

August 26, 2019

VIA ELECTRONIC MAIL

Kate Gordon  
Director  
Office of Planning and Research  
1400 10th Street  
Sacramento, CA 95814

Re: Supplemental Submittal Re AB 734 Application for Oakland Athletics Oakland Sports and Mixed-Use Project at Howard Terminal

Dear Director Gordon:

This firm represents the Athletics Investment Group LLC B/B/A The Oakland Athletics, a California limited liability company (the “**Oakland A’s**”). As you know, the Legislature enacted Assembly Bill 734 (“**AB 734**”) to specifically address the possibility of developing a new ballpark for the Oakland A’s and complementary adjacent mixed-use development at Howard Terminal and adjacent properties in Oakland (the “**Project Site**”) and to provide for expedited judicial review of a project that meets the requirements of AB 734. On March 18, 2019, the Oakland A’s submitted an application and supporting documentation (the “**AB 734 Application**”) for certification under AB 734 for the Oakland Sports and Mixed-Use Project (the “**Project**”).

Enclosed with this letter is supplemental information regarding the AB 734 Application, including (i) supplemental information prepared by Ramboll, the environmental technical experts, regarding the greenhouse gas (GHG) emissions calculations and (ii) supplemental information prepared by Fehr & Peers, the transportation technical experts regarding the Vehicle Trip Reduction (VTR) calculations for the proposed Project. In addition, we are aware that the Pacific Merchant Shipping Association (PMSA) submitted a letter dated June 3, 2019 providing comments on the AB 734 Application, and urging that the AB 734 Application be denied, notwithstanding the fact that the public comment period closed on April 19, 2019 (the “**Late Comment Letter**”). PMSA claims that the Project does not meet certain eligibility criteria of Section 21168.7(a)(3) of the California Public Resources Code and that it does not provide sufficient evidence to support the Governor’s determination that the Project will comply with California Public Resources Code Section 21168.7(d). This letter and the supplemental information enclosed with it will address objections raised by PMSA although we would respectfully note that the Oakland A’s are not obligated to

Kate Gordon  
August 26, 2019  
Page 2

respond to such late comments. The AB 734 Application and the supplemental information submitted with this letter demonstrate that the Project meets the requirements for certification under AB 734.

**The Application and Supplemental Information Demonstrate the Project Meets the No Net Additional GHG Requirements of AB 734 (Public Resources Code Section 21168.6.7(a)(3)(A)(ii)).**

The enclosed supplemental memorandum prepared by Ramboll, attached as Exhibit A to this letter (the “**Supplemental GHG Memo**”) demonstrates that the Project will not result in any additional emission of GHG and that the Project meets the AB 734 requirement that 50% of non-residential GHG emissions reductions required of the Project are from local, direct GHG emissions reductions, including Project design features, on site reduction measures and/or offsite reduction measures. The local measures are specifically identified and quantified in the Supplemental GHG Memo, and establish that the Project can and will meet the requirement. Please note that the Supplemental GHG Memo also clarifies the Oakland A’s proposal regarding the timing and calculations of the obligations under AB 734. We also attach as Exhibit B a LEED scorecard describing the menu of project design features that the Project could employ to achieve a LEED Gold (or comparable Greenpoint rating) for the Project, which will be required as a condition of approval of the Project. In addition, the Supplemental GHG Memo addresses the additional offsets achieved under the Oakland Power Plant and the Aerial Gondola Variants, which, if implemented, would cause the Project to exceed the 50% local measure requirement.

In addition, you have requested clarification on existing Howard Terminal uses and the proposed Oakland Power Plant Variant. These matters are addressed below, and are followed with responses to certain criticisms of the analysis raised in the Late Comment Letter.

a. Existing Howard Terminal Uses. You asked for clarification regarding the existing Howard Terminal uses. Currently, Howard Terminal is used primarily for the truck parking and loaded and unloaded container storage from ships berthing at other Port docks. While vessels do occasionally berth at Howard Terminal, those berthed vessels are not operationally associated with the other Port activities occurring at the site. Trucks come and go from Howard Terminal to various locations throughout the Bay Area today based on the goods they are transporting. The Port has been unable to specify where the trucks may park in the future, so it is not possible to speculate as to their future location or routes, but we would note that the use of Howard Terminal for the existing breakdown and repackaging is only approximately 5 years old, indicating the fluidity of Port uses and locations. In light of the recent genesis of this use at Howard Terminal, the analysis assumes that the existing

Kate Gordon  
August 26, 2019  
Page 3

truck movements to pick up and drop off containers would continue elsewhere on Port property and not be eliminated altogether. Consequently, no credit is taken for the reduction of emissions associated with the existing Howard Terminal uses. In addition, we would note that while the future travel patterns and truck parking locations are somewhat speculative, the arrival of the goods at Port locations is a known factor. To the extent such activities continue in the future after the Project is established at Howard Terminal, the trucks still must come to Port properties to procure the goods for storage and transport. Additionally, the trucks will continue to transport those goods from the Port to locations throughout the Bay Area and there is no evidence to suggest that the relocation of the repackaging activities to another Port location would affect that existing activity in any way. As discussed below, the potential for idling or delay of the trucks is considered and discussed in the attached Supplemental GHG Memo and discussed below.

b. The Oakland Power Plant Variant. Enclosed with this letter is a letter attached as Exhibit C, from the Vistra Power Company (“**Vistra**”), owner of the Oakland Power Plant describing the Oakland Power Plant Project Variant, which provides for the proposed conversion of the existing jet fuel Oakland Power Plant to battery power (the “**Vistra Letter**”). As described in greater detail in the Vistra Letter, although there have been aspirational hopes for the conversion of the existing jet fuel power plant to a cleaner form of power, no plans have been implemented, in part because the costs of the infrastructure investment did not justify the conversion. The conversion of the existing jet fuel Oakland Power Plant is not mandated by any existing law or regulation, but is a proposal being put forward by Vistra and the Oakland A’s. Vistra will not receive any RPS credits for the conversion to battery power, but the conversion will in fact reduce emissions. As detailed in the attached Supplemental GHG Memo, offset reductions associated with the Oakland Power Plant Project Variant are not necessary to achieve the Project’s 50% local offset requirement; however, the Oakland A’s believe that the Project should receive a credit for emissions reduction of the Oakland Power Plant Project Variant if it is in fact implemented. As noted in the Vistra Letter, the existing Oakland Power Plant provides back up power to address power demand fluctuations, particularly during periods of time in which renewable sources are not available for power generation, and in other markets, such as New York City, power providers are adding conventional backup power like the existing Oakland Power Plant. Consequently, the potential future use and lifespan at the Oakland Power Plant in its existing jet fuel configuration could continue for many years without conversion. As the attached Vistra Letter makes clear, the agreements between Vistra and the Oakland A’s are making this conversion to clean power possible.

Kate Gordon  
August 26, 2019  
Page 4

c. The Late Comment Letter's Objections to Methodology. PMSA raises several specific objections to the GHG calculations and methodology. Contrary to PMSA's claim, the AB 734 Application and the Supplemental GHG Memo demonstrate and provide evidentiary support that the Project can and will meet AB 734's requirement that there be no net additional GHG emissions and that a combination of identified offset measures and carbon credits satisfy that requirement. PMSA also raises certain specific objections, addressed below.

i. Credits for NFL Games and non-Baseball Events. PMSA objects to including NFL games played at the Coliseum as a credit. Please note that the enclosed Supplemental GHG Memo has modified the calculations to remove any credit for NFL games. In addition, although this has not been at issue, the Supplemental GHG Memo took an even more conservative approach and now removes the credit for non-baseball events at the Coliseum as a credit.

ii. Truck Idling and Existing Howard Terminal Activities. The Supplemental GHG Memo and the supplemental information prepared by Fehr & Peers attached as Exhibit D to this letter (the "**Supplemental VTR Memo**"; and together with the Supplemental GHG Memo, collectively, the "**Supplemental Memos**") address PMSA's claim that Howard Terminal's existing operations have not been appropriately addressed in the calculations. As discussed above, the analysis assumes conservatively that the existing Howard Terminal operations will continue elsewhere and does not seek or take a credit for the emissions associated with those activities. Additionally, PMSA claims that the existing Port activities will be delayed by the addition of the Project to the Project Site, resulting in truck idling and delays and additional emissions. Any potential delays would be de minimis following proposed signalization in the area, as addressed in the Supplemental GHG Memo in greater detail.

iii. PMSA Claims that the Oakland Coliseum Should be Considered Part of the Project Seeking Certification under AB 734. AB 734 addresses the environmental analysis of a potential Project at the Project Site and the AB 734 Application seeks certification under AB 734 for the Howard Terminal Project. The Project Site does not include Coliseum City and the Project does not include development of Coliseum City. There are no applications on file for discretionary development approvals by the Oakland A's with respect to anything other than the "Project Site". We would note that the Coliseum City is the subject of a Specific Plan and an attendant EIR which was certified several years ago. The trips associated with the Oakland A's activities at the Coliseum are already trips occurring in the Oakland area and those trips will move to the Project Site upon development of the

Kate Gordon  
August 26, 2019  
Page 5

Project. This fact is reflected in the analysis submitted with the AB 734 Application, this letter and in the Supplemental Memos.

iv. Comparison of Project 1.0 to 2.0 for GHG Calculations. PMSA argues that Project 1.0 is a “fictionalized representation of a ballpark”. However, as demonstrated in the enclosed Supplemental GHG Memo and the AB 734 Application, the Project 1.0/2.0 framework of the GHG analysis isolates design features and other onsite features for purposes of quantifying the impact that Project Design Features and on site measures have on GHG emissions for purposes of analyzing the 50% local offset requirement. This framework reflects AB 734’s approach to the local offset requirement.

**The AB 734 Application and Supplemental Information Demonstrate the Project Meets the Vehicle Trip Reduction Requirement of AB 734. (Public Resources Code Section 21168.6.7(a)(3)(A)(iii))**

The attached Supplemental VTR Memo demonstrates that the Project will achieve, through a combination of the Transportation Management Plan (TMP) and Transportation Demand Management (TDM), a 20% vehicle trip reduction (VTR) as compared to a project without a TMP or TDM or both. Above we discussed your questions about truck traffic at Howard Terminal. Below we discuss certain criticisms regarding the AB 734 Application’s VTR analysis raised in the Late Comment Letter.

a. Rejection of the 20% Metric. The Late Comment Letter seems to claim that AB 734 requires an effective 40% VTR in order for the Project to be certified under AB 734. Such a claim is incorrect and without a basis in the law. AB 734 is clear that a project with a 20% VTR qualifies for certification under its terms. The fact that the City of Oakland has in the past imposed a similar 20% requirement on other large development projects has no bearing on the percentage reduction required under AB 734, but supports the conclusion that the City can and will enforce that requirement on the Project. We would further note that the City and the Port, in the course of rezoning the Project, will determine which conditions of approval, if any, to apply to the Project. As described in the letter from the City attached as Exhibit E (the “**City Letter**”), although the City has adopted standard conditions of approval that are generally applied to proposed development projects within the City, both the Port and the City have authority to fashion project-specific conditions of approval, as well as mitigation measures as part of the CEQA review. However, the City and the Port have agreed, as set forth in the letter attached as Exhibit B to the AB 734 Application, that if the Project is approved, the City and/or the Port will impose conditions of approval on the Project to ensure that the all the obligations of AB 734 will be imposed upon, and enforced against, the Project.

Kate Gordon  
August 26, 2019  
Page 6

b. PMSA Attack on Project 1.0 as an artificial baseline. The Project Site is within the fee jurisdiction of the Port. The City and the Port anticipate that the Project Site will be rezoned as part of the Project approvals. Today, as property under the Port fee jurisdiction, the site is not subject to the existing Oakland Planning Code. Consequently, the rezoning will reflect a site-specific set of regulations unique to the Project Site. The Project 1.0/2.0 framework serves to quantify the vehicle trip reduction achieved through project components, as reflected in the TMP and TDM measures. Project 1.0 quantifies the Project before the TMP and TDM measures while Project 2.0 quantifies the Project after imposition of the TMP and TDM.

As set forth in the Supplemental VTR Memo, the parking ratios assumed for Project 1.0 are commensurate with project demand and fan expectation based on current parking at the Coliseum. Absent an effort to reduce vehicle trips, the Project would reflect extant conditions at the Coliseum and elsewhere in the City. Project 2.0 reflects reductions in project parking that reduce parking below fan and market supply in competing product types.

c. BART Ridership Assumptions. PMSA challenges the Project's VTR analysis' assumption regarding BART ridership. Please note that the Project Site is less than 1 mile from 2 different BART stations, which is only 0.3 to 0.4 miles further than Oracle arena is from the Coliseum BART station. Please see the Supplemental VTR Memo on this point.

d. Calculation of the 20% Vehicle Trip Reduction. PMSA objects to the use of a weighted average in calculating the 20% Vehicle Trip Reduction. Please see the Supplemental VTR Memo for a further discussion of this issue. We would note that AB 734 simply requires a "20-percent reduction in the number of vehicle trips". The attached Supplemental VTR Memo demonstrates that the 20% reduction is achieved for both the ballpark and the ancillary development in accordance with AB 734. The attached analysis properly factors in the numbers of trips through use of a weighted average to correctly calculate the reduction in all vehicle trips. For example, the ballpark and entertainment venue have very different numbers of trips; the weighted average addresses that differential in order to show an accurate trip reduction number and is therefore the appropriate approach. By way of illustration, if (hypothetically speaking) the analysis were inverted, and the ballpark, instead of having a higher VTR and many more trips, had a lower VTR, PMSA would surely demand the use of a weighted average. The attached Supplemental VTR Memo demonstrates that the 20% VTR is achieved and that use of a weighted average is appropriate.

**The Project is within a Priority Development Area. (Public Resources Code Section 21168.6.7(a)(3)(iv)).**

Kate Gordon  
August 26, 2019  
Page 7

The Late Comment Letter claims that the Project Site is not within a Priority Development Area (PDA). Please see the enclosed City Letter which confirms that the Project Site is within the Downtown & Jack London Priority Development Area (PDA) as set forth in Plan Bay Area 2040 and that the City has taken no action to remove the Project Site from the PDA. We would also respectfully note that the Project is consistent with the recommendations of Plan Bay Area 2040 to increase density in PDAs.

**The Project Includes Associated Public Spaces and Facilities and Infrastructure for Ingress, Egress and Use of the Ballpark and Mixed Use Development. (Public Resources Code Section 21168.6.7(a)(3)(B) and (C)).**

The Late Comment Letter claims that the AB 734 Application does not sufficiently describe or establish that the Project will include associated public spaces or facilities and infrastructure for ingress, egress and use of the ballpark and mixed-use development. This allegation is incorrect. These elements, including extensive public open space, dedicated bay trails and waterfront access, as well as infrastructure, were described in the project description and site plan attached to the AB 734 Application. However, please see the enclosed the following attachments providing more information regarding these Project elements:

(i) A more detailed set of Project plans, showing open spaces and infrastructure, including the new proposed street grid for ingress and egress, as well as utilities, attached as Exhibit F.

(ii) A copy of the Project's Notice of Preparation describing the Project elements, attached as Exhibit G.

(iii) As discussed below in connection with PMSA's objection concerning the Project's Community Benefits Agreement, a copy of Exhibit C to the Term Sheet approved by the Port, which requires, among the Project's community benefits "open space elements", attached as Exhibit H.

**The Project will be Subject to a Comprehensive Package of Community Benefits Approved by the Port of Oakland or the City Council of the City of Oakland (Public Resource Code Section 21168.6.7(a)(3)(v)).**

The Late Comment Letter takes the position that the Governor cannot certify the Project until a Community Benefits package has been approved by the Port or the City of Oakland. As is consistent with the requirements of the California Environmental Quality Act (CEQA) and CEQA case law, the Port and the City are engaged in a thorough environmental review of all aspects of the proposed Project, and no discretionary approval of the Project or

Kate Gordon  
August 26, 2019  
Page 8

any aspect of it, including the community benefits package discussed in AB 734, will be issued or rendered until completion of the CEQA review. At that time, the Port and the City of Oakland will, if they approve the Project, impose upon it conditions of approval, including a comprehensive community benefits package. Please see the Letter Agreement among the Port, the City and the Oakland A's attached as Exhibit B to the Application, and the Port Term Sheet attached to this letter as Exhibit I. The Port Term Sheet confirms that binding agreements for the Project will only be entered into after certification of an EIR.

Furthermore, the Port Term Sheet requires that a community benefits package be included among the Project's obligations, if approved. Exhibit C to the Port Term Sheet includes a number of specific community benefits the Port expects to be the subject of the negotiations of the final Project agreement with the Port. As you can see from the outlined list, the anticipated benefits are comprehensive and the community benefits agreement will be required as a condition of the Project's approval. The letter agreement attached as Exhibit B to the AB 734 Application and resubmitted here for your convenience as Exhibit J specifically commits all parties to imposing the requirements of AB 734 on the Project once approved. Taken together, the Port Term Sheet and the letter agreement attached as Exhibit B to the AB 734 Application provide clear evidence that a comprehensive community benefits agreement will be a part of the approved Project.

**The Project will Create New Jobs. (Public Resources Code Section 21168.6.7(d)).**

PMSA claims that the AB 734 Application does not sufficiently establish that the Project will create new jobs. The Project will create many new construction and permanent jobs over the life of the Project, both at the ballpark and ancillary development, as confirmed by the letter from the Oakland A's attached as Exhibit K (the "A's Jobs Letter"). As confirmed in the A's Jobs Letter, the Project will continue to employ approximately 1,605 employees from the baseball operations at the proposed ballpark, and will also create new permanent jobs at the remainder of the proposed mixed use development.

In closing, we hope that this answers any questions you may have about the AB 734 Application and the Project. The Oakland As believe that the information provided with this letter and the AB 734 Application demonstrates that the Project is qualified for certification by the Governor and we would respectfully urge the Governor to certify the Project. Thank you for your time and consideration and please do not hesitate to call if you have any comments or questions.

August 26, 2019  
Page 9

Sincerely,

GIBSON, DUNN & CRUTCHER LLP

Mary G. Murphy

MGM/nf

103363511.1