

CALIFORNIA STATE LANDS COMMISSION

100 Howe Avenue, Suite 100-South
Sacramento, CA 95825-8202



Established in 1938

JENNIFER LUCCHESI, *Executive Officer*
(916) 574-1800 Fax (916) 574-1810
California Relay Service TDD Phone 1-800-735-2929
from Voice Phone 1-800-735-2922

Contact Phone: (916) 574-1890

April 26, 2021

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

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

Governor's Office of Planning & Research

April 26, 2021

STATE CLEARINGHOUSE

VIA ELECTRONIC MAIL ONLY

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

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

Dear Peterson Vollmann:

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

Commission Jurisdiction and Public Trust Lands

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

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

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

Project Description

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

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

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

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

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

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

The Draft EIR identifies Alternative 1: The No Project Alternative as the Environmentally Superior Alternative. The second most environmentally superior alternative would be Alternative 4: The Reduced Project Alternative that would include a reduced commercial and residential development at lower densities than the proposed Project. The site plan for Alternative 4 would be the same as for the proposed Project, with commercial, residential, and mixed-use development. However, only the ballpark and the hotel(s) would be taller than 100 feet tall and both the amount of construction and the intensity of use of the site would be less than with the proposed Project.

Environmental Review

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

General Comments

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

2. Project Description:

- a. The Draft EIR proposes a performance venue and hotel with ancillary conference facilities (page 3-26, Chapter 3, *Project Description*). Staff understands that these may be among the uses anticipated to be located on lands subject to the Public Trust following a land exchange. Commission staff will require additional information on facility design and programming before a trust consistency finding could potentially be recommended to the Commission for a performance venue or conference facilities.
- b. “Athletics’ Way ... would be reserved for ticketed attendees during event days at the ballpark.” (page 3-28, Chapter, 3, *Project Description*) Staff understood from discussions with the Project sponsor that the public would not need a ticket to be able to access Athletics’ Way during events. Please confirm whether that is correct. If Athletics’ Way is planned to be closed to the public during game and event days, please have the Final EIR clarify how else the public can readily access the tide and submerged lands at this location, the waterfront park, and associated open space areas.
- c. Project Objective 10 (page 3-16, Chapter 3, *Project Description*) states that the Project sponsor will “construct a project that meets high-quality urban design and high-level sustainability standards, including but not limited to green building design and construction practices, walkability features, and *sea level rise adaptability standards*.” (emphasis added) The sea-level rise adaptability standards are not identified or articulated explicitly anywhere in the Draft EIR. Please have the Project Description include information about the Project’s elements (or features) that constitute ‘adaptability standards’, organized in a way that reviewers can clearly evaluate. Adaptive measures could be selected from [BCDC’s Adapting To Rising Tides: Adaptation Responses](#) or a similar framework. The Project Description should also include some baseline information such as the lifespan of the Project, the current elevation of the entire shoreline that borders the Project area, and a description of Project elements (or features) that are designed to adapt to sea-level rise. This information would provide the basis to understand how the project will be designed in consideration of sea-level rise. The Final EIR should include any additional features that may be constructed or implemented in Phase 1 or Phase 2 to respond to triggers and thresholds occurring from progressively higher total water conditions. Impacts, and any appropriate mitigation measures associated with these related features, should then be evaluated in the appropriate impact analysis sections of a recirculated Draft or Final EIR, as appropriate.
- d. The Final EIR should include the following State Lands Commission approval in Table 3-4, found on page 3-66: “Approval of a Ballpark and Public Lands Development pursuant to Section 7 of AB 1191”.

3. Project EIR versus Program EIR: CEQA Guidelines section 15165 sets forth an agency's environmental review requirements when undertaking a phased project, such as the Phase 1 and Phase 2 activities described in the Draft EIR. In such a case, the lead agency "...shall prepare a single program EIR for the ultimate project as described in Section 15168." A program EIR would allow for a detailed analysis of the Project's Phase 1 activities but accommodate a less detailed approach to Phase 2 because of information gaps related to activities set further into the future. For example, Commission staff notes that truck operations data to quantify criteria pollutant and diesel particulate matter (DPM) emissions is not included for Phase 2 operations, because "heavy-duty delivery truck activity associated with other development is not known." (page 45, Section 4.2, *Air Quality*) While the Draft EIR appears to dismiss these potential impacts as speculative, page 46 first re-emphasizes that the CEQA analysis does not include "specific pollutant-generating activities by future tenants" but then notes that "a detailed quantification of operations-related criteria air pollutant emissions was conducted...upon Project buildout operations in Year 8." In addition, page 86 of Chapter 4.15, *Transportation and Circulation*, as well as page 41 of Chapter 4.7, *Greenhouse Gas Emissions*, determines that the vehicle miles traveled (VMT) and greenhouse gas (GHG) emission calculations associated with the change in existing Howard Terminal users was too speculative, and would not be analyzed and potentially mitigated. Commission staff requests that the Final EIR provide the worst-case scenario for future tenant operational emissions and changes to the existing Howard Terminal user operations as part of a Project EIR (100 percent of the available office, commercial, and/or retail area to be used by the highest-polluting potential tenants in addition to feasible locations that would result in the maximum VMT and GHG emissions). In sum, the City should modify the document to be a combined program EIR, with a project-level EIR analysis for Phase 1 of the Project, and a program-level EIR analysis for Phase 2, with any necessary future environmental review to be tiered from the program EIR. A programmatic approach could also potentially address Project uncertainty caused by the Maritime Reserve scenario.
4. Mitigation Measures: The DEIR sets forth mitigation measures that purport to address a potential impact, but do not appear to create an enforceable condition that reduces the impact's severity. A mitigation measure must minimize significant adverse impacts and be fully enforceable through permit conditions, agreements, or other legally binding instruments (CEQA Guidelines, §15126.4, subds. (a)(1) and (a)(2)).

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

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

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

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

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

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

Aesthetics

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

Air Quality

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

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

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

Biological Resources

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

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

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

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

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

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

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

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

For marine mammals, please refer to NOAA's Technical Guidance for Assessing the Effects of Anthropogenic Sound on Marine Mammal Hearing for the onset of permanent and temporary threshold shifts (PTS and TTS, respectively): [https://media.fisheries.noaa.gov/dam-migration/tech_memo_acoustic_guidance_\(20\)_pdf_508.pdf](https://media.fisheries.noaa.gov/dam-migration/tech_memo_acoustic_guidance_(20)_pdf_508.pdf). Please note that there are underwater acoustic thresholds for behavioral effects. For impulsive noise (e.g., from impact pile driving) the threshold is 160 dB (RMS) (unweighted) and for non-impulsive/continuous noise (e.g., from vibratory pile driving) the threshold is 120 dB (RMS) (unweighted) for all cetaceans (whales, dolphins, and porpoises) and pinnipeds (seals and sea lions/fur seals). NOAA also has in-air acoustic thresholds specific to pinnipeds: 90 dB (RMS) (unweighted) for harbor seals and 100 dB (RMS)(unweighted) for non-harbor seals.

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

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

Hazards and Hazardous Materials

13. Removal Action Work Plan vs. Remedial Action Plan: The Draft EIR repeatedly states that the Project's site cleanup mitigation obligations will require a "removal action work plan" (RAW). Commission staff notes that the Department of Toxic Substances Control (DTSC) has an iterative process to approve a remedy selection document. This process is consistent with the National Contingency Plan, and there is significant public participation involved with remedy selection. Projects requiring more than \$2 million in mitigation utilize a Remedial Action Plan (RAP) decision document (Health & Saf. Code, § 25356.1, subd. (h)), while less expensive projects use a RAW. If the EIR assumes that site mitigation work required will use a RAW, then the document expects DTSC to approve spending less than \$2M on remediation within this historically overburdened community. Given that DTSC has not finalized or approved a decision document, this assumption is inappropriate. The Final EIR should consider a RAP if the existing cleanups for the different portions of the Project Site will be consolidated, as developers indicate in the Draft EIR on page 4.8-38. In addition, a RAP requires additional public participation allowing input regarding equity and Public Trust lands enhancement.
14. Offsite Contamination Sources: Several hazardous materials and hazardous waste sites are potentially emitting contamination upgradient and upwind of Howard Terminal. For example, it has been reported that Schnitzer Steel discharges airborne, potentially toxic dust into the estuary and beyond the Schnitzer facility fence line. Also, upgradient sites such as shuttered-electroplater E-D Coat have not yet been fully characterized to determine the potential contaminant migration through groundwater to the Project site. The Final EIR should analyze whether the Project will exacerbate potential impacts of offsite contamination by, for instance, altering groundwater drainage or wind patterns.

Hydrology and Water Quality

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

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

Land Use, Plans, and Policies

16. Land Status and Determination:

- a. On page 10 of Chapter 4.10, *Land Use, Plans, and Policies*, the Draft EIR states that the 1923 Tidelands are “filled, formerly submerged lands.” Staff believes that some portion of these lands remain unfilled, with a pile-supported wharf over water.
- b. Page 11 states with respect to the Rancho Uplands that, “If the Port were to determine the property was no longer needed for trust purposes, however, the Port could, among other things, lease the lands for an economically productive non-trust use ...” Staff reminds the City that the Port cannot lease the Rancho Uplands for the non-trust uses proposed as part of this Project, as Commission staff explained in a letter to the Port dated April 10, 2020. Please correct this portion of the Final EIR.
- c. Figure 4.53 displays a Public Trust land configuration following a proposed land exchange. An exchange has not yet been negotiated, and the final site configuration could vary significantly from the diagram in the Draft EIR.

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

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

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

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

Transportation and Circulation

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

Tribal Cultural Resources

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

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

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

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

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

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

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

Cumulative Impacts

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

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

Other Commission Considerations – Sea-Level Rise

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

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

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

25. Shoreline Management – Quay Wall: Underlying the site is an existing quay wall that runs east-west. Page 8 of Chapter 4.9, *Hydrology and Water Quality*, indicates that it diverts contaminated groundwater to the southwest end of the site. The groundwater table under the site is currently measured at 5 to 9 feet below the surface of the site, however recent research and modeling is emerging to show that California groundwater tables within 1 kilometer of the coast will rise and spread significantly due to the influence of sea-level rise (see Befus, et al., “Increasing Threat Of Coastal Groundwater Hazards From Sea-Level Rise In California”, published in *Nature Climate Change*, VOL 10 | October 2020 | 946–952). As this occurs, stormwater drainage infrastructure will be inundated with more saline water, and nuisance (or daily) flooding will become more frequent. The Draft EIR states that the quay wall will remain in place but does not give further details on its condition or how groundwater diversion will change as the groundwater table rises. In light of recent information, the Project's shoreline management has to be conceptually expanded to consider the influx of seawater into the groundwater system. Seawater may cause flooding at the Project site by overtopping the built shoreline due to sea-level rise, and it will also likely permeate laterally into the groundwater table through the Project site's submerged edge. Staff recommends that the recirculated Draft or Final EIR consider whether the design of the Project needs to be augmented to include a more robust dewatering pump system for the ground under the Project site. It is unclear if the installation of the cut-off wall around the ballpark, the existing quay wall, and temporary or permanent dewatering measures/pump usage (described briefly on page 53, Chapter 3, *Project Description*) would adequately divert contaminated groundwater and maintain stormwater drainage infrastructure functionality.
26. Sea-Level Rise Scenarios: One of the most critical flood factors to consider in the Project's design will be sea-level rise. Different sea-level rise scenarios, corresponding with different risk aversion categories from the 2018 OPC State Sea-Level Rise Policy Guidance, are described on pages 6 through 8 of Chapter 4.9, *Hydrology and Water Quality*. However, little information is given about how the Project is designed in relationship to sea-level rise scenarios, or how the design of the project will result in a less-than-significant environmental impact after evaluating the design's responsiveness to and careful consideration of sea-level rise. If any impacts cannot be reduced to less than significant, mitigation measures would be needed. Adaptation strategies could include protecting the shoreline with a seawall made of bio-concrete or incorporating more natural infrastructure into the stormwater drainage system. Commission staff notes that the 2018 OPC Guidance renders the low-risk aversion scenario inapplicable to this Project.

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

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

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

Other Commission Considerations – Environmental Justice

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

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

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

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

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

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

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

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

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

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

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

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

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

Sincerely,



Nicole Dobroski, Chief
Division of Environmental Planning
and Management

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