Additionally, because the Port is a heavy industrial land use, any development in the vicinity should be able to coexist with the realities of heavy industrial activity, which often involve noise; frequent heavy truck traffic; the presence, use, and transport of hazardous materials; rail activity; and air pollution. It is with these considerations that BCDC reviewed the DEIR's land use analysis.

Navigation Safety

A-12-13

As part of BCDC's Seaport Plan update, staff and the Seaport Planning Advisory Committee (SPAC) have received public comment from the San Francisco Bar Pilots Association regarding concerns that stadium lighting, fireworks, and an increase in the numbers of recreational watercraft resulting from the Project could pose hazards for Bar Pilots navigating large ships through the estuary, including in the Inner Harbor Turning Basin adjacent to the Project site. These comments raise concerns related to the Bay Plan's Navigational Safety Findings, including

RESPONSE

A-12-11 This comment is a summary of provisions of the McAteer-Petris Act, Bay Plan, and Seaport Plan. This comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft EIR that would require response pursuant to State CEQA Guidelines Section 15088. Draft EIR Chapter 3, *Project Description*, acknowledges that the Project site is designated in the Seaport Plan and Bay Plan as a port priority use area (see Draft EIR pp. 3-59 to 3-60). The Draft EIR explains that the Project sponsor proposes to amend the Seaport Plan and the Bay Plan to remove the port priority use designation, and that any such determination to amend these plans would be made by BCDC. Detailed discussion of the implications of changing the port priority use designation is presented in Section 4.10, *Land Use, Plans, and Policies* (see Draft EIR Impact LUP-4, pp. 4.10-53 through 4.10-56). See also Consolidated Response 4.4, *Port Operations and Land Use Compatibility*.

A-12-12 This comment is a summary of BCDC's considerations with respect to the Port of Oakland. The comment is noted. This comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft EIR that would require response pursuant to State CEQA Guidelines Section 15088. Detailed discussion of the implications of changing the port priority use designation is presented in Section 4.10, *Land Use, Plans, and Policies* (see Draft EIR Impact LUP-4, pp. 4.10-53 through 4.10-56). See also Consolidated Response 4.4, *Port Operations and Land Use Compatibility*.

A-12-13 This comment is a summary of public comments received by BCDC on the Seaport Plan update on navigational safety and recreational watercraft and BCDC comments on recreational watercraft and Mitigation Measure LUP-1a. See Consolidated Response 4.4, *Port Operations and Land Use Compatibility.*

A-12

COMMENT

Finding a) "…Providing for safe navigation greatly enhances the region's water-related industries;" Finding b) "Mariners operating in the Bay face difficult challenges such as increasing vessel traffic, physically restricted shipping lanes, frequent shoaling, rapid weather changes, fog, strong currents, and physical obstructions;" and Finding c) "Marine accidents that result in spills of hazardous materials, such as oil, can adversely affect a variety of Bay resources." The comments also raise the concern that an increase in collisions or other accidents or of related shipping delays resulting from these navigational hazards would compromise the ability of the port to function safely or effectively. Staff appreciates that DEIR Impact LUP-2 includes consideration of these potential impacts in the evaluation the Project's land use compatibility and has the following comments on the analysis and proposed mitigation measures.

A-12-13

- **Recreational watercraft.** To address potential hazards posed by recreational watercraft, the DEIR proposes Mitigation Measure LUP-1a requiring the Oakland Athletics to prepare a Boating and Recreational Water Safety Plan and Requirements. While such a plan could help to reduce the impact, the manner in which this mitigation measure is structured does not allow us to know at this time the degree to which the plan will actually be effective and would not allow for the reduction of the impact to be enforced. To improve the mitigation measure, BCDC recommends that the text of the measure include a definition of what would constitute an effective plan so that readers are able to understand what degree of impact the DEIR considers acceptable. Additionally, in its current phrasing, there is no guarantee in the measure that the development and implementation of a safety plan will achieve the desired results, even after subsequent revisions, signage, and safety patrols. For a mitigation measure to adequately reduce the impact below a level of significance, it should define the threshold of significance and clearly indicate how the proposed actions would be effective in achieving that threshold. Otherwise, it would be more conservative to consider the impact significant and unavoidable.

A-12-14

- **Daytime glare.** Regarding hazards from light and glare, the DEIR proposes Mitigation Measure BIO-1b, which requires the Project proponents to comply with the City of Oakland's Bird Safety Measures during project design and to prepare a Bird Collision Reduction Plan for approval by the Oakland Bureau of Building prior to approval of a construction-related permit. In reviewing this mitigation measure, it is not clear which actions would specifically address the issue of glare as experienced by crews in the channel, as the measure is written in terms of impacts on birds. The DEIR should have a more detailed description under Impact LUP-2 of the components of the measure that would reduce impacts from glare, how they would do so, and to what extent. Additionally, as the measure is currently worded, it does not appear to be an enforceable measure that could ensure the desired impact reduction. Many of the "mandatory" measures cited in

RESPONSE

A-12-14 See Consolidated Response 4.18, *Effects of Light and Glare on Maritime Operations and Safety*. See also Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*, which contains revisions to Mitigation Measure BIO-1b: Bird Collision Reduction Measures in response to comments from BCDC and others. The revisions clarify requirements of the measure (including restrictions on upward beams of light) and remove references to "the maximum extent feasible."

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COMMENT

A-12-14

BIO-1b rely on language such as "minimize," "avoid," "to the extent feasible," and "promote," which cannot guarantee that the reduction of the impact is sufficient to reduce it below a level of significance. Therefore, it is not clear that the mitigated effects of daytime glare on navigation would be less than significant.

A-12-15

- **Nighttime glare.** BCDC requests the following additional information to provide context for the analyses conducted for nighttime glare.
    - In the discussion of Disability Glare, explain why the Veiling Luminance that would be acceptable to navigate on a local street with high pedestrian activity is the most apt benchmark for maritime navigation and note whether similar benchmarks have been developed specifically for maritime scenarios.
    - In the comparison of potential glare from sports lighting fixtures to existing high-mast lighting at existing active terminals, please describe the similarities and differences between the two types of lighting. Details that might affect a reader's understanding of this comparison include number of lights, density of lighting, the design or style of lights, and how the lights are or will be positioned in relation to the channel. Please also state how the European standard definition of "obtrusive light" compares to lighting that would potentially impair a navigator in the channel.
    - In the comparison of the potential sport lighting to outdoor lighting in airport environments, please introduce what IES RP-37-15 refers to and why it would provide a reliable standard. Additionally, please describe the considerations that went into their 25,000 cd limit, if that information is available, to help readers understand how these numbers correlate to an impact. And please also provide a discussion about the similarities and differences in the navigation experience between an airplane and ship pilot so that a reader may know how applicable this standard is.
    - Additionally, BCDC requests that the DEIR provide more detail connecting how Mitigation Measure LUP-1b would reduce the effects of lighting on maritime navigators specifically, as the description of the measure in Section 4.1 does not include information that clearly relates the measure to this impact. Lastly, note that similar to other comments regarding mitigation, it is not clear how this measure is able to be enforced, thus ensuring that the impact of light and glare on navigation would be reduced below the threshold of significance.

A-12-16

- **Pyrotechnic events.** While the discussion about the potential effects of fireworks on navigation presents some information about the heights that fireworks would reach, it does not present any evidence that this would not affect the ability of a Bar Pilot to safely navigate the estuary during a fireworks display. The position that because a Pilot would be "looking down" to distinguish landmarks and objects in the water that their vision would

RESPONSE

A-12-15 See Consolidated Response 4.18, *Effects of Light and Glare on Maritime Operations and Safety*. See also Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*, which contains revisions to Mitigation Measure BIO-1b: Bird Collision Reduction Measures in response to comments from BCDC and others. The measure has been revised to, among other things, clarify requirements of the measure (including restrictions on upward beams of light) and remove references to "the maximum extent feasible."

A-12-16 See Consolidated Response 4.18, *Effects of Light and Glare on Maritime Operations and Safety*. See also Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*, which contains revisions to Mitigation Measure BIO-1b: Bird Collision Reduction Measures in response to comments from BDCD and others. The measure has been revised to, among other things, clarify requirements of the measure (including restrictions on upward beams of light) and remove references to "the maximum extent feasible."

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COMMENT

A-12-16

not be impaired by a pyrotechnical display that would be occurring overhead requires additional support to be acceptable. The analysis does not discuss how a series or pattern of fireworks in various colors and intensities would affect navigability, or how the repeated illumination of the landscape and return to darkness that would occur during and between explosions would affect a Pilot's ability to safely navigate the estuary. BCDC recommends that the City explore whether the San Francisco Bar Pilots' experience in the Bay Area and/or the experience of Bar Pilots of other port cities during past fireworks displays (such as those on New Year's Eve and Independence Day) could provide useful case studies for identifying what the actual impacts would be and whether mitigation would be required and/or effective.

CIRCULATION

A-12-17

As stated under Impact LUP-2 in the DEIR, "seaport operations are sensitive to traffic and truck delays, and a level of traffic congestion or vehicular delay that might be acceptable to typical residential or commercial development may result in a significant disruption to Seaport operations. A significant disruption could result in loss of business and imperil Seaport functioning." BCDC is considering circulation impacts to the extent that they could affect the functionality of the port priority use area, as well as in terms of Bay Plan Transportation Finding a), which states that "the reliable and efficient movement of people and goods around the Bay Area is essential for the region's economic health and quality of life."

A-12-18

- **Truck parking and movement.** The DEIR analyses make the assumption that ancillary uses currently taking place at Howard Terminal will relocate to other sites within the Port and region. Because the new sites of many of the uses are uncertain, the DEIR does not go into detail about potential outcomes of the relocation, including changes in vehicle miles traveled (VMT). Unfortunately, understanding these potential outcomes is important to understanding how the change in land use at Howard Terminal could affect Port operations. While the destinations of the relocating uses are not pre-determined, the DEIR should still account for this uncertainty in the environmental impact analysis and describe what the more likely effects might be. This would allow the City to meaningfully identify potential concerns and prepare mitigation measures to avoid potentially significant impacts.

  In terms of truck parking, including overnight parking, short term parking, and container staging, the DEIR can consider where alternative truck parking sites currently exist in the region. Caltrans is currently conducting a statewide truck parking study and would be a potential source of information for this discussion. Additionally, the City should communicate with the trucking companies that service the Port for insight on what their expectations are in the event that they lose access to Howard Terminal.

RESPONSE

A-12-17 This comment is a summary of the Bay Plan's Transportation Finding regarding circulation. The comment is noted. See Consolidated Response 4.4, *Port Operations and Land Use Compatibility*.

A-12-18 See Consolidated Response 4.5, *Truck Relocation*.

A-12

COMMENT

A-12-19

The DEIR makes the claim that "all trucks currently making trips in/out of Howard Terminal will continue to make the same number of trips to and from the Seaport, to the same destinations within the Seaport, from their new locations." If trucks must find parking outside of the Port, but are still assumed to be making the same number of trips, this would seem to indicate an increase in VMT, as parking would likely be taking place farther from the terminals. It is also possible that this condition would cause the number and/or nature of trips to change. To clarify the extent to which changing truck traffic patterns could impact the DEIR's VMT and circulation-related compatibility analyses, the DEIR should provide a more detailed description of the types of parking and truck movements that take place at Howard Terminal. Only a portion of the parking is overnight parking; other uses include short-term parking and container staging, which do not have a designated relocation site at the Port. Short-term parking and container staging play important roles in the movement of cargo at the Port; thus, the circulation patterns for these uses should be considered in any Port-related transportation study. Providing this information would allow for a clearer picture of the likely impacts of relocation and whether any specific measures could be proposed to ensure that no adverse impacts would take place, even if the potential impacts are not fully known.

A-12-20

Additionally, the DEIR should consider whether there could be a cumulative impact related to truck parking, as over time, many of the locations at the port where truck parking and other ancillary uses currently take place—including the Roundhouse and Outer Harbor Berths 20-24—are anticipated to develop as active marine terminals and are considered as such in the 2019-2050 Bay Area Seaport Forecast (Cargo Forecast) prepared by The Tioga Group. Thus, the statement on page 3-61 that, based on the Cargo Forecast, the 15 acres of parking availability at the Roundhouse along with 15 acres of City-provided parking would be sufficient for meeting overnight parking needs through 2050 is not correct. Additionally, in the near term, the Port of Oakland is contemplating the development of a dry bulk terminal at Berths 20-22 that would displace existing parking and other ancillary uses. The DEIR should consider where those uses may be relocating, as it may affect the available capacity at those sites for uses relocating from Howard Terminal.

A-12-21

Lastly, the DEIR states that "the existing tenants and users of Howard Terminal are assumed to move to other locations within the Seaport..., the City, or the region where their uses are permitted under applicable zoning and other regulations;" however, the DEIR should consider the possibility that some amount of the relocated trucks may attempt to park illegally, whether knowingly or unknowingly, in the areas near the Port. This could include in West Oakland, which has historically been disproportionately affected by the environmental and health impacts of truck traffic to and from the Port and has been working to reduce the presence of trucks in the neighborhood. This is an environmental

RESPONSE

A-12-19 See Consolidated Response 4.5, *Truck Relocation*.

A-12-20 See Consolidated Response 4.5, *Truck Relocation*.

A-12-21 See Consolidated Response 4.5, *Truck Relocation*, and Consolidated Response 4.14, *Environmental Justice*, and Consolidated Response 4.4, *Port Operations and Land Use Compatibility*.

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COMMENT

A-12-21

justice issue related to air quality and safety, as well as to the compatibility issue of Port traffic congestion and merits a more detailed discussion of potential impacts and how the impacts would be avoided or mitigated.

A-12-22

BCDC understands that parking and congestion are no longer CEQA topics under Appendix G and are not part of the City of Oakland's CEQA significance criteria. However, both of these topics, considered in combination with the other circulation changes anticipated under the Project, are important to understanding how the Project could affect Port operations, and therefore to assessing land use compatibility. If, after examining the additional data suggested above, the DEIR is still unable to project the magnitude or nature of the impacts resulting from the displacement of ancillary uses from Howard Terminal, it should still provide a more thorough discussion about the uncertainties, whether significant impacts are possible, and how the City may avoid any potential significant impacts.

A-12-23

- **Projected cargo growth.** In May 2020, BCDC completed the Cargo Forecast for the ongoing Seaport Plan update. As the growth projected in the forecast is likely to translate into more freight movements, whether by rail or truck, please clarify whether a similar level of growth is captured in the models and assumptions used in the transportation analysis. Staff request that a brief discussion be added to show the two perspectives on freight demand and how they do or do not relate to one another. If the City finds that the growth projected in the cargo forecast is not reflected in the transportation demand models, then BCDC would be concerned that a potential source of truck or rail traffic is missing from the DEIR analysis.

A-12-24

- **3rd Street Corridor.** Staff noted that the Project proposes to incorporate transit, bicycle, and pedestrian routing on the 3rd Street corridor, which is also designated as the heavyweight truck corridor. The DEIR should consider any potential safety hazards or traffic impacts that may result from this combination of roadway users.

A-12-25

- **West Oakland Community Action Plan.** In Section 4.15.1 of the DEIR, in the list of Planned Transportation Network Changes, staff noted that there is only one entry under the West Oakland Community Action Plan (WOCAP). BCDC has reviewed this plan and found strategies related to transportation improvements and truck management that may warrant inclusion here.[2] The WOCAP was developed by the West Oakland community and the Bay Area Air Quality Management District to address air quality concerns in the neighborhood, many of which are related to its proximity to the Port. As this is a land use

[2] https://www.baaqmd.gov/community-health/community-health-protection-program/west-oakland-community-action-plan.

RESPONSE

A-12-22 To the extent that vehicle trips to and from the proposed Project contribute to traffic congestion and become a land use compatibility concern, this issue has been included in the analysis of Impact LUP-2 beginning on p. 4.10-33 of the Draft EIR.

As discussed in Consolidated Response 4.5, *Truck Relocation,* potential physical environmental impacts of tenant displacement are assessed in the Draft EIR to the extent that this is feasible without knowing where tenants would relocate to; and the Draft EIR declines to speculate, except to say that tenants would relocate elsewhere in the Seaport, the city, or the region, where permitted by local zoning. Possible locations in the Seaport/Oakland Army Base are discussed, as are zoning and planning restrictions and truck parking prohibitions under the West Oakland Truck Management Plan that would preclude relocation to West Oakland.

As discussed in Consolidated Response 4.4, *Port Operations and Land Use Compatibility*, the potential for disruption of economic activity at the Port is a matter for consideration by the Port Commission and the City Council, and is not a CEQA issue.

A-12-23 This comment refers to the Tioga Report (2019 to 2050 Bay Area Seaport Forecast), which was referenced in the Draft EIR (see Draft EIR pp. 4.10-55 –

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56).[52] See Consolidated Response 4.5, *Truck Relocation,* for a discussion of cumulative traffic volumes derived from the Alameda County Transportation Commission (Alameda CTC) travel demand model in comparison to the Tioga Report forecast.

A-12-24 See Draft EIR p. 4.15-45, which states that the overweight trucks have been incorporated into the analysis of the proposed Project. The transportation data collected for the Draft EIR (Chapter 4.15) included multimodal intersection counts on 3rd Street and included the number of trucks. These trucks were considered in all of the intersection operations analysis (Draft EIR Appendix TRA.3) and incorporated into the traffic forecasts (Appendix TRA.4). The transportation impact on the 3rd Street corridor is discussed on Draft EIR p. 4.15-119. Mitigation Measure TRANS-3b includes measures along 3rd Street between Market Street and Broadway to close gaps in the pedestrian network by converting diagonal and perpendicular parking to parallel parking, to provide a pedestrian path of travel between buildings and parking where no sidewalk exists today. In addition, the Transportation Management Plan (TMP) required in Mitigation Measure TRANS-1b would include traffic control officers and other traffic management tools to minimize Project-related automobile circulation in the blocks adjacent to the Project site including 2nd, 3rd, and 4th Streets. The TMP would also include traffic control officers to direct ballpark event attendees from the West Oakland BART station to use the 7th Street corridor, rather than 3rd Street, to access the Project.

The Project would also realign and redesign Embarcadero West and Market Street, including at-grade railroad crossing improvements, to accommodate the tractor trailer trucks from Schnitzer Steel and the Project and so the design would accommodate the overweight trucks using the same streets. The Embarcadero West and Market Street improvements at the railroad tracks would need to be designed to comply with CPUC requirements as they are the permitting agency for railroad changes.

The Draft EIR does not contemplate substantial bicycle use on 3rd Street by ballpark attendees. As shown in Draft EIR Figure 4.15-45 bicyclists destined for the ballpark are expected to use Martin Luther King Jr. Way and Washington Street as well as 2nd Street. The City of Oakland Bike Plan does propose protected bike lanes on 3rd Street. But, because it is unlikely 3rd Street would

[52] The Tioga Group and Hackett Associates, 2020. 2019-2050 Bay Area Seaport Forecast. Prepared for SF Bay Conservation and Development Commission. May 22, 2020. https://www.bcdc.ca.gov/seaport/2019-2050-Bay-Area-Seaport-Forecast.pdf, accessed November 11, 2020.

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be used by ballpark attendees, the protected bike lanes for 3rd Street were not incorporated into the recommended transportation improvements for the proposed Project (Draft EIR Section 4.15.4).

A-12-25 In response to this comment, the following measures are added to Draft EIR p. 4.15-55 under the heading "West Oakland Community Action Plan" and to Draft EIR Table 4.15-41, Consistency Analysis, on p. 4.15-226:

> Strategy 38: The City of Oakland, consistent with the West Oakland Truck Management Plan: (1) improves training for police officers, community resource officers, and parking control technicians who issue truck and trailer parking tickets; (2) changes the parking regulations so they are easier to enforce; (3) increases truck parking fines; (4) targets enforcement at specific times and locations; and (5) improves signage directing drivers to available truck parking.
>
> Strategy 39: The City of Oakland, consistent with the West Oakland Truck Management Plan: (1) improves signage regarding existing truck routes; (2) works with businesses on preferred routes to use when destinations are not located on truck routes; and (3) adds to, or changes, truck routes and prohibited streets.
>
> Strategy 40: The City of Oakland, consistent with the West Oakland Truck Management Plan, implements, in consultation with West Oakland residents, traffic calming measures to keep truck traffic off residential streets.
>
> Strategy 56: The City of Oakland implements the broad array of bicycle and pedestrian improvements identified in the West Oakland Specific Plan, the 2019 Oakland Bike Plan, and the 2017 Oakland Walks Pedestrian Plan.

See Response to Comment A-12-26 related to land use compatibility and air quality.

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COMMENT

A-12-25 compatibility issue that is closely related to the land use compatibility discussion around the Project, staff recommends incorporating more of the findings and strategies into the DEIR analysis and mitigations wherever appropriate.

AIR QUALITY

As stated in Section 4.10 of the DEIR, the extent to which air pollutant emissions would expose new residents to substantial health risks could indicate a fundamental conflict with nearby or adjacent land uses and the need for mitigation.

A-12-26
- In the air quality analyses in Section 4.2, Impact AIR-2 (operational impacts), Impact AIR-1.CU (cumulative regional air quality impacts associated with criteria pollutants), and AIR-2.CU (cumulative health risk to sensitive receptors) were all found to be significant and unavoidable. It is not entirely clear how Impact LUP-2 finds that the same air quality impacts would be considered less than significant and not a fundamental land use conflict in terms of potential health risks. As discussed in the next bullet point, LUP-1c, as it is written, does not demonstrate how siting and buffers would reduce potential impacts below a threshold of significance. Additionally, the analysis states that while background levels of pollutants and TACs at the Project site pose health risks to proposed on-site sensitive receptors and would be significant and unavoidable under cumulative conditions, they would be reduced "to the extent feasible" with listed mitigation measures. However, "to the extent feasible" does not automatically equate to "to below a level of significance." For this impact to be considered less than significant, the analysis needs to quantify exposure to harmful pollutants in projected with-Project conditions, describe potential health risks and define a level of significance for exposure to risks, and demonstrate how any exposure above that level of significance will be mitigated.

A-12-27
- Mitigation Measure LUP-1c requires the use of land use siting and buffering strategies to reduce potential air quality impacts for sensitive receptors. While the proposed strategy and overall principle of using thoughtful siting and design could reduce air quality impacts, this mitigation measure must also include a means of quantifying the impact reduction of these strategies or the strategies used in the final site plan in order to assume that it would help reduce the impact below a level of significance. While "scientific evidence indicates" that strategies in CARB's Technical Advisory can decrease exposure to air pollution, the mitigation measure is not clear that a given combination of these strategies would decrease exposure by a certain amount in order to reduce significance. Defining the level of significance would help to establish a target for this mitigation measure to achieve.

A-12-28
- Mitigation Measure AIR-2d seeks to reduce diesel truck emissions. In addition to the strategies already included, this measure should provide for a comprehensive truck parking strategy.

RESPONSE

A-12-26 As disclosed in the Draft EIR, the Project would include proposed residential and office/commercial uses located near existing Port uses (which include many pollutant sources including heavy-duty trucks, diesel locomotives, off-road equipment, stationary sources, and waterborne vessels), industrial uses (Schnitzer Steel and other stationary pollutant sources), and railroads (diesel locomotives), exposing new uses to sources of diesel exhaust emissions and other toxic air contaminants (TACs). As explained below, the Draft EIR appropriately analyzes the land use impacts of locating the Project uses in this area under the City's adopted CEQA thresholds.

Generally, CEQA does not require an agency to consider the effects of existing environmental conditions on a proposed project's future users or residents, except to the extent that the proposed project will exacerbate those conditions. (see *California Building Industry Association v. Bay Area Air Quality Management District* (2015) 62 Cal.4th 369.)

Under the City of Oakland's adopted CEQA significance thresholds, a project would have a significant impact on the environment if it would result in a fundamental conflict between adjacent or nearby land uses. The City of Oakland does not have a quantitative threshold for this standard. For the purpose of the Draft EIR analysis, a "fundamental conflict with nearby or adjacent land uses" means that the characteristics of one land use disrupt or degrade adjacent land uses to such a degree that the functional use of the adjacent land for its existing or planned purpose is imperiled (see Draft EIR p. 4.10-32).

In evaluating this standard with the respect to the Project, the Draft EIR considers whether the location of the Project residential and office/commercial uses would exacerbate existing conditions so to disrupt or degrade nearby Port and industrial land uses to such a degree that the functional use of those nearby uses is imperiled. The Draft EIR notes to the extent that exposing new residents to existing sources of diesel exhaust emissions and other TACs may exacerbate health risks, this could indicate a fundamental conflict with nearby or adjacent land uses and the need for mitigation (see Draft EIR p. 4.10-45). Of concern was the possibility that bringing residential and commercial uses to the area would result in incompatibility that could affect the future operation of the Port and nearby industrial uses.

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RESPONSE

The Draft EIR acknowledges the air quality–related TAC impacts (Draft EIR Impacts AIR-5 and AIR-2.CU, pp. 4.2-108 through 4.2-119 and pp. 4.2-140 through 4.2-159, respectively). In addition, the Draft EIR contains data regarding cumulative TAC and $PM_{2.5}$ emissions at the Project site to inform where modeled emissions concentrations are highest on the site. High background (existing) levels of pollutants and TACs at the Project site pose potential health risks to proposed on-site sensitive receptors, and under cumulative conditions, air quality–related impacts on on-site sensitive receptors would be potentially significant and unavoidable. However, the Draft EIR identifies Mitigation Measures AIR-1b, AIR-1c, AIR-2c, AIR-2d, AIR-2e, AIR-3, AIR-4a, AIR-4b, and AIR-2.CU to reduce the magnitude of air quality impacts under cumulative conditions to the maximum extent feasible (see Draft EIR Impact AIR-2.CU, pp. 4.2-140 through 4.2-159). In particular, Mitigation Measure AIR-4a requires the installation of MERV16 Filtration System at all residential buildings on the Project site that will result in less than significant impact under the Health Risk Assessment (Impact AIR-5).

These air quality thresholds of significance are not appropriate for determining a fundamental land use conflict. A "fundamental land use conflict" is a qualitative standard based on disruption or degradation of nearby land uses, and thus does not translate to a quantified threshold. Lead Agencies have discretion to formulate their own significance thresholds (See State CEQA Guidelines Section 15064.7(b)). Appropriately for a land use threshold, the Draft EIR considers land use siting and planning strategies for assessing land use conflicts and determining measures that would reduce potential conflicts that could affect future operation of the Port and industrial uses. As discussed in the Draft EIR, this analysis relies on guidance from the California Air Resources Board's (CARB's) *Air Quality and Land Use Handbook,* which provides information on siting situations and preventative actions.[53] Land use siting is also under the control of the City. With regard to other planning and buffering strategies, scientific evidence indicates that implementing the strategies contained in CARB's *Technical Advisory: Strategies to Reduce Air Pollution Exposure Near High-Volume Roadways*, including building and streetscape design principles, solid barriers, and

[53] California Air Resources Board. 2017. *Technical Advisory: Strategies to Reduce Air Pollution Exposure Near High-Volume Roadways.* April 2017.

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vegetated buffers, can decrease exposure to air pollution in a variety of locations and contexts.[54]

Mitigation Measure LUP-1c: Land Use Siting and Buffers would incorporate these strategies by imposing siting limitations to physically separate sensitive land uses and strategies. Sensitive proposed Project uses would be buffered from nearby Port, rail, and industrial operations. Prohibiting residential uses west of Myrtle Street would separate potential on-site sensitive receptors from Port and industrial operations west of the Project site, and would place residential uses more than 1,000 feet from the Union Pacific Railroad (UPRR) railyard northwest of the Project site, consistent with the guidance in CARB's land use handbook. Buffering strategies included in Mitigation Measure LUP-1c would promote airflow and pollutant dispersion, and scientific evidence indicates that implementing those strategies contained in CARB's *Technical Advisory* can decrease exposure to air pollution in a variety of locations and contexts (Draft EIR p. 4.10-50).

The buffering strategies in Mitigation Measure LUP-1c that would promote airflow and pollutant dispersion, combined with Mitigation Measures AIR-1b, AIR-1c, AIR-2c, AIR-2d, AIR-2e, AIR-3, AIR-4a, AIR-4b, and AIR-2.CU, would reduce air quality impacts on sensitive receptors on-site. This would provide a greater physical separation between potentially incompatible uses and minimize adverse effects that could affect the future operation of the Port and nearby industrial uses. Therefore, with implementation of these mitigation measures, the proposed Project would not result in a fundamental conflict with nearby or adjacent land uses that would disrupt or degrade adjacent land uses to such a degree that the functional use of the adjacent land for its existing or planned purpose is imperiled due to air quality (see Draft EIR p. 4.10-49).

A-12-27 There is no requirement under CEQA that all mitigation measures have quantitative performance standards, especially where the impacts themselves are qualitative, such as a fundamental land use conflict. In addition, Mitigation Measure AIR-4a requires the installation of MERV16 Filtration System at all residential buildings on the Project site that will result in less than significant impact under the Health Risk Assessment (Impact AIR-5). See Response to Comment A-12-26.

[54] California Air Resources Board. 2005. *Air Quality and Land Use Handbook: A Community Health Perspective.* April 2005.

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COMMENT		RESPONSE
A-12-28	Mitigation Measure AIR-2d would require implementation of health risk reduction measures that would be applicable to project-related trucks. Item 5 requires that the Project sponsor establish "truck routes to avoid sensitive receptors in the Project" and "a truck route program, along with truck calming, parking, and delivery restrictions, shall be implemented." In addition, the City of Oakland has approved The West Oakland Truck Management Plan, which proposes to update the Oakland Municipal Code to prohibit truck parking on most streets in and around the neighborhood and prohibit unattached trailers throughout Oakland. As noted on Draft EIR p. 4.2-40, the West Oakland Truck Management Plan was prepared to reduce the effects of trucks serving the Port of Oakland and redevelopment on the former Oakland Army Base on local streets, in compliance with Mitigation Measure 4.3-7 of the Oakland Army Base EIR. See Consolidated Response 4.5, *Truck Relocation*, for additional discussion.	

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COMMENT

RESPONSE

A-12-29

- The conclusion to the air quality analysis for Impact LUP-2 states "… the Project would not interfere with adjacent Port, rail, or industrial operations, and would not result in a fundamental land use conflict in this regard." This is not the appropriate conclusion for this impact analysis, as the impact being discussed is the potential for the Project to site sensitive uses in an area where air quality could expose the site's users to health risks, not necessarily whether the Project's air quality impacts would affect neighboring industrial operations. Please reconsider this conclusion, particularly in light of the above comments.

OTHER NOTES

A-12-30

- In Figure 4.10-4, it may be useful for the discussion to include labels for BCDC's current Bay and shoreline band jurisdictions.
- Page 4.15-56 includes the following statement: "(including the Roundhouse parking adjacent to Howard Terminal)." Please note that the Roundhouse is not adjacent to Howard Terminal, but rather is on the other side of Schnitzer Steel.

A-12-31

- On page 4.10-56, make the following addition: "…minimum necessary to accomplish the purpose, there is no upland alternative…." BCDC also suggests citing Government Code Section 66605 as the source for these requirements as the Government Code provides additional details and includes requirements not listed in this paragraph.

A-12-32

- On page 4.10-57, the DEIR characterizes the new fill associated with the Project as "a small amount of permanent Bay fill from the relocation and construction of stormwater and drainage, as needed, and the limited addition of in-water piles for the reinforcement of waterfront areas." However, as BCDC's Bay jurisdiction extends into existing fill at the Project site, which was placed subsequent to the creation of BCDC, including much of the wharf, any fill occurring on those areas—such as fill to raise the elevation of the site—would also be considered new Bay fill (14 CCR § 10710).

Sea Level Rise

A-12-33

The Bay Plan includes a Climate Change section, which recognizes the various ways climate change and related rises in sea level could affect the communities in BCDC's jurisdiction, particularly through sea level rise and flooding. Findings and policies in this section establish a basis for evaluating projects based on their resiliency to projected rises in sea level. In BCDC's letter in response to the NOP, staff advised the City to incorporate an analysis of sea level rise vulnerabilities and impacts in the DEIR, as well as provide a description of adaptation measures planned for the Project and their potential effects. In BCDC's review of the DEIR, staff found references to sea level rise in Section 4.9. The following comments seek to improve the quality of the background information and analysis provided this section. Additionally, BCDC urges the City to incorporate the findings from the sea level rise analysis in other areas of the DEIR, as a number of other resource areas could potentially be affected.

A-12-29 See Response to Comment A-12-26 regarding the conclusion of Impact LUP-2 related to land use compatibility and air quality.

A-12-30 The intent of Figure 4.10-4 is to illustrate the approximate shoreline location at the time the McAteer-Petris Act was enacted in September 1965, the original 100-foot shoreline band jurisdiction, and the approximate area of fill authorized by BCDC since that time (see Draft EIR p. 4.10-13). In response to the comment, the Draft EIR has been amended to add labels to Figure 4.10-4 on p. 4.10-14, depicting BCDC's current bay and shoreline band jurisdiction. The revised figure is presented in Chapter 7, *City-Initiated Updates and Errata to the Draft EIR*. In addition, the first full paragraph of Draft EIR p. 4.15-86 is revised to read:

> As discussed in Chapter 3, Project Description, the Howard Terminal portion of the Project site is approximately 50 acres. With development of the proposed Project, the existing tenants and users of Howard Terminal are assumed to move to other locations in the Seaport (including the Roundhouse parking adjacent to the Schnitzer Steel property~~Howard Terminal~~), the City, or the region where their uses are permitted under applicable zoning and other regulations.

A-12-31 In response to the comment, the second full paragraph of Draft EIR p. 4.10-56 is revised to read:

> As explained in Section 4.10.2, the McAteer-Petris Act and the Bay Plan14 restrict the types of projects for which fill may be authorized. BCDC interprets these regulations as applying both to projects proposing new fill, as well as projects which would utilize or rely upon previously authorized Bay fill (BCDC, 2019). Pursuant to the McAteer-Petris Act Section 66605, for new Bay fill to be approvable, it must be demonstrated that the fill is the minimum necessary to accomplish the purpose, there is no upland alternative, and the fill will not conflict with public access or enjoyment of the Bay or waterfront…

A-12-32 Per the comment, the first two paragraphs of Draft EIR p. 4.10-57 are revised to read:

> As described in Section 3.10.2 of the Project Description, the Project could require a small amount of permanent new Bay fill where none presently exists from the relocation and construction of stormwater and drainage, as needed, and the limited addition of in-water piles for the

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reinforcement of waterfront areas, within an area of no more than 0.01 acre (500 square feet), to support the cranes. The environmental effects of potential pile installation to support cranes is addressed in Section 4.3, Biological Resources. Given the small amount of potential new permanent fill proposed and that the potential piles would not obstruct Bay or waterfront access or use, potential permanent fill for the crane support piles would not be expected to conflict with applicable BCDC Bay fill regulations. At the time of McAteer-Petris Act's passage in September 1965, the Project site's shoreline was landward of its current location. In the years subsequent to that date, BCDC authorized fill placement for port-related purposes, resulting in an approximately 17-acre bayward expansion of the site (Catellus, 2019). The approximate locations of the current and 1965 shorelines are presented in Figure 4.10-6.

Development of those portions of the Project that lie within the Commission's Bay jurisdiction, including the ballpark, parks and open space, and associated improvements on top of the existing Howard Terminal fill and wharf structure, would be evaluated by BCDC in light of AB 1191. AB 1191 requires all BCDC jurisdictional bay fill lands to remain subject to the public trust and authorizes BCDC, in considering permits for the Project, to find that the ballpark, public trust, and public open space uses that lie within the BCDC jurisdictional bay fill lands are water-oriented uses, if BCDC finds that certain conditions are met. Thus, project components proposed for such filled areas must be evaluated consistent with the conditions in AB 1191, which address ballpark and open space design, public access, views, and activation of public open spaces. Determinations of Project consistency with these conditions will ultimately be made by BCDC through the permit process, which will include review of the Project's proposed appearance and design by the agency's Design Review Board. Through issuance of a permit, consistent with the conditions in AB 1191, the Project's potential conflicts with BCDC's Bay fill policies would be resolved, and the Port would require that the Project sponsor consult with and obtain the required permits from BCDC for the Project as a condition to commencing construction of any portion of the Project within BCDC's jurisdiction. With BCDC approval, the Project would not conflict with the agency's regulations governing use of Bay fill, and the impact would be less than significant. In the absence of such approval, the Project could not proceed.

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COMMENT		RESPONSE
A-12-33		See Responses to Comments A-7-6 and A-7-8 regarding the Project's resiliency to sea level rise, in addition to planned sea level rise impacts and adaptive measures. Part of this comment is introductory remarks that summarize more specific BCDC comments that follow.

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COMMENT

BCDC CLIMATE CHANGE POLICIES AND ADAPTING TO RISING TIDES

Please note that some of the references to BCDC's Climate Change Policies and the Adapting to Rising Tides (ART) program is incorrect.

On page 4.9-7, the DEIR states (emphasis added):

> "The projections in Table 4.9-1 are similar to, though somewhat higher than, BCDC's most recent consideration of sea level rise (e.g., BCDC's 2017 ART Bay Area Sea Level Rise Analysis and Mapping Project), which is **based upon the 2013 California State guidance for sea level rise projections** described above. According to the 2013 study, the State's range for sea level rise relative to 2000 levels was for an increase of between 0.4 to 2.0 feet by 2050 and 1.4 to 5.5 feet by 2100 (BCDC, 2017). Although BCDC's ART analysis and mapping **used the older sea level rise projections**, BCDC acknowledges that the more recent 2018 OPC guidance will help local agencies update their analysis and decision-making (BCDC, 2019a)."

A-12-34

This statement is inaccurate and misrepresents BCDC's work and the methodology used. The 2017 Mapping Project is not based on the State Guidance or projections. The inundation mapping conducted for that report was based on Water Surface digital elevation model (DEM) and Land Surface DEM. The 2017 mapping data does not provide a probability or expected timing of future sea level rise, but instead created maps that show where increased water levels will impact the Bay shoreline and inland areas based on the two DEM layers.

As stated in the 2017 report, "the SLR [sea level rise] inundation maps produced as part of this project have the flexibility to be interpreted and applied to ever-changing SLR projections and do not require adoption of specific SLR amounts to be useful." The 2017 mapping data includes spatial mapping data for a range of scenarios (not projections) that include Mean Higher High Water (MHHW), which is the baseline elevation at a given shoreline, plus a rise in sea level from 12 inches to 108 inches, with 10 water levels in total.[3] In addition to each of those water levels, the mapping data also includes how Extreme Tides (Storm Surge) would additionally raise water levels with a 1-year to 100-year storm (seven water levels in total). The 2017 mapping data provided the basis for BCDC's interactive ART Bay Area Shoreline Flood Explorer.[4]

A-12-35

Similarly, page 4.9-30 of the DEIR states, "BCDC's most recent analysis of sea level rise (e.g., its 2017 ART Project) used OPC's 2013 sea level rise projections, which fall between OPC's 2018 low and medium-high risk aversion projections." Note that BCDC's most recent analysis of sea level rise impacts and consequences is in the 2020 ART Bay Area Report. Additionally, neither the 2017 study cited in the DEIR nor the 2020 ART Bay Area Report use or depend on sea level rise projections and do not provide projections tied to timelines. This line should be deleted.

[3] Water level refers to Total Water Level (TWL), the combination of tides, storm surge, and sea level rise at the shoreline.
[4] https://explorer.adaptingtorisingtides.org/explorer.

RESPONSE

A-12-34 The intent of this paragraph was not to describe the details of the Adapting to Rising Tides 2017 mapping methodology. The intent was to compare BCDC guidance available at the time the Draft EIR was prepared with the state guidance (OPC 2018) upon which the Draft EIR's impact analysis was based.

Since the Draft EIR was prepared, BCDC has released its 2021 *San Francisco Bay Plan Climate Change Policy Guidance*.[55] (See Comment A-12-35 below.) Because this document explicitly states that "BCDC considers the best estimates of future sea level rise to be those provided in the State of California Sea-Level Rise Guidance: 2018 Update," the text in Draft EIR Section 4.9.1 that provides a comparison with BDCP (2017) is no longer required and has been deleted from the Final EIR.

The text on Draft EIR p. 4.7-9 has been modified as follows:

> The projections in Table 4.9-1 are from the same source, OPC (2018), that "~~similar to, though somewhat higher than,~~ BCDC '~~s most recent~~ considers~~ation~~ the best estimates of future sea level rise" (~~e.g.,~~ BCDC 2021'~~s 2017 ART Bay Area Sea Level Rise Analysis and Mapping Project), which is based upon the 2013 California State guidance for sea level rise projections described above. According to the 2013 study, the State's range for sea level rise relative to 2000 levels was for an increase of between 0.4 to 2.0 feet by 2050 and 1.4 to 5.5 feet by 2100 (BCDC, 2017). Although BCDC's ART analysis and mapping used the older sea level rise projections, BCDC acknowledges that the more recent 2018 OPC guidance will help local agencies update their analysis and decision-making (BCDC, 2019a)~~.

These changes to the Draft EIR are made only to clarify the relationship between BCDC guidance and the sea level rise analysis used in the Draft EIR. As such, these changes do not change the findings of the Draft EIR's impact analysis for sea level rise.

A-12-35 As discussed in Response to Comment A-12-34, the purpose of discussing prior guidance documents was to compare BCDC guidance available at the time the Draft EIR was prepared with the state guidance (OPC 2018) upon which the Draft EIR's impact analysis was based. With the release of BCDC's

[55] BCDC, 2021. *San Francisco Bay Plan Climate Change Policy Guidance*, July 2021.

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2021 guidance, the older guidance documents no longer need to be mentioned. Draft EIR Section 4.9.4 (p. 4.9-30) has been revised accordingly:

> As discussed in Section 4.9.1, *Environmental Setting*, the current projections for San Francisco Bay sea level rise in 2050 are 1.1 feet under the low risk aversion projection, or 1.9 feet under a medium-high risk aversion projection; and in 2100 to be 2.4 to 3.4 feet under the low risk aversion projection, and 5.7 to 6.9 feet under the medium-high risk aversion projection (Cal OPC, 2018). BCDC's most recent ~~analysis of~~ sea level rise guidance (~~e.g., its~~BCDC 2021~~17 ART Project~~) considers ~~used OPC's 2013 sea level rise projections, which fall between~~ OPC's 2018 ~~low and medium-high risk aversion~~ projections to be the best estimates of future sea level rise. Hence, the 2018 OPC medium-high risk scenarios used to assess the Project are consistent with ~~consider a higher sea level rise of up to 6.9 feet, as compared to~~ BCDC's 2021 guidance~~ART mapping, which considered up to 5.5 feet. Although BCDC's ART analysis and mapping used the older sea level rise projections, BCDC acknowledges that the more recent 2018 OPC guidance will help local agencies update their analysis and decision-making (BCDC, 2019a)~~. Additionally, AB 1191 requires that plans for the Project account for 100-year storm events, wave run-ups, king tides, and other extreme high tides associated with the medium-high risk aversion for the high-risk emissions scenario through 2100. AB 1191 also requires consideration of the H++ scenarios as defined by the Ocean Protection Council, for purposes of risk management, by outlining adaptation pathways that would be implemented as contingency plans to ensure resiliency if H++ scenarios occur. Accordingly, the extreme risk aversion projection (H++ scenario) is also presented in this analysis for informational purposes only.

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A-12-35 In the same paragraph, the statement "as compared to BCDC's ART mapping, which considered up to 5.5 feet" should also be deleted, as the source of this number is not clear, and the statement is incorrect. The 2017 mapping study includes 10 total water levels that show flood maps up to 108 inches Total Water Level (TWL).

A-12-36 On page 4.9-13, the DEIR states that BCDC "has regulatory jurisdiction over the Bay shoreline." This should read "over the Bay and the Bay shoreline." To ensure clarity, the DEIR should specify that the requirements for sea level rise vulnerability and risk assessments are established in the Climate Change Policies of the Bay Plan, specifically Climate Change Policies 2 and 3.

A-12-37 On page 4.9-33, remove "and is above the guidance range (2.6-5.5 feet) from BCDC," as the BCDC mapping study does not give guidance or a range of projections connected to a time horizon.

A-12-38 Also on page 4.9-3, note that the reports listed in the second paragraph on BCDC are not "within BCDC jurisdiction," and it is not clear what "within BCDC jurisdiction" is intended to mean in this context. ART studies are non-regulatory, planning level studies that are not exclusive to any jurisdiction. Staff suggests this replacement:

> BCDC's Adapting to Rising Tides (ART) program provides resources and support to local jurisdictions on sea level rise adaptation planning. The following reports in this area that were conducted or supported by the ART program include: *Adapting to Rising Tides Alameda County Subregional Project* (BCDC, 2019b), *Oakland/Alameda Resilience Study* (BCDC, 2016), *Capitol Corridor Joint Powers Authority Sea Level Rise Vulnerability Assessment* (2014),[5] and *the Adapting to Rising Tides Bay Area: Regional Sea Level Rise Vulnerability and Adaptation Study* (2020).[6]

The Capital Corridor study identifies vulnerabilities along the rail corridor, including vulnerabilities of specific assets, such as railroad tracks at grade, railroad signal systems, railroad bridges, stations, and the Oakland Maintenance Facility. The report also includes Focus Areas, including Oakland. The project area is adjacent to the railroad tracks and as a networked system, impacts from flooding in one location would impact the entire network.

The ART Bay Area Study evaluates flooding exposure and consequences to four regional systems: transportation networks, vulnerable communities, priority development areas (PDAs), and priority conservation areas (PCAs). The project area is within an area identified by the ART Bay Area report as a "regional hot spot," meaning that it contained multiple regional assets with among the highest consequences of impact from sea level rise. This hot spot was driven by impacts to the Downtown and Jack London Square PDA and impacts to existing, future, and

[5] http://www.adaptingtorisingtides.org/wp-content/uploads/2015/04/CCJPA-SLR-Vulnerability-Assessment_Final.pdf.
[6] - http://www.adaptingtorisingtides.org/wp-content/uploads/2020/03/ARTBayArea_Regional_Transportation_Final_March2020_ADA.pdf.

RESPONSE

A-12-36 In response to the comment, the first paragraph regarding BCDC jurisdiction and specific Bay Plan Climate Change policies on Draft EIR p. 4.9-13 has been changed as follows:

> The San Francisco Bay Conservation and Development Commission (BCDC) has regulatory jurisdiction over the Bay and the Bay shoreline. (See Section 4.10, *Land Use, Plans and Policies*, for a discussion and map of areas of the site in BCDC's jurisdiction, including the original 100-foot shoreline band and areas of fill permitted subsequent to creation of BCDC.) BCDC's policies for assessing sea-level rise vulnerability and risk are established in the Climate Change Policies 2 and 3 of the Bay Plan. Sea level rise vulnerability and risk assessments are required when planning shoreline areas or designing larger shoreline projects in BCDC's jurisdiction. Risk assessments must be based on the best available estimates of future sea level rise. New projects on Bay fill, likely to be affected by future sea level rise and storm surge activity during the life of the project, must meet additional requirements, and when feasible, integrate hard shoreline protection structures with natural features that enhance the Bay ecosystem (e.g., including marsh and/or upland vegetation).

A-12-37 The text has been removed from Draft EIR Section 4.9.4, p. 4.9-33, as requested (deletions are ~~crossed-out~~):

> The Project site would be elevated such that proposed grades include an allowance for sea level rise. As described in Chapter 3, Project Description, the Project's proposed grading plan calls for the addition of soil throughout much of the Project site to raise the ground surface elevations. In addition, the finished floor elevations of all residential buildings on the site, except development block #18 at the corner of Embarcadero West and Clay (see Figure 4.9-1), are proposed to be at or above 10 feet COD to accommodate future increases in the base flood elevation (BFE) due to future sea level rise (see Table 4-9.1 in the Environmental Setting). At an elevation of 10 feet COD, the finished floors would remain above the BFE for up to 6.1 feet of sea level rise. This amount of sea level rise by 2100 falls with the guidance range (5.7-6.9 feet) for medium-high risk aversion from the state (Cal OPC, 2018)~~, and is above the guidance range (2.6-5.5 feet) from BCDC~~. Although the elevations for the proposed finished floors only fall within, not above, the medium-high risk aversion range for 2100, the incremental difference of

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0.8 feet does not cause substantial additional risk, since minimal adaptations, such as subtle modifications to grades, would be required to keep up with rising sea levels under the medium-high risk aversion scenario. Additionally, the medium-high risk aversion projection has only a 0.5 percent probability of being exceeded (Cal OPC, 2018) and the proposed finished floor elevation meets the medium-high risk aversion sea level rise range through 2090 (Table 4.9-1).

A-12-38 This comment contains summaries of certain studies related to sea level rise issues. In response to the comment, the second paragraph under the BCDC heading on p. 4.9-13 has been modified as shown below:

~~Within BCDC jurisdiction are the~~ BCDC's Adapting to Rising Tides (ART) program provides resources and support to local jurisdictions on sea level rise adaptation planning. The following reports in this area were conducted or supported by the ART program: ~~that apply to the Project site:~~ *Adapting to Rising Tides Alameda County Subregional Project* (BCDC, 2019b), ~~and~~ *Oakland/Alameda Resilience Study* (BCDC, 2016), *Capital Corridor Joint Powers Authority Sea Level Rise Vulnerability Assessment* (2014), and *Adapting to Rising Tides Bay Area: Regional Rise Vulnerability Assessment* (2020). ~~The *Adapting to Rising Tides: Alameda County Subregional Project* provides adaptation responses for vulnerabilities identified across five broad asset categories: overarching, community land use, transportation, utilities, shorelines. It includes possible planning mechanisms, governance structures, or collaborative approaches that could be used to implement actions. The *Oakland/Alameda Resilience Study* includes adaptation responses for vulnerabilities identified in four sectors: schools, childcare facilities, senior care facilities, and communities.~~

The *Capital Corridor* assessment identifies vulnerabilities along the rail corridor, including vulnerabilities of specific assets, such as railroad tracks at grade, railroad signal systems, railroad bridges, stations, and the Oakland Maintenance Facility. The Project area is adjacent to the railroad tracks and as a networked system, impacts from flooding in one location would impact the entire railroad network.

The *ART Bay Area Study* evaluates flooding exposure and consequences to four regional systems: transportation networks, vulnerable communities, priority development areas (PDAs), and priority

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conservation areas (PCAs). The Project area is within an area identified by the ART Bay Area report as a "regional hot spot," meaning that it contained multiple regional assets with among the highest consequences of impact from sea level rise. As part of the *ART Bay Area Study*, Howard Terminal (i.e. the Project area) was considered part of the Port of Oakland in the "Seaports" analysis. This analysis includes consequences from flooding of dollar value of exports and imports of seaports and identifies the Port of Oakland as having the highest dollar value of exports and imports impacted by flooding exacerbate by sea level rise. High level adaptation strategies were identified in the report. Additionally, Local Vulnerability Assessments were conducted with this project being within the "San Leandro" Local Assessment.

The ART reports are informational products with planning-level studies that provide initial analyses for use by local governments in their planning efforts. All relevant climate change policies and requirements are located in the Bay Plan and include policy on climate change, safety of fills, and shoreline protection. Guidance for the Bay Plan's climate change policies are further explained in BCDC (2021).

Also see Response to Comment A-12-35 which describes consideration of the 2021 update of the Bay Plan's Climate Change Guidance policies.

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growth in residential housing units and growth in job units, as well as impacts to the Port of Oakland, Jack London Ferry Terminal, and adjacent communities with significant social vulnerability and contamination burden vulnerability from flooding.

As part of the ART Bay Area report, the Howard Terminal (project) was considered part of the Port of Oakland in the "Seaports" analysis. This analysis includes consequences from flooding of dollar value of exports and imports of seaports and identifies the Port of Oakland as having the highest dollar value of exports and imports impacted by flooding starting at 52 inches Total Water Level (TWL) and increasing through 108 inches TWL. High level adaptation strategies were identified in the report. Additionally, Local Vulnerability Assessments were conducted with this project being within the "San Leandro" Local Assessment.[7]

A-12-38

Note that none of the ART studies contain policies or regulations; they are informational products with planning-level studies that provide initial analyses for use by local governments in their planning efforts. All relevant climate change policies and requirements are located in the Bay Plan and are not reflected in ART studies. Policy references that should be cited in the DEIR's Regulatory Setting include the policies in the Climate Change section, Safety of Fills Policy 4, and policies in the Shoreline Protection section. BCDC is in the process of preparing a guidance document for the Bay Plan's Climate Change Policies that may be a useful resource for the DEIR preparers. A draft of this document is currently available online at https://www.bcdc.ca.gov/BPA/1-08/San-Francisco-Bay-Plan-Climate-Change-Policy-Guidance.html. The final draft is anticipated to be available in June 2021. Additionally, BCDC staff is available to discuss both the ART studies and the Bay Plan's Climate Change Policies with preparers of the EIR to ensure accurate representation.

FLOODING IMPACTS

The DEIR addresses flood impacts related to sea level rise under Impact HYD-5. BCDC has the following comments on this analysis.

A-12-39

- **Mapping.** The HYD-5 impact analysis, as well as the Environmental Setting for Section 4.9, should include mapping that illustrates the flood levels and locations described in the text. The current style of analysis makes it challenging for readers of the DEIR to verify the elevations and water levels at the various sites discussed or to view all potential impacts at the Project site holistically and in relation to surrounding land uses. Ideally, figures would show the variation between existing conditions and the other scenarios studied. Site-specific sea level rise mapping is a necessary component of a complete Project-level sea level rise analysis and should be included and referenced in the revised EIR.

A-12-40

- **H++ Scenario.** On page 4.9-7, staff suggest removing the clause "sea level rise is not currently following the H++ scenario." The H++ scenario is intended to depict the potential consequences of runaway/extreme ice loss in Antarctica in a way we can understand.

[7] http://www.adaptingtorisingtides.org/wp-content/uploads/2020/03/OLU_H-SanLeandro.pdf.

RESPONSE

A-12-39 Figures showing the mapping of existing conditions and other scenarios discussed in the analysis of Impact HYD-5 have been provided[56]. These figures have been added to the Draft EIR as Figures 4.9-2 through 4.9-7. See Final EIR Chapter 7, *City-Initiated Updates and Errata in the Draft EIR*, for the new figures. These figures indicate that the existing site is mostly above the current 100-year base flood elevation, but that much of the site would be inundated by the 100-year base flood with the addition of 3 feet of sea level rise.

At proposed buildout conditions, the Project would elevate all of the site above the current base flood elevation[57]. With the amount of sea level rise projected to occur by 2050, most of the site would remain above the base flood elevation, but portions of the Project site would face flood hazards. Adaptation measures[58], shown in the 2050 map, would be implemented in accordance with the adaptation plan in Draft EIR Mitigation Measure HYD-3, to limit the flood hazards to the site's borders. With the 6.9 feet of sea level rise projected to occur by 2100 under the medium-high risk aversion scenario, further adaptation measures would be implemented along the Project site perimeter to block inundation from reaching all of the developed portions of the Project site.

A-12-40 In response to the comment, the last sentence of the first full paragraph on p. 4.9-7 of the Draft EIR has been amended as follows:

> The probability of this scenario occurring depends upon extreme Antarctica ice loss, which is not currently considered likely, ~~unknown~~, ~~as sea level rise is not currently followed the H++ scenario,~~ but its consideration is important, particularly for high stakes, long-term decisions (California OPC, 2018).

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While this loss is not considered "likely" right now, the occurrence would cause sea levels to rise at much faster rates. The current rate does not suggest that the H++ scenario is probable, but the rate is increasing and there is uncertainty about when the increase will stop. The rate of sea level rise is unlikely to be consistent; therefore, we cannot assume that future rates of sea level rise are going to be the same as they are today. Rather, it is *expected* that the rate of sea level rise will continue to accelerate with existing and future warming.[8]

A-12-41

- **Changes in flood hazards.** Impact HYD-4 discusses the Project's potential to place structures within a 100-year flood hazard area, which could impede or redirect flood flows, exposing people of structures to significant risk of loss, injury, or death. This analysis should consider the ways in which areas that would be affected by a 100-year storm would change over the life of the Project as a result of sea level rise. Mapping with the Bay Area Flood Explorer shows that in its current configuration, the Project site would experience flooding along the wharf, at the Peaker Power Plant and Fire Station 2, throughout the area proposed for Phase II residential and commercial development, and on portions of the area proposed for the stadium at 66 inches TWL. One of the scenarios that corresponds to this water level is a 100-year storm surge at 24 inches of sea level rise, which is comparable to the State Guidance 22.8 inches above MHHW for Medium-High Risk Aversion with High Emissions for 2050.[9] Figure 1 is a screenshot of the Flood Explorer at 66 inches TWL to illustrate the potential hazard. To make proper use of the DEIR's sea level rise analysis, the HYD-4 impact discussion should use information such as that provided by the Bay Area Flood Explorer to assess how projected 100-year flood flows could potentially be altered by the preliminary grading plan and where the flows will be directed around development and off of the raised site, as well as any mitigation that may be required. One potential concern would be if flows are directed onto neighboring site, such as Schnitzer Steel, in a manner that could contribute to the mobilization of hazardous materials into the community or stormwater system.

[8] https://climate.nasa.gov/news/2680/new-study-finds-sea-level-rise-accelerating/.
[9] https://explorer.adaptingtorisingtides.org/about.

RESPONSE

A-12-41 As discussed in Response to Comment A-12-39, the proposed Project would reduce inundation from the 100-year base flood event. The existing-conditions scenario projects the inundation of much of the existing site by the 100-year base flood event with the addition of 3 feet of sea level rise. Instead, the proposed Project and its adaptation measures would prevent inundation for all proposed structures for the 100-year event with the addition of 6.9 feet of sea level rise, the 2100 projection under OPC's medium-high risk aversion scenario.

Mapping of existing conditions used published reports, as per BCDC's *Adapting to Rising Tides (ART) Transportation Vulnerability and Risk Assessment Pilot Project* and *2017 Oakland SLR Road Map*, as well as mapping of proposed conditions with the Project based on the 2018 OPC guidance, all of which entail similar methods as the Bay Area Flood Explorer, are provided[59]. The Bay Area Flood Explorer uses existing grades, which precludes the ability to show post-project inundation for the site because the Project proposes to raise the site.

As reported in supporting documentation[60], "proposed grading for all elements as described above will not result in hydrological changes in the vicinity. This is because the source of flooding is the entire waterfront of the Oakland Estuary and raising the site as proposed will not displace floodwaters such that the depth of flooding on adjacent parcels would be higher." Because the proposed Project would not result in hydrologic changes to neighboring sites, the Project would not contribute to a change in the mobilization of hazardous materials. See Response A-12-39 and A-12-42 regarding potential effects to adjacent property.

[59] Moffat & Nichol, 2021. Potential Extents of Inundation, Oakland Athletics Howard Terminal Project, September 27, 2021.
[60] 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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Figure 1: Project Site at 66 inches TWL

A-12-42 Mitigation Measure HYD-2 requires that the Project be designed to ensure that new structures within a 100-year flood zone do not interfere with the flow of water or increase flooding. As it is written, the measure appears to suggest that the primary way of avoiding an impact is to raise floor elevations. It is not clear how this design approach would mitigate flood flows around the raised structures. BCDC recommends revising this mitigation measure to more clearly tie the actions in the measure to the impact being mitigated, and to consider additional ways in which a project may be designed to achieve the desired result. Additionally, the revised mitigation measure or an additional mitigation measure should address how the Project may need to adapt to accommodate changing flood conditions over the life of the Project in accordance with State Guidance and BCDC's Climate Change Policies.

A-12-43 Additionally, please note that to the extent that the Project's grading or structures could redirect flood flows, particularly contaminated flows, onto neighboring sites, it could cause environmental impacts in communities where environmental justice is a concern.

- A-12-44 Mitigation Measure HYD-3 requires development of a final adaptive management and contingency plan for sea level rise prior to the issuance of the first grading permit for the Project, and references the Tidal Datums and Sea Level Rise Design Basis Memorandum prepared by Moffatt & Nichol. The memorandum shows various grading options as adaptation measures, and the DEIR mentions site elevation as a means of adapting to future sea level rise. Staff would like to raise a few initial considerations for relying on the adaptation measures presented thus far. In terms of elevating the site, the City should consider how much weight the fill can handle to build the site upwards, and the extent to which elevation can protect the site before floods are inevitable, then ensure that adaptive strategies are triggered before that point is reached. Additionally, BCDC has not seen

RESPONSE

A-12-42 As noted in supplemental documentation[61], "proposed grading for all elements as described above will not result in hydrological changes in the vicinity. This is because the source of flooding is the entire waterfront of the Oakland Estuary and raising the site as proposed will not displace floodwaters such that the depth of flooding on adjacent parcels would be higher." Because the proposed Project would not result in hydrologic changes to neighboring sites, the Project's mitigation measure is sufficient as currently stated. See also Responses to Comments A-12-39 and A-12-43 regarding potential effects to adjacent property.

Adaptation to changing flood conditions with sea level rise is proposed in Mitigation Measure HYD-3, in the form of an adaptive management plan; see Responses to Comments A-7-6 and A-7-8.

A-12-43 As described in the impact analysis on Draft EIR pp. 4.9-19 through 4.9-25, the proposed Project would be required to comply with the San Francisco Bay Regional Water Quality Control Board's National Pollutant Discharge Elimination System Construction General Permit to control stormwater runoff of exposed soil and construction materials. The Project would also be required to comply with the California Department of Toxic Substances Control's (DTSC's) land use covenants (LUCs) and associated plans to implement a cover on the Project site to prevent hazardous materials from leaving the Project site. The proposed Project would collect all stormwater in an on-site collection system that would be monitored by qualified consultants to meet state water quality standards for discharge into the Oakland-Alameda Estuary.

In addition, as discussed in Section 4.8, *Hazards and Hazardous Materials*, Impact HAZ-1, compliance with the numerous federal, state, and City laws, regulations, and ordinances that govern the transportation, use, handling, and disposal of hazardous materials would limit the potential for an accidental release of hazardous materials that could enter stormwater runoff and degrade surface or groundwater water quality. Implementing Mitigation Measures HYD-1a and HYD-1b would further reduce impacts of the proposed Project on water quality. See also Consolidated Response 4.14, *Environmental Justice*.

Impacts of the proposed Project's changes in site elevation on Federal Emergency Management Agency (FEMA) flood map zones, and impacts related to impedance or redirection of flood flows, were analyzed on Draft EIR p. 4.9-29. The Draft EIR concluded that with implementation of Mitigation Measure HYD-2, impacts would be less than significant. In addition, the only area of the

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Project site within a FEMA-identified Special Flood Hazard Area (SFHA) is a small portion at the northeast corner of the Project site. This area of the Project site is isolated; it would be removed from the SFHA by elevating the interior portion of the Project site, and would not impede flows from the Estuary to flood adjacent areas that, with current elevations, lie well above the SFHA criteria for the 100-year flood. Therefore, the proposed Project would not impede or redirect flows inland to areas surrounding the Project site. See also Response to Comments A-12-39 and A-12-42.

A-12-44 To raise the site to ground surface elevations of 10 feet City of Oakland datum (COD) and above would require placing approximately 3–5 feet of fill on the existing ground surface. These proposed Project conditions have been subject to geotechnical analysis, which found that with the recommended ground improvement prior to development, the existing fill can support the additional fill and that "liquefaction will not be a hazard to the Project in the event of a [sic] earthquake with a Maximum Considered Earthquake (MCE) level of ground shaking as defined in the current Building Code" (ENGEO, 2021).[62] The geotechnical report also includes an analysis of settlement and foundation design recommendations.

As discussed in the Draft EIR, much of the site would be initially elevated above the base flood elevation with the addition of more than 6 feet of sea level rise. To address larger amounts of sea level rise, e.g., up to the extreme aversion projection (also known as the H++ scenario) at 2100, adaptive mitigation measures would be implemented, as described in the revised Mitigation Measure HYD-3 (shown in Response to Comment A-7-8 and Chapter 7, *City-Initiated Updates and Errata in the Draft EIR*, for the revised language). Also see Responses to Comments A-7-6 and A-7-8.

The revisions to Mitigation Measure HYD-3 include specifying monitoring, trigger thresholds, and methods for implementation. In addition, the plan would identify potential adaptation measures and triggers that are suitable for the site's different components. Examples of possible triggers and measures are described[63] and mapped[64].

[61] 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.

[62] ENGEO, 2021. Liquefaction Information, Howard Terminal Redevelopment, Oakland, California, July 7, 2021.

[63] 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.

[64] Moffat & Nichol, 2021. Potential Extents of Inundation, Oakland Athletics Howard Terminal Project, September 27, 2021.

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The Project's site public space, e.g., the wharf, is at approximately 7 feet COD, which is above current base flood elevation and an additional 3 feet of sea level rise[65]. Under the medium-high risk aversion scenario, this amount of sea level rise is not anticipated until about 2065[66]. Therefore, no adaptation measures are proposed for the buildout phase. If sea level rise were to cause flooding to become frequent enough to substantially impair public access, then, as described in Mitigation Measure HYD-3, adaptation measures would be implemented, such as constructing parapet walls along the wharf edge or modifying the design of the public access area to accommodate infrequent and temporary inundation. Also see Response to Comment A-12-52 regarding public access and the wharf.

[65] 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.

[66] 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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A-12-44

mention in the DEIR whether the wharf would be adapted for sea level rise—note that maintenance or repairs on the wharf will become more difficult as the space between the water and the structure decreases.

- **Maritime Reservation.** In section 4.9, the DEIR includes the following conclusion for the MRS:

  "The reconfigured Project site would become smaller, although the impacts relative to hydrology and water quality on the Project site would be the same as those discussed above for the proposed Project, since the surface and groundwater conditions would remain unchanged and development on the smaller site would be subject to the same regulatory framework protecting water quality."

A-12-45

As stated under general comments, the analyses for the MRS need to be more detailed and show more of the rationale behind the conclusions provided in order to be acceptable. For this section, the analysis first must acknowledge that the MRS would mean a change in the physical condition of the site for which this Project is being planned, and it should identify how that change could result in differences in the types and degrees of impact before describing how the framework that reduces impacts to below a level of significance for the proposed Project would achieve the same result for the MRS. One potential issue that would need to be addressed is the difference in sea level rise resilience between the proposed Project and the MRS – whether it is a difference in site design and grading, or a difference in the Project's approach to adaptation. If the Project will rely on a not-yet-complete adaptation plan to address potential flooding impacts from sea level rise in both scenarios, please discuss whether the differences in the site configuration would necessitate any differences in the content or formulation of the plan, or what strategies or thresholds/triggers may be appropriate to include in the plan. Based on these concerns, BCDC would expect a more detailed and methodical program-level analysis for this resource topic.

A-12-46

GROUNDWATER RISE

In reviewing the DEIR, BCDC did not find any reference to groundwater rise and its potential to affect the nature and severity of related impacts. Groundwater rise is likely to play a critical role in the severity of impacts in Section 4.6: Geology, Soils, and Paleontological Resources; 4.8: Hazards and Hazardous Materials; 4.9: Hydrology and Water Quality; and 4.16: Utilities and Service Systems, and should be thoroughly analyzed in each of those sections.

RESPONSE

A-12-45 The proposed project's approach to sea level rise resilience is to raise the entire project area west of the ballpark to 10 feet City of Oakland Datum (COD) or higher (Draft EIR Figure 4.9-1). At this elevation, the ground surface would be above the 100-year base flood elevation with the addition of up to six feet of sea level rise[67].

If implemented, the Maritime Reservation Scenario would convert a portion southwest part of Howard Terminal into open water, to serve as a turning basin for large vessels (DEIR Figure 3-17). The remaining blocks proposed for development to the west of the ballpark, Blocks 10-14 and Block 17 (Draft EIR Figure 3-18), would still have the ground surface raised to at least 10 feet COD. As such, the setback of the shoreline for the Maritime Reservation scenario does not substantially affect the project's approach to sea level rise resilience. As in the case without the Maritime Reservation Scenario, the adaptation plan under Mitigation Measure HYD-3 (which is applicable to the Maritime Reservation Scenario) would monitor for flood hazards arising after more than six feet of sea level rise, identify triggers for responding to these hazards, and develop and implement adaptation measures that would continue to provide flood protection for more than six feet of sea level rise

As described on Draft EIR p. 3-37, the Port of Oakland has not designed, approved, or secured permits for an expanded turning basin. The impacts of an expansion, if it were proposed, are not considered in the Draft EIR. See also Consolidated Response 4.1 *Project Description* and *Consolidated Response* section 4.1.3.

A-12-46 See the following responses to individual BCDC comments that address the potential effects of groundwater rise on other topics. Specifically,

see Response to Comment A-12-47 regarding potential groundwater rise effects on topics under hazardous materials;

see Responses to Comments A-12-47 and A-12-48 regarding potential groundwater rise effects on topics of flooding/stormwater infrastructure, water quality, and other utility infrastructure; and

see Response to Comment A-12-49 regarding potential groundwater rise effects on topics under geologic and seismic hazards.

[67] 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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A-12-46 Groundwater rise is a concern for the Project site because the groundwater below it has a tidal interface. As sea levels rise, waters from the Bay will intrude on the aquifer underlying the site, raising the water table and salinity of the groundwater, affecting underground infrastructure, and eventually causing the emergence of groundwater and surface flooding.[10]

A-12-47 Groundwater beneath the project site has been documented in the DEIR as contaminated with chemicals of concern above environmental screening levels. Recent monitoring results cited in the DEIR have found that the groundwater contamination tends to be localized to specific points under the site and is not entering the harbor in appreciable amounts; based on this information, and the fact that there are no beneficial uses indicated for the Project site's groundwater other than dewatering, the DEIR declares that groundwater is not considered to pose a human health risk or a significant risk to the environment and large-scale groundwater remediation is not proposed (page 4.8-43). However, groundwater rise has the potential to mobilize contaminants in the site's groundwater, as well as contaminants in the overlying soils. It could also disrupt the caps or monitoring equipment placed to contain the site's contamination by increasing the buoyancy of underground remediation measures. The impact analyses in Section 4.8 should consider these potential impacts and how they will be addressed through coordination with the Department of Toxic Substances Control and mitigation.

A-12-48 From a hydrological perspective, emergent groundwater has the potential to cause flooding on the site behind planned shoreline structures, which the DEIR should address in Section 4.9. Additionally, the DEIR analysis should evaluate whether the site-wide planned groundwater and stormwater management infrastructure, including the cutoff wall and pumps systems, will be able to accommodate the volumes of groundwater that could emerge during storm events and as the water table rises.

A-12-49 Other impacts of a rising water table include a potential increase in the site's susceptibility to liquefaction during an earthquake event (analyze in Section 4.6) and potential damage to or overwhelming of the site's stormwater system (analyze in Section 4.16). This is not an exhaustive list, and the City should consider whether this process would affect impacts in other resource areas.

A-12-50 BCDC suggests the following resources for additional information on groundwater rise:

- Plan, Ellen, Kristina Hill, and Christine May. A rapid assessment method to identify potential groundwater flooding hotspots as sea levels rise in coastal cities. *Water*. 11, 2228 (2019). https://www.mdpi.com/2073-4441/11/11/2228.
- Befus, K.M., P.L. Barnard, D.J. Hoover, *et al.* Increasing threat of coastal groundwater hazards from sea-level rise in California. *Nat. Clim. Chang.* **10,** 946–952 (2020). https://doi.org/10.1038/s41558-020-0874-1.

[10] https://res.mdpi.com/d_attachment/water/water-11-02228/article_deploy/water-11-02228-v2.pdf.

RESPONSE

A-12-47 This response addresses the relationship of potential groundwater rise to the possible mobilization of existing contaminated groundwater and/or soil conditions on the site. For context, the primary approach for adapting the Project to sea level rise would be to raise the ground surface elevation of the Project site and the proposed new structures, such that most of the ground surface would be at least 6 feet above the current 100-year base flood elevation. Strategies and measures are identified in Mitigation Measure HYD-3 (as revised in this document, Response A-7-8) to adapt to higher sea levels in the event sea level rise exceeds the resistance to coastal and/or groundwater flooding built into the proposed Project[68] (see Responses to Comments A-7-6 and A-7-8). Also, as discussed in Draft EIR Section 4.8, *Hazards and Hazardous Materials,* under *Current Nature and Extent of Onsite Contamination*, contaminated soil and groundwater is currently encapsulated beneath the existing hardscape and behind the quay wall and wooden bulkhead wall to prevent exposure to people and the environment.

The projected sea level rise would be expected to also raise groundwater levels beneath the Project site to higher elevations. This may also mobilize some of the encapsulated contamination. However, as discussed above, the elevation of the Project site would be raised so that groundwater would not be able to reach the ground surface. In addition, the previously noted cutoff wall and groundwater drainage system under the ballpark would further ensure that groundwater would not be able to reach the ground surface (as described in Response to Comment A-4-73; Draft EIR Section 3.12.2, *Stormwater,* under *Cutoff Wall*; and in Section 4.9.4, *Impacts of the Project*). The groundwater collected in the drainage system would be treated before release to San Francisco Bay, in accordance with San Francisco Bay Regional Water Quality Control Board's National Pollutant Discharge Elimination System Construction General Permit and DTSC's LUCs and related plans. Consequently, the raising of elevations across the Project site and the installation of the cutoff wall and drainage system would prevent the exposure of people and the environment to contaminated materials, including resulting from potential groundwater rise. No additional text is necessary for Section 4.8, *Hazards and Hazardous Materials,* of the Draft EIR.

A-12-48 Strategies and measures are identified to adapt to higher sea levels in the event sea level rise exceeds the resistance to coastal and/or groundwater

[68] 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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flooding built into the proposed Project[69]. See Mitigation Measure HYD-3, as revised in this document in Response to Comment A-7-8. Also, see the discussion of how potential for groundwater rise relates to stormwater management infrastructure, specifically the cutoff wall and groundwater drainage system under the ballpark, in Response to Comment A-4-73 and detailed in Draft EIR Section 3.12.2, *Stormwater,* under *Cutoff Wall*; and in Section 4.9.4, *Impacts of the Project*. No additional text is necessary for Section 4.9, *Hydrology and Water Quality,* of the Draft EIR.

A-12-49 As discussed on p. 4.6-8 of the Draft EIR, liquefaction can potentially occur during strong earthquake ground shaking in areas of saturated, predominantly loose granular soils below the groundwater. Therefore, groundwater rise could occur to an extent that increases the saturating of existing soils. The Project's compliance with existing code requirements and final site specific geotechnical investigation described below will apply to the Project and limit any significant risk of liquefaction on the site.

A liquefaction analysis is presented in Draft EIR Impact GEO-1, pp. 4.6-16 through 4.6-17. The preliminary geotechnical analysis provided preliminary recommendations to address liquefaction. Pursuant to the requirements of the California Building Code, and the City of Oakland Building Code and Grading Regulations, the proposed Project would be required to conduct a final geotechnical investigation subject to City approval that would further inform the final Project design and provide recommendations to address all identified geotechnical issues, including liquefaction. Further, the liquefaction information memorandum prepared by ENGEO on July 7, 2021 (ENGEO, 2021) provides additional explanation and analysis of the effects of liquefaction, along with recommendations to address liquefaction and other geotechnical conditions.[70] Also see Response to Comment O-26-2. No additional text is necessary for Section 4.6, *Geology, Soils, and Paleontological Resources,* or Section 4.16, *Utilities and Service Systems*, of the Draft EIR.

Also see Response to Comment A-12-47 and A-12-48 regarding flooding and stormwater management infrastructure.

A-12-50 The comment does not address the adequacy or accuracy of the Draft EIR and no further response is required under CEQA. The comment provides links to

[69] 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.

[70] ENGEO, 2021. *Liquefaction Information, Howard Terminal Redevelopment, Oakland, California*, July 7, 2021.

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two documents on the topic of how potential groundwater rise and emergence could affects other topics, which the comment has raised in its other comments in this section See Response to Comment A-12-46. This particular comment does not address the adequacy or accuracy of the Draft EIR and no further response is required under CEQA. The environmental setting presented throughout Chapter 4, *Environmental Setting, Impacts, and Mitigation Measures*, of the Draft EIR, in addition to all modifications presented in Chapter 7, *City-Initiated Updates and Errata in the Draft EIR*, of this document, fully supports the project and cumulative environmental impact analysis for all topics in the EIR.

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A-12-51

Utilities

In addition to groundwater rise impacts on underground utilities, surface effects of sea level rise could also impact the effectiveness of stormwater facilities. The analysis in Section 4.16 should consider whether stormwater infrastructure could be overwhelmed by increases in flood flows from rising sea levels or backups at the sewer outfalls.

A-12-52

Recreation

In Section 4.14, the analysis of Impact REC-1 states that the increase in demand for recreational resources that would accompany the proposed development would be met by the provision of public recreation areas and open space as part of the Project on the Project site, including the proposed 10-acre Waterfront Park. However, BCDC is concerned that there is no discussion in the DEIR about sea level rise adaptation for these public access and recreational amenities, particularly those bordering the Bay. The sketches included with the Moffat & Nichol memorandum show the public recreation areas at a lower grade than the rest of the site, suggesting that they will be among the first areas to experience sea level rise impacts. If the degradation or loss of these public recreation areas negatively affects the ability of residents and visitors to use the provided park space, it is possible they will choose to utilize other recreation areas in the city. Therefore, sea level rise should be incorporated into the analysis for Impact REC-1.

Note related Bay Plan policies: Public Access Policy No. 6 states that "public access should be sited, designed, managed and maintained to avoid significant adverse impacts from sea level rise and shoreline flooding." Policy No. 7 states in part that "whenever public access to the Bay is provided as a condition of development, on fill or on the shoreline, the access should be permanently guaranteed… Any public access provided as a condition of development should either be required to remain viable in the event of future sea level rise or flooding, or equivalent access consistent with the project should be provided nearby."

A-12-53

Appearance, Design, and Scenic Views

As previously stated, the conditions in AB 1191 that would allow the Commission to consider the Project as a water-oriented use and that would allow the Commission to authorize the Project to include specific references to the design of the Project in relation to the Bay and the provision of scenic views from structures and public spaces. These conditions can be found in Section 9 of the bill and should be included in the Regulatory Setting section of Chapter 4.1 "Aesthetics Shadow and Wind."

The visual appearance of the Bay and waterfront are considered unique, regionally significant resources. Bay Plan Appearance Design and Scenic Views Policy No. 2. states that: "All bayfront development should be designed to enhance the pleasure of the user or viewer of the Bay. Maximum efforts should be made to provide, enhance, or preserve views of the Bay and shoreline, especially from public areas, from the Bay itself, and from the opposite shore." Policy No. 8 states, in part, that: "Shoreline developments should be built in clusters, leaving areas

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A-12-51 See Response to Comment A-12-47 and A-12-48 regarding potential groundwater rise on flooding and stormwater management infrastructure.

A-12-52 See Response to Comment A-12-44 which discusses possible repairs and adaptation of the wharf for sea level rise. As explained there, no adaptation measures are proposed for the wharf for the buildout phase, since 3 feet of sea level rise under a medium-high risk aversion scenario is not anticipated until about 2065.

As raised by the comment, the Moffat & Nichol memorandum conservatively includes exhibits showing the wharf area with possible adaptation designs (i.e., landscape berms, steps/terraces, overlooks, wharf enhancements) under higher or faster than projected sea level rise scenarios [71]. Still, Mitigation Measure HYD-3 for buildout of the Project adequately specifies adaptation measures appropriate for the EIR analysis to avoid significant adverse impacts from sea level rise and shoreline flooding, including in public recreation areas, as addressed by Public Access Policy 6 and Policy 7 of the Bay Plan. No further analysis is required for the EIR.

A-12-53 AB 1191 is discussed in detail in Draft EIR Section 4.10, *Land Use, Plans, and Policies*, on p. 4.10-11 with respect to the Public Trust Doctrine; on p. 4.10-15 with regard to BCDC jurisdiction, the Bay Plan, and the San Francisco Bay Area Seaport Plan; and in Impact LUP-4 on p. 4.10-53 (public trust) and pp. 4.10-55 and 4.10-56 concerning BCDC, the Bay Plan, and the Seaport Plan.

In response to the comment, Draft EIR Section 4.1, *Aesthetics, Shadow, and Wind*on p. 4.1-13 has been amended to include the following additional text under the heading "State":

> ***San Francisco Bay Plan and San Francisco Bay Area Seaport Plan***
>
> The 1965 McAteer-Petris Act (Government Code Sections 66600–66694) assigns to the San Francisco Bay Conservation and Development Commission (BCDC) the responsibility for planning for the long-term use of the Bay and regulating development in and around the Bay. BCDC's San Francisco Bay Plan (Bay Plan) provides policy direction for BCDC's permit authority regarding the placement of fill, extraction of materials, determining substantial changes in use of land, water, or structures within its jurisdiction, protection of the Bay habitat and shoreline, and maximizing

[71] 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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public access to the Bay. (The Bay Plan and the Public Trust Doctrine are discussed in greater detail in Section 4.10, *Land Use, Plans, and Policies*.)

With respect to visual quality, the Bay Plan states that Bayfront development should be designed to "enhance the pleasure of the user or viewer of the Bay" and that [m]aximum efforts should be made to provide, enhance, or preserve views of the Bay and shoreline, especially from public areas, from the Bay itself, and from the opposite shore" (Appearance, Design, and Scenic Views Policy 2). Additionally, shoreline development should be clustered, with surrounding open areas "to permit more frequent views of the Bay" (Appearance, Design, and Scenic Views Policy 8). In addition, BCDC's Design Review Board should review and advise BCDC as to project design that affects the appearance of the Bay (Appearance Design and Scenic Views Policy 12) and as to the adequacy of a proposed project's public access, based on BCDC's adopted advisory Public Access Design Guidelines, and the ability of the proposed public access to "meet the needs of a growing and diversifying population" (Public Access Policy 13).

Assembly Bill (AB) 1191 (Stats. 2019, Chap. 752), also known as the Oakland Waterfront Sports and Mixed-Use Project, Waterfront Access, authorizes BCDC to take certain actions related to the development of the Howard Terminal property and the proposed Project, finding, among other things, that:

(1) The ballpark, public trust, and public open-space uses that lie within the BCDC jurisdictional bay fill lands are water-oriented uses for which BCDC may consider and grant permits, provided that the ballpark and other buildings that are built on BCDC jurisdictional fill are designed using the Bay as a design asset to attract large numbers of people to enjoy the bay, including substantial high-quality open space and public access with water views.

(2) The ballpark itself will provide views of the bay from a rooftop park that is publicly accessible on non-game and non-event days.

(3) Public trust uses on BCDC jurisdictional fill promote activation of the adjacent public open spaces to encourage substantial public use and enjoyment of the waterfront.

AB 1191 is discussed in greater detail in Section 4.10, *Land Use, Plans, and Policies*. See also Response to Comment I-311-5-29.

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open around them to permit more frequent views of the Bay." Public Access Policy No. 13 states: "[t]he Public Access Design Guidelines[11] should be used as a guide to siting and designing public access consistent with a proposed project. The Design Review Board should advise the Commission regarding the adequacy of the public access proposed. The Design Review Board should encourage diverse public access to meet the needs of a growing and diversifying population." Appearance Design and Scenic Views Policy No. 12. States that "[i]n order to achieve a high level of design quality, the Commission's Design Review Board, composed of design and planning professionals, should review, evaluate, and advise the Commission on the proposed design of developments that affect the appearance of the Bay in accordance with the Bay Plan findings and policies on Public Access; on Appearance, Design, and Scenic Views; and the "Public Access Design Guidelines."

The DRB advises the Commission for major projects along the shoreline using Bay Plan policies related to Appearance Design and Scenic Views, Public Access, and Recreation. To date, the DRB has reviewed the Project on three occasions. A project briefing took place on March 11, 2019. The first pre-application review occurred on October 7, 2019, and the second pre-application review took place on April 5, 2021. The second pre-application review occurred during the DEIR comment period and key concerns related to the impacts discussed in Chapter 3 "Project Description," Chapter 4.1 "Aesthetics Shadow and Wind," and Chapter 4.14 "Recreation" of the DEIR were raised during the review, as reiterated below.

A-12-54

SHIPPING CRANES

AES-1 discusses how the Project would not have a substantial adverse effect on a public scenic vista or substantially damage scenic resources. The DEIR discusses retention of the four shipping cranes for the Project, one of which, Crane X-422 is prone to historical significance. The cranes serve as a visual resource at the local setting since they can be seen from many publicly accessible vantage points throughout the City and is a key visual landmark along the Oakland Estuary. The Project intends to incorporate the cranes into the design of the public access areas within the Waterfront Park. If it is determined that the cranes are not feasible to be placed in this public access area, the DEIR states that they will be demolished. Please provide an analysis of what alternative location opportunities were explored to retain this critical visual resource and interpretive maritime structure for the site. The analysis should include an evaluation of Phase I, Phase II, and the MRS.

A-12-55

KEY VIEWPOINT ANALYSIS

Impact AES-2 for the DEIR analyzes how the Project would not substantially degrade the existing visual character or quality of the site. Building massing and street grid alignment are included as part of the analysis and visual simulations created from five viewpoint locations are shown on Figure 4.1-10. As part of the final EIR, please include an additional viewpoint location that includes the Market Street corridor. Howard Terminal is located at One Market Street; the

[11] https://www.bcdc.ca.gov/planning/reports/ShorelineSpacesPublicAccessDesignGuidelinesForSFBay_Apr2005.pdf.

RESPONSE

A-12-54 The proposed Project would include retention of Crane X-422 and the maintenance of its current relationship to the waterfront in its current location. See Response to Comment H-1-19 for additional information regarding retention of the cranes on the Project site. Thus, the Project sponsor has not proposed and does not anticipate removal of Crane X-422.

Although the removal of Crane X-422 is not part of the proposed Project, to provide a conservative analysis that accounts for unforeseen changes to the plans to preserve the crane in-situ, the Draft EIR addressed possible demolition of the crane should it be discovered that retention of the crane is infeasible, either because of its existing condition or as a matter of public safety. In the event that preservation of the crane on-site is determined to be infeasible, Mitigation Measures CUL-3a and CUL-3b would provide for additional study to facilitate relocation of the crane off-site.

Specifically, Mitigation Measure CUL-3a: Crane Removal Documentation would set forth a procedure for creating documentation that would establish appropriate characteristics for a proposed receiver site. These characteristics would be based on the existing conditions, context, and relationships for Crane X-422 as recorded in the Historic American Buildings Survey–level documentation.

Mitigation Measure CUL-3b: Crane Relocation would provide oversight by the City and the Port to ensure that the selected relocation site meets the criteria established in Mitigation Measure CUL-3a. The ultimate treatment of the crane with regard to retention in situ, relocation within the Project site, or deconstruction and subsequent relocation off-site, is uncertain and the timeline for such action is not known. Therefore, identification of an appropriate site would take place only if such action becomes necessary. In this way, specific potential relocation sites could be identified based on existing conditions at that point in time. This could vary depending on the phase of construction, existing waterfront conditions outside of the Project site, the results of feasibility studies, and the intent of the receiving party.

A-12-55 In response to the comment, an additional series of visual simulations has been prepared, looking generally south toward the Project site from a viewpoint near the intersection of Market and Fourth Streets (see **Figures 5.1-3** and **5.1-4** for Phase 1 and Full Buildout simulations, and **Figure 5.1-5** for the Cumulative scenario). Although, as noted in the comment, Howard Terminal is at the foot of Market Street, San Francisco Bay is not readily visible, whether

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SOURCE: Bjarke Ingels Group, 2021

Oakland Waterfront Ballpark District Project

Figure 5.1-3
Visual Simulation (Existing and Phase 1)
Southwest View toward Project Site
from Market Street near Fourth Street

from Market and Fourth Streets (as shown in the existing-conditions photograph in Figure 5.1-3) or from closer to the Bay, such as at the intersection of Market Street with the Union Pacific Railroad tracks and Embarcadero West. This is because of the flatness of the terrain and because existing structures at Howard Terminal and the shipping containers stored there generally preclude views of the water. Accordingly, the existing-conditions photograph in Figure 5.1-3 depicts a generally low-rise industrial landscape.

With development of Phase 1 of the proposed Project, the portion of the Project site east of Market Street would be occupied by several new buildings reaching a height of up to 350 feet. Project buildout would add the tallest buildings on the Project site, reaching heights of up to 400 feet east of Market Street and up to 600 feet west of Market Street. (This latter structure is represented by the green massing model prominently visible at right in Figure 5.1-4.)[72]

Phase 1 of the proposed Project would somewhat constrain the view down Market Street toward San Francisco Bay, while Project buildout would reduce the view to a relatively narrow corridor. Compared to existing conditions, the proposed Project towers—particularly at Project buildout—would present a view of highly intensified development. However, because the Bay is not readily visible at present, the proposed Project would result in little to no alteration of Bay views from this viewpoint. Regardless, as explained on p. 4.1-1 of the Draft EIR, under CEQA Section 21099(d), aesthetic impacts are not considered in determining whether a residential, mixed-use residential, or employment center project on an infill site in a transit priority area—such as the proposed Project—would result in significant environmental effects under CEQA.

[72] As explained in Draft EIR Chapter 3, *Project Description*, the Project sponsor intends to retain the existing container cranes on-site, if feasible; however, retention of the cranes would be dependent on whether such retention meets required safety standards to incorporate the cranes within a publicly accessible space and the feasibility of any required retrofitting or other safety measures. Therefore, this analysis assumes that the cranes are removed. Nevertheless, because the Project sponsor intends to retain the existing container cranes on-site, if feasible, the simulations herein depict one relocated existing crane at the foot of Market Street.

SOURCE: Bjarke Ingels Group, 2021

Oakland Waterfront Ballpark District Project

Figure 5.1-4
Visual Simulation (Existing and Full Buildout)
Southwest View toward Project Site
from Market Street near Fourth Street

SOURCE: Bjarke Ingels Group, 2021

Oakland Waterfront Ballpark District Project

Figure 5.1-5
Visual Simulation (Existing and Cumulative)
Southwest View toward Project Site
from Market Street near Fourth Street

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terminus of the former Market Street Pier and aligns with the existing city street grid. Please analyze how the project would preserve and enhance the visual character of the Market Street corridor that connects the West Oakland neighborhood to the Bay shoreline.

Public Access and Recreation

A-12-56

Section 66602 of the McAteer-Petris Act states, in part, "that maximum feasible public access, consistent with a proposed project, should be provided." The construction of a Major League Baseball stadium and mixed-use development that includes residential, office/commercial, retail, performance venue, and hotel components, as well as public recreation and open space areas will bring more people to the site, and it will impact the existing nearby public access spaces. In addition to mitigating adverse impacts to existing public access areas and uses within the vicinity of the site, maximum feasible public access consistent with the project is to be provided.

PARKS, PLAZAS AND OPEN SPACE PROGRAM

Bay Plan Public Access Policy No. 2 states in part that: "…maximum feasible access to and along the waterfront and on any permitted fills should be provided in and through every new development in the Bay or on the shoreline." Policy No. 8 states in part that: "… improvements should be designed and built to encourage diverse Bay-related activities and movement to and along the shoreline, should provide barrier free access for persons with disabilities, for people of all income levels, and for people of all cultures to the maximum feasible extent...."

Section 4.14 includes the following conclusion for the MRS:

A-12-57

> Taking into account a potential 19 percent reduction in open space as compared to the Project, 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. Impacts related to the demand for athletic fields and indirect demand for boating facilities would remain the same as the Project, as the service population and development program uses would remain the same. All other site conditions relative to recreation would remain the same as described for the proposed Project, and therefore the impacts, analysis and mitigation for the Maritime Reservation Scenario would be the same as those discussed above for the proposed Project

A similar conclusion was made for the cumulative analysis, which includes the Project and Brooklyn Basin, another mixed-use development project along the Oakland Estuary currently in construction. Assuming the MRS scenario, the two projects combined would bring 34.9 acres of open space to the area and would still be expected to absorb a substantial part of the demand.

The discussion of the MRS does not include sufficient evidence or analysis to arrive at this conclusion. The claim that when reduced by 19 percent, the open space area provided by the Project would be expected to "absorb a substantial part of the demand" from new users such that there would be no difference in impact, analysis, or mitigation between the MRS and the

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A-12-56 This comment includes a summary of the provisions of the McAteer-Petris Act. 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 discussed in the Draft EIR, taken together, the proposed Project's publicly accessible open spaces would absorb a substantial part of the demand for general recreational facilities generated by new residents, employees, and visitors, and by nearby and regional residents and users, because of the amount of open space provided, mix of passive and active uses proposed, and ease of access. Therefore, the proposed Project would not substantially increase or accelerate the substantial physical deterioration or degradation of existing general recreational resources as a result of use by proposed Project residents, employees, and visitors (see Draft EIR p. 4.14-13).

The proposed Project would provide Bay and shoreline views and access where it currently does not exist, and public access to the shoreline would be preserved at all times. See Response to Comment A-7-5, which explains that Figures 4.14-2 and 4.14-2.MRS have been added to the Draft EIR to clarify and illustrate proposed event-day ticketed and security zones surrounding the ballpark and includes the interface with proposed Bay Trail improvements.

Additionally, the City acknowledges BCDC's role as a Responsible Agency. The Draft EIR notes that for BCDC to authorize a permit for the proposed Project, it must find the Project consistent with the McAteer-Petris Act, including its requirements related to providing the maximum feasible public access (see Draft EIR p. 4.10-53).

A-12-57 The first part of this comment includes a summary of the Bay Plan's Public Access policies. 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.

With respect to the Project under the Maritime Reserve Scenario, the entire Project site would be reduced from 55 to approximately 45 acres. Certain uses, such as the Ballpark, would be composed of the same acreage under the Maritime Reserve Scenario because that is the acreage necessary to accomplish that use. Other uses on the site would be reduced proportionally to accommodate the Ballpark and reduction of available acreage, with the

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objective of maintaining the same ratios of uses to acreage between the Project and the Maritime Reserve Scenario whenever possible.

The open space component of the Project under the Maritime Reserve Scenario remains the same ratio as under the proposed Project. Specifically, the 19-percent reduction in open space for the Project under the Maritime Reserve Scenario is relative to the open space provided under the proposed Project. Under the Maritime Reservation Scenario, the Project would provide approximately 14.9 acres of publicly accessible open space, or approximately one-third (33 percent) of this scenario's site acreage; this is the same ratio as under the proposed Project (also one-third of the site acreage). 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 also exceeds the open space requirements for group usable open space per dwelling unit in some of the City's lower density residential zones (e.g., RD-1, RH-1, RH-2, and RH-3, RM-3, and RM-4) for planned unit developments. Also, this publicly accessible open space would be provided in addition to any on-site open space required requirements for each of the future residential development sites.

Therefore, as described in the Draft EIR, the proposed Project under the Maritime Reservation Scenario would continue to provide publicly accessible open space on approximately one-third of the Project site. This acreage would still be expected to absorb a substantial part of the demand generated by new residents, employees, and visitors (see Draft EIR p. 4.14-17). Taken together, the publicly accessible open spaces under the Maritime Reservation Scenario would absorb a substantial part of the demand for general recreational facilities generated by new residents, employees, and visitors, and by nearby and regional residents and users, because of the amount of open space provided, mix of passive and active uses proposed, and ease of access (even though programming may differ slightly). The same would be true under the cumulative scenario.

The proposed Project would provide Bay and shoreline views and access where it currently does not exist, and public access to the shoreline would be preserved at all times. Access and views under the Maritime Reservation Scenario would remain the same, and while the Waterfront Park would be reduced in size under the Maritime Reservation Scenario, public access would be provided along the Estuary for the length of the smaller site, similar to the

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Project Applicant's preferred design. See Response to Comment A-7-5, which explains that Figures 4.14-2 and 4.14-2.MRS have been added to the Draft EIR to clarify and illustrate proposed event-day ticketed and security zones surrounding the ballpark and includes the interface with proposed Bay Trail improvements.

Additionally, the City acknowledges the BCDC's role as a Responsible Agency. The Draft EIR notes that for BCDC to authorize a permit for the proposed Project, it must find the Project consistent with the McAteer-Petris Act, including its requirements related to providing the maximum feasible public access (see Draft EIR p. 4.10-53).

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proposed Project Phases I and II needs to be quantified and a program-level analysis needs to be performed. The analysis needs to walk through the rationale behind why providing less recreational space and a different program of recreational space for the same number and mix of users would not lead new residents, workers, and visitors to instead use other public recreation facilities such that accelerated deterioration of those facilities could take place. Please provide a comparative analysis of the recreation experience and public access amenities that would occur due to the reduction in open space for the MRS .

A-12-58

SAN FRANCISCO BAY TRAIL

Bay Plan Public Access Policy No. 10 states in part that: "Access to and along the waterfront should be provided by walkways, trails, or other appropriate means and connect to the nearest public thoroughfare where convenient parking or public transportation may be available." Recreation No. 3.a.[9] state in part that a project should "Complete segments of the Bay Trail where appropriate."

As discussed under Impact REC-1, an additional 1.25 miles of the Bay Trail would be included as part of the project to enhance the existing Bay Trail system. For the Final EIR, please expand upon Figure 4-14-1 "Parks and Open Space in the Project Vicinity" and provide information for how the Bay Trail program would be impacted on game/special event days versus and non-game days. Please analyze the impacts of possible Bay Trail closures and the frequency for which they may occur and identify alternate routes. The analysis should include an evaluation of Phase I, Phase II, and the MRS.

A-12-59

RECREATIONAL FISHING

Bay Plan Recreation Policy No. 1 states, in part: "Diverse and accessible water-oriented recreational facilities, such as launch ramps, beaches, and fishing piers, should be provided to meet the needs of a growing and diversifying population, and should be well distributed around the Bay and improved to accommodate a broad range of water-oriented recreational activities for people of all races, cultures, ages and income levels…" Policy No.3.e.(1) states in part that: [w]here practicable, access facilities for non-motorized small boats should be incorporated into waterfront parks, marinas, launching ramps and beaches, especially near popular waterfront destinations."

BCDC has recently received public comments from the Oakland Asian Cultural Center, West Oakland Benefits for Equity, and West Oakland Environmental Indicators Project requesting that a fishing pier be incorporated into the Project design. The comments made the case that a public fishing pier would provide a culturally meaningful way for the Chinatown and West Oakland[12] communities to interact with the Bay: "[a]n accessible, well-designed and maintained fishing pier with cleaning facilities could become an anchor for neighbors to carry on the

[12] West Oakland and Chinatown fall within the high and highest social vulnerability categories as analyzed with BCDC's online Community Vulnerability and Mapping tool. The City of Oakland also recognizes the vulnerability of these two neighborhoods in the Oakland Race and Equity Baseline Indicators Report (City of Oakland, 2019).

RESPONSE

A-12-58 This comment includes a summary of the Bay Plan's Public Access policies. Figure 4.14-1 (see Draft EIR p. 4.14-3) depicts the existing Bay Trail program and planned segments not yet completed. The proposed Project would extend and fill in missing segments of the Bay Trail, as described on Draft EIR p. 4.14-13 and illustrated in Draft EIR Figure 3-15 in the Project Description (see Draft EIR p. 3-30). Specifically, the proposed Project would extend the Bay Trail onto the Project site "along the waterfront and along a circular route using Market Street, Embarcadero West and a segment of Jefferson Street...," and "Off-site, the proposed Project would construct a continuation of the Bay Trail Connection north on Martin Luther King Jr. Way to 3rd Street where it would continue west along Brush Street" (see Draft EIR p. 3-28). No part of the Bay Trail would be closed to the public on game/special event days. Portions of the proposed Bay Trail extension are coterminous with Athletics' Way, which would remain open to the public during game/special event days but would require all persons, including those without a ticket to the game/event, to clear security checkpoints. See Response to Comment A-7-5, which explains that Figures 4.14-2 and 4.14-2.MRS have been added to the Draft EIR to clarify and illustrate proposed event-day ticketed and security zones surrounding the ballpark and includes the interface with proposed Bay Trail improvements. Additionally, the City acknowledges BCDC's role as a Responsible Agency. The Draft EIR notes that for BCDC to authorize a permit for the proposed Project, it must find the Project consistent with the McAteer-Petris Act, including its requirements related to providing the maximum feasible public access (see Draft EIR p. 4.10-53).

A-12-59 The Howard Terminal site is adjacent to a federal navigation channel and the Inner Harbor Turning Basin; a fishing pier in this location would interfere with navigation and therefore is not feasible. However, the City and the Project sponsor acknowledge the Recreation and Environmental Justice policies cited, and the Project would allow members of the public to access and fish from portions of the proposed open space (Waterfront Park) along the wharf. Port of Oakland maritime staff indicated that, based on their initial consultations with the U.S. Army Corps of Engineers and the U.S. Coast Guard, no issues are anticipated with public fishing from the open space that would be located along the southern edge of the existing wharf, as long as no separate fishing pier structures are proposed.

A key consideration influencing the viability of fishing off the existing wharf is that fishing activity would need to remain between the face of the wharf and

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the edge of the federal navigable waterway channel (currently approximately 128 feet but subject to change). Moreover, after further consideration, fishing activity from the southeast portion of the wharf may be prohibited to accommodate the operation and berthing of Oakland Police Department and Oakland Fire Department vessels, the USS *Potomac*, U.S. Lightship *Relief*, and WETA ferries, as these parties have vessels that berth in facilities between Howard Terminal and the existing ferry dock. Fishing off the western edge of the wharf would be prohibited given its proximity to the Inner Harbor Turning Basin.

The Bay Plan policies cited in the comment are acknowledged and were considered in formulating this response. Also, see Consolidated Response 4.14, *Environmental Justice*.

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intergenerational culture and traditions of families fishing and appreciating nature together. It would provide a benefit for people who may not have the resources for, or be comfortable with, other forms of bay access such as boating."[13] Though the lack of a new public fishing pier may not necessarily meet the thresholds of significance selected for Recreation under the DEIR, in light of relevant Bay Plan Recreation and Environmental Justice policies (discussed below), which will be relevant at the BCDC permit application stage of the Project, please analyze in the Final EIR the feasibility and potential inclusion of a fishing pier in the final Project design and implementation.

This request is informed by the following Bay Plan policies:

- Recreation Policy 1 states, in part: "Diverse and accessible water-oriented recreational facilities, such as launch ramps, beaches, and fishing piers, should be provided to meet the needs of a growing and diversifying population, and should be well distributed around the Bay and improved to accommodate a broad range of water-oriented recreational activities for people of all races, cultures, ages and income levels…"
- Recreation Policy 3 states, in part: "Recreational facilities, such as waterfront parks, trails, marinas, live-aboard boats, non-motorized small boat access, fishing piers, launching lanes, and beaches, should be encouraged and allowed by the Commission, provided they are located, improved and managed consistent with" the standards specified as part of the policy.

A-12-59

- Environmental Justice and Social Equity Policy 2 states: "Since *addressing issues of environmental justice and social equity should begin as early as possible* in the project planning process, the Commission should *support, encourage, and request local governments to include environmental justice and social equity in their general plans, zoning ordinances, and in their discretionary approval processes*. Additionally, the Commission should provide leadership in collaborating transparently with other agencies on issues related to environmental justice and social equity that may affect the Commission's authority or jurisdiction." (Emphasis added).
- Environmental Justice and Social Equity Policy 3 states: "Equitable, culturally-relevant community outreach and engagement should be conducted by local governments and project applicants to meaningfully involve potentially impacted communities for major projects and appropriate minor projects in underrepresented and/or identified vulnerable and/or disadvantaged communities, and such outreach and engagement should continue throughout the Commission review and permitting processes. *Evidence of how community concerns were addressed should be provided.* If such previous outreach and engagement did not occur, further outreach and engagement should be conducted prior to Commission action." (Emphasis added).

[13] Oral and written comments presented at the March 26, 2021 SPAC meeting and the April 5, 2021 DRB meeting.

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Given the above policies, the Project proponent should, at the very least, anticipate addressing the public comment regarding the requested fishing pier as part of the BCDC permit application process for the Project. In the event that the Project proponent decides to incorporate a pier into the design of the Project, BCDC would like to ensure that such a decision would already have been captured in the EIR analysis, including Impact REC-1 and any other relevant impact analyses were.

WILDLIFE COMPATIBILITY

A-12-60

Public Access Policy No. 4 states, in part, that "[p]ublic access should be sited, designed and managed to prevent significant adverse effects on wildlife." To the extent necessary to understand the potential effects of public access on wildlife, information on the species and habitats of a proposed project site should be provided, and the likely human use of the access area analyzed. In determining the potential for significant adverse effects (such as impacts on endangered species, impacts on breeding and foraging areas, or fragmentation of wildlife corridors), site specific information provided by the project applicant, the best available scientific evidence, and expert advice should be used. In addition, the determination of significant adverse effects may also be considered within a regional context. Siting, design and management strategies should be employed to avoid or minimize adverse effects on wildlife, informed by the advisory principles in the Public Access Design Guidelines. Public Access Policy No. 15 states in part that: "the Commission should, in cooperation with other appropriate agencies and organizations, determine the location of sensitive habitats in San Francisco Bay and use this information in the siting, design and management of public access along the shoreline of San Francisco Bay."

The DEIR claims that the impacts to biological resources would be less than significant, mainly due to the lack of biota currently found on the site. The site is currently urbanized with industrial, port, and ancillary uses which is not suspected to support any special status or species of concern. The DEIR states: "Following construction, the urbanized upland portions of the Project site would continue to provide little in terms of wildlife benefits." While there is a list of sensitive and protected species for the Bay as a region, the DEIR fails to clearly identify which Bay area species have the potential to be impacted, discuss the likelihood of their presence or absence, or provide a map indicating the species' proximity to Project construction and operations. It would be beneficial to see where known nesting sites are in the surrounding areas, to see if the species could move in, and to better visualize the potential lighting, sound (fireworks), and human disturbance impacts.

Safety of Fills

A-12-61

The Bay Plan includes a policy section on Safety of Fills to reduce the risk of life and damage to property from construction on filled lands in the Bay. Implications of these policies relate primarily to the analyses in Section 4.6 and Section 4.8 of the DEIR.

RESPONSE

A-12-60 Draft EIR Appendix BIO contains Figure BIO-1, which lists the names and depicts the locations of special-status species occurrences within 5 miles of the Project site, as recorded in the California Department of Fish and Wildlife's Natural Diversity Database in January 2019. Figure BIO-1 also identifies the location of the Project site and marine and terrestrial study area boundaries. The boundary of the terrestrial study area "...includes the Project site and adjacent landside areas with similar habitat composition including developed or paved areas with long-standing industrial or Port of Oakland related uses..." (see Draft EIR, Figure 4.3-1, p. 4.3-2). The marine study area "...includes the [Oakland] Estuary shoreline along the Project site and waters immediately adjacent to the Project site, although marine resources documented in all waters of the Central San Francisco Bay basin (Central Bay)...were considered in this analysis" because of the movement of marine resources within the Central Bay (see Draft EIR, Figure 4.3-2, p. 4.3-2).

Draft EIR Appendix BIO also contains four tables listing special-status species and their potential to occur in the terrestrial or marine study areas (Table BIO-1, Special-status or Otherwise Protected Plant Species that may occur in the Terrestrial Study Area; Table BIO-2, Special-status or Otherwise Protected Animal Species that may occur in the Terrestrial Study Area; Table BIO-3, Special-Status Fish and Marine Mammal Species that may occur in the Bay Waters of the Study Area; and Table BIO-4, Managed Fish Species known to occur in Central San Francisco Bay under the Magnuson-Stevens Act). These tables list the individual species, their federal, state, or other protective status, and habitat requirements. For each species, the tables then identify whether the species is present or has a low, moderate, or high potential to occur based on the presence of suitable habitat in the study area, and whether these areas are within the species' range. Species determined to have at least a moderate potential to occur in the marine or terrestrial study areas are discussed in detail in the Environmental Setting, which further describes their documented presence in the Project study area, including known nesting sites for special-status birds with potential to be present (Draft EIR pp. 4.3-15 through 4.3-18).

Potential impacts of the proposed Project on those species determined to have at least a moderate potential to occur were assessed in the impact analysis. This approach is a conditional analysis where a focused evaluation of potential Project impacts on an individual species is based on their potential to be present in the marine or terrestrial study areas. See also Consolidated

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Response 4.2, *Formulation, Effectiveness and Enforceability of Mitigation Measures*, regarding bird collision mitigation, and Consolidated Response 4.17, *Bird Impacts from Fireworks Displays*.

A-12-61 The subsurface profile and details related to existing fill material on the Project site is discussed in Section 4.6, *Geology, Soils, and Paleontological Resources,* of the Draft EIR (Draft EIR p. 4.6-4). See also analysis under Impact GEO-1 (Draft EIR pp. 4.6-16-18), and Impact GEO-3 (Draft EIR pp. 4.6-19-20) related to fill material and geotechnical concerns. In response to the comment, information about the Bay Plan's Safety of Fills policy and the Engineering Criteria Review Board is added to the regulatory setting of Section 4.6, *Geology, Soils, and Paleontological Resources*.

In response to the comment, the following text has been added at the bottom of p. 4.6-12 of the Draft EIR:

> ***San Francisco Bay Conservation and Development Commission***
>
> The McAteer-Petris Act of 1965 (McAteer-Petris Act), which created the San Francisco Bay Conservation and Development Commission (BCDC), requires the preparation of an enforceable plan to guide the future protection and use of the Bay (Bay Plan). The McAteer-Petris Act directs BCDC to exercise its authority to issue or deny permit applications for placing fill, extracting materials, or changing the use of any land, water, or structure within its jurisdiction. The Bay Plan[6a] presents two essential components: policies to guide future uses of the Bay and shoreline, and the maps that apply these policies to the present Bay and shoreline. BCDC is directed by the McAteer-Petris Act to carry out its regulatory processes in accordance with the Bay Plan policies and Bay Plan Maps.
>
> Part IV of the Bay Plan contains the findings and policies associated with development of the Bay and shoreline. Within Part IV, there are policies associated with safety of fills and structures that will be built upon fill. Listed below are two of the four policies that pertain to the Project:
>
> **Policy 1:** The Commission has appointed the Engineering Criteria Review Board (ECRB) consisting of geologists, civil engineers specializing in geotechnical and coastal engineering, structural engineers, and architects competent to and adequately empowered to: (a) establish and revise safety criteria for Bay fills and structures thereon; (b) review all except minor projects for the adequacy of their specific safety provisions, and

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make recommendations concerning these provisions; (c) prescribe an inspection system to assure placement and maintenance of fill according to approved designs; (d) with regard to inspections of marine petroleum terminals, make recommendations to the California State Lands Commission and the U.S. Coast Guard, which are responsible for regulating and inspecting these facilities; (e) coordinate with the California State Lands Commission on projects relating to marine petroleum terminal fills and structures to ensure compliance with other Bay Plan policies and the California State Lands Commission's rules, regulations, guidelines, and policies; and (f) gather, and make available performance data developed from specific projects. The activities would complement the functions of local building departments and local planning departments, none of which are presently staffed to provide soils inspections.

Policy 2: Even if the Bay Plan indicates that a fill may be permissible, no fill or building should be constructed if hazards cannot be overcome adequately for the intended use in accordance with the criteria prescribed by the ECRB.

_____

[6a] San Francisco Bay Conservation and Development Commission. 2020. *San Francisco Bay Plan.* Originally adopted in 1968; amended in October 2011; reprinted in May 2020.

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- **Role of the ECRB.** Since the proposed wharf improvements and the stadium structure are sited on previously filled lands still constituting BCDC's Bay jurisdiction (14 CCR § 10710), the ECRB has purview over the proposed project. The Regulatory Settings in Section 4.6 should include information on the Safety of Fills Policies and the ECRB. California Code of Regulations Title 14, Section 10271 cites that "the Board shall advise the Commission on problems relating to the safety of fills and of structures on fills." Additionally, the Bay Plan policies for Safety of Fills state, in part: "[t]he Commission has appointed the Engineering Criteria Review Board consisting of geologists, civil engineers specializing in geotechnical and coastal engineering, structural engineers, and architects competent to and adequately empowered to: (a) establish and revise safety criteria for Bay fills and structures thereon; (b) review all except minor projects for the adequacy of their specific safety provisions, and make recommendations concerning these provisions; (c) prescribe an inspection system to assure placement and maintenance of fill according to approved designs…." The ECRB was most recently briefed on the Project on March 25, 2021.

A-12-62

- **Maritime Reservation.** Section 4.8 includes this analysis of the MRS: "… All site conditions relative to hazards and hazardous materials would remain the same as described for the proposed Project, and therefore the impacts and analysis for the Maritime Reservation Scenario would be the same as those discussed above for the proposed Project," without any additional evidence or discussion specific to the MRS. Staff believes that additional evidence and a program-level discussion is warranted, not because the Project itself would result in the excavation and development of the turning basin, but because the site condition upon which the MRS variation of the Project is built would be potentially different. In the MRS, the buildings in both Phase I and Phase II would be closer to the water's edge, and that edge would have been created through the disturbance of fill and soil known to be contaminated. The open space area, similarly, would be located along an edge where contaminated fill would have been disturbed. The analysis needs to acknowledge the change in site condition and potential exposure to the development being proposed (in this case, the MRS); identify how these changes may result in different impacts or different levels of significance in impacts for the MRS compared to the proposed Project; identify ways that these foreseeable differences in potential impacts between the proposed Project and MRS could affect the way the development is planned, designed, and approved; and include mitigation for any potentially significant impacts.

Environmental Justice

A-12-63

The State of California defines environmental justice as "the fair treatment of people of all races, cultures, and incomes with respect to the development, adoption, implementation, and enforcement of environmental laws, regulations, and policies." In 2019, the Commission adopted Environmental Justice and Social Equity findings and policies into the Bay Plan (BPA 2-17), as well as Resolution 2019-07 to uphold a set of Environmental Justice and Social

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A-12-62 As discussed in Draft EIR Section 4.8, *Hazards and Hazardous Materials,* under *Current Nature and Extent of Onsite Contamination*, the nature and extent of contamination has been characterized for the entire Project site. Draft EIR Figures 4.8-2, 4.8-3, and 4.8-4 (see Draft EIR pp. 4.8-12 through 4.8-14) present the extent of contamination above risk levels for the entire Project site. As shown on Figure 3-17, *Illustrated Phase 1 Site Plan – Maritime Reservation Scenario* (Draft EIR p. 3-38), and Figure 3-18, *Illustrated Buildout Site Plan – Maritime Reservation Scenario (*Draft EIR p. 3-39), the structures for the Maritime Reservation Scenario would still be located within the Project site area where the nature and extent of contamination has already been characterized. Also, both the Project and the Maritime Reservation Scenario would involve construction of buildings and open space on areas where contaminated fill would be disturbed. Therefore, impacts related to hazards and hazardous materials would not change.

A-12-63 See Consolidated Response 4.14, *Environmental Justice,* and Section 4.14.4, *San Francisco Bay Conservation and Development Commission, San Francisco Bay Plan*.

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Equity Guiding Principles. While environmental justice is not necessarily identified as a distinct resource area in and of itself to be analyzed under Appendix G of the CEQA Guidelines, many of the DEIR's topic areas touch on issues of environmental justice and it is clear that environmental justice can and does intersect with CEQA environmental impact analysis requirements.[14] Environmental Justice and Social Equity Policy 4 states: "If a project is proposed within an underrepresented and/or identified vulnerable and/or disadvantaged community, potential disproportionate impacts should be identified in collaboration with the potentially impacted communities. Local governments and the Commission should take measures through environmental review and permitting processes, within the scope of their respective authorities, to require mitigation for disproportionate adverse project impacts on the identified vulnerable or disadvantaged communities in which the project is proposed." BCDC identified issues related to environmental justice in our comments on air quality, circulation, flooding impacts, and public access and recreation, and noted them above.

A-12-64

In addition, BCDC has a comment on tribal cultural resources. The first of the Commission's Guiding Principles on Environmental Justice and Racial Equity is to "recognize and acknowledge the California Native American communities who first inhabited the Bay Area and their cultural connection to the natural resources of the region." Staff requests that Section 4.4 include additional ethnographic information about the tribes that have historically had a connection to the Project site. Additionally, based on the State of California Office of Planning and Research AB 52 and Tribal Cultural Resources in CEQA Technical Advisory, mitigation for the potential discovery of tribal cultural resources during construction should include some form of tribal consultation to determine the appropriate treatment of the resource, including the presence of a Native American monitor on the site to ensure that the agreed-upon treatment plan is correctly implemented.

A-12-65

CONCLUSION

Once again, BCDC appreciates the opportunity to provide comments on this DEIR. As a responsible agency, BCDC will be using the Final EIR to inform the Commission's decisions on both Bay Plan Amendment No. 2-19 and, if a permit application is submitted, approval of a permit. Please continue to keep BCDC staff informed on developments in the environmental review and local approvals for the Project. Additionally, BCDC staff is available to answer any questions about our comments and to work and to share information with preparers of the DEIR wherever we can be of assistance.

[14] *See, e.g.*, https://oag.ca.gov/sites/all/files/agweb/pdfs/environment/ej_fact_sheet.pdf, pp 2-6.

RESPONSE

A-12-64 See Response to Comment A-7-41 – A-7-44. The Draft EIR recognizes that the Project site and vicinity was occupied by the Native American group known as the Ohlone before Euroamerican contact and settlement. In addition, the City recognizes that the mitigation should also require a Native American representative if an unanticipated discovery is Native American–related. As a result, the text of Mitigation Measure CUL-4a on p. 4.4-28 of the Draft EIR has been revised as shown in Response to Comment A-7-44.

A-12-65 The City acknowledges the BCDC's role as a Trustee Agency and a Responsible Agency. 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.

A-12

COMMENT

RESPONSE

Please direct any questions concerning the DEIR and this comment letter to Katharine Pan, Principal Shoreline Analyst, at katharine.pan@bcdc.ca.gov or 415/-352-3600. We look forward to future updates on the Project.

Sincerely,

DocuSigned by:
Katharine Pan

KATHARINE PAN
Principal Shoreline Development Analyst

San Francisco Bay Conservation and Development Commission
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cc: State Clearinghouse, (SCH No. 2018112070) (state.clearinghouse@opr.ca.gov)
Areana Flores, Bay Area Air Quality Management District (aflores@baaqmd.gov)
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Becky Ota, Program Manager, California Department of Fish and Wildlife (Becky.Ota@wildlife.ca.gov)
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Cameron Oakes, California Department of Transportation (cameron.oakes@dot.ca.gov)
Mark Leong, California Department of Transportation (mark.leong@dot.ca.gov)
Raleigh McCoy, Metropolitan Transportation Commission/Association of Bay Area Governments (rmccoy@bayareametro.gov)
Xavier Fernandez, San Francisco Bay Regional Water Quality Control Board (xavier.fernandez@waterboards.ca.gov)
Katerina Galacatos, U.S. Army Corps of Engineers, (Katerina.Galacatos@usace.army.mil)
Reid Boggiano, State Lands Commission (reid.boggiano@slc.ca.gov)

KP/ra

A-13 California Department of Transportation (Caltrans)

COMMENT

RESPONSE

From: Leong, Mark@DOT
To: Vollmann, Peterson
Cc: state.clearinghouse@opr.ca.gov
Subject: Oakland Waterfront Ballpark DEIR, SCH #2018112070, Case #ER18-016: Caltrans Comments
Date: Tuesday, April 27, 2021 10:53:33 AM
Attachments: Oakland Waterfront Ballpark DEIR Caltrans.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 Peterson,

I would like to thank you for including Caltrans in the review process for this project. Attached you will find our response letter. Feel free to contact me if you need any more information or if you would like to discuss our comments.

Best regards,

Mark Leong, Branch Chief
Local Development- Intergovernmental Review
Caltrans, District 4 | cell: 510-960-0868

For early coordination or CEQA land use review requests, please email LDIGR-D4@dot.ca.gov.

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COMMENT

RESPONSE

STATE OF CALIFORNIA—CALIFORNIA STATE TRANSPORTATION AGENCY GAVIN NEWSOM, Governor

DEPARTMENT OF TRANSPORTATION
DISTRICT 4
OFFICE OF TRANSIT AND COMMUNITY PLANNING
P.O. BOX 23660, MS-10D
OAKLAND, CA 94623-0660
www.dot.ca.gov

Making Conservation a California Way of Life.

April 27, 2021

SCH #: 2018112070
GTS #: 04-ALA-2018-00577
GTS ID: 13581

Peterson Vollman
City of Oakland, Bureau of Planning
250 Frank H. Ogawa, Suite 2114
Oakland, CA 94612-2032

Re: Oakland Waterfront Ballpark District Draft Environmental Impact Report (DEIR), Case File # ER18-016

Dear Peterson Vollman:

Thank you for including the California Department of Transportation (Caltrans) in the environmental review process for this project. We are committed to ensuring that impacts to the State's multimodal transportation system and to our natural environment are identified and mitigated to support a safe, sustainable, integrated and efficient transportation system. The following comments are based on our review of the February DEIR.

Project Understanding

The Oakland Athletics Investment Group, LLC (Project sponsor) proposes to acquire the rights to develop the Howard Terminal from the Port of Oakland, acquire the rights to adjacent properties from private owners, and construct a new Major League Baseball ballpark, as well as residential, entertainment, office, hotel, and retail (mixed-use) development, creating a new Oakland Waterfront Ballpark District. The proposed Project is adjacent to major freight activity and near Interstates (I)-880 and I-980.

A-13-1

Travel Demand Analysis

With the enactment of Senate Bill (SB) 743, Caltrans is focused on maximizing efficient development patterns, innovative travel demand reduction strategies, and multimodal improvements. Caltrans commends the City of Oakland regarding its vehicle trip reduction strategies through the proposed Transportation Management (TMP) Plan. This project supports the State's goals to reduce greenhouse gas emissions and improve multimodal transportation options for land use development. Caltrans encourages the City of Oakland to regularly provide TMP monitoring reports to Caltrans when made available.

"Provide a safe, sustainable, integrated and efficient transportation system to enhance California's economy and livability"

A-13-1 This is a general comment that includes introductory remarks and serves to introduce the more specific comments that are responded to in detail below. As a result, no specific response is provided here. The 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.

A-13

COMMENT

A-13-2

Multimodal Safety
Due to the increased frequency and scale of multimodal transportation crossings through the State Transportation Network, local roads and rail line, Caltrans requests the following:

- All pedestrian facilities near the project site be brought to current Americans with Disabilities Act (ADA) standards;

A-13-3

- The Market Street buffered bike lane and road improvement be extended from 3rd Street to Embarcadero West;

A-13-4

- *Appendix 13, Section 5.2.1* states that the gondola may replace the need for shuttles to and from the 12th Street Bart station and the ballpark site during event times. Because the gondola has greater capacity to transport pedestrians, please discuss whether there are potential safety benefits through not requiring shuttle service on local roads;

A-13-5

- While fences along the rail line for grade separation between pedestrians and rail operations will be installed, there are fence gaps that diminish their effectiveness to maximize safety for pedestrians and other transportation modes. Additionally, fence gaps and additional crossings could result in impacts to freight rail and Amtrak operations. Please explain if a safety analysis for the rail corridor adjacent to this project area was performed. Such an analysis should include multimodal crossings at full capacity during game events and with current and projected rail operations; and
- On page 83 of the Howard Terminal Draft Transportation Management Plan, it is noted that "the multi-use path would be up to 30 feet wide between the fence and the existing buildings." Please confirm whether this aligns with Union Pacific Railroad (UPRR) and Capitol Corridor Joint Powers Authority (CCJPA) expectations regarding clearance and use along the rail right of way.

A-13-6

Freight Operations
The Port of Oakland handles 99% of containerized goods in Northern California and is considered the eighth busiest seaport in the United States. Therefore, freight, particularly containerized freight transported by truck, is a significant component of transportation operations along the existing roadway network near the project site. Given that this project seeks to acquire land currently designated as a Port Priority Use Area within the current San Francisco Bay Area Seaport Plan, there should be a discussion on this project's implications on freight operations:

Section 4.15-7 - 4.15-10, Existing Roadway Network, should include an acknowledgement and discussion on the following:

RESPONSE

A-13-2 The comment requests that all pedestrian facilities near the Project be brought to current Americans with Disabilities Act (ADA) standards. standards. The City of Oakland incorporates ADA requirements into all new and modified street and intersection improvements. It 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.

A-13-3 See Table 4.15-41, the consistency analysis table, and specifically Market Street between Embarcadero West and 18th Street (see Draft EIR p. 4.15-208). Market Street between Embarcadero West and 7th Street is the primary truck corridor for Schnitzer Steel and would be the primary automobile access for the proposed Project. The design cross section for the segment of Market Street between Embarcadero West and 3rd Street indicates that four lanes (two lanes each way) would be required to accommodate the frequent trucks as well as the proposed Project traffic. Thus, bike lane facilities could not be accommodated on this segment of Market Street. The Draft EIR determined that a less-than-significant impact would occur with alternative bike connections required as mitigation measures to provide an alternative bicycle route to the Project site via 7th Street and Martin Luther King Jr. Way, which carries substantially less truck traffic.

A-13-4 As indicated on Draft EIR p. 5-95, the Aerial Gondola Variant would provide an alternative to on-road vehicles, resulting in replacement of an estimated 4–10 percent of non–delivery vehicle trips. As noted by the commenter, the gondola could also replace the need for shuttles between the site and the 12th Street BART Station. Although these reductions in vehicle trips could theoretically result in safety benefits, the Project (with and without the Gondola Variant) would bring new vehicles, bicyclists, and pedestrians to the area, requiring a continued focus on safety. The Aerial Gondola Variant would be managed to ensure safety, traffic flow, and emergency access/egress; would adhere to improvements and measures in the proposed Project's Transportation Management Plan (see Draft EIR pp. 4.15-137 through 4.15-143); and would result in the same transportation and circulation impacts and mitigation measures as identified for the proposed Project without this variant (see Draft EIR pp. 5-132 through 5-133).

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COMMENT

RESPONSE

A-13-5 See Consolidated Response 4.6, *Rail Safety, Grade Crossing, and Grade Separation*. The Consolidated Response includes a safety effectiveness analysis that shows statistically that Mitigation Measure TRANS-3a would improve safety over unmitigated conditions. Mitigation Measure TRANS-3a (pp. 4.15-235 and 4.15-236 as revised as shown in Consolidated Response 4.6) would require installation of fencing along the railroad corridor as well as at-grade crossing improvements such as quad gates and gates for pedestrians and bicyclists. This fencing would eliminate gaps when the gates are down. The final set of railroad corridor improvements would be determined when the Project sponsor undertakes the necessary diagnostic study and coordinates with the City, CPUC, and affected railroads, and obtains all necessary permits/approvals, including a GO 88-B Request (Authorization to Alter Highway Rail Crossings).

As noted in the Draft EIR (4.15-93) the multi-use path could be up to 30 feet wide depending on the location of the fence line separating the railroad tracks and Embarcadero, and as noted the fence line would be determined in consultation with UPRR and CPUC and this may alter the width available for the multi-use path. Refer to Consolidated Response 4.6, *Rail Safety, Grade Crossing, and Grade Separation* for more information regarding the implications of the fence line in relation to UPRR setback and right of way requirements.

A-13-6 See Consolidated Response 4.4, *Port Operations and Land Use Compatibility*. Draft EIR pp. 4.15-149 through 4.15-156 describe the implications of the proposed Project to Port-related freight operations. Topics in this section include: Event Day Traffic Management (see Draft EIR p. 4.15-149), Seaport Access at Adeline Street (see Draft EIR p. 4.15-151), I-880 On-Ramp and Off-Ramp at Union Street (see Draft EIR p. 4.15-152), Railroad Access (see Draft EIR p. 4.15-152), Sensitivity Testing of Intersection Operations and Vehicle Queueing (see Draft EIR p. 4.15-154), and Seaport Cut-Through Traffic (see Draft EIR p. 4.15-155).

The detailed technical analyses supporting Draft EIR Section 4.15.5, *Port Operations*, are provided in: Appendix TRA.3, *Intersection Operations Technical Memorandum*; Appendix TRA.4, *Air and Noise Forecasts*; and Appendix TRA.7, *Port of Oakland Intersection Operations Sensitivity Analysis*. The transportation data collection sheets are provided in the Additional Transportation Reference Material. The transportation data collected for the Draft EIR (Chapter 4.15) included multimodal intersection counts at all study

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COMMENT

RESPONSE

intersection and included the number of trucks. These trucks were considered in all of the intersection operations analysis and incorporated into the traffic forecasts.

The commenter is directed to Draft EIR Page 4.15-42 through 46 which describes the existing Port characteristics as they relate to the Project study area. As noted, within the project study area the 7th Street, 5th and 6th Streets, and 3rd Street corridors all serve Port-related truck traffic and the description identifies the number of peak hour trucks using these corridors. The description of the 3rd Street corridor as the overweight corridor is also described. In consideration of the comment, the following text is incorporated into Draft EIR (Page 4.15-42) to summarize the Port's daily traffic volumes:

> The Seaport, shown in **Figure 4.15-13**, is bounded by freight and passenger rail lines, I-80, and I-880, and has three access points, at Maritime Street (ADT 4,900 vehicles), 7th Street (ADT 7,800 vehicles), and Adeline Street (ADT 7,000 vehicles) ~~Streets~~.

Please see Chapter 7, *City-Initiated Updates and Errata to the Draft EIR*, for a description of the current overweight truck route, which has been added on p. 3-46 of the Draft EIR.

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COMMENT

A-13-6

- The high levels and percentage shares of truck traffic traveling to and from the Port of Oakland and the State Transportation Network (STN) and local roadways;
- The three roads that access the Port of Oakland (Adeline Street, 7th Street, Maritime Street) and their associated AADTT levels; and
- That 3rd Street is part of the Port-City of Oakland Heavyweight Container Permit Program that allows heavy containers to be moved on local streets.

A-13-7

Section 4.15-1, Transportation and Circulation. An identification and discussion of all local, State, and federally designated truck routes should be provided in this section. Particularly, an acknowledgement of the Port-City of Oakland Heavyweight Container Permit Program along 3rd Street should be provided and discussed in terms of safety, efficiency, and general throughput.

A-13-8

Section 4.15-45, Existing Port Characteristics, 3rd Street Corridor. The Heavy Container Permit Program allows the passage of heavy trucks along the 3rd Street corridor to serve commercial businesses and industries located between the Port of Oakland, East Oakland and San Leandro. While the DEIR states that the program's primary purpose is to prevent overweight trucks from using the State highways, please note that the main benefit of the program is to allow shippers to maximize the loading and transloading demands of heavy commodities moving to and through the Port of Oakland. The Port-City of Oakland Heavyweight Container Permit Program also has restrictions relating to time of day and speed of travel which could impact some surface transportation efficiency related project mitigation.

A-13-9

Section 4.15-46 – 4.15-47, Existing Port Characteristics. Based on high levels of truck Vehicle Miles Traveled (VMT) in the region and State, there is a significant shortage in truck parking options, particularly within the West Oakland community and Port of Oakland area. The need for drivers to park is seldom discretionary and is often driven by a terminal's commercial practices, most notably the hours of operation, when a load is ready to be picked up or transferred, and the day of the week. Additionally, the need to park to take required rest is governed by federal and State rules concerning safety relating to hours of driving and mandatory rest periods. When the location choice for drivers cannot be furnished by the facility (terminal or yard), the truck operator may drive a significant distance for the right location. Due to shortages in legal truck parking facilities and dedicated off-street truck parking and as a result of the loss of the Howard Terminal as a truck parking and ancillary facility, the DEIR should include a discussion and propose mitigation measures on potential demand and impacts from truck drivers parking in local neighborhoods and streets while waiting to access the Port of Oakland.

RESPONSE

A-13-7 Draft EIR p. 4.15-41 identifies Market Street and Martin Luther King Jr. Way in the study area as truck routes leaving the Project site. Draft EIR p. 4.15-45 identifies additional city-designated truck routes in the study area including 7th Street east of Union, 5th/6th Streets between Union and Market, and 3rd Street between Adeline and Market. 3rd Street is also described as the route designated by the Oakland Police Department to be used by overweight trucks as part of the Heavy Container Permit Program (see Oakland Municipal Code Chapter 10.53).

See Response to Comment A-13-6 for references to the technical analyses conducted along these and other streets in the study area.

A-13-8 The fourth sentence of the third bullet on Draft EIR p. 4.15-45 is revised to read:

> The primary reason for the program is that heavy containerized loads that exceed Federal and or State weight limits are not allowed on State highways to protect interstate freeway bridge structures. This established program allows shippers to meet the demands of industry and to maximize both transportation efficiencies and the economic benefits afforded by utilizing the full cargo carrying capabilities of shipping containers.

A-13-9 See Consolidated Response 4.5, *Truck Relocation*.

A-13

COMMENT

A-13-10 *Section 4.15-80, Parking*. Please include a discussion of truck parking demand as a result of the proposed Oakland Waterfront Ballpark District at Howard Terminal. The associated supply, service, and delivery needs generated by the proposed project will almost exclusively be handled by trucks and the need to park and/or stage for deliveries is essential to the safe and efficient delivery of goods.

A-13-11 Additionally, the San Francisco Bay Area is considered a non-attainment area for PM 2.5 which is primarily generated through the combustion of diesel fuel from trucks and other heavy-duty equipment. Due to these concerns, an analysis of truck parking needs as well as the potential for on-site Zero Emission Truck charging and/or fueling stations to improve safety and air quality should be included.

State Right of Way (ROW) over and under the STN

A-13-12 *Aerial Gondola Variant.* The proposed Gondola will require a ROW Use Agreement, with payment of a fair market rent, for the use of the State's airspace. The Federal Highway Administration (FHWA) would need to approve the federal environmental document, the Right of Way Use Agreement, and the Plans associated with this gondola utilizing the Airspace over the STN.

A-13-13 *Pedestrian Corridor Improvements under the STN*. These corridors will require an encroachment permit to relocate the fence lines under the freeway. Please note that the State has ROW Use Agreements with various tenants underneath the STN and the relocation of the fence-lines may impact those tenants' lease areas.

A-13-14 Additionally, please consider the implications of removing the public art installation along Broadway under the STN as there may be liability under the Visual Artists Rights Act if this public art is altered or removed.

Construction-Related Impacts

A-13-15 Potential impacts to the State ROW from project-related temporary access points should be analyzed. Mitigation for significant impacts due to construction and noise should be identified.

A-13-16 Project work that requires movement of oversized or excessive load vehicles on state roadways requires a transportation permit that is issued by Caltrans. To apply, visit: https://dot.ca.gov/programs/traffic-operations/transportation-permits.

A-13-17 Prior to construction, coordination may be required with Caltrans to develop a Transportation Management Plan (TMP) to reduce construction traffic impacts to the STN. Consider that the aerial gondola variant may require temporary closures of the STN, and transportation impacts should be evaluated in the TMP.

RESPONSE

A-13-10 The proposed truck use and activity on the Project site would be substantially less than current truck operations at Howard Terminal. See Appendix AIR.1 Table 23 for the truck activity assumptions used for the proposed Project and Appendix AIR.1 Table 131 for current truck operations at Howard Terminal.

Truck activities associated with the ballpark are expected to be as follows. These numbers reflect average truck deliveries for a seven-day home stand:

- 11 semi trucks and 27 box trucks for concessions
- 2 semi trucks and 12 box trucks for merchandise
- 3 media trucks per game
- 3 motor visiting team motor coaches per game[73]

This latest information represents less truck activity than was assumed in the air quality analysis. Please refer to Appendix AIR.1 section 2.3.4 and Table 23 for the truck activity assumptions used for the proposed Project (e.g., 11 daily truck deliveries per ballgame and 21 daily truck deliveries per event).

Individual concert events would also involve trucks (mostly box trucks) as well as performer trucks and busses.

In the absence of specific information about future tenants of non-ballpark development, the air quality analysis for the Draft EIR evaluates criteria pollutant and toxic air contaminant emissions from anticipated truck operations resulting from the proposed Project by using the County average fleet mix, which includes trucks. See Section 2.3.4 of Draft EIR Appendix AQ.

A-13-11 As discussed on Draft EIR p. 4.2-14, according to the BAAQMD, the major contributors to regional PM2.5 concentrations are biomass burning (30 percent), on-road motor vehicles (14 percent), biogenic/natural sources (10 percent), cooking (9 percent), and sea salt (9 percent).[74]

As stated above, the air quality analysis for the Draft EIR evaluates criteria pollutant and toxic air contaminant emissions from all anticipated truck operations resulting from the proposed Project, including PM2.5 emissions. Draft EIR p. 4.2-44 explains the methods used to estimate truck emissions; also refer to Appendix AIR (see p. 14-15 and Tables 24 through 28). See also Consolidated Response 4.5, *Truck Relocation*.

[73] Noah Rosen, Email to Rob Rees dated September 27, 2021

[74] BAAQMD, 2017. *Air Quality Standards and Attainment Status*, updated January 5, 2017. http://www.baaqmd.gov/research-and-data/air-quality-standards-and-attainment-status, accessed April 2019.

A-13

COMMENT

RESPONSE

Regarding the requirement for on-site zero emission truck charging and fueling stations, Mitigation Measure AIR-2d would require the Project sponsor to install electrical hook-ups for trucks with transport refrigeration units (TRU) or auxiliary power units at loading docks, require all trucks serving the ballpark to use TRUs and auxiliary power units that are electric plug-in capable, and require any truck-intensive uses to use TRUs and auxiliary power units that are electric plug-in capable and trucks that use advanced exhaust technology or alternative fuels (see Draft EIR p. 4.2-77 and See Response to Comment A-17-9.) Availability of electric medium-duty and heavy-duty trucks has been expanding over the last few years in the United States and globally due to increasing demand, technology improvements in battery capacities and declining battery prices. Market availability is expected to increase as original equipment manufacturers (OEM) announce sales plans, technologies and cost improves, and government policies incentivize the market towards a zero-emissions medium-duty and heavy-duty truck fleet. However, given that electric truck infrastructure standards have not yet converged, the Countywide fleet penetration of zero-emission trucks at Project buildout is minimal, and because considerable uncertainty exists on the type and number of chargers that could be needed to address the demand, at this stage it is too speculative for the Project to commit to installing heavy-duty chargers. For example, Financial and operational barriers still remain for implementation of electric trucks, including the extra weight of batteries and potential payload penalties, limited driving distance range between charges, charging logistics and convenience, regional infrastructure availability and costs, and overall confidence in the technology to fulfill operational requirements. Please refer to *Electric Vehicle Assumptions for the Oakland Waterfront Ballpark District Project* (Ramboll, 2021)[75] (section 6) and response to comment A-17-6 for additional discussion.

Through implementation of Mitigation Measure AIR-2e, the project would install EV charging stations at 13 percent of the Project's parking spaces and EV-capable spaces at 29 percent of the Project's parking spaces, which would allow for future EV charging infrastructure to be installed. Mitigation Measure AIR-2e also allows for the installation of heavy-duty truck charging as a strategy to achieve the required performance standard. Please also refer to *Electric Vehicle Assumptions for the Oakland Waterfront Ballpark District*

[75] Ramboll, 2021. Electric Vehicle Assumptions for the Oakland Waterfront Ballpark District Project, November 3, 2021.

A-13

COMMENT

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Project (Ramboll, 2021)[76] and Responses to Comments O29-1-22 through O29-1-28 for additional discussion of EV charging infrastructure

A-13-12 The comment provides information related to the Gondola variant. The approvals required as described in the comment are noted.

A-13-13 The comment provides information related to the pedestrian improvements that cross under the freeway. The approvals required as described in the comment are noted and the ROW Use Agreements are noted.

A-13-14 The comment relates to the approval process for removing public art and not to environmental impacts or the adequacy 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. 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.

A-13-15 The proposed Project would access State facilities from existing access points (see Draft EIR Figure 4.15-20, p. 4.15-95). The Draft EIR analyzes construction-related transportation impacts starting on p. 4.15-240 of the Draft EIR and includes Mitigation Measure TRANS-4, which would require preparation and implementation of a Construction Management Plan to address construction-related impacts. Mitigation measures to address construction-related noise impacts of the proposed Project are also identified on Draft EIR pp. 4.11-38 through 4.11-41. These measures include:

- 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: Physical Improvements or Off-site Accommodations for Substantially Affected Receptors

All other sections of the Draft EIR (i.e., sections other than Transportation and Noise) also begin their impact analysis by considering potential impacts of

[76] Ramboll, 2021. Electric Vehicle Assumptions for the Oakland Waterfront Ballpark District Project, November 3, 2021.

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COMMENT

RESPONSE

construction and include mitigation where such impacts are potentially significant.

A-13-16 The comment provides information related to Caltrans transportation permits for oversized and excessive load construction vehicles. The comment is noted. This comment raises neither significant environmental issues nor specific questions about the analyses or information in the Draft EIR that would require response pursuant to State CEQA Guidelines Section 15088. The comment will be included as a part of the record and made available to the decision makers prior to a final decision on the proposed Project.

A-13-17 Mitigation Measure TRANS-4 (Draft EIR p. 4.15-241) would require a Construction Management Plan (CMP) for the proposed Project. The CMP would be submitted to the City of Oakland for review and approval prior to issuance of the first construction-related permit. Infrastructure improvements that would occur on or over Caltrans rights-of-way would require encroachment permits and the necessary supporting studies as directed by Caltrans through the encroachment permit process.

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COMMENT

A-13-18

Utilities
Any utilities that are proposed, moved or modified within the State ROW must be discussed. If utilities are impacted by the project, provide site plans that show the location of existing and/or proposed utilities. These modifications require a Caltrans-issued encroachment permit.

A-13-19

Terminology
Section 4.15-28 – 4.15-29, Freeway Segments. Caltrans strives to achieve equity by participating in a transparent and inclusive process, and that we engage in practices where everyone is treated with dignity and justice. Caltrans requests that the word "grandfathered" be replaced with "legacy" to describe exempt roadway segments and associated analyses.

A-13-20

Lead Agency
As the Lead Agency, the City of Oakland is responsible for all project mitigation, including any needed improvements to the STN. The project's fair share contribution, financing, scheduling, implementation responsibilities and lead agency monitoring should be fully discussed for all proposed mitigation measures.

Thank you again for including Caltrans in the environmental review process. Should you have any questions regarding this letter, please contact Mark Leong at mark.leong@dot.ca.gov. Additionally, for future notifications and requests for review of new projects, please contact LDIGR-D4@dot.ca.gov.

Sincerely,

Mark Leong

MARK LEONG
District Branch Chief
Local Development - Intergovernmental Review

c: State Clearinghouse

RESPONSE

A-13-18 Utilities alignments are illustrated in Section 4.16 of the Draft EIR and would not affect State ROW. Should this change, the City understands that an encroachment permit would be required.

A-13-19 The text of the Draft EIR will be modified such that freeway segments referred to as "grandfathered" on pp. 4.15-28 through 4.15-29 are now referred to as "legacy segments."

On Draft EIR p. 4.15-28, the list of Freeway Segments is revised to read:

Freeway Segments

- I-80 eastbound: Toll Plaza to I-580 (~~grandfathered~~ legacy segment)[7]
- I-580 eastbound: I-80 to I-980 (~~grandfathered~~ legacy segment)
- I-580 eastbound: I-980 to Harrison Street
- I-580 eastbound: Harrison Street to Lakeshore Avenue
- I-580 eastbound: Coolidge Avenue to SR 13
- I-580 westbound: SR 24 to I-80/580 split (~~grandfathered~~ legacy segment)
- I-880 northbound: Between I-80 ramps
- I-880 southbound: Between I-80 merge and junction I-980
- I-880 southbound: Between I-980 and 23rd Avenue
- SR 13 northbound: Moraga Avenue to Hiller Drive
- SR 13 southbound: Redwood Road to I-580
- SR 24 eastbound: I-580 to Broadway/SR 13 (~~grandfathered~~ legacy segment)
- SR 24 eastbound: Broadway/SR 13 to Caldecott Tunnel (~~grandfathered~~ legacy segment)
- SR 24 eastbound: Caldecott Tunnel to Fish Ranch Road (~~grandfathered~~ legacy segment)

On Draft EIR p. 4.15-28, footnote 7 is revised to read:

~~Grandfathered~~ Legacy segments that operated at LOS F during the initial data collection effort in 1991 by the Alameda County Congestion

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COMMENT

RESPONSE

Management Agency, a predecessor to Alameda CTC, and are therefore ~~"grandfathered,"~~ "legacy," meaning that they are exempt from LOS standards. The other segments are not exempt, meaning that they operate at unacceptable conditions based on Alameda CTC standards. Alameda CTC requires preparation of a deficiency plan for ~~non-grandfathered~~ non-legacy segments that fail to meet the established standards.

On Draft EIR p. 4.15-29, the list of Freeway Ramps is revised to read:

Freeway Ramps

- I-80/I-580 interchange: I-580 westbound to I-80 northbound
- I-580/SR 24 interchange: I-580 westbound to SR 24 eastbound
- I-580/SR 24 interchange: SR 24 westbound to I-580 eastbound
- SR 13/SR 24 interchange: SR 13 northbound to SR 24 eastbound (~~grandfathered~~ legacy segment)
- I-880/SR 260 connection: SR 260 eastbound to I-880 northbound
- I-880 northbound off-ramp to 5th Street/Broadway intersection

A-13-20 See Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*.

A-14 San Francisco Bay Area Rapid Transit District (BART)

COMMENT

RESPONSE

From: Val Menotti
To: Peterson Vollmann
Cc: Kamala Parks; Tim Chan; NFerrara@oaklandca.gov; WLogan@oaklandca.gov
Subject: BART Comments - Oakland Waterfront Ballpark District Project DEIR
Date: Tuesday, April 27, 2021 2:37:40 PM
Attachments: Oakland Waterfront Ballpark DEIR - BART comments 2021-04-27.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,

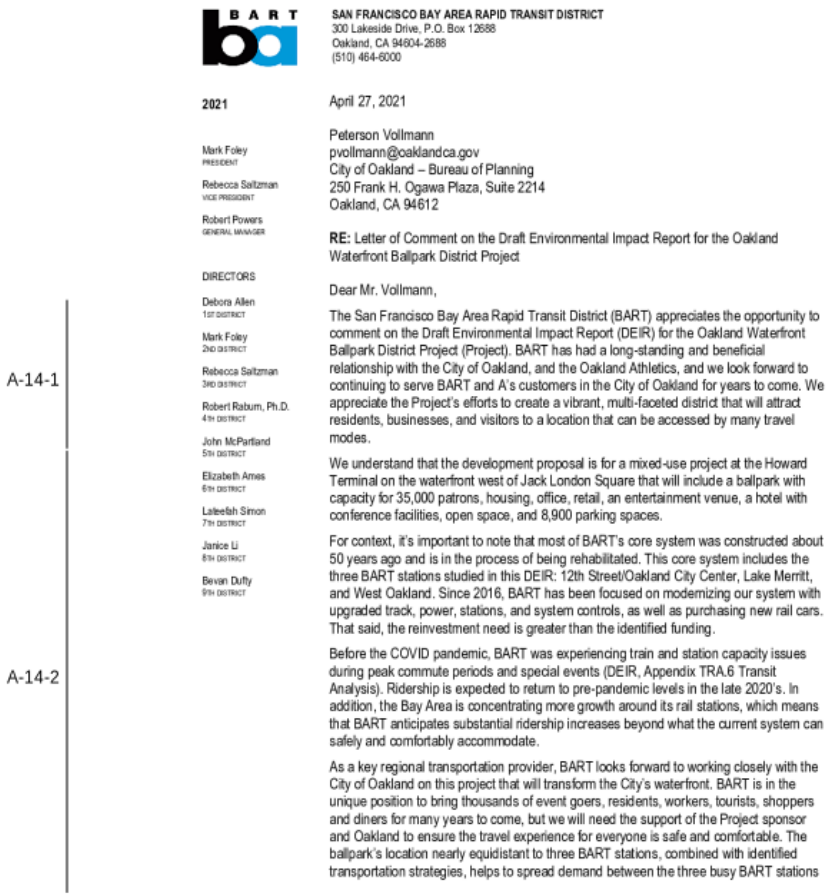
Attached please find BART comments on the DEIR. Please let us know if you have any questions.

Regards,

Val Joseph Menotti
Chief Planning & Development Officer
BART Planning & Development
300 Lakeside Drive, 21st Floor
Oakland, CA 94612
VMenott@bart.gov
510.287.4794

A-14

COMMENT



BART

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5TH DISTRICT

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8TH DISTRICT

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April 27, 2021

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

RE: Letter of Comment on the Draft Environmental Impact Report for the Oakland Waterfront Ballpark District Project

Dear Mr. Vollmann,

The San Francisco Bay Area Rapid Transit District (BART) appreciates the opportunity to comment on the Draft Environmental Impact Report (DEIR) for the Oakland Waterfront Ballpark District Project (Project). BART has had a long-standing and beneficial relationship with the City of Oakland, and the Oakland Athletics, and we look forward to continuing to serve BART and A's customers in the City of Oakland for years to come. We appreciate the Project's efforts to create a vibrant, multi-faceted district that will attract residents, businesses, and visitors to a location that can be accessed by many travel modes.

We understand that the development proposal is for a mixed-use project at the Howard Terminal on the waterfront west of Jack London Square that will include a ballpark with capacity for 35,000 patrons, housing, office, retail, an entertainment venue, a hotel with conference facilities, open space, and 8,900 parking spaces.

For context, it's important to note that most of BART's core system was constructed about 50 years ago and is in the process of being rehabilitated. This core system includes the three BART stations studied in this DEIR: 12th Street/Oakland City Center, Lake Merritt, and West Oakland. Since 2016, BART has been focused on modernizing our system with upgraded track, power, stations, and system controls, as well as purchasing new rail cars. That said, the reinvestment need is greater than the identified funding.

Before the COVID pandemic, BART was experiencing train and station capacity issues during peak commute periods and special events (DEIR, Appendix TRA.6 Transit Analysis). Ridership is expected to return to pre-pandemic levels in the late 2020's. In addition, the Bay Area is concentrating more growth around its rail stations, which means that BART anticipates substantial ridership increases beyond what the current system can safely and comfortably accommodate.

As a key regional transportation provider, BART looks forward to working closely with the City of Oakland on this project that will transform the City's waterfront. BART is in the unique position to bring thousands of event goers, residents, workers, tourists, shoppers and diners for many years to come, but we will need the support of the Project sponsor and Oakland to ensure the travel experience for everyone is safe and comfortable. The ballpark's location nearly equidistant to three BART stations, combined with identified transportation strategies, helps to spread demand between the three busy BART stations

A-14-1

A-14-2

RESPONSE

A-14-1 This is a general comment that includes introductory remarks and serves to introduce the more specific comments that are responded to in detail below. As a result, no specific response is provided here. The 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.

A-14-2 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.

A-14

COMMENT

A-14-2

(though that may increase operational costs to BART). To that end, BART wants to continue to engage with the City of Oakland and the Project sponsor to identify impacts and find funding solutions for mitigations.

A-14-3

BART submitted scoping comments in a letter dated January 7, 2019 based on the Notice of Preparation (NOP) issued by the City of Oakland for the Project. The NOP topics, listed below, were used to review the DEIR and organize our comments to the City of Oakland for your consideration in proceeding with the Project.

- Capacity
  - Study BART station and network capacity implications
  - Platform screen door or other platform capacity measures
- Station Access
  - Improve pedestrian path from BART to new Project site
  - Improve pedestrian path from 12th Street/City Center station to new proposed Gondola
  - Signage, wayfinding
- Transit Demand Management
  - Reduced or free BART fares for ballpark event attendees
  - Limit the construction of new parking facilities
  - Incentives for spreading travel demand

In addition to these topics from the NOP, as we have reviewed the DEIR, BART has identified some additional operational concerns. We've also included some minor suggested edits for the Existing Transit Services section of the DEIR as well as a new consideration with Link21 (second rail crossing) alignment.

Capacity

The following presents our comments to the analysis, impacts, and mitigations of the Project on BART's capacity, which includes station emergency egress, other station capacity concerns, and passenger load capacity.

A-14-4

The DEIR provides a table that estimates Project ridership on BART, by station, and includes some potential cumulative development, as identified in relevant specific plans (Appendix TRA.6, Table 7). The Lake Merritt Specific Plan (as adopted by the City of Oakland) should also be included in the table. The analysis should have been conducted using existing (pre-pandemic) and future BART ridership with the full Project build-out to determine capacity impacts due to the Project. While the December 1, 2020 *Howard Terminal – Transit Analysis* memorandum indicates that the transit trips generated by the Project's other land uses is relatively small, the memorandum also acknowledges that four out of BART's ten routes are over-loaded under existing (pre-pandemic) conditions in its peak-hours and directions (7:45-9:15 AM towards San Francisco and 5:00-6:30 PM away from San Francisco).

The DEIR estimates that a total of 8,000 attendees would use BART to access the ballpark with the following number of faregate exits in the weekday peak-hour:

BART station	Peak-hour exits by ballpark attendees using BART (sell-out crowd)
12th Street/Oakland City Center	1,800
Lake Merritt	1,400
West Oakland	900
Reference: Section 5.2.2 of the *Howard Terminal Draft Transportation Management Plan* located in Appendix TRA.1	

It is unclear if these numbers assume that transportation demand management is included or not. Nevertheless, the DEIR concludes that there are no impacts to BART station capacity without conducting any analysis on the various capacity constraints under existing (pre-pandemic) or future conditions. We believe such a determination should be

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RESPONSE

A-14-3 The BART comments on the NOP were reviewed by the City and informed the development of the Draft EIR. See the BART NOP comment letter in Draft EIR Appendix NOP. See Responses to Comments A-14-4 through A-14-18.

A-14-4 The Draft EIR and responses to comments provided analysis on station capacity-related issues that could be done at this time based on information available from BART about its system and ridership. There is no specific information available from BART about ridership, train service (level and frequency), and stations (conditions and planned improvements) in 2040 to perform the requested "cumulative analysis". BART has no specific information about 2040 ridership by station or peak hour. There is only general overall projections of daily ridership in the BART system. There are no BART planning documents that address 2040 conditions. It is not appropriate or feasible to perform future planning and projections for BART as part of the project. In addition, projections for ridership in 2040 are uncertain at this time given the pandemic impacts and resulting ridership decline. Given these uncertainties and unavailable information, the requested analysis would not provide accurate, meaningful and reliable information. In addition, since the analysis is focused on additional passengers during ballpark and special events, they present limited conditions on overall BART operations and would not be the basis for determining the need for overall station improvements to address ridership under long-term plans. Rather, similar to the existing conditions analysis and measures currently used at the Coliseum BART station for ballpark events, the types of measures described as part of the TMP program would be the same for cumulative conditions as those identified under existing conditions. The cumulative analysis would not identify other types of measures to address special event surges in BART use. Also see Consolidated Response 4.20, *BART Station Capacity*.

A-14

COMMENT

A-14-4 supported by robust analysis for not only station capacity but also for BART's network capacity and operational impacts, as identified below.

Emergency egress

The DEIR contains no analysis of emergency egress at the affected BART stations.

A-14-5 BART has been working proactively with local fire marshals to address emergency egress at all BART stations due to expected ridership increases from planned regional growth. BART is currently analyzing the three adjacent Oakland stations for impacts on vertical circulation and station emergency egress capacities in accordance with the National Fire Protection Association (NFPA) 130 guidelines for guideway transit and passenger rail systems.

Based on past major events in downtown Oakland (and decades of operational experience at the Coliseum station), BART has concerns about pre- and post-ballpark event surges at the Lake Merritt and West Oakland BART stations, as both stations have limited evacuation capacity in the event of an emergency due to the number of vertical circulation elements (stairs and escalators), and station exit points.

Requested actions: Coordinate with BART on potential emergency egress impacts at the three BART stations using NFPA-130, partner to identify mitigations, and coordinate on TMP operational planning.

Other station capacity concerns

The DEIR contains no analysis of other capacity issues at the affected BART stations.

A-14-6 There are limited numbers of faregates and vertical circulation elements (stairs, elevators, escalators) at Lake Merritt and West Oakland BART stations, and the station configurations make it challenging to add more of these elements. The Project may result in crowd control and queuing issues at these bottlenecks.

BART's NOP letter had indicated that the Project may lead to overcrowding on its station platforms, hampering BART's ability to safely serve commuters and ballpark attendees, and had indicated that there may be a need to include platform screen doors at the affected stations to manage this condition.

A-14-7 Shuttle and bus service between the Project and the BART stations may also pose station capacity issues, particularly after events, as they result in a surge at the fare gates for entries. The DEIR indicates the following:

BART station	Shuttles per hour
12th Street/Oakland City Center	Up to 36
Lake Merritt	Up to 24, if provided
West Oakland	Up to 24 to 36, if provided

The analysis does not indicate shuttle capacity, but assuming they can hold 40 passengers, it may result in a surge of over 1,400 passengers over an hour at each station.

A-14-8 Weekday station entries and exits by ballpark attendees may coincide with BART's evening commute peak hours of 4:00 to 7:00 PM (p. 4.15-138). Of greatest concern is a weekday game that could lead to the peak number of attendees **entering** the BART system post-event between 4:00 to 5:00 PM, the majority of whom would be going in the same directions as peak commuters. An evening game could lead to the peak number of attendees **exiting** the BART system pre-event between 5:45 to 6:45 PM, resulting in station interactions with commuters entering the BART system.

BART appreciates that TRA.6 Recommendation #3 identifies that the City and stakeholders should advocate with transportation funding partners to pay for BART station improvements to safely accommodate riders.

Requested actions: Analyze station capacity at the affected BART stations for platform crowding, vertical circulation, fare system, shuttle and queuing issues under existing (pre-pandemic) and future conditions for a sell-out ballpark crowd with full Project build-out and cumulative growth from the three relevant Specific Plans. Include Lake Merritt Specific Plan ridership in TRA.6 Table 7. As identified in TRA.6 Recommendation #3, work with BART to

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RESPONSE

A-14-5 See Consolidated Response 4.20, *BART Station Capacity*. The information provided illustrates that the platforms, vertical circulation, and faregates at all three stations (Lake Merritt, 12th Street, and West Oakland) would operate at acceptable levels with the following conclusions from Consolidated Response 4.20:

- While there is sufficient platform area to handle the passenger loads, consideration should be given through the Transportation Management Plan (TMP) implementation to the potential for passenger bunching around escalators and other obstacles as the passengers arrive on the platform after one or more of the 14 daytime ballpark events at the Lake Merritt and 12th Street BART stations; as well as prior to one or more of the 50 weekday evening ballpark events at the 12th Street BART station;
- Lake Merritt BART station mezzanine could realize some passenger bunching that may require operational strategies during one or more of the 14 daytime ballpark events; and
- There would be sufficient faregate capacity to handle the passenger loads with a ballpark event.

Mitigation Measure TRANS-1b would implement a Transportation Management Plan (TMP) that provides strategies for navigating the proposed Project demand over time and by type of event. The draft TMP notes that many agreements for managing the transportation system before, during, and after a ballpark event have not been finalized. These agreements would be established through implementation of the TMP and on-going management of the TMP. BART is identified as a key stakeholder in the draft TMP (Appendix TRA.1) and would be engaged in the development, implementation, monitoring, and adjusting the TMP over time to respond to changing needs.

Regarding emergency egress procedures at the three downtown BART stations, to the extent that the procedures from the emergency planning effort would be established, or any other emergency planning procedures are identified by BART, they would be coordinated through BART's participation in the TMP actions as requested by the comment.

In response to BART's requested actions the following mandatory requirement is added to the Mitigation Measure TRANS-1b (Page 4.15-196):

24. Provide BART personnel or other personnel acceptable to BART to manage pre- and post-event attendees accessing the West Oakland,

A-14

COMMENT

RESPONSE

12th Street, and Lake Merritt BART stations to ensure safe and efficient access for all people traveling to and from the ballpark event through the BART stations.

A-14-6 See Consolidated Response 4.20, *BART Station Capacity,* and Response to Comment A-14-5.

A-14-7 See Consolidated Response 4.20, *BART Station Capacity*. The information provided illustrates that the platforms, vertical circulation, and faregates at all three stations (Lake Merritt, 12th Street, and West Oakland) would operate at acceptable levels with a few specific crowd management issues at 12th Street and Lake Merritt BART stations. Pursuant to Mitigation Measure TRANS-1b the Project would be responsible for implementing a Transportation Management Plan (TMP). The TMP would provide strategies for navigating the proposed Project demand over time and by type of event. BART is identified as a key stakeholder in the draft TMP (Appendix TRA.1) and would be engaged in the development, implementation, monitoring, and adjusting the TMP over time to respond to changing needs.

Shuttle buses have been identified as a City priority but there are potential constraints that could affect the provision of shuttle buses. AC Transit has noted that they do not have the infrastructure or staffing for a shuttle bus program, and there are currently no Bay Area private bus operators with high capacity multi-door buses designed to handle standing passengers. Should shuttle buses be provided through the TMP; the routing and stop locations would be coordinated with AC Transit to minimize conflicts with existing transit bus operations; coordinated with the City of Oakland to address curb management, adjacent businesses, and adequate pedestrian connections between the shuttle stops; and with BART to minimize bunching and maintain efficient circulation between the street and the trains.

A-14-8 See Consolidated Response 4.20, *BART Station Capacity*. This Consolidated Response analyzes the BART station capacities requested by the commenter and illustrates that the platforms, vertical circulation, and faregates at all three stations (Lake Merritt, 12th Street, and West Oakland) would operate at acceptable levels with a few specific crowd management issues at 12th Street and Lake Merritt BART stations that can be addressed with personnel acceptable to BART. Also see Response to Comment A-14-4 regarding a cumulative analysis of BART ridership.

A-14

COMMENT

A-14-8

advocate for funding for station improvements. In addition, the City and Project Sponsors should work with AC Transit and BART to develop a plan to manage the limited curb space at BART stations so that event shuttles can seamlessly transfer ballpark attendees to BART without interfering with regular AC Transit service at these critical nodes. Determine if there are Project impacts, identify mitigations and who would implement and fund them.

Passenger train load capacity

The DEIR contains no analysis of BART's passenger train load capacity.

A-14-9

The December 1, 2020 *Howard Terminal – Transit Analysis* memorandum (DEIR, Appendix TRA.6) correctly indicates that BART's peak-hour loads under existing conditions (pre-pandemic) are over-subscribed on four of the ten lines in Table 3. While BART is in the midst of purchasing new rail cars (to replace and expand the fleet) and updating its train control system to increase network capacity, there was no analysis of the Project's impact on BART's train load capacity with or without these capacity enhancements.

Requested actions: Analyze passenger train load capacity under existing (pre-pandemic) and future conditions for a sell-out ballpark crowd with full Project build-out and the TODs. Determine if there are Project impacts, identify mitigations and who would implement and fund them.

Operations

A-14-10

As indicated above, surges of ballpark attendees exiting or entering the BART system may create operational impacts that result in system disruptions, challenges to station resiliency, and the need for operations support. The following details the necessary analysis and considerations.

System disruption

A surge of ballgame attendees trying to access train cars already at capacity may cause system-wide delays. This would be especially challenging for station entries by attendees during the weekday afternoons since these stations are located at the system's core where all BART trains pass through.

There is mention in the DEIR on p. 4.15-138 about the Project coordinating with BART to provide additional trains for well-attended events at the ballpark. However, there is insufficient track capacity in proximity to these stations to enable effective staging of event trains. During non-peak periods, BART may be able to stage one train at MacArthur BART Station and another at Bay Fair BART Station, but well-attended events could create demand for more trains than BART is able to provide, leading to over-capacity platforms and trains during peak periods.

Requested actions: Include BART in future TMP operations planning to be responsive to potential BART system disruptions, BART looks forward to participating on operational coordination.

State of good repair

A-14-11

These three stations are part of BART's core system. As such, the station components need rehabilitation or replacement, particularly the elevators and escalators. In order to serve our customers with mobility challenges, BART coordinates with paratransit to provide rides eligible members when our elevators break down, a costly service. We are particularly concerned about the elevators at West Oakland. The Project may further exacerbate the breakdown of the station elevators and escalators and lead to exponentially higher costs for paratransit.

Requested actions: BART looks forward to working with the Project sponsors and the City to develop short- and long-term strategies and actions to address BART's state of good repair.

Operations support

A-14-12

When games or events occur at the current location, BART has additional staff on hand at the Coliseum station. This includes two to six police officers (depending on the event size), one faregate technician, an additional station agent, and one elevator technician to ensure smooth crowd control and properly functioning equipment. BART has borne the cost of providing this extra staff at the Coliseum Station. However, this Project will require extra staffing at three

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RESPONSE

A-14-9 See Consolidated Response 4.20, *BART Station Capacity* for a discussion of train load capacity under three scenarios including: pre-pandemic conditions, conditions with a ballpark event at the Coliseum, and conditions with a ballpark event at the Project. In summary, the analysis reflects a worst case scenario because the analyses assume that all trips to a ballpark event are new trips to the BART system. Considering this fact, there are several instances in which a sellout game under Plus Project conditions would result in a line load exceeding 100 percent capacity. However, because all five lines serve two of the three nearby BART stations, riders are generally more dispersed between lines than for games at the Coliseum, where all riders must use one of the three lines serving Coliseum station. In all cases, the train loads are well below the crush load so the BART lines can accommodate the additional riders associated with the ballpark events. Also see Response to Comment A-14-4 regarding a cumulative analysis of BART ridership.

A-14-10 See Consolidated Response 4.20, *BART Station Capacity*. Draft EIR Mitigation Measure TRANS-1b would implement a Transportation Management Plan (TMP) for ballpark events. BART is identified as a key stakeholder in the implementation, management, monitoring, and adjusting the TMP for the ballpark events to ensure that appropriate resources are allocated to manage the flow of people to and from the ballpark event. In consideration of the need to manage ballpark event attendees through the West Oakland, 12th Street, and Lake Merritt BART station an additional TMP requirement was added to Mitigation Measure TRANS-1b. Refer to Response A-14-5 which summarizes the additional requirement.

A-14-11 The comment regarding the costs associated with the current state of repair of elevators and escalators at BART stations in Oakland is noted. CEQA considers the project impact on the environment and the Project is not required to address existing conditions such as current state of repair of BART system. CEQA mitigations require a nexus between the required measure and the Project impact and there is no nexus between the Project and BART's maintenance program. See Consolidated Response 4.14, *Environmental Justice*, for a discussion of the consideration of social and economic effects in an 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

A-14

COMMENT

RESPONSE

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.

A-14-12 See Consolidated Response 4.20, *BART Station Capacity*. BART's assertion that the Coliseum BART station staffing needs means that they will require similar staffing levels at all three BART stations serving the Project does not take into account that ballpark events at Howard Terminal will disperse BART ridership across three stations rather than one at the Coliseum. Therefore, the ridership levels at each station will be roughly one-third that expected at the Coliseum BART station for a similar sized event. As documented in the referenced Consolidated Response this results in less impact to each BART station operations. BART is identified as a key stakeholder in the Transportation Management Plan (TMP) (required for Mitigation Measure TRANS-1b) and so would be engaged during the development, implementation, and monitoring of the TMP. One of the purposes of the TMP is to ensure that appropriate resources are allocated to manage people traveling to and from the ballpark events. Even with the reduced impacts on the BART system compared to a similar event at the Coliseum the City recognizes BART's concern about crowd control. In consideration of the need to manage ballpark event attendees through the West Oakland, 12th Street, and Lake Merritt BART stations an additional TMP requirement was added to Mitigation Measure TRANS-1b. Refer to Response A-14-5 which summarizes the additional requirement.

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COMMENT

A-14-12

stations instead of one. While the Project will bring more riders into the BART system, the fare revenue generated cannot be assumed to cover BART's extra costs at the three affected stations.

Requested actions: BART looks forward to working with the Project sponsors and the City to ensure that develop short- and long-term strategies and actions to address identified transportation shortcomings.

Station Access

The following presents our comments to the analysis, impacts, and mitigations of the Project on BART's station access. While the DEIR indicates Project improvements to many forms of travel, we focus our comments here on pedestrian access and touch upon the others in the transportation demand management section.

Pedestrian path from BART to new ballpark site

A-14-13

BART is pleased that the Project will improve pedestrian experience between the West Oakland and 12th Street/Oakland City Center BART stations and the Project as part of its base set of transportation improvements. This includes widened and repaired sidewalks, pedestrian-scale lighting, daylighted or bulb-out intersections, wide crosswalks, signage, wayfinding, and placemaking treatments at freeway underpasses.

Figure 4.15-19 shows pedestrian routing from the Lake Merritt BART station along 8th Street, which is a high-vehicle volume corridor. The Project does not identify pedestrian improvements, signage, or wayfinding connecting the ballpark to Lake Merritt BART station despite expecting a sizeable number of ballpark attendees to use this station.

A-14-14

p. 4.15-125 indicates removing sidewalk on the west side of MLK between 2nd Street and the Project site to deter pedestrians from crossing the railroad tracks on that side. We think this is an inadequate and undesirable mitigation to address safety and access at the railroad tracks.

BART is particularly concerned about pedestrian access and safety on Embarcadero West at the Project's frontage where at-grade passenger and freight rail operate. The proposed 20-foot wide pedestrian and bicycle overcrossing of Embarcadero West at one intersection will be inadequate to provide a safe and convenient crossing, particularly during post-event surges. We foresee that crowding, convenience, and poor judgment will lead to conflicts, operational delays, injuries, and possibly death. The proposed fencing along the railroad tracks still leave gaps at four or five intersections where conflicts will occur. Due to the frequent passenger and freight rail activity along Embarcadero West, mitigations should look to separate rail activity from Project-related trips.

Requested actions: Provide an upgraded walking route from Lake Merritt BART to the Project site, complete with signage, wayfinding, lighting, and freeway underpass treatments, as needed. Reconsider the "significant but unavoidable" determination to operational and safety impacts at Embarcadero West by developing a design for the Project that more effectively separates its access routes from the rail activity.

Pedestrian path from 12th Street/City Center station to new proposed Gondola

A-14-15

The Project DEIR considers the possibility of installing an aerial gondola along Washington Street between the 12th Street/Oakland City Center BART station and the Project. This gondola could serve 5,000 to 6,000 passengers per hour.

If the gondola concept is advanced, it may have unintended consequences. While pedestrian/vehicle conflicts would be reduced, the gondola would not activate the public realm nor support local businesses on route and may discourage walking between the Project and the 12th Street/ Oakland City Center BART station by reducing the number of eyes on the street.

Requested actions: Work with BART if the gondola is advanced from the beginning of design in order to ensure seamless access and coordination that does not disrupt BART operations.

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RESPONSE

A-14-13 Draft EIR Mitigation Measure TRANS-1e, p. 4.15-200, is revised to read:

- Unless another street that directly connects the Lake Merritt BART station and Broadway is identified and agreed upon by the City, upgrade the sidewalk on both sides of 8th Street between Oak Street and Washington Street to provide minimum 8-foot clear space at fixed sidewalk obstacles; maximize sidewalk waiting areas within 20 to 30 feet of intersections; provide pedestrian lighting as necessary; correct sidewalk tripping hazards; daylight intersections and driveways with red curb per City guidance; and provide pedestrian wayfinding signage to direct patrons to the ballpark.

This addition to Mitigation Measure TRANS-1e reflects the sidewalk improvements needed to support the ballpark wayfinding program between Lake Merritt BART Station and the Project via 8th Street.

A-14-14 Refer to Response to Comment A-14-13 which identifies 8th Street through Chinatown as the pedestrian corridor connecting the Lake Merritt BART station to the Project. See Consolidated Response 4.6, *Rail Safety, Grade Crossing, and Grade Separation* and Consolidated Response 4.9, *Alternative 3: The Proposed Project with Grade Separation Alternative*, for responses to issues raised in the comment. Mitigation Measure TRANS-3a (pp. 4.15-235 and 4.15-236) would install fencing along the railroad corridor as well as at-grade crossing improvements such as quad gates and gates for pedestrians and bicyclists that would eliminate gaps referenced by the commenter when the gates are down. The final set of railroad corridor improvements would be determined when the Project sponsor undertakes the necessary Diagnostic Study and coordinates with the City, CPUC, and affected railroads, and obtains all necessary permits/approvals, including a GO 88-B Request (Authorization to Alter Highway Rail Crossings).

Further, Draft EIR Mitigation Measure TRANS-1b would implement a TMP to manage transportation systems before, during, and after ballpark events. A draft TMP is included in Draft EIR Appendix TRA.1. The draft TMP describes event management strategies for events of different sizes (Chapter 11), and includes a reference to the personnel required to manage crowds, including those approaching the at-grade railroad crossings and key intersections in the area. To clarify the intent of the TMP with respect to pre- and post-

A-14

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event management the following additional mandatory requirement is added to Mitigation Measure TRANS-1b (Page 4.15-196):

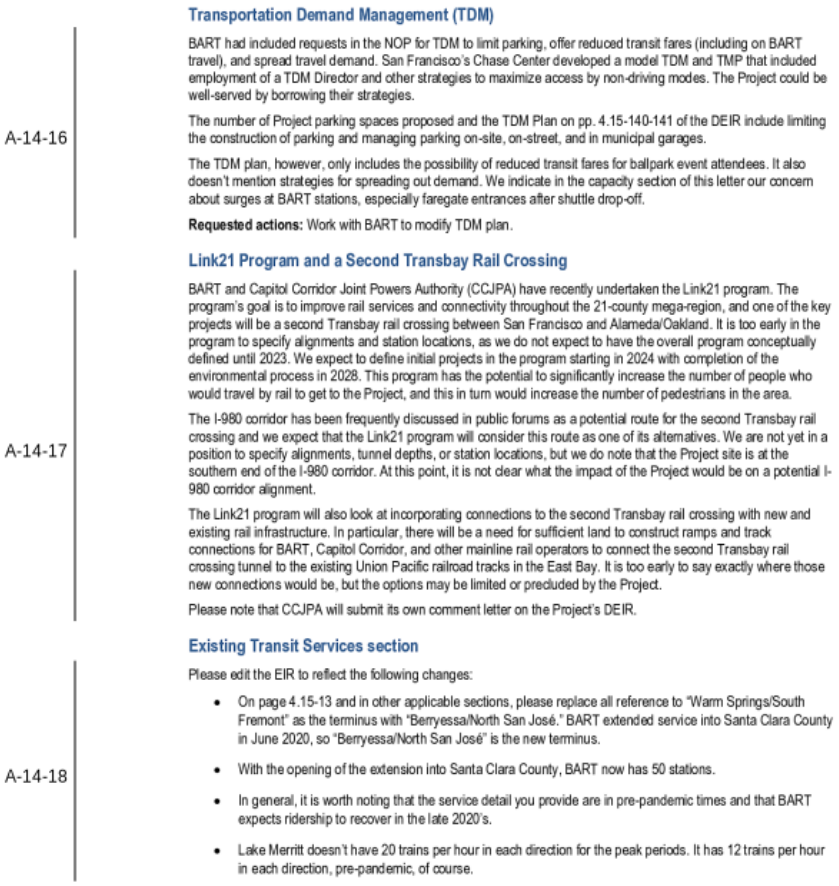
> **25. Provide Traffic Control Officers or other personnel acceptable to the City of Oakland to manage pre- and post-event attendees to ensure safe and efficient access for all people traveling to and from ballpark events.**

Mitigation Measure TRANS-1b also includes a mandatory requirement that wayfinding be provided between the BART stations and the ballpark including 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.

A-14-15 This comment refers to future actions regarding to the Aerial Gondola Variant and BART's desire that the Gondola design team work with BART to also include seamless connections to the 12th Street BART station. 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. BART will be kept informed if the Gondola moves forward into design. 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.

A-14

COMMENT



Transportation Demand Management (TDM)

BART had included requests in the NOP for TDM to limit parking, offer reduced transit fares (including on BART travel), and spread travel demand. San Francisco's Chase Center developed a model TDM and TMP that included employment of a TDM Director and other strategies to maximize access by non-driving modes. The Project could be well-served by borrowing their strategies.

A-14-16

The number of Project parking spaces proposed and the TDM Plan on pp. 4.15-140-141 of the DEIR include limiting the construction of parking and managing parking on-site, on-street, and in municipal garages.

The TDM plan, however, only includes the possibility of reduced transit fares for ballpark event attendees. It also doesn't mention strategies for spreading out demand. We indicate in the capacity section of this letter our concern about surges at BART stations, especially faregate entrances after shuttle drop-off.

Requested actions: Work with BART to modify TDM plan.

Link21 Program and a Second Transbay Rail Crossing

BART and Capitol Corridor Joint Powers Authority (CCJPA) have recently undertaken the Link21 program. The program's goal is to improve rail services and connectivity throughout the 21-county mega-region, and one of the key projects will be a second Transbay rail crossing between San Francisco and Alameda/Oakland. It is too early in the program to specify alignments and station locations, as we do not expect to have the overall program conceptually defined until 2023. We expect to define initial projects in the program starting in 2024 with completion of the environmental process in 2028. This program has the potential to significantly increase the number of people who would travel by rail to get to the Project, and this in turn would increase the number of pedestrians in the area.

A-14-17

The I-980 corridor has been frequently discussed in public forums as a potential route for the second Transbay rail crossing and we expect that the Link21 program will consider this route as one of its alternatives. We are not yet in a position to specify alignments, tunnel depths, or station locations, but we do note that the Project site is at the southern end of the I-980 corridor. At this point, it is not clear what the impact of the Project would be on a potential I-980 corridor alignment.

The Link21 program will also look at incorporating connections to the second Transbay rail crossing with new and existing rail infrastructure. In particular, there will be a need for sufficient land to construct ramps and track connections for BART, Capitol Corridor, and other mainline rail operators to connect the second Transbay rail crossing tunnel to the existing Union Pacific railroad tracks in the East Bay. It is too early to say exactly where those new connections would be, but the options may be limited or precluded by the Project.

Please note that CCJPA will submit its own comment letter on the Project's DEIR.

Existing Transit Services section

Please edit the EIR to reflect the following changes:

A-14-18

- On page 4.15-13 and in other applicable sections, please replace all reference to "Warm Springs/South Fremont" as the terminus with "Berryessa/North San José." BART extended service into Santa Clara County in June 2020, so "Berryessa/North San José" is the new terminus.
- With the opening of the extension into Santa Clara County, BART now has 50 stations.
- In general, it is worth noting that the service detail you provide are in pre-pandemic times and that BART expects ridership to recover in the late 2020's.
- Lake Merritt doesn't have 20 trains per hour in each direction for the peak periods. It has 12 trains per hour in each direction, pre-pandemic, of course.

6

RESPONSE

A-14-16 Mitigation Measure TRANS-1b would implement a Transportation Management Plan (TMP) for ballpark events. A draft TMP is provided in Draft EIR Appendix TRA.1 and it was modeled after Chase Center's draft TMP in its' EIR. The draft TMP for the ballpark limits on-site parking (See Consolidated Response 4.7, *Parking*), it identifies the need for a designated mobility coordinator to oversee and coordinate the ongoing implementation of the Ballpark TMP (draft TMP Page 36), it includes potential strategies to spread out arrivals and departures (draft TMP Section 4.2.5), and it includes the option of providing transit subsidies for ballpark attendees (draft TMP Page 38). All of these measures are consistent with the Chase Center's draft TMP developed during its CEQA process. It is true that the Chase Center now includes transit payments to SFMTA but this was not a requirement of the TMP proposed as part of the project. Instead, it was a possible strategy in the TMP that was subsequently adopted to achieve the specified performance standards. BART is identified in the draft TMP as a key stakeholder to be consulted during the development and implementation of the TMP. Chapter 4 of the TMP describes transportation management strategies that could be implemented. For example, strategies to spread out arrivals and departures are listed in Section 4.2.5 of the draft TMP. See also Consolidated Response 4.23, *Transportation and Parking Demand Management Plan and Transportation Management Plan Considerations*.

A-14-17 This comment provides information on the status of the Link21 program. 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 second transbay rail crossing was considered in the Draft EIR as a possible Transportation Improvement strategy (Page 4.15-148) and was determined to be infeasible within the timeframe that the ballpark would be constructed. Given the complexity and cost of the potential Link21 program's elements, such as providing a second Transbay rail crossing and potentially an I-980 corridor alignment change, and because the Link21 program is not anticipated to begin defining an initial project list until 2024, these projects were determined to be infeasible within the time frame for ballpark construction. Also, given the time frame for Link21 projects, the projects would not alter Draft EIR Impact TRANS-3, the associated mitigation measures, or the Draft EIR conclusions result in.

A-14

COMMENT

RESPONSE

A-14-18 In response to the comment, the following revisions have been made to Draft EIR Section 4.15, *Transportation and Circulation*, to correct statements about BART's termini, number of stations, and trains per hour. This revision does not affect any conclusions or significance determinations in the Draft EIR. Therefore, no recirculation of the Draft EIR is required pursuant to Section 15088.5(a), Recirculation of an EIR Prior to Certification.

On Draft EIR Page 4.15-13, the text is revised as follows:

- 12th Street Oakland City Center station is located under Broadway in downtown Oakland, with station entrances between 11th Street and 14th Street, about 0.8 miles from the Project's eastern boundary. The station is served by the Richmond-Millbrae, Richmond–Berryessa~~Warm Springs/South Fremont~~, and Antioch–SFO/Millbrae lines.
- Lake Merritt station is in Oakland's Chinatown District, with an entrance at the Oak Street/8th Street intersection about 1.1 miles from the Project's eastern boundary. The station is served by the Dublin/Pleasanton–Daly City, Richmond– Berryessa~~Warm Springs/South Fremont~~, and Berryessa~~Warm Springs/South Fremont~~ –Daly City lines.
- West Oakland station is in West Oakland, about 0.9 miles from the Project's northern boundary, and is bounded by 7th Street, Chester Street, 5th Street, and Mandela Parkway. The station is served by all four transbay lines: Richmond–Daly City, Antioch–SFO/Millbrae, Dublin/Pleasanton–Daly City, and Berryessa~~Warm Springs/South Fremont~~ –Daly City.

~~These stations~~ In 2018 the 12th Street and West Oakland stations were each served by about 20 trains per hour, per direction, during the peak periods while the Lake Merritt station was served by about 12 trains. Based on BART monthly ridership reports provided by BART, in fall 2018 about 28,300, 14,200, and 15,200 weekday daily passengers (entries plus exits) were served at the 12th Street, Lake Merritt, and West Oakland stations, respectively.

A-14

COMMENT

RESPONSE

Conclusion

Thank you for the opportunity for BART to comment on this DEIR. We look forward to participating in event coordination and partnering to pursue regional funding for BART station improvements, as indicated in Appendix TRA.6. Please feel free to contact me by email at VMenott@bart.gov or by phone at (510) 287-4794.

Sincerely,

Val Menotti

Val Joseph Menotti
Chief Planning and Development Officer

Cc: Robert Powers, General Manager
Michael Jones, Deputy General Manager
Tim Chan, Group Manager, Stations Planning
Kamala Parks, Senior Planner, Stations Planning
Robert Padgette, Managing Director, Capitol Corridor
Sadie Graham, Project Manager, Acting Director, Link21
Rodd Lee, Assistant General Manager, External Affairs

7

A-15 San Francisco Bay Region Harbor Safety Committee (HSC)

COMMENT

RESPONSE

From: Lynn Korwatch
To: PVollmann@oaklandca.gov
Subject: Letter from SF Bay Region Harbor Safety Committee
Date: Tuesday, April 27, 2021 3:41:47 PM
Attachments: HSC Howard Terminal Letter .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.

Attached please find a response to the EIR for the proposed A's Stadium at the Howard Terminal. The San Francisco Bay Region Harbor Safety Committee is comprised of representatives from all maritime stakeholders and are active users of the waterway adjacent to this terminal. If you have any questions, please do not hesitate to contact me.

Captain Lynn Korwatch
Chair, San Francisco Bay Region Harbor Saftey Committiee
Executive Director, Marine Exchange of the San Francisco Bay Region
10 Commodore Drive, Emeryville, CA 94608
Office: 415.441.5045
Mobile: 415.254.2213

A-15

COMMENT

RESPONSE

Harbor Safety Committee
of the San Francisco Bay Region
Mandated by the California Oil Spill Prevention and Response Act of 1990

April 27, 2021

Transmitted Via Electronic Mail

City of Oakland Planning and Building Department
250 Frank H. Ogawa Plaza
Suite 2114
Oakland, CA 94612
Fax: (510) 238-4730
Email: PVollmann@oaklandca.gov

RE: Harbor Safety Committee Comments on the Waterfront Ballpark District at Howard Terminal Draft Environmental Impact Report

Dear City of Oakland,

These comments are respectfully submitted on behalf of the Harbor Safety Committee of the San Francisco Bay Region regarding the Draft Environmental Impact Report (DEIR) for the Oakland A's proposed Stadium and Development at the Howard Terminal in the Port of Oakland. [Harbor Safety Committee description boilerplate here] [Harbor Safety Committee mission boilerplate]

We are pleased that the DEIR has acknowledged the potential impacts that the proposed project may have on maritime operations and harbor safety. We agree with the DEIR when it concludes that the impacts of the A's Howard Terminal development "could result in a fundamental conflict between the proposed Project and adjacent or nearby water-based uses, including maritime navigation and ferry transit, resulting in the need for mitigation." (DEIR 4.10-36)

A-15-1

DEIR Alternatives #1 and #2 Eliminate the Maritime Safety Risks Posed by the Project

The DEIR identifies and discusses various project Alternatives to the proposed Oakland A's stadium and development project at Howard Terminal. Alternative #1 and Alternative #2 will eliminate the significant impacts associated with conflicts between vessels, result in increased maritime safety, and minimize risk.

Alternative #1 concludes accurately that "[w]ith no change in use, impacts on the Seaport and land use compatibility concerns between Project uses and nearby industrial uses, there would be no need for mitigation of these impacts." (DEIR 6.2.1)

Alternative #2 likewise concludes that "potential impacts of the proposed Project related to land use compatibility under CEQA would not occur at the Coliseum site, because the Coliseum site is not adjacent to maritime uses like the proposed Project at Howard Terminal, and no mitigation would be required." (DEIR 6.2.2)

1

A-15-1 The first part of this comment 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 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 that Alternative #1 and #2 will not result in significant impacts due to a fundamental conflict between the proposed Project and water-based uses including maritime navigation is noted. 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.

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COMMENT

RESPONSE

Harbor Safety Committee
of the San Francisco Bay Region

Mandated by the California Oil Spill Prevention and Response Act of 1990

A-15-1 Maritime safety under these two project alternatives is enhanced and preserved to the greatest degree. For purposes of minimizing risks in the maritime domain, the Harbor Safety Committee encourages the City to seriously consider these two alternatives.

Fundamental Conflicts with Maritime Navigation Addressed in DEIR

The DEIR identifies and discusses the need for mitigation to avoid the risks posed by these fundamental conflicts in several respects, including:

A-15-2
- **Project Impacts on Safe Vessel Operations in the Navigational Channels and Turning Basin Adjacent to Howard Terminal**
- **Stadium Lighting Impacts on Safe Vessel Operations**
- **Building Glare Impacts on Safe Vessel Operations**
- **Fireworks Impacts on Safe Vessel Operations**
- **Inner Harbor Turning Basin Expansion (the "Maritime Reservation Scenario")**

This letter addresses each of these DEIR discussions in turn.

A-15-3
- **Regarding potential impacts on safe vessel operations in navigational channels and the turning basin adjacent to Howard Terminal, the Harbor Safety Committee believes that the conflict between the project and water-based uses is significant.**

The project is likely to invite loitering, congregation, and other recreational vessel activity. These activities will increase the risk of a maritime casualty and represent safety hazards. We agree with the DEIR's conclusion that the presence of these impacts results "in the need for mitigation." (DEIR 4.10-36)

In order to address the likely significant increases of risks in the maritime domain in this regard, the DEIR includes Mitigation Measure LUP-1a, which is "intended to minimize conflicts with maritime navigation resulting in safety hazards and ship delay." LUP-1a would require a protocol to be developed with the Harbor Safety Committee, Water Emergency Transportation Authority (WETA), and the United States Coast Guard, in addition to the Oakland A's, City of Oakland, and Port of Oakland. The Protocol would require installation of signage, water patrols by the Oakland Police Department (OPD), procedures for response to event emergencies, and communications regarding the protocol. All costs, including of the OPD patrols, would be born solely by the Oakland A's.

This Mitigation Measure as proposed is a good start, however the Harbor Safety Committee is concerned that LUP-1a may be inadequate to fully mitigate conflicts with maritime navigation resulting in safety hazards and ship delay.

While the Harbor Safety Committee, WETA, and the Coast Guard are mentioned as part of the approval process to "develop a protocol" in the opening paragraph of LUP-1a, when it comes to actual approval of the

2

A-15-2 See Consolidated Response 4.4, *Port Operations and Land Use Compatibility*.

A-15-3 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 (see Consolidated Response 4.4 for the corresponding text changes to the Draft EIR).

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COMMENT

Harbor Safety Committee
of the San Francisco Bay Region
Mandated by the California Oil Spill Prevention and Response Act of 1990

requirements necessary to achieve the protocol, the "Approving Parties" only include the Oakland A's, the City of Oakland, and the Port of Oakland. The "Approving Parties" may then subsequently amend the protocol, reduce patrols, and eliminate safety measures in the protocol. Because the Harbor Safety Committee, WETA, and the Coast Guard are primarily focused on, tasked with, or responsible for enforcing maritime safety standards, the Harbor Safety Committee believes that for LUP-1a to be effective these groups should also be included as "Approving Parties." A-15-3

The Harbor Safety Committee is also concerned with the risk of recreational vessel interactions. Protocol condition number 1 is focused primarily on anchoring and docking with respect to public notifications. The Harbor Safety Committee recommends that full mitigation include measures to keep all vessels in the inner harbor moving, thus reducing potential conflicts from loitering and vessel congregation.

The Harbor Safety Committee recommends that OPD water patrols described in protocol condition number 2 be expanded to include all potential additional conflicts, not just those that take place during scheduled baseball games. Patrol of the shipping channel around the project area by OPD should be dictated by maritime safety needs. OPD patrols will likely need additional resources for specific events, including concerts, which will draw both the highest concentration of vessels and highest concentration of vessels after dark. A-15-4

Protocol condition number 3 should not be limited to water-related emergencies during baseball games and events but should be focused on maritime safety considerations for the entire area. This should include evaluations of procedures for the imposition of safety zones, security zones (including navigational security needs under all MARSEC levels), and restricted navigational areas. These evaluations should include the Ferry terminal, ferry routes, and the OPD and Oakland Fire Department (OFD) pier. A-15-5

The Harbor Safety Committee recommends that Protocol condition number 4 include appropriate safety measures for any recreational boating or water-based activities. As indicated earlier, congestion and loitering have the potential to pose navigational safety risks, which should be taken into account. A-15-6

- **Regarding stadium lighting impacts on safe vessel operations, the Harbor Safety Committee believes that more lighting impact analysis needs to be conducted to ensure that these impacts are less than significant.**

We are pleased that the Port of Oakland requested a lighting study to ensure that safe vessel navigation would not be impaired, and that the City and A's conducted a quantitative light analysis. (DEIR 4.10-39 – 4.10-43; Appendix AES). A-15-7

However, the Harbor Safety Committee is concerned that the lighting study was inadequate and did not address or evaluate a number of potential lighting impacts on vessel operations in the inner harbor. As shown in Figure 4.1-21, there was only one Light and Glade Receptor Location which was included in the study on the water. And, as shown in Figure 4.10-7, the DIER's conclusions were reached on the sole basis of this receptor location on the bridge of the vessel being turned. As such, the DEIR is focused on the direct impact of these factors on one single position and point in time – when the bridge of a vessel is at the center of the turning basin

3

RESPONSE

A-15-4 See Consolidated Response 4.4, *Port Operations and Land Use Compatibility*. Mitigation Measure LUP-1a would require, at a minimum, that the Project sponsor provide water-based patrols by the Oakland Police Department during and reasonably prior and subsequent to, all baseball games, concerts, and other large events at the ballpark or the Waterfront Park, not just during scheduled baseball games.

A-15-5 See Consolidated Response 4.4, *Port Operations and Land Use Compatibility*.

A-15-6 See Consolidated Response 4.4, *Port Operations and Land Use Compatibility*.

A-15-7 See Consolidated Response 4.18, *Effects of Light and Glare on Maritime Operations and Safety*. As explained Consolidated Response 4.18, the intense focus of stadium lighting on the playing field means that the amount of light cast beyond the field of play is substantially less than that shining on the field. The surface of the water can essentially act like a mirror, so when the water is completely still there will be visible reflections of stadium lighting at a perfect mirror angle. Any movement in the water that causes the surface to have any imperfection will diffuse the mirror effect, reducing the brightness of the reflection.

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COMMENT

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Mandated by the California Oil Spill Prevention and Response Act of 1990

facing the stadium – in reaching the conclusion that "the anticipated glare at the turning basin receptor sites from the proposed ballpark lighting is not anticipated to exceed recommended limits per available glare standards."

A-15-7

The Harbor Safety Committee recommends that lighting impacts include impacts on all safety aspects and components of vessel turning, including tug assets and various additional members of the crew not on the bridge – especially during narrow margin transits in the turning basin. Further, impact analysis should also include vessels in the turning basin which transit into the reach beyond the turning basin in order to accommodate periods where multiple vessels are arriving or departing berths at the Oakland Inner Harbor Terminal. The Ferry Terminal and approach should also be included as Receptor Location points. Finally, impacts of reflected light from the water surface should also be considered.

- **Regarding building glare impacts on safe vessel operations in navigational channels and the turning basin adjacent to Howard Terminal, the Harbor Safety Committee believes that the potential impact of substantial new daytime glare could be significant.**

A-15-8

The project finds that "adjacent buildings under Phase 1 and Buildout could create new sources of daytime glare." (DEIR 4.10-30) The DEIR proposes that the building glare impacts on vessels will "be minimized through implementation of Mitigation Measure BIO-1b, Bird Collision Reduction Measures, as described in Section 4.3 Biological Resources, which would reduce the amount of reflective glass and polished surfaces on proposed buildings." (DEIR 4.10-30). BIO-1b, subsection v. is the provision of that mitigation measure which deals with glare reductions by restricting the use of reflective glass and polished surfaces, but those measures require these restrictions only to "windows and glass between the ground and 60 feet above ground or to the height of existing adjacent landscape or the height of the proposed landscape."

The buildings authorized for construction in this project are up to 600 feet tall, leaving potentially 90% of the tallest buildings' surfaces unmitigated under this measure. Further, there is no evaluation of Glare impacts in the Inner Harbor, including in the turning basin. The Harbor Safety Committee believes that these glare impacts should be evaluated for all of the building scenarios in the DEIR.

- **Regarding fireworks impacts on safe vessel operations, the Harbor Safety Committee believes that the DEIR should study the matter and mitigate any potential impacts.**

A-15-9

While the DEIR acknowledges that pyrotechnic events and fireworks may impact navigational safety and maritime operations (DEIR 4.10-43), it nevertheless concludes that "the Project would not result in a fundamental conflict in this regard" and therefore there are no significant impacts and no mitigation measures are necessary. Fireworks could distract the crew of a vessel or the crew of the tugs assisting the vessel, including ferry masters and ferry crews. The DEIR should formally evaluate these potential impacts.

The Harbor Safety Committee is also concerned that the creation of a 500-1,000-foot safety zone for the use of a fireworks barge could hinder and reduce access to the Navigational Channel, a Rule 9 waterway. The reach beyond the Turning Basin and in front of Howard Terminal is the only location for a commercial vessel to go

4

RESPONSE

A-15-8 See Consolidated Response 4.18, *Effects of Light and Glare on Maritime Operations and Safety*.

A-15-9 See Consolidated Response 4.18, *Effects of Light and Glare on Maritime Operations and Safety*, Section 4.18.5.

A-15

COMMENT

RESPONSE

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Mandated by the California Oil Spill Prevention and Response Act of 1990

when more than one vessel is transiting the channel and needing to be turned at one time, so this area cannot be blocked by a fireworks safety zone. The DEIR should conduct an additional evaluation of these impacts.

A-15-9

Due to these concerns, the Harbor Safety Committee recommends that the City consider the benefits of terrestrially based fireworks. The potential for marine debris should also be taken into consideration. Based on these considerations, the Harbor Safety Committee recommends that fireworks displays not take place over the estuary.

A-15-10

- **Regarding the Maritime Reservation Scenario, the Harbor Safety Committee observes that this scenario, which expands the turning basin, increases vessel safety and minimizes vessel risk, with or without construction of the A's proposed development at Howard Terminal.**

As maritime safety is enhanced with increased margins of clearance for vessels, the Maritime Reservation Scenario is the Harbor Safety Committee's preferred scenario for a Howard Terminal Alternative.

Captain Lynn Korwatch
Chair of the Harbor Safety Committee of the San Francisco Bay Region

5

A-15-10 The comment is noted. The Maritime Reservation Scenario is not a project alternative that could be implemented under the authority of the City of Oakland or the Project sponsor. It is a separate project that would only occur if implemented by the Port of Oakland and the U.S. Army Corps of Engineers. See Consolidated Response 4.1, *Project Description*, and Consolidated Response 4.4, *Port Operations and Land Use Compatibility*.

A-16 Alameda County Transportation Commission (Alameda CTC)

COMMENT

RESPONSE

From: Christopher Marks
To: Vollmann, Peterson
Cc: Cathleen Sullivan
Subject: Alameda CTC Response to the Availability and Release of a Draft Environmental Impact Report (DEIR) for the Oakland Waterfront Ballpark District Project
Date: Tuesday, April 27, 2021 3:50:58 PM
Attachments: AlamedaCTC_Comments_Oakland_BallPark_DEIR.pdf

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

Hi Peterson;

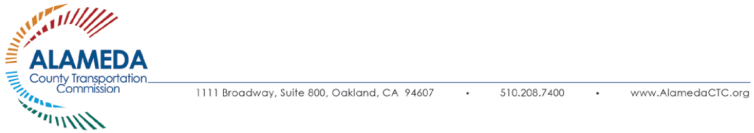
Please see Alameda CTC's comments on the Oakland Waterfront Ballpark District Project DEIR attached to this email. Thank you for the opportunity to comment on this environmental document.

Kind Regards,

Chris G. Marks, Associate Transportation Planner
Alameda County Transportation Commission
1111 Broadway, Suite 800, Oakland, CA 94607
510.208.7453 direct dial | 510.208.7400 main line
Email: cmarks@alamedactc.org Website: www.alamedactc.org
Facebook: www.facebook.com/AlamedaCTC Twitter: @AlamedaCTC

A-16

COMMENT



April 27, 2021

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

SUBJECT: Response to the Availability and Release of a Draft Environmental Impact Report (DEIR) for the Oakland Waterfront Ballpark District Project

Dear Peterson Vollmann,

A-16-1

Thank you for the opportunity to comment on the Draft Environmental Impact Report (DEIR) for the Oakland Waterfront Ballpark District Project. The project site is located at the Charles P. Howard Terminal (Howard Terminal) at the Port of Oakland along the Inner Harbor of the Oakland-Alameda Estuary. The site is approximately 55 acres and bordered by Jack London Square to the east, the Oakland Estuary Middle Harbor to the south, Union Pacific Railroad tracks and Embarcadero to the north, and the Schnitzer Steel heavy recycling center to the west.

The project site currently offers maritime support uses for short-term tenants and was previously used as a maritime container terminal, until 2014. The proposed project would demolish all existing structures, except four shipping cranes (which will remain on-site if feasible), the fire station at 47 Clay Street, and the historic Pacific Gas & Electric Company facility. The proposed project would construct a new open-air Major League Baseball ballpark with a capacity for up to 35,000 persons; mixed-use development with up to 3,000 residential units; up to 1.5 million square feet of commercial uses, approximately 270,000 square feet of retail uses; 50,000 square feet of indoor performance space, with a capacity for up to 3,500 people; up to 280,000 square feet of hotel space, including up to 400 rooms; a network of up to 18.3 acres of private and publicly-owned open space; and 8,900 parking spaces. The proposed project would be developed in multiple phases.

The proposed project would generate more than 100 new PM-peak trips and is subject to review under Alameda County Transportation Commission's (Alameda CTC's) Congestion Management Program (CMP), Land Use Analysis Program (LUAP). Alameda CTC respectfully submits the following comments:

- The DEIR and the Additional Transportation Reference Materials state that as of publication, the most recent Level of Service (LOS) Monitoring Report released by Alameda CTC was in December 2017. However, the most recent monitoring report was released in December of 2018 and includes data collected in the spring of 2018. Alameda CTC plans to release the 2020 monitoring report before the publication of the Final EIR, however that report will use data collected during the COVID-19 pandemic and should not be used to project future conditions,

RESPONSE

A-16-1 The initial paragraphs contain 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.

Regarding the comment in the first bullet point, as indicated on p. 4.0-2 of the Draft EIR, the baseline condition or environmental setting used in the Draft EIR is based on the publication date of the Notice of Preparation, which was in November 2018. Thus, the Draft EIR analysis uses the data in the 2017 Construction Management Plan (CMP) Report. If data from the 2018 CMP Report, which was published in December 2018, had been used the overall CMP roadway network characteristics described in the Draft EIR would be similar in nature and would not alter the analysis or the results presented in the Draft EIR. No new analysis is required.

A-16

COMMENT

A-16-1

once available. Please correct the DEIR to reflect the date the LOS Monitoring Report was released.

A-16-2

- Footnote 7 on page 4.15-28 notes that grandfathered segments are exempt from LOS standards. This is true only for deficiency findings under the Congestion Management Program (CMP), those segments are not exempt from review of impacts to the CMP network.
- Alameda CTC acknowledges that the latest version of the countywide travel model, dated May 2018, was used to assess impacts to the CMP network.

A-16-3

- In June 2020 Alameda CTC amended the Land Use Analysis Program of the 2019 CMP in response to SB 743. Alameda CTC is required by state CMP legislation to analyze impacts to the CMP network using a delay-based metric (LOS) analysis for projects which generate more than 100 pm-peak period trips, however this analysis may be submitted for Alameda CTC's consideration separate from the DEIR since, under SB743, LOS may not be used to make decisions on the proposed project. This required analysis is included in the Additional Transportation Reference Materials (added March 26, 2021) and notes that the proposed project would create significant and unavoidable impacts which could only be mitigated by expanding roadway capacity for automobiles. Alameda CTC affirms that that capacity expansion is not desirable and would induce additional automobile trips.

A-16-4

- Impact TRANS-3 notes that the proposed project has the potential to generate additional pedestrian activity near at-grade railroad crossings which create a potential safety hazard. The proposed project includes two mitigation measures which include a grade-separated overcrossing and at-grade safety improvements. Alameda CTC encourages the project team to continue to explore rail safety improvements including grade-separated crossings wherever feasible.
- Impact TRANS-3 does not identify impacts and explore mitigation measures related to freight and passenger rail service itself, the additional multimodal traffic across the railroad corridor creates safety risks for bicycles, pedestrians, and vehicles and can potentially impede normal freight and passenger rail activity, however these impacts are not explored by the DEIR.

A-16-5

- The DEIR references several important projects within the vicinity of the project, including the Oakland-Alameda Access Project and the GoPort Project. As stated in the response to the NOP, submitted on December 28, 2018 Alameda CTC continues to encourage the proposed project to coordinate with these projects as they continue to develop.

Thank you for the opportunity to comment on this DEIR. Please contact me at (510) 208-7484 or Chris G. Marks, Associate Transportation Planner at (510) 208-7453, if you have any questions.

Sincerely,

Cathleen Sullivan
Director of Planning

RESPONSE

A-16-2 The CMP analysis presented in Draft EIR Section 4.15 includes legacy roadway segments. See the Draft EIR Additional Transportation Reference Materials, which include a memorandum titled *Howard Terminal – CMP and MTS Analysis* (December 1, 2020) that contains a complete list of CMP road segments evaluated. The confirmation that the latest countywide travel model was used in the Draft EIR is noted.

A-16-3 The comment is a summary of legislation regarding the analysis of transportation impacts. and supports the Draft EIR conclusion that capacity expansion of the roadway network is not desirable because it would induce more automobile travel. 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.

A-16-4 See Consolidated Response 4.6, *Rail Safety, Grade Crossing, and Grade Separation*.

A-16-5 The Project would coordinate with the Oakland Alameda Access Project (OAAP) and the GoPort Project through the Transportation Management Plan (TMP) and the Construction Management Plan (CMP). Both the TMP and the CMP are required mitigation measures of the Project.

Mitigation Measure TRANS-1b would require preparation of a Transportation Management Plan (TMP) for the ballpark. As stated in the mitigation measure, the TMP would be required to outline operational strategies to optimize access to and from the ballpark within the constraints inherent in a large public event. The TMP must be approved by the City before the issuance of the Temporary Certificate of Occupancy. The TMP would be a living document requiring periodic updates over time as travel patterns change because of development and changes to transportation infrastructure and operations such as the OAAP and GoPort Project construction activities. All revisions to the TMP would be subject to the review and approval of the City. Alameda CTC is identified in the draft TMP as a key stakeholder (see Draft EIR Appendix TRA.1).

Mitigation Measure TRANS-4 would require that a Construction Management Plan (CMP) to be submitted for review and approval by the City, and

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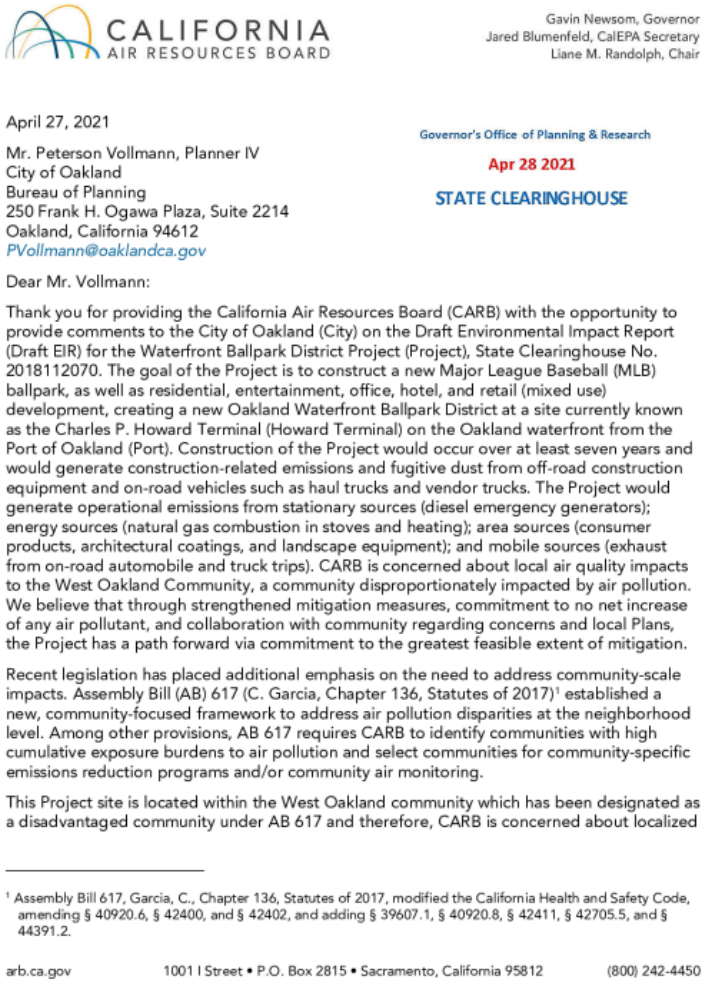
implemented over the duration of construction of the proposed Project, including all on- and off-site improvements. The CMP must consist of measures to minimize potential construction impacts, including measures to comply with all construction-related mitigation measures (and additional conditions of approval, if applicable). The Project sponsor is required to implement the approved CMP during construction, and to coordinate with the City and the Port to adjust, if necessary, in response to transportation-related issues that arise out of proposed Project construction such as the overlapping construction of the OAAP or GoPort Project with Project construction activities.

A-17 California Air Resources Board (CARB)

COMMENT



CALIFORNIA AIR RESOURCES BOARD

Gavin Newsom, Governor
Jared Blumenfeld, CalEPA Secretary
Liane M. Randolph, Chair

April 27, 2021

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Governor's Office of Planning & Research
Apr 28 2021
STATE CLEARINGHOUSE

Dear Mr. Vollmann:

A-17-1

Thank you for providing the California Air Resources Board (CARB) with the opportunity to provide comments to the City of Oakland (City) on the Draft Environmental Impact Report (Draft EIR) for the Waterfront Ballpark District Project (Project), State Clearinghouse No. 2018112070. The goal of the Project is to construct a new Major League Baseball (MLB) ballpark, as well as residential, entertainment, office, hotel, and retail (mixed use) development, creating a new Oakland Waterfront Ballpark District at a site currently known as the Charles P. Howard Terminal (Howard Terminal) on the Oakland waterfront from the Port of Oakland (Port). Construction of the Project would occur over at least seven years and would generate construction-related emissions and fugitive dust from off-road construction equipment and on-road vehicles such as haul trucks and vendor trucks. The Project would generate operational emissions from stationary sources (diesel emergency generators); energy sources (natural gas combustion in stoves and heating); area sources (consumer products, architectural coatings, and landscape equipment); and mobile sources (exhaust from on-road automobile and truck trips). CARB is concerned about local air quality impacts to the West Oakland Community, a community disproportionately impacted by air pollution. We believe that through strengthened mitigation measures, commitment to no net increase of any air pollutant, and collaboration with community regarding concerns and local Plans, the Project has a path forward via commitment to the greatest feasible extent of mitigation.

Recent legislation has placed additional emphasis on the need to address community-scale impacts. Assembly Bill (AB) 617 (C. Garcia, Chapter 136, Statutes of 2017)[1] established a new, community-focused framework to address air pollution disparities at the neighborhood level. Among other provisions, AB 617 requires CARB to identify communities with high cumulative exposure burdens to air pollution and select communities for community-specific emissions reduction programs and/or community air monitoring.

This Project site is located within the West Oakland community which has been designated as a disadvantaged community under AB 617 and therefore, CARB is concerned about localized

[1] Assembly Bill 617, Garcia, C., Chapter 136, Statutes of 2017, modified the California Health and Safety Code, amending § 40920.6, § 42400, and § 42402, and adding § 39607.1, § 40920.8, § 42411, § 42705.5, and § 44391.2.

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RESPONSE

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

The description of the proposed Project presented in the comment is accurate and the City understands the concerns regarding air quality in the West Oakland community.

It is for this reason that the Draft EIR not only analyzes Project-level health risks (see Draft EIR Impact AIR-4, pp. 4.2-97 through 4.2-108) and cumulative health risks (see Draft EIR, Impact AIR-2.CU, pp. 4.2-140 through 4.2-159) at existing off-site sensitive receptor locations using the Bay Area Air Quality Management District (BAAQMD) Guidelines and other accepted protocols, but also analyzes cumulative health risks using community-wide modeling data from the BAAQMD conducted for the West Oakland Community Action Plan (WOCAP). As discussed in Response to Comment A-11-1, the analyses within the Draft EIR were developed in consultation with the BAAQMD, rely heavily on modeling data provided by the BAAQMD for the West Oakland Community Action Plan (WOCAP), and follow the same modeling approach as the BAAQMD used to develop the WOCAP. The Draft EIR also discusses the WOCAP and the applicability of its actions on the proposed Project (see Draft EIR pp. 4.2-30 through 4.2-33). A total of 22 actions are listed that are relevant to the proposed Project. 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. In addition, Mitigation Measure AIR-2.CU, Implement Applicable Strategies from the West Oakland Community Action Plan, would require the Project sponsor to implement all applicable strategies and actions from the WOCAP that apply to the proposed Project.

As noted in the comment, the Project site is located in an overburdened community, disproportionately affected by air pollution, and is also disadvantaged and low-income. The Draft EIR uses BAAQMD- and City-adopted thresholds of significance to evaluate the significance of air quality impacts; these thresholds are non-zero and are supported with substantial evidence presented in the BAAQMD CEQA Guidelines.[77] See Response to Comment A-11-1.

[77] BAAQMD, 2010. *Revised Draft Options and Justification Report, California Environmental Quality Act Thresholds of Significance*, June 2, 2010.

A-17 California Air Resources Board (CARB)

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	See Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures,* for a response to comments regarding the specificity and effectiveness of mitigation measures in the Draft EIR.

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A-17-1

air pollutant exposure at the neighborhood level. CARB is concerned about the lack of specificity and stringency in the proposed air quality mitigation measures regarding criteria and toxic air contaminants during and after the construction phase. CARB submits the following comments to strengthen the Project's mitigation measures to reduce local air quality impacts and ensure consistency and alignment with existing Plans (*Owning Our Air: The West Oakland Community Action Plan*).

Assembly Bill 617 (Garcia, 2017)

A-17-2

In response to AB 617, CARB established the Community Air Protection Program with the goal of reducing exposure in communities heavily impacted by air pollution. This Project falls within the boundaries of the West Oakland Community, a community chosen for inclusion in the first year of the Community Air Protection Program.

In September 2018, CARB's Governing Board selected West Oakland as one of the initial 10 communities for this community-focused action and the development of a community emissions reduction program (CERP), recognizing the cumulative exposure from air pollution sources impacting the community like freight, freeways, industry, and seaport operations. CARB's Governing Board approved the Owning Our Air: The West Oakland Community Action Plan (WOCAP) in December 2019, previously adopted by the Bay Area Air Quality Management District (BAAQMD) Governing Board in October 2019. The WOCAP is a plan developed by a community-based Steering Committee and serves as a blueprint for improving air quality in this community. The West Oakland Environmental Indicators Project (WOEIP) and the BAAQMD are now actively engaged in implementation of the WOCAP to reduce exposure to air pollution in West Oakland. Both BAAQMD and CARB are legally responsible for implementing their respective WOCAP emission reduction measures and for enforcing the full extent of the WOCAP, generally. (Health and Safety Code, section 44391.2, subds. (c)(6) and (c)(8))

AB 617 underscores the need for public agencies to collaborate with communities, industry, and each other to avoid further exacerbating elevated air pollution levels in communities across the State. While the Project's Draft EIR lists a number of mitigation measures to reduce air quality and health impacts, we submit the following comments for consideration:

A-17-3

CARB has reviewed the Air Quality chapter of the Draft EIR and believe that additional, more specified, and more stringent mitigation measures are feasible to reduce air quality and health impacts in West Oakland.

I. The Project's Air Quality Mitigation Measures Improperly Defer Mitigation and Should Be Strengthened with Clear Performance Standards

The Draft EIR determined that the Project would result in significant and unavoidable impacts in the following areas, even with implementation of mitigation measures:

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A-17-2 The description of AB 617 and the WOCAP in the comment is noted. See Response to Comment A-17-1.

A-17-3 As discussed on Draft EIR p. 4.2-86, after implementation of mitigation measures that were quantified for emission reductions, Impact AIR-2 (operation of Project and combined overlapping construction and operation for certain years) would remain significant and unavoidable because net new emissions of NO_X would exceed the significance thresholds in all years from Year 5 through Year 9 and at full Buildout; net new emissions of ROG would exceed the significance thresholds in all years from Year 6 through Year 9 and at full Buildout; net new emissions of PM_{10} would exceed the significance thresholds in Year 9 and at full Buildout; and net new emissions of $PM_{2.5}$ would not exceed the significance thresholds in any year. Additionally, the Project's cumulative health risk impact (Impact AIR-2.CU) would be significant and unavoidable after mitigation given the already high background health risk, and all feasible mitigation measures are identified to reduce this impact. However, the project-level health risk impacts (Impact AIR-4 and AIR-5) would be less than significant with mitigation. See Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*.

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COMMENT

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a. 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*)
b. 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 AIR1.CU*)
c. The Project, combined with cumulative development, would also contribute to cumulative health risk impacts on sensitive receptors. (*Impact AIR-2.CU*)

A-17-4

Mitigation Measure AIR-1b would require the Project Sponsor to prepare and implement a Construction Emissions Minimization Plan (Emissions Plan) and Mitigation Measure AIR-1c would require all off-road construction equipment used during Project construction to be equipped with Tier 4 Final or equivalent engines. Once prepared, the Project Sponsor will submit the Emissions Plan to the City prior to the start of the Project's construction-related activities for each project site. Mitigation Measure AIR-2e would require the Project Sponsor to prepare a Criteria Pollutant Mitigation Plan (CPM Plan) to identify all available feasible measures to reduce total criteria pollutant emissions below the City's thresholds of significance.

A-17-5

Mitigation Measure AIR-2e as written, improperly defers mitigation for air quality impacts associated with the project by improperly delegating responsibility to assess impacts and mitigation to the Oakland Planning Department, in violation of CEQA (See, *Sundstrom v. County of Mendocino* (1988) 202 Cal. App. 3d 296)), 307). Mitigation Measure AIR-2e requires the Project sponsor's CPM Plan to "include detailed description of the criteria pollutant emissions for all construction activities and all operational components of each Project site as shown in the final development plan or equivalent based on the best available construction and operational activity and energy use data at the time of Project approval and the latest and most up-to-date emissions modeling and estimation protocols and methods."[2] A study or plan, like the CPM Plan required under Mitigation Measure AIR-2e, developed after project approval to determine the extent of air pollutant emissions, and the associated air quality impacts and mitigation, that is subject to only administrative approval bypasses the public decision-making process and amounts to post hoc rationalization of the City's actions. (*Sundstrom* , 202 Cal. App. 3d at p. 307.) Notably, Mitigation Measure AIR-2e does not cite to existing criteria air pollutant data and impacts that the City, the lead agency for CEQA, has identified in the DEIR for operational and construction activities associated with the Project, but leaves it up to the applicant to determine the extent of air quality impacts from the Project. This is not consistent with CEQA because the EIR and its associated impact analyses for all resource areas must be prepared "directly by, or under contract to" the lead agency, "must reflect the independent judgment of the lead agency," and must be presented to the decision making body of the lead agency before project approval.

[2] Draft EIR, page 4.2-78.

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A-17-4 The comment accurately describes Draft EIR Mitigation Measures AIR-1b and AIR-2e. However, specific changes have been made to these mitigation measures in response to comments - See Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*.

A-17-5 See Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures* for discussion of the issues in the comment regarding Mitigation Measure AIR-2e and the modification of the mitigation to address the concerns raised in this and other comments.

The Draft EIR includes a full accounting of all construction- and operational emissions generated by the Project and evaluates whether these emissions exceed the BAAQMD significance thresholds adopted by the City. Impact AIR-2 is found be significant and unavoidable, and all feasible mitigation measures are required to reduce this impact below the significance threshold. This process is conducted with full opportunity for public involvement, as required by CEQA.

Mitigation Measure AIR-2e requires the Project sponsor to achieve a performance standard, the BAAQMD/City's thresholds of significance, through all feasible measures to reduce emissions. This includes required onsite actions, and includes the provision for emissions offsets or other programs (including those identified in the WOCAP). Mitigation Measure AIR-2e requires the Project sponsor to provide a full emissions accounting of the project and documentation of emissions reductions from measures to the City Planning Department demonstrating that this performance standard has been met. The accounting must be consistent with the methods used in the Draft EIR. As discussed in Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*., this performance standard with required measures and a menu of additional measures is valid mitigation under CEQA.

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A-17-5 (*Sundstrom,* 202 Cal. App. 3d at p. 307; Public Resources Code, section 21082.1, subd. (a); title 14 California Code of Regulations (CCR), section 15084, subd. (e).)

Mitigation Measure AIR-2e is also not enforceable and improperly defers mitigation. (Title 14 CCR sections 15126.4, subdivision (a)(1)(B) and (a)(2).) Although the applicant could potentially include measures that could reduce the Project's onsite construction and operational emissions in the CPM Plan required under Mitigation Measure AIR-2e, Mitigation Measure AIR-2e is not enforceable because it does not commit the agency to implement feasible mitigation for the Project's air quality impacts. Mitigation Measure AIR-2e states that mitigation measures may be removed from the CPM Plan if the Oakland Planning Department determines they are infeasible, "in its discretion."[3] The City's decision-makers, however, are solely authorized to identify potential actions that will feasibly achieve a performance standard to mitigate air quality impacts, which must occur during environmental review; allowing the City's Planning Department to make feasibility determinations related to mitigation measures after project approval is inconsistent with CEQA because it lacks the legal authority under CEQA to do so, making Mitigation Measure AIR-2e unenforceable. (Title 14 CCR § 15126.4, subd. (a)(1)(B).)

A-17-6 The DEIR improperly defers mitigation for Mitigation Measure AIR-2e because it, plainly, states, "the exact amount of daily and annual emission reductions from implementation of the required CPM Plan is not currently known"[4] which implies that there is no certainty relative to the CPM Plan's ability to mitigate the Project's air quality impacts. CEQA prohibits deferred mitigation to a future time, but allows the development of mitigation measures to a later date provided it follows the mandates of title 14 CCR section 15126.4, subdivision (a)(1)(B). This subdivision provides: "[t]he specific details of a mitigation measure, however, may be developed after a project's approval, when it is impractical or infeasible to include those details during the project's environmental review, provided that the agency (1) commits itself to the mitigation, (2) adopts specific performance standards the mitigation will achieve, and (3) identifies the types of potential action(s) that can feasibly achieve that performance standard that will be considered, analyzed, and potentially incorporated in the mitigation measure." (Ibid.) The DEIR fails to comply with this mandate because it does not identify, with any specificity, nor does it quantify the effect any type of potential action has on the ability to mitigate air quality impacts from the Project, which is inconsistent with section 15126.4, subdivision (a)(1)(B).

A-17-7 Similarly, Mitigation Measure AIR-1c also improperly defers the mitigation to a future time in violation of CEQA because it does not provide adequate detail to reduce the Project's significant impact on air quality. Notably, it does not provide a performance standard for determining when the "possible exception" to the Tier 4 emission requirement applies to certain equipment. Furthermore, Mitigation Measure AIR-1c leaves it up to the applicant to decide when certain types of equipment are "not commercially available", which makes the

[3] Draft EIR pages 4.2-77 and 4.2-82
[4] Draft EIR, page 4.2-84

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A-17-6 For a discussion of issues regarding enforceability, deferral, feasibility, and use of performance standards related to Mitigation Measure AIR-2e and the revisions to Measure AIR-2e to address issues raised in this and other comments, see Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*. See also the discussion of Mitigation Measure AIR-2e in Draft EIR Section 4.2.

A-17-7 Mitigation Measure AIR-1c has been revised to require Tier 4 engines on all off-road construction equipment except for selected pieces of specialty equipment for which such engines are not available at the start of a construction phase. These exceptions may only be granted for cranes required for geotechnical work (deep dynamic compaction and deep power or vibro-compaction). The measure has also been revised to require that for these exceptions, the Project sponsor must provide the City with evidence supporting its conclusion that equipment meeting Tier 4 standards is not available. The term "commercially available" has been removed from the measure. See Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures* for additional discussion and the revised mitigation measure language.

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A-17-7 mitigation measure virtually unenforceable since there is no objective standard for determining what constitutes unavailability.

A-17-8 CARB urges the City to identify adequately the construction and operational air quality impacts of the project and to prepare adequate, enforceable and feasible mitigation measures in the Draft EIR to provide adequate disclosure to the public and the City's decision-making body before the City approves the Project, as required under CEQA. Where several feasible measures are available to mitigate an impact, CEQA requires each measure to be discussed in the EIR (see title 14 CCR § 15126.4(a)(1)(B)).

II. More Mitigation Measures Should Be Applied to Reduce the Project's Significant and Unavoidable Impact on Air Quality

Without stringent performance standards for evaluating the feasibility of mitigation measures identified in the Draft EIR, unmitigated emissions from construction equipment and project operations can contribute to increased air pollution in the West Oakland community. Although the Draft EIR identifies a set of "feasible" mitigation measures to reduce air pollutant emissions from construction and operation of the Project, CARB believes the Draft EIR does not consider the full set of feasible mitigations and urges the City to ensure the cleanest possible construction and operational practices and equipment are utilized, including zero emission vehicles, equipment, and technologies. CEQA requires that all feasible mitigation measures be incorporated into the EIR before a lead agency can determine if an impact is still significant and unavoidable (see California Public Resources Code§ 21081; title 14 CCR §§ 15092, 15126.2(b)). To meet these requirements, CARB urges the City to include the following mitigation measures in the Final Environmental Impact Report (FEIR).

A-17-9
1. Include contractual language in tenant lease agreements that requires all loading/unloading docks and trailer spaces be equipped with electrical hookups for trucks with transport refrigeration units (TRU) or auxiliary power units.
2. Include contractual language in tenant lease agreements that requires all TRUs entering the project site be plug-in capable.
3. Include contractual language in tenant lease agreements that requires future tenants to exclusively use zero-emission light and medium-duty delivery truck and vans.
4. Include contractual language in tenant lease agreements that requires all service equipment (e.g., yard hostlers, yard equipment, forklifts, and pallet jacks) used within the project site to be zero-emission. This equipment is widely available.
5. Include contractual language in tenant lease agreements that requires all heavy-duty trucks entering or on the project site to be model year 2014 or later, expedite a transition to zero-emission vehicles, and be fully zero-emission beginning in 2030.
6. Prohibit the use of diesel fuel on-site, consistent with the Bay Area Air Quality Management District's Diesel Free By '33 initiative (*http://dieselfree33.baagmd.gov/*).

CARB staff are available to further discuss technology availability and potential construction and operations mitigation measures with the City.

RESPONSE

A-17-8 The Draft EIR fully evaluates and discloses the proposed Project's construction-related and operational air quality impacts through the following impacts:

- Impact AIR-1 (construction criteria pollutants) beginning on Draft EIR p. 4.2-61.
- Impact AIR-2 (combined construction and operational criteria pollutants) beginning on Draft EIR p. 4.2-70.
- Impact AIR-3 (carbon monoxide concentrations) beginning on Draft EIR p. 4.2-96.
- Impact AIR-4 (health risks for existing offsite receptors) beginning on Draft EIR p. 4.2-97.
- Impact AIR-5 (health risks for future onsite receptors), beginning on Draft EIR p. 4.2-108.
- Impact AIR-6 (odors) beginning on Draft EIR p. 4.2-119.
- Impact AIR-1.CU (cumulative criteria pollutants) beginning on Draft EIR p. 4.2-133.
- Impact AIR-1.CU (cumulative health risks) beginning on Draft EIR p. 4.2-140.

The Draft EIR identifies numerous mitigation measures to reduce significant impacts, including Mitigation Measures AIR-1a (Draft EIR p. 4.2-64), AIR-1b (Draft EIR p. 4.2-64), AIR-1c (Draft EIR p. 4.2-66), AIR-1d (Draft EIR p. 4.2-67), AIR-2a (Draft EIR p.4.2-75), AIR-2b (Draft EIR p. 4.2-76), AIR-2c (Draft EIR p. 4.2-76), AIR-2d (Draft EIR p. 4.2-77), AIR-2e (Draft EIR p. 4.2-77), AIR-3 (Draft EIR p. 4.2-104), AIR-4a (Draft EIR p. 4.2-113), AIR-4b (Draft EIR p. 4.2-114), AIR-1.CU (Draft EIR p. 4.2-139), AIR-2.CU (Draft EIR p. 4.2-156), TRANS-1a (Draft EIR p. 4.15-183), TRANS-1b (Draft EIR p. 4.15-193), TRANS-1c (Draft EIR p. 4.15-197), TRANS-1d (Draft EIR p. 4.15-198), TRANS-1e (Draft EIR p. 4.15-198), TRANS-2a (Draft EIR p. 4.15-230), TRANS-2b (Draft EIR p. 4.15-230), TRANS-2c (Draft EIR p. 4.15-230), TRANS-3a (Draft EIR p. 4.15-235), and TRANS-3b (Draft EIR p. 236). See also Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures,* and Response to Comments A-7-13, A-7-22, A-7-54, A-11-2, A-11-3, A-11-4, A-11-6, A-11-11, A-13-11, A-17-1, A-17-5, A-17-7, A-17-9, and A-17-12 regarding air quality impact mitigation measures that have been revised in this Final EIR.

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A-17-9 The City reviewed each of the additional suggestions for mitigation measures provided in the comment. Revisions to mitigation measures and responses to issues raised are set forth below.

With Regard to Items #1 and #2 in comment, the text of Mitigation Measure AIR-2d regarding Diesel Truck Emission Reductions on Draft EIR p. 4.2-77 has been amended as follows:

Mitigation Measure AIR-2d: Diesel Truck Emission Reduction.

The Project sponsor shall incorporate the following health risk reduction measures into the Project design and construction contracts (as applicable) in order to reduce the potential health risk due to exposure to toxic air contaminants. These features shall be submitted to the City for review and approval and be included on the Project drawings submitted for the construction-related permit or on other documentation submitted to the City. ~~Emissions from Project-related diesel trucks shall be reduced through implementing the following measures, if feasible~~:

1. All loading docks for non-residential uses, including the ballpark, shall be equipped with electrical hookups for trucks with transport refrigeration units (TRU) or auxiliary power units ~~Installing electrical hook-ups for diesel trucks at loading docks~~.

2. ~~Require~~ing trucks to use Transportation Refrigeration Units (TRU) ~~that meet Tier 4 emission standards.~~Signs shall be posted at all loading docks requiring trucks without electrical hookups for TRUs to meet Tier 4 emission standards and prohibiting those TRUs from operating for more than thirty minutes.

~~3. Requiring truck-intensive tenants to use advanced exhaust technology (e.g., hybrid) or alternative fuels.~~

~~4~~3. Signs shall be posted at the site entry point, at all loading locations, and throughout the project site, to ~~P~~prohibit~~ing~~ trucks from idling for more than two minutes.

~~5~~4. The Project sponsor shall e~~E~~stablish~~ing~~ truck routes to avoid sensitive receptors in the Project. The Project sponsor shall also prepare ~~A~~a truck route program, along with truck calming, parking, and delivery

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restrictions, which shall be implemented for all project-related truck operations.

In addition, the Project sponsor shall require trucks serving the ballpark to use TRUs and auxiliary power units that are electric plug-in capable, and shall provide a notice on the lease or title to all new tenants or owners of the Project or any portion thereof requiring any truck-intensive uses on the site, such as large grocery stores or distribution facilities with their own fleet of trucks, to use TRUs and auxiliary power units that are electric plug-in capable and trucks that use advanced exhaust technology (e.g. hybrid) or alternative fuels.

In addition, in response to Item #4 in comment, the text of Mitigation Measure AIR-2e has been revised to require all service equipment used within the Project site to be zero-emission (see Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures*).

The revisions to Mitigation Measure AIR-2d and Mitigation Measure AIR-2e above incorporate the commenter's suggested mitigation measures #1, #2, and #4.

Regarding the commenter's suggested Mitigation Measure in Item #3, requiring all future light- and medium-duty tenant and vendor trucks to be zero-emission vehicles and in Item #5, which would require all heavy-duty trucks serving the Project site to be a certain model year and be exclusively zero-emission by 2030, these measures are infeasible for several reasons. The identities and characteristics of future tenants and the timeline of their tenancies are currently unknown and, thus, [explain why this affects feasibility]. The control future tenants have over their vendor delivery vehicles is likely to be limited because most delivery services are likely to be provided by third-party vendors with their own fleets. Building tenants typically do not have control over the delivery vehicles bringing goods and materials to their business locations. For example, an office tenant contracting with Costco delivery services has no control over the trucks in Costco's delivery fleet. In addition, the future availability of zero-emission delivery vehicles is highly uncertain, especially for larger medium- and heavy-duty vans and trucks (see *Electric Vehicle Assumptions for the Oakland Waterfront Ballpark District Project* (Ramboll, 2021)[78] and Response to Comment A-13-11 for additional

[78] Ramboll, 2021. Electric Vehicle Assumptions for the Oakland Waterfront Ballpark District Project, November 3, 2021.

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discussion). Further, it is unknown whether any future tenants and their vendors could actually meet these requirements, and enforcing these contract stipulations would be extremely difficult or impossible for the City or the Project sponsor. Finally, mobile sources associated with the proposed Project would have emissions limitations consistent with all other mobile sources in both the region and the State. That is, all trucks and TRUs entering the Project site would be required to comply with state emissions laws, including BAAQMD and CARB regulations and rules.

Regarding the commenter's suggested Mitigation Measure in Item #6, the prohibition of diesel fuel use on the Project site is currently not feasible given the state of off-road construction equipment technology, on-road vehicle technology, and the requirements of the City of Oakland Fire Department regarding emergency diesel generators. For off-road construction equipment, only small equipment types are currently available with electric motors. This includes equipment pieces like air compressors, pumps, saws, forklifts, sweepers, and pressure washers. Tower cranes can also be electric. Mitigation Measure AIR-1b requires the use of electric construction equipment and grid power (see Draft EIR p. 4.2-65). According to the BAAQMD *Diesel Free by '33* initiative, zero emission small construction equipment is in the "early commercialization" stage and zero emission large construction equipment is in the "not yet available" stage.[79] Consequently, it is not feasible to require all off-road construction equipment to zero emission during the proposed construction period. If zero-emission construction equipment is available during Project construction, either because of advances in technology or because construction activities are extended beyond the schedule analyzed in the Draft EIR, Mitigation Measure AIR-2e (item b.iii.) would allow the Project sponsor to use such equipment to meet the performance standard requirement of this mitigation measure (the City's thresholds of significance for criteria pollutant emissions). As technologies become more available, the proposed Project would be required to comply with all future CARB and BAAQMD regulatory updates, and would benefit from future emissions limits. Mitigation Measure AIR-2e has been revised to include future off-road construction technologies to replace diesel fuel use. See Consolidated Response 4.2, *Formulation, Effectiveness and Enforceability of Mitigation Measures*, for more information.

[79] BAAQMD, 2018. *Diesel Free by '33: Summary of Available Zero-Emission Technologies and Funding Opportunities*.

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For medium-duty and heavy-duty on-road vehicles, as discussed above, neither the Project sponsor nor the City have operational control over the future vendor truck fleets and their technology types, and future tenants and vendors at the Project site are currently unknown. Requiring all future tenant and vendor trucks to meet specific technology requirements is not feasible at this time given the unknowns in future technology and the limitations this may place on future unknown tenants and vendors. According to *Diesel Free by '33*, heavy-duty trucks are in the "demonstration" stage and are not commercially available yet.[80] The vast majority of light-duty automobiles are gasoline-powered, but for the remaining diesel vehicles, it is outside of the City's and/or Project sponsor's control to mandate that future tenants, users, customers, residents, and ballpark attendees drive non-diesel vehicles. Further, if future tenants did add a prohibition on diesel fuel use into their contracts, its enforceability would be uncertain because the City does not have enforcement authority over private contracts. Future CARB regulations are expected to continue to compel fleet owners to further reduce emissions of their vehicles.

The Final EIR includes revisions to Mitigation Measure AIR-2c that require alternatives to diesel power emergency backup generators such as battery storage or hydrogen fuel cells whenever possible when such technology is approved for use by City of Oakland Fire Department (see Consolidated Response 4.2 and Response to Comment A-11-11). In addition, according to *Diesel Free by '33*, batteries for emergency backup power greater than 5 kilowatts are in the "early commercialization" stage and are not commercially available yet; fuel cell systems are "commercially available" for 5- to 20-kilowatt (kW) systems.[81] The proposed Project emergency diesel generators would range in size from 250 to 1,500 kW (see Draft EIR Appendix AIR.1 Table 36), and therefore battery backup and fuel cell generators of this size are not expected to commercially available when the proposed Project reaches full buildout This may change in the future with technology improvements, but the timing and availability of future technologies is unknown and it would be speculative to predict these changes. As discussed above, Mitigation Measure AIR-2c requires these new technologies for emergency generators if they become available and are approved by the Fire Department. Mitigation Measure AIR-2e also includes the provision to

[80] BAAQMD, 2018. *Diesel Free by '33: Summary of Available Zero-Emission Technologies and Funding Opportunities*.

[81] Ibid.

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implement additional measures and technologies as they become available, which applies to non-diesel emergency generators and other equipment.

See Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures,* for the full text of changes to Mitigation Measure AIR-2e and further information relating to issues raised in this comment.

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COMMENT

A-17-10

CARB is in agreement with the statement in the Bay Area Air Quality Management District's comment letter submitted during the Notice of Preparation of the Draft EIR recommending the Project use a no net increase of any air pollutant as the significance threshold to base impacts and mitigation measures in West Oakland – a community already facing high cumulative exposure burdens to air pollution. Onsite mitigations (including those listed above) should be prioritized, followed by offsite mitigation measures within the West Oakland Community and near the Project site.

III. The City and Project Sponsor Should Do More to Ensure Tenant Relocation Does Not Negatively Impact the Community

A-17-11

The Draft EIR states that "truck drivers or businesses currently parking at Howard Terminal should find sufficient overnight parking in the Seaport or the former OAB."[5] Both truck operators and community members on the West Oakland Steering Committee continue to voice concerns over insufficient parking availability that causes neighborhood impacts.

The 1998 City of Oakland General Plan, Land Use and Transportation Element, recognized that illegal truck parking, loading, and driving on neighborhood streets was a cause for concern requiring truck re-routing and enforcement. To this end, the implementation section identified the need for targeted improvements in West Oakland.

Although the Howard Terminal currently has at least 23 acres allocated to truck operations such as parking and container depot, the West Oakland Community Steering Committee members have expressed concerns about truck parking and idling in their neighborhoods. The long-standing issue of illegal truck operational activity in West Oakland neighborhoods therefore causes CARB acute concern about the potential overflow of displaced truck parking tenants into the West Oakland community due to space and availability constraints both during and after Project construction.

CARB believes that the Draft EIR provides insufficient evidence that displaced Howard Terminal tenants will find parking availability that does not negatively impact the West Oakland community and therefore requests that the Project Sponsor provide additional evidence beyond speculation to ensure tenant relocation does not negatively impact the community.

IV. The City Should Ensure Consistency and Alignment with the West Oakland Community Action Plan (WOCAP)

A-17-12

CEQA also requires a lead agency to discuss any inconsistencies between a proposed project and applicable regional plans, such as the WOCAP. (Title 14, CCR section 15125, subdivision (d)) The WOCAP lays out a series of strategies to be implemented to reduce pollution in the community. The City has authority for implementing many of the strategies identified in the

[5] Project Draft EIR page 4.2-39

RESPONSE

A-17-10 The City consulted with the BAAQMD on a number of occasions regarding its comment in the NOP related to thresholds, and the BAAQMD staff did not continue to emphasize or advocate for this recommendation, as demonstrated by their comment letter submitted on the Draft EIR (Comment letter A-11), which does not reiterate BAAQMD's comment about thresholds in response to the NOP.

The proposed Project would be located in an overburdened community in terms of exposure to air pollution. As discussed in Response to Comment A-11-1, the analyses within the Draft EIR were developed in consultation with the BAAQMD, rely heavily on modeling data provided by the BAAQMD for the West Oakland Community Action Plan (WOCAP), and follow the same modeling approach as the BAAQMD used to develop the WOCAP. The health risk analysis indicates that existing background risk levels already exceed the BAAQMD cumulative thresholds of significance, and that any additional emissions associated with a project of any size would result in a significant and unavoidable impact.

While the proposed Project would be required to implement all of the most advanced and commercially available on-site mitigation measures that are currently feasible, it is technologically infeasible for the proposed Project (or any development project for that matter) to result in no net increase of any air pollutants. Without substantial advances in technology and regulations (such as 100 percent zero emission automobiles and trucks, fire department-approved alternatives to diesel emergency generators, and roadways which are completely dust-free) achieving net zero pollution is unattainable and infeasible from a CEQA perspective.

In addition, as discussed in Response to Comment A-17-1 above, CEQA requires that the significant environmental impacts of a proposed Project are fully disclosed based on substantial evidence; that where available, feasible mitigation measures are identified for any potentially significant impacts; and that any significant and unavoidable impacts are reduced by implementing all feasible mitigation. The Draft EIR satisfies these requirements. The BAAQMD adopted significance thresholds, which are used in the Draft EIR, are not-zero emission thresholds and were developed based on substantial evidence provided in the BAAQMD CEQA Guidelines.[82]

[82] BAAQMD, 2017. *California Environmental Quality Act Air Quality Guidelines*, May 2017. http://www.baaqmd.gov/~/media/files/planning-and-research/ceqa/ceqa_guidelines_may2017-pdf.pdf?la=en, accessed April 2019.

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A-17-11 The City acknowledges neighborhood concerns regarding potential illegal truck activity resulting from elimination of truck parking at Howard Terminal and seeks to address this concern via implementation of the West Oakland Truck Management Plan as discussed on Draft EIR p. 4.15-67. Please see Consolidated Response 4.5, *Truck Relocation,* for additional discussion of the issues raised in this comment, including the Truck Management Plan, sites which may be made available for truck parking at the Port and Oakland Army Base, as well as zoning restrictions and other rules and requirements that would limit the impact of trucks on the West Oakland neighborhood.

A-17-12 The Draft EIR discusses the WOCAP and the applicability of its actions on the proposed Project (see Draft EIR pp. 4.2-30 through 4.2-33). A total of 22 actions are listed that are relevant to the proposed Project.

Impact AIR-2.CU evaluates whether the proposed Project, in conjunction with cumulative development and existing background TAC sources, would contribute to cumulative health risk impacts on sensitive receptors. This analysis uses the BAAQMD citywide health risk modeling data and methodology prepared for the WOCAP to determine the background cumulative cancer risk and PM2.5 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 in on Draft EIR pp. 4.2-146 through 4.2-153 and in Tables 4.2-22 through 4.2-25. See also Consolidated Response 4.5, *Truck Relocation*.

As discussed on Draft EIR p. 4.2-30, the WOCAP actions are not direct Project-level requirements, and implementation of the WOCAP strategies are not the responsibility of private development projects. The WOCAP actions direct the City, the BAAQMD, and CARB to develop plans, requirements, programs, and funding sources to reduce TAC emissions within West Oakland. The City is currently analyzing how and whether to incorporate WOCAP strategies in its regulations and policy documents. 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.

However, strategies and actions from the WOCAP are incorporated into Mitigation Measures in the EIR. Mitigation Measure AIR-2e has been revised to include the option for the Project sponsor to directly fund or implement a

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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. In addition, Mitigation Measure AIR-2.CU, Implement Applicable Strategies from the West Oakland Community Action Plan, would require the Project sponsor to implement all applicable strategies and actions from the WOCAP that apply to the proposed Project. These include Actions 14a, 14b, 18, 29, 36, 49, and 52 (see 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 total health risk impact of the proposed Project to zero, through implementation of all relevant and feasible WOCAP actions, other feasible measures and technology, and offsite TAC exposure reduction projects.

Regarding specific WOCAP strategies referenced in comment, WOCAP Strategy #9, trucks associated with proposed Project operations would be required to comply with any truck operation restrictions developed and adopted by the City. An example of this are the West Oakland Truck Management Plan and City zoning regulations that will apply to all Project-related trucks and also address potential impacts of truck parking due to relocated trucks from Howard Terminal. See Consolidated Response 4.5 *Truck Relocation* and Draft EIR p. 4.2-40. Mitigation Measure AIR-2d requires a truck route program to avoid sensitive receptors in the Project, and would include truck calming, parking, and delivery restrictions.

Regarding WOCAP Strategy #22, the mitigation measures contained in the Draft EIR would impose more stringent air quality construction and operational requirements than contained in the City's standard conditions of approval. For example, Mitigation Measure AIR-1c would require all off-road construction equipment to meet Tier 4 Final engine emission standards with a narrow exception for limited specific specialty equipment; Mitigation Measure AIR-2c would require all emergency backup generators to meet Tier 4 standards, be vented on rooftops, and not exceed 20 hours of annual testing;

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and Mitigation Measure AIR-2e would require the Project to reduce emissions below the BAAQMD's thresholds of significance. (See Consolidated Response 4.2, *Formulation, Effectiveness and Enforceability of Mitigation Measures*, for revisions to Mitigation Measures AIR-1b, AIR-1c, AIR-2c, AIR-2d, AIR-2e, AIR-4a, and AIR-4b in response to comments on the Draft EIR.) In addition, the Project would be required to comply with any requirements associated with construction and operational air quality developed and adopted by the City and/or BAAQMD in the future pursuant to the implementation of any WOCAP actions. See Consolidated Response 4.2, *Formulation, Effectiveness and Enforceability of Mitigation Measures*, for more information and changes to air quality mitigation measures.

Regarding WOCAP Strategy #40, proposed Project trucks would be required to comply with the West Oakland Truck Management Plan and with any future traffic calming programs or requirements (see Draft EIR pp. 4.15-67 through 4.15-68 and 4.15-210).

For the reasons explained above, the proposed Project is consistent with and would not preclude implementation of any WOCAP strategies.

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WOCAP. As described on the City's website: "The work to explore land use tools to address emissions, as well as the research and existing conditions assessment of poor health, air pollution and industrial lands will serve a bridge to the General Plan Update, estimated to kick-off in June 2021."[6] Activities related to or as a consequence of the Project have the potential to delay or interrupt the implementation of multiple strategies in the WOCAP – an adopted local Plan. We urge the City to ensure, through well-defined mitigation or design measures in the FEIR, that no WOCAP strategies are adversely affected and that the Project will not conflict with the already adopted WOCAP, with emphasis on the following strategies within the City's jurisdiction:

- Strategy #9: The City of Oakland develops a plan to limit the hours that trucks can operate in the community.
- Strategy #22: The City of Oakland adopts more stringent air quality construction and operations requirements.
- Strategy #40: The City of Oakland, consistent with the West Oakland Truck Management Plan, implements, in consultation with West Oakland residents, traffic calming measures to keep truck traffic off residential streets (see Section III above).
- Strategy #42: The City and Port of Oakland award long-term leases to vendors that will deliver trucker services (including mini-market and convenience stores, fast food, and fast casual restaurants), and parking to keep trucks off West Oakland streets.

V. **Commitment to Community Benefits Agreement (CBA)**

A-17-13

We applaud the City for working closely with the CBA Steering Committee on the equity-centered Howard Terminal proposal Community Benefits Agreement (CBA). CARB supports a fully enforceable and legally binding CBA that is developed with and benefits the air quality of the local community.

The Project will have significant impacts on the West Oakland community which is already overburdened with air pollution; therefore, it is critical to work collaboratively with community members to ensure equitable outcomes and improved local air quality. CARB supports relevant community-driven air quality measures as listed on pages 20-22 of the August 20, 2020 Howard Terminal Steering Committee Initial CBA recommendations, provided the City establish the requisite substantial evidence that they would mitigate air quality impacts identified in the DEIR.[7]

CARB urges the City and Project Sponsor to adopt relevant air quality and health recommendations put forth by the CBA Steering Committee.

[6] https://www.oaklandca.gov/topics/west-oakland-community-action-plan-ab-617
[7] West Oakland Recommendation Letter https://cao-94612.s3.amazonaws.com/documents/CBA-Topic-Cohort-Initial-Recommendations-August-14-DRAFT.pdf

RESPONSE

A-17-13 This comment pertains to the development of the community benefits agreement and references initial recommendations of the Community Benefits Agreement (CBA) Steering Committee from August 2020, including strategies to improve indoor air quality in existing homes, to increase air quality monitoring, to increase the tree canopy in four neighborhoods, to expand asthma prevention and treatment, to build climate resilience hubs to support residents during climate-related crises, to plant vegetated buffers between existing neighborhoods and freeways, to make improvements to encourage walking, and to prioritize GHG emission offsets in the neighborhoods. A final report from June 2021 is available on the City's website at https://cao-94612.s3.amazonaws.com/documents/FINAL_062521-HT-CBA-Recommendations-Final-Report-1.pdf and contains a summary and evaluation of the recommendations in the prior report. The final report includes a number of strategies in all of the "cohorts" or topics considered by the Steering Committee. A sampling of some of the strategies include:

- Increasing the frequency and efficiency of public transit to achieve a maximum of 15-minute headways for all transit routes in West Oakland.
- Funding for onsite affordable homeownership programs and designation of an investment fund to design, purchase, construct, expand, improve, seismically retrofit, or rehabilitate single or multi-family homes to provide homeownership opportunities that prioritized displaced and long-time Black West Oakland residents.
- Funding for pedestrian safety improvements for the most dangerous streets in nearby neighborhoods to increase walkability.
- Funding for redesign and upgrading of freeway underpasses to encourage walking.
- Funding for a team of "ambassadors" to clean parks, sidewalks, and places in neighborhoods away from the immediate ballpark area, with additional clean-up within ¼ mile of the stadium and along pedestrian routes from the three BART stations.
- Funding a pilot project and installation of vegetated buffers in nearby neighborhoods adjacent to the freeways.
- Meeting green building priorities/standards by including greywater systems and water conservation in the design and going beyond LEED certification.

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(Please see the final report itself for a comprehensive list of strategies and the precise wording of the strategies paraphrased here.)

Some of the strategies identified would address existing exposures to air pollutant emissions (e.g. landscape buffers between nearby neighborhoods and existing freeways), some would address existing emissions *and* emissions associated with the Project (e.g. improved transit headways, and strategies to encourage walking such as funding for cleaning, pedestrian safety improvements, and upgrading underpasses), and some would be specific to the Project itself (e.g. local hiring, green building standards.)

Where the suggestions would address potential impacts of the Project, there are similar strategies included and available for implementation in the mitigation measures included in the EIR. For example, Mitigation Measures TRANS-1a and TRANS-1b include actions to improve transit service and encourage pedestrian/bicycle use, and Mitigation Measure GHG-1 includes required actions and a menu of additional strategies that can be used to ensure the Project would result in no net additional GHG emissions.

The final community benefits agreement is the subject of negotiations between the Project sponsor and the City, and will be presented to the City Council for adoption following certification of the EIR. Nothing in the EIR would preclude adoption of any strategies identified by the Steering Committee if desired by the City Council.

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VI. Conclusion

CARB believes that additional, more specified, and more stringent mitigation measures are feasible to reduce air quality and health impacts in West Oakland. Through strengthened mitigation and tenant relocation measures, consistency and alignment with the WOCAP, and commitment to the CBA, the Project is capable of showing environmental leadership and commitment to the greatest feasible extent of mitigation.

A-17-14

Given the breadth and scope of projects subject to CEQA review throughout California that have air quality impacts coupled with CARB's limited staff resources to substantively respond to all issues associated with a project, CARB must prioritize its substantive comments here based on staff time, resources, and its assessment of impacts. CARB's deliberate decision to substantively comment on some issues does not constitute an admission or concession that it substantively agrees with the lead agency's findings and conclusions on any issues on which CARB does not substantively submit comments.

CARB appreciates the opportunity to comment on the Draft EIR for the Project and can provide assistance on zero-emission technologies and emission reduction strategies, as needed. If you have any questions, please contact Dr. Julia Luongo, Air Pollution Specialist, via email at julia.luongo@arb.ca.gov.

Sincerely,

Deldi Reyes

Deldi Reyes, Director of the Office of Community Air Protection

cc: See next page.

RESPONSE

A-17-14 This is a general comment that includes closing remarks and serves to provide a summary of the more specific comments which are responded to in detail above. As a result, no specific response is provided here. See Responses to Comments A-17-1 through A-17-13, above, for discussions of additional mitigation measures added to the Final EIR and mitigation measures deemed infeasible. See also Consolidated Response 4.2, *Formulation, Effectiveness, and Enforceability of Mitigation Measures,* and Consolidated Response 4.5*, Truck Relocation*.

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RESPONSE

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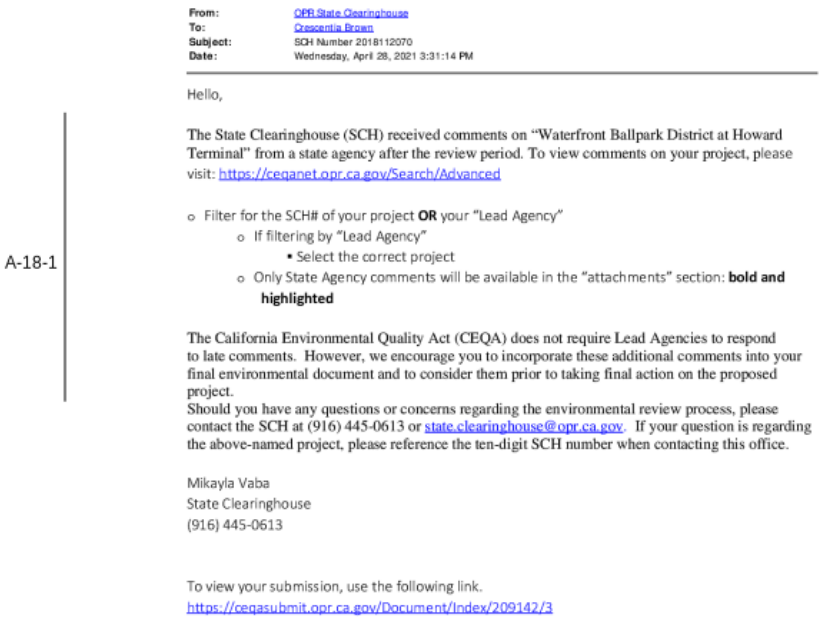
A-18 State Clearinghouse (SCH)

	COMMENT	RESPONSE
A-18-1		A-18-1 The comment informing the City of Oakland that state agencies had submitted comments on the Draft EIR via the State Clearinghouse is noted. Responses to all comments from state agencies can be found in Chapter 5 of this Final EIR.