

March 30, 2021

Mayor Libby Schaaf
President Nikki Fortunato Bas
Council Member Carroll Fife
Council Member Noel Gallo
Council Member Dan Kalb
Council Member and Vice Mayor Rebecca Kaplan
Council Member Treva Reid
Council Member Loren Taylor
Council Member Sheng Thao

Oakland City Hall
1 Frank H. Ogawa Plaza
Oakland, CA 94612

Re: Extension of Time to Respond to Howard Terminal Draft EIR

Dear Mayor Schaaf and Members of the Oakland City Council:

The Draft Environmental Impact Report (DEIR) for the Oakland Ballpark Waterfront District Project (the proposed Howard Terminal ballpark development, or “Project”) was issued on February 26th, 2021, subject to a 45 - day comment period. Following the request for an additional 45 days to comment by seventeen community organizations (CBE et al.) and a separate request by the Oakland League of Women Voters, the comment period was extended, but only by 15 days. Without further action, the public comment period now closes on April 27, 2021.

The Oakland Chinatown Coalition, members of the Oakland United coalition and other community allies respectfully ask the City of Oakland to provide the full 45-day extension requested by CBE and thereby allow the public to read, analyze, and comment on the DEIR until May 27, 2021.

The Howard Terminal Project DEIR demonstrates that the environmental effects of this ambitious project may have significant, far-reaching, and unavoidable impacts on our communities. The DEIR comment process is the only way the public can learn about the potential negative impact of the Project and attempt to protect its interests in response. A total of 90 days is needed to understand the impacts of the Project, review the adequacy of the DEIR’s proposed mitigation measures and project alternatives, share the terms of the DEIR with our community members, get their feedback, and submit comments to the City.

The unusual circumstances surrounding the Project constitute grounds for the City to exercise its discretion to accept comments on the DEIR outside the 60-day comment period recommended by the California Environmental Quality Act (CEQA).¹ While there is no case law defining what type of unusual circumstance may justify a longer review period nor any case law limiting the lead agency’s exercise of discretion to determine what constitutes “unusual circumstances,”² the circumstances created by the Project are certainly unique, including:

¹ 14 California Code of Regulations Sec 15105(a).

² Continuing Education of the Bar, Practice Under the California Environmental Quality Act, Section 9.24.3.

- Special legislation providing expedited CEQA review and other benefits to the Project,
- Enabling the city to ignore public comments filed after the close of DEIR comments,
- Extinguishment of public trust protections on Project property,
- Alteration and intensification of land use through general plan and zoning amendments, subdivisions, and planned unit development, and
- Permanent physical, economic, and social impacts on communities that are the backbone of Oakland.

The Project would convert largely vacant land to substantially more intensive use over a period of seven years.³ Briefly, it consists of a “state-of-the-art ballpark and event center that can be used year-round for sporting events, entertainment, and convention purposes with capacity up to 35,000 and a sufficiently dense mixed-use residential/office/commercial/retail/entertainment development.” The fact that the final project description was not publicly revealed until the DEIR was published on February 26, 2021 has also raised fresh challenges.⁴ Special legislation grants the Project “fast track” post approval judicial review if and only if the project has met specific requirements that appear intended to benefit the public. This is another dimension of the Project that bears scrutiny.

For the City to gain a full appreciation of the environmental impacts of this complex development, it has undertaken two years of study and produced a DEIR of over 6000 pages.⁵ To evaluate the Project’s impacts on the Project environment, including existing infrastructure and conditions, and to identify appropriate mitigation measures, the DEIR refers to pre-existing regulatory protocols, plans, and studies. The application of technical material to a project that is already exceptional in its scope and scale has resulted in a report that simply requires more than 45 days to review. This is particularly true for members of the public who lack the resources and expertise to respond quickly.

In 2018, the Legislature passed AB 734, which provided a fast-track judicial review process for CEQA determinations related to the Project. AB 734 makes a compelling case for the City to provide abundant opportunity for public comment on the DEIR. AB 734 requires the City to warn the public that any comments on the Project made after the DEIR comment period may be ignored by the City. This limitation on public comment is so integral to the fast-track judicial process that it is only fair to allow the public a reasonable amount of time to address the substantive issues in the DEIR.⁶

³ For more detail, see Project Description from Notice of Availability, reprinted in the Attachment to this letter.

A succinct description of the Project and its public review process is available at the state Office of Planning and Research website: <https://ceqanet.opr.ca.gov/2018112070/3>

⁴ For example, the Project now includes buildings up to 620 feet tall (DEIR p. 4.1-25); currently, Oakland’s tallest building is the 404 foot tall Ordway Building. https://localwiki.org/oakland/Tallest_Building_in_Oakland, and creates winds gusting up to 36 miles per hour (DEIR p. 2-5, Sec. 2.2.1).

⁵ The Notice of Preparation of the DEIR was issued on November 30, 2018,

⁶ Public Resources Code Section 21168.6.7, subsec. (f) states:

(f) (1) The draft and final environmental impact report shall include a notice in not less than 12-point type stating the following:

THIS ENVIRONMENTAL IMPACT REPORT IS SUBJECT TO SECTION 21168.6.7 OF THE PUBLIC RESOURCES CODE, WHICH PROVIDES, AMONG OTHER THINGS, THAT THE LEAD AGENCY NEED NOT CONSIDER CERTAIN COMMENTS FILED AFTER THE CLOSE OF THE PUBLIC COMMENT PERIOD, IF ANY, FOR THE DRAFT ENVIRONMENTAL IMPACT REPORT. ANY JUDICIAL ACTION CHALLENGING THE CERTIFICATION OR ADOPTION OF THE ENVIRONMENTAL IMPACT REPORT OR

The need for additional time for public comment is driven by equity as well. The Draft EIR determined that the Project would result in significant and unavoidable impacts in the following areas, even with the implementation of feasible mitigation measures: Wind, Air Quality, Cultural Resources, Noise and Vibration, Traffic Safety Hazard, and Consistency with Transportation Plans.⁷ Despite over 6000 pages of analysis, the DEIR found that these impacts on the quality of life could not be abated. Accordingly, the public should have ample opportunity to review these findings and comment on "Whether or not the project should be approved despite significant and unavoidable impacts that would occur if the Project were implemented." (See, DEIR, p. 2-8, "Sec.2.5 Issues to be Resolved.")

As noted above, seventeen organizations representing diverse community members in East and West Oakland requested a total of 90 days to review the DEIR but were turned down.⁸ The Oakland Chinatown Coalition specifically agrees with these organizations that 30 additional days are needed to inform and solicit feedback from individual members of the community whom we serve.

The Oakland League of Women Voters, whose byword is "making democracy work," also sought an extension of time. We agree with the League that, "In a project of such magnitude, which could have significant long term consequences for Oakland residents, all voices and viewpoints should have a real opportunity to be heard and considered." Adding only two weeks to the initial 45-day period fails to provide the public with a real opportunity to be heard and considered.

For all of these reasons, the City should extend the period for public comment on the DEIR by an additional 45 days, which would require comments to be submitted no later than Thursday, May 27th, 2021.

Sincerely,

Oakland Chinatown Coalition signatory members in alphabetical order

Asian Health Services
Asian Pacific Environmental Network
East Bay Asian Local Development Corporation
AYPAL - Building API Community Power
Asian Immigrant Women Advocates
Asian Pacific Islander Legal Outreach
Buddhist Church of Oakland
Chinese American Citizens Alliance - Oakland Lodge
Chinatown Community United Methodist Church
Family Bridges

THE APPROVAL OF THE PROJECT DESCRIBED IN SECTION 21168.6.7 OF THE PUBLIC RESOURCES CODE IS SUBJECT TO THE PROCEDURES SET FORTH IN THAT SECTION. A COPY OF SECTION 21168.6.7 OF THE PUBLIC RESOURCES CODE IS INCLUDED IN THE APPENDIX TO THIS ENVIRONMENTAL IMPACT REPORT.

⁷ DEIR, pp. 2-5 and 2-6, Section 2.2.1, "Significant and Unavoidable Impacts."

⁸ Letter of Communities for a Better Environment, et al., to Peterson Vollman of the City of Oakland Bureau of Planning, dated March 5th 2021.

Filipino Advocates for Justice
Friends of Lincoln Square
OCA - Asian Pacific American Advocates: East Bay Chapter (OCA-East Bay)
Oakland Asian Cultural Center
Wa Sung Community Service Club
Alan Yee

Oakland United Coalition signatory members and other supporting organizations

Alliance of Californians for Community Empowerment
Causa Justa:: Just Cause
East Bay Alliance for Sustainable Economy
East Bay Community Law Center
Oakland Heritage Alliance
Oakland Tenants Union
Sierra Club
Public Advocates
Urban Habitat

Cc: Betsy Lake, Deputy City Administrator
William Gilchrist, Director of Planning
Peterson Vollmann, Project Planner

Attachment
Excerpt from

**COMBINED NOTICE OF AVAILABILITY AND RELEASE OF A
DRAFT ENVIRONMENTAL IMPACT REPORT (EIR) AND
NOTICE OF PUBLIC HEARINGS FOR THE OAKLAND
WATERFRONT BALLPARK DISTRICT PROJECT**

February 26, 2021

DESCRIPTION OF PROJECT: The Oakland Waterfront Ballpark District Project ("Project or "proposed Project") would construct:

- a new open-air waterfront multi-purpose Major League Baseball (MLB) ballpark with a capacity of up to 35,000-persons ("Ballpark");
- mixed use development including up to 3,000 residential units,
- up to 1.5 million square feet of office (which could include a range of commercial uses, such as general administrative and professional office and life sciences/research), and up to approximately 270,000 square feet of retail uses;
- an approximately 50,000 square-foot indoor performance venue with capacity of up to 3,500 persons;

- up to approximately 280,000 square-feet of hotel space including up to 400 rooms in one or more buildings and supportive conference facilities;
- a network of approximately 18.3 acres of privately-owned, publicly-accessible open spaces; and a maximum of approximately 8,900 total parking spaces at full buildout. Approximately 2,000 parking spaces would be shared by the Ballpark and the performance venue, and the remaining 6,900 parking spaces would serve residential and commercial uses on the Site.