

June 3, 2019

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*Delivered via email to: California.jobs@opr.ca.gov*

**Comments Re: AB 734 Application: Oakland Sports and Mixed-Use Project at Howard Terminal (Oakland Athletics) (#2019039102)**

Dear Director Gordon,

On behalf of the members of the Pacific Merchant Shipping Association (PMSA), including ocean carriers, marine terminal operators, and other maritime-related interests doing business at California's public seaports, thank you for the opportunity to submit these comments on Application #2019039102 by the Oakland Athletics (the "A's") related to their proposed "Oakland Sports and Mixed-Use Project at Howard Terminal" pursuant to AB 734 (Chap. 959, Statutes of 2018)(adding Pub. Res. Code §21168.6.7).

AB 734, and AB 900 and its related guidelines, set preliminary standards above and beyond basic CEQA compliance that an Application must meet in order for a Project to receive the special EIR streamlining considerations accorded by these statutes. The Application by the A's fails to meet these standards.

PMSA respectfully requests that OPR determine that the A's Application does not fully and adequately present a "Project" as defined under AB 734. Further, even if determined to be a "Project," the Application does not provide the evidence or documentation necessary to support the findings for certification required by the Governor pursuant to AB 734.

Specifically, the A's Application should be rejected and not granted CEQA Streamlining status at this time because it fails to meet the statutory requirements to be awarded this privilege:

- **The Application for the proposed Howard Terminal housing-office-stadium-hotel complex does not meet all the baseline "Project" eligibility criteria as required by §21168.6.7(a)(3).**
- **The Application does not provide the evidence necessary to support the §21168.6.7(e)(1) findings required to be made prior to consideration by the Governor of a discretionary Project certification pursuant to §21168.6.7(d) or the AB 900 Guidelines per §21168.6.7(e)(2).**

AB 734 certification requires comprehensive review of expected environmental impacts and proactive descriptions of project mitigations and detailed processes which will be undertaken to address those environmental impacts. The A's Application does not do this; instead it chiefly asks OPR, ARB and the Governor to trust these issues to a future EIR without describing the project itself, the project's impacts, or how the project's impacts will be addressed with specificity. Because the Application's proposed project does not clearly meet all of the requirements of AB 734, the proposal does not meet the threshold "Project" definition, it omits critical components necessary to analyze AB 734's performance criteria under AB 900 Guidelines, and lacks a foundation for making the findings required.

**The Application Does Not Present an Eligible “Project” Pursuant to §21168.6.7(a)(3)**

An Application for a development can only be considered an eligible “Project” if it “meets ***all*** of the” required components listed in subparagraph §21168.6.7(a)(3)(A).<sup>1</sup> (emphasis added)

The A’s Application fails to meet all of these required components. Specifically, the A’s Application is defective with respect to each of the following clauses of subparagraph (a)(3)(A):

- **(ii) – “The project does not result in any net additional emissions of greenhouse gases ... ”**

The A’s Application presents a development which would substantially increase GHG emissions. Given these GHG emissions increases, the Application must detail the mitigation measures and offsets that will reduce those increases in order to meet the requirements of AB 734. For multiple reasons, the Application does not meet this eligibility requirement regarding GHGs.

With respect to the methodology for measuring GHG emissions, the Application’s estimates of future GHG emissions both undercount emissions increases resulting from the Project and overcount the credits that it awards itself as an off-set to its project impacts. These evaluations are obviously faulty from the description of the methodologies included in the Application (Application pg. 4; Exhibit C-1).<sup>2</sup>

One glaring fault of this project’s emissions projections is that while the Application notes that it is necessary to evaluate resulting GHG impacts at two locations – both at the Howard Terminal and at the Coliseum – the baseline does not deal with before AND after net GHG emissions at both sites. To the contrary, the Application picks and chooses emissions impacts between the locations in order to minimize emissions and to maximize credits. For instance, with respect to estimating emissions growth, the Application proposes to consider ONLY the current operations of the Coliseum location in its analysis but IGNORES the existing operations of the Howard Terminal and surrounding Port of Oakland. But, when seeking credits against Net GHG emissions, the Application proposes to consider ONLY the proposed operations at the Howard Terminal and completely IGNORES the future operations of the Coliseum location.

The Application should be denied on the basis that it does not include an adequate evaluation of total GHG emissions impacts. Without an adequate baseline of emissions against which to measure “net additional emissions” it is impossible to either argue or confirm that “the project does not result in ***any*** net additional emissions of greenhouse gases.”

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<sup>1</sup> All future statutory references are to Public Resources Code §21168.6.7 except as otherwise noted.

<sup>2</sup> We make all assertions based only on the information made available to the public in the body of the Application and on the basis of Exhibit C-1, and without evaluation of detailed emissions calculations from Exhibit C-2, as Exhibit C-2 is not made available to the public on the OPR website. For the purposes of these comments, we presume that all calculations are based on the Exhibit C-1 assumptions, and therefore no data in Exhibit C-2 could be used to reasonably impeach these comments with respect to GHG Emissions and, consequently, the project’s inability to achieve the AB 734 requirements of net neutral GHGs.

With respect to current operations at the Howard Terminal, it is critical to note that the project being proposed by the A's is to develop a high-density and high-intensity housing, office, retail, hotel, and stadium complex within an existing industrial facility and working seaport. It is patently unavoidable that this project will necessarily create numerous GHG impacts as a result of this project, including but not limited to: tens of thousands of hours of annual congestion and delay for trucks' ingress and egress to and from the Port of Oakland; navigational impacts that will either delay or divert ocean-going vessel traffic; and, congestion impacts associated with freight and passenger rail operations, in addition to trucks and passenger vehicles congestion, due to lack of on-site grade separations.

Despite the significant congestion and GHG implications posed by these interactions with freight and Port activities, these GHG impacts were affirmatively ignored in this Application. (Exhibit C-1, §1.1.1 "...for purposes of this analysis, it is conservatively assumed that prior to commencing Project construction all Port uses would be relocated to other parts of the Port's property or other off-Port locations in the region.")

In addition to ignoring ALL seaport and freight impacts of this project generally, the Application also declares that it need not evaluate GHG impacts associated with the current operations on Howard Terminal itself. (Exhibit C-1, §1.1.1 "... no operational GHG emissions credit is assumed from the existing Howard Terminal conditions associated with the Port of Oakland.")<sup>3</sup> In other words, even though intermodal trucks make about 325,000 moves into or out of the Port of Oakland annually, this analysis of GHG impacts proposes to ignore the displacement of these 325,000 annual gate transactions or simply assumes that the displacement of these operations can be ignored or that finding new locations for these trucks and the resulting congestion and delay will be GHG Neutral. In reality, intermodal truck displacement could significantly increase congestion, VMT, and ultimately GHG, diesel PM, and criteria pollutant emissions in the process. It is simply inappropriate for the impacts on the significant existing freight operations at the Port and Howard Terminal to be excluded from the Baseline GHG table. (Exhibit C-1, Table 1)

With respect to the omission of future Coliseum emissions, the Application is silent on the future uses of this property, and therefore either infers or presumes that the Coliseum location will be vacated and thus a property without future GHG emissions. This is not credible, especially because it is the Oakland A's themselves, the applicants in this instance, who are positioning themselves to be the master developer in charge of the redevelopment of the current Coliseum location. The A's have already negotiated a preliminary deal with Alameda County to take some share of the equity ownership of the Coliseum property.

The A's have stated publicly that their intent to control the redevelopment of the Coliseum location is tied to their housing/office/stadium proposal at Howard Terminal and simultaneously released preliminary drawings of their proposed Howard Terminal location along with plans for their redevelopment project for the Coliseum property. Further still, because the initial plans

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<sup>3</sup> We would note that we agree, of course, that no "Credit" against GHGs ought to be assumed from the displacement of these approximately 325,000 annual gate transactions from Howard Terminal.

for the Coliseum property by the A's likely increase GHGs themselves, they will require additional GHG mitigation undiscussed in this Application.<sup>4</sup>

As such, while the Application is silent on the future uses at the Coliseum, it will not remain vacant or produce zero future economic activity. It would be truly untenable for the Application to assert such a conclusion considering that the Applicant itself is the very same developer who is currently attempting to acquire the ownership interests necessary to redevelop that location, which has already received numerous environmental clearances. To the extent that this Application rests on an assumption of a zero-emissions future at the Coliseum, its GHG calculations should be expressly rejected.

Regarding the "credits" calculated from the Coliseum's current uses, the Application overstates the "credit" to be taken against future uses at Howard Terminal. One glaringly obvious error, the A's calculations of CO<sub>2</sub>e emissions at the Coliseum of 12,738 MT/year are based on "Existing conditions" which include not just A's games and other events but also "NFL games." (Exhibit C-1, Table 6, §3.1) This may be an accurate evaluation of the 2019 and 2020 baseline, but for every year after that it is simply impossible to credit NFL games against the "existing" baseline GHG emissions conditions at the Coliseum because the Oakland Raiders are moving to their new home stadium in Las Vegas beginning with either the 2020 or 2021 season. In other words, the application of any "Credit" (Exhibit C-1, Table 9) is overstated for every year with the possible exception of 2020-2021. Based on the Application's attendance estimates (Exhibit C-1, Table 1), this GHG Credit is overstated by approximately 14.5%, or 1,850 MT/year of CO<sub>2</sub>e.

With respect to the parking projections for both the GHG emissions baseline and Transportation Demand Management (TDM) at the new Howard Terminal project location, the Application states that the project will have 6800-6900 on-site parking spaces. However, the Application acknowledges that the initial plans for Howard Terminal include significantly more surface parking and it identifies those spots as "interim surface parking." (Exhibit C-1, Table 1) However, these parking spots are not included in the GHG projections (id., "interim surface parking ... is not included in this analysis.") Given the most recent actions by the Port of Oakland to reserve a buffer zone with no construction for at up to at least the first 10 years of an agreement regarding the stadium, these should no longer be excluded from the GHG baseline consideration as it will likely result in several hundreds of thousands of additional annual vehicle trips to the site for games and events as well as for residents, guests, and visitors for the greater part of the next decade. And, if the maritime reservation options are exercised, those surface parking spots will more than likely be made permanent as part of a buffer zone.

A conservative approach would include an allocation of GHGs and vehicle trips to the buffer zone parking lots as a permanent feature of any project, and therefore these additional parking spaces should be added both to the GHG baseline projections and to the TDM baseline for the

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<sup>4</sup> The A's proposed Coliseum site-design is unabashedly highway-centric and embraces an anti-TOD land use plan, as it concentrates density at freeway on- and off-ramps but places a "ruin" of a baseball diamond and open space immediately next to a BART station. This land use plan would exacerbate GHG emissions and is decidedly relevant to the evaluation required under AB 734.

entirety of the project. This is especially important since the requirements for the ballpark must be achieved within one-year of the first season, and the maritime reservation area will require execution of a buffer zone much longer than the A's projected first season in its new stadium.

- **(iii) – “The project has a transportation management plan ... achieves a 20-percent reduction in the number of vehicle trips ... as compared to operations absent the transportation management plan...”**

The baseline transportation assumptions and the TMP meant to address them fail to acknowledge that this Project is being built amidst a working seaport and ignores all potential interactions with freight transportation. The assumptions upon which this Application rests regarding GHG emissions - that freight impacts can be ignored, generally, at the Port of Oakland and at the Howard Terminal specifically - are replicated in the Application's lack of acknowledgement of freight issues in its Transportation Demand Management program. (Application, pg. 8, Table 2) There are no specific provisions for management of issues related to truck ingress and egress from marine terminals, train or rail impacts, or for other impacts to freight transportation in the intermodal supply chain.

With respect to development of the TMP, the Application asserts that the development of Howard Terminal “with high-density housing and office uses” will actually improve vehicle trip reductions, but there is no evidence or explanation for how this would reduce trip generations other than to restate that there is a co-location. To argue that the development of housing and office space will do anything except create additional vehicle demand and traffic congestion would be to presume that the people working in the offices do not need access to and from the Howard Terminal location, even if they are attending a game or event at the stadium, and likewise for the residents of Howard Terminal.

Co-development of proposed Housing and Office uses in the Howard Terminal project will likely render the Application's primary TMP measure for the Stadium, to add surcharges and geofencing to TNC vehicle trips, unworkable and at cross-purposes with the primary TMP measures for the Housing and Office uses, since the primary trip reduction strategies for those uses are a reduction of parking availability. (Exhibit D, pg. 4) The strategy to remove parking as the principal method to address individual transportation needs of working and living in the project area, as well as those staying in the hotel, is to force more of their transportation solutions away from individual car trips. But, as they will ultimately still need to access ingress and egress methods from non-parking spot dependent homes and offices and hotel rooms tens of thousands of times per day (Exhibit D, pg. 5, Table ES-3), this will spike the demand for TNC services. The Application fails to reconcile how the active discouragement of TNCs from the project site as a TMP for the baseball stadium will ultimately impact the solutions for the TMP for the housing and office.

The Application should make clear why there is such a large variance in the percentage range associated with the TMP measure reducing the number of fixed on-site parking spaces that will be made available, because it is unclear why that would fluctuate. If the Application bases these percentage ranges on allocation amongst uses, this also changes the baseline consideration for

TMP measures by increasing the number of trips that need to be accounted for; if, for instance, the additional parking spaces are used for housing/office development rather than for ballpark uses, the TMP for both may become deficient and it may signal gamesmanship with respect to the one-year requirement for both types of developments.

With respect to the TMP's final prediction that BART usage rates for the new ballpark will ultimately exceed current usage at the Coliseum, the Application does not explain or reconcile the two counter-vailing projections that underlie Project 1.0 and Project 2.0 with respect to TNC's and BART.

Under the Project 1.0 scenario, the Application predicts that there will be a 100% greater reliance on TNC users at the Howard Terminal (projected at 18%-19%)(Exhibit D, pg. 12, Table 3), than at the Coliseum (estimated at 7%-9%)(Exhibit D, pg. 8, Table 2). Also, under Project 1.0, there is a slight reduction in the mode share of BART riders from the existing Coliseum's mode share rates, with a BART station immediately next to the stadium, where BART is utilized to access 19%-23% of games. (Exhibit D, pg. 8, Table 2). This ridership is predicted to be revised slightly down to 17%-22% (Exhibit D, pg. 12, Table 3) in Project 1.0 because "moving to a ballpark at Howard terminal would induce ... overarching changes in travel patterns of attendees" which include a reduction in the number of "attendees who currently take BART to the Coliseum" and that "attendees from south or southeast of the Coliseum site, for whom the Howard Terminal site represents a longer travel distance may no longer attend games, replaced by those for whom games would be more conveniently located." (Exhibit D, page 9)

In Project 2.0, despite the factors depressing the number of BART patrons in Project 1.0, the TMP predicts that BART mode share percentages under Project 2.0 will grow to projected rates of 31%-38% of all attendees at Howard Terminal (Exhibit D, pg. 22, Table 7). This is predicted even though BART is not proximate or convenient to the new Howard Terminal site. To come to the conclusion in Project 2.0 that a future Howard Terminal stadium which is further from and more *inconvenient to BART* will now see a BART mode share some 50%-100% higher than current BART mode share at the Coliseum, which has a proximate and *convenient BART* station, is not backed by any evidence in the Application. There is no evidence submitted for why the bases for Project 1.0's estimations for depression of BART usage, and common sense, should be ignored upon the application of surcharges and geo-fencing to TNCs in Project 2.0.

Given the regular, existing requirements of the City of the Oakland, evaluation of the Application should determine whether the Project needs to reduce an additional 20% above and beyond Project 2.0 in order to meet AB 734 obligations. Since AB 734 requires specific percentage reductions from a baseline, it is critical that baseline calculations be made accurately. With respect to the TMP, the Application discloses that City of Oakland's existing "Standard Conditions of Approval" has already set this baseline. Under the existing City approval process the project will already "be required to incorporate enough TMP measures to ensure the ballpark VTR is 20%" because Oakland "requires a 20-percent reduction in vehicle trips as a Condition of Approval (COA) for large development projects." (Exhibit D, pp. 1-2).

Therefore, Project 1.0 is completely fictitious, because no such a ballpark could be built within the City of Oakland now given its local requirements for new large development projects. “Project 1.0 considers a ballpark at Howard Terminal operated in the same way that the A’s operate at the Coliseum without any consideration for managing vehicle generation, maintaining today’s personal vehicle parking availability, and no special accommodations for or attempt to encourage non-automobile transportation.” (Exhibit D, pg. 2)

The Application then presumes that the AB 734 requirement will be satisfied simply through compliance with the existing City requirements. The Application conclusion that no TMP is needed beyond the City’s existing requirements is essentially an assumption that AB 734 allows it to use a fictitious baseline against which to control transportation impacts and not the baseline of actual operations absent an AB 734-required TMP.

AB 734 does not allow for project TMP to be compared to a hypothetical and fictitious project baseline, it specifically requires an actual plan “that achieves a 20 percent reduction in the number of vehicle trips collectively by attendees, employees, visitors, and customers as compared to operations absent the transportation management plan...” In this case, had the Legislature never adopted AB 734, the baseline for the environmental analysis of the stadium would not be Project 1.0, it would already be a Project 2.0 operation under City requirements. To presume otherwise defies the basic precepts underlying CEQA analysis rooted in actual existing conditions, not speculative conditions.

Likewise, had the Legislature intended for the City’s existing requirements to suffice as a “check-the-box” for the City’s TMP, instead of a separate AB 734-required set of detailed requirements, it would have written paragraph (3)(A)(iii) similarly to (3)(A)(iv), but it did not.

OPR should evaluate the language of this requirement to determine whether the Application’s fictionalized Project 1.0 has adequately set the baseline against which the 20% reduction transportation management planning should be judged or whether Project 2.0 is the more appropriate pre AB 734 baseline given the state of current law in the City of Oakland.

- **(iv) – “The project is located within a priority development area identified in the sustainable communities strategy Plan Bay Area 2040...”**

Howard Terminal was in the original Oakland Downtown-Jack London Square Priority Development Area when the initial Plan Bay Area was adopted by MTC. This is because the Howard Terminal was included in the boundaries of the City’s Downtown Specific Plan.<sup>5</sup>

However, the Howard Terminal has been removed from the Downtown Specific Plan as the Draft was released for public comment and CEQA scoping in January of 2019.

(<https://www.oaklandca.gov/documents/preliminary-draft-plan>) Because the Downtown

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<sup>5</sup> The Oakland Downtown-Jack London Square PDA was specifically aligned with the Downtown Specific Plan in the original Plan Bay Area. (PDA Assessment Update, prepared for MTC, November 23, 2015, pp. A-173 – A-179) (“Starting a Downtown Specific Plan and EIR process in mid-2015, which should be complete by 2017.”)

Specific Plan forms the basis for this PDA under Plan Bay Area 2040, and the Howard Terminal project is technically no longer located with the Specific Plan, Howard Terminal is no longer located in a Priority Development Area.

The PDA boundaries in Plan Bay Area 2040 are not static, rather they are subject to control by the local government's actions, and not limited by a prior map published by MTC. As described by Plan Bay Area 2040 (<http://2040.planbayarea.org/strategies-and-performance>):

Priority Development Areas (PDAs) ... [are] identified, recommended and approved by local governments.

...

It is important to emphasize that the region's cities and counties retain local land use authority and that local jurisdictions will continue to determine where future development occurs. Plan Bay Area 2040 is supported through implementation efforts such as neighborhood-level planning grants for PDAs and local technical assistance. The plan does not mandate any changes to local zoning rules, general plans or processes for reviewing projects; nor is the plan an enforceable direct or indirect cap on development locations or targets in the region. As is the case across California, the Bay Area's cities, towns and counties maintain control of all decisions to adopt plans and to permit or deny development projects.

As stated in California Government Code Section 65080(b)(2)(K), "[n]othing in a sustainable communities strategy shall be interpreted as superseding the exercise of the land use authority of cities and counties within the region... Nothing in this section shall require a city's or county's land use policies and regulations, including its general plan, to be consistent with the regional transportation plan or an alternative planning strategy."

The Application submitted a screen-shot of a webpage of a map (Exhibit E) that marked the Plan Bay Area PDA boundaries which were correct at the time of the Plan adoption, but it materially omitted any explanation of how the boundaries of the Downtown Specific Plan have since been changed. Therefore, while the map submitted reflects the PDA boundaries of the Downtown Specific Plan at the time of Plan adoption, the Application has not submitted any current evidence to show that Howard Terminal is still located within the PDA.

- **(v) – “The project is subject to a comprehensive package of community benefits approved by the Port of Oakland or City Council of the City of Oakland...”**

AB 734's language is unequivocal: a package of community benefits must have been “approved” to meet the “Project” definition. No comprehensive package of community benefits has been approved for this project and no evidence of such a package was included in the Application.

In fact, at the recent Port of Oakland hearing to extend the Exclusive Negotiating Agreement with the A's based on a non-binding preliminary term sheet, the Community Benefits Agreement provisions were specifically highlighted as an outstanding and prospective task yet to be negotiated and that future Community Benefit Agreement approval remains tentative and further subject to the discretion of both the A's and the Port of Oakland.



In addition, the Application fails to describe the “associated public spaces” and the “facilities and infrastructure for ingress, egress and use of the baseball park and mixed-use development” components of subsections (a)(3)(B) and (a)(3)(C), respectively. The (a)(3)(C) project description of infrastructure for transportation regarding “ingress” and “egress” is critical to the accurate description of the environmental impacts of the project, especially with respect to interactions with the Port and intermodal freight supply chain and resulting GHG and transportation demand impacts. Yet they are entirely omitted from this Application.

As detailed above, because the A’s Application fails to meet all the required components of the definition of a “project” under AB 734, the A’s have no right to a determination at this time for their ineligible project.

**The Application Does Not Provide the Evidence Necessary to Support §21168.6.7(e)(1) Findings, Fails to Conform to the AB 900 Guidelines pursuant to §21168.6.7(e)(2), and Is Ineligible for A Discretionary Project Certification Pursuant to §21168.6.7(d)**

The Governor may only extend the privilege of AB 734 streamlining to a project after first having made baseline findings of fact. These findings, required by §21168.6.7(e)(1), must conclude that each of the conditions of subdivision §21168.6.7(d) have been met. The findings must rest on the evidence submitted by the Application, per the requirements of the AB 900 Guidelines, as required by §21168.6.7(e)(2). It is only after all of the findings have been made that “the Governor ***may***” choose to exercise his discretion to “certify the project for streamlining pursuant to this section ***if*** it complies with ***all*** of the [] conditions” required in Section §21168.6.7(d). (emphasis added)

Under the AB 900 Guidelines, an Application must have included “all sufficient information” necessary for the Governor to make findings. (Guidelines, §2) The A’s Application fails in numerous respects to provide the actual evidence necessary to support the baseline findings required by AB 734 and AB 900 in this case.

Specifically, the A’s Application is materially and substantively defective with respect to each of the following requirements of subdivision §21168.6.7(d):

- **(1) – “The project creates high-wage, highly skilled jobs ... permanent jobs for Californians, and helps reduce unemployment.”**

The A’s Application provides some evidence of commitments with respect to the creation of (d)(1) one-time and transitory construction jobs but provides no evidence with respect to the requirement that the project creates permanent jobs for Californians and helps reduce unemployment. The language of AB 734 requires that all provisions of this requirement be met prior to certification.

Not only is such evidence missing, we would note that given the high potential for economic disruption to the intermodal supply chain and Port of Oakland’s maritime businesses and dependent supply chain, the consideration for the net creation of permanent jobs for

Californians and overall reduction of unemployment are truly open questions. The Port of Oakland recently estimated that it creates some 84,000 jobs in the Bay Area and an overall economic value of over \$130 billion. (<https://www.portofoakland.com/economic-impact-report/>). When compared to the Oakland A's assertion that their stadium will only increase employment by 900 jobs and total annual economic value of \$65 million (with another \$750 million and 4,600 jobs coming from proposed new office space at Howard Terminal), the potential economic trade-offs are stark and clear: if an investment in a ballpark comes at the expense of maritime commerce there will be massive negative macroeconomic impacts.

However, because the Application is silent on this point, it makes no affirmative case for any of these required findings. Had the Application made such claims or presented evidence to that effect then we would surely address those claims head-on in these comments. Given that they are missing in their entirety from the Application, we have no need or basis to do so and no lawful finding can be made, and this requirement has not been met.

- **(3) – “The project applicant demonstrates compliance with clauses (i) to (iii), inclusive of subparagraph (A) of paragraph (3) of subdivision (a) and mitigation measures, to the extent feasible, to reduce any additional greenhouse gas emissions from the project, including greenhouse gas emissions from employee transportation.”**

In paragraph (d)(3) the Legislature has fashioned a statute which provides a pathway for a project to earn EIR Streamlining privileges from the State. These privileges are only extended to a project which earns them in exchange for demonstrating that they will meet the high bar of providing additional, up-front environmental assurances to the state prospectively. This framework requires an Application to demonstrate with evidence how and to what extent the project sponsor intends to implement provisions, execute strategies, and utilize mitigation measures to address selected issues that have been deemed to be of critical environmental importance by the Legislature:

- (i) to guarantee LEED construction certification;
- (ii) eliminate all net increases in GHG Emissions; and,
- (iii) reduce traffic and transportation impacts by at least 20%.

These conditions require substantive findings, not procedural promises. Certification may only occur under this section if the Application can demonstrate “compliance with clauses (i) to (iii), inclusive, ... **and** mitigation measures, to the extent feasible, to reduce any additional greenhouse gas emissions from the project...” (emphasis added)

The Application by the A's confuses the need for specific, proactive, substantive description of compliance, complete with the mitigation measures that will be employed to meet specific requirements, and a determination of feasibility required under (d)(3) with the need to provide a procedural affirmation by agreement of how to enforce mitigation measures under (d)(5). These are separate and complementary requirements under AB 734. Each finding must be individually described in enough detail such that specific proposed measures can be analyzed to determine their efficacy and their likelihood of success, as based upon the AB 900 Guidelines.

**With respect to requirement (ii), GREENHOUSE GAS EMISSIONS WILL INCREASE and there is no evidentiary basis in the Application for evaluating proposed mitigation measures.** The A’s Application delivers a project that would result in a massive and significant increase in GHG Emissions. (Exhibit C-1, pp. 25-29, Tables 9-10). Even if one takes the Application at face value (ignoring the methodology concerns raised in this letter with respect to this requirement, above), there are approximately 9,400 MT/year of CO<sub>2</sub>e unaccounted for.

**Table 10: Emissions Reductions and Offsets Summary**

Category	CO <sub>2</sub> e Emissions (MT/year)	
	Nonresidential	Residential
Existing Conditions Emissions (2020)	-12,738	-
Project 1.0 Emissions (2028)	54,841	16,767
Net New Project Emissions without GHG Reductions (2028) (Project 1.0 - Existing)	42,104	16,767
Reductions Needed from Local Measures (50% of Net New Nonresidential Emissions) <sup>1</sup>	-21,052	-
Reductions Achieved through Local Measures (28% of Net New Nonresidential Emissions) <sup>2</sup>	-11,651	
<b>Additional Reductions Needed from Local Measures<sup>3</sup></b>	<b>-9,401</b>	<b>-</b>
<b>Additional Reductions Achieved through Offset Credits</b>	<b>-37,818</b>	
<b>Notes</b> <sup>1</sup> Per AB 734, at least 50% of the nonresidential emissions must be offset by local measures. <sup>2</sup> Local measures include TDM and TMP measures. The percent of net new nonresidential emissions is calculated as shown below. 11,651 MT per year/42,104 MT per year = 28% <sup>3</sup> Reductions achieved through local measures are applied to the nonresidential portion of Project emissions.		
<b>Abbreviations:</b> CO <sub>2</sub> e - carbon dioxide equivalents MT - metric ton		

The Application does not include any mitigation measures proposed at this time, other than the purchase of off-sets.

AB 734 limits the purchase of GHG offsets to 50% of the allowable measures to be employed to reach a net zero GHG emissions outcome for a project. Without any specific plan to describe its mitigation measures or plans to create a net zero GHG emission outcome, the Application seeks to satisfy this requirement by simply asserting that such a decision will be made at a future time by the City of Oakland, the Port of Oakland, and the A’s at their future discretion (Application, pg. 5.; Exhibit B). This is simply not an acceptable basis for making a No Net GHG Increase finding under AB 734 and the AB 900 Guidelines (see also the relevant discussion below re §21168.6.7(d)(5) requirements).

The Application is silent on the identification of “measures that will reduce the emissions of greenhouse gases in the project area and in the neighboring communities of the baseball park,” as well as emissions reductions measures which are required “[t]o maximize public health.” The language in AB 734 is unambiguously clear that an Application must identify measures required from local and direct GHG emissions which reduce GHG emissions to net zero from on-project and in adjacent neighborhoods. In addition, an Application must consider “criteria air pollutant and toxic air contaminant emissions reductions,” and for the express purposes of improving

public health, a plan of instituting mitigation measures must “reduce the emissions” in both the project area and “neighboring communities.”

The Application simply does not attempt to address in any detail the question of how to provide the emissions reductions necessary to comply with the air quality requirements of AB 734. The Application does not include any discussion of any specific mitigation measures that will reduce net GHG emissions to zero. In addition to omitting a description of how these efforts will occur with respect to GHGs, there are no descriptions of actual measures to be undertaken, or intersection with local SIP, ATCM, or other regulatory programs with respect to public health.

Furthermore, Exhibit C-1 provides no geographic breakdown as to distinguish between the impacts of proposed activities related to on-site and neighboring communities. Of course, there are likewise no geographic considerations regarding mitigation measures, because no mitigation measures are included in the Application. AB 734 specifically requires consideration of GHG, criteria air pollutants, and air toxics reductions measures which address both “(I) ... onsite reduction measures ... [and] (II) Off-site reduction measures in the neighboring communities.” (subsection (3)(A)(ii)). As this Application does not distinguish between on-site and off-site emissions impacts, it would be impossible to evaluate on-site and off-site mitigation measures consistent with AB 734, had any mitigation measures been included in the Application.

Compounding the lack of specific project and neighboring communities’ emissions reductions measures is the complete lack of evaluation of the impacts of the proposed development regarding the industrial and freight uses of the Port of Oakland (as noted above). This is relevant to the creation of mitigation measures as the Application is also silent on the fact that this proposal seeks to introduce 3,000 new units of housing into an AB 617-designated community. OPR and CARB should consult with the BAAQMD regarding ATCM exposures and other AB 617-related criteria for the Howard Terminal location prior to any consideration of whether or not the project’s proposed mitigations actually are measures which will reduce emissions such that public health is maximized consistent with the state’s policies that are now being introduced pursuant to AB 617. However, for purposes of this Application, since there is no detailed conversation of actual mitigation measures in this Application there is no such evaluation which is necessary because there is no basis upon which any findings may be made.

The Application’s use of Project 1.0, the fictionalized representation of a ballpark project that could never exist under local City ordinance, must not be utilized as the baseline for the actual emissions reductions needed. As discussed prior, with respect to the interpretation of the application of the TMP, the Application admits that the Project 1.0 scenario is not an actual project representation. In reality, the City of Oakland’s existing conditions of approval for large projects already require construction of the Project 2.0 scenario. Therefore, with respect to the GHG emissions reduction baseline it is absolutely inappropriate to count Project 2.0 as a reduction of emissions. Instead, Project 2.0 is the proper baseline upon which to compare GHG emissions reductions. Because the goal of AB 734 is to reduce actual GHG emissions to net zero and reduce actual emissions of criteria pollutants and air toxics in communities, it is imperative not to use a fictitious baseline for emissions, or one which would allow larger offset credits.

Given the lack of a specific plan of emissions reductions this Application does not conform to the requirements of the AB 900 Guidelines, which require that an Application include “[i]nformation establishing that the project will not result in any net additional greenhouse gas emissions ... subject to a determination signed by the Executive Officer of the Air Resources Board ... following the procedures set forth in section 6 of these Guidelines.” (§2.e) In order to provide such a determination, the Board must be able to rely on evidence submitted in the Application that allows it to conclude “that a project does not result in any net additional emissions of greenhouse gases if the project demonstrates through a combination of project design features, compliance with (or exceeding minimum requirements of) existing regulations, and mitigation that it would result in zero additional greenhouse gas emissions.”

This is a high hurdle which is not met by Exhibit B’s promises of future consideration of GHGs alone. To the extent that the balance of the Application’s emissions might be considered through an application of an agreement similar to Exhibit B (see discussion re (d)(5) below), it is still imperative that descriptions of future actions be substantive and detailed enough to make evaluations and findings for purposes of gubernatorial scrutiny. It cannot be enough to simply parrot the general language of the requirements of subsection (a)(3)(A)(iii) but offer no specifics as to how this will be achieved.

Given the bases needed to make such determinations, along with the statutory requirement to evaluate the feasibility of multiple measures, there is obviously a dearth of evidence presented in the Application that would allow the Board to make these determinations. As the Legislature crafted this program, it is clearly the burden of the Applicant to provide the evidence to meet the terms of AB 734 in order to acquire the privilege of streamlined CEQA review. If these underlying conditions are not met, then the project did not qualify for streamlining.

**With respect to requirement (iii), the Transportation Management Plan in the Application does not produce evidence to support the 20% trip reduction requirement claim.** In addition to all the extensive reasons discussed prior in this letter regarding the TMP, the A’s Application simply does not introduce evidence that it meets the specific provisions of this requirement and should not be found to comply.<sup>6</sup>

The Application proposes a cumulative 20% reduction in vehicle trips only upon a weighted averaging of all sources against an unexplained and statistically significant proposed reduction in vehicle trips during Weekday Day games at the stadium. (Exhibit D, pp. 22, Tables 7-8).

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<sup>6</sup> Spreadsheets of calculations provided by the consultant to the A’s based on generalized assumptions are not stand-alone pieces of evidence. For these worksheets to be the basis of compliance with the 20% trip reduction requirement requires an explanation and demonstration of the relevance and methodology for making the assumptions applied to the spreadsheets and the presumption of causality with specific TMP measures.

**TABLE 7: PROJECT 2.0 BALLPARK ATTENDEE ARRIVAL MODE**

Scenario	Weekday Evening	Weekday Day	Weekend	Concert
Drive	50%	39%	50%	62%
TNC	13%	15%	14%	10%
Walk	3%	4%	3%	5%
Bike	1%	2%	1%	1%
Ferry	1%	<1%	<1%	<1%
Bus	1%	2%	1%	1%
BART	31%	38%	31%	20%

Source: Fehr & Peers, 2018.

**TABLE 7: BALLPARK VEHICLE TRIP GENERATION AND VTR**

Scenario	Weekday Evening <sup>1</sup>	Weekday Day <sup>1</sup>	Weekend <sup>1</sup>	Concert <sup>2,3</sup>	Weighted Average <sup>4</sup>
Project 1.0	27,400	27,800	28,600	22,800	27,400
Project 2.0	22,200	20,800	22,900	19,600	21,900
<b>VTR</b>	<b>19%</b>	<b>25%</b>	<b>20%</b>	<b>14%</b>	<b>20%</b>

Notes:

1. Includes 35,000 attendees and 1,320 employees
2. Includes 28,000 attendees and 1,200 employees
3. The concert venue trip generation can be adjusted based on attendance and staff to represent the other smaller events, corporate / community events, and plaza events anticipated to be held at the ballpark.
4. Weighted average calculated based on 41 weekday evening games, 14 weekday day games, 27 weekend games, and 9 concerts.

Source: Fehr & Peers, 2018.

As described in Table 8 above [sic – Table 8 is labeled as a second Table 7], even using all the Application’s assumptions, this plan barely conforms to the 20% requirement as proposed. And, because most categories are not above the 20% threshold, the TMP would NOT result in the required 20% reduction without a weighted averaging of an assumption in massive decreases in trips for Weekday Day games. Given that the interpretations, assumptions, or methodologies for creating this TMP are underperforming the 20% threshold, AB 734 has not been met.

Under the highest number of event scenarios presented, the Ballpark plan does not achieve a 20% reduction. With Weekday Evening games and Concerts accounting for 50 events (41 and 9 events with 19% and 14% VTR reductions, respectively), Weekend games at 27 events (with 20% VTR reduction), and weekday day games at 14 events with (25% reductions), 50 out of 91 events

are not at the 20% VTR reduction requirement. The Application interprets the AB734 requirement for a 20% reduction to be applied “collectively” to mean a weighted average across all events. However, if the AB 734 requirement is interpreted to mean that a majority of the ballpark events must collectively be evaluated meet or exceed the 20% VTR reductions, the Application would fail.

Under the weighted-average scenario, the Application only meets the 20% reduction requirement based on a massive reduction in trips under Project 2.0 for Weekday Day games, but these Day game projections are not supported by evidence. The Application can claim a weighted 20% reduction in vehicle trips only because there is a much larger projected decrease in Weekday Day game vehicle trips. But the Application’s own provisions do not back this conclusion.

In fact, the presumptions included in the Application might allow one to draw the opposite conclusion and question the validity of the numbers. First, Table 8 shows that under Project 1.0, the number of vehicle trips for Weekday Day games at 27,800 would be slightly higher than the number of vehicle trips for Weekday Evening games at 27,400. However, the Application clearly claims that within the one-mile radius of the ballpark “there are about 4,600 available off-site spaces for weekday evening games and 2,700 available spaces for weekday day games.” With almost 2,000 fewer parking spaces available, it is unclear how vehicle trips would be higher for Day games than for Evening games in the Project 1.0 baseline.

No evidence is provided, and no explanation is made for why reducing the number of parking spots does not reduce the vehicle Project 1.0 baseline for Weekday Day games. By contrast, the Application readily and consistently claims that reducing the number of parking spots is an effective TMP component for reducing the number of vehicles in Project 2.0 projections.

To make these applications in the reduction in the number of parking spots consistent with the total number of vehicle trips, the Weekday day game baseline should also be reduced by the same amount in Project 1.0 projections that other vehicle trip numbers are reduced in Project 2.0 projections.

Acknowledging such a reduction would inevitably result in significant reductions in total vehicle trips in the baseline for Weekday day games, meaning the Project 2.0 revisions would represent a much smaller percentage than 25%, and the weighted average would fall below 20% and no longer present a project which meets the AB 734 requirements.

In addition to this needed Baseline adjustment, there is no discussion in any of the TMP measures (Exhibit D, pp 14-23) as to why they would have different impacts when imposed on different types of games or events, including by time of day. Yet, Table 8 predicts that these same TMP measures would have significantly greater impacts on Weekday day games (a vehicle reduction of 7,000 trips) than on Weekday evening games (a vehicle reduction of 5,200 trips). There is no evidence in the Application to support that the same measures applied at different times of the day would generate a 34% higher success rate during Weekday Day games than they would during Weekday evening games.

Significantly, given the existing requirements of current local Oakland law, it is not even clear what the baseline for the analysis of a 20% trip reduction requirement should be for an AB 734-required TMP versus a City-required TMP. As discussed in the prior section, this issue of the existing Conditions of Approval and their relationship to AB 734 will also need to be resolved prior to making any findings regarding reductions from a baseline under the two proposed Project 1.0 and 2.0 scenarios.

**(5) – “The project applicant has entered into a bidding and enforceable agreement that all mitigation measures required pursuant to this division and any other environmental measures required by this section to certify the project under this chapter shall be conditions of approval ... the applicant agrees, as an ongoing obligation, that those measures will be monitored and enforced by the lead agency for the life of the obligation.”**

Exhibit B to the Application seemingly meets the criteria of this finding to allow for an agreement for the enforcement of CEQA and AB 734 mitigation measures. However, Exhibit B is also intended to be the basis for the avoidance of the specificity of mitigation measures required under (d)(3). This is inappropriate.

AB 734 requires two separate findings for these two sections: (d)(3)'s findings are substantive based on GHG and transportation reductions (as described above) and (d)(5)'s findings are procedural based on enforceability and liability provisions. Both findings stand on their own and cover separate requirements concurrently but independently. It is necessary to have the procedures for enforcement in place, regardless of the substance of the mitigation measures which need to be enforced.

Nothing in Exhibit B provides for the substance of this current Application to be analyzed to determine what mitigation measures will be pursued, what the efficacy and likelihood of success of achieving net zero GHGs will be, and how the AB 900 Guidelines will be met. Consistently, Exhibit B may properly satisfy this finding under (d)(5), but it may not also concurrently satisfy the requirements under (d)(3).

**(9) – “The project meets the requirements of clauses (iv) and (v) ...”**

As discussed, prior, these sections are also unable to be included in the findings based on the facts in the Application and the realities on the ground. With respect to (iv), Howard Terminal is no longer included in the Downtown Specific Plan being promulgated by the City of Oakland and therefore no longer within a Plan Bay Area 2040 PDA. With respect to (v), no comprehensive package of Community Benefits Agreements has been approved by the Port of Oakland or the City of Oakland.

As noted above with respect to other baseline criteria for streamlining, the Legislature has asked for potential projects to display to the public that they have reached a higher bar of proactivity and planning prior to DEIR completion in order to have earned the privilege of CEQA review modification. As initial baseline criteria for this privilege, the Application must be able to



demonstrate that they have already been identified in a Plan Bay Area PDA and that they have negotiated and had approval by the appropriate local legislative body a comprehensive Community Benefits Agreement. Without being able to first make these findings in the affirmative, the Governor may not move to the second step of considering under his discretion whether to grant a certification to a project under AB 734.

**In Conclusion, the Application should be denied.**

No project has a right to an expedited CEQA review under law. AB 734 provides a pathway for projects to potentially earn the privilege of streamlining their CEQA process, but these privileges can only be awarded if the project meets elevated criteria of substantive environmental protections. An Application for a project must propose specific mitigation measures in enough detail that they can be evaluated by OPR, CARB, and the Governor (and the public) prior to any discretionary action is taken to grant a certification of streamlining. This hurdle must be cleared before the issuance of a Draft EIR, in order to preserve CEQA and of the specific environmental priorities identified by the Legislature.

AB 734 and AB 900 require a more robust and early disclosure of those evaluations and their related mitigations than otherwise required under CEQA. As a result, the streamlining process can provide expedited review during the post-adoption phase of review of a Final EIR, but only because it requires additional work to be completed prior to publication of a Draft EIR.

The Application by the Oakland A's does not show evidence of the completion of this additional work during its current Draft EIR phase. The Application cannot enunciate how it will achieve no net increases in GHG emissions or demonstrated that vehicle transits will be reduced by at least 20%. By failing to meet these elevated standards of preliminary review, and avoiding specificity on these subjects, the Application effectively asks OPR, CARB, and the Governor to put their faith in a future Draft EIR. This does not satisfy the high and early hurdles created by AB 734 and AB 900 and runs counter to the statute's imposition of the burdens of meeting substantive review, findings, and certification prior to a certification for the privilege of CEQA streamlining.

Based on the preceding, the Application by the Oakland A's fails to meet AB 734 and it should be denied.

Please feel free to contact me regarding this or any other matters related to the proposed project at Howard Terminal via email at [mjacob@pmsaship.com](mailto:mjacob@pmsaship.com) or phone at 510-987-5000 at any time.

Sincerely,



Mike Jacob  
Vice President & General Counsel

cc: Air Resources Board, [ab900arbsubmittals@arb.ca.gov](mailto:ab900arbsubmittals@arb.ca.gov)