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Charles P. Costanzo
Vice President – Pacific Region

January 14, 2019

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

Re: Oakland Waterfront Ballpark District
Project (Case File # ER18-01)

Dear Mr. Vollmann:

The American Waterways Operators, the national trade association for the tugboat, towboat, and barge industry, appreciates the opportunity to provide comments on the City of Oakland's Environmental Impact Report for the potential Oakland Waterfront Ballpark District Project that would replace the Charles P. Howard Terminal within the Port of Oakland. With seven members headquartered in California, and five of those within the San Francisco Bay Area, AWO and its members care deeply about the viability of the Port of Oakland and the positive economic impact its operation has on the City of Oakland.

AWO is concerned that the Proposed Project will have substantial physical impacts on the Port of Oakland and the vibrant maritime economy of the entire Bay Area. The Port of Oakland is growing significantly in terms of both cargo and vessel volume. In 2018, cargo volume increased 3.3%, and the Port's "Growth with Care" strategic plan for 2018-2022 "anticipates a 5-year run of record cargo volume" that will see continuing growth of 2-3% each year. Considerable efforts have been made to promote and manage the increased flow of cargo through the Port of Oakland, including:

- Seaport Logistics Complex: Once completed, this 180-acre cargo logistics hub that will include warehouse and distribution center space, rail access and transload capability to efficiently move cargo between ships and trains.
- Cool Port Oakland: Opened in November, this 280,000-square-foot temperature-controlled distribution facility can handle more than 50,000 refrigerated containers.
- Oakland International Container Terminal: Four ship-to-shore cranes were raised 27 feet to accommodate larger container ships.
- TraPac Terminal: A project to double the terminal's capacity from two vessel berths and 66 acres to four berths and 123 acres is nearly complete. The terminal is also the second at the Port of Oakland to add "night gates" to accommodate increased cargo.

With increased physical capacity needed at the Port of Oakland, it is incongruous and disruptive to consider reallocating existing industrial port facilities for a 55-acre mixed use project. The location of the Howard Terminal provides key access to rail and highway connections for future port growth. Additionally, the Turning Basin required for ships accessing the Harbor Channel, Middle Harbor, and Inner Harbor lies directly adjacent to Howard Terminal. Development that obstructs access to the Turning Basin or impedes it through increased recreational use will negatively impact physical port access.

While hampering future growth and ongoing operations at the Port of Oakland might not presently seem like a significant impact to the City of Oakland, the long-term economic and physical impacts of ceding maritime freight transportation resources to retail and residential development will harm the City and its citizens. In response to the City's request that comments address potential physical impacts of the Proposed Project, the following physical constraints and impacts from ceding industrial port land for the Proposed Project should be considered:

- Access to and safe use of the Turning Basin and the navigational channel.
- Future needs to expand the Turning Basin and widen/deepen the navigational channel to accommodate larger ocean vessels.
- Existing truck and rail access to port facilities.
- Future land-based transportation needs, particularly as reduced maritime capacity will cause a modal shift of more cargo to roadways by truck.
- Environmental impacts of modal shift from efficient ocean and rail transportation networks to trucks.
- Safety concerns for truck/rail operators, drivers and pedestrians if land resources around existing highways, railways and roads are transformed from industrial use to retail and residential use.
- Traffic congestion to existing roadways (including commercial truck routes) inherent to a 35,000-person sports park and retail, residential and recreational use, particularly in light of the lack of public transit options to the site.

Thank you for the opportunity to express our concerns about the Proposed Project. We would be pleased to answer any questions or provide further information to assist the City of Oakland in assessing the impacts that this significant change in existing land-use would have on physical operations at the Port of Oakland and wider impacts on the economy and transportation network of the City of Oakland.

Sincerely,



Charles P. Costanzo
Vice President – Pacific Region



Schnitzer



CUSTOMS BROKERS AND FORWARDERS ASSOCIATION
OF NORTHERN CALIFORNIA

January 14, 2019

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

Submitted Electronically <http://comment-tracker.esassoc.com/tracker/oaklandsportseir/>

**COMMENTS IN RESPONSE to NOTICE OF PREPARATION Case File No. ER-18-016;
and,
WRITTEN REQUEST FOR NOTICE OF ADDITIONAL ACTION**

Dear Mr. Vollmann,

These comments are respectfully submitted in response to the November 30, 2018 Notice of Preparation (NOP) of a Draft Environmental Impact Report (DEIR) for the “Oakland Waterfront Ballpark District Project” (Case File Number ER18-016) on behalf of the California Trucking Association, Pacific Merchant Shipping Association, Harbor Trucking Association, The American Waterways Operators, Transportation Institute, Save the Bay, Agriculture Transportation Coalition, Schnitzer Steel, and the Customs Brokers and Forwarders Association of Northern California. Each of these organizations submitting comments may also be submitting additional comments which should be considered supplemental to any comments contained herein.

Upon our full review of the NOP and available public documents, we respectfully request that the City immediately withdraw this NOP, refrain from all further work on this DEIR or in response to the Application, and direct the project Applicant to focus its request for

environmental clearance under CEQA to the Port of Oakland, which will need to promulgate a DEIR as the proper Lead Agency for any potential project at Howard Terminal.

This request for full and immediate cessation of the City's work on the DEIR is based on numerous concerns with the NOP for the proposed Housing/Stadium Project at Howard Terminal in the Port of Oakland by the Oakland A's. These concerns include:

- the Application is Premature and from an Applicant with no rights in the Project
- the Application is incomplete and NOP project description are inadequate;
- the City is the wrong Lead Agency for this Port project;
- limitations on entitlements and approvals are insufficient; and,
- the project scope and description of project action under the Application are inconsistent with the limited purpose of the action requested of the City.

The Application for Environmental Review Submitted to the City is Premature and Incomplete As a Matter of Law and is Factually Inaccurate, Inadequate, and Ineffective Regarding Necessary Project Specifics

The most fundamental substantive component of any environmental review is a clear and effective Project Description. The Application underlying this NOP submitted by the Oakland Athletics Investment Group is inaccurate, vague, and suffers from material omissions in multiple, material respects. These defects in project description render the Application factually inadequate. The lack of a clear Project Description in both the Application and NOP, premature filing by the Applicant, and numerous discrepancies between the Application and NOP predicate that the NOP should be immediately withdrawn and recirculated only upon receipt of a complete Application and adequate Project Description.

The City has an affirmative duty to conduct a Preliminary Review of an Application for completeness within 30 days, as described in §15060 of the state's CEQA Guidelines (14 CCR §15000 et seq.), and shall only "begin the formal environmental evaluation of the *project after accepting an application as complete* and determining that the project is subject to CEQA." This clearly did not occur here, as the NOP was issued within 2 days of receipt of an Application with obvious inaccuracies and incomplete elements and the NOP itself contains numerous significant and substantive materials which were not included in, and contradict several of the provisions of, the Application.

One inaccuracy of alarming and immediate note, the Applicant represents itself as a "Developer or Project Sponsor" of a project at Howard Terminal, Port of Oakland. Yet, the Oakland A's have no rights in the public property at Howard Terminal, have reached no agreement with the Port of Oakland to acquire or develop a facility at Howard Terminal, and have no understanding with the City as to any development or project rights at any location.¹

¹ The fact that the Oakland A's are in talks with the Port of Oakland under an ENA to potentially acquire future rights to a development at Howard Terminal does not create a cognizable right or interest in the

The Application for Environmental Review to the City is specifically predicated upon either a Developer or Project Sponsor seeking an Environmental Review in part to ensure adequate Project Description. However, without any rights to the property, the derivative representations of expected project terms, scope, or scale are all necessarily speculative. And, the terms which are included in the Application are presently conceptual and of exceptionally dubious accuracy. This renders the Application premature and inadequate as a matter of law and fact.²

The Application's lack of project detail is replete. Plans are "Pending" and unattached. The entirety of the Environmental Setting is described in one page. The Proposed Land Use Program for this exceptionally intense and complex project is summarily described in a single small table with limited detail consisting only of various, random, and non-uniform single project descriptors.

The Application makes broad and dubious claims of no environmental impacts which are simply implausible for a potential project of this size and type at this location. For example, the Application is facially unbelievable in its claims that this project -- 4,000 housing units, 2 million square feet of commercial space, a major league baseball stadium, entertainment venue, and 400 room hotel over an existing urban location polluted with numerous hazardous materials -- will have **none** of the following impacts:

- “24. Significant amounts of solid waste or litter.
26. Change in ocean, bay, lake, stream, or ground water quality or quantity, or alteration of existing drainage patterns.
28. Use of disposal or [sic] potentially hazardous materials, such as toxic, flammable or explosive materials.
30. Substantially increased fossil fuel consumption (electricity, oil, natural gas, etc.)
31. Relationship to a larger project or series of projects”

Finally, the Applicant answered “None” to the questions of whether there are any “Associated Projects” related to the Howard Terminal project in addition to the claim that this Application was not submitted in “Relationship to a larger project or series of projects.” This is wholly inconsistent with the Applicant's public statements related to this project. The Applicant has insisted that the Coliseum location must be an ancillary development to support the financing of

property. Since no development agreement has been reached at this time, no rights have been conveyed (conditionally or otherwise), and no grant of privilege to apply to the City for this Environmental Review have been given to the Applicant by the Port.

² It is further imperative for legal and policy purposes that the City should avoid the preparation of Environmental Review documents for projects where Applicants have not yet acquired rights to a property in which they are presently negotiating for rights. Applicants who are attempting to negotiate rights to a property could leverage a premature project environmental review process by the City to alter the rights, development overhead, risks, opportunity costs, and property values of an existing property against the interests of current property owners during a negotiation process prior to any alienation of rights, title, or subdivision of properties. Specifically, with respect to Howard Terminal, it is likely that if an Agreement is reached between the Port and Applicant that could be materially impacted by issues and mitigation which would be addressed in an EIR.

the Howard Terminal project.³ Moreover, project components such as the Washington Street gondola are not listed as part of the project in the Application.

In the CEQA context, fundamental inaccuracies in the project description, or such facially obtuse descriptions so as to yield an unclear description, are not mere harmless error. The state's CEQA Guidelines directly address the predicate criteria necessary for making a project description effective in an EIR:

§15124. Project Description. The description of the project shall contain the following information but should not supply extensive detail beyond that needed for evaluation and review of the environmental impact.

(a) ***The precise location and boundaries of the proposed project*** shall be shown on a detailed map, preferably topographic. The location of the project shall also appear on a regional map.

(b) ***A statement of objectives sought by the proposed project.*** A clearly written statement of objectives will help the lead agency develop a reasonable range of alternatives to evaluate in the EIR and will aid the decision makers in preparing findings or a statement of overriding considerations, if necessary. The statement of objectives should include the underlying purpose of the project.

...

As noted by the Guideline, “an accurate, stable, finite project description is an essential element of an informative and legally sufficient EIR under CEQA” pursuant to *County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, not simply for the purposes of a check-the-box exercise but because this “section requires the EIR to describe the proposed project in a way that will be meaningful to the public, to the other reviewing agencies, and to the decision-makers.” (14 CCR §15124, Discussion)

Furthermore, “[s]ubsection (b) emphasizes the importance of a clearly written statement of objectives. Compatibility with project objectives is one of the criteria for selecting a reasonable range of project alternatives. Clear project objectives simplify the selection process by providing a standard against which to measure possible alternatives.” (*Id.*) The basic Project Description and Statement of Objectives are therefore requirements of CEQA which are *predicate* to the development of an adequate DEIR and presentation of project alternatives.

The NOP acknowledges the Project Description deficiency by noting that it can only seek comments at this time based on “key initial plan elements.”

That the NOP can offer only an incomplete Project Description is also apparent in the few instances in which the NOP tries to make up for these overwhelming deficiencies. For instance, despite the Application's claim that there aren't any potential associated projects with the Howard Terminal development, the NOP includes pedestrian connections over the railroad tracks, an aerial tram to downtown above Washington Street, power plant development, altered

³ This is seemingly inconsistent with the NOP's notation of the Oakland Coliseum site as a DEIR Alternative.

wharf configurations, and street extensions and a ramp to Middle Harbor Road and Adeline Street. These additional project components would occur outside of the description of the “precise location and boundaries of the proposed project” required under §15124(a) and are not detailed on either the map submitted in the Application or with those in the NOP itself. Moreover, it would be impossible to relate these additional project descriptions to “a statement of objectives sought by the proposed project” because none was submitted in the Application and none is included in the NOP, as required under §15124(b).

Without these basics, and in light of the numerous obvious inaccuracies, the City cannot demonstrate that it accepted the Application as complete prior to issuing the NOP. Instead, we are presented with an NOP that includes a Project Description (issued on Friday, 11/30/18) which is still incomplete but also inconsistent in many respects with the wholly inadequate and inaccurate Application (submitted on Wednesday, 11/24/18).

The Port of Oakland, Not the City of Oakland, Is the Proper Lead Agency on the DEIR for the Howard Terminal Project

CEQA defines a “Lead agency” as “the public agency which has the principal responsibility for carrying out or approving a project which may have a significant effect upon the environment.” Public Resources Code §21067. With respect to the A’s Application to the City, the Port remains the public agency with principal responsibility for carrying out or approving the proposed project which is envisioned at Howard Terminal, not the City.

The misdesignation of Lead Agency is not harmless error, and it can be prejudicial to a CEQA adequacy determination, result in the creation of a defective EIR, and ultimately result in a necessity for the preparation of an entirely new EIR by the proper Lead Agency. *Planning and Conservation League v. Dept. of Water Resources* (2000) 100 Cal.Rptr.2d 173.

The state’s CEQA Guidelines (14 CCR §15000 et seq.) directly address the criteria for how to avoid the misdesignation of the Lead Agency amongst multiple potential Responsible Agencies and how to identify the proper Lead Agency for EIR development (emphasis added):

§ 15051. Where two or more public agencies will be involved with a project, the determination of which agency will be the lead agency shall be governed by the following criteria:

(a) *If the project will be carried out by a public agency, that agency shall be the lead agency even if the project would be located within the jurisdiction of another public agency.*

(b) *If the project is to be carried out by a nongovernmental person or entity, the lead agency shall be the public agency with the greatest responsibility for supervising or approving the project as a whole.*

(1) *The lead agency will normally be the agency with general governmental powers, such as a city or county, rather than an agency with a single or limited*

purpose such as an air pollution control district or a district which will provide a public service or public utility to the project.

(2) Where a city prezones an area, the city will be the appropriate lead agency for any subsequent annexation of the area and should prepare the appropriate environmental document at the time of the rezoning. The local agency formation commission shall act as a responsible agency.

(c) Where more than one public agency equally meet the criteria in subdivision (b), the agency which will act first on the project in question shall be the lead agency.

(d) Where the provisions of subdivisions (a), (b), and (c) leave two or more public agencies with a substantial claim to be the lead agency, the public agencies may by agreement designate an agency as the lead agency. An agreement may also provide for cooperative efforts by two or more agencies by contract, joint exercise of powers, or similar devices.

Based on the application of these criteria in §15051, the Port is clearly the proper Lead Agency:

- Under §15051(a), any development of Howard Terminal will require an action by the Port to Lease or Convey rights to the Oakland A's. That action alone by the Port's Board would be a "Project" under CEQA, and therefore an approval by the Port of a project would require the development of an EIR. Even though it is located in the jurisdiction of the City of Oakland, this alone is affirmatively disclaimed in the Guidelines as a basis for Lead Agency status by the City over the principal public agency carrying out the project.
- Under §15051(b), the Port is clearly the public agency with the most site control of Howard Terminal and with traditional general governmental powers. This is especially true since both State Tidelands Trust law and the City Charter limit the general authority of the City on Port property. Consider the source of principal control of all of the following considerations for this Project site with respect to comparison of either the Port or the City:

	Port	City
Lessor and Recipient of Revenues Derivative of Prior, Present, and Ongoing Uses of Howard Terminal	✓	
Existing Entity with Exclusive Negotiating Agreement w/ Project Applicant regarding Howard Terminal project	✓	
Future Lessor or Conveyer of Howard Terminal Under Project Description of Project Transactional Documents	✓	
Trustee of Granted State Tidelands in the Port Area Subject to Enforcement by State Lands Commission including Howard Terminal	✓	

Signatory to Current Department of Toxic Substances Control Deed Restrictions on Howard Terminal	✓	
Issuer of Revenue Bonds for Financing of all Existing Port Terminal Facility Infrastructure Including Howard Terminal	✓	
Issuer of Building Permits for any Waterfront Building or Structure in the Port Area Including Howard Terminal	✓	
“To have control and jurisdiction of that part of the City hereinafter defined as the ‘Port Area’ and enforce therein general rules and regulations, to the extent that may be necessary or requisite for port purposes and harbor development.” Oakland City Charter §706(4)	✓	
“No franchise shall be granted, no property shall be acquired or sold, no street shall be opened, altered, closed or abandoned, and no sewer, street, or other public improvement shall be located or constructed in the ‘Port Area,’ by the City of Oakland, or the Council thereof, without the approval of the Board.” Oakland City Charter §712	✓	
“To provide in the Port Area, subject to the provisions of Section 727, for other commercial development and for residential housing development; provided that any residential housing development shall be approved by the Board with the consent of the City Council.” Oakland City Charter §706(23)	✓	✓
“The Board shall develop and use property within the Port Area for any purpose in conformity with the General Plan of the City. Any variation therefrom shall have the concurrence of the appropriate City board or commission.” Oakland City Charter §727	✓	✓

- Under §15051(c), the Port would be the logical Lead Agency as it will need to take the first actions to approve this project, well prior to any necessity for the City to even consider approving a General Plan amendment. First, any development of Howard Terminal will necessarily involve an action by the Port to Lease or Convey rights to the Oakland A’s under the terms of the current ENA, which is set to expire well in advance of the proposed calendar for completion of this Draft EIR. Moreover, it is illogical to conclude that the Oakland A’s, as Applicant for this general planning amendment, would continue to pursue such an amendment if the ENA concludes with the Port and it still has no rights in the Howard Terminal location. Lastly, under the terms of the Oakland City Charter, if the Port seeks to build commercial or housing development in the Port Area such construction would only be authorized with the subsequent concurrence of the City to the Port’s actions – not prior authorization. This analysis is likely unnecessary in any

event, because the City would not have anything close to an equally justified claim with the Port for status based on the criteria of §15051(b).

The NOP's only stated basis for City Lead Agency status is that "[t]he City of Oakland is the public agency that would consider approval of an amendment to the Oakland General Plan required for the Proposed Project, and as such, it is the Lead Agency for the Proposed Project." As demonstrated, this is not the CEQA standard for the determination of Lead Agency status. While the City might have some land-use authority over aspects of a Howard Terminal project,⁴ and is undoubtedly a Responsible Agency, it is not the proper Lead Agency.

The Port of Oakland, Not the City of Oakland, Has the Responsibility to Promulgate the EIR for the Howard Terminal Project

A full EIR will need to be prepared by the Port with respect to any agreement that affirmatively vests substantive project rights, even if partial or conditional, in the Oakland A's to the Howard Terminal location. Appropriate time for DEIR drafting is prior to when the Port would consider making an affirmative grant of rights in Howard Terminal to the Oakland A's for pursuit of this project once enough details and framing of the project have begun to emerge under the current ENA. Once there is a conceptual framework of a project, then the Port would necessarily need to consider its environmental impacts, evaluate alternatives to the project, circulate the DEIR with the public, and then only approve a project deal with the A's along with an FEIR.

⁴ A municipality cannot enforce local land use regulations on state property. It is a general principle of land use planning that "[a] city may not enact ordinances which conflict with general laws on statewide matters." *Hall v. City of Taft* (1956) 47 Cal. 2d 177, 184. Similar to the other provisions which govern the relationship between various levels of state and local government, "the state, when creating municipal governments does not cede to them any control of the state's property situated within them, nor over any property which the state has authorized another body or power to control." *Id.*, at 183. The tidelands trust is such an example of reserved state authority. Even when this authority is exercised through local trustees, this is still the management of statewide interests "through the medium of other selected and more suitable instrumentalities. How can the city ever have a superior authority to the state over the latter's own property, or in its control and management? From the nature of things it cannot have." *Id.*

Even if the City makes a favorable argument for its retention of some land use authority over some portion of the project site, with respect to that portion which is granted tidelands the City would still owe specific trustee duties to the state when managing these properties, regardless of the City Charter designation of roles between the Port and City. To the extent that these trustee obligations raise conflicting interests vis-à-vis the exercise of the City's local planning laws, the specific statewide interests identified by the legislature would need to be preserved over the general authority of the municipality. To wit, if there is a "doubt whether a matter which is of concern to both municipalities and the state is of sufficient statewide concern to justify a new legislative intrusion into an area traditionally regarded as 'strictly a municipal affair.' Such doubt [], 'must be resolved in favor of the legislative authority of the state.' (*Abbott v. City of Los Angeles* (1960) 53 Cal.2d 674, 681 [citations omitted].)" *Baggett v. Gates* (1982) 32 Cal.3d 128.

Save Tara v. City of West Hollywood (2008) 45 Cal.4th 116 is precisely on point with respect to the need for the Port to specifically address the need for a CEQA determination if it looks likely to convey rights in the Howard Terminal to the Oakland A's. The principle adopted by the Supreme Court is "that before conducting CEQA review, agencies must not 'take any action' that significantly furthers a project 'in a manner that forecloses alternatives or mitigation measures that would ordinarily be part of CEQA review of the public project.'" *Id.* at 139, citing 14 CCR §15004(b)(2)(B).

Because CEQA is a central component of project approval, "an agency has no discretion to define approval so as to make its commitment to a project precede the required preparation of an EIR." *Id.* at 132. In evaluating the correct timing for EIR preparation, "CEQA itself requires environmental review before a project's approval, not necessarily its *final* approval (Pub. Resources Code, §§21100, 21151), so the guideline defines 'approval' as occurring when the agency *first* exercises its discretion to execute a contract or grant financial assistance, not when the *last* such discretionary decision is made." *Id.* at 134. (emphasis in original)

Since a Project at Howard Terminal could occur as a result of the current negotiations underway subject to the ENA, the Port should already be working on numerous potential CEQA clearance issues which might inform its own negotiating positions, the value of the project, the scope of the potentially significant impacts and related mitigation, and the timing of any proposal. In this type of instance, if the ENA yields the desire to create a conditional development agreement, the Supreme Court reasoned, "postponing EIR preparation until after a binding agreement for development has been reached would tend to undermine CEQA's goal of transparency in environmental decisionmaking." *Id.* at 135. Therefore, if there is a project agreement it is the Port which must determine when "as a practical matter, the agency has committed itself to the project as a whole or to any particular features, so as to effectively preclude any alternatives or mitigation measures that CEQA would otherwise require to be considered, including the alternative of not going forward with the project." *Id.* at 139.

Finally, under CEQA, the Port cannot delegate away its environmental obligations. The proper designation of the Lead Agency is a requirement which is "so significant" that it "proscribes delegation" because "[d]elegation is inconsistent with the purposes of the EIR itself." *Planning and Conservation League v. Dept. of Water Resources* (2000) 100 Cal.Rptr.2d 173, 185 (citing *Kleist v. City of Glendale* (1976) 56 Cal.App.3d 770, 779). With respect to Howard Terminal, this is a requirement which is parallel with the Port's duties and responsibilities as a trustee of granted state tidelands, and the prohibitions attendant to administering these properties, including the prohibition on granting control over trust property to a third party (Public Resources Code §6009.1), and a prohibition on a trustee to allow trust lands to be utilized for local municipal benefit (Public Resources Code §6009).

Additional Constraints on Howard Terminal Development and Associated Projects EIR Unidentified In the NOP

In addition to the above, any CEQA process for Howard Terminal and its associated projects must address multiple additional legal and environmental constraints unique to the project site. These may present additional legal restrictions on the uses proposed.

With respect to Hazardous Materials, while the NOP notes that Howard Terminal is a Hazardous Waste site and is present on the DTSC “Cortese List,” and that the DEIR will include a Hazardous Materials element, the NOP fails to mention that Howard Terminal is a contaminated site which is already subject to a Deed Restriction entered into between the Port and DTSC. The Deed Restriction affirmatively limits all future activities which might disturb the site and which depart from its use as a port-industrial marine facility, and prohibits construction of housing or other new uses unless otherwise authorized by DTSC. This Deed Restriction is not listed in the list of Discretionary Approvals required for development of this project in the NOP and is not included in the Application (which answered “No” to the question as to whether or not the project may implicate issues of use or disposal of hazardous materials), however the DTSC Deed Restriction may place significant physical and legal constraints on the project site.

With respect to site condition and constraints, neither the Application nor the NOP list Pipeline safety and transportation issues as an issue specific to the site. The site is adjacent to the Kinder Morgan jet fuel pipeline and is subject to an easement at the property line to ensure access to the pipeline and to ensure that all federally-mandated pipeline safety, security, and maintenance standards are maintained. The presence of an oil pipeline on the boundary of Howard Terminal is a condition that may place significant physical and legal constraints on the project site.

With respect to Public Trust lands, while the NOP notes that Howard Terminal is a subject to the Public Trust, it lists this as a condition which is anticipated to be addressed through “Port and State Lands Commission approval of a Trust Settlement and Exchange Agreement.” However, such an Agreement requires a legal basis for its facilitation, and no such an Agreement has been authorized or authority for such Agreement specific to these parcels have been proposed or identified at this time. Barring the same, specific aspects of the proposed project are *per se* incompatible with the public trust – most notably housing and non-trust supporting commercial. Moreover, the Trustee duties of the Port of Oakland are not limited to Howard Terminal alone, and must be considered to be physical and legal constraints on the project site.

With respect to the Associated Project of the construction of an “aerial tram or gondola above Washington Street extending from downtown Oakland near 12th Street BART to Jack London Square,” this would impact specifically the right-of-way over Interstate 880. However, the NOP does not list CalTrans approvals as necessary for the development of the proposed project. The approvals of CalTrans must be considered to be physical and legal constraints on the project variant including the aerial tram system.

Relatedly, given that the identified Project Location and specific maps limited to Howard Terminal only, it is possible that, even though this project could impact CalTrans rights, it is unaware of the impending variant of the aerial tram system. The NOP should affirmatively notify OPR that this DEIR should specifically be identified as subject to the rules for projects impacting state transportation assets and CalTrans should be given a specific opportunity to ask for a hearing under Public Resources Code §21083.9.

Given the Complexity of the Project, an Initial Study Should Be Completed and the Public Should Be Provided With a Realistic EIR Development Timeline Based Upon the Results of the Initial Study

The Oakland A's have sought (and apparently been granted already in several respects) an exceptional and unusual timeline for completion of the entirety of the EIR process from scratch to completion in less than one year, according to the NOP and related City staff reports.

In addition to seemingly ignoring the very first component of the CEQA process, the review of an Application for completeness (see above), the City has also dispensed entirely with the second foundational step of the CEQA process, the Initial Study. A NOP is then typically issued regarding the project upon completion of the Initial Study.

The City is not following that process, however, and instead relies on 14 CCR §15063(a) for the justification not to prepare an Initial Study. Therefore, there is no Initial Study for the public or the City staff to rely on or comment on at this NOP stage, and because the City jumped straight to this NOP, it is attempting to create an expedited process for this Applicant. Aside from the notation of the ability of the City to sidestep an Initial Study, there is no actual justification for short-circuiting the Initial Study process given in the NOP.

This plainly ignores the balance of §15063, which details the myriad of good planning reasons why an Initial Study should still be completed for projects that will obviously require an EIR in any event. Most notably, §15063(d), which would require an Applicant to truly and effectively submit an initial Project Description, which is missing in this situation, and an initial identification of actual environmental impacts.

Notably, this sleight of hand does not even remotely relieve the City of going through an exercise of examining a panoply of environmental impacts just as if they had completed a study – indeed, as the NOP states, the EIR will still need to “evaluate the full range of environmental issues contemplated for consideration under CEQA” – but it does deprive the public of the benefit of the Initial Study on the front end of the CEQA process prior to issuance of the NOP.

Given the complexity of the project and the uncertainty associated with the foundational issues of Project Description, we would respectfully request that the NOP be withdrawn until after the completion of an Initial Study and then recirculated with a realistic timeframe which is developed after analysis of the preliminary environmental issues which need to be addressed in any Howard Terminal EIR process.

NOTICE REQUEST

This submission shall also serve as an official written request of Notice for any and all meetings conducted under the California Environmental Quality Act, Division 13 (commencing with Section 21000) of the Public Resources Code (CEQA), upon which the public has access and/or noticing rights. Each of the signatories hereby additionally requests these Notices in both written and email format to the addresses and contacts of record listed as Attached herein.

Respectfully Submitted,

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