



AGENDA REPORT

TO: Edward D. Reiskin
City Administrator

FROM: Betsy Lake
Interim Assistant City
Administrator

SUBJECT: Study Session on the Waterfront
Ballpark District at Howard Terminal

DATE: July 1, 2021

City Administrator Approval 

Date: Jul 2, 2021

RECOMMENDATION

Staff Recommends That The City Council Conduct A Study Session And Receive An Informational Report As Follows: (A) Conduct A Study Session On The Proposed Non-Binding Terms Of A Development Agreement With The Athletics Investment Group LLC D/B/A The Oakland Athletics, A California Limited Liability Company, Including Terms For, But Not Limited To, A Potential Infrastructure Financing District, Affordable Housing, And Non-Relocation, Relating To The Proposed Project; And (B) Receive An Informational Report On The Proposed Oakland Waterfront Ballpark District Project To Be Developed On The Property Known As The Howard Terminal At The Port Of Oakland (Project), Including But Not Limited To The Following: (1) Port Of Oakland's And City's Project Decision Responsibilities, Including The City-Port Regulatory Framework; (2) Project Approvals And Timelines; (3) Community Benefits; (4) Analysis Of Environmental Toxic Contaminants At Project Site And Anticipated Remediation Process; And (5) Potential Impacts To Nearby Maritime Industry And Port-Related And Non-Port Related Jobs.

EXECUTIVE SUMMARY

The Oakland Athletics (Oakland A's or A's) have proposed development of the Waterfront Ballpark District at Howard Terminal on Port of Oakland land at the westerly end of Jack London Square. The proposed project would include a new, 35,000-person capacity ballpark, together with up to 3,000 residential units, 1.5 million square feet of office space, and 270,000 square feet of mixed retail, cultural and civic uses, as well as a 3,500-seat performance theater, up to 400 hotel rooms, and approximately 18 acres of new, publicly-accessible open space (the Project). At \$1 billion, the A's iconic new waterfront Ballpark at Howard Terminal would represent the largest private investment to date in any Major League Baseball (MLB) park nationwide.

If approved, the Waterfront Ballpark Project at Howard Terminal will keep the A's rooted in Oakland for decades to come. Properly executed, the Project has the potential to accelerate long-needed infrastructure and transportation improvements that will allow people to move

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safely to and around the waterfront and protect the economic engine of our seaport, expand the tax bases of both City and County, and achieve equitable jobs, housing, and other direct benefits for our community – all without the risk of leaving our taxpayers on the hook. In stark contrast to past Oakland sports deals, at Howard Terminal, the Oakland A's will privately finance, construct, operate and maintain the proposed Ballpark. No public funds will be used to build or operate the facility, nor will the City or County have operational duties or liabilities. Further, unlike the bonds issued to renovate the Coliseum, Staff's proposed financing structure won't put a dime of the City's or County's General Funds at risk.

With these guiding principles in mind, Staff has reviewed in detail the A's proposal of April 23, 2021, and presents below the results of that analysis, as well as its recommendations related to certain key issues requiring further negotiation, specifically:

A Financial Plan that:

- Invests the City's "but for" property taxes (new, additional tax revenues that will be generated by the Project) in critically needed public infrastructure, open space, and affordable housing by establishing a single Enhanced Infrastructure Financing District (IFD) over the Project site only;
- Attracts similar investment from Alameda County, commensurate with the substantial regional benefits the Project will provide; and
- Seeks to leverage local investments with state and federal funding to the maximum extent possible.

A Non-Relocation Agreement that:

- Reflects a commitment from A's to Oakland on par with Oakland's commitment to the A's; and
- Provides appropriate remedies in the event the team elects to leave Oakland in the future.

A Community Benefits Agreement that:

- Provides ample affordable housing opportunities on and off site;
- Provides equitable access to living and prevailing wage jobs for local residents; and
- Provides a flexible, long-term, community-directed source of funds to address community needs over the life of the 66-year Port lease.

BACKGROUND AND LEGISLATIVE HISTORY

The Oakland A's have applied to the City of Oakland (City) for a Development Agreement, General Plan Amendment, Rezoning, Planned Unit Development, and associated environmental review, all to govern redevelopment of the approximately 55-acre site commonly known as Howard Terminal, located within the Port of Oakland (Port) on the Oakland Estuary at the southerly terminus of Market Street. The site is Port-owned and is currently used primarily for truck parking and as a container depot.

The Project will require multiple discretionary approvals at the state and local levels, including but not limited to the City's approval of a General Plan Amendment, Rezoning, Tentative Tract

Map, Preliminary and Final Development Plans and a Development Agreement, and the Port's approval of various real estate agreements, including an Option Agreement and Port Building Permit. The City and Port also must each ensure that the shared regulatory framework contemplated in the 2020 "Memorandum of Understanding Between City and Port Regarding Howard Terminal Oakland A's Ballpark Project" (MOU), approved by Resolution No. 87998 CMS dated January 21, 2020 is implemented. Once the local approvals are complete, the Project requires, at a minimum approval, from the State Lands Commission (SLC) of a trust exchange agreement for the property and trust-consistency determination with regard to the proposed uses on trust lands, issuance of a Major Permit from the Bay Conservation and Development Commission (BCDC) for the Project, and approval from the Department of Toxic Substances Control (DTSC) of a remedial action workplan (or equivalent) for the site. All agencies are working collaboratively with City Staff and the Oakland A's to review and regulate the proposed Project.

This Informational Report provides the relevant background information for the scheduled study session on the Waterfront Ballpark District at Howard Terminal, provides an update on each of the items listed under the title of the report, and is organized accordingly. Additional information is provided in the Frequently Asked Questions (FAQs) about the Waterfront Ballpark District at Howard Terminal on the City's website at <https://www.oaklandca.gov/resources/waterfront-ballpark-district-at-howard-terminal-faqs> and provided here as **Attachment 1**.

ANALYSIS AND POLICY ALTERNATIVES

1. DEVELOPMENT AGREEMENT TERM SHEET

In February 2020, the A's submitted an application for a Development Agreement for the proposed Project, and shortly thereafter, in April 2020, the City and A's began negotiating a Development Agreement term sheet. A "term sheet" is a non-binding document that memorializes a general agreement between parties in many different types of complex business negotiations. On May 13, 2019, the Board of Port Commissioners unanimously approved the nonbinding terms of its own contemplated agreements with the A's for the Project, as documented in the Exclusive Negotiating Term Sheet Agreement available at <https://www.portoakland.com/wp-content/uploads/Howard-Terminal-microsite-Term-sheet.pdf>. A term sheet is often used as a framework or outline to guide the negotiation of subsequent binding contract documents. A term sheet is not a binding project approval, entitlement or contract.

With limited exceptions, most of the terms contained in the term sheet released by the A's on April 23, 2021, provided in **Attachment 2**, were negotiated and mutually agreed upon between City and A's between April 2020 and April 2021. However, the A's first submitted their proposed Financial Plan (Exhibit F to the A's Proposed Term Sheet in **Attachment 2**) in April 2021, and that exhibit does not represent a consensus of A's and City Staff. Staff is continuing to evaluate, revise, and attempt to arrive at consensus with the A's on a new Term Sheet and Financial Plan. Staff's proposed term sheet will be presented to the City Council on July 20, 2021.

The sections below first discuss the Financial Plan, including the fiscal impacts of the Project and Staff's recommendation regarding the use of an IFD, followed by a discussion of, and Staff's recommendations regarding the proposed non-relocation agreement and community benefits, including affordable housing, jobs and a community fund.

(a) FINANCIAL PLAN – INFRASTRUCTURE FINANCING DISTRICT

The City and the Oakland A's are in agreement that the Ballpark and all of the new commercial and market-rate residential development in the Waterfront Ballpark District at Howard Terminal will be 100 percent privately financed. The A's have asked the City and County to seek grants and use project-generated revenues to help fund the infrastructure and safety improvements, public parks, affordable housing, and other community benefits needed to make the Waterfront Ballpark District successful, resilient, safe and equitable. This sort of public-private partnership is common on projects of this size because many of the contemplated infrastructure improvements and amenities benefit the City and region as a whole, and not just the Project. Many safety and infrastructure improvements that the Project would accelerate and fund are needed now, even absent the proposed Project, including protection against sea level rise, anti-displacement measures and new affordable housing, safer separation and protection of Port-serving rail and truck routes, and stronger bike, pedestrian, and transit connections between West Oakland, Downtown and Old Oakland, Chinatown, and Oakland's waterfront.

In addition to State and Federal transportation funds, the primary mechanism contemplated to fund these improvements is a form of tax-increment financing known as an IFD. IFD stands for "Infrastructure Financing District" and is sometimes also called an EIFD, or "Enhanced Infrastructure Financing District." IFDs were originally created by the State legislature in 2014 and have been amended and expanded over the years since. Although an IFD and an EIFD have slightly different rules under State law, they are very similar, and the terms IFD and EIFD are often used interchangeably. An IFD is governed by a Public Financing Authority (PFA) comprised of representatives from each participating taxing entity. The PFA is tasked with adopting and implementing a detailed Infrastructure Financing Plan for the district.

When an IFD is established, the district's existing "base-year" level of property tax revenue is fixed. Then, as assessed values and property tax revenues grow over the years due to new development, the additional (also known as "incremental") property tax revenues over and above the fixed base year revenues are used to help finance infrastructure and affordable housing needed to support the new development project. Based on a current assessed value of the Waterfront Ballpark District site of approximately \$29.5 million, the City today receives about \$73,000 per year in property taxes from Howard Terminal. Over the next 16 years, if the proposed Project is built out, that assessed value is expected to grow to \$7.6 billion, a more than 250-fold increase, with a corresponding increase in the City's share of property tax revenue of more than \$11.5 million each year.

Taxing entities, such as the City and County, must take formal actions to contribute their respective shares of these new tax revenues into the IFD. IFD proceeds may be used on a "pay as you go" basis or leveraged through bond financing to reimburse or fund infrastructure and affordable housing costs. When all bonds are paid off, usually after 45 years, all of the respective shares of property tax revenue resume flowing into the City or County's General Fund. Only property taxes can be contributed to an IFD, and other taxes, like sales and transfer

taxes, flow to the City's and County's General Funds throughout the project's life cycle, as illustrated in **Figure 1** below.

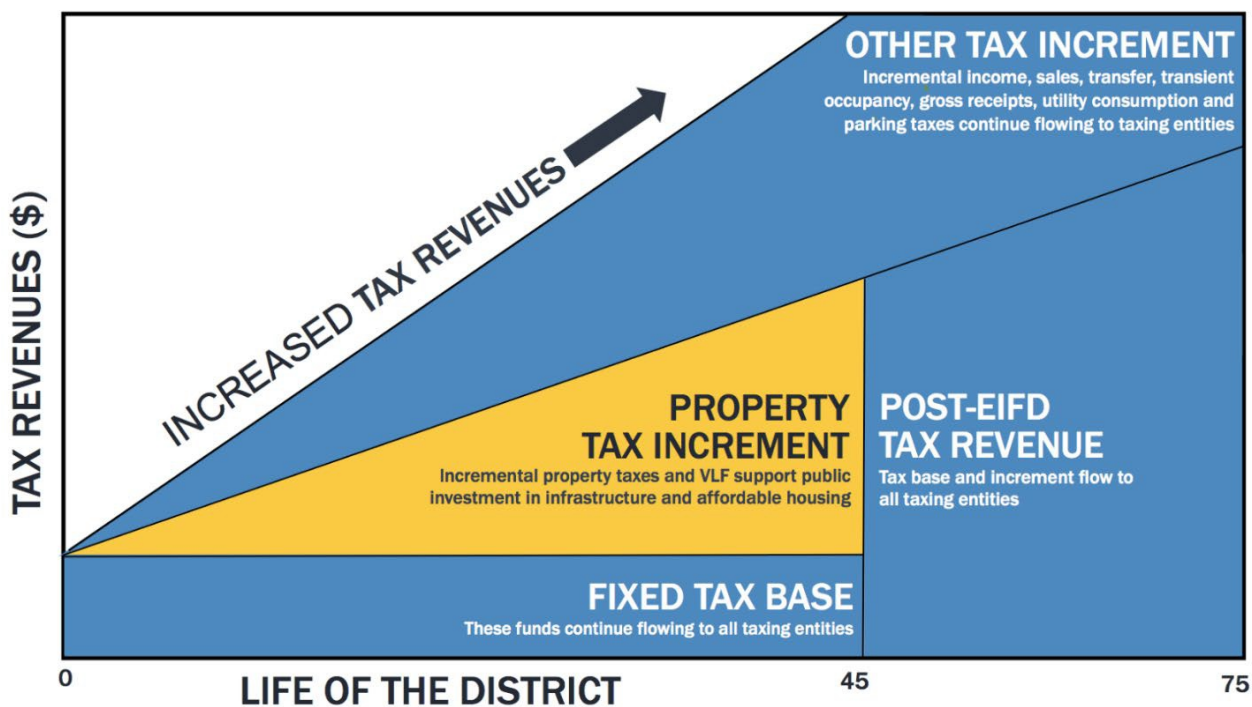


Figure 1: Tax Increment

IFDs are generally paired with a geographically coterminous Community Facilities District (CFD), also sometimes known as a "Mello Roos District," formed pursuant to the California Mello Roos Community Facilities District Act of 1982. When a CFD is created, the property owners within the district agree to impose a "special tax" on their property, over and above regular property taxes. The special tax would apply only to the Howard Terminal site, and no property owner outside of the Project site would be subject to it. The special taxes are collected by the County tax collector and because they are considered secure revenue, investors will lend against that revenue. When paired with an IFD, CFD bond issuances are generally timed and sized such that the incremental revenues captured by the IFD are adequate to service the CFD debt without additional cost to the property owner. This structure (CFD bonds backed in part by IFD revenues) has been used successfully by each IFD that has issued debt to date statewide, and is recommended by Staff for the following reasons:

1. An IFD over the project site (as illustrated on **Attachment 3**) would utilize those incremental tax revenues that would not exist "but for" the Project to pay for critically needed infrastructure, open space and affordable housing that will broadly benefit the City and region, in addition to the Project.
2. CFD bonds are non-recourse to the issuing entity (the City), which means they don't put the City's General Fund at risk or increase base property tax rates, either in the district or elsewhere in the City.
3. CFD bonds are issued regularly and are well accepted by the debt markets.

Fiscal Impact of the Proposed Project

The City's goal is for the Project to create a net fiscal benefit to the City and its taxpayers, even after accounting for the increased costs that the City will incur to provide City services to new residents and workers.

Century Urban is a local firm that has been retained by the City to evaluate the economics of the proposed Project. Its July 2021 report on "Fiscal Impacts of the Waterfront Ballpark District at Howard Terminal" (Fiscal Impact Report) is included as **Attachment 4**. Based on Century Urban's analysis, absent an IFD, the City could expect to see the following increases in **Table 1**¹, below, to one-time and ongoing revenues and expenses, were the project built today:

Table 1: Fiscal Impact to the City

Total One-Time Revenue to General Fund	\$ 60,050,000
Total Annual Tax Revenue to General Fund	\$ 34,469,000
Total Annual Parking Revenue to General Fund	\$ 12,520,000
Total Recurring Expenses, Per Year	\$ (10,250,000)
Total Parking Management Expenses, Per Year	\$ (11,170,000)
Total Annual Recurring Net Revenue	\$ 25,569,000

In addition to new General Fund revenues, the City could expect to see \$960,000 in annual Measure C Transient Occupancy Tax funding for cultural affairs, and \$1,582,000 in annual Measure Z Parking Tax for public safety and violence prevention. The Oakland Unified School District (OUSD) could expect to realize approximately \$13.5 million in one-time School Facilities Impact Fees, and OUSD and the Peralta Community College District would receive \$13 million in new annual revenues as a result of the project.

Projected total annual tax revenues to the City's General Fund include \$10.4 million per annum in incremental property taxes and property taxes in lieu of vehicle license fees (VLF). Should the City elect to form an IFD over the Project site and invest all or a portion of its incremental property tax and/or VLF in public infrastructure and affordable housing through the IFD, annual recurring net General Fund revenue would be reduced commensurately with that investment. With all eligible incremental taxes dedicated to an IFD, the project would still yield more than \$15 million additional net General Fund revenue to the City annually.

IFD – Oakland A's Proposal

The A's Proposed Term Sheet included two IFDs (as illustrated in Exhibit F to **Attachment 2**) – one over the Project site and one off-site covering the Jack London District and portions of West Oakland. Staff recommends against using an offsite IFD for a number of reasons. While an IFD over the Howard Terminal site itself would clearly capture those incremental taxes that would

¹ All estimates are provided in 2020 constant dollars as if the project were fully built and stabilized

not exist “but for” buildout of the proposed Project, an IFD over the adjacent neighborhoods is likely to capture at least some naturally occurring incremental property tax revenues that, absent the Project, would otherwise flow to the City’s General Fund. The City has been operating with a structural imbalance for a number of years, with growth in expenses outpacing that of revenues. An offsite IFD could exacerbate this structural imbalance, reducing the City’s ability to provide services and infrastructure enhancements in the near term and long term to the City as a whole, and would in essence be using General Fund dollars to subsidize the Project.

Over the past 20 years, assessed values Citywide have appreciated approximately 6.4 percent per annum, on average. Projections provided by the A’s for their proposed Jack London Square IFD anticipate assessed value growth within that area of 6.8 percent per annum, on average, over the forthcoming 45-year period. While there is no certainty that assessed values in Oakland will continue to grow as rapidly going forward as they have over the past 20 years, this would suggest that more than 90 percent of the anticipated growth in assessed values and property tax increment within the A’s proposed Jack London Square IFD could occur with or without the proposed Project. Further, the majority of the property located within the A’s proposed Jack London Square IFD is within the Downtown Specific Plan Area. In many cases, adoption of the Downtown Specific Plan would result in changes to allowable uses and/or the allowable density or intensity of development within the Plan Area. While it is reasonable to assume that construction of the Ballpark and the substantial ancillary development contemplated for Howard Terminal would accelerate development on neighboring blocks, it is impossible to parse the degree to which the growth in assessed values within that area would be due to the City’s independent planning efforts and “background” growth versus the “catalytic” effects of the proposed Project.

Further, formation of an offsite IFD presents a number of logistical challenges. As noted above, the only use of IFDs to date has been to create a revenue stream in the future that can support the issuance of debt through a CFD. This structure works well in situations where there is single ownership of the land (as with an on-site IFD over Howard Terminal) and has been successfully used in several recent development projects on public land in San Francisco, including the Giants’ Mission Rock, Pier 70, and Treasure Island projects. However, the diverse ownership within the A’s proposed Jack London District IFD makes the use of both CFDs and IFDs challenging. Forming a CFD requires that two-thirds (2/3) of the affected property owners within the proposed district “opt in” to a higher property tax rate. The IFD law includes a protest process, such that protests lodged by a majority of the landowners and residents within the proposed district would prevent its formation and protests lodged by at least a quarter would necessitate an election. Thus, there is no certainty that the A’s proposed Jack London Square IFD could be successfully formed, nor, if formed in the absence of a corresponding CFD, successfully issue debt.

Finally, the proposed offsite IFD is a poor fit for the A’s intended use – namely, to provide funds to construct offsite infrastructure and grade separations. IFDs function primarily as reimbursement mechanisms. The 80 percent of the A’s proposed Jack London District IFD allocated to infrastructure, for example, is expected (based upon the A’s projections of increment) to generate pay-go and bond proceeds of less than \$39 million by opening day of the ballpark, or less than 15 percent of the anticipated costs of the improvements it has been proposed to fund.

IFD - Staff Recommendation

Development of the Howard Terminal site requires significant investment in infrastructure, both on- and off-site, as shown in **Table 2**², below:

Table 2: Infrastructure Costs

Onsite Infrastructure	\$ 194,400,000
Grade Separated Crossings	\$ 147,100,000
Offsite Transportation Improvements	\$ 138,600,000
Bay Trail Extension & Parks (18.3 acres)	\$ 132,600,000
Total Infrastructure & Open Space Costs	\$ 612,700,000

The cost of those improvements is beyond what can be borne by the City and developer alone. In order to bring the Project to fruition, unlock the potential of the Howard Terminal site, grow the City's and County's tax bases, and achieve equitable benefits for our residents, public investment from both the City and County is needed.

Therefore, City staff recommends formation of an IFD over the Howard Terminal site only, as shown on the figure provided as **Attachment 3**, ensuring that the Project pays for itself. Investing new project-generated revenues into public infrastructure and benefits, without putting either the County or City's General Funds at risk, is a responsible way to maximize the public benefits of this transformative development.

(b) NON-RELOCATION

As discussed below, Staff is recommending that the City's final package of approval's include a binding Non-Relocation Agreement with the A's. As compared to professional football and basketball, relocation in MLB is extremely rare.³ This is due in part to the advent of "non-relocation" or "commitment" agreements associated with new ballpark construction. Since the 1980s, at least 30 non-relocation agreements have been signed between public entities and MLB teams, and at present, these agreements are nearly universal elements of ballpark projects that involve any level of public investment. A non-relocation agreement essentially binds a team to remain headquartered in its home city and to play most or all of its home games in its new facility. Specific performance covenants are included in non-relocation agreements, as monetary remedies are generally considered to be insufficient to make the host city "whole" in the event of a team's early departures. The need for such covenants was amply demonstrated by numerous relocations in the two decades between 1990 and 2010 whereby major league sports teams, absent a specific performance covenant, were allowed to relocate simply by paying the remaining rent on their existing facilities. Non-relocation agreements are put in place to protect substantial investment by a city, county or other public entity and in recognition of the loss of tax revenues, indirect economic benefits and reputation that would

² All figures are in today's dollars.

³ In the past 50 years, 10 professional football teams have relocated, and 13 professional basketball teams. Only one MLB team has relocated since 1971. All leagues are similarly sized (30 – 32 teams per league).

result if the team were to leave. In addition, in order for required public or private financing to be executed, a non-relocation agreement of at least the term of the debt to be issued will be required.

Staff reviewed in detail five MLB non-relocation agreements signed in the last eight years, as well as an article from the Marquette Sports Law Review which surveys an additional 25 earlier agreements. These agreements are remarkably consistent in their content. Based on this research, below are the terms Staff is negotiating with the A's as well as the current status of such terms (shown in *italics*):

- **Covenant to Play:** all home games to be played in the new stadium, subject to limited exceptions. *The A's have agreed to this provision.*
- **Maintenance of Franchise:** maintenance of Oakland Athletics franchise as a major league baseball team in good standing with headquarters in Oakland and using Oakland as the team's primary geographic identifier. *The A's have agreed to this provision.*
- **Transfer Rights:** requirement that any new owner of the A's team be subject to the non-relocation agreement, through the execution of a preapproved form of assignment agreement. *The A's have agreed to this provision.*
- **Non-Relocation:** prohibition against engaging in discussions with any parties about relocating the team outside Oakland, except during the final years of the term of the non-relocation agreement. *The A's have not agreed to this provision.*
- **Default Remedies:** in case of a breach of the agreement, availability to the City of equitable and injunctive relief through the Courts and, if those are unsuccessful, substantial liquidated damages paid to the City. *The A's have agreed to equitable and injunctive relief, but not to liquidated damages.*
- **Term:** a term of the non-relocation agreement equal to the longer of the A's ballpark lease with the Port or the term of any outstanding debt issued for the Project by any public entity. *The A's have agreed to only a 20-year term for the agreement, contingent on no increase in city taxes (For reference, the proposed term of the ground lease between the A's and Port for the Ballpark is 66 years, and the proposed EIFD is expected to run for 45 years.)*

Non-Relocation Agreement – Staff Recommendation

Moving forward, Staff recommends that any agreement between the City and the A's that includes public investment also include a non-relocation agreement that incorporates all of the elements noted above, including a term equal (at a minimum) to the length of any contemplated public financing, and reasonable liquidated damages in the event of a breach of the agreement.

(c) COMMUNITY BENEFITS

As noted above, the Oakland A's have requested a Development Agreement for the Project, which, if approved, would govern the future development of the proposed Project for a specified period of time. Generally speaking, development agreements serve to reduce the risks associated with development through a local agency's agreement to "freeze" certain regulatory requirements. In exchange for this added certainty provided by a Development Agreement, developers often provide community benefits that go beyond any benefits that would otherwise result from meeting City or other regulatory requirements. Community benefits are an

opportunity for the developer to share a portion of the additional property value created through the City's actions (such as rezoning and increased density) with the community, while taking into account the financial feasibility of the project.

In addition to community benefits, the proposed Waterfront Ballpark District at Howard Terminal would provide substantial public benefits, including:

- Retention of the City's last remaining professional sports franchise;
- 18.3 acres of new, publicly accessible parks and open space;
- An approximately 1.5-mile extension of the San Francisco Bay Trail;
- Approximately .5 miles of new transit-only lanes connecting existing neighborhoods and transit facilities in Downtown Oakland, Chinatown, Old Oakland, the Jack London District, and the Oakland waterfront;
- Approximately 1.25 miles of new protected bike lanes connecting the West Oakland neighborhood and Bay Area Rapid Transit (BART) station with Downtown Oakland and the Oakland waterfront;
- Key intersection improvements between Interstate-880 and the Seaport, which will move trucks and cargo in and out of the Port of Oakland more safely and efficiently while reducing traffic congestion and truck idling;
- At-grade rail safety improvements throughout the Jack London District, both at and between crossings;
- New public art valued at \$15.3M;
- Projected new revenues to Oakland schools and community colleges of \$13.0 million per year at full buildout;
- No net new greenhouse gas emissions;
- Leadership in Energy and Environmental Design (LEED) Gold (or equivalent) standards for new construction;
- Protection against sea-level rise; and
- Remediation of existing toxic contaminants in soil and groundwater.

To arrive at a recommended set of community benefits for the proposed Project in addition to those public benefits articulated above, in late 2019, the City, Port and Oakland A's initiated a multi-stakeholder community- and equity-centered community benefits process. The process was organized around a Steering Committee and seven Topic Cohorts: Community Health & Safety, Culture Keeping & History, Economic Development/Employment, Education, Environment, Housing, and Transportation. The *Draft Community Benefits Recommendations Summary Report* resulting from Steering Committee's work is available on the City's website at https://cao-94612.s3.amazonaws.com/documents/FINAL_062521-HT-CBA-Recommendations-Final-Report-1.pdf and provided hereto as **Attachment 5**. This report is not an agreed-upon package of community benefits, but instead is a document that explains the extensive community process and can guide future funding allocations.

Community Benefits - Oakland A's Proposal

As noted above, on April 23, 2021, the Oakland A's publicly released their proposed Development Agreement Term Sheet for the Project. The A's Proposed Term Sheet included a

\$450 million (nominal) allocation from the two proposed IFDs for community benefits. Under the Oakland A's proposal, all community benefits would be funded entirely by property tax increment captured over 45 years by two proposed IFDs, one over the Howard Terminal site, and a second over the Jack London District and portions of West Oakland. The A's proposal included no commitments to specific community benefits, noting only that "the City of Oakland and community will direct how those funds are spent".

The A's proposed approach presents a number of challenges. First, IFD proceeds can only be spent on "public capital facilities." Although these facilities can include parks, childcare facilities, libraries and affordable housing, IFDs are explicitly prohibited from funding "the costs of ongoing operation or providing services of any kind". Therefore, utilizing IFD proceeds as the sole source of funding for community benefits would, by operation of law, severely limit their scope. An initial analysis of the Community Benefits Recommendations (Estolano Advisors, June 2021) indicates that the majority of potential benefits identified by the Steering Committee could not be funded by an IFD. Second, an IFD has a maximum 45-year life. Throughout the community benefits process, the Steering Committee consistently advocated that community benefits should extend for the entire duration of the 66-year Port lease. Finally, IFD funds accumulate slowly at first and grow over time as new development is completed and placed on the tax roll, which means that without another source of upfront or early funding, most of the contemplated community benefits would not be realized for many years.

Community Benefits - Staff Recommendation

Staff recommends an alternative approach to community benefits, generally as follows:

- Provide affordable housing opportunities on- and off-site, including both new construction and displacement prevention strategies including preservation, renovation, down payment and senior assistance in the four impacted neighborhoods of West Oakland, Chinatown, Old Oakland, and the Jack London District.
- Provide equitable access to living and prevailing wage jobs for local residents.
- Provide a flexible, long-term source of funding and community governance structure to address community needs over the life of the 66-year Port lease.

Each of these strategies is addressed in greater detail below.

Community Benefits - Affordable Housing

Absent a Development Agreement, new development in the City of Oakland, including the proposed Project, is required to pay Affordable Housing and Jobs/Housing Impact Fees, respectively. Pursuant to the OMC, the proposed Project currently would be subject to impact fees of \$22,000 per market-rate residential unit, and \$5.77 per square foot of commercial office, or \$74.7 million in total, assuming full buildout of the proposed Project, as shown in **Table 3**, below.

Table 3: Affordable Housing and Jobs/Housing Impact Fees

Residential	3,000	Units	\$22,000	\$ 66,000,000
Commercial Office	1,500,000	Square Feet	\$5.77	\$ 8,655,000
Total Housing Impact Fees				\$ 74,655,000

In lieu of the payment of Jobs/Housing Impact Fees, the OMC allows for the production of new affordable housing units (up to 80 percent of Area Median Income, or AMI) equal to the number of gross square feet of office space, less 25,000 square feet, multiplied by a factor of .00004. In lieu of payment of Affordable Housing Impact fees, the OMC allows for the production of new affordable housing units (up to 50 percent AMI) equal to 5 percent of total units, or (up to 120 percent AMI) equal to 10 percent of total units. In total, in lieu affordable units required to be provided onsite pursuant to the OMC, assuming full buildout of the proposed Project and no payment of fees, would range from approximately 209 to 359 units, or 7 – 12 percent of total housing units, depending upon level of affordability, as follows in **Table 4**⁴:

Table 4: Required Affordable Housing Production in Lieu of Fees

Residential	5%	50% AMI	150	
	10%	120% AMI		300
Commerical Office		80% AMI	59	59
Total Required Units			209	359

The Community Benefits Steering Committee recommendations related to affordable housing onsite far exceed the OMC and precedents under State law. In addition, the prioritized Steering Committee recommendations gave equal or greater weight to offsite strategies including preservation and affordable homeownership. The Housing Topic Cohort’s recommendations include:

- Housing development at the Waterfront Ballpark District should include at least 1,000 units⁵ of housing affordable to households with incomes at or below an average of 50 percent of AMI.

⁴ Although the Project Site is not subject to the Surplus Land Act (Government Code 54220 et seq.) because this property is “exempt surplus land” pursuant to Government Code Sections 54222.3 and 54221(f), the majority of the Project site lies within the former Oakland Army Base Redevelopment Plan Area (Plan Area), and thus is subject to the Inclusionary Housing requirements of that Plan, which survive despite the dissolution of redevelopment. That Plan requires at least 15 percent of all residential units affordable to low or moderate income households, with at least 40 percent of those units affordable to very low income households. As the vast majority of land within the Plan Area is not zoned for residential uses, an initial analysis of housing production completed or entitled to date within the Plan Area indicates that a minimum of 8 percent of units within the Project must be affordable to very low, low or moderate income households in order to maintain compliance with the Plan under State law. This percentage is subject to change with further analysis and other development within the Plan Area, but is generally consistent with the number of in lieu units required under the OMC.

⁵ This reflects recommendations that Staff received from East Bay Housing Organizations (EBHO) from its October 24, 2019 Memorandum of Affordable Housing Position Statement for developments at Howard Terminal and Coliseum City that “35% of all residential units in each project area to be restricted to 60% AMI or below”, as well recommendations from the Oakland United Coalition dated June 22, 2021

- Twenty (20) percent of the total affordable units onsite should be reserved for households earning no more than 30 percent of AMI, and the remainder reserved for households earning up to 60 percent of AMI.
- Investment fund for purchase of non-regulated housing to stabilize these properties as permanently affordable.
- A minimum \$50 million fund to provide homeownership opportunities that prioritize displaced and qualified long-time West Oakland residents.
- Onsite affordable homeownership programs targeting 60-100 percent of AMI.

To understand the rough order of magnitude cost of the Topic Cohort recommendations, **Table 5** below shows the estimated gap funding required to build each affordable unit onsite⁶:

Table 5: Affordable Housing - Gap per Unit @ 60% AMI

Sources:		
LIHTC Investor Equity		\$ 269,000
Other Permanent Funding Sources		
Deferred Developer Fee	7%	\$ 49,000
Permanent Financing		\$ 161,000
Total Sources		\$ 479,000
Uses:		
Total Development Cost		\$ 700,000
Total Uses		\$ 700,000
Gap Per Unit		\$ (221,000)

Thus, the projected cost to provide 1,000 units of affordable housing onsite at 60 percent AMI (slightly higher than the topic cohort's recommendation of 50 percent AMI) is \$220.8 million. Taking into account the recommended \$50 million fund for homeownership opportunities, the cost of the Housing Topic Cohort's recommended onsite program is estimated at \$270.8 million, which is \$196.1 million (or 263 percent) more than the fees otherwise due pursuant to the OMC. Implementation of affordable homeownership opportunities onsite and preservation strategies offsite would further increase the program's cost, and would not result in an economically feasible project.

Affordable Housing – Staff Recommendation

With these considerations in mind, Staff recommends that the Project target 30 percent affordability using onsite and offsite strategies as follows:

that "The Project shall provide housing for a range of income levels, including not less than 35% of the number of housing units associated with the Project affordable to extremely low, very low, low, and moderate income households, providing a range of affordability options."

⁶ Century Urban, June 2021.

Onsite, in lieu of payment of impact fees pursuant to the OMC, the developer provide affordable housing units onsite equal to at least 15 percent of all new onsite units, or 17.5 percent of market rate housing units, constructed within the Project, (in either case, equivalent to approximately 450 new affordable units assuming full buildout of the Project). Affordable housing production should generally proceed on pace with market rate housing production, should be affordable to households with a maximum AMI of 120 percent and a weighted average AMI not to exceed 60 percent and should be deed-restricted for a period of 55 years. To support the production of affordable housing in excess of OMC requirements, Staff recommends that the expenses incurred for construction of onsite affordable housing in excess of the Affordable Housing and Jobs/Housing Impact requirements otherwise due under current code (estimated at \$74.7 million assuming full buildout) be eligible for reimbursement from the proceeds of an IFD over the project site, as and when such proceeds become available.

Offsite, consistent with the top housing priority identified in the *Draft Community Benefits Recommendations Summary Report*, Staff recommends establishment of a fund to implement displacement prevention strategies, including but not limited to new construction, preservation, renovation, downpayment assistance, legal and rental assistance in the four impacted neighborhoods (West Oakland, Chinatown, Old Oakland, and the Jack London District). Financed primarily by the City and County's IFD, the fund is expected to reach \$50 million over the first half of the 45-year span of the IFD. For more information, see "Community Fund", below.

Jobs – Staff Recommendation

Because the proposed Project is located primarily on property jurisdictionally controlled by the Port, it is anticipated that the Port's policies with regard to construction and operations jobs will apply to the Project.

All project-related construction on Port owned property or funded, in whole or in part, by or through the Port, will be subject to the Port's Maritime Aviation Project Labor Agreement (MAPLA). General and subcontracts subject to the MAPLA are required to provide for monthly contributions of \$0.30 cents per craft hour worked to the Port's Social Justice Trust Fund, currently estimated at \$9.96 million in total over the approximately 15-year projected buildout of the Project. Consistent with the MAPLA and the equity-centered recommendations of the Howard Terminal Community Benefits Steering Committee, this money will be used to assist local residents in eliminating employment barriers and gaining entry into and remaining in the building trades (see "Community Fund" below).

In addition, it is anticipated that the Port's tenets related to operations jobs, generally as set forth in the Port's 2017 Operations Jobs Policy for the Centerpoint Oakland Global Logistics project (available at https://cao-94612.s3.amazonaws.com/documents/CenterPoint-Operations-Jobs-Policy_Final.pdf), will form the basis for an operations jobs policy for the proposed Project. These include living wages and benefits for workers; priority consideration for unemployed individuals, armed forces veterans, single parents, ex-offenders and foster care adults; and a ban on asking applicants about prior criminal offenses.

Community Fund – Staff Recommendation

Throughout the community benefits process, the community consistently advocated that community benefits should extend for the entire duration of the 66-year lease and that there should be a long-term source of funding to implement those benefits. Over the course of the approximately 18-month community benefits process, it became clear that the typical approach of providing community benefits primarily through and during the Project's construction phase is misaligned with the community's sentiments.

Several recommendations from the Topic Cohorts included establishment of a community fund, which is also the approach Staff is recommending, subject to further analysis of the specific legal framework. This fund could be used to implement both IFD-eligible and non-IFD-eligible benefits, and long-term funding can originate from multiple sources, including the A's. The community fund structure, including governance, implementation, and oversight, may be developed with a Community Advisory Committee and use the *Community Benefits Recommendations Summary Report (Attachment 5)* to guide the development of an initial, five year strategic plan (and periodic updates) and define funding criteria and priorities.

Staff recommends establishment of such a Community Fund, to be administered over the course of the 66-year Port lease, comprised, at a minimum, of funding from the following sources:

- Port's Social Justice Trust Fund - \$10 million over 10 – 15 years for workforce development.
- City and County set-aside from IFD - \$50 million over 15 – 20 years for affordable housing.
- 0.75 percent condominium transfer fee - \$340 million over 66 years.
- Payments in lieu of Transportation Impact Fees - \$11 million over 10 years.

Anticipated deposits to the Community Fund over 66 years would total \$411 million, generally as illustrated in **Table 6**⁷ below:

Table 6: Estimated Community Benefits Fund Deposits by Decade, All Sources

Start Year	End Year	
0	9	\$ 34,379,000
10	19	55,976,000
20	29	36,674,000
30	39	49,286,000
40	49	66,237,000
50	59	89,017,000
60	66	79,962,000
Total Estimated Deposits		\$ 411,531,000

Finally, Staff recommends further engagement with the Steering Committee and other interested stakeholders to arrive at consensus on a legally permissible fund design and

⁷ Year 1 is assumed to be 2026. All deposits are expressed in nominal dollars as of the year of the deposit.

governance, to be set forth in greater detail in the Development Agreement, and generally anticipated to be as shown in **Figure 2**:

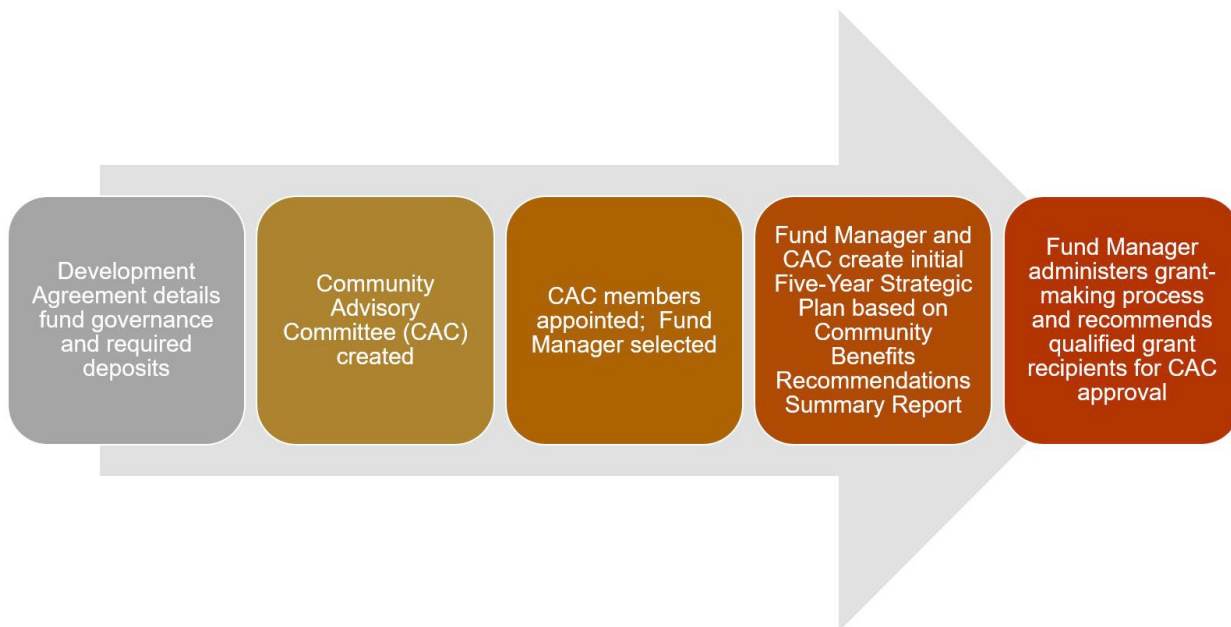


Figure 2: Community Fund

2. ADDITIONAL ISSUES

(a) PORT OF OAKLAND’S AND CITY’S PROJECT DECISION RESPONSIBILITIES, INCLUDING THE CITY-PORT REGULATORY FRAMEWORK

The Project site includes parcels which are, in accordance with the Oakland City Charter, jurisdictionally controlled, in separate parts, by the Port and the City. Pursuant to the Charter, the Port is a department of the City, but vested with the exclusive authority to control and manage certain lands of the City, referred to as the Port Area. Approximately 50 acres of the 55-acre project site lie within the Port Area and are controlled by the Port. The remaining 5 acres are privately owned. The Port’s land use regulations and the City’s General Plan both apply to the 50 acres of Project site located within the Port Area. As noted above, the Port and City, without waiving any of their respective authorities and jurisdiction over lands within the Port Area and consistent with Article VII of the Charter, have entered into a nonbinding MOU which describes a contemplated shared regulatory framework that, if ultimately approved, would apply to the Project.

As part of the MOU, the City is processing all development permits for the proposed Project as applied under the Oakland Municipal Code. The development permits for the Project reviewed by the City include a Planned Unit Development, Tentative Tract Map, and the Development Agreement that is the subject of this Informational Report. The City is also processing the request for a General Plan Amendment and Rezoning.

The Port has been engaged in negotiations with the A’s regarding various real estate agreements, including the Option Agreement. It is anticipated that the Port will also continue to

process Port Building Permits (sometimes referred to as a Port Development Permit) for the project in addition to the entitlements processed by the City.

(b) PROJECT APPROVALS AND TIMELINES

As noted in Staff's February 11, 2021 Information Memorandum available at <https://cao-94612.s3.amazonaws.com/documents/Howard-Terminal-info-report-w-attachments.pdf>, the A's selected Howard Terminal as the preferred site for their new ballpark in 2018, and in November 2018, the City issued a Notice of Preparation of a Draft Environmental Impact Report (EIR) for the proposed Project. Public scoping meetings on the EIR were conducted by the City of Oakland Landmarks Preservation Advisory Board on December 17, 2018, and by the City of Oakland Planning Commission on December 19, 2018. An extended, 45-day public comment period for the EIR scoping concluded in mid-January 2019. Thereafter, City staff and consultants, working collaboratively with Port staff and consultants, prepared a Draft EIR pursuant to the California Environmental Quality Act (CEQA), State CEQA Guidelines, and California Assembly Bill 734 (AB 734; California Environmental Quality Act: Oakland Sports and Mixed-Use Project) to analyze the potential physical environmental impacts of the proposed Project.

AB 734, enacted in 2018, requires that any challenges, including appeals, be resolved within 270 days following Project approvals, so long as the Project meets the following conditions:

1. The Project will create high-wage, highly skilled jobs that pay prevailing and living wages;
2. The ballpark and ancillary residential and commercial development will receive Leadership in Energy and Environmental Design (LEED) Gold certification or equivalent;
3. The Project will not result in any net additional emissions of greenhouse gases;
4. The Project achieves a 20-percent reduction in the number of vehicle trips collectively by attendees, employees, visitors, and customers, as compared to operations absent transportation demand management;
5. The Project is located within a priority development area identified in the sustainable communities strategy Plan Bay Area 2040;
6. The Project will be subject to a comprehensive package of community benefits; and
7. The Project will comply with the City of Oakland's Bird Safety Measures.

The Draft EIR was ready for publication in February 2020; however, at the Oakland A's request, publication of the Draft EIR was delayed in order to allow additional time for review and certification of the Project by the California Air Resources Board (CARB) and the Governor pursuant to AB 734. CARB subsequently issued its determination for the Project on August 25, 2020, and in September 2020, work to update the Draft EIR in anticipation of an early 2021 publication commenced. The Governor's certification was received on February 11, 2021, and the City published the Draft EIR for public review and comment 15 days thereafter, on February 26, 2021, beginning a 45-day public comment period. On March 19, 2021, in response to requests from the public, the City's Environmental Review Officer extended the comment period from 45 days to 60 days, which extended the end of the comment period to April 27, 2021.

The Draft EIR and all other documents submitted to or relied upon by the lead agency in the preparation of the Draft EIR can be accessed and downloaded from the following website: <http://www.waterfrontballparkdistrict.com>. Consistent with the procedural requirements of AB 734, the City conducted an informational workshop on March 6, 2021 to inform the public of

the key analyses and conclusions of the Draft EIR. That workshop can be viewed on the City's website at: <https://www.oaklandca.gov/events/march-6-2021-oakland-waterfront-ballpark-district-project-deir-information-workshop>.

The City received in excess of 400 comments on the Draft EIR, and is currently working with the City's environmental consultant to prepare the Final EIR/Response to Comments document. Staff anticipates that the Final EIR will be ready to be published in the Fall of 2021 and will proceed to the City Council for consideration of certification after receiving a recommendation from the City Planning Commission. Staff estimates that the item will be before the City Council for consideration in late 2021 or early 2022. This estimated schedule is also dependent upon the applicant, the A's, submitting all materials related to the development applications cited above, which are to be reviewed and considered concurrently with the certification of the EIR.

Finally, it is anticipated that subsequent Project approvals by the various agencies discussed in Item 5, below, will rely in whole or in part on the City's EIR. As such, the Port, SLC, DTSC and the BCDC, among others, are acting as Responsible Agencies under CEQA, and their discretionary approvals, including but not limited to those described below, may only be undertaken following the City's certification of a Final EIR for the Project.

(c) ANALYSIS OF ENVIRONMENTAL TOXIC CONTAMINANTS AT PROJECT SITE AND ANTICIPATED REMEDIATION PROCESS

The California DTSC is the regulatory agency overseeing investigation and cleanup of the Project site and will continue in this regulatory role for the foreseeable future. There are three principal parts of the Project site (Howard Terminal, Gas Load Center, and Peaker Power Plant), which are regulated by the DTSC under separate existing governing documents and separate Land Use Covenants (LUCs), which currently prohibit the residential uses proposed by the Project.

In 2019, the Oakland A's entered into a Voluntary Cleanup Agreement (VCA) with DTSC, and continue to be engaged in a process with DTSC to consolidate the existing cleanup decision documents for the different portions of the Project site into a single set for the entire site. The new, consolidated decision documents are proposed to address all three current DTSC sites within the Project site, as well as the Embarcadero/Clay parking lot (BevMo parking lot) and the public rights of way. DTSC would then approve a new consolidated remedial action workplan (RAW) for the entire Project area, requiring the preparation of a site management plan or equivalent document and an operations and maintenance (O&M) plan and agreement, as well as recordation of two LUCs, one for all the Port-owned portions of the Project area, and one for the portions to be owned by the Oakland A's, that would allow activities and uses (such as residential) which are proposed in the Project but currently prohibited on the site under existing LUCs.

In October 2020, DTSC approved the Human Health and Ecological Risk Assessment prepared on behalf of the Oakland A's for the Project site⁸, which will guide the target clean up levels of

⁸https://www.envirostor.dtsc.ca.gov/public/deliverable_documents/3917614161/Howard%20Terminal_Human%20Health%20and%20Ecological%20Risk%20Assessment%20Approval%20Letter_10.22.20.pdf

the site to be established in the required RAW. Consistent with typical practice, the DTSC will rely on the Project EIR for CEQA compliance when undertaking consideration of the RAW. Therefore, the RAW cannot be approved until the EIR is first certified by the City. DTSC approval will be required before any grading or construction commences on the Project site, consistent with mitigations established in the Draft EIR for the Project.

(d) COMMUNITY BENEFITS

See Discussion in Part 1, above.

(e) POTENTIAL IMPACTS TO NEARBY MARITIME INDUSTRY AND PORT-RELATED AND NON-PORT RELATED JOBS

A number of individuals and organizations representing interests in the maritime industry at the Port have raised concerns regarding the proposed Waterfront Ballpark District and its potential impacts on Port operations. To ensure that these concerns are adequately considered and addressed, Port staff has been regularly consulted throughout the process of environmental review.

Howard Terminal hasn't been leased for container cargo operations since 2013 and cannot accommodate the modern ultra-large ships that currently call the Port. The 50-acre site is separated from any adjacent Port-owned maritime terminal acreage by Schnitzer Steel, a privately-owned metal recycling operation. There remains under-utilized capacity for cargo and freight operations to expand along the Port's deeper water outer harbor, as well as in the more than 160 acres of converted Army Base land conveyed to the Port in 2003 and 2006.

Some of the primary issues that have been raised include:

- Project construction and operational traffic conflicts with Port traffic could cause delays to trucks servicing the seaport;
- Safety conflicts of game day attendees (auto, pedestrian, and bike) with seaport truck traffic;
- Increased recreational watercraft in the shipping lanes and turning basin could cause conflicts with commercial shipping vessels;
- Impacts from ballpark lighting and fireworks on ships maneuvering in the turning basin;
- Increased noise complaints from new residents in closer proximity to the seaport and other nearby industrial operations;
- Potential domino effect of converting Port and other industrial waterfront property to mixed use and/or conversion of other adjacent industrial land in close proximity to the seaport;
- Conflicts with railroad crossings, concerns with safety and delays to rail service; and
- Loss of truck parking and container storage and staging at Howard Terminal.

Those industry concerns that are relevant for CEQA purposes were analyzed in the Draft EIR for the Project in Chapter 4.10 (Land Use). To minimize the potential for conflicts between residential and industrial uses, both the Draft EIR and the Port's May 2019 Exclusive Negotiation Term Sheet with the Oakland A's restrict residential development to the easterly portion of the project site, nearest Jack London Square and away from the seaport and other industrial users. Traffic analyses have also been prepared that include recommendations to

reduce potential conflicts with and delays to Port operations, which are summarized in Section 4.15.5 of the Transportation Chapter in the Draft EIR (beginning on page 4.15-192).

Independent of the City's CEQA analysis, the Port of Oakland Board of Port Commissioners has been working with maritime interests to develop a set of Seaport Compatibility Measures, as documented in the Exclusive Negotiation Term Sheet with the Oakland A's, which was unanimously approved by the Board of Port Commissioners in May 2019, to further reduce any potential conflicts between the Project and ongoing seaport operations. These Seaport Compatibility Measures would be part of any future real estate agreement between the Port and the Oakland A's.

The Port has stated that it anticipates potential *benefits* of the project, including diversification of its business, greater nationwide visibility, more visitor traffic at Jack London Square, and a boost for neighboring businesses.

Century Urban estimates that the Project will generate over 7,100 full-time equivalent non-Port jobs after full buildout and nearly 25,000 full-time equivalent jobs during construction.

FISCAL IMPACT

There is no fiscal impact from this agenda item, as it is informational only. However, as stated above, the City's goal in any future Development Agreement that may be approved for the Waterfront Ballpark District at Howard Terminal is to create a net ongoing fiscal benefit to the City and its taxpayers, even after accounting for the increased costs that the City will incur to provide City services to new residents and workers. The Informational Report and Study Session are intended to inform the creation of such a non-binding term sheet, including a Financial Plan.

PUBLIC OUTREACH / INTEREST

The Waterfront Ballpark District at Howard Terminal has been the subject of multiple public processes, including public processes related to the various state legislation, including AB 734, AB 1191 and Senate Bill 293, and the California Environmental Quality Act. In addition, the City, Port and A's have conducted extensive outreach surrounding the community benefits process as discussed above. The upcoming study session is another opportunity for public outreach.

COORDINATION

This report was created in coordination with the Planning and Building Bureau and has been reviewed by the Office of the City Attorney and the Finance Department.

SUSTAINABLE OPPORTUNITIES

Economic: The Waterfront Ballpark District at Howard Terminal provides an economic redevelopment opportunity; the ultimate economic impact will depend on the final terms of the Development Agreement.

Environmental: The environmental impacts of the Waterfront Ballpark District at Howard Terminal are being analyzed in the CEQA document for the project, as described above.

Race & Equity: The project has convened a community benefits process that is equity centered; the ultimate impact will depend on the final community benefits package.

CALIFORNIA ENVIRONMENTAL QUALITY ACT (CEQA)

This Informational Report and Study Session are informational only, would not result in any discretionary approval, and are not a “project” subject to CEQA.

ACTION REQUESTED OF THE CITY COUNCIL

Staff Recommends That The City Council Conduct A Study Session And Receive An Informational Report As Follows: (A) Conduct A Study Session On The Proposed Non-Binding Terms Of A Development Agreement With The Athletics Investment Group LLC D/B/A The Oakland Athletics, A California Limited Liability Company, Including Terms For, But Not Limited To, A Potential Infrastructure Financing District, Affordable Housing, And Non-Relocation, Relating To The Proposed Project; And (B) Receive An Informational Report On The Proposed Oakland Waterfront Ballpark District Project To Be Developed On The Property Known As The Howard Terminal At The Port Of Oakland (Project), Including But Not Limited To The Following: (1) Port Of Oakland’s And City’s Project Decision Responsibilities, Including The City-Port Regulatory Framework; (2) Project Approvals And Timelines; (3) Community Benefits; (4) Analysis Of Environmental Toxic Contaminants At Project Site And Anticipated Remediation Process; And (5) Potential Impacts To Nearby Maritime Industry And Port-Related And Non-Port Related Jobs.

For questions regarding this report, please contact Molly Maybrun, Project Manager III, at (510) 238-4941.

Respectfully submitted,

Betsy Lake

BETSY LAKE
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Attachments (6):

Attachment 1: FAQs about the Waterfront Ballpark District at Howard Terminal

Attachment 2: April 23, 2021 Oakland A's Proposed Term Sheet

Attachment 3: Proposed EIFD Boundary Figure

Attachment 4: Fiscal Impact Report

Attachment 5: Howard Terminal Community Benefits Recommendations Summary Report

Attachment 6: June 15, 2021 Oakland Waterfront Ballpark District Presentation to the Alameda County Board of Supervisors