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Via Electronic & Regular Mail

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Environmental Programs and Planning Division
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SUBJECT: OAKLAND INTERNATIONAL AIRPORT TERMINAL MODERNIZATION AND DEVELOPMENT PROJECT FINAL EIR (SCH#: 2021050164)

Dear Colleen Liang,

The City of Alameda staff and City Council (City) have reviewed the Final Environmental Impact Report (FEIR) for the proposed Terminal Modernization and Development Project (Project) and remain deeply concerned about the document's failure to rectify the shortcomings we identified in our comment letter on the Draft Environmental Impact Report (DEIR). In particular, the document still fails to identify and mitigate, to the greatest extent feasible, all of the Project's potentially significant adverse impacts as required by the California Environmental Quality Act (CEQA) (Pub. Resources Code, § 21000 et seq.).

We are also troubled that the FEIR fails to meaningfully respond to many of our comments, including those from our technical experts who presented substantial evidence regarding the Project's significant impacts to air quality, greenhouse gas emissions (GHGs), and noise, and the EIR's deficient analyses in support thereof.¹ These concerns are compounded by several new and revised appendices in the FEIR, which contain significant new information about these impacts and that were never previously circulated or disclosed to the public for review and consideration.

The FEIR's rationale for its selected baseline does not assuage our concerns. In particular, the FEIR does not present any additional substantial evidence to support its assumption that only market demand will drive increases in aviation activity, regardless of whether the Project is or is not built. As our comments on the DEIR explained, this

¹ This letter, including the attached technical expert comment letters, constitutes the City's initial comments on the FEIR. Attachments A and B include technical comments and analysis from: (i) Ms. Erin Sheehy, LEED AP, Environmental Compliance Solutions, regarding air quality and GHG emissions (Attachment A); and, (ii) Mr. John Freytag, P.E., Freytag & Associates LLC, regarding noise impacts (Attachment B).

approach fails to isolate and evaluate the Project's specific contributions to environmental impacts, such as increased air quality/GHG emissions, noise, and traffic congestion, that will ensue by virtue of the proposed increase in gates and parking spaces. We fear that simply assuming certain impacts will occur, regardless of the Project, inappropriately inflates future baseline conditions. Thus, without substantial evidence that those future conditions will, in fact, occur, the FEIR's conclusion that the ensuing impacts will be less-than-significant remains unsupported.

The FEIR's Project Description similarly continues to lack many of the Project-specific details that we implored the Port to provide so that the public could better understand the Project's short and long-term environmental ramifications. In particular, absent any visual/architectural renderings or definitive construction plans, the public remains in the dark as to what future development of the Project will actually entail. By virtue of this, the City cannot meaningfully ensure that the safety and well-being of its residents will be protected from the Project's significant adverse impacts.

For similar reasons, we are disappointed that the FEIR still fails to consider a reasonable range of Project alternatives, such as an environmentally-superior or reduced-intensity alternative. Without this analysis, the City fears that the Port is precluding the public and relevant decisionmakers from focusing on alternatives capable of eliminating the Project's significant environmental effects or at least reducing them to a level of insignificance. This missing analysis also underscores the document's virtually non-existent mitigation measures. The FEIR's Mitigation, Monitoring, and Reporting Program (MMRP) contains no measures to mitigate the Project's significant and unavoidable air quality and GHG impacts, much less any measures that require adherence to best management practices (BMPs) that will help reduce the increased levels of noise that will ensue during construction and operation. As our prior comments reiterated, these impacts will directly and adversely affect the well-being of Alameda's residents, which is not an acceptable outcome to the City.

Given the significant new information included in the FEIR, along with the document's outstanding informational deficiencies that still require correction, the City implores the Port to recirculate the EIR so that the public has an opportunity to meaningfully review and comment on it. The recirculated EIR must include revised analyses that consider the Project under an appropriate baseline that adequately accounts for future conditions under a No Project scenario, along with scenarios that contemplate an environmentally-superior or reduced-intensity Project alternative that reduces significant impacts. Finally, the Port must adopt all feasible mitigation measures, particularly for air quality, GHG, noise, and traffic impacts, so that neighboring communities, such as Alameda, are not burdened by their inevitable long-term ramifications.

I. The FEIR Precludes Informed Decisionmaking.

Despite our prior comments requesting that the Port revise and recirculate the fundamentally inadequate DEIR to cure its numerous deficiencies, we are disappointed

to find that the FEIR still contains those shortcomings, along with many others, and thus continues to preclude informed public participation. Moreover, we are also concerned that the Port has now added significant new information to the FEIR that the public previously had no chance to consider or comment on, including new technical data and appendices for resources such as air quality, GHGs, and noise. The addition of this new information confirms our prior comments that the Project will have even more significant adverse environmental impacts to air quality, GHGs, and noise—yet, the FEIR still fails to impose any mitigation measures to ameliorate those impacts.

We are similarly disheartened by the FEIR’s cursory responses to our detailed comments, including those submitted by our air quality and noise experts. At many times, the FEIR’s responses either misinterpret or fail to address the crux of our comments, while at other times many of our comments go completely unaddressed. The failure to meaningfully respond to comments violates CEQA and renders the FEIR legally inadequate.

A. The FEIR Must Be Recirculated Because It Contains Significant New and/or Missing Information.

The FEIR contains significant new information that mandates recirculation. (CEQA Guidelines, § 15088.5, subd. (a); Pub. Resources Code, § 21092.1.) The purpose of subsequent notice and recirculation is to provide the public with meaningful “opportunity to test, assess, and evaluate the data and make an informed judgment as to the validity of the conclusions to be drawn” from the revised EIR. (*Save Our Peninsula Committee v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99, 131; CEQA Guidelines, § 15088.5.) “Significant new information” that requires recirculation includes that a disclosure that shows a substantial increase in the severity of an environmental impact would result unless mitigation measures adopted to reduce that impact to a level of insignificance, or if a feasible project alternative or mitigation measure considerably different from others previously analyzed would clearly lessen the Project’s significant environmental impacts, but the Port declines to adopt it. (CEQA Guidelines, § 15088.5, subds. (a)(2)–(3).)

Multiple appendices attached to the FEIR were either amended or modified without any substantive explanation. For example, The Human Health Risk Assessment – Inhalation Pathway Modeling Protocol from January 6, 2023, which was previously contained in Appendix E to the DEIR, has since been removed from the same appendix attached to FEIR. The FEIR makes no mention of this, much less explain why this key document was removed. Instead, removing this data and information that was previously relied on to analyze the Project’s air quality emissions and impacts to human health will only further preclude meaningful public review.

Similarly, the FEIR adds new emissions data to the end of Appendix F, however, these new figures were not explained nor addressed in the body of the FEIR. (FEIR, Appendix E, pp. 889–898; see also Attachment A hereto). It’s difficult to discern what, precisely, was added, and how the addition of that data changes any of the EIR’s conclusions about

the Project's air quality impacts. It also prevents the public, including experts such as those retained by the City, from being able to meaningfully weigh and analyze this data and determine whether the conclusions drawn therefrom are accurate. As our prior comments reiterated, “the data in an EIR must not only be sufficient in quantity, it must be presented in a manner calculated to adequately inform the public and decision makers, who may not be previously familiar with the details of the project. Information scattered here and there in EIR appendices or a report buried in an appendix, is not a substitute for a good faith reasoned analysis.” (*Vineyard Area Citizens for Responsible Growth v. City of Rancho Cordova* (2007) 40 Cal.4th 412, 442 (*Vineyard*).)

The FEIR also now includes significant new information and data about the Project's potential noise impacts, including new construction noise tables and calculations that were added to Appendix L, a new technical memorandum that was added to Appendix M, and an entirely new appendix—Appendix Q—which features a newly-conducted Single Event Noise Level (SEL) analysis. Curiously, in explaining the addition of Appendix Q, the FEIR admits that this study “was prepared because that methodology is more commonly used and was used for the Port's last OAK EIR, the 2003 Airport Development Program Supplemental Environmental Impact.” (FEIR, Appendix P, p. P-44.) This begs the question, then, as to why this analysis wasn't initially prepared and included in the *draft* EIR so that the public could meaningfully assess its analyses and findings, and in turn, recommend any outstanding mitigation measures that could feasibly reduce impacts? The FEIR's last-minute inclusion of this crucial analysis precludes informed decisionmaking and presents significant new information that must be recirculated for adequate public review and comment.

We are similarly troubled by the FEIR's reference to several new studies and documents that are not incorporated into or attached to the FEIR at all. In particular, the FEIR's “Global Response G: Greenhouse Gas and Climate Change” reveals that, since publishing the DEIR, the Port has now achieved “Level 2 Accreditation: Reduction” and “Level 3 Accreditation: Optimization” as part of its participation in the Airports Council International (ACI) Airport Carbon Accreditation (ACA) Program. (FEIR, Appendix P, p. P-53.) The response explains that, as part of these accreditations, “the Port developed and signed Carbon Reduction Statements with a goal of 50 percent emission reduction by 2030 and 100 percent zero emissions by 2040 from airport-owned and operated operations.” (*Ibid.*) Moreover, as part of achieving Level 2 Accreditation, “the Port prepared a Carbon Management Plan, which includes initiatives to further reduce its carbon footprint.” (*Id.* at p. P-54.) Similarly, as part of its Level 3 Accreditation, the Port will focus on “third-party engagement in carbon footprint reduction and wide[n] the scope of carbon footprint [*sic*] to include third party emissions and engage third parts at and around the Airport.” (*Ibid.*) While the DEIR previously provided a citation to the general webpage for the ACI's ACA Program, the FEIR provides no further information about where these Accreditation documents can be accessed, including the Port's newly-prepared Carbon Management Plan. Because the FEIR purports to rely on the initiatives contained within that Plan to help reduce GHG emissions, the Port has a duty to

incorporate that Plan into the FEIR or, at the very least, provide a hyperlink to it. (CEQA Guidelines, § 15150, subd. (b); see also *id.* at § 15130, subd. (a)(1)(B) [“Any such planning document shall be referenced and made available to the public at a location specified by the lead agency”].) Otherwise, “[m]aterial not contained in the EIR cannot be expected to be considered; and therefore, cannot be relied upon to support an adequate EIR.” (*People ex rel. Bonta v. County of Lake* (2024) ___ Cal.App.5th ___ (Cal. Ct. App., Oct. 23, 2024, No. A165677) (2024 WL 4553306 at *6) (*Bonta v. Lake County*).

However, there do not appear to be express conclusions provided regarding noise level impacts—and if they are included, they are difficult to find. An adequate EIR must contain more than raw data. It requires an analysis that provides decisionmakers with “sufficient information to make intelligent decisions.” Forcing a reader to “cobble together” information included in and appended to the EIR is not enough. (*County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 955.)

When an EIR lacks “adequacy, completeness, and a good faith effort at full disclosure” by failing to disclose relevant information—it runs afoul of the public notice purposes of CEQA and will require additional opportunities for public scrutiny. (CEQA Guidelines, § 15151; *Mountain Lion Coalition, supra*, 214 Cal.App.3d at p. 1052; *Save Our Peninsula Committee, supra*, 87 Cal.App.4th at p. 131.)

B. The FEIR’s Responses to Alameda’s Comments are Legally Inadequate.

We are underwhelmed by the FEIR’s responses to the comments we and are experts submitted on the DEIR, particularly those that raised significant environmental concerns about the Project’s unmitigated impacts. Under CEQA, the Port must address major environmental issues raised in comments “in detail giving reasons why specific comments and suggestions were not accepted. There must be good faith, reasoned analysis in response. Conclusory statements unsupported by factual information will not suffice.” (CEQA Guidelines, § 15088, subd. (c).) The requirement for providing “a detailed analysis in response[s] [is to] ensure that stubborn problems or serious criticisms are not ‘swept under the rug.’” (*Santa Clarita Organization for Planning the Environment v. County of Los Angeles* (2003) 106 Cal.App.4th 715, 723 (SCOPE).) Here, however, the Port’s responses do precisely that.

The Port’s inadequate responses to the City’s comments abound. For example, in response to our suggestion that the Port consider adopting a baseline that averages airport demands from the years 2019, 2020, and 2021 so as to better estimate the Project’s actual future impacts, the Port contends that it did not “average airport demands from 2019, 2020, and 2021.” (FEIR, Appendix P, p. P-230 [Response 5].) This misconstrues our comment, which states that the DEIR *should have* averaged historic conditions instead of relying only on those conditions that existed in 2019. (See *id.* at p. P-84 [explaining that the “DEIR misleads the public and agency decisionmakers as to the reality of the Project’s impacts and subverts full consideration of actual impacts” by

“fail[ing] to account for historic conditions—i.e., by averaging airport demands from 2019, 2020, and 2021”).)

The Port similarly dismissed our request that the Port revise the DEIR to present technical data in a more intelligible manner, rather than simply referring the reader to one of its many appendices. (*Id.* at pp. P-85–P-86 [Comment 9].) For example, instead of synthesizing the results of the Sleep Disturbance Study contained in Appendix M—as our comment requested—the Port’s response simply repeated that the Study contained therein “was incorporated into the main body of the EIR by reference[.]” (*Id.* at p. P-231 [Response 9].) Not only does this response ignore our request, but the Port’s failure to present the study’s data in the body of the EIR violates CEQA. “An adequate EIR requires more than raw data; it requires also an analysis that will provide decision makers with sufficient information to make intelligent decisions. If, as [the Port] claim[s], the requisite information is included in the documentation attached to the EIR, setting out that information in a clear analysis within the EIR should not pose any difficulty.” (*County of Amador, supra*, 76 Cal.App.4th at pp. 955–956.)

The Port’s Global Responses unfortunately repeat this practice, by similarly providing generalized references to corresponding appendices rather than summarizing the raw data and conclusions in the body of the FEIR. (See, e.g., FEIR, Appendix P, pp. P-49–P-50 [global response to comments regarding air quality analyses by referring to Appendix E instead of summarizing the results of its PM2.5 analysis for the Project].) As our comment emphasized, however, decisionmakers and members of the public “should not be forced to sift through obscure minutiae or appendices in order to ferret out the fundamental...assumptions that are being used for purposes of the environmental analysis.” (*San Joaquin Raptor/Rescue Center v. County of Merced* (2007) 149 Cal.App.4th 645, 659 (*San Joaquin Raptor v. Merced*); see *Planning and Conservation League v. Dept. of Water Resources* (2000) 83 Cal.App.4th 892, 911 (*PCL*) [“requiring the reader to painstakingly ferret out the information from the reports...is not enough” under CEQA].) Instead, the FEIR must “provide an adequate analysis to inform the public how its bare numbers translate” by presenting such data “in a manner calculated to adequately inform the public and decisionmakers who may not be previously familiar with the details of the Project.” (*Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 521 (*Friant Ranch*); *Vineyard, supra*, 40 Cal.4th at p. 442.) The FEIR’s failure to do so, much less in response to our comment requesting as much, thwarts “the purpose of CEQA that the public obtain a full understanding of the environmental impacts of [the] Project from a single source relevant informational document—that being the EIR.” (*Bonta v. Lake County, supra*, at *6.)

II. The FEIR Remains Legally Inadequate.

Our comments on the DEIR highlighted the document’s significant deficiencies, including: the lack of substantial evidence that supports the selected baseline and the assumptions

that flow from it; the inadequate analyses of and mitigation for the Project's reasonably foreseeable and potentially significant and unavoidable impacts to air quality, noise, GHGs, and traffic; and the document's woefully inadequate analysis of Project alternatives. Nevertheless, the FEIR essentially remains unchanged and fails to cure any of these informational shortcomings. We therefore remain troubled by the Port's unwillingness to adopt any additional mitigation measures, particularly for air quality/GHGs and noise, or contemplate a reduced-intensity Project alternative. Because the FEIR is just as informationally deficient as the DEIR was, it continues to remain legally inadequate under CEQA.

A. The FEIR Still Fails to Provide Substantial Evidence to Support its Baseline Assumptions.

Our prior comments urged the Port to recirculate the DEIR with substantial evidence to support its baseline assumptions regarding future conditions under No Project and Proposed Project scenarios, as this would have allowed readers to glean whether those conditions will, in fact, occur, and in turn support the EIR's conclusion that impacts would be less than significant. The FEIR unfortunately provides little of such evidence, and instead essentially mirrors its previous incarnation. In doing so, the FEIR buries the lede by glossing over serious concerns about the Project's future impacts and instead providing overly-rosy projections devoid of substantive analysis.

In particular, the City remains concerned that expanding the airport with additional terminals, gates, and parking lots, would result in a greater number of enplanements, and in turn, additional unmitigated air quality, GHG, noise and traffic impacts. Instead of meaningfully analyzing what future conditions would look like under a Project and No Project scenarios, the FEIR still reasons that the need for expansion stems from predicted increased demand, and that there is no correlation between a greater number of terminals and passenger growth. (FEIR, Appendix C, pp. 10–16.) The Port's methodology in reaching this conclusion is wholly inadequate and defies the notions of common sense. The EIR still fails to explain how increased capacity will not directly correlate to greater flight activity—it simply concludes that this is not the case. CEQA, however, requires more. (*Laurel Heights Improvement Assn. v. Regents of University of Cal.* (1988) 47 Cal.3d 376, 404 (*Laurel Heights I*) ["Conclusory comments in support of environmental conclusions are generally inappropriate"].)

The chief purpose of an EIR is to provide the public and decisionmakers with the "most accurate and understandable" information regarding a proposed project's significant environmental impacts on the "physical conditions which exist within the area." (CEQA Guidelines, § 15125, subd. (a); Pub. Resources Code, § 21060.5; *Save Our Peninsula Committee v. Monterey County Board of Supervisors* (2001) 87 Cal.App.4th 99, 120 (*Save Our Peninsula*)). Therefore, this existing environmental setting should generally serve as a baseline to determine the significance of the project's environmental impacts. (CEQA Guidelines, § 15125, subd. (a).) To accurately inform the public about these impacts, the baseline must reflect the "realized physical conditions on the ground" rather

than “merely hypothetical” and “illusory” conditions that only serve to “mislead the public.” (*San Joaquin Raptor/Rescue Center v. Merced*, *supra*, 149 Cal.App.4th at p. 658; *Communities for a Better Environment v. South Coast Air Quality Management Dist.* (2010) 48 Cal.4th 310, 322 (*CBE*)). The agency may use baselines consisting of both existing and projected future conditions to provide a clearer understanding of project impacts. (CEQA Guidelines, § 15125, subd. (a)(1).) In doing so, however, the ensuing analysis must provide more than just raw data. (CEQA Guidelines, § 15125, subd. (a)(1); *CBE*, *supra*, 48 Cal.4th at pp. 327–28.)

Despite this requirement, the EIR does not sufficiently explain how such growth will occur and fails to account for new information made available since its initial notice and comment period. Though it purports that migration patterns within the Bay Area and the availability of certain airlines at OAK will spur increased demand, the Port asks the public to suspend its disbelief and pretend that these conditions alone will more than double passenger activity at the airport over the next decade and a half, stretching from 5,520,812 enplanements in 2023 to well over 12,000,000 by 2038. Despite warning from the FAA that these growth forecasts should take constrained conditions into account that would curb OAK’s ambitious growth projections, the forecasts provided in Appendix C are still “unconstrained” and predict this rapid growth through model year 2038. (FEIR, Appendix C, p. 11.) The Port does so even after they possess enplanement data for OAK in 2023. Though the Port anticipated passenger activity to reach its pre-pandemic levels by 2023, this is far from the case. There were over one million less enplanements in 2023 (5,520,812) than in 2019 (6,560,230). However, these forecasts were not adjusted nor was the Port’s analysis modified. The Port’s determination of significance must be supported by substantial evidence, which remains lacking here. (CEQA Guidelines, § 15088.5, subd. (e); *Laurel Heights Improvement Assn. v. Regents of University of California* (1993) 6 Cal.4th 1112, 1133 (*Laurel Heights II*); see *We Advocate Through Environmental Review v. County of Siskiyou* (2022) 78 Cal.App.5th 683, 695 (*WATER*)). In turn, the EIR’s failure to adequately address or conspicuously identify the reasoning behind the baseline selection fails to meet CEQA’s requirement of a good faith effort at full disclosure. (*San Joaquin Raptor/Rescue Center v. Merced*, *supra*, 149 Cal.App.4th at p. 659.)

Due to decreased aviation activity beginning in 2020 as a result of the COVID-19 pandemic, the FEIR uses 2019 as a baseline of operations rather than 2021, when the Notice of Publication was initially distributed. (FEIR, p. 2-8.) However, the Port fails to provide any substantial evidence for why 2019 is the ideal baseline, especially when current operations at OAK still have not returned to this level of operation. While 2019 saw a total of 6,689,457 passenger enplanements, 2023 saw only 5,520,812. This is over a 15 percent decrease in passenger activity. Despite OAK’s optimism for a rapid resurgence, the airport’s post-pandemic growth has lagged behind the national growth

average for medium-hub airports.² While activity is still down generally, the discrepancy has shrunk, with passenger activity being only 1.47 percent less in 2023 when compared to 2019. In fact, despite the FEIR’s assertions to the contrary—San Francisco International Airport (SFO) has reported faster growth than OAK. Appendix C contends that OAK should have experienced a faster recovery in capacity and demand compared to SFO, but this is not the case. SFO has seen a 12.9 percent decline in passenger activity—almost three percentage points higher than that of OAK. (FEIR, Appendix C, pp. 11–16.)

The FEIR’s forecasts are clearly off base and must be readjusted to provide the public with sufficient information to determine the Project’s true impacts. Former OAK Aviation Director Bryant Francis nearly stated as much in his email to Southwest Airlines representative Randy Gillespie where he informed him that much of the forecast work would need to be redone if the project was delayed and did not “proceed in the early fall” of 2020. (See FEIR, Appendix P, p. P-378.) The year is 2024 and the Project’s baseline has not been updated. As such, utilizing such a high baseline minimizes the extent of the Project’s impacts and fails to reflect the “realized physical conditions on the ground,” which in turn inflates future conditions under anticipated scenarios.

Finally, the FEIR utilizes inconsistent baselines in certain aviation forecasts. This provides decisionmakers with an unclear analysis of the Project’s aviation impacts as certain analyses utilize 2019 as a baseline (FEIR, Appendix C, p. 74), while others use a 2021 baseline. (*Id.* at p. 94.) An updated baseline would eliminate the confusion and uncertainty stemming from these inconsistent baseline applications. Utilizing a forecast that incorporates newer data—such as that from 2022 and 2023—will reduce these inconsistencies between forecasts.

B. The FEIR’s Vague and Ambiguous Project Description Precludes Informed Decisionmaking.

An EIR cannot sufficiently provide decisionmakers with an accurate view of the proposed project unless it provides a comprehensive description of it. (*Stoepthemillenniumhollywood.com v. City of Los Angeles* (2019) 39 Cal.App.5th 1, 18–19.) “An accurate, stable and finite project description is the *sine qua non* of an informative and legally sufficient EIR.” (*County of Inyo v. City of Los Angeles* (1977) 71 Cal.App.3d 185, 193.) Essentially, the project description is an “indispensable” element of a final EIR. (*Stoepthemillenniumhollywood.com*, 39 Cal.App.5th at p. 16.) A complete project description must address all reasonably foreseeable consequences of the initial project. (*Laurel Heights I, supra*, 47 Cal.3d at p. 396.) A failure to include an accurate, stable, and finite project description precludes informed decisionmaking and public participation—

² <https://www.faa.gov/sites/faa.gov/files/2024-10/cy23-commercial-service-enplanements.pdf>

thwarting the goals of CEQA and resulting in an abuse of discretion by the agency. (*Stopthemillenniumhollywood.com*, 39 Cal.App.5th at p. 18.)

Based on these requirements, it is clear that the FEIR’s project description prevents meaningful public review. As stated above, the Project’s forecasted passenger activity is unsupported by substantial evidence, resulting in erroneous analyses throughout the EIR—including improper conclusions regarding impacts, mitigation measures, and alternatives. The Port fails to conclude that modernizing an airport and adding a brand-new terminal with up to 25 new gates will increase airport capacity, resulting in increased flight activity. (FEIR, p. 2-17.) However, common sense would seem to dictate otherwise. As “common sense is an important consideration at all levels of CEQA,” this logical conclusion was improperly disregarded—leading to an insufficient EIR. (*Save the Plastic Bag Coalition v. City of Manhattan Beach* (2011) 52 Cal.4th 155, 175; *County of Inyo, supra*, 71 Cal.App.3d at p. 193.)

When compared to the FEIRs of other airport improvement projects in California, the FEIR’s Project Description is far less informative. With regards to staging of the Project, the FEIR fails to identify which demolition and construction activities (Project Components) will overlap and how long each will last. (FEIR, p. 2-25–2-26.) Rather, it merely provides that the “stages are general in nature” and can be modified upon the Project’s approval, when “detailed design of the project component occurs.” (*Ibid.*) In comparison, the EIR prepared for the expansion of the Los Angeles International Airport (LAX) provides a detailed staging breakdown that includes graphics showing duration and component overlap, along with construction haul routes. (LAWA Improvement Project DEIR, Figures 2-28, 2-29.) The FEIR for the proposed improvements at OAK, however, fails to provide anything nearly as thorough.

More specifically, the public remains in the dark as to the actual scope of what the Project will ultimately develop. The FEIR continues to only provide a vague, fleeting summary of the Project’s various components and construction activities, even though, upon closer review, development, and operation will entail nearly 40 different components that span six stages of extensive demolition and construction. For example, the Project will develop larger parking lots that will now accommodate over 2,000 new parking spaces above and beyond the airport’s current capacity, yet the FEIR provides no specifics about changes to inner circulation routes or where parking will be redirected during construction. (FEIR, pp. 2-20, 2-23.) Moreover, the Project will demolish existing terminal buildings and cargo and ancillary facilities and replace them with buildings nearly twice their size, but the FEIR still fails to provide any specific details about basic building details, such as site plans with massing and elevations. (See, e.g., FEIR, pp. 2-17, 2-23–2-24.) Even more troublesome, the public still knows nothing about the siting, size, maps, appearance, cross-sections, elevations, or illustrative massing of the Project’s brand new, 830,000-square-foot terminal, which will feature upwards of 25 new aircraft gates. (FEIR, p. 2-17.) How can the public meaningfully evaluate and balance the Project’s purported benefits against its environmental costs if they have no idea what will ultimately be built? The FEIR’s failure

to include any of these details—apart from a few cursory sentences—“does not meet [CEQA’s] requirement of a stable or finite proposed project [description]” and instead only continues to thwart informed public participation and decisionmaking. (*Stopthemillenniumhollywood.com*, *supra*, 39 Cal.App.5th at p. 18.)

III. The FEIR Still Fails to Support its Analyses of the Project’s Reasonably Foreseeable and Potentially Significant Adverse Environmental Impacts with Substantial Evidence.

The purpose of an EIR is to provide “detail sufficient to enable those who did not participate in its preparation to understand and to consider meaningfully the issues raised by the proposed project.” (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1197.) CEQA requires that an EIR be detailed, complete, and reflect a good faith effort at full disclosure regarding a project’s significant environmental effects to inform the public and allow decisionmakers to make intelligent, informed decisions when considering whether to approve a proposed project. (CEQA Guidelines, § 15151.) Consistent with this requirement, the information regarding a project’s impacts must be “painstakingly ferreted out.” (*Environmental Planning and Info. Council of Western El Dorado County v. County of El Dorado* (1982) 131 Cal.App.3d 350, 357.)

The FEIR still fails to substantiate many of its conclusions regarding the Project’s impacts to air quality and GHG emissions, noise, and transportation/traffic. The dearth of any mitigation measures in the FEIR’s MMRP, particularly for significant and unavoidable impacts to air quality/GHGs, noise, and traffic, is even more troublesome. The FEIR inexplicably lacks any substantial evidence to justify its exclusion of *any* mitigation measures, such as those the City and its experts proposed in their comments on the DEIR. For these reasons, the Port should revise and recirculate the EIR to incorporate binding mitigation measures that will ensure the Project’s potentially significant and unavoidable impacts do not harm vulnerable neighboring communities, such as the residents of Alameda.

A. The FEIR still fails to adequately analyze and mitigate for the Project’s significant air quality and GHG impacts.

In addition to the comments herein, the City submits the report prepared by air quality expert Ms. Erin Sheehy, LEED AP and President of Environmental Compliance Solutions, which is included as Attachment A hereto. The City supplements Ms. Sheehy’s comments regarding the FEIR’s ongoing inadequacies in analyzing air quality and GHG impacts with the following comments.

1. The FEIR fails to produce any substantial evidence to support its methodology for analyzing impacts associated with the Project’s air quality and GHG emissions.

The City’s comments on the DEIR noted the document’s significant shortcomings in analyzing and mitigating for the Project’s anticipated air quality and GHG impacts. In particular, the City noted that Section 3.3.2.3 and the Air Quality Protocol in Appendix F failed to identify any significant emissions related to construction, despite the magnitude of the Project and the many stages of significant construction activities that will span across 5+ years. Instead of providing additional data about on and off-site construction emissions and their ensuing impacts, the Port simply responded that the EIR “discussed construction emissions,” even though no such analysis exists. (FEIR, Appendix P, p. P-233 [Response 18].)

We also remain troubled by the FEIR’s conclusion that, although overall particulate matter (PM) emissions may increase under the proposed Project scenarios, those increases would occur due to forecasted market demand, regardless of whether the Project moves forward. In arriving at this assumption, the FEIR fails to take a meaningful look at the cumulative air quality and GHG impacts associated with overlapping Project construction and operation, as well as the long-term potential for the Project’s additional gates to enable more growth and passenger enplanements (and in turn, additional emissions) beyond the numbers predicted in the EIR.

We are also concerned about conflicting data and conclusions presented in the FEIR. For example, the Human Health Risk Assessment (HHRA) in Appendix E identifies diesel particulate matter as the primary driver of cancer and chronic non-cancer health risks. Despite this concession, the FEIR somehow concludes—without any further explanation—that expanding the airport will result in a significant *reduction* in cancer-causing emissions and cancer cases in surrounding residential neighborhoods. How can this be so? This conclusion is even more concerning given that the FEIR confusingly concludes that the net change in existing operational emissions will not exceed the thresholds of significance prescribed by BAAQMD, despite the presented data suggesting otherwise. In particular, FEIR Tables 3.3-11 and 3.3-12 describe the net change in existing operational emissions compared to those anticipated in the years 2028 and 2038. Both tables specify that, in the year 2019, operational PM_{2.5} emissions equated to 58.2 lbs/day. By 2028, those emissions will increase to 73.8 lbs/day. (FEIR, p. 3.3-30 [Table 3.3-11].) By 2038, PM_{2.5} emissions will increase to 85.5 lbs/day. (FEIR, p. 3.3-31 [Table 3.3-12].) The FEIR specifies that the threshold of significance for PM_{2.5} is 54 lbs/day, but then confusingly and inexplicably concludes that anticipated PM_{2.5} emissions in 2028 (i.e., 73.8 lbs/day) and 2038 (i.e., 85.5 lbs/day) will still be “below” that threshold. (FEIR, pp. 3.3-30, 3.3-31.) How can the FEIR make this conclusion when 73.8 and 85.5 lbs of PM_{2.5} per day unquestionably exceed the 54 lbs/day threshold? To this end, how can the FEIR conclude that the increase in these cancer-causing emissions will yield a significant *reduction* in cancer cases in surrounding neighborhoods? The EIR must be recirculated to clarify these troubling discrepancies.

Finally, the projected significant increases in airport operations would also be expected to result in a significant increase in ground support equipment (GSE) and other airport

engines and equipment. However, emissions from GSE continue to be missing from the FEIR’s air quality and GHG analyses. In fact, the air quality analysis still fails to include any quantification or analysis of impacts associated with offsite truck trips related to Project construction and hauling. (See, e.g., FEIR, Appendix F, pp. 44, 77-78, 112-113, 145, 212, 253-254, 295-296, 336-337, 414-415.) The potential air quality, GHG, and health risk impacts of the Project are therefore understated and not supported by evidence or explanation, in turn depriving the public of an opportunity to meaningfully consider these risks and propose viable mitigation measures in response thereto.

2. The FEIR still inexplicably fails to impose any mitigation measures to address the Project’s significant and unavoidable air quality and GHG impacts, much less present any substantial evidence to explain why such measures are infeasible.

The FEIR’s unsupported conclusions about the Project’s air quality and GHG impacts are compounded by the absence of *any* mitigation measures, despite conceding that those impacts will be significant and unavoidable. (See FEIR, pp. ES-5–ES-6.) The City and other commenters, including BAAQMP, proposed numerous feasible mitigation measures that the Port could have easily incorporated into the FEIR’s MMRP. The FEIR fails to explain why those measures could not be implemented; therefore, their inexplicable absence is deeply concerning. (*King & Gardiner Farms, LLC v. County of Kern* (2020) 45 Cal.App.5th 814, 869 [failure to disclose specific information about mitigation measures violates CEQA].)

For example, the FEIR lists BAAQMD’s BMPs for reducing construction-related emissions, yet fails to mention whether the Project will actually have to comply with them. These measures were not included in the MMRP or integrated into the Project’s features. As such, the public has no way of knowing whether these measures will actually be implemented and followed, and in turn, whether air quality emissions from the 5+ years of construction will be abated to the greatest extent feasible. The FEIR’s failure to prescribe any performance criteria or binding language explicitly violates CEQA. (*Federation of Hillside and Canyon Associations v. City of Los Angeles* (2000) 83 Cal.App.4th 1252, 1260–1261 [“the agency ‘shall provide that measures to mitigate or avoid significant effects on the environment are fully enforceable through permit conditions, agreements, or other measures...The purpose of these requirements is to ensure that feasible mitigation measures will actually be implemented as a condition of development, and not merely adopted and then neglected or disregarded.”]; *CBE, supra*, 184 Cal.App.4th at pp 92–94 [failure to impose mitigation measures with “criteria for success” and performance standards violated CEQA].)

The measures that the FEIR and MMRP do purport to impose are similarly inadequate under CEQA. The FEIR indicates that the Port will continue to provide electrical infrastructure throughout the new terminal and cargo area and will “commit to providing environmental awareness training” to onsite workers, but is otherwise devoid of any criteria for measuring the effectiveness of these efforts. (See *Friant Ranch, supra*, 6

Cal.5th at p. 523; see also CEQA Guidelines, § 15126.4, subd. (a)(1)(B).) For GHG emissions, the FEIR similarly, albeit improperly, relies on various “initiatives” to conclude any ensuing impacts will be mitigated to less than significant levels. (See, e.g., FEIR, Appendix P, p. P-233 [Global Response G].) Not only does the FEIR omit these “initiatives” from the MMRP, it also fails to describe what these initiatives actually entail, how the Project will specifically implement them, or how the Port will enforce them. (*Ibid.*) Without an enforcement mechanism or any metric for success, how can the public be sure that the Project’s significant GHG emissions will be mitigated to the greatest extent feasible? (*Lotus v. Dept. of Transportation* (2014) 223 Cal.App.4th 645, 655–657 [compressing analysis of impacts and mitigation measures into a single issue disregards the requirements of CEQA; simply stating there will be no significant impacts because the project incorporates certain construction techniques is neither adequate nor permissible]; see also *San Joaquin Raptor v. Merced*, *supra*, 149 Cal.App.4th at pp. 663–664 [“a mitigation measure cannot be used as a device to avoid disclosing project impacts”].)

For these reasons, the City remains deeply concerned about the FEIR’s failure to impose any tangible mitigation measures to mitigate the Project’s significant and unavoidable air quality and GHG impacts. In the absence of any such measures, the EIR remains legally inadequate.

B. The FEIR still fails to adequately analyze and mitigate the Project’s reasonably foreseeable noise impacts.

In addition to the comments herein, the City submits the report prepared by airport noise expert Mr. John (“Jack”) Freytag, PE, INCE Bd. Certified of Freytag & Associates, LLC, which is included as Attachment B hereto. The City supplements Mr. Freytag’s comments regarding the FEIR’s ongoing inadequacies in analyzing the Project’s noise impacts with the following comments.

1. The FEIR still fails to analyze the cumulative noise effects associated with Project construction and ongoing and future increased aviation activities—its rationale for not doing so is unfounded.

As the City noted in its comments on the DEIR, noise from the OAK Airport greatly impacts Alameda citizens’ quality of life. Construction and operation of the Project will only exacerbate those impacts. The City therefore implored the Port to analyze the reasonably foreseeable cumulative impacts associated with combined construction and aircraft noise during the anticipated 5–10-year construction timeline. CEQA is clear: an informationally adequate EIR must include an analysis of potential cumulative noise impacts. (*Gray v. County of Madera* (2008) 167 Cal.App.4th 1099, 1123 [holding that EIR violated CEQA by failing to analyze whether cumulative noise impacts would be significant when certain increases are added to the existing noise level].)

Nevertheless, the FEIR inexplicably declines to do so, instead stating only that “[t]he impact thresholds for construction noise and aircraft noise are not assessed using the same metric. Community Noise Equivalent Level (CNEL) and Hourly Equivalent Sound

Level (LEQ) represent distinct thresholds for significant impact [*sic*].” (FEIR, Appendix P, p. P-232 [Response 15].) This evasive response, however, fails to meaningfully explain how these differing thresholds prevent the Port from conducting a cumulative noise analysis, particularly when other cumulative noise thresholds remain available. (*Berkeley Keep Jets Over the Bay Committee v. Board of Port Com’rs* (2001) 91 Cal.App.4th 1344, 1371 (*Berkeley Jets*) [conclusory responses to comments violate CEQA].)

For example, the OAK Master Plan contains “cumulative metrics” for assessing community response to noise based on the total number of events occurring at given hours of the day, including Leq, CNEL, and DNL. (2006 Oakland International Airport Master Plan, pp. 85–86.) Why couldn’t the Port use one of these metrics to analyze cumulative noise effects of Project construction and operation? Under CEQA, there is “no authority that exempts an agency from complying with the law, environmental or otherwise, merely because the agency’s task may be too difficult.” (*Laurel Heights I, supra*, 47 Cal.3d at p. 399.) Instead, the Port was required to “use its best effort to find out and disclose all that it reasonable [could]” about the Project’s cumulative noise impacts. (*Citizens to Preserve the Ojai v. v. County of Ventura* (1985) 176 Cal.App.3d 421, 431.)

The FEIR’s isolated analyses of the Project’s potential noise impacts understate the real-world conditions of those residents who live by the airport. Actual noise monitoring data could provide a more accurate picture of the total noise environment and how additional aircraft operations would affect already impacted communities, such as Alameda’s Bay Farm Island community, which neighbors the airport. Moreover, the City still believes that the Port should revise the EIR to analyze the reasonably foreseeable cumulative impacts associated with the Project’s simultaneous construction and aircraft noises, as their combined impact could adversely affect nearby communities. As the City’s noise expert explained in his comments on the DEIR and those attached hereto (see Attachment B), this analysis can likely be conducted notwithstanding the differing thresholds of significance by relying on alternative, comparable noise metrics. Accordingly, there is no reason why such a critical analysis cannot be conducted to ensure the public is adequately informed and all feasible mitigations are imposed.

2. The FEIR either inexplicably fails to mitigate or improperly defers mitigation of the Project’s reasonably foreseeable noise impacts.

The City also remains concerned that the FEIR does not impose any tangible mitigation measures to ensure noise from Project construction and operation will be mitigated to the greatest extent feasible. The City is troubled that the few measures that are included in the MMRP simply defer analysis of and mitigation for these inevitable impacts. The City’s comments on the DEIR proposed numerous noise reduction measures, and thus re-encourages the Port to incorporate them into the FEIR’s MMRP.

One noise “mitigation measure,” in particular, explains:

“Enforcement mechanism [*sic*] is completed via continuous noise monitoring during construction. This mitigation measure in Section 3.11.3.1 of the EIR has been revised to include a statement that *baseline sound levels will be monitored at the compliance locations prior to the start of construction to establish a baseline to compare against* for the 5 decibel (dB) increase threshold. *At this time the construction information is preliminary, and the actual construction approach may be different than what is assumed.* For this reason, the EIR states that *the construction contractor would be required to provide specific details as to how they will ensure impact thresholds are not exceeded.*”

(FEIR, Appendix P, p. P-231 [Response #13, italics added].) The emphasized text presents cause for concern. In particular, the measure calls for monitoring noise levels ahead of time to “establish a baseline to compare against.” But it is the EIR’s responsibility, however, to collect data and establish those baselines *ahead of time* so that noise impacts can be adequately analyzed and mitigated for *before* versus *after* Project approval. (See *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 306 [deferring environmental assessment to a future date “run[s] counter to that policy of CEQA which requires environmental review at the earliest feasible stage in the planning process” because “[e]nvironmental problems should be considered at a point in the planning process where genuine flexibility remains”].)

Moreover, this measure troublingly admits that “construction information is preliminary, and the actual construction approach may be different than what is assumed.” If construction information is preliminary and subject to change, how can the public be sure that those future construction activities will not produce significant unanalyzed and unmitigated noise impacts? This “mitigation measure” should not be used as a “device to avoid disclosing [actual] Project impacts.” (*San Joaquin Raptor v. Merced, supra*, 149 Cal.App.4th at pp. 663–664.)

Finally, the measure tasks the unidentified construction contractor with providing “specific details as to how they will ensure impact thresholds are not exceeded.” CEQA, however, expressly delegates the responsibility to mitigate potential impacts to *the Port*, not the contractor. (*California Clean Energy Committee v. City of Woodland* (2014) 225 Cal.App.4th 173, 194 [under CEQA, a public agency cannot charge a developer with the responsibility to study the impact of a proposed project]; see *Sundstrom, supra*, 202 Cal.App.3d at p. 306 [lead agency cannot delegate legal responsibility to assess and mitigate environmental impacts by directing project applicant or proponent to conduct future studies and craft corresponding mitigation]; *CBE, supra*, 184 Cal.App.4th at pp. 92–93 [“the development of mitigation measures, as envisioned by CEQA, is not meant to be a ‘bilateral negotiation’ between a project proponent and the lead agency after project approval”].) Accordingly, the FEIR’s lone mitigation measure for the Project’s inevitable noise impacts remains fundamentally inadequate because it improperly defers analysis of and mitigation for future construction noise impacts.

Given this, the City once again encourages the Port to adopt those measures proposed by the City, Mr. Freytag, and other commenters, to ensure local residents are not subject to years of highly disturbing noise from Project construction and operation.

C. The FEIR still fails to adequately analyze or mitigate the Project's transportation and parking impacts.

The City reiterates its concerns about the Project's reasonably foreseeable impacts to local traffic and VMT. As the lead agency, the Port's methodology for evaluating the Project's transportation impacts must be "sufficiently credible" and supported by facts and analysis rather than bare conclusions. (*Laurel Heights I, supra*, 47 Cal.3d at p. 409; CEQA Guidelines, § 15064.3, subd. (b)(2).) In crafting a methodology to analyze the Project's potential VMT impacts, the FEIR's criteria must promote "the reduction of greenhouse gas emissions, the development of multimodal transportation networks, and a diversity of land uses." (Pub. Resources Code, § 21099, subd. (b)(1).) If, based on these criteria, the Port finds transportation impacts will be "significant," the FEIR must identify Project alternatives that would mitigate those impacts. (Pub. Resources Code, § 21002.1, subd. (a).) Despite the numerous measures we recommended to help ease the Project's reasonably foreseeable traffic and VMT impacts, we are disappointed that the FEIR declined to include any of them. We therefore implore the Port to not only reconsider and reevaluate the Project's potentially significant transportation impacts, but also adopt readily available measures to ensure Project construction and operation does not adversely affect local traffic in and around the airport.

1. The FEIR still lacks substantial evidence to support its conclusion that the Project will not have significant traffic impacts.

The FEIR projects a drastic increase in overall VMT in 2038 when compared against its 2019 baseline—i.e., from 749,445 VMT to 1,264,780 VMT. (FEIR, Table 3.13-15.) The FEIR also projects enplanements to rise by 83%—i.e., from 16,516 enplanements in 2019 to 30,273 in 2038. (*Ibid.*) Despite these estimates, the FEIR, however, concludes that the Project would not have significant transportation/traffic impacts, in part due its chosen methodology. In particular, the FEIR utilized a VMT per passenger (VMT/Enplanement) ratio-based approach to set a significance threshold of "no increase in VMT per passenger" when compared to existing conditions. (FEIR, Appendix N, p. 1.) Under this approach, VMT per enplanement between 2019 and 2038 purportedly decreases from 46.4 to 42.5 VMT/Enplanement. (FEIR, Table 3.13-15.) The dubious ratio predicted by the FEIR's selected methodology, however, is underscored by several flaws.

In particular, the FEIR reasons that this ratio-based method is appropriate given the absence of any comparable, previously established significance criteria for VMT. Therefore, the FEIR adopts the approach utilized in the Norman Y. Mineta San José International Airport (SJC) Master Plan Programmatic EIR (PEIR) along with various thresholds suggested by OPR's Technical Advisory on Evaluating Transportation Impacts. (FEIR, Appendix P, p. P-234.) In comparing the Proposed Project to that

analyzed in the SJC Master Plan PEIR, however, the FEIR omits several crucial details. First, the FEIR fails to acknowledge that SJC’s adopted approach was not only based on OPR’s guidance, but also based on a policy prescribed by the City of San Jose’s Transportation Analysis, which provides specific VMT screening thresholds and ratios for projects within the San Jose area. The OAK airport, however, is located in the City of Oakland and thus must conform to applicable local plans, such as the Oakland General Plan and its Land Use and Transportation Element. By relying solely on the methodology adopted in the SJC PEIR as its only source of authority, the FEIR erroneously invoked VMT metrics that were adopted to meet an entirely different General Plan’s objectives for an entirely different Project in an entirely different City.

In doing so, the FEIR failed to consider the goals of those plans that *do* govern the Project. (See Appendix N.) The FEIR concedes that Plan Bay Area 2050 recommends reducing VMT per capita and per employee—a threshold that OPR’s Advisory and that ABAG³ also recommend. (FEIR, Appendix N, p. 45; OPR Technical Advisory, pp. 15–16.) OPR describes this threshold as achieving a 15% reduction in VMT from the baseline for either VMT per employee or per capita, respectively. Essentially, a project’s VMT must be reduced by at least 15% from baseline figures to otherwise avoid significant transportation impacts. LAX adopted a similar approach in the EIR it prepared for its Airfield & Terminal Modernization Project—a document we recommended the Port rely on when considering appropriate thresholds to use. Nevertheless, the FEIR failed to address the ATMP EIR entirely. Rather, it decided—rather conclusively—that SJC’s approach worked best, without considering the alternative methodologies, such as those prescribed by Oakland’s or Alameda County’s local plans. Conversely, the FEIR could have concurrently analyzed total VMT, rather than VMT per enplanement, to provide a more comprehensive measure of actual traffic impacts on local communities and infrastructure. For these reasons, the Project’s VMT impacts clearly remain understated; therefore, the FEIR must be revised to more accurately reflect them.

The FEIR also fails to analyze the Project’s consistency with any of the City of Alameda’s transportation plans, including the Alameda 2040 General Plan Mobility Element (2021), Vision Zero Action Plan (2021), and Transportation Choices Plan (2018). While the Port reasons that the Project is solely located in the City of Oakland and therefore need not be consistent with Alameda’s plans and policies, the City of Alameda still falls within the airport’s Area of Influence, which is why many of its land use plans’ policies and objectives are incorporated into the OAK Airport Land Use Compatibility Plan. (ALUCP). By virtue of the City’s proximity to OAK, the Project is still expected to generate additional vehicular traffic through Alameda’s streets—which are governed by the City’s General Plan (along with several other transportation plans and policies). As noted in a prior comment letter,

³ See *Quick Guide for VMT Policy Adoption* (Apr. 25, 2024) Association of Bay Area Governments, available at: https://abag.ca.gov/sites/default/files/documents/2024-04/VMT_Policy_TA_Policy_Adoption_Quick_Guide_04-25-2024.pdf.

the transportation analysis must “comport with adopted programs addressing circulation systems, including transit affected by the project.” (FEIR, Appendix P, p. P-130.)

The FEIR further fails to analyze multiple environmental issues that could stem from the Upland (formerly Maitland) Lot, including the increased number of parking spaces it will produce. In its responses to the City’s comments raising these concerns, the FEIR contends that the VMT analysis evaluated the effects of this proposed lot by calculating trip length to these lots into trip length changes to find that VMT would decline for those trips originating from Alameda due to its closer proximity to the City versus the proximity of existing lots. The FEIR also claims that it analyzed the effects of this lot through a level of service assessment (LOS) at key intersections—which the FEIR admits was done only for informational purposes, as this analysis is no longer valid under CEQA. Because the FEIR considers the Project’s overall VMT impact to be less than significant, it concluded no further analysis was required. (FEIR, Appendix P, p. P-235.) However, as discussed above, this analysis is too conclusory. The Project’s VMT methodology is flawed, and the traffic impacts stemming from increased vehicular traffic to and from this lot need to be further analyzed so that the City can ascertain how they will affect the City’s circulation network and infrastructure.

2. The FEIR improperly ignores feasible mitigation measures that would reduce the Project’s inevitable VMT and transportation impacts.

As stated above, the Port relied on faulty methodology in concluding that the Project would not result in significant VMT impacts. In doing so, it was also able to conclude that mitigation measures for several potential transportation impacts raised in previous comment letters were unnecessary and did not need to be evaluated. (FEIR, Appendix P, p. P-234.) These include the implementation of a Transportation Demand Management (TDM) program to further reduce VMT and encourage transit use. Further, the FEIR fails to commit itself to any mitigation measures that would reduce the impacts of construction traffic on Alameda’s or other jurisdictions’ surrounding roadways.

A TDM program is designed to “encourage alternative modes of transportation and reduce reliance on single-occupancy vehicles.” (FEIR, Appendix P, p. P-131.) Because the FEIR finds that the Project will not have significant transportation impacts, it declines to implement one. Instead, the FEIR indicates that it will assess TDM strategies in the future when the Port starts to design the Project and would “incorporate measures as feasible.” (FEIR, Appendix P, p. P-61, 2053.) This means that the Port intends to first begin on the Project and then subsequently determine whether its impacts are truly significant enough to warrant the implementation of a TDM program. This precludes the public from having any input in the matter—a clear violation of CEQA’s information disclosure requirements. (CEQA Guidelines, § 15201 [“Public participation is an essential part of the CEQA process”]; § 15151 [“An EIR should. . .provide decisionmakers with information [enabling] them to make a decision”].)

As discussed above, the Port also intends to apply this approach to the impact of construction traffic on Alameda’s roadways as well. Though the DEIR must identify all reasonably foreseeable direct and indirect impacts related to construction and mitigate them to the extent feasible, the Port fails to do so. (Rather, it defers the development of a construction traffic management plan until “detailed construction activities are planned.” (FEIR, Appendix P, p. P-247.)

Finally, the FEIR still fails to sufficiently analyze and mitigate the reasonably foreseeable direct and indirect impacts that 5+ years of Project construction and overlapping operation will have on traffic within the surrounding area. Pub. Resources Code, § 21002.1, subd. (a); § 21100, subd. (b)(3).) Rather, the FEIR defers creation of the construction management plan that would purportedly reduce these impacts to some unknown future time when “detailed construction activities are planned” after the EIR is certified. (FEIR, Appendix P, p. P-247.) The Port further concludes that the Project will not double off-site construction traffic, but provides no rationale for why this decision was reached. (FEIR, Appendix P, p. P-232, 484.) As with the FEIR’s impermissible deferral of the air quality/GHG and noise mitigation measures described above, the deferred creation of a traffic mitigation plan, coupled with the MMRP’s failure to prescribe any performance criteria for that plan, is inadequate under CEQA. (See *Lotus v. Dept. of Transportation* (2014) 223 Cal.App.4th 645, 655–657 [the failure to discuss the significance of an environmental impact apart from proposed avoidance, minimization, or mitigation measures, fails to consider whether other possible mitigation measures would be more effective]; *San Joaquin Raptor v. Merced*, *supra*, 149 Cal.App.4th 670 [the success or failure of mitigation that largely depends on management plans that have not yet been formulated or subject to analysis and review within the EIR violates CEQA].) Instead of providing this information up front, as it is required to do, the FEIR implores the public to take its word that the Port will eventually plan and design activities so that construction traffic will not pose a significant impact on local streets. CEQA requires more than these unsubstantiated bare conclusions. (*CBE*, *supra*, 184 Cal.App.4th at p. 85 [an EIR’s conclusions cannot simply call for “blind faith in vague subjective characterizations”].)

As the Port has not currently analyzed the Project’s construction impacts on traffic, it is unclear whether or not these impacts will be significant. To this end, because the EIR’s overly optimistic enplanement projections have improperly altered its VMT impact calculations, the FEIR must be revised to provide a more realistic threshold so the Project’s impacts can be properly determined and allow for sufficient mitigation measures to be implemented. The Port must therefore resolve this issue and appropriately adopt mitigation measures to reduce any potential significant impacts *before* it can certify the FEIR. Otherwise, the FEIR remains deficient, as it fails to contain any mitigation measures that address the Project’s potentially significant impacts on traffic and VMT.

IV. The FEIR’s Analysis of Project Alternatives Still Violates CEQA.

The City is disappointed that the FEIR still fails to adequately analyze a reasonable range of Project alternatives, including an “environmentally superior” alternative. Although our

comments on the DEIR apprised the Port of this critically absent analysis, the FEIR inexplicably fails to ameliorate this shortcoming, much less consider any viable alternatives that could reduce the Project’s otherwise significant impacts. As a result, the FEIR’s conclusory discussion of alternatives remains so inadequate that it continues to preclude informed public participation and decisionmaking.

A. The FEIR still fails to analyze an adequate range of Project alternatives, much less explain its rationale for failing to do so.

The FEIR still violates CEQA’s statutory requirement to describe and analyze a reasonable range of Project alternatives that would feasibly attain most of the Project’s basic objectives but that would avoid or substantially lessen any of the Project’s significant effects. (CEQA Guidelines, §§ 15126.6, subd. (a), 15002, subd. (a)(3); Pub. Resources Code, § 21002.) Under CEQA, this discussion must “focus on alternatives capable of eliminating any significant adverse environmental effects or reducing them to a level of insignificance, even if these alternatives would impede to some degree the attainment of the project objectives or would be more costly.” (*San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 735 (*San Joaquin Raptor/Wildlife v. Stanislaus*) [quoting CEQA Guidelines, § 15126, subd. (d)(3)].)

The City’s comments on the DEIR explained that three factors the EIR used to evaluate eight and ultimately eliminate six potential Project alternatives were too narrow and, as a result, prematurely excluded otherwise feasible, less-environmentally impactful Project alternatives. (See *North Coast Rivers Alliance v. Kawamura* (2015) 243 Cal.App.4th 647, 688 [project objectives cannot be artificially narrow or so restrictively construed that they preclude meaningful consideration of alternatives].) The FEIR’s responses fail to meaningfully address these comments, and instead simply refer the reader to Global Response I: Alternatives. The FEIR’s Global Response, however, is equally silent on how the EIR selected these factors and applied them so as to eliminate environmentally superior alternatives. If anything, the FEIR still continues to rely on subjective criteria, such as constructability, cost, or increases in passenger travel times. These factors, alone, however, cannot be used to completely forego analysis of alternatives that are otherwise feasible or environmentally superior to the Proposed Project. (CEQA Guidelines, § 15126, subd. (d)(3); see *Preservation Action Council v. City of San Jose* (2006) 141 Cal.App.4th 1336, 1354 [“A potential alternative should not be excluded from consideration merely because it ‘would impede to some degree the attainment of the project objectives, or would be more costly’”].) This is because it is “virtually a given that the alternatives to a project will not attain all of the project’s objectives.” (*Watsonville Pilots Assn. v. City of Watsonville* (2010) 183 Cal.App.4th 1059, 1087 (*Watsonville*)).

Accordingly, the FEIR was required to meaningfully analyze the identified environmentally feasible alternatives rather than prematurely exclude them from consideration. The EIR’s use of artificially narrow and subjective screening criteria effectively defined all competing reasonable alternatives out of consideration, thus rendering the alternatives analysis “an

empty formality.” (*We Advocate Through Environmental Review v. County of Siskiyou* (2022) 78 Cal.App.5th 683, 692 (*WATER*).)

B. The FEIR inexplicably fails to analyze other viable Project alternatives, including an “environmentally superior” or “reduced-intensity” Project alternative.

The FEIR remains legally inadequate because it fails to identify and analyze an “environmentally superior” alternative *other than* the Proposed Project. More specifically, under CEQA, an EIR “*shall* also identify an environmentally superior alternative among other alternatives,” particularly where, as here, the only other environmentally superior alternative is the “no project” alternative. (CEQA Guidelines, § 15126.6, subd. (e)(2).) Despite this explicit mandate, the FEIR still selects the Proposed Project as the “environmentally superior” alternative, while, once again, declining to analyze the two “environmental avoidance alternatives”—(1) Retain Terminal 1 Ticketing and Baggage Claim Building (M101) and (2) Use of Hardstands with No New Terminal—even though both alternatives would yield impacts that are the same or less than those of the Proposed Project. (FEIR, p. 4-7.) The EIR reasons that neither alternative would meet the Project’s objectives of providing new and modernized facilities that are sized to accommodate market-based passenger demand (Factor 1) and both would have adverse effects on levels of service provided to travelers (Factor 2).

CEQA does not permit the Port “to omit any discussion, analysis, or even mention of *any* alternatives that feasibly might reduce the environmental impact of a project on the *unanalyzed theory* that such an alternative *might not* prove to be environmentally superior to the project.” (*Habitat & Watershed Caretakers, supra*, 213 Cal.App.4th at p. 1305.) Instead, “[e]nvironmentally superior alternatives *must* be examined whether or not they would impede to some degree the attainment of project objectives.” (*Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 737, emphasis added.) Reliance on the “no project alternative” or the proposed Project itself does not satisfy the Port’s obligation to consider alternatives that would mitigate or avoid significant impacts. (See, e.g., *Watsonville, supra*, 183 Cal.App.4th at p. 1089 [rejecting respondent agency’s argument that EIR’s consideration of a “no-project alternative” constituted sufficient consideration of a reduced development alternative].) This is because “the purpose of an alternatives analysis is to allow the decisionmaker to determine whether there is an environmentally superior alternative that will meet most of the project’s objectives, [therefore] the key to the selection of the range of alternatives is to identify alternatives that meet most of the project’s objectives but have a reduced level of environmental impacts.” (*Ibid.*) Here, however, because the EIR failed to discuss either of these environmentally superior alternatives in any concrete detail, neither the City nor the public and decisionmakers were “provided with any information about the effect that such alternative might have on” various areas of impact, such as air quality, traffic, and noise. (*Habitat & Watershed Caretakers, supra*, 213 Cal.App.4th at p. 1304.)

Ms. Colleen Liang
November 20, 2024

****INITIAL DRAFT – SUBJECT TO CHANGE****

The continued absence of this information in the FEIR, thus violates CEQA and renders it legally inadequate as an informational document.

VI. Conclusion

The City appreciates the opportunity to submit these comments on this important project and respectfully requests that the Port meaningfully consider the issues raised herein and in the supporting technical letters before rendering a final decision on the EIR and Project. The City further requests that a revised EIR be recirculated to correct its many outstanding deficiencies, and that the Port be inclusive in the public process and allow reasonable time for the public to weigh in on this complex subject matter.

We look forward to collaborating with the Port to ensure that community concerns about the Project are fully addressed.

Please contact Allen Tai at atai@alamedaca.gov with any questions or if you would like to set up a meeting to discuss the City's concerns. Please also provide Mr. Tai with copies of all future public notices issued for the Project, including all notices issued pursuant to CEQA and the Ralph M. Brown Act.

Sincerely,

Marilyn Ezzy Ashcraft,
Mayor of Alameda

Cc: Alameda City Councilmembers
Jennifer Ott, City Manager
Yibin Shen, Alameda City Attorney
Cara Silver, Alameda City Attorney
Allen Tai, Alameda Planning, Building and Transportation Director
Andrea K. Leisy, Esq., Remy Moose Manley, LLP
Bridget K. McDonald, Esq., Remy Moose Manley, LLP

Encl.

Attachment A: Letter from Erin Sheehy, Environmental Compliance Solutions
Attachment B: Letter from John C. Freytag, P.E., Freytag & Assoc. LLC