



April 27, 2021

City of Oakland
 250 Frank Ogawa Plaza
 Oakland, CA 94612

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

Re: Draft Environmental Impact Report for the Waterfront Ballpark District at Howard Terminal

These comments are respectfully submitted in response to the February 26, 2021 publication of a Draft Environmental Impact Report (DEIR) for the “Oakland Waterfront Ballpark District Project” at Howard Terminal (Case File Number ER18-016). These comments are submitted on behalf of the undersigned businesses, labor unions, and trade associations who utilize and depend on a healthy, growing, and well-functioning Port of Oakland.

The DEIR is inadequate in numerous respects and fails to both analyze and mitigate numerous significant environmental impacts associated with the proposed Project at Howard Terminal. Nearly all of these significant impacts are derivative of the simple fact that the Howard Terminal is an exceptionally challenging location to develop anything other than an industrial seaport facility.

The impacts associated naturally with this site are compounded by the sheer size and intensity of the project proposed here by the Oakland A's which would cram a baseball stadium, 3,000 units of residential housing, 1.5 million square feet of office space, and a hotel and other amenities onto this terminal facility constructed for intermodal container operations.

The outstanding significant environmental impacts resulting from this project which have failed to be adequately analyzed, identified, and addressed in this DEIR include:

- interference with the Port and its future operations,
- traffic and transportation nightmares,
- lack of clear descriptions and scope of the massive public infrastructure contemplated, needed, and likely publicly financed, and
- public safety and railroad safety issues.

The DEIR inadequately describes the one Alternative which is clearly environmentally superior to the Howard Terminal project: the existing Coliseum project location option. The DEIR cannot avoid the common sense conclusion that everyone already knows, that the existing Coliseum location is much better suited for a new ballpark. The Coliseum alternative clearly avoids many of the serious adverse impacts at the Howard Terminal site, especially as to transportation generally, VMTs, transit access, transportation safety, maritime safety, rail safety, air quality, hazardous materials, impacts on the Bay and shoreline and Public Trust lands, and other issues including urban decay and growth inducement.

Analysis of Baseline Existing Operations of the Port and its Future Operations Is Missing in its Entirety from the DEIR

The DEIR completely and knowingly avoids any substantial baseline analysis of the operations of the Port of Oakland, generally, and Howard Terminal, specifically, despite the obvious fact that the Howard Terminal is a critical component of the operations of the Port of Oakland.

Without a baseline analysis of the current operations of the Port of Oakland inclusive of the operations at Howard Terminal so as to place the Howard Terminal operations in their proper existing site utilization context, the DEIR is inadequate. Furthermore, without a baseline analysis of these operations it is impossible to compare, weigh or evaluate any potential impacts and mitigation measures with respect to significance.

The intermodal supply chain, including the numerous business and labor stakeholder signatories to this letter, relies on the safe and efficient operations of the Port of Oakland, including the Howard Terminal, to facilitate international trade and commerce. The supply chain stakeholders have been consistent and unambiguous with the City during the course of the development of this DEIR that all reasonably foreseeable Port business impacts, including their associated significant environmental consequences, must be analyzed. This has not occurred.

In order to analyze and identify reasonably foreseeable impacts on Port business and their attendant environmental impacts of the removal of Howard Terminal, there first needs to be a complete baseline analysis done of Port operations. Only once these are established in a project baseline, can any policymaker at the City or any of the many responsible agencies that will be relying on this document evaluate the significance and importance of the need to preserve or relocate or eliminate the activities at Howard Terminal.

The DEIR does not provide any such baseline, and without a baseline evaluation of the existing operations at the site, is per se defective.

Inexplicable and Surprising Omission of Any Discussion Whatsoever of the Coliseum Alternative as an Environmentally Superior Alternative to Howard Terminal

The DEIR includes the Coliseum location as Alternative 2 and provides that the Oakland A's could build their project and achieve their project objectives, and stay rooted in Oakland at this location. The Coliseum Alternative presents an option which would avoid all of the disruptions and impacts of constructing the project at Howard Terminal.

The Coliseum location is already under an approved EIR which would allow for the construction of a stadium, housing, and additional commercial and entertainment spaces as envisioned by the Oakland A's. The Coliseum location has the benefit of existing infrastructure for all modes of transportation, including direct BART and transit access, allowing for Transit-Oriented Development which is impossible at Howard Terminal. The Coliseum location has nothing like the significant toxic and hazardous materials challenges at Howard Terminal. The Coliseum location currently operates below significance threshold for air quality concerns, which are significant and unavoidable at Howard Terminal. The Coliseum location has 3x the acreage of Howard Terminal, allowing for more development of open space and green space, while still preserving more transportation options for fans, residents, and workers, including parking and TOD. The Coliseum location does not pose the same rail and truck safety issues which are significant and unavoidable at Howard Terminal. Finally, with respect to GHG emissions, because the Oakland A's have been allowed to meet their goals with respect to greenhouse gas emissions by buying credits, there is no benefit or detriment to either the Coliseum or the Howard Terminal location with respect to these emissions.

And, of critical importance to the Port's customers and supply chain stakeholders: the Coliseum poses no threat of disruption of Port business, does not introduce numerous safety of navigation variables into the Oakland Inner Harbor, does not threaten to complicate the expansion of the Turning Basin, does not displace thousands of truck transactions currently occurring at Howard Terminal into a blind ether, and does not introduce hundreds of thousands of new cars into the existing complex of trucks and trains serving the Port of Oakland's customers.

In short, the Coliseum Alternative is environmentally superior in numerous significant respects. Yet, inexplicably, the Coliseum Alternative is completely omitted and not even discussed in the DEIR's evaluation of an "Environmentally Superior Alternative" (at Sec. 6.5) in comparison to the numerous impacts of the Howard Terminal.

To be consistent with the state's CEQA Guidelines, a DEIR must focus, describe and discuss all selected "feasible alternatives ... in a manner to foster meaningful public participation and informed decision making." (Guidelines § 15126.6 (f).) "[T]he discussion of alternatives shall focus on alternatives to the project or its location which are capable of avoiding or substantially lessening any significant effects of the project, even if these alternatives would impede to some degree the attainment of the project objectives, or would be more costly." (Guidelines § 15126.6(b).)

Here, the DEIR identifies the Coliseum as an Alternative, but then failed to discuss the Alternative as an Environmentally Superior Alternative, even though it obviously is. It is no justification to exclude the Coliseum from the Environmentally Superior Alternative discussion because the A's find that location to be less lucrative than Howard Terminal or less able to meet all of the A's project objectives.

No Analysis Included of Induced Growth and the Plainly Intended Transformation of Oakland's Seaport-Industrial to an Entirely New Neighborhood

The DEIR's project description violates CEQA by either improperly segmenting environmental review of the Howard Terminal project from the Draft Downtown Oakland Specific Plan or, alternatively, by refusing to acknowledge the growth inducement and cumulative impacts of the Howard Terminal project in conjunction with the Draft Downtown Oakland Specific Plan (DOSP) area surrounding Howard Terminal.

The A's project is intended to be a catalyst for the elimination of an entire swath of Port-supporting and industrial buffer zone properties and to expand Downtown Oakland south of 880 and west of Broadway. One of the major problems with the Howard Terminal DEIR is the abject lack of acknowledgement that this project by the A's is the lynchpin of whether or not the City is abandoning its commitment to creating an industrial buffer zone which protects the Port from residential encroachment and, vice versa, protects Oakland residents from the negative externalities of the industrial Port operations on the waterfront. These impacts are compounded by the draft DOSP, which promotes widespread upzoning, densification, additional housing, and elimination of industrial uses in the current industrial corridor and buffer zone north of Howard Terminal and west of Broadway if the A's Howard Terminal project is approved.

There is no mention of any of these cumulative impacts in the DEIR. Without an acknowledgement of this type of analysis, the environmental review is a deficient piecemeal approach to approving multiple projects with related impacts but considering them in a vacuum from each other. Taken together, the Howard Terminal project must be viewed as a critical inducement to the anti-industrial rezoning and focus on residential growth in the critical industrial buffer which currently exists.

Inadequate Analysis of Truck and Port Traffic and Transportation Impacts

One of the most obvious and glaring results of the lack of the preparation of a baseline analysis of current Port operations is the complete abandonment of any actual analysis to quantify the impacts of truck displacement from Howard Terminal. Obviously, this displacement must be analyzed at least with respect to air quality, transportation, and safety. However, the DEIR fails to properly and fully address the ramifications of displacing all current uses at the Howard Terminal.

The displacement of the existing truck and container yard operations and usage at Howard Terminal is the primary direct, undisputed, and inevitable outcome resulting from the development of Howard Terminal. Yet, somehow, the DEIR refuses to analyze the impacts to Port trucking as being “speculative.”

This is a clear DEIR deficiency. Just because a potential impact may be complicated and involve a level of analysis by experts, does not mean that the impact is “speculative” – if that were the standard for CEQA, which by its very nature requires evaluations of potential future events, all EIRs would be short, concise, easy to read, and patently uninformative. Instead, the City and project sponsor should have hired the proper experts to conduct an analysis of trucking impacts. Such an analysis will require research, application of modeling expertise, the evaluation and adoption of reasonable assumptions, and the documentation of these efforts.

This type of analysis applied to the Howard Terminal cannot be limited to just the elimination and displacement of truck parking, but must also include an analysis of the displacement of container and equipment interchange activities, vessel lay-berthing, container storage, and other truck-supporting uses which occur at that site.

While the project sponsor is happy to tell the public and say in the media that Howard Terminal is just an empty parking lot, the DEIR is fortunately held to a higher standard of analysis. Therefore, it must establish a baseline evaluation and calculation of the current uses and acknowledge that the Oakland A’s are seeking to eliminate a critical piece of terminal infrastructure that is not easily replaceable. Howard Terminal provides space for small trucking companies who do not own their own yard in the Port area which affords them the opportunity to maximize efficiency and reduce contributions to air emissions and congestion by providing them with this space that will accommodate a “dray-off” delivery model. In addition, Howard Terminal allows them to take their trucks and interchanged equipment and containers off the roads and streets of West Oakland.

The resulting impacts on air quality, transportation, and other issues in the Port area and surrounding communities are unstudied in the DEIR. That includes a lack of an analysis of how truck and container moves impacted by their displacement by the Oakland A’s would increase project emissions, traffic, VMT, and safety issues. Instead of evaluating these impacts, the DEIR attempts to just assume the displacement has no

impacts whatsoever and presumes existing truck uses at Howard Terminal will just continue to operate at the Port as if there were no displacement at all.

To add insult to injury, while refusing to do any actual analysis of truck VMT or displacement impacts whatsoever, the DEIR actually goes out of its way in the Air Quality chapter to propose that there will actually be air quality benefits from this displacement by making the assumption (only for the purposes of the Air Quality section) that all trucks will park, stage, and operate at the Roundhouse and further away from residential exposures. There is no factual data or evidence to support this.

To the contrary, motor carriers know that removing Howard Terminal from its current uses would force the thousands of trucks that use Howard Terminal into some alternative arrangement than at present. Nearly all of these alternatives will involve additional VMT, less efficiency, more peak transits on freeways during congested rush hours, and less capacity for smaller trucking companies to utilize an efficient dray-off model of operations. For all of these reasons, the DEIR is inadequate.

Inadequate and Lack of Clear Descriptions and Scope of the Massive Public Infrastructure Contemplated, Needed, and Likely to be Publicly Financed

The Oakland A's have promised only to finance their stadium development with private financing. None of the other potential infrastructure needed to be developed has been described as being within the scope of the Oakland A's project financing. The obvious derivative situation is that the City of Oakland or some other private entity will be left to use public funds to subsidize and develop infrastructure for this project. These subsidies may include improvements within the scope of this DEIR and improvements outside of the scope of this DEIR.

In other words, no one knows what infrastructure is actually being developed as a part of this project by the Oakland A's or whether the necessary infrastructure may be considered by the City of Oakland as a project at some future point in time. This points to a lack of a stable and concise project description.

There is no public version of a development agreement published at this time, so it is impossible to know the scope of the terms of that agreement. There is no draft of a tax infrastructure financing district authorization ordinance or a related underwriting plan for the proceeds from a tax increment financing deal. This past Friday, just four days before the close of the public comment period on the DEIR, the Oakland A's released a proposed "Development Agreement Terms Sheet" that references the creating of two new tax-increment financing districts and \$855 million of on-site and off-site infrastructure to be funded by what they euphemistically call "project-generated revenue" (i.e., taxes). These clearly relate to analysis required to be provided in the DEIR, such as the growth inducing impacts of the Project taken together with other cumulative development reasonable forecasted in the area. However, even this late disclosure lacks any detail. The failure to release this information earlier and to provide sufficient detail, as part of the DEIR, limits our ability to review and comment here.

We also do not have a clear and concise description of the Seaport Compatibility Measures that must be a part of any final plan adopted by the Port and City in order to remain consistent with the existing Port-A's ENA and negotiated Term Sheet.

Without these types of documents, it is further impossible to know whether the scope of the DEIR is broad enough to capture the improvements likely to need to be part of a decision by the City about the scale, scope, and intensity of public subsidies and publicly-provided infrastructure. Given this impossibility, the DEIR is critically deficient.

Inadequate Analysis of Railroad Safety Issues

The DEIR also fails to provide an analysis of the only project alternative that would adequately address the critical issue of rail safety inherent at the Howard Terminal location: fully grade-separated access to the site. The failure of the DEIR to include this Alternative, even though advised to be considered by the California Public Utilities Commission and requested by the Union Pacific Railroad, results in a Significant and Unmitigated impact on safety.

A failure of the City and the A's to require full and effective grade separations in the construction and design of the project will inevitably result in the avoidable injury or fatality of fans, visitors, and residents.

The only explanation for why the full grade-separation option is not included as a project alternative, is that by requiring these safety improvements somehow the A's competitiveness amongst other teams in Major League Baseball would be impacted, and therefore grade separations are infeasible. The DEIR, at Section 6.4.2, states:

“Provision of a grade-separated crossing prior to commencement of Project construction was deemed infeasible given the length of time it would take to design, get approval for, and construct a new grade-separated crossing and the stated Project objective to complete construction of the new ballpark, together with any infrastructure required within a desirable timeframe and to maintain the Oakland Athletics' competitive position within MLB.”

According to this section of the DEIR, the City and the Oakland A's are literally trading the ability to prevent the death or severe injury of future Oaklanders or fans for many decades to come in exchange for the ability of the Oakland A's to save some money and potentially spend those funds to field a winning team on the field for a couple of years during the construction of this project.

The DEIR includes no analysis or justification of the claim that the investment in adequate safety infrastructure should be considered infeasible. There is simply no evaluation or discussion of how the A's baseball operations render this alternative infeasible. Therefore, there is no basis upon which the DEIR could rest on an assertion

of infeasibility, or explanation of why the City of Oakland would knowingly choose to ignore an alternative to the significant impact of injuries and fatalities at this project.

When feasibility is claimed as a basis for requiring a statement of overriding considerations for significant and unmitigated impacts, it requires a high degree of justification. Similarly, the avoidance of analyzing an effective project alternative based on feasibility must meet the same high bar of justification. This requires facts, disclosure, analysis, and a discussion of the merits, however anything resembling such a discussion is omitted. This is a shameful omission. Not only is the DEIR deficient in this respect, but if the A's go forward with this project without these grade separations it will inevitably result in the tragically avoidable death or injury in fans and residents, with the City likely on the hook for the liability as a result.

In conclusion, the undersigned organizations have serious concerns with the inadequacy of this DEIR to address, identify, analyze, and disclose many of the significant impacts of the Oakland A's proposed Howard Terminal project. In particular, the analysis of this project's interaction with the Port of Oakland's stakeholders, the intermodal supply chain, and industrial activity is woefully deficient and largely absent.

The deficiencies of this DEIR are not only impactful to the decisions made by the City but will substantively and negatively impact the numerous other responsible agencies which may be acting in reliance on this report to further evaluate the viability of the Oakland A's proposed stadium project. While this doesn't enhance the already high CEQA thresholds of review that must be met (and that this DEIR falls short of meeting), given the complexity of this project and the many additional discretionary levels of review required of multiple public agencies, the DEIR has failed as a comprehensive disclosure and public informational document which could "provide decisionmakers with information which enables them to make a decision which intelligently takes account of environmental consequences." (CEQA Guidelines §15151).

We request that to comply with CEQA, the City revise the DEIR to account for the many deficiencies outlined in this letter and then recirculate the revised DEIR to the public for further review and comment before considering any further action on the Oakland A's Howard Terminal project application.

Respectfully submitted,

***African-American Farmers of California
Agriculture Transportation Coalition
American Waterways Operators
California Automotive Wholesalers Association
California Trucking Association
Customs Brokers & Forwarders Association of Northern California
Devine Intermodal
Dreisbach***

Fashion Accessories Shippers Association
Fashion Jewelry and Accessories Trade Association
Gemini Shippers Group
GSC Logistics
Harbor Trucking Association
Inland Boatmen's Union of the Pacific
International Longshore and Warehouse Union
International Organization of Masters Mates & Pilots, AFL-CIO
Marine Firemen's Union
Matson Navigation
Nisei Farmers League
Pacific Drayage Services
Pacific Merchant Shipping Association
Sailors' Union of the Pacific
Schnitzer Steel Industries, Inc.
SSA Terminals
Transportation Institute
Union Pacific Railroad