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14 Attorneys for Petitioners and Plaintiffs

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 IN AND FOR THE COUNTY OF ALAMEDA
17

18 PACIFIC MERCHANT SHIPPING
19 ASSOCIATION, HARBOR TRUCKING
ASSOCIATION, CALIFORNIA TRUCKING
20 ASSOCIATION, and SCHNITZER STEEL
INDUSTRIES, INC.,

21 Petitioners and Plaintiffs,

22 vs.

23 GAVIN C. NEWSOM, in his official capacity
24 as Governor of the State of California, and the
CITY OF OAKLAND,

25 Respondents and
26 Defendants.

27 OAKLAND ATHLETICS INVESTMENT
28 GROUP, LLC,

FILED
ALAMEDA COUNTY
MAR 15 2020
CLERK OF THE SUPERIOR COURT
By *Jurina P. [Signature]* Deputy

Case No. R920058915

VERIFIED PETITION FOR WRIT OF
MANDAMUS AND COMPLAINT FOR
DECLARATORY AND INJUNCTIVE
RELIEF

[Code Civ. Proc. §§ 1085, 1060]

FAXED

1 Real Party in Interest.

2 Petitioners and Plaintiffs petition this Court for a writ of mandate, and complain for
3 declaratory and injunctive relief, against Respondents and Defendants, Gavin C. Newsom, in his
4 official capacity as Governor of the State of California ("Governor") and the City of Oakland (the
5 "City") (collectively, "Respondents"), and Real Party in Interest, the Oakland Athletics Investment
6 Group, LLC ("Real Party"), and for their petition and complaint allege as follows.

7 **INTRODUCTION**

8 1. This Petition and Complaint seeks a ruling on two important issues of law relating to
9 the Oakland Sports and Mixed-Use Project proposed at the Howard Terminal site in Oakland
10 ("Howard Terminal Project" or the "Project"). First, Petitioners seek a determination that the
11 Governor lacks power or authority to certify the Howard Terminal Project under an environmental
12 fast-track statute (AB 734, Stats. 2018 ch. 959, codified at Pub. Res. Code § 21168.6.7) because, as a
13 matter of law, the Governor's authority thereunder expired as of December 31, 2019, and any
14 attempt by the Governor to certify the Project at this time would be an ultra-vires act. Second,
15 Petitioners seek a declaration that AB 734 is invalid under Article IV, §16(b) of the California
16 Constitution, as a special statute for a matter to which general statutes -- the California
17 Environmental Quality Act ("CEQA"), Pub. Res. Code § 21000 et seq., and the Jobs and Economic
18 Improvement Through Environmental Leadership Act of 2011 ("AB 900") (Stats. 2011, ch. 354,
19 codified at Pub. Res. Code § 21178 et. seq.) -- could have been made applicable.

20 2. Because the Howard Terminal Project will cause significant adverse environmental
21 harm in the City of Oakland and the region at large, it is critical that the Project be processed,
22 reviewed, and considered by the public, public agencies and others under the full and regular CEQA
23 procedures, and not a truncated process under AB 734 which the City and Real Party have stated
24 their intent to undertake, following a certification of the Project by the Governor.

25 **PARTIES**

26 3. Petitioner and Plaintiff Pacific Merchant Shipping Association ("PMSA") is a
27 nonprofit mutual benefit corporation trade association headquartered in the City of Oakland,
28 California. Among other things, the PMSA represents maritime interests on the U.S. West Coast

1 and its members include ocean carriers, marine terminal operators, and other maritime-related
2 interests doing significant business at and with California seaports, including the Port of Oakland.

3 4. Petitioner and Plaintiff Harbor Trucking Association (“HTA”) is a trucking industry
4 trade association headquartered in Long Beach, California. The HTA’s members include intermodal
5 carriers and trucking service providers doing significant business at and with California seaports,
6 including the Port of Oakland.

7 5. Petitioner and Plaintiff California Trucking Association (“CTA”) is headquartered in
8 Sacramento, California, and is the largest trucking association in California. The CTA includes
9 members doing significant business at and with California seaports, including the Port of Oakland.

10 6. Petitioner and Plaintiff Schnitzer Steel Industries, Inc. (“SSI”) is a metal recycling
11 company and a manufacturer of steel from recycled metal that is headquartered in Portland, Oregon.
12 For over 50 years, SSI has owned and operated a major metals recycling facility and export terminal
13 at the Port of Oakland, located adjacent to Howard Terminal, that serves California, the western
14 United States, and foreign markets.

15 7. Petitioners, and each of them, and their members, will be prejudiced and adversely
16 affected by the Howard Terminal Project, including any failure to undergo full environmental and
17 judicial review according to the regular provisions of CEQA and the State CEQA Guidelines (Cal.
18 Code Reg. Title 14, § 15000 et seq.).

19 8. Respondent and Defendant, Gavin C. Newsom, is the Governor of the State of
20 California, and is sued herein in his official capacity. Among other things, the Governor, through
21 the Office of Planning and Research (“OPR”), is responsible for the administration and certification
22 of eligible projects under the fast-track AB 900 program and any special fast-track statutes such as
23 AB 734.

24 9. Respondent and Defendant City of Oakland is a municipal corporation in Alameda
25 County chartered under Article XI, §3(a) of the California Constitution. The Howard Terminal
26 Project is located within the boundaries of the City and its Department, the Port of Oakland. The
27 City has asserted the authority to act in the capacity of Lead Agency (Pub. Res. Code § 21067) for
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1 environmental review of the Howard Terminal Project.

2 10. Petitioners are informed and believe, and on that basis allege, that Real Party in
3 Interest Oakland Athletics Investment Group, LLC is a limited liability company which has its
4 principal place of business in Oakland, and does business as the Oakland Athletics, a Major League
5 Baseball team. Among other things, Real Party is the applicant to OPR, as defined in Pub. Res.
6 Code § 21168.6.7(a)(1), for fast-track certification of the Howard Terminal Project.

7 **JURISDICTION AND VENUE**

8 11. This Court has jurisdiction over this proceeding under Article VI, § 10 of the
9 California Constitution and §§ 410.10, 1060, and 1085 of the Code of Civil Procedure.

10 12. Venue in this Court is proper under §§ 393, 394, and 395 of the Code of Civil
11 Procedure, in that the City of Oakland and the Howard Terminal Project are located in Alameda
12 County; the causes of action or some part thereof arose in Alameda County; and Real Party is
13 headquartered and does business in Alameda County.

14 **GENERAL ALLEGATIONS**

15 **A. The Howard Terminal Project.**

16 13. The Howard Terminal Project is identified in AB 734 (Pub. Res. Code §
17 21168.6.7(a)(3)) as the “Oakland Sports and Mixed-Use Project,” and is sometimes also referred to
18 in City documents as the “Oakland Waterfront Ballpark District Project.” As described in AB 734,
19 the Howard Terminal Project would include:

- 20 (A) A baseball park that will become the new home to the Oakland Athletics and
21 adjacent residential, retail, commercial, cultural, entertainment, or recreational
22 uses developed by the Oakland Athletics...
- 23 (B) Associated public spaces.
- 24 (C) Facilities and infrastructure for ingress, egress, and use of the baseball park
and mixed development.”

25 *Id.* § 21168.6.7(a)(3). In addition to a new baseball stadium and special event venue, the Howard
26 Terminal Project would involve over 3,000 new residences and mixed commercial uses in an area
27 that is now industrial and being utilized for Port, maritime, and trucking-related functions, and lacks
28 transportation infrastructure for the massive new development proposed as part of the Project.

1 14. On November 30, 2018, the City issued a Notice of Preparation (“NOP”) of an
2 environmental impact report (“EIR”) for the Howard Terminal Project. A true and correct copy of
3 the NOP is attached hereto as Exhibit. A. Among other things, the NOP asserted that the EIR for the
4 Howard Terminal Project would be prepared “[u]nder the new California Assembly Bill 734 judicial
5 streamlining legislation.” Ex. A, p. 1.

6 **B. Normal Review under CEQA.**

7 15. The Legislature’s intent in enacting CEQA was that:

8 “all agencies of the state government which regulate activities of private individuals,
9 corporations, and public agencies which are found to affect the quality of the
10 environment, shall regulate such activities so that major consideration is given to
preventing environmental damage, while providing a decent home and satisfying
living environment for every Californian.”

11 Pub. Res. Code § 21000(g). The protections provided under CEQA are both procedural, including
12 comprehensive processes for analysis and public review and comment on proposed projects and their
13 impacts, as well as substantive, including the duty to lessen or avoid all significant impacts through
14 imposition of reasonably feasible mitigation measures and/or selection of alternatives to the project.

15 16. Where a proposed project may have a significant effect on the environment, such as
16 the Howard Terminal Project, an EIR is required:

17 “An environmental impact report is an informational document which, when its
18 preparation is required by [PUB. RES. CODE], shall be considered by every public
19 agency prior to its approval or disapproval of a project. The purpose of an
20 environmental impact report is to provide public agencies and the public in general
with detailed information about the effect which a proposed project is likely to have
on the environment; to list ways in which the significant effects of such a project
might be minimized; and to indicate alternatives to such a project.”

21 Pub. Res. Code § 21061.

22 17. As alleged above, the City is preparing an EIR for the Howard Terminal Project.
23 CEQA provides a detailed framework for review of the EIR including, among other things,
24 procedures for public comment and responses on the draft EIR (Pub. Res. Code §§ 21082.1(a) & (c),
25 21091), and special statutes of limitations, briefing and hearing deadlines, and procedures for
26 preparing the record of proceedings for court review (*id.* §§ 21167, 21167.4, 21167.6).

27 **C. Special Fast-Track Legislation: AB 900 and the OPR Guidelines.**

28 18. Beginning in 2011, the Legislature began authorizing “fast-track” procedures for

1 certain projects under AB 900, which provides “unique and unprecedented streamlining benefits
2 under [CEQA]” for large projects. Pub. Res. Code §§ 21178(c), (h). These so-called
3 “environmental leadership development projects” or “leadership projects,” may include “[a]
4 residential, retail, commercial, sports, cultural, entertainment, or recreational use project” that meets
5 specified environmental criteria. *Id.* § 21180(b).

6 19. To qualify for fast-track review under AB 900, however, a project sponsor must apply
7 for and obtain certification of the project from the Governor based on a number of criteria and
8 findings. Pub. Res. Code §§ 21182-21183. As directed by the statute, the OPR administers the AB
9 900 program and has issued the Governor’s Guidelines that govern the process (“AB 900
10 Guidelines,” *see* <http://opr.ca.gov/Pub.Res.Code/california-jobs.html>). A true and correct copy of
11 the AB 900 Guidelines is attached as Exhibit B.

12 20. Since its inception in 2011, AB 900 has contained a mandatory deadline for the
13 Governor’s certification of any project for fast-track treatment. The Legislature has extended the
14 deadline on three prior occasions, the last being in 2017 under AB 246 (Stats. 2017, chap. 522).
15 Currently, AB 900 provides that it

16 “.....*does not apply to a project* if the Governor does not certify the project as an
17 environmental leadership development project eligible for streamlining . . . *prior to*
18 *January 1, 2020.*” Pub. Res. Code § 21181 (emphasis added).

19 21. The AB 900 website maintained by the OPR lists all of the pending projects that
20 applied for the Governor’s certification,, including the Howard Terminal Project. The AB 900
21 Guidelines affirm in Section 8 that “[t]he Governor *must certify the project prior to January 1,*
22 *2020.*” *See* Ex. B, p. 8 (emphasis added).

23 22. Under AB 900, the benefits of certification to a project sponsor, and the
24 corresponding detriments to the public, are significant. Among other things, contrary to the normal
25 procedures for other types of development projects, the record of proceedings for a fast-track project
26 can be prepared only by the lead agency on a much stricter timeline “concurrently with the
27 administrative process” (Pub. Res. Code § 21186); and judicial review of EIR certifications or
28 project approvals must be completed under a compressed process in all court levels combined within

1 270 days of the filing of the record of proceedings in superior court (*id.* § 21185, Cal. R. Ct. 3.2220
2 to 3.2237).

3 **D. AB 734.**

4 23. A number of project proponents seeking fast-track certification have sought separate
5 statutes in addition to the AB 900 program. Beginning in 2018, the Howard Terminal Project
6 proponents sought passage of AB 734, a special statute that applies solely to that Project. AB 734
7 was signed by the Governor on September 20, 2018. In defining the “Oakland Sports and Mixed-
8 Use Project,” AB 734 listed environmental and planning criteria that must be satisfied for
9 certification (Pub. Res. Code § 21168.6.7(a)(3)), which are in part the same or similar to, and in part
10 different from, the criteria for a leadership project under AB 900 (*id.* § 21180(b)). AB 734 further
11 provides that “[t]he Governor may certify the project for streamlining pursuant to this section if it
12 complies with” nine separate conditions listed in § 21168.6.7(d), which again are in part similar to,
13 and in part different from, the criteria under AB 900 (*id.* § 21183). Real Party submitted its
14 application to OPR for the Howard Terminal Project under AB 734 on March 15, 2019.

15 24. As under AB 900, judicial review under AB 734 is made subject to the fast-track
16 procedures in Rules 3.2220 - 3.2237 of the California Rules of Court, including the 270-day
17 accelerated deadline for final resolution of any challenge to the EIR or project approvals. Pub. Res.
18 Code § 21168.6.7(c). Also as under AB 900, the lead agency’s review of the draft EIR is expedited
19 and the lead agency has sole authority for preparing/certifying the administrative record. *Id.* §
20 21168.6.7(f). In contrast, under generally applicable CEQA procedures, and except as provided in §
21 21167.6.2, a petitioner challenging an EIR may (1) request that the lead agency prepare the
22 administrative record, (2) prepare the record itself, or (3) agree with the other parties on an
23 alternative method of preparation. *Id.* § 21167.6(a)-(b).

24 25. Significantly, AB 734 provides that:

25 “(2) The guidelines issued pursuant to Chapter 6.5 (commencing with section 21178)
26 [that is, AB 900] **apply to the implementation of this section** [i.e. AB 734], to the
27 extent those guidelines are applicable and do not conflict with specific requirements
28 of this section.”

Pub. Res. Code § 21168.6.7(e) (emphasis added). The legislative history of AB 734
reflects a clear intent to subject the Howard Terminal Project to the AB 900 program and

1 all its requirements, except where expressly modified. AB 734 did not amend or extend
2 the December 31, 2019 certification deadline for the Howard Terminal Project under the
3 AB 900 Guidelines.

4 **E. The Governor Failed To Certify The Howard Terminal Project By December**
5 **31, 2019.**

6 26. As alleged above, the AB 900 Guidelines provide that “[t]he Governor *must certify*
7 *the project prior to January 1, 2020.*” Ex. B, p. 8 (emphasis added). The AB 900 Guidelines refer
8 to AB 734 and list the Howard Terminal Project as one of 19 “submitted applications.” *Id.* pp. 1-2.
9 There are no specific requirements in AB 734 that conflict with the December 31, 2019 certification
10 deadline under the AB 900 Guidelines or that would make that mandatory deadline inapplicable to
11 the Howard Terminal Project.

12 27. Prior to January 1, 2020, the Governor issued certifications for all pending projects
13 before OPR seeking fast track-certification, except the Howard Terminal Project. The other projects
14 certified before the deadline included a sports arena/mixed use project in the City of Inglewood
15 proposed under AB 987 (Stats. 2018 ch. 961), a special statute very similar to AB 734 that was
16 signed into law the same day as AB 734. Nevertheless, the Governor failed to certify the Howard
17 Terminal Project prior to the December 31, 2019 deadline, and any authority to certify the Howard
18 Terminal Project has expired as a matter of law.

19 28. Notwithstanding the Governor’s lack of authority or power to certify the Howard
20 Terminal Project after December 31, 2019, the City and Real Party have taken recent actions
21 evidencing a mistaken belief that the Governor retains such authority. Attached as Exhibit C is a
22 letter dated February 28, 2020, from the Mayor of the City of Oakland to the California Air
23 Resources Board, that erroneously presupposes the Governor still retains certification power under
24 AB 734. Attached as Exhibit D are recent public statements issued by Real Party indicating that the
25 City’s release of the Draft EIR for the Project is contingent upon the Governor’s certification,
26 erroneously suggesting that that the Governor still retains authority to certify the Project after
27 December 31, 2019. Attached hereto as Exhibit E is a notice from OPR sent march 4, 2019 silticing
28

1 comments on a recent supplement filing by the Howard Terminal Project sponsor.

2 **F. Beneficial Interest of Petitioners in Full Environmental Review.**

3 29. Petitioners, and each of them, are parties beneficially interested in full and regular
4 application of CEQA and the State CEQA Guidelines to the processing and consideration of the
5 Howard Terminal Project EIR and project approvals, including judicial review of the final EIR.
6 Among others things, the Howard Terminal Project will cause massive and harmful environmental
7 impacts in the City, the Port, and the region, including but not limited to significant new adverse
8 traffic and transportation impacts, air quality impacts, and others, as well as business interference
9 and disruption that will adversely affect operations and services at the Port of Oakland provided by
10 Petitioners and/or their members. Because of these significant adverse impacts, the Howard
11 Terminal Project should proceed under full and regular environmental review, and not fast-tracked
12 truncated review, for the protection not only of Petitioners' interests, but also the interests of citizens
13 and residents of Oakland and the region. Accordingly, Petitioners and their members would be
14 adversely affected by any attempt by the Governor or the City to truncate the normal CEQA
15 processes without authority to do so in purported reliance on AB 734.

16 30. A declaration that any authority to certify the Howard Terminal Project for fast-track
17 treatment has expired as a matter of law is needed so that the public, public agencies and other
18 interested parties will not be misled in the course of the CEQA review process for the Project.

19 **FIRST CAUSE OF ACTION**

20 (Lack of Authority to Certify)

21 31. Petitioners incorporate by reference the allegations of Paragraphs 1-30 above.

22 32. Prior to January 1, 2020, the Governor failed to certify the Howard Terminal Project
23 under AB 734 and the AB 900 Guidelines, and any authority or power to certify the Howard
24 Terminal Project has terminated as a matter of law.

25 33. Petitioners are informed and believe, and on that basis allege, that notwithstanding the
26 Governor's lack of certification authority, the City intends to conduct environmental review of the
27 Howard Terminal Project as if AB 734 applies, and in so doing, to deprive Petitioners and others
28 who would be adversely affected by the Howard Terminal Project of important substantive and

1 procedural rights under CEQA.

2 34. A declaration resolving the foregoing controversy would afford relief from the
3 uncertainty, confusion, cost, and disruption that would ensue if the environmental review of the
4 Howard Terminal Project proceeds unlawfully pursuant to AB 734.

5 35. Accordingly, Petitioners seek a determination that the Governor lacks power or
6 authority to certify the Howard Terminal Project under AB 734 and/or AB 900, and a writ of
7 mandate and/or an injunction barring the Governor and the City from proceeding thereunder.

8 **SECOND CAUSE OF ACTION**

9 (Unconstitutional Special Statute)

10 36. Petitioners incorporate by reference the allegations of Paragraphs 1-35 above.

11 37. Article IV, § 16(b) of the California Constitution provides that a “local or special
12 statute is invalid in any case if a general statute can be made applicable.” A special statute is one that
13 confers particular privileges “upon a class of persons arbitrarily selected from the general body of
14 those who stand in precisely the same relationship to the subject of the law” (*Serve Yourself*
15 *Gasoline Stations Ass'n v. Brock* (1952) 39 Cal. 2d 813, 820.)

16 38. AB 734 is a “special statute” within the meaning of Article IV, § 16(b) in that it
17 expressly applies only to a single project that would otherwise be subject to the general provisions of
18 CEQA and AB 900.

19 39. Because a general statute could have been made applicable to the Howard Terminal
20 Project, AB 734 violates Article IV, § 16(b), and the conclusory statements in AB 734 (Sec. 3) are of
21 no force or effect.

22 40. Petitioners are informed and believe, and on that basis allege, that the City intends to
23 conduct environmental review of the Howard Terminal Project as if AB 734 applies, and in so doing,
24 to deprive Petitioners and others who would be adversely affected by the Howard Terminal Project
25 of important substantive and procedural rights under CEQA.

26 41. A declaratory judgment resolving the foregoing controversy would afford relief from
27 the uncertainty, confusion, cost, and disruption that would ensue if the environmental review of the
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1 Howard Terminal Project proceeds without such resolution.

2 42. Accordingly, Petitioners seek an adjudication that the Governor lacks any power or
3 authority to certify the Howard Terminal Project under AB 734 as an unconstitutional special statute,
4 and a writ of mandate and/or injunction barring the Governor and the City from proceeding
5 thereunder.

6 **PRAYER FOR RELIEF**

7 Wherefore, Petitioners pray for relief as follows:

- 8 (1) A declaration that the Governor has no power or authority to certify the Howard
9 Terminal Project under AB 734;
- 10 (2) A writ of mandate and/or injunction barring the Governor from certifying the Howard
11 Terminal project under AB 734 and barring the Governor and City from proceeding thereunder;
- 12 (3) An award of costs of suit;
- 13 (4) An award of attorneys' fees under Code Civ. Proc. § 1021.5 or other applicable law;
- 14 and
- 15 (5) Such other and further relief as the Court finds just and proper.

16 Dated: March 16, 2020

PILLSBURY WINTHROP SHAW PITTMAN LLP

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19 By: RONALD E. VAN BUSKIRK

20 Attorneys for Petitioners and Plaintiffs
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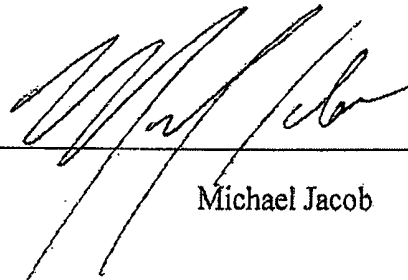
VERIFICATION

I, Michael Jacob, declare:

I am the Vice President and General Counsel of Petitioner and Plaintiff Pacific Merchant Shipping Association and I am authorized to execute this verification in its behalf. I have read the forgoing VERIFIED PETITION FOR WRIT OF MANDAMUS AND COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF ("Petition") and I am familiar with its contents. The facts generally alleged in the Petition not otherwise supported by exhibits or other documents are true to the best of my personal knowledge, except as to matters alleged therein on information or belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct.

Executed this 16th day of March 2020, at Oakland, California.



Michael Jacob

Exhibit A



CITY OF OAKLAND

Bureau of Planning

250 Frank H. Ogawa Plaza, Suite 3315, Oakland, California, 94612-2032

NOTICE OF PREPARATION (NOP) OF A DRAFT ENVIRONMENTAL IMPACT REPORT FOR THE OAKLAND WATERFRONT BALLPARK DISTRICT PROJECT

The City of Oakland's Bureau of Planning is preparing an Environmental Impact Report ("EIR") for the Oakland Waterfront Ballpark District Project ("Proposed Project") at Howard Terminal. The City is requesting comments on the scope and content of the EIR. A description of the Proposed Project and its location, together with a summary of the probable environmental effects that will be addressed in the EIR are included herein. Pursuant to California Environmental Quality Act Guidelines §15063(a), the City has **not** prepared an Initial Study.

The EIR for the Proposed Project is being prepared in compliance with the California Environmental Quality Act (CEQA) (California Public Resources Code §§21000 et. seq.) and the State CEQA Guidelines (Guidelines) (California Code of Regulations, Title 14, Division 6, Chapter 3, §§15000 et. seq.). The EIR for the Proposed Project is also being prepared under the new California Assembly Bill 734 judicial streamlining legislation (California Environmental Quality Act: Oakland Sports and Mixed-Use Project) that added new provisions to CEQA as Public Resources Code § 21168.6.7 for the Proposed Project. The City of Oakland is the public agency that would consider approval of an amendment to the Oakland General Plan required for the Proposed Project, and as such, it is the Lead Agency for the Proposed Project. Pursuant to Guidelines §15082(a), upon deciding to prepare an EIR, the City as lead agency must issue a Notice of Preparation (NOP) to inform the Governor's Office of Planning and Research, trustee and responsible agencies, and the public of that decision.

The purpose of the NOP is to provide information describing the project and its potential environmental effects to those who may wish to comment regarding the scope and content of the information to be included in the EIR. Guideline §15082(b) states: "... [E]ach responsible and trustee agency and the Office of Planning and Research shall provide the lead agency with specific detail about the scope and content of the environmental information related to the responsible or trustee agency's area of statutory responsibility that must be included in the draft EIR. The response at a minimum shall identify: (A) The significant environmental issues and reasonable alternatives and mitigation measures that the responsible or trustee agency, or the Office of Planning and Research, will need to have explored in the Draft EIR; and (B) Whether the agency will be a responsible agency or trustee agency for the project." This notice is being sent to responsible or trustee agencies and other interested parties. Responsible and trustee agencies are those public agencies, besides the City of Oakland, that have a role in considering approval and/or carrying out the project. The City encourages responsible and trustee agencies and the Office of Planning and Research to provide this information to the City, so that the City can ensure that the Draft EIR meets the needs of those agencies. Once the Draft EIR is published, it will be sent to all responsible or trustee agencies and to others who respond to this NOP or who otherwise indicate that they would like to receive a copy. The Draft EIR will also be available for review at the City of Oakland at the address identified immediately below.

SUBMITTING COMMENTS IN RESPONSE TO THIS NOP: The City encourages comments to be submitted electronically via the following link: <http://comment-tracker.esassoc.com/tracker/oaklandsportseir/>.

Comments that address the scope of the Draft EIR may also be directed in writing to: Peterson Vollmann, Planner IV, City of Oakland Bureau of Planning, 250 Frank H. Ogawa Plaza, Suite 2214, Oakland, CA 94612, by hand

delivery or mail, by email to PVollmann@oaklandca.gov, or by fax to (510) 238-4730. Mr. Vollmann may be reached by phone at (510) 238-6167. Time limits mandated by State law require that the City must receive comments within 30 days after publication of this notice; however, the City will receive comments through January 7, 2019, 38 days after publication of this notice. Responses to the NOP must be received via the above web address, mailing or e-mail address or fax by 5:00 p.m. on **Monday, January 7, 2019**. Please reference Case File Number **ER18-016** in all correspondence. Comments and suggestions as to the appropriate scope of analysis in the EIR are invited from all interested parties and will be received at the EIR Scoping Meetings to be held before the City Planning Commission, as noticed below.

Commenters should focus comments on potential impacts of the Proposed Project on the physical environment. Commenters are encouraged to identify ways that potential adverse effects resulting from the Proposed Project might be minimized and to identify reasonable alternatives and mitigation measures to the Proposed Project.

EIR SCOPING MEETINGS:

The **City of Oakland Planning Commission** will conduct a public scoping meeting on the EIR for the Oakland Waterfront Ballpark District Project on **Wednesday December 19, 2018 at 6:00 p.m.** in the Council Chambers in **Oakland City Hall, 1 Frank H. Ogawa Plaza, Oakland, CA.**

The **City of Oakland Landmarks Preservation Advisory Board** will conduct a public scoping meeting on the historic and cultural resource aspects of the Proposed Project on **Monday December 17, 2018 at 6:00 p.m.** in the Council Chambers, **Oakland City Hall, 1 Frank H. Ogawa Plaza, Oakland, CA.**

PROJECT TITLE: Oakland Waterfront Ballpark District Project (Case File No. **ER18-016**)

PROJECT LOCATION: Approximately 55 acres that comprises the Charles P. Howard Terminal and adjacent parcels, located at the Port of Oakland along the Inner Harbor of the Oakland-Alameda Estuary (See Figure 1, Site Location). The site is bound generally by the Oakland Estuary Middle Harbor on the south; Jack London Square on the east; Union Pacific railroad tracks and the Embarcadero on the north; and the heavy metal recycling center, Schnitzer Steel, on the west (see Figure 2, Site Boundary and Context).

PROJECT SPONSOR: Oakland Athletics Investment Group, LLC d/b/a The Oakland Athletics

PROJECT SITE OWNERS: City of Oakland acting by and through the Port of Oakland, Dynegy Oakland, LLC, and PG&E

EXISTING CONDITIONS: Maritime support uses for short term tenants. Existing uses and activities include but are not limited to: truck parking, loaded and empty container storage and staging, and longshore training facilities. The Project Site was previously used as a maritime container terminal until 2014. Howard Terminal is designated as Berths 67 through 69 within the Port of Oakland. Berths 67 and 68 were constructed in the early 1980's, and Berth 69 was constructed in the mid 1990's. The site includes a marginal wharf structure approximately 75' wide. A below grade rock dike sits adjacent to the Oakland Inner Harbor as the site's shoreline. The remaining site is

understood to be on grade pavement. Four cranes are located on Howard Terminal that were used to load/unload ships when the area was an active shipping facility. Howard Terminal is currently used by short term tenants.

Existing regional access to the Project Site exists via both Interstate 880 and Interstate 980, with on-ramps to each within one mile of the Project Site. The Project Site is located about one mile, a 20- to 25-minute walk, from three BART stations including West Oakland, 12th Street Downtown, and Lake Merritt. Railroad tracks are adjacent to the north boundary of the Project Site and there are several at-grade crossings of the railroad tracks nearby, including two directly into the Project Site. There is an Amtrak / Capital Corridor train station about one-half mile from the Project Site, transit bus service is within one-quarter mile, and the Jack London Ferry Terminal is immediately adjacent to the east of the Project Site.

The City of Oakland, acting by and through the City Council, controls the General Plan designation of the Project Site, which currently has a land use designation of "General Industrial" and the "Industrial General (IG)" zoning designation. In addition, areas of Howard Terminal fronting the Oakland Estuary (to the south) are designated within the Bay Conservation and Development Commission (BCDC) jurisdiction and are State Public Trust lands.

The Project Site is included in the list of Hazardous Waste and Substances sites in the Department of Toxic Substances Control (DTSC) EnviroStor database, one of the lists meeting the "Cortese List" requirements (<http://www.calepa.ca.gov/sitecleanup/cortese/list/>, accessed October 2018).

PROJECT DESCRIPTION: The Project Sponsor proposes to develop the Howard Terminal property with the following key initial plan elements:

- Demolish existing buildings on the Project Site, except the existing power plant and the existing container cranes, which may be retained;
- Address any hazardous materials that may be present on the Project Site;
- Construct:
 - A new privately funded, open-air, approximately 35,000 person capacity Major League Baseball park;
 - Up to 4,000 residential units of varying affordability and types
 - Approximately 2.27 million square feet of adjacent mixed use development, including retail, commercial, office, cultural, entertainment, flex light industrial/manufacturing, and recreational uses;
 - A performance venue with a capacity of up to 3,500 individuals;
 - A 300 to 400-room hotel;
 - New and expanded utility infrastructure; and
 - New signage and lighting;
- Construct/provide improved access from the surrounding neighborhood and regional transportation networks, which could include, but may not be limited to:
 - an expanded shuttle and/or bus service ("rubber-tire trams"); and

- a new network of public streets and sidewalks that provide connectivity to and through the Project Site, and pathways that lead directly to the waterfront and related amenities.
- Construct/provide new waterfront public access, enhanced water views, and on-site open space;
- Comply with AB 734 regarding implementation of sustainability measures, development of a LEED Gold ballpark, and no net increase of greenhouse gas (GHG) emissions; and
- Phase development of the Proposed Project, with a target completion date of Spring 2023 for construction of Phase 1, including the ballpark, associated infrastructure, and potentially some ancillary development.

The Proposed Project may also consider one or more variants or options, potentially including but not limited to:

- New elevated pedestrian connections over the railroad tracks and improvements to existing at-grade crossings;
- An aerial tram or gondola above Washington Street extending from downtown Oakland near 12th Street BART to Jack London Square;
- Development of a portion of an existing power plant and removal of adjacent tanks;
- Altered edge configuration of the existing wharf to enhance public views and provide additional boat access/active water uses; and/or
- Extension of Embarcadero West to Middle Harbor Road and a new ramp from the existing Adeline Street overpass for new direct access to the Project Site.

ANTICIPATED ENTITLEMENTS AND APPROVALS: Discretionary approvals required for development of the Proposed Project are anticipated to include, but may not be limited to, the following:

- City Council approval of amendments to the General Plan and Planning Code after recommendation by the Planning Commission;
- Board of Port Commissioners approval of project transactional documents (e.g. leases and conveyance agreements);
- All necessary development permits and entitlements from the City & the Port;
- Port and State Lands Commission approval of a Trust Settlement and Exchange Agreement addressing public trust issues affecting the Project Site; and
- Bay Conservation and Development Commission (BCDC) Major Permit and Amendment to the BCDC and Metropolitan Transportation Commission (MTC) Seaport Plan.

PROBABLE ENVIRONMENTAL EFFECTS AND PROPOSED SCOPE OF THE EIR: The EIR will analyze and disclose the direct and indirect potentially significant impacts that would result from construction and operation of the Proposed Project under Existing Plus Project and Cumulative conditions (Guidelines §§15126.2, 15130), in addition to other analysis scenarios that may be appropriate for the EIR. Where significant impacts are identified, the EIR will describe potentially feasible mitigation measures that could minimize significant adverse impacts (Guidelines §15126.4). It is anticipated that the Proposed Project may have environmental impacts on aesthetics, air quality, biological resources, cultural resources, hazards, land use, noise and vibration, population and housing, public services, public utilities, transportation and circulation, hydrology and water quality, and growth inducement. It is anticipated that the Proposed Project would have no impact or less-than-significant impacts on


agricultural and forestry resources. Nevertheless, the EIR will evaluate the full range of environmental issues contemplated for consideration under CEQA and the CEQA Guidelines, including but not limited to the following:

- Aesthetics, Shadow and Wind (including Light, and Glare)
- Agricultural and Forestry Resources
- Air Quality
- Biological Resources
- Cultural and Historic Resources (including Tribal Cultural Resources)
- Geology and Soils (including Geological and Seismic Hazards)
- Greenhouse Gas Emissions /Global Climate Change
- Hazards and Hazardous Materials
- Hydrology and Water Quality
- Land Use and Planning
- Mineral Resources
- Noise and Vibration
- Population and Housing (including Growth Inducement)
- Public Services (including Police Services, Fire Protection Services, Parks and Schools);
- Recreation
- Transportation and Circulation
- Public Utilities and Service Systems (including Energy Demand and Conservation)

The Draft EIR will evaluate cumulative impacts of the Proposed Project, including the effects of other past, present, and reasonably foreseeable projects in the vicinity (Guidelines §15130).

The Draft EIR will also identify and examine a range of reasonable alternatives to the Proposed Project, including, but not limited to, a No Project Alternative (Guidelines §15126.6) and an alternative site (e.g. the Oakland Coliseum site).

November 30, 2018
Case File Number: ER18-016



Ed Manasse, Bureau of Planning
Environmental Review Officer

Attachments:

- Figure 1, Project Location Map
- Figure 2, Site Boundary and Context

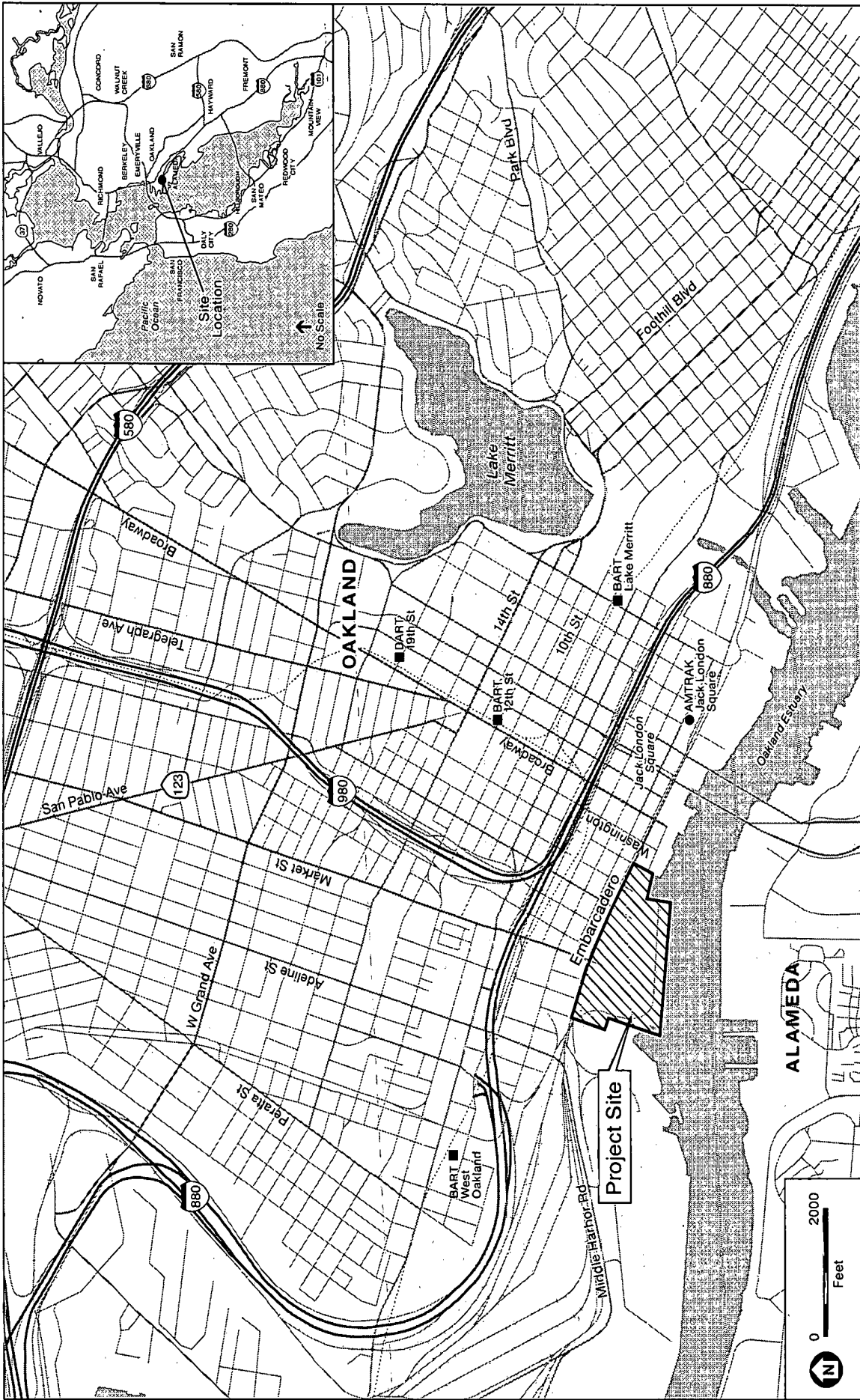
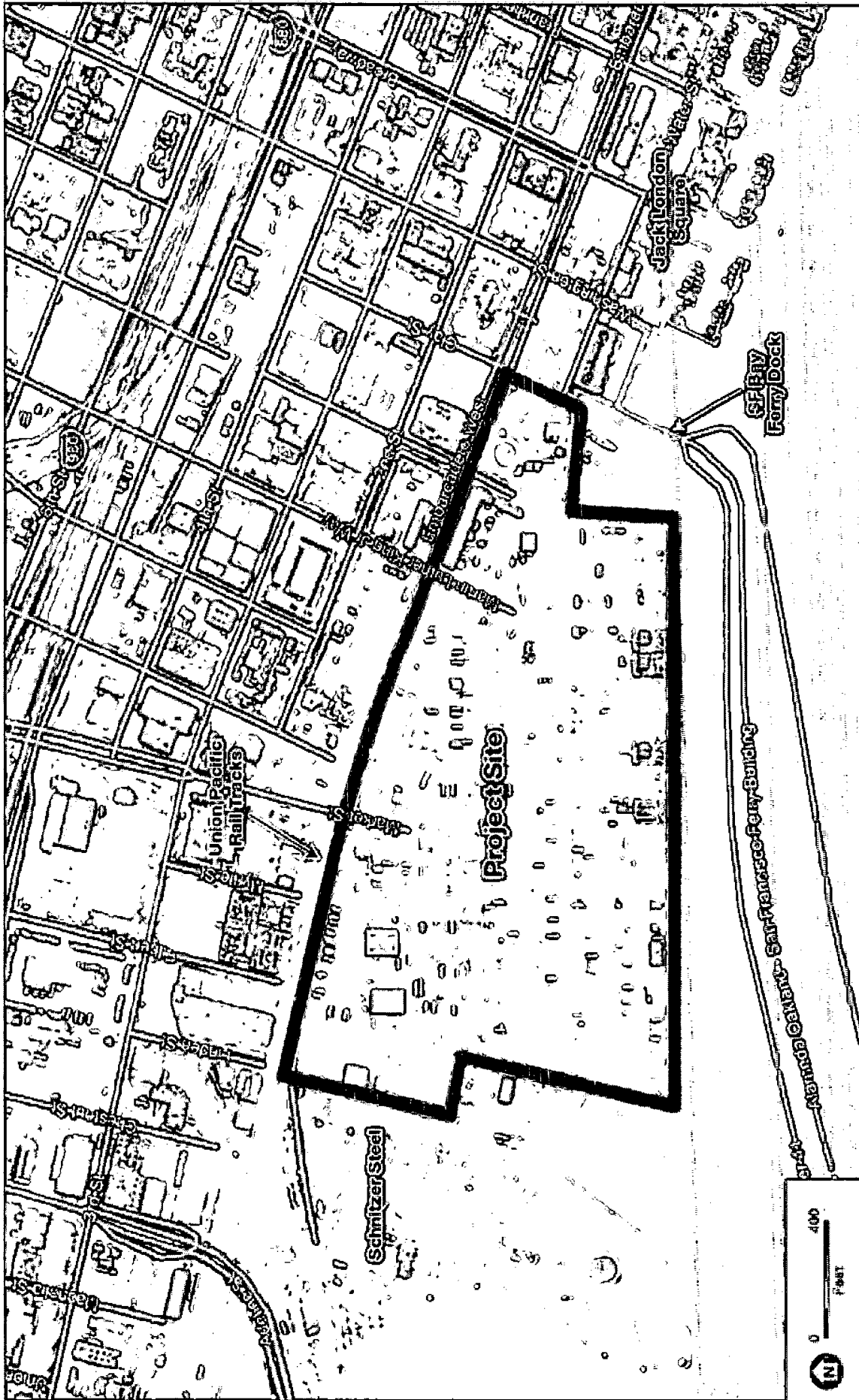


Figure 1
Project Location

SOURCE: ESA, 2018



017104.00 - A's Support District EIR/ES/EIS Graphics-GIS-Media/MapServer



SOURCE: City of Oakland, Bureau of Planning

Figure 2
Site Boundary and Context

Exhibit B



California Jobs (AB 900)

Pursuant to Public Resources Code Section 21181, the Governor must certify a project as an environmental leadership development project by **January 1, 2020** in order for the project to be eligible for judicial streamlining. The certification process typically takes 3 to 6 months.

Submitted Applications

- 2019050019 – California Northstate University Medical Center Project +
- 2019080493 – Downtown West Mixed Use Plan +
- 2018102028 – Balboa Reservoir +
- 2019039102 – Oakland Sports and Mixed-Use Project at Howard Terminal +
- 2017051079 – Hollywood & Wilcox Mixed-Use Project +
- 2018021056 – Inglewood Basketball and Entertainment Center +
- 2017092053 – 3333 California Street Project +
- 2017112005 – Potrero Power Station Mixed-use Project +
- 2018051002 – Hollywood Center Project +
- 2017121047 – 1045 Olive Street Project +
- 2017072018 – 10 Van Ness Avenue Mixed-Use Project +

2015111073 – 6220 West Yucca Project +

2015101073 – Crossroads Hollywood +

2015061061 – Qualcomm Stadium Reconstruction Project +

2014112045 – Event Center and Mixed-Use Development at Mission Bay Blocks +

2014011087 – 8150 Sunset Boulevard +


2013011007 – Soitec Solar Energy Project +


2011082055 – Apple Campus 2 +


2012011019 – McCoy Solar Energy Project +


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Resources


[AB 734 \(Chapter 959, Statutes of 2018\)](#) 


[AB 987 \(Chapter 961, Statutes of 2018\)](#) 

[AB 246 \(Chapter 522, Statutes of 2017\)](#) 

[SB 734 \(Chapter 210, Statutes of 2016\)](#) 

[SB 743 \(Chapter 386, Statutes of 2013\)](#) 

[AB 900: \(Chapter 352, Statutes of 2011\)](#) 


[Process for Greenhouse Gas Methodologies and Documentation Submittal to the California Air Resources](#) 

To receive notifications when a project application is posted or supplemented, please subscribe to the AB 900 listserv.

Governor's Guidelines

GOVERNOR'S GUIDELINES FOR STREAMLINING JUDICIAL REVIEW UNDER THE CALIFORNIA ENVIRONMENTAL QUALITY ACT PURSUANT TO AB 900 (CHAPTER 352, STATUTES OF 2011)

NOTE: These Guidelines apply to projects requesting certification for streamlined judicial review under Assembly Bill 734 (Chapter 959, Statutes of 2018) or Assembly Bill 987 (Chapter 961, Statutes of 2018) to the extent that the Guidelines are applicable and do not conflict with the language contained within those statutes. See Pub. Res. Code, §§ 21168.6.7(e)(2), 21168.6.8(c)(3).

1. Applications to the Governor for CEQA streamlining under Public Resources Code Section 21178 et seq., along with a Notice of Completion Form , shall be submitted electronically to the Governor's Office of Planning and Research at the following e-mail address:

California.Jobs@opr.ca.gov

Upon receipt of the application, the Office of Planning and Research will assign a clearinghouse tracking number and will enter the project information from the Notice of Completion Form into a publically accessible database. **Note, the application is then posted to a public website: <http://www.opr.ca.gov/ceqa/california-jobs.html>. Do not include any sensitive or proprietary information.**

Beginning July 1, 2019, the entire application must be submitted in a format that complies with State and Federal accessibility requirements, and the Web Content Accessibility Guidelines 2.0, or a subsequent version, published by the Web Accessibility Initiative of the World Wide Web Consortium at a minimum Level AA success criteria. Instructions on how to create an accessible document can be found on OPR's Accessibility Page.

2. The electronic application shall include all sufficient information to enable the Governor to determine whether the project satisfies the statutory requirements for CEQA streamlining. This information shall include at least the following:

a. For projects defined in Public Resources Code section 21180(b)(1), information sufficient to enable the Governor to determine that:

(1) the project is residential, retail, commercial, sports, cultural, entertainment, or recreational in nature;

(2) the project, upon completion, will qualify for LEED gold certification or better. The application shall specify those design elements that make the project eligible for LEED gold certification or better, and the applicant shall submit a binding commitment to delay operating the project until it receives LEED gold certification or better. If, upon completion of construction, LEED gold certification or better is delayed as a result of the certification process rather than a project deficiency, the applicant may petition the Governor to approve project operation pending completion of the certification process.

(3) the project will achieve at least 15 percent greater transportation efficiency, as defined in Public Resources Code section 21180(c), than comparable projects. The applicant shall provide information setting forth its basis for determining and evaluating comparable projects and their transportation efficiency, and how the project will achieve at least 15 percent greater transportation efficiency. For residential projects, the applicant shall also submit information demonstrating that

the number of vehicle trips by residents divided by the number of residents is 15 percent more efficient than for comparable projects. For the purposes of this provision, comparable means a project of the same size, capacity and location type.

(4) the project is located on an infill site, as defined at Public Resources Code section 21061.3, and in an urbanized area, as defined at Public Resources Code section 21071.

(5) the information required by Public Resources Code section 21180(b)(1) is available for projects within a metropolitan planning organization for which a sustainable communities strategy or alternative planning strategy is in effect. For the purposes of this provision, "in effect" means that the sustainable communities strategy or the alternative planning strategy has been adopted by the metropolitan planning organization, and that the Air Resources Board has accepted the metropolitan planning organization's determination that the sustainable communities strategy or alternative planning strategy meets the adopted greenhouse gas reduction targets and is not the subject of judicial challenge.

(6) if the project is a multifamily residential project, evidence that (1) private vehicle parking spaces are priced and rented or purchased separately from dwelling units; or (2) the dwelling units are subject to affordability restrictions that prescribe rent or sale prices, and the cost of parking spaces cannot be unbundled from the cost of dwelling units.

b. For projects defined in Public Resources Code section 21180(b)(2) or 21180(b)(3), information sufficient to enable the Governor to determine that the project meets the criteria set forth in those sections.

c. Information establishing that the project entails a minimum investment of \$100 million in California through the time of completion of construction.

- d. Information establishing that the prevailing and living wage requirements of Public Resources Code section 21183(b) will be satisfied.
 - e. Information establishing that the project will not result in any net additional greenhouse gas emissions. This information is subject to a determination signed by the Executive Officer of the Air Resources Board that the project does not result in any net additional greenhouse gas emissions, following the procedures set forth in section 6 of these Guidelines.
 - f. Information establishing that the project will comply with requirements for commercial and organic waste recycling in Chapters 12.8 (commencing with Public Resources Code section 42649) and 12.9 (commencing with Public Resources Code section 42649.8), as applicable.
 - g. Information documenting a binding agreement between the project proponent and the lead agency establishing the requirements set forth in Public Resources Code sections 21183(e), (f), and (g).
 - h. Any other information requested by the Governor.
3. The public may submit comments on the application electronically to the Governor's Office of Planning and Research (California.Jobs@opr.ca.gov) at any time up to 30 days after the initial application or within 7 days after any supplemental application, whichever is later.
- a. The comments must include a reference to the clearinghouse tracking number.
 - b. Public comments may be posted to a public website. **Do not submit any sensitive or personal information in the comment letter.**
 - c. Public comments submitted to the Governor's Office of Planning and Research will be considered regardless of the format in which they are received. However, **beginning July 1, 2019, we encourage public comments to be submitted in a format that complies with State and Federal accessibility requirements and the Web Content**

Accessibility Guidelines 2.0, or a subsequent version, published by the Web Accessibility Initiative of the World Wide Web Consortium at a minimum Level AA success criteria. Instructions on how to create an accessible document can be found on OPR's Accessibility Page.

4. Within 10 days of the Governor certifying an Environmental Leadership Development Project, the lead agency shall, at the applicant's expense, issue a public notice, as set forth in Public Resources Code section 21187. The public notice shall be distributed by the lead agency as required for public notices issued pursuant to paragraph (3) of subdivision (b) of Public Resources Code section 21092.

5. The Governor may request additional information. Failure to submit necessary information will preclude certification by the Governor.

6. For purposes of California Public Resources Code section 21183(c) the following process applies:

a. The applicant shall submit electronically to AB900ARBsubmittals@arb.ca.gov a proposed methodology for quantifying the project's net additional greenhouse gas emissions. The Air Resources Board (Board) will review and comment on the methodology, at its discretion, within 30 days of submission.

b. At the same time, the applicant shall submit to AB900ARBsubmittals@arb.ca.gov documentation that the project does not result in any net additional greenhouse gas emissions. The documentation must at least quantify:

(1) Both direct and indirect greenhouse gas emissions associated with the project's construction and operation, including emissions from the project's projected energy use and transportation related emissions; and

(2) The net emissions of the project after accounting for any mitigation measures that will be monitored and enforced consistent with Public Resources Code section 21183

(d).

c. Within 60 days of receiving the documentation in 6.b. above, the Board will determine whether the condition specified in Public Resources section 21183(c) has been met or, if more time is needed, notify the applicant of the expected completion date.

d. The Board will determine and report to the Governor in writing 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.

7. The Governor's Office of Planning and Research will post information submitted by the applicant electronically on its web-site and make available for public review a hardcopy of the material upon request.

8. The Governor will make a decision on the application as expeditiously as possible. The Governor must certify the project prior to January 1, 2020. The certification will expire and is no longer valid if the lead agency fails to approve the certified project before January 1, 2021.

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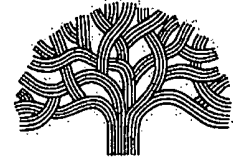
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Exhibit C

CITY OF OAKLAND



1 FRANK H. OGAWA PLAZA • 3RD FLOOR • OAKLAND,
CALIFORNIA 94612

Office of the Mayor
Libby Schaaf
Mayor

(510) 238-3141
FAX: (510) 238-4731
TDD: (510) 238-3254

February 28, 2020

Richard Corey
California Air Resources Board
1001 I Street
Sacramento, CA 95814
Dear Mr. Corey,

I write concerning the potential future of the Oakland Coliseum site, which includes the stadium and associated parking lots (the "Coliseum"). Today the Coliseum is the home field of the Oakland Athletics (the "A's") and the Oakland Raiders (the "Raiders"). The Raiders franchise is moving to Las Vegas next season, leaving the A's as the only remaining tenant. As you know, the Coliseum was built in the early 1960s, with its first game held in 1966. As indicated in prior correspondence to you from us, the City of Oakland (the "City") prepared a Specific Plan for the Coliseum City area in which it noted that the Coliseum was "obsolete" and would be demolished in the circumstance where neither the A's nor the Raiders were anchor tenants. Once the Coliseum loses its anchor tenants, there may not be a steady revenue stream to support the ongoing maintenance and repair of this facility.

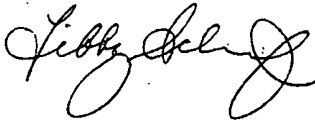
We understand that in association with the Howard Terminal Project ("Project"), in the event the Coliseum is not demolished immediately following the A's departure, the California Air Resources Board ("CARB") wishes to have a commitment regarding the potential use of the newly available dates in excess of the historical average of four non-sporting events per year at the Coliseum. By this letter, I confirm that the A's have agreed and the City will enforce the following: if (1) the Project is approved and constructed, (2) the A's leave the Coliseum, and (3) the Coliseum is not demolished, then for each year the Coliseum is not demolished and events exceed four per year, the A's are required to fully reduce and offset, consistent with AB 734 requirements, all greenhouse gas emissions associated with events that are in excess of four per year. I understand that the Application provided by the A's to CARB must identify a menu of reduction measures and their associated greenhouse gas reductions that the A's may then select to reduce emission from these excess events in accordance with a process and methodology included in the Application and approved by CARB.

As you know, the City, as the lead agency charged with enforcing the obligations of the A's under AB 734, has agreed to monitor and enforce all obligations if the Project is certified by the Governor, approved, and constructed.

Please note that the City has no obligation to approve, and the A's have no obligation to develop, the Project unless and until the parties have negotiated, executed and delivered mutually acceptable agreements based upon information produced from the CEQA environmental review process and any other public review and hearing processes, subject to all applicable regulatory approvals. The City retains the absolute, sole discretion to (1) modify the Project as the City in its sole discretion deems necessary to comply with CEQA; (2) select other feasible alternatives and/or impose mitigation measures to avoid or reduce significant environmental impacts; (3) balance the benefits of the Project against any significant environmental impacts prior to taking final actions, if such significant impacts cannot otherwise be avoided; and/or (4) determine not to grant the requisite approvals for the Project.

Thank you for your consideration of this letter. Please do not hesitate to call if you have questions.

Sincerely,



Mayor Libby Schaaf

Cc:

Jared Blumenfeld, Secretary for Environmental Protection, State of California
Vice Mayor Reid, City of Oakland
Councilmember Taylor, City of Oakland
Supervisor Miley, County of Alameda
Supervisor Haggerty, County of Alameda

103772222.1

Exhibit D

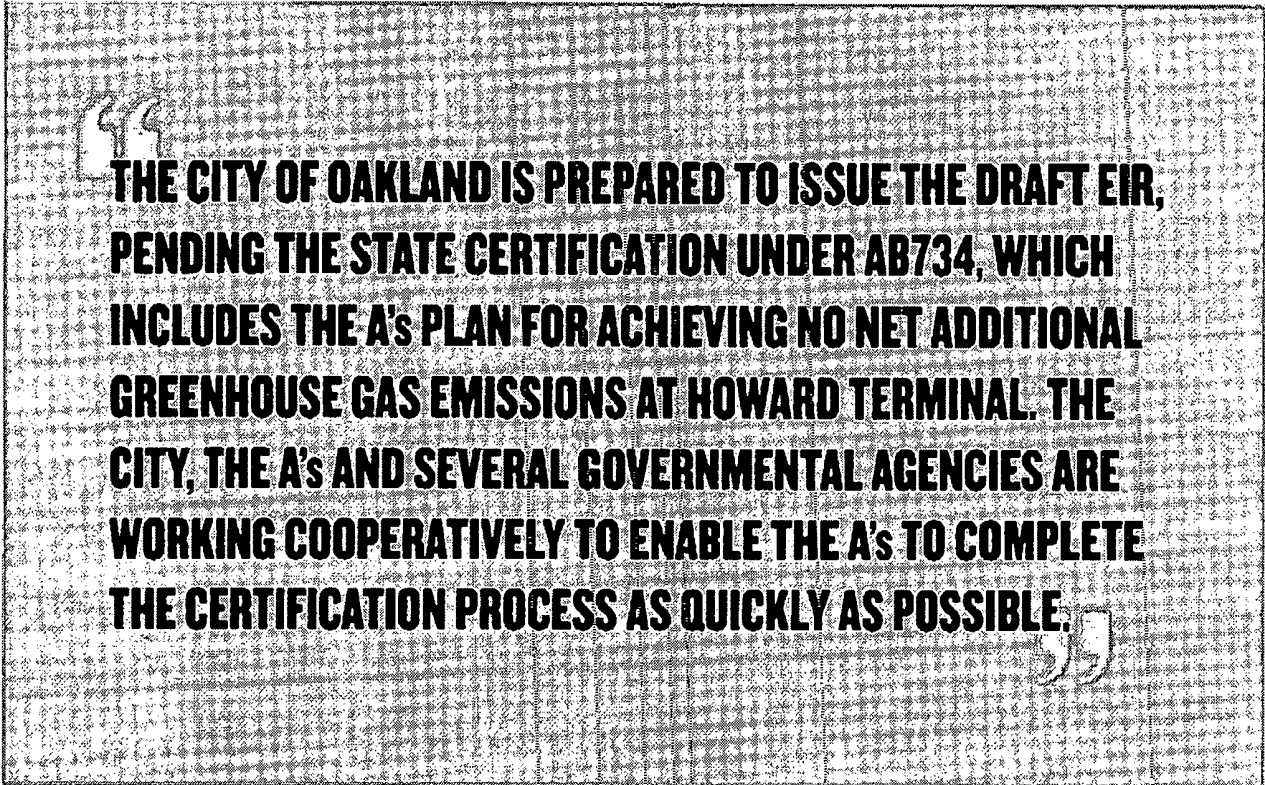


Oakland A's 
@Athletics



Don't worry, we've seen your questions about the EIR. Here's the latest update from the A's and the City of Oakland. pic.twitter.com/8h2JMxogRl

10:52 AM - 3 Mar 2020



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by: Oakland A's @Athletics



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Dave Kaval

@DaveKaval

Follow

City of Oakland leads EIR process and timing of release. Working with them on timing with State certification.

Will M @WillMartin001

@DaveKaval genuinely confused about the EIR. I notice the dates keep sliding but I haven't seen anything from the A's, the city, or the port that explains why. No info leads to a perception of hiding an issue. Can you clarify the status and timeline for us?

3:19 PM - 1 Mar 2020