



July 19, 2021

Metropolitan Transportation Commission
Attn: Draft Plan/Draft EIR Comments
375 Beale Street, Suite 800
San Francisco, CA 94105
Submitted via email to: info@planbayarea.org & eircomments@bayareametro.gov.

Comments Re: Plan Bay Area 2050 Draft Plan and Draft EIR

These comments on the Draft Plan Bay Area 2050 main document (“Draft Plan”) and on the Draft Environmental Impact Report for Plan Bay Area 2050 (“DEIR”) are respectfully submitted on behalf of the Pacific Merchant Shipping Association. PMSA represents ocean carriers, marine terminal operators, and other stakeholders in the maritime transportation system which operate at California’s public seaports.

Our comments are submitted to make two observations:

PMSA supports the proposed policies in the Draft Plan, including Strategy #EC6, to protect and enhance investment and utilization of key industrial lands and to fund infrastructure improvements for industrial lands.

However, the Draft Plan fails to adequately identify freight industry PPAs and labels maritime industrial lands for conversion to PDAs even though they are designated for Seaport Priority Use under the maritime element of the Regional Transportation Plan. Specifically, the Draft Plan and DEIR mis-designate and mis-identify large swaths of industrial acreage and entirely omit recognition of the regional planning law – the BCDC Seaport Plan - which protects seaport industrial properties. This inconsistency with existing law results in significant and unavoidable negative impacts which are unidentified and unaddressed in the DEIR.

The Draft Plan Policies to Protect and Enhance Key Industrial Lands Are Critical and Important to Protect Long-term Economic Health of the Bay Area

PMSA supports the proposed policies in the Draft Plan, including Strategy #EC6, to protect and enhance investment and utilization of key industrial lands and to fund infrastructure improvements for industrial lands.

The preservation of industrial lands that include seaports and marine terminals, including all of the uplands properties necessary to facilitate the trucking, rail, and warehousing operations which support seaport operations, are critical to the ongoing health of the regional economy. Without ongoing protection of these properties it will be nearly impossible to preserve the Bay Area’s leadership in global trade, and to protect the region’s industrial base from the encroachment of non-compatible land uses which threaten industrial uses, jobs, and benefits.

We support the designation of Priority Production Areas (PPAs) in the Plan Bay Area process. This is an important policy designation and it is imperative that this policy be protected, enhanced, and thoroughly integrated into other components of the Draft Plan. To that end, PPA’s cannot just be a planning afterthought and they should receive specific focus and

protection. PMSA supports the comments submitted by the Port of Oakland on the Draft Plan and Draft EIR which requests that MTC work with industrial stakeholders to preserve core industrial lands. Likewise, PMSA supports the comments of the Port of Oakland with respect to Mitigation Measure AQ-4(a) that PDA's should not be extended into existing industrial areas or placed along current industrial truck routes.

The Draft Plan Fails to Designate PPAs and Actually Misidentifies Industrial Property as PDAs Instead; DEIR Fails to Identify Significant Impacts As a Result of these Omissions

It is not enough for the Draft Plan to adopt a policy of protecting industrial properties for such protections to be effective. It is also imperative that the actual designation of PPAs be clear, unambiguous, and significant. The Draft Plan has not adequately designated port industrial and transportation related PPAs, and this under-designation leaves industrial properties vulnerable.

Furthermore, the Draft Plan actually does the opposite of protecting industrial properties when it mistakenly identifies or shows current industrial properties as part of a "Priority Designation Area" for housing and other non-industrial urban development.

PMSA supports the comments submitted by the Port of Oakland on the Draft Plan and Draft EIR which requests that MTC work with industrial stakeholders to preserve core industrial lands. Likewise, PMSA supports the comments of the Port of Oakland with respect to Mitigation Measure AQ-4(a) that PDA's should not be extended into existing industrial areas or placed along current industrial truck routes.

The DEIR is inadequate because the under-designation of Seaport industrial property as a "PPA" or the mis-designation specifically of Seaport industrial property as a "PDA" is contrary to regional planning law and therefore must be identified as a significant impact.

As the current DEIR fails to include an analysis of whether or not the Draft Plan conforms to the Regional Transportation Plan (see below), it must be corrected such that it identifies the project's inconsistencies with local and regional plans and policies because such inconsistencies constitute significant impacts under CEQA. *Endangered Habitats League, Inc. v. County of Orange* (2005) 131 Cal.App.4th 777.

With respect to under-designation of freight and seaport industrial properties as PPAs, Draft Plan [Map 1.1 ("Plan Bay Area 2050 Growth Geographies")] fails entirely to list any of the current maritime and waterfront properties with seaport operations at the Port of Redwood City, the Port of Richmond, the Port of Benicia, any of the private marine terminal operations of liquid bulk commodity terminals affiliated with petroleum refinery, and only a portion of the operational footprint of the Port of San Francisco. These freight and industrial transportation activities are all either designated as "Seaport Priority Use" under the BDC Bay Plan or by local zoning ordinances and plans or both. *Failure to designate these industrial properties in a manner consistent with local and regional plans is a significant impact under CEQA.*¹

¹ While not Seaport specific, we would also note that the Draft Plan obviously omits other important transportation industrial operations, such as rail freight facilities, including the BNSF yard in the City of Richmond, and air freight facilities, such as those at SFO.

This is especially important with respect to the fact that the BCDC Seaport Plan “constitutes the maritime element of MTC’s Regional Transportation Plan” and because of the direct relationship of the MTC to the existing Bay Plan and its Seaport Plan derivative, must be viewed as a component of “managing the metropolitan transportation system” as explained in the Introduction to the current Seaport Plan (at page 1):

The San Francisco Bay Area Seaport Plan is the product of a cooperative planning effort of the Metropolitan Transportation Commission (MTC) and the San Francisco Bay Conservation and Development Commission (BCDC). The Seaport Plan constitutes the maritime element of MTC’s Regional Transportation Plan, and is incorporated into BCDC’s San Francisco Bay Plan, where it is the basis of the Bay Plan port policies. The MTC uses the Seaport Plan to assist in making project funding decisions and managing the metropolitan transportation system, and BCDC uses the Seaport Plan to help guide its regulatory decisions on permit applications, consistency determinations, and related matters.

The Seaport Plan promotes the following goals:

1. Ensure the continuation of the San Francisco Bay port system as a major world port and contributor to the economic vitality of the San Francisco Bay region;
2. Maintain or improve the environmental quality of San Francisco Bay and its environs;
3. Provide for the efficient use of finite physical and fiscal resources consumed in developing and operating marine terminals through the year 2020;
4. Provide for integrated and improved surface transportation facilities between San Francisco Bay ports and terminals and other regional transportation systems; and
5. Reserve sufficient shoreline areas to accommodate future growth in maritime cargo, thereby minimizing the need for new Bay fill for port development.

To achieve these goals, the Seaport Plan employs land use designations and enforce-able policies that MTC and BCDC use in their funding and regulatory decisions, and that local governments use in their land use and regulatory decisions. Areas determined to be necessary for future port development are designated as *port priority use areas* and are reserved for port -related and other uses that will not impede development of the sites for port purposes. Within port priority use areas, *marine terminals* are identified and are reserved specifically for cargo handling operations. The number of marine terminals (measured by marine terminal berths and amount of land needed for marine terminal use) is derived from an analysis of the Bay Area waterborne cargo demand in 2020 and the capability of existing marine terminals to handle the forecast cargo.

The Draft EIR fails to identify the Draft Plan’s proposal to identify the Howard Terminal at the Port of Oakland as part of a PDA as a Significant Impact, despite such a designation being facially inconsistent with its “Seaport Priority Use” designation in the BCDC Bay Plan. The Howard Terminal designation as a PDA is not only inconsistent with the BCDC Bay Plan as a “Seaport Priority Use” but it also is inconsistent with the related public trust restrictions imposed on the site under state law, the current Land Use Covenants which exist at this property between the state Department of Toxic Substances Control and the Port of Oakland which restrict uses on site to industrial and non-residential activities, the recently adopted West Oakland Community Air Plan policies on separation of industrial and residential activities, and the City of Oakland general plan. *The designation of the Howard Terminal at the Port of Oakland as a “Priority Development Area” is a significant impact under CEQA.*

- Public Trust Restrictions and BCDC Seaport Plan
The Howard Terminal PDA designation is facially inconsistent with both the site restrictions imposed by the Tidelands Trust underlying the property and the BCDC Seaport Plan restrictions overlaying the property. Without any future approval by the State Lands Commission, required by recently adopted statutes specific to this property for development of housing, the Howard Terminal Project remains a location where a PDA designation conflicts with public trust restrictions under current law. Moreover and consistently, the PDA designation conflicts with the San Francisco Bay Plan and Seaport Plan land use policies which identify the Howard Terminal as a Priority Seaport Use area. These conflicts are Significant Impacts under CEQA.

While there is a project application pending at the City of Oakland for Howard Terminal, the presence of an application by a private developer or the possibility that existing laws may change in the future is not the CEQA standard for this analysis. The point of an EIR’s disclosure of significant impacts with respect to land use conflicts is to identify the conflicts which exist, not to speculate that it may be removed at some point in the future. Reference to the existing plans and statutes makes it clear to policymakers that a PDA designation for Howard Terminal is a facial and unavoidable conflict with the existing law, and the identification of these as significant impacts is necessary in order to adequately provide the disclosures required under CEQA.

- Department of Toxic Substances Control Land Use Covenant
The Howard Terminal PDA designation is facially inconsistent with the site restrictions which are imposed through a Land Use Covenant (LUC) agreed to by the Port of Oakland and the state Department of Toxic Substances Control (DTSC). The hallmark of a PDA is that it is an area which the Draft Plan identifies as a potential location for residential in-fill development. However, the LUC which governs all future activities at Howard Terminal explicitly prohibits the utilization of the site for housing and other related activities, including schools and day care facilities. A copy of the LUC for the Howard Terminal location can be found at:
https://www.envirostor.dtsc.ca.gov/public/profile_report?global_id=01440006

The conflict of the proposed PDA designation for housing to be built on site is a fundamental conflict with the legal restrictions imposed on this property. This is yet another basis for the PDA designation to be identified as a significant impact under CEQA, but which the DEIR fails to do.

- West Oakland Community Air Plan

The Howard Terminal PDA designation exists in an area located in the West Oakland Community Action Plan (WOCAP)². Adopted in 2019, the WOCAP plan adopted a series of Strategies related to the reduction of impacts on West Oakland residents from air pollution and emissions from Port, transportation, and other industrial sources, including the Howard Terminal PDA property. These Strategies are intended to further buffer and separate industrial and transportation source emissions away from residential areas (WOCAP, pages 6-2 and 6-3):

... These Strategies include lowering emissions from the most important sources in West Oakland, reducing exposure by filtering pollutants, and moving pollution sources away from residents.

Land Use Strategies

The Steering Committee identified air pollution issues closely tied to land use decisions. Nonconforming or incompatible land uses can result in increased exposure, particularly when industrial facilities or truck routes are sited near residences. The City of Oakland adopted the West Oakland Specific Plan to facilitate development in West Oakland. Consistent with the West Oakland Specific Plan, the City plans to identify locations to relocate heavy industrial businesses currently in West Oakland (Strategy #4). Relocating two recycling companies (California Waste Solutions and CASS, Inc.) to the former Oakland Army Base has been the subject of community concerns. Relocating these two firms by the end of 2024, if not sooner, will reduce exposure from both their onsite operations and from trucks traveling and idling on local streets within Zones 1 and 6 (Strategy #1). In addition to relocating polluting businesses out of residential areas, the Steering Committee also identified strategies to relocate truck yards and truck routes away from residences (Strategy #5). Exposure from trucks can be reduced by shifting and enforcing truck routes and hours within the community and enforcing existing restrictions on truck parking, truck idling (Strategy #9). ...

The Howard Terminal PDA designation would do the exact opposite of the WOCAP strategy of moving pollution sources further away from residents and creating larger buffer zones; instead of helping to reduce exposures by limiting interaction between industry and residential uses in West Oakland, the Howard Terminal PDA would instead move high density residential uses into areas immediately contiguous to heavy industry, directly downwind of all Port activities, and in an area already impacted by existing pollution sources.

The DEIR must also identify this land use conflict as significant under CEQA Guideline § 15126.2(a) which requires an “EIR shall also analyze any significant environmental effects the project might cause by bringing development and people into the area affected.” This provision requires that the effects of environmental conditions upon a project’s future residents or users be considered where the project may exacerbate

² <https://www.baaqmd.gov/community-health/community-health-protection-program/west-oakland-community-action-plan>

existing environmental hazards. See *California Building Industry Assoc. v. Bay Area Air Quality Management District* (2015) 62 Cal.4th 369.

In addition to the separation of industrial and residential uses, the WOCAP also specifically recommends “Action 26. The City and Port of Oakland will work to establish permanent locations for parking and staging of Port related trucks and cargo equipment, i.e., tractors, chassis, and containers. Such facilities will provide long-term leases to parking operators and truck owner-operators at competitive rates. Such facilities will be at the City or Port logistics center or otherwise not adjacent to West Oakland residents.”

Howard Terminal is currently the principal and largest staging area and parking area that meets the criteria of WOCAP Action 26. In this regard as well, the Howard Terminal PDA designation is a facial conflict with the WOCAP and a significant impact. No analysis has occurred of these trucking displacements to quantify or measure their related emissions, the scope of this significant impact is unknown.

The goals of the WOCAP are set in terms of targets for reduced average additional localized Cancer Risk by 2025 and 2030. The 2025 Target is excess cancer risk of no greater than 200 per million in the most impacted areas of West Oakland, which is West Oakland’s average air quality, and the 2030 Target is for all areas of West Oakland to reach an excess cancer risk of no greater than 110 per million, which is West Oakland’s best air quality. (WOCAP, at Figure 4-4). The WOCAP has established that the “Baseline conditions in West Oakland in the year 2017 for excess cancer risk resulting from exposure to local air pollution is 204 per million.

The current City of Oakland published DEIR for the proposed development of a Howard Terminal ballpark by the Oakland A’s, at Figure 4.10-8a, projects that “On-site Cumulative Cancer Risk (2024)” on the Howard Terminal Project site will more often than not be well in excess of both the 2017 West Oakland cancer risk baseline and the 2025 WOCAP targets. Of the 163 data points detailed in Figure 4.10-8a, 57 were in the cancer risk zone of “0.0 – 290 per million” – which means these could be at, above, or below the WOCAP targets. This analysis cannot confirm whether those data points on Howard Terminal exceed the West Oakland baseline or not. But of the remaining 106 data points in Figure 4.10-8a, all of them exceeded an excess cancer risk of 290 per million, including 9 with a risk of over 355 per million. Therefore, per the City of Oakland’s Ballpark DEIR, at least 65% of the Howard Terminal project site is projected to be at a cancer risk of at least 290 per million in 2024, while the WOCAP target for 2025 is intended to be 200 per million. And, for at least 5% of the project site, excess cancer risk is approximately double the current (2017) West Oakland baseline and nowhere near the WOCAP target.

As such, the City of Oakland Ballpark DEIR concedes that “high background (existing) levels of pollutants and TACs at the Project site pose health risks to proposed on-site sensitive receptors, and ... under cumulative conditions, **impacts to on-site sensitive receptors would be significant and unavoidable**. Mitigation Measures ... are identified to reduce air quality impacts under cumulative conditions to the extent feasible.” (at 4.10-45)

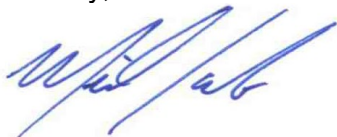
- Current City of Oakland General Plan and Zoning
The Howard Terminal PDA designation is facially inconsistent with both the City of Oakland's own General Plan and its zoning, which for this property is Industrial. We also understand that the original basis for the inclusion of the Howard Terminal in this PDA designation was during the Plan 2040 because, at the time, the City of Oakland had originally proposed to include Howard Terminal within the boundaries of its proposed Downtown Oakland Specific Plan. At the present time, however, this is no longer the case as the City has removed Howard Terminal from the boundaries of its latest Downtown Oakland Specific Plan. Strictly speaking, this leaves no basis for the inclusion of this property in the Draft Plan as a PDA.

Moreover, if the intention of the designation of Howard Terminal as a PDA is indeed to specifically facilitate the Oakland A's ballpark project, independent of its removal from the Downtown Oakland Specific Plan, then it is even more imperative that the Draft Plan and DEIR identify significant impacts and analyze any effective mitigation for these impacts, which will result from designation of Howard Terminal as a PDA for the purposes of building a ballpark complex. These include many significant and unavoidable impacts which are not part of the stated and intended purpose of the Draft Plan and DEIR.

The creation of housing and industrial conflicts is an outcome which would equally exist with respect to designation of Howard Terminal as a PDA for housing in general or under the Ballpark DEIR (see WOCAP discussion, above) and is therefore also inconsistent with the City of Oakland's General Plan Air Quality objectives and policies. This includes "Policy CO-12.1: Land Use Patterns Which Promote Air Quality," which requires the City to "[p]romote land use patterns and densities which help improve regional air quality conditions by ... (c) separating land uses which are sensitive to pollution from the sources or air pollution..."

Thank you for the opportunity to submit these comments on the Draft Plan Bay Area 2050 and on the Draft Environmental Impact Report. Please do not hesitate to contact me regarding any of these comments at mjacob@pmsaship.com or (510) 987-5000.

Sincerely,



Mike Jacob
Vice President & General Counsel