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

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

Dear Mr. Vollmann:

These comments are submitted on behalf of the East Oakland Stadium Alliance and its members (“EOSA”) regarding the draft Environmental Impact Report (“DEIR”) for the proposed Oakland Waterfront Ballpark District Project at the Charles P. Howard Terminal (“Howard Terminal”) and adjacent parcels at the Port of Oakland (“HT Project” or “Project”), published by the City of Oakland (“City”) on February 26, 2021. In these comments, reference is made to a number of technical reports<sup>1</sup> also being submitted on behalf of EOSA that are directed to numerous deficiencies identified in the DEIR under the California Environmental Quality Act (“CEQA”).<sup>2</sup>

**I. INTRODUCTION.**

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

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<sup>1</sup> *Review of Draft Environmental Impact Report for the Waterfront Ballpark District at Howard Terminal* (AES, April 26, 2021) (“AES Report”), and appendices thereto.

<sup>2</sup> Public Resources Code § 21000, *et seq.* CEQA is implemented through the State CEQA Guidelines (“CEQA Guidelines”), 14 Cal. Code Regs. § 15000, *et seq.*

The HT Project would bring about profound changes displacing all current uses at the Howard Terminal and other nearby properties to make way for a massive redevelopment project within the Port that will come with significant environmental and other adverse impacts. In addition to environmental damage, the Project will negatively affect transportation systems and infrastructure, businesses and jobs associated with Port-related activities, and future flexibility for expanded seaport operations.

As described in the DEIR, the HT Project Sponsor<sup>3</sup> proposes the following Project components:

- (i) A 35,000-seat baseball stadium/event venue with games and concerts up to 103 days of the year, and other events throughout the entire year for an estimated total of 354 events per year.
- (ii) Up to 3,000 new residential units in 600-foot-tall high-rise buildings greatly exceeding the height of any buildings in Oakland today.
- (iii) Up to an additional 1,500,000 square feet of office/commercial uses, 270,000 square feet of retail uses, a 3,500-seat (50,000 square foot) indoor performance venue for “year-round” events, and hotel uses in one or more buildings with up to 400 rooms.

See DEIR at 1-1 to 1-2, 3-20, 3-26, 3-35, 3-36. The DEIR also describes a Maritime Reservation Scenario associated with a turning basin expansion, and two Project Variants for (i) potential conversion of an existing power plant – an approximately 2.5-acre historic PG&E Station C facility located on the south side of Embarcadero West that supplies power in times of peak demand (“Peaker Power Plant”) – to battery storage; and (ii) an aerial gondola to access the site from across Highway 880 and over the Union Pacific Railroad (“UPRR”) tracks that run along Embarcadero Road north and east of the Howard Terminal site. DEIR at 1-2 to 1-3, 3-5.<sup>4</sup>

Given the scale and nature of this proposed development, and its proposed location in an industrial area on the Oakland waterfront within a working seaport, the EOSA is deeply concerned that the DEIR insufficiently analyzes a number of important environmental impacts that would be associated with allowing a baseball stadium complex and large-scale residential/mixed-use development abutting and in conflict with waterfront industrial uses and transportation systems in and near the Port. These adverse effects include the creation of

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<sup>3</sup> The Oakland Athletics Investment Group, LLC (“Project Sponsor”).

<sup>4</sup> Just four days prior the close of the public comment period on the DEIR, the Project Sponsor released a proposed “Development Agreement Terms Sheet” (see Letter from Dave Kaval to Betsy Lake, dated April 23, 2021) with information on Project financing – including two new tax-increment financing districts – for funding of the Project including on-site and off-site infrastructure changes. This also includes community benefits such as affordable housing that clearly relate to analysis required to be provided in the DEIR, such as the growth inducing impacts of the Project taken together with other cumulative development which is reasonably foreseeable in the area. The failure to release this information earlier, as part of the DEIR, has prejudiced the public’s ability to review and comment on the DEIR.

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

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

- Individual Impact Areas. The DEIR fails to sufficiently address potentially significant environmental impacts of the Project in many areas, including impacts related to air quality, biological resources, greenhouse gas (“GHG”) emissions, exposure to hazardous materials, public safety including at-grade railroad crossings, hydrology and water quality, land use, transportation and circulation, and others.
- Deferred Study and Mitigation. As a systemic problem, the DEIR relies on improperly deferred study and mitigation in many areas, including mitigation related to traffic/transportation effects and management, potential exposure to hazardous materials and toxic air contaminants, waterfront safety protocols, and the effect of displacing all current activities at the Howard Terminal. Instead of full and current analysis of these subjects, the DEIR opts for “future study” and an impermissible “plan to plan” approach that deprives the public and public agencies of required information needed at this time to be fully informed on the environmental risks of the Project.
- Alternatives. The DEIR’s analysis of alternatives to the Project is legally deficient, especially in respect to the comparative impacts of the Off-Site Coliseum Area Alternative (Alternative 2), thereby mis-informing the public regarding the significant environmental (and other) benefits of developing the Project at the Coliseum site, rather than at Howard Terminal.
- Project Description. The DEIR’s project description violates CEQA in a number of respects, including by improperly piecemealing environmental review of the HT Project from the Project Sponsor’s related Coliseum redevelopment in East Oakland.
- Howard Terminal Displacement. The DEIR fails to accurately describe current uses at the Howard Terminal or address the ramifications of displacing all such uses, in terms of impacts from relocating trucking, container storage and other activities on air quality and transportation, as well as other negative effects in the Port area and surrounding communities.
- Cumulative Impacts. The DEIR fails to sufficiently address the cumulative impacts of the Project and its growth-inducing effects, especially in relation to the projected growth and impacts from reasonably foreseeable development under the proposed Downtown Oakland Specific Plan (“DTOSP”), as well as at the Coliseum site under the Coliseum Area Specific Plan (“CASP”).

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

## II. INTERESTS OF COMMENTING PARTIES.

The EOSA is comprised of a large and diverse group of organizations and members<sup>5</sup> with significant interests in ensuring the continued success and vitality of the Port’s maritime-related industrial uses, including transportation and union-related interests. Many of the members, in connection with their work and facilities at the Oakland Seaport, contribute significantly to the economy and institutions in the City in a myriad of ways. These members include the majority of the transportation providers necessary to facilitate the movement of goods and who play a vital role in preserving the local, regional and State-wide economic importance of the Port’s industrial and transportation-related operations. The economic impacts of their activities are critical to the overall success of the Port and are well documented.<sup>6</sup>

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

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

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

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

<sup>6</sup> *See Impacts of the A’s Proposed Howard Terminal Stadium on the Operation and Economics of the Oakland Seaport* (September 2019), available at: [https://d3n8a8pro7vhmx.cloudfront.net/oaklandstadiumalliance/pages/12/attachments/original/1570821793/EPS\\_Howard\\_Terminal\\_Report\\_09.30.19\\_-\\_FINAL.pdf?1570821793](https://d3n8a8pro7vhmx.cloudfront.net/oaklandstadiumalliance/pages/12/attachments/original/1570821793/EPS_Howard_Terminal_Report_09.30.19_-_FINAL.pdf?1570821793).

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

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

In addition, members of the EOSA have important interests at stake regarding the selection of the Coliseum Area Alternative, rather than the Howard Terminal site, for the proposed new ballpark and related development. Redevelopment of the Coliseum site, including an MLB stadium, has long been planned under the CASP<sup>8</sup> and would revitalize this area of East Oakland for the betterment of the local communities and the entire City. For purposes of the DEIR analysis, the Coliseum Area Alternative would reduce or avoid significant environmental and other impacts of the HT Project, which the DEIR fails to correctly assess and explain.

### III. LEGAL REQUIREMENTS FOR AN EIR.

The purpose of an EIR is to “provide public agencies and the public in general with detailed information about the effect [that] a proposed project is likely to have on the environment; to list ways in which the significant effects of such a project might be minimized; and to indicate alternatives to such a project.” (Pub. Resources Code § 21061...)” *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 511-512. An EIR is a document of accountability, and public disclosures made in a properly-prepared EIR serve to protect both the environment and informed self-government. *Id.* at 512. Thus, an EIR must include sufficient detail “to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.” *Laurel Heights Improvement Ass’n v. Regents of Univ. of California* (1988) 47 Cal.3d 376, 405; *Sierra Club v. County of Fresno, supra*, 6 Cal.5th at 516; *see* CEQA Guidelines § 15151. Simply acknowledging that an impact would be significant and unavoidable, even with mitigation measures, is insufficient. *See Galante Vineyards v. Monterey Peninsula Water Management Dist.* (1997) 60 Cal.App.4th 1109, 1123 (EIR’s acknowledgement that an impact would be significant and unavoidable, even with mitigation measures, was inadequate and a more detailed analysis of the magnitude of the adverse impact was required). An EIR’s description of the environmental setting must not be “inaccurate, incomplete [or] misleading.” *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 729.<sup>9</sup>

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<sup>8</sup> *See* Coliseum Area Specific Plan, adopted by the Oakland City Council on April 21, 2015.

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

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

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

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

##### **A. Systemic Deferral of Analysis and Mitigation.**

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

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

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

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

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

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

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

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

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

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

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Howard Terminal site. However, again, mitigation for this disturbance is relegated to a future RAW by the DTSC and is thus unknown. DEIR at 4.9-21.

- Geology/Soils. The DEIR cites to and relies on the (future) LUC, as well as Operation & Maintenance (“O&M”) Agreements (and the RAW and Soil Gas Management Plan (“SGMP”)) for the Project. *See* DEIR at 4.6-20 to 4.6-23 (referencing discussion in Section 4.8, *Hazards and Hazardous Materials*). The difficulty is that none of these documents exists today.
- Transportation. Measures in the Transportation Management Plan (“TMP”) (for the new ballpark) and Transportation Demand Management Plan (“TDMP”) (for residential and commercial uses) are vague and without adequate performance standards. The TMP, in particular, is set up as a “plan to plan” that crosses the line into impermissible deferred mitigation. *See* DEIR at 4.15-137.
- Waterfront Protocols. Similarly, the DEIR provides for a waterfront safety protocol to be developed in the future between the Project Sponsor, the City and the Port. DEIR at 2-61 to 62. Risks to navigational safety posed by the Project are especially problematic given the large number of ball games and other events that are expected to create glare and other impediments to safe navigation and to draw recreational watercraft into the Oakland Inner Harbor, an active shipping lane.
- Future Ordinances. The DEIR provides that the City and Port will at some point “cooperate” to establish a “shared regulatory framework” so that the Oakland Municipal Code (“OMC”) would apply to the Project. *See* DEIR at 3-11, 3-58. However, that framework should have been provided with the DEIR so that the public and agencies can understand the new framework, the standards that would be applicable to the HT Project, and the potential for land use inconsistency and conflicts with existing uses in the area, especially taking into account the nearby development that would be permitted under the proposed DTOSP. Environmental review must be undertaken and impacts should be analyzed based on whether the OMC will or will not apply.

The real problem is that the DEIR does not involve just a single instance of deferred analysis of potential impacts and mitigation for future plans, although that alone could be grounds for revision and recirculation. Here, the “deferral approach” taken by the City in the DEIR is systemic and renders the DEIR lacking under CEQA on a broad scale as an informational document.

#### **B. Insufficient Treatment of Howard Terminal Displacement Impacts.**

The Howard Terminal is a water-dependent use that serves important maritime, heavy industrial and transportation-related purposes within the Port of Oakland. *See* DEIR at

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

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

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

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

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

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

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

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

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

<sup>16</sup> Foulweather Report, at 9.

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

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

## **V. THE DEIR’S PROJECT DESCRIPTION IS DEFICIENT.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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Terminal site could meet them. *See, e.g.* Objective 2 (*provide waterfront destination that is active year round and complements the waterfront ballpark*); Objective 3 (*construct a new ballpark on Oakland's waterfront*); Objective 4 (*create continuous waterfront district with strong connections to Jack London Square*); Objective 8 (*design a project that minimizes interference with the Port of Oakland operations*); Objective 9 (*increase public use through a waterfront park and waterfront promenade extending access to the Oakland waterfront from Jack London Square, and taking advantage of the project site's unique proximity to Jack London Square, the waterfront and downtown*). DEIR at 3-15 to 3-16 (emphasis added). Yet, unlike the basic maritime-related function of Howard Terminal, none of the proposed Project components – a ballpark, condos and apartments, hotels, retail shops, and offices – depend in any way on a necessary nexus to the waterfront. Although the City's narrow set of project objectives did not entirely preclude discussion of one off-site alternative, Alternative 2, they resulted in a less-than-robust comparison of alternatives, especially with respect to consideration of the Coliseum Area Alternative (*see* Section VII.A., *infra*).

### **C. The Project Description is Inconsistent and Uncertain.**

“[A]n accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR.” *County of Inyo v. City of Los Angeles*, *supra*, 71 Cal.App.3d at 199. “A curtailed, enigmatic or unstable project description draws a red herring across the path of public input.” *Id.* at 197-198. Only through an accurate view of the project “may the public and interested parties and public agencies balance the proposed project's benefits against its environmental cost, consider appropriate mitigation measures, assess the advantages of terminating the proposal and properly weigh other alternatives.” *City of Santee v. County of San Diego* (1989) 214 Cal.App.3d 1438, 1454.

The DEIR's Project Description is confusing and uncertain as to the nature and variety of actions that will be taken for the Project. The description contains numerous “possible” elements, leaving the reader to speculate as to exactly what will be undertaken:

- That large-scale existing shipping container cranes may (or may not) be retained depending on a “later assessment” of safety that has been improperly deferred. DEIR at 2-2, 3-16, 3-31.
- That a potential future Turning Basin project involving an approximately 10-acre portion of the Project site, located generally in the southwestern corner, may (or may not) be developed; and this, along with and any necessary Project reconfiguration and impacts on associated financing, might be unknown for 10 years. DEIR at 2-3, 3-37.
- That the nearby Peaker Power Plant may (or may not) be converted to battery power storage, especially as it relates to GHG emissions and other issues. DEIR at 2-4, 3-16.

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- That an Aerial Gondola system for transporting visitors over and above Interstate 880, the UPR railroad tracks, and other areas may (or may not) be included or built. DEIR at 2-4.<sup>21</sup>
- That Fire Station 2 on the Project site may (or may not) be renovated or demolished which would affect emergency response times. DEIR at 2-2, 3-16.
- That the Project may (or may not include) on-site or off-site affordable housing units and the analysis of associated environmental impacts is deferred. DEIR at 3-26.
- That the fate of off-site transportation improvements “identified” or “recommended” to “increase connectivity for transit” and to “implement” vehicle trip reductions and “to manage vehicle travel and parking” (DEIR at 3-40) is uncertain and not guaranteed.
- That the plot plan (DEIR Fig. 3-10) shows maximum heights for various parcels north of the stadium, but the conceptual rendering of the site (Fig. 3-11) shows differing heights of buildings in different locations.

Although these items are mentioned in the DEIR, the cumulative effect created by the many uncertainties involved, when coupled with the other project description issues identified above, make the scope and description of the Project insufficient for purposes of CEQA analysis, and require revision and re-circulation of the Project Description chapter to address these issues. The revisions should also include sufficient information and analysis regarding the financing details and the plans for construction and operation of on-site and off-site infrastructure improvements under the Terms Sheet newly released by the Project Sponsor, so that the environmental and other effects of those improvements can be assessed by the public in the context of the DEIR.

## **VI. THE DEIR FAILS TO SUFFICIENTLY ANALYZE MANY IMPACT AREAS.**

As described in the AES Report and the supporting technical reports, the DEIR’s analysis of individual impact areas is deficient in a number of important respects.

### **A. Air Quality and GHG Emissions.**

The AES and Foulweather Reports explain that the DEIR’s air quality and GHG analyses suffer from numerous deficiencies, leading the DEIR to significantly understate the Project’s impacts in these areas. Some of the key deficiencies are the following:

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<sup>21</sup> See also Letter from AC Transit, dated April 16, 2021, p. 2, stating: “We are skeptical that the gondola can be built in this complex environment and will be able to provide a substantial number of trips to a 35,000-seat ballpark.”

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- Baseline. The DEIR relies on an inappropriate baseline for the assessment of “net” Project impacts related to air quality and public health risks. Foulweather Report at 3-5.
- Rooftop Generators. The DEIR’s analysis of air quality and public health impacts related to the Project’s emergency rooftop generators does not reflect the current Best Available Control Technology, and modeling of emissions also suffers from numerous deficiencies, leading the DEIR to underpredict diesel particulate matter emissions from emergency generators. Foulweather Report at 5-7.
- Howard Terminal Displacement. The DEIR fails to address reasonably foreseeable air quality impacts resulting from the relocation of all existing operations at Howard Terminal. Foulweather Report at 8-9.
- Fugitive Dust Emissions. The DEIR fails to evaluate or quantify the air quality and public health impacts associated with fugitive emissions of PM<sub>10</sub>, PM<sub>2.5</sub> and related toxic air contaminants (“TACs”) during construction and remediation. Foulweather Report at 9-11.
- GHG Credits for Electric Vehicle Charging Infrastructure. The DEIR’s quantification of GHG benefits associated with the installation of electric vehicle (“EV”) charging infrastructure is logically flawed, and unjustifiably takes credit for GHG reductions attributable to actions by others. Foulweather Report at 11-15.
- Inadequate Health Risk Assessment. The DEIR’s health risk assessment suffers from numerous flaws and was not performed in accordance with Bay Area Air Quality Management District (“BAAQMD”) and State guidelines. Foulweather Report at 15-17.
- Emission Offset Credits. Mitigation Measure AIR-2e(c) (“Emissions Offsets”) is impermissibly vague and indeterminate, and mitigation fees should be set equal to BAAQMD excess emission fees calculated based on the remainder of 30-year project life at the time the shortfall begins. Foulweather Report at 17-18.

The DEIR also suffers from numerous other deficiencies with respect to air quality and GHG impact analyses, including failure to use meteorological data from the Oakland Sewage Treatment Plant used in the West Oakland Community Action Plan; failure to compare unmitigated or mitigated project air quality impacts with ambient air quality standards and to describe the magnitude of ambient air quality exceedances to which the Project could potentially contribute; and the use of out-of-date emission factor models.

## **B. Hazards and Hazardous Materials.**

The DEIR’s analysis of hazards and hazardous materials suffers from substantial deficiencies

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as described in the Terraphase Engineering technical review<sup>22</sup> and outlined briefly below:

- Insufficient Analysis of Impacts and Improperly Deferred Mitigation for Subsurface Contamination. The DEIR’s analysis and mitigation of subsurface contamination in soil, soil gas, and groundwater rely on speculative plans and unreasonable assumptions that understate the extent and significance of environmental impacts.
- Reliance on a Removal Action Workplan is Not Appropriate. It is unlikely that the DTSC will approve a Removal Action Workplan (“RAW”) as the proper means to address contamination at the Project Site. Given the scope and nature of the contamination, the complex hydrogeology of the site, its proximity to sensitive human and ecological receptors, the planned encapsulation of significant contamination, and the anticipated cost of the remediation (likely close to \$50 million for soil excavation and disposal alone), DTSC would typically require preparation of a comprehensive Remedial Action Plan (“RAP”) based on a Feasibility Study that evaluates the full range of remedial alternatives. Additional investigation may be required in order to prepare an adequate Feasibility Study.<sup>23</sup> The DEIR should evaluate the impacts associated with removal of all soil contamination that exceeds accurately derived human health-based risk levels as would be required under a properly developed RAP. Terraphase Report at 5.
- Deferred Study. The engineering, technical and logistical parameters of the remedial action, and impacts to groundwater quality, cannot be evaluated because they are deferred to as-yet nonexistent studies and evaluations. Terraphase Report at 5.
- Failure to Consider All Contaminants. The DEIR entirely fails to consider certain contaminants and their impacts, including petroleum metabolites (hydrocarbon oxidation products) in groundwater and their potential to migrate to the Bay. Terraphase Report at 5-6.
- Human Health and Ecological Risk Assessment. The Human Health and Ecological Risk Assessment (“HHERA”) relied on in the DEIR (DEIR at 4.8-15) does not include a current ecological risk assessment or calculate target levels based on ecological receptors, relying instead on outdated information. Terraphase Report at 6-7.

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<sup>22</sup> See *Review of Selected Sections of the Draft Environmental Impact Report for the Waterfront Ballpark District at Howard Terminal, Oakland, California (Case File No. ER18-016) (State Clearinghouse No. 2018112070)* (Terraphase Engineering Inc., April 26, 2021) (“Terraphase Report”), Appendix 3 to the AES Report.

<sup>23</sup> A RAW is used at smaller, less contaminated sites where all, or substantially all of the contamination that exceeds action levels, is being excavated and taken away. At more contaminated sites, such as Howard Terminal, where significant contamination may remain in place, it is essential to have a more comprehensive understanding of what is being left behind, what risks it poses (both during construction and post-construction), and how those risks can be effectively managed going forward, as is performed with a RAP. The DEIR should contain a complete analysis of all hazardous materials that are present at the site today, and the risks associated with disturbing those materials, especially given the site’s location relative to the community and the Inner Harbor.

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- Cancer Risk and Non-Cancer Hazards. The HHERA is fundamentally flawed because the cancer risk and noncancer hazard associated with several chemicals of potential concern (“COPCs”) were not considered in deriving target cleanup levels; a cancer toxicity value, a noncancer toxicity value, or both, were omitted for 41% of the COPCs considered in the HHERA; there is no characterization of potential risks from exposure to nonaqueous-phase liquid; and the exposure to lead in soil should be characterized and discussed. Terraphase Report at 6-8.<sup>24</sup>
- Inadequate Risk Characterization. The HHERA lacks quantitative estimates of site-related cumulative cancer and noncancer risks for each receptor, and a comparison of those risks with risk management thresholds. Terraphase Report at 6-7.
- Inadequate Indoor Air Quality/Vapor Intrusion Factors. Soil-gas-to-indoor air attenuation factors for new residential and commercial construction are less conservative than the attenuation factors recommended by DTSC and the Regional Water Quality Control Board for screening-level assessments, and the HHERA provides no justification for this deviation. Terraphase Report at 7.
- Inadequate Sampling. The HHERA does not demonstrate that adequate sampling has occurred. Terraphase Report at 8.
- Potential Fuel Pipeline Hazards. The DEIR also fails to analyze the potential hazards associated with construction or long-term operations near active high-pressure fuel pipelines. *See* Terraphase Report at 9.

### **C. Geology and Soils.**

The DEIR’s analysis relating to geology and soils has substantial flaws as described in the Terraphase Engineering technical review and noted briefly below:

- Deferral of Study. The DEIR’s analysis of Impact GEO-1 and adoption of Mitigation Measure GEO-1 require only a future site-specific geotechnical report, and on that basis finds impacts to be less than significant (DEIR at 2-42), thus failing to identify significant impacts in the first instance or establish that mitigation measures are feasible or would reduce impacts to a less-than- significant level.
- Liquefaction Impacts. The DEIR significantly understates the potential for liquefaction and other impacts at the Project site and surrounding area, and improperly defers analysis and mitigation of liquefaction impacts to a future undefined process. DEIR at 4.6-17; *see* Terraphase Report at 3-4. The DEIR also does not identify appropriate Risk Categories established by the American Society of Civil Engineers indicating that a level III or IV category is necessary; and also fails to adequately

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<sup>24</sup> Among other things, the HHERA omits the oral cancer slope factors (9 COPCs), inhalation unit risks (three COPCs), noncancer chronic oral reference doses (12 COPCs), and noncancer inhalation reference concentrations (8 COPCs). Terraphase Report at 6.

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analyze (i) the potential for structural failure, including lateral failure of subsurface structures such as the Quay Wall and Rock Dike, which could occur regardless of ground improvement measures, (ii) the potentially significant impact of additional loading caused by soil fill placed to mitigate sea level rise, and (iii) the potential for on-site and nearby liquefaction to disrupt soil caps. Terraphase Report at 3.

- Addition of Fill. The DEIR's conclusion that the addition of fill would "further isolate" underlying contaminants (DEIR at 4.6-22) is unsupported and contradicted by the potential for liquefaction and sea level rise as acknowledged in the DEIR, which will cause groundwater elevations to rise and saturate the soil higher up the soil column with contaminated groundwater. Terraphase Report at 3-4.
- Cumulative Impacts. The DEIR fails to provide sufficient information concerning the cumulative impact of earthquake-induced liquefaction on site access, emergency response, utilities, structures, regional access, differential settlement (including substantial differential elevation changes between the Project Site in a seismic event and the unmodified surroundings), and flooding. Terraphase Report at 3-4.

#### **D. Hydrology and Water Quality.**

The DEIR's analysis relating to hydrology and water quality has substantial deficiencies as described in the Terraphase Report and noted below:

- Surface Water and Stormwater. The DEIR fails to provide a site-specific pollutant source assessment or to adequately describe the range of contaminants and concentrations that have been monitored/detected in stormwater or surface water at the Project site that represent baseline conditions and site-specific contaminants of concern. *See* Terraphase Report at 9. The DEIR contains additional deficiencies in relation to surface water impacts, including that mitigation measure HYD-1a includes best management practices ("BMPs") that have no application to the Project site (DEIR at 4.9-22 to 4.9-24); the failure to disclose how the Project could be designed to reduce the amount of impervious surface to comply with mitigation measure HYD-1a; the failure to analyze or mitigate flooding potential in light of sea level rise projections, storm surge events, or extreme high-tide events; the failure to develop engineering assessments regarding how proposed grading may affect floodplain mapping; and the lack of a site-specific hydrodynamic surface water model to evaluate stormwater outfall elevation to support the DEIR assessment. *See* Terraphase Report at 11.
- Groundwater. The DEIR fails to identify the range of groundwater contaminants that would require continuous monitoring, sampling, and treatment, or to analyze potential vertical migration of contaminants associated with sea level rise. Terraphase Report at 9, 12. A comprehensive dewatering plan and treatment system design should be prepared for public review to address groundwater and commingled stormwater, especially because depth to groundwater at the site is estimated at only 5 to 12 feet and "likely fluctuates several feet daily with tidal action." DEIR at 3-8, 4.9-4. The DEIR

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also fails to analyze the potential remobilization of groundwater and soil contaminants or potentially commingled contaminated groundwater and stormwater due to sea level rise; and fails to provide a dewatering plan clearly describing the extent and duration of proposed dewatering, or a groundwater model that accounts for the substantial dewatering required for the Project which could adversely impact local groundwater flow dynamics, recharge rates (and local surface water quality). Terraphase Report at 10

- Cutoff Wall. The DEIR states that a “cutoff wall” could be installed to control groundwater inflow into the ballpark area (DEIR at 4.9-21), but it does not discuss impacts to flow direction or impacts associated with construction of the wall itself. Terraphase Report at 10.
- Beneficial Uses. The DEIR fails to analyze all beneficial uses of groundwater beneath the Project site. DEIR at 4.9-26, HYD-2. De-designation of beneficial uses requires an amendment to the Water Quality Control Plan for the San Francisco Bay Area which has not occurred.
- Tidal Zone. Project construction and associated in-water work would result in temporary and potential long-term significant impacts to the near-shore tidal zone, water quality, and marine life in adjacent waters that are not adequately mitigated. The DEIR relies on the future preparation of a Creek Protection Plan (HYD-1a), but this reference is unclear because the DEIR notes the absence of any creeks at or adjacent to the Project site, and it is impossible to evaluate the significance of any future proposed mitigation measures because the Plan does not now exist.

#### **E. Inconsistency with Land Use, Plans and Policies.**

As discussed in the AES Report, the DEIR’s analysis of potential land use incompatibility is insufficient. The DEIR identifies numerous potential land and water-based use conflicts that could arise due to introduction of new residential and office/commercial uses on the Project site adjacent to Port, as well as industrial and railroad uses, but then concludes that the Project would not result in a fundamental conflict with nearby land uses and impacts would be less than significant with mitigation. DEIR at 4.10-33 to 4.10-44. This conclusion is unwarranted and unsupported for a number of reasons:

- Land Use Conflicts. The DEIR identifies numerous potential land and water-based used use conflicts that could arise due to the Project, including: (1) increased vehicular/pedestrian/bike traffic that could mix with Seaport traffic, (2) increased cut-through traffic, (3) additional traffic at at-grade rail crossings, and (4) exposure of new residents to noise and diesel exhaust emissions and other contaminants (DEIR at 4.10-33- 44), but fails to adequately analyze and disclose the significance of these impacts.
- Seaport Compatibility Measures. The DEIR improperly defers mitigation to future potential “Seaport Compatibility Measures” to ensure that the Project does not impact or interfere with the Port’s use or operations. DEIR at 4.10-33. The DEIR does not

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analyze how that could be feasible or even possible, and this impact should be determined significant and unavoidable.

- Downtown Oakland Specific Plan. The DEIR fails to account for cumulative impacts of the Project taken together with reasonably foreseeable development under the DTOSP with regard to conflict with existing land uses, addressing the DTOSP in just two paragraphs and failing to account for significant cumulative traffic impacts, among others. See DEIR at 4.10-68.; see also AES Report and Appendix 1 (Comment Letter on Draft EIR for Downtown Oakland Specific Plan, submitted by Pacific Merchant Shipping Association et. al., November 8, 2019).

#### **F. The Transportation and Circulation Analysis is Deficient.**

The DEIR's transportation analysis fails to account for the Project's potentially significant impacts to traffic and circulation and resulting impacts on existing Port operations. Specific deficiencies in the DEIR's transportation analysis are noted below and supplemental comments regarding transportation are provided in the Kittelson Report.<sup>25</sup>

- Increased VMT Due to Relocation of Truck Operations. The DEIR acknowledges that VMT associated with truck travel is likely to change due to trucks being relocated from Howard Terminal, but erroneously concludes that estimating the change in truck VMT would be speculative and therefore no estimate was completed. Kittelson Report at 1, 9.
- Inconsistent Significance Criteria for VMT. The DEIR establishes significance criteria for VMT that are inconsistent with the City of Oakland Transportation Impact Review Guidelines ("TIRG"), dated April 2017. Kittleson Report at 1-2, 10.
- Potentially Significant VMT Impacts for the Retail Component. The DEIR fails to disclose a significant impact due to a net increase in VMT per service population. Kittleson Report at 2, 10.
- Transportation Demand Management Plan for the Performance Venue. The DEIR does not support the claim that the transportation demand management ("TDM") plan for the performance venue will reduce VMT to a level constituting a less-than-significant impact. Kittelson Report at 2, 6.
- Impacts of Train Blockages. The DEIR fails to sufficiently analyze how the higher volume of vehicular and pedestrian traffic created by the Project would increase congestion and hazards at the at-grade rail crossings at Market Street, Martin Luther

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<sup>25</sup> See Kittelson & Associates Technical Memorandum, *Waterfront Ballpark District at Howard Terminal DEIR (Case File No. ER18-016) (State Clearinghouse No. 2018112070)* (Kittelson & Associates, April 21, 2021) ("Kittelson Report"), attached as Appendix 4 to the AES Report.

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King Way, and Clay Street, including blockages of emergency service vehicles, Project access, and Port operations. Kittelson Report at 2-3.<sup>26</sup>

- Deferred Mitigation. The Transportation Management Plan (“TMP”) and the Transportation Demand Management Plan (“TDMP”) include measures that are too vague and lack adequate performance standards to qualify as permissible deferred mitigation. Kittelson Report at 8.

In addition to the above, the Kittelson Report identifies numerous additional problems with the DEIR’s transportation and circulation impacts analysis, including flaws in the DEIR’s trip generation assumptions, inadequate street capacity to meet Project traffic demands (Kittelson Report at 5), inadequate sidewalk capacity for pedestrian demand (*id.* at 11), lack of sufficient parking supply (*id.* at 3), and others. While some impacts such as parking may not be categorized as transportation effects for CEQA purposes, they still contribute to overall degradation of the Project area’s transportation elements and system if added to today’s transportation baseline.

### **G. Additional Deficiencies in the DEIR.**

In addition to the foregoing, the DEIR is deficient in a number of other important ways outlined briefly below and discussed in more detail in the AES Report and the attached technical reports, incorporated herein. These include the DEIR’s treatment of energy; aesthetics, shadow, wind and glare; cultural resources; noise and vibration; population and housing; public services; recreation; utilities and service systems; cumulative effects; and indirect growth-inducing effects.

For example, regarding aesthetics, shadow and wind, the HT Project would construct the tallest buildings in Oakland. The tallest building in Oakland today is the Ordway Building downtown at 404 feet, while Project plans would construct two 600-foot luxury condo towers, along with three other 400-foot towers, and two 350-foot towers. Massing and height of this kind are unprecedented anywhere in Oakland, much less on the industrial waterfront, and would present significant aesthetic and planning issues for the City and its residents, especially because the Project would be in a highly visible and sensitive waterfront location where no buildings in the immediate vicinity currently exceed four stories. The DEIR’s conclusion that the visual effects of the Project would be less than significant is plainly not

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<sup>26</sup> As the DEIR acknowledges, the Union Pacific Railroad tracks border the eastern boundary of the Project, and are used 24/7 by UPRR, Capitol Corridor, San Joaquin, and Amtrak Long Distance trains. *See also* comments of Adrian Guerrero, General Director of Public Affairs for Union Pacific Railroad, submitted for April 21, 2021 meeting of the Oakland Planning Commission, on the proposed Waterfront Ballpark District Project, with video illustrating UPRR’s Oakland terminal facilities, and rights of way and operations, highlighting the associated safety concerns with the HT Project, available at:

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

A second video graphically demonstrating the potential impacts and safety risks involved without full and adequate above-grade separation for pedestrian, cycling and vehicle crossings is found at the following link: <https://www.sandiegouniontribune.com/sdut-padres-fans-warned-about-railroad-safety-2010sep08-htmlstory.html>.

supportable – the changes to views and architectural style will be extreme and significant to the residents in West Oakland and the public in general and would permanently scar the historic visual character of the area as a seaport.<sup>27</sup>

As another example, the DEIR fails to assess the impacts of the Project, including its nature, density and massing, that would negatively affect historic resources in the vicinity of the Project, including the Southern Pacific Railroad Corridor (“SPRC”), the Remillard Brick Company, the *USS Potomac* and *Lightship Relief*, the Muller Brothers Pickle Factory, the Wempe Brothers-Western Paper Box Company, and the proposed Jack London Maker District located just two blocks north of the SPRC along 3rd Street between Brush and Clay Streets. Numerous buildings in the area retain historic character and appearance recognizable as historical resources, indicating that a larger National Register Landscape District could be established in the area. Significant aesthetic impacts to all these cultural resources would result from construction of a large-scale baseball stadium and residential, entertainment, office, hotel, and retail uses, ranging from 50 to 600 feet high, that would dwarf all other structures or buildings in the area and permanently alter the visual character of the maritime industrial complex in and around the Howard Terminal and the Port. However, the DEIR improperly omits this analysis.

Finally, as described in the AES Report, the DEIR’s assessment of both cumulative impacts and growth-inducing impacts is clearly insufficient, given the DEIR’s failure sufficiently to address reasonably foreseeable levels of development under both the DTOSP and the CASP.<sup>28</sup>

## **VII. THE DEIR’S ANALYSIS OF ALTERNATIVES IS DEFICIENT.**

### **A. The Analysis of the Coliseum Area Alternative is Insufficient.**

An EIR must “include sufficient information about each alternative to allow *meaningful* evaluation, analysis, and comparison with the proposed project.” CEQA Guidelines § 15126.6(d) (emphasis added). Here, the DEIR includes a cursory and misleading analysis of the Off-site Coliseum Area Alternative (Alternative 2) and its environmental effects. In many cases the discussion of impacts is just a few paragraphs. For most of the impact areas, the DEIR summarily concludes that impacts would be “similar” to those of the proposed Project, without providing a full analysis of Alternative 2’s potential impacts (and in some cases without an accurate statement of Project-related impacts), including its potential advantages over the Project. The DEIR’s analysis of Alternative 2 relies mostly on outdated

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<sup>27</sup> The buildings would also present unmitigated impacts due to glare for safe navigation. Mitigation Measure BIO-1b, which would incorporate specific design elements into the Project to avoid or minimize avian collisions, applies only for first 60 feet above the ground “or to the height of existing adjacent landscape or the height of the proposed landscape.” DEIR at 4.3-37 to 4.3-38.

<sup>28</sup> The Project Sponsor’s recently-released Development Agreement Terms Sheet forecasts gross and unexplained numbers for Project and financing district revenues to be directed at a variety of infrastructure improvements and other purposes, such as affordable housing. Clearly, these could potentially be growth-inducing and contribute to cumulative impacts; and the full ramifications of such proposals should have been revealed and discussed in detail in the DEIR, and the analysis made available for public review and comment.

analysis of Alternative 2C from the Coliseum Area Specific Plan EIR.<sup>29</sup> Such conclusory analysis precludes “meaningful evaluation” of Alternative 2’s impacts and prevents decisionmakers and the public from meaningfully comparing the impacts of Alternative 2 to those of the proposed Project, and from understanding which is superior from an environmental viewpoint.

For example, the DEIR concludes that “impacts related to hazards and hazardous materials under Alternative 2 would be . . . similar to the proposed Project with mitigation.” DEIR at 6-18. This is clearly not the case. Subsurface contamination at Howard Terminal is substantially more extensive laterally, and more pervasive, than contamination at the Coliseum site. *See* Terraphase Report at 12. Regardless of whether impacts at both locations could possibly be mitigated to an insignificant level, that does not make them equal or comparable; and it does not excuse the DEIR from addressing in more detail the order-of-magnitude differences in the nature and extent of the contamination and the different steps necessary to remediate the competing sites in order to mitigate the potential human health and ecological risk.

As discussed in more detail in the AES Report, other environmental impacts would plainly be more severe at the Howard Terminal site than at the Coliseum, including effects associated with land use conflicts and transportation/circulation issues. For example, unlike the Howard Terminal, the Coliseum site is well-connected to local and regional roadways and freeways, and to public transportation systems such as BART and the Oakland Airport. The proposed Project, if located at the Coliseum site, would not require consideration of overly expensive and unlikely improvements such as an aerial gondola system to cross highways and railroad tracks; an above-grade separation for vehicles to cross railroad tracks; and possible interference with marine improvements such as the turning basin expansion for Port vessel traffic. At a minimum, more meaningful comparison of the Project and Alternative 2 should include not only those key points, but also the following:

- Impacts to historic resources would be greater under the proposed Project. The DEIR states that demolition of the Coliseum would not occur under the Proposed Project. *See* DEIR at 6-16. However, the DEIR acknowledges that demolition of the Coliseum and redevelopment would occur under either scenario. *See* DEIR at 7-11 (noting that the CASP “support[s] redevelopment of the site and surrounding area” and that the CASP EIR “considered several redevelopment scenarios for the site, all of which anticipated demolition of the Oakland Coliseum.”).
- Population and housing impacts (DEIR at 6-19) would be similar in terms of number of units, but Alternative 2 would involve fewer environmental and other impacts.

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<sup>29</sup> The DEIR states that Alternative 2C is “similar but not identical to the Off-Site Alternative evaluated here” and therefore “the analysis in this section estimates impacts that vary somewhat from those identified in the CASP EIR.” DEIR 6-13. *See* Table 6-1, comparing development under Alternative 2 and CASP EIR Alternative 2C. There are several differences; for example, the ballpark under CASP Alternative 2C would have a 39,000-seat capacity, vs. the 35,000-seat capacity under Alternative 2, and Alternative 2C would have 4,000 dwelling units, vs. the 3,000 units under Alternative 2.

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- Noise and vibration impacts at the Howard Terminal site would remain significant and unavoidable. Noise-sensitive land uses would be exposed to train horn activity and 24-hour noise sources that cannot limit hours of operation. DEIR at 4.11-18. The proposed Project also would remove the buffer area between industrial and residential land uses, DEIR at 4.11-1, 4.11-60. On the other hand, operational noise from the Coliseum Alternative would not violate City of Oakland Standard Conditions of Approval. *See* CASP at 4.10-24.

### **B. The DEIR Fails to Analyze a Reasonable Range of Alternatives.**

As noted above, the DEIR defines project objectives in an overly restrictive manner that precludes adequate consideration of reasonably feasible off-site alternatives. Most objectives reference a “waterfront” project at the Port and/or in proximity to Jack London Square (DEIR at 3-15 to 3-16), which basically encompasses only the Howard Terminal. *See* Section V.B., *supra*. However, an EIR must “describe a range of reasonable alternatives to the project, *or to the location of the project*, which would feasibly attain most of the basic objectives of the project but would avoid or substantially lessen any of the significant effects of the project, and evaluate the comparative merits of the alternatives.” CEQA Guidelines § 15126.6(a) (emphasis added). The DEIR’s focus solely on a “waterfront” location near Jack London Square resulted in an insufficient and cursory analysis of the Coliseum Alternative and potential variants at that site.

For example, the DEIR fails to consider any “reduced development” alternative at the Coliseum site, or other feasible alternatives at the Coliseum site altogether. Alternative 2 simply “transplants” the proposed development designed specifically for the Howard Terminal to the Coliseum site. But CEQA requires a better effort than that when a proposed project, such as the HT Project, will have many significant and unavoidable impacts. A lead agency must consider a “reasonable range of potentially feasible alternatives that will foster informed decision making and public participation.” CEQA Guidelines § 15126.6(a). “The range of alternatives required in an EIR is governed by a ‘rule of reason’ that requires the EIR to set forth only those alternatives necessary to permit a reasoned choice... The range of feasible alternatives shall be selected and discussed in a manner to foster meaningful public participation and informed decisionmaking.” *Id.*, subd. (f).

Here, the DEIR should have studied additional Coliseum alternatives, such as a “reduced development” alternative requiring lower densities of commercial or residential development and/or lower building heights or a different configuration. The Coliseum site does not have anywhere near the site constraints presented at the Howard Terminal site, and there is no reason the project design could not be adjusted or improved for that alternative location, even if provisions of the CASP might need to be amended for such purposes. The DEIR’s failure to consider a lower-density alternative for the Coliseum site precludes meaningful evaluation of the benefits of that site as compared to the Project at the Howard Terminal location.

Please ensure that these comments, along with the AES Report and all appendices thereto, are

Comments re DEIR (ER18-016)  
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entered into the record for the HT Project.

Sincerely,

A handwritten signature in black ink, appearing to read "Ronald E. Van Buskirk". The signature is written in a cursive style with a large initial "R" and "V".

Ronald E. Van Buskirk