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Via Electronic Mail Only

Ms. Colleen Liang
Environmental Programs and Planning
Division
Port of Oakland
530 Water Street
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Re: Draft Environmental Impact Report for Oakland International
Airport – Terminal Modernization and Development Project (SCH
No. 2021050164)

Dear Ms. Liang:

We submit this letter on behalf of the Citizens League for Airport Safety and Serenity (“CLASS”), which represents over 3,000 households in the City of Alameda on issues related to the Oakland Airport (“OAK”). CLASS has membership from all households in the Community of Harbor Bay Isle (“CHBI”), households in Ballena Bay, households in Fernside, and other individuals in Alameda. We have reviewed the Draft Environmental Impact Report (“DEIR”) for the proposed OAK Terminal Modernization and Development Project (“Project”), and its appendices. The purpose of this letter is to inform the Port that the DEIR violates the minimum standards of adequacy under the California Environmental Quality Act (“CEQA”), Public Resources Code § 21000 et seq. and “CEQA Guidelines,” California Code of Regulations, title 14, § 15000 et seq. As discussed in detail below and in the attached technical reports, a variety of significant deficiencies exist in the DEIR, virtually all of which result in the DEIR understating the Project’s true impacts and/or the need to mitigate those adverse impacts.

This letter is submitted along with reports prepared by Jules Yimga, Ph.D., Department Chair of School of Business and Associate Professor, Embry-Riddle Aeronautics University, Attachment A (“Yimga Report”); Jeremy Decker, Professional Engineer with Salter and Associates, Attachment B (“Salter Report”); and Todd Tamura,

QEP, Attachment C (“Tamura Report”). We refer the Port to these attached reports, both here and throughout these comments, for further detail and discussion of the DEIR’s inadequacies. We request that the Port reply to each of the comments in this letter and to each of the comments in the attached reports. Because the aforementioned reports provide detailed comments on the DEIR’s revised analyses, we will not reiterate each of those comments in this letter.

I. Introduction and Background.

The Project site is located in the City of Oakland and is bordered to the northwest by neighborhoods in the City of Alameda, to the southeast by neighborhoods in City of San Leandro, and to the north and east by neighborhoods and businesses in the City of Oakland. The Project would modernize existing Terminal 1 and 2, consolidate passenger processing functions, construct expanded international arrival facilities, construct a new terminal with new gates, relocate existing cargo and support facilities, improve the terminal area roadway, add parking, and modify support facilities. DEIR at 2-10. The Project would facilitate a substantial increase in aircraft operations, which the DEIR states would be as many as 80,744 additional operations annually by 2038. DEIR at 2-7.

CHBI neighborhoods, represented by CLASS, are located immediately north of OAK’s South Field Runway and immediately west of the North Field Runways. CLASS, along with the City of Alameda (“City”) and a Berkeley neighborhood group called Keep Jets Over the Bay, sued the Port of Oakland challenging the CEQA analysis for the proposed Airport Development Plan in the early 2000s. Through that lawsuit, the Port and all of the parties entered into a Settlement Agreement (“Agreement”) that was subsequently updated and reaffirmed.

The Agreement provides the framework that allows OAK, CLASS, and the City of Alameda to work together to protect the interests of City residents as the Port implements facilities and programs anticipated in the Agreement. A key provision of the Agreement is that it limits noise by setting forth key commitments for how the Port operates the airport. The Agreement specifies, for example, that the Port is required to monitor compliance with established Noise Abatement Procedures (“NAPs”). The NAPs are critically important to avoiding noise impacts for area residents. It is surprising then that, as discussed further below in section V.A, the DEIR makes no mention of the Settlement Agreement or the NAPs applicable at OAK. The Agreement and NAPs are part of the existing and future conditions at OAK. The NAPs influence management and operations at the airport. Any plans to expand facilities and accommodate future operations at OAK must take into account ongoing compliance with the Agreement and consistency with the

NAPs. The DEIR's failure to do so raises serious questions about what the Port is proposing. This gap in the DEIR must be remedied in a revised document.

This Project will have serious long-term consequences, not only for area residents, but for the region. Those consequences include, but are not limited to, significant increased noise, air pollution, and public safety impacts associated with an increase in overflights. Other impacts include an increased risk of water pollution and traffic impacts.

Moreover, as explained in detail below, the Project is inconsistent with applicable plans and ordinances, and the DEIR's analysis of these inconsistencies is inadequate. For example, aspects of the Project are inconsistent with the Airport's current Master Plan, despite assertions to the contrary. DEIR at 3.10-17. As explained further below, while OAK's Master Plan includes the concept of a new terminal, it also includes a new parallel Taxiway B to address anticipated congestion from anticipated delays associated with implementation of the Master Plan and response to stakeholder concerns. CLASS has consistently pointed out, and the Port has acknowledged, the need for a new parallel Taxiway B. Yet, the DEIR does not expressly include a new parallel Taxiway B as part of this proposed Project. This omission should be addressed in an updated project description.

In addition, as discussed further below, the DEIR violates CEQA because it: (1) uses an inappropriate baseline; (2) relies on inappropriate assumptions regarding existing gate use and future aviation demand at OAK; (3) fails to adequately analyze the Project's impacts, including but not limited, impacts related to noise, air quality, and climate change; (4) fails to propose adequate mitigation measures to address those impacts; and (5) fails to adequately analyze alternatives to the Project. These inadequacies require that the DEIR be revised and recirculated so that the public and decision-makers are provided with a proper analysis of the Project's significant environmental impacts and feasible mitigation for those impacts. See CEQA Guidelines § 15002(a)(1) (listing as one of the "basic purposes" of CEQA to "[i]nform governmental decision makers and the public about the potential, significant environmental effects of proposed activities").

II. The Airport's Master Plan Is Near Expiration and Should Be Updated.

The community has consistently requested full transparency and detailed information about OAK's long-term plan for the airport, as evidenced by stakeholder participation in the Master Plan process, which was completed in 2006, and through consistent participation in the Stakeholder Advisory Committee since its inception. The Planning horizon for the current Master Plan concludes in 2025, yet the DEIR fails to

provide information on OAK's next steps. OAK cannot simply let the existing plan expire with no plan for the future. Surrounding communities want assurance that OAK will not propose additional, piecemeal, and unplanned expansion projects after the proposed Terminal Development Project. Such projects would contribute to cumulative impacts, and as such, should be evaluated as part of an updated Master Plan. CLASS understands that OAK may not currently have plans beyond what it described in its 2006 Master Plan. If that is the case, then OAK should publicly confirm an extension of the existing Master Plan (e.g., for another ten years, until 2036). Simply allowing the current Master Plan horizon of 2026 to pass without an extension or update to the Master Plan would be inconsistent with the Federal Aviation Administration (FAA) guidance and raise significant concerns for OAK neighbors.

III. The Proposed Project Is Inconsistent with the Airport's Master Plan.

The OAK Master Plan, provides long-term (20-year) guidance for land-use at the airport. OAK Master Plan at 1, excerpt attached as Attachment D. The Master Plan was prepared in accordance with FAA Advisory Circular (AC) No.150/5070-6A regarding Airport Master Plans. *Id.* The FAA guidance specifies that: "The goal of a master plan is to provide the framework needed to guide future airport development that will cost-effectively satisfy aviation demand, while considering potential environmental and socioeconomic impacts." FAA AC150/5070-6B at 2; excerpt attached as Attachment E.

OAK and the community invested a substantial amount of time and resources in the Master Plan process. According to the Oakland Airport's website, "The Port committed to prepare this Master Plan with community participation as a result of various agreements settling litigation over the [Airport Development Program] environmental review documents." See, <https://www.oaklandairport.com/development/master-plan/history/>. Several years were spent developing a vision for future development at the airport, modeling various scenarios, engaging with stakeholders, and evaluating the feasibility of the Plan. OAK must now follow its own Master Plan and include the features identified within it as necessary for smooth operations at the airport.

The OAK Master Plan was developed with the assumption that future development plans would include construction of a "new taxiway parallel to and east of Taxiway B". Master Plan at 3, 4, 43, 54-58, 69, 130. This is because when analyzing potential delays on all runways to identify congested areas, OAK concluded that a new taxiway parallel to Taxiway B is the best way to alleviate congestion from anticipated delays on Runway 29 (now Runway 30). *Id.* at 72. The Master Plan states that:

“Based on measured taxi distances and estimated taxi times, as well as the airfield simulation described above, it was demonstrated that a taxiway parallel to Taxiway B on South Field (e.g., between Taxiways T and B2) would resolve most of the Taxiway B congestion and head-to-head taxi issues.”

Master Plan at 4, 72. In fact, the Master Plan assumed construction of the new taxiway parallel to Taxiway B for purposes of simulation modeling to simulate all of the studied development concepts and includes the parallel taxiway as one of the recommendations moving forward. *Id.* at 3, 4, 70, 133, and 134.

As explained in CLASS’s comments on the Notice of Preparation for this DEIR, avoiding additional delays on Runway 30 and the taxiways is critical to minimizing taxi time and to maximizing compliance with NAPs at OAK, one of which calls for corporate jets and large turboprops landing and parking at the North Field to depart from Runway 30 (taxiing from North Field to South Field southbound on Taxiway B). Without the addition of a taxiway parallel to Taxiway B, added traffic from the proposed 16 new gates and expanded cargo facilities is likely to cause delay and discourage the use of Runway 30 by North Field jets. Moreover, any Project features that could increase departures from the North Field would also pose safety concerns for adjacent communities. As such, the Project description needs to include features that support use of the longest (safest) runway at OAK, which is Runway 30. To this end, the Project should include the addition of a taxiway parallel to Taxiway B as well as other means of further reducing taxiing times and delays in order to maximize compliance with the noise abatement procedures in place at OAK and to ensure public safety. With the addition of this parallel taxiway to the Project, a revised noise analysis should be completed to compare current NAP compliance levels to expected NAP compliance levels at both PAL 1 and PAL 2 thresholds. The public and decision makers deserve to know how NAP compliance is expected to be impacted by the Project.

In addition, the Master Plan included an Airfield and Airspace Simulation Report concluding that a parallel Taxiway B would be required to efficiently utilize the gates at a new terminal and that it would be the most effective way to avoid congestion and delays. Master Plan, Appendix I - SIMMOD Simulation Airfield and Airspace Simulation Report, January 6, 2006, at 29, 30. The DEIR should have included an updated simulation report and analysis using an updated forecast and projections. Such an analysis will help the public and decisionmakers understand how the forecasted increase in flights and corresponding departure delays at OAK would be managed. A recirculated DEIR should include these simulations and related analysis.

In summary, the Master Plan included extensive modeling and analysis of various possible airport configurations to evaluate potential airport plans designed to result in a safe, efficient airport. The Master Plan concluded that a new parallel Taxiway B would be needed to alleviate congestion. The Master Plan also specifies that “[t]his taxiway would also be required to support a new terminal in this vicinity, if such a terminal is proposed and approved.” Master Plan at 72. Therefore, implementation of a new taxiway parallel to Taxiway B is critical as a feature of the proposed Terminal Development Project and the DEIR must include an updated project description that includes a new parallel Taxiway B, per the Master Plan. When making this addition to the project description, the DEIR should provide information about its design and operation as well as an analysis of potential impacts.

IV. The DEIR Is Misleading Due to Reliance on an Outdated Baseline and Inaccurate Assumptions Regarding Future Air Traffic at OAK.

The DEIR dramatically overstates the extent to which aviation activity will increase at OAK whether or not the Project is approved. The entire DEIR is built on the faulty assumption that the demand for commercial airline service is going to continually increase, regardless of whether OAK builds new facilities and increases capacity. E.g., DEIR at ES-3, 3.3-22, 3.11-15, 3.11-24, 3.12-8, 3.14-30, 4-8. This distorts the Project’s purpose and impacts. Simply stated, the DEIR asks decisionmakers and the public to believe aviation activity will increase sharply and inevitably at OAK in the coming years, even if nothing is done to expand or modernize airport facilities. The DEIR likewise asks decisionmakers and the public to believe that the improvements proposed as part of the Project will not enable or encourage such growth. The DEIR’s claims here are not supported by substantial evidence and are not credible. The failure to acknowledge that improving the airport’s facilities will enable and drive a substantial increase in aviation activity infects nearly all of the DEIR’s conclusions, including those in the noise, air quality, and alternatives analyses, among others.

Moreover, as discussed below and in the Yimga Report, the DEIR employs an outdated baseline, relies on an inaccurate, inflated forecast, and underestimates the growth-inducing potential of the produced Project. Yimga Report at 1-5.

A. The DEIR Uses a Baseline that Artificially Understates the Project’s Environmental Impacts.

An EIR’s description of a project’s environmental setting plays a critical role in all of the subsequent parts of the EIR because it provides “the baseline physical conditions by which a lead agency determines whether an impact is significant.” CEQA Guidelines

§ 15125(a). Longstanding case law upholds this fundamental principle by recognizing that “[a]n EIR must focus on impacts to the existing environment, not hypothetical situations.” *County of Amador v. El Dorado County Water Agency* (1999) 76 Cal.App.4th 931, 955.

While the general rule under CEQA provides that lead agencies should “normally” determine the baseline from existing conditions when environmental review commences (CEQA Guidelines §15125), the courts have determined that the rules for establishing baseline are not rigid and inflexible (*Communities for a Better Environment v. South Coast Air Quality Mgmt. Dist.* (2010) 48 Cal.4th 310, 327-28 (citing *Save Our Peninsula Com. v. Monterey County Bd. of Supervisors* (2001) 87 Cal.App.4th 99, 125). Specifically, the court established that:

“In some circumstances, peak impacts or recurring periods of resource scarcity may be as important environmentally as average conditions. . . . A temporary lull or spike in operations that happens to occur at the time environmental review for a new project begins should not depress or elevate the baseline”

Communities for a Better Environment, 48 Cal. 4th at 328. Courts have interpreted this guidance to mean that agencies must “employ a realistic baseline that will give the public and decision makers the most accurate picture practically possible of the project’s likely impacts.” *Neighbors for Smart Rail v. Exposition Metro Line Construction Authority* (2013) 57 Cal.4th 439, 449. Moreover, the baseline may not be “misleading or without informational value.” *Id.* at 457.

Courts have also observed that when a project may change the operations of an existing facility, a discussion of past operational patterns may be necessary to establish the existing operational conditions and assess project impacts that would be created by the change in operations. See, e.g., *County of Amador*, 76 Cal.App.4th at 952-56 (agency may not just give a snapshot of past conditions, but must describe those conditions in some depth and justify them as the basis for a baseline); *Save Our Peninsula Com.*, 87 Cal.App.4th at 119-28 (rejecting agency’s baseline as not being supported by evidence of historical conditions).

The DEIR here ignores these fundamental principles. The DEIR uses as a baseline the operation of the Project site in 2019, which was four years prior to publication of the DEIR for this Project and the year prior to the beginning of the COVID 19 pandemic, when aviation operations worldwide dropped to historic lows. See, e.g., DEIR at 2-7, 3.13-6, 3.13-9, 3.13-25 and DEIR Appendix C at 3, fn 1. While the DEIR acknowledges

that the COVID-19 pandemic has had a significant impact on aviation demand since 2020, it nevertheless attempts to justify the use of an outdated, pre-COVID baseline by stating that “the impact of the pandemic is not expected to change future aviation trends over the long term.” DEIR Appendix C at 3. Moreover, as discussed further below, and in more detail in the Yimga Report, the DEIR forecast assumes a steep recovery in passenger demand beginning in 2023. Yimga Report at 3, 4. However, the DEIR fails to provide any evidence to support this assertion. *Id.*

To the contrary, a major change in environmental conditions *has* occurred, and any assumption that aircraft operations will have returned to “business as usual” at the end of the pandemic, rather than emerge permanently altered, is pure speculation. In fact, many sectors are experiencing altered work habits and changes in commerce, which impact passenger demand that may last for years or may be permanent. OAK’s approach of assuming, without evidence, a return to 2019 conditions in 2023 is completely unsupported.

Similarly, OAK’s own data , indicates that monthly passenger traffic from July 2022 to July 2023 went down slightly (from 1,118,213 to 1,038,451), showing that passenger traffic stayed relatively level in the past year. See, data from https://www.oaklandairport.com/wp-content/uploads/July_CY2023-Summary-Page-only.pdf attached as Attachment F. San Jose Mineta International Airport (“SJC”) saw similar traffic trends with only modest growth in their passenger traffic from 1,072,782 to 1,121,691 during the same period. See https://www.flysanjose.com/sites/default/files/financial/activity_reports/July%20CY%2023%20Statistics_0.pdf; Attachment G. As a Mercury News article dated September 5, 2023 makes clear, businesses across the country have cut back on business travel significantly and replaced it with remote conference calling. See <https://www.mercurynews.com/2023/09/05/will-business-travel-to-the-bay-area-bounce-back-to-pre-covid-levels-maybe-not/> also attached as Attachment H. While business travel may recover in the future, there is no guarantee that the recovery is certain, let alone that it will happen at the high rate forecast in the DEIR. *Id.* Bay Area airports saw substantial drops in passenger demand and corresponding flights between April 2019 and April 2023. *Id.* SJC saw a 22% decline in flights from April 2019 to April 2023, SFO saw a 16% decline, and OAK saw an 18% decline in the same period. *Id.*

The DEIR’s choice of an outdated baseline presents inflated conditions, artificially minimizes the Project’s environmental impacts, and thus distorts its analysis of many categories of environmental impact, most notably noise and air pollution. Had the DEIR used an appropriate more recent baseline, the number of aircraft operations and other activity under the existing condition would have been less than assumed in the document.

With an accurate/current baseline, and appropriate analysis of aircraft operations resulting from a Project-related increase in capacity, the noise analysis and the air quality analyses would likely have shown that the related impacts would be worse than presented.

OAK acknowledges that the 2019 baseline would be problematic and that the DEIR-utilized 2019 baseline would need to be updated if the project was delayed. See, email from Bryant Francis, former OAK Aviation Director to Randy Gillespie, Southwest Airlines representative, dated April 16 2020, attached as Attachment I. In this email B. Francis states that if the project did not “proceed in the early fall” of 2020, Oak would “need to redo much of the forecast work” conducted at great expense. *Id.* In addition, B. Francis indicates that “changing the base year from 2019 to 2020” would result “in a much steeper impact between the no project and the project” triggering the need for additional mitigation. The project *was* delayed, but the baseline was not updated. A revised DEIR must correct this flaw.

In short, the DEIR uses a snap shot in time—flight operations that took place prior to a sector-wide downturn—that has not been the norm for at least four years and measures the Project’s impacts against this baseline. The DEIR fails to provide evidence to support its use of the 2019 baseline. Absent such evidence, the Port should use its discretion to employ a more realistic current condition as baseline for the DEIR.

It is the agency’s burden to “conduct the investigation and obtain documentation to support a determination of preexisting conditions.” *Save Our Peninsula Com.*, 87 Cal.App.4th at 122. Here, the DEIR has not met its burden to support its determination of existing conditions. As a result, the DEIR’s entire analysis of the Project’s impacts is arbitrarily skewed because it compares the Project’s impacts against outdated conditions that have changed, instead of against what the current conditions actually are.

In addition, the DEIR employs a 2019 baseline for parts of the aviation forecast and a 2021 baseline for others. See, e.g., DEIR, Appendix C at 74 showing use of 2019 baseline and DEIR Appendix C at 94 showing use of a 2021 baseline. The use of different baselines may be due to the FAA directing OAK to use a more current baseline for comparison of OAK’s to the FAA’s Terminal Area Forecast (“TAF”). See, e.g., Attachment J, Notes from Meetings of OAK staff with the FAA ADO Group (Regional Airports Division and District Offices) dated February 2022 (i.e., FAA staff commented on the fact that OAK’s forecast is not compatible with FAA’s TAF. Using a more current baseline with lower passenger numbers would reduce the difference between the two forecasts.) However, the DEIR’s approach of using inconsistent baselines is problematic because it presents a jumbled analysis that compares impacts from Project buildout to

higher operations in 2019 in some parts and to lower operations in 2021 in other parts. This approach is unacceptable and only adds to the unreliability of the analysis.

B. The DEIR's Aviation Forecast Is Inaccurate.

The environmental analysis for an airport project can only be accurate if it is based on an accurate aviation forecast. That is because the critical impacts such as noise and air emissions are based on forecast numbers. If the forecast is too low, or too high, the DEIR fails entirely as an informational document. It is the job of the Project proponent — in this case OAK — to put forth and support a credible aviation forecast. Unfortunately, OAK's forecast lacks credibility and undermines the entire DEIR because it is too high, presenting overly optimistic forecast numbers. However, the DEIR fails to provide substantial evidence to support the basis of the forecast.

The forecast presented in the DEIR is inaccurate, in part, because it is based on faulty methodology. Yimga Report at 1, 2. For example, the DEIR fails to consider historic data about passenger demand at OAK. Specifically, the modelling did not include recent trend breakers such as the recession of 2007-2008, the grounding of the 737 MAX in 2019-2020, and the COVID 19 pandemic in 2020-2022. Yimga Report at 2; DEIR Appendix C at Figure 2-7. In addition, the analysis for the long-term forecast considers only unconstrained growth. Yimga Report at 3. The DEIR fails to consider relevant macroeconomic factors that would influence demand, such as competition from other airports in the region, seasonality, and population demographics. *Id.* Instead the analysis included only unconstrained growth, which ignores real-world factors that influence passenger demand at OAK.

As explained on OAK's website, "Constrained airline passenger forecasts are *dependent on many factors*, including the types of airplanes the airlines choose to fly (i.e., fleet mix and the number of seats per airplane), assumed taxiway and other airfield improvements, amount of delay that the airlines and airline passengers are willing to tolerate, air travel market constraints, air traffic control rules and procedures, required aircraft-to-aircraft separations due to wake vortices, etc., all of which are likely to change between now and 2025." Available at <https://www.oaklandairport.com/development/master-plan/forecasts/> (emphasis added).

OAK staff received feedback regarding the questionable passenger forecasts from FAA staff. See, Notes from Meetings of OAK staff with the FAA ADO Group (Regional Airports Division and District Offices) dated February 2022 and April 2022, attached as Attachment K. Specifically, FAA staff referred to OAK's forecast as describing an "optimistic recovery" and indicated that demographic changes have to be linked to

demand, not just to level-of-service or in-kind replacement. *Id.*, dated February 2022. FAA staff also commented on the fact that OAK's forecast is not compatible with FAA's TAF. *Id.* As explained in the Yimga Report, attached to this letter as Attachment A, and as shown in the DEIR's Appendix C at 94, OAK forecasts higher passenger enplanements compared to the TAF forecast in 2026, 2031, and 2036. The discrepancy between the two forecasts becomes amplified at each forecast horizon to a peak difference in 2036 where OAK's forecast exceeds the TAF forecast by 22.5%. *Id.*

As the FAA notes "if the airport historically functions under constrained conditions, the FAA [TAF] forecast may reflect those constraints since they are embedded in historical data." See <https://www.faa.gov/sites/faa.gov/files/Forecast%20Process%20for%202022%20TAF.pdf>, at 2; also attached as Attachment L. Thus, the FAA's more conservative forecast captures some of the constraints that OAK experiences, while OAK's forecast does not. Therefore, the FAA's TAF is likely a closer estimate of the growth OAK can expect.

As discussed above, and in detail in the Yimga Report, OAK fails to adequately respond to FAA's comments. OAK's forecast remains beyond "optimistic." It assumes that passenger demand will not only fully recover from pandemic disruptions by 2023, but will also grow at an unprecedented rate to levels never achieved at OAK. Yimga Report at 3. The DEIR fails to link the forecasted demand to demographic changes and largely points to level-of-service needs (although, as explained in the Yimga Report, even this link is tenuous). See, Yimga Report at pp. 6 to 11 (explaining that gates at OAK are generally underutilized so that a substantial expansion in the number of gates is not warranted).

Moreover, airports including OAK can anticipate other economic disruptions as well. As just one example, the International Air Transport Association (IATA) has indicated that airline capacity is expected to remain constrained until at least 2025, and perhaps beyond, due to new aircraft delivery delays and a shortage spare parts. See, <https://www.reuters.com/business/aerospace-defense/global-airline-capacity-constrained-until-2025-says-iatas-walsh-2023-04-19/>, also attached as Attachment M (Reuters article "Airline Capacity Constrained until 2025 due to delivery delays, spare parts -IATA" August 19, 2023). For all of these reasons, the airport's assumptions are simply unrealistic.

Simply stated, OAK has not met its burden of presenting a credible aviation forecast. This failing undermines the entire DEIR, which must be redone based on a more realistic and accurate build-out forecast which takes into account the full extent that

aircraft operations could be accommodated at OAK with and without the proposed improvements.

C. The DEIR's Aviation Forecast Approach Improperly Overstates the No Project Alternative's Impacts.

As discussed above, in addition to using an inappropriate baseline and dramatically overestimating the airline operations forecast, OAK has adopted the nonsensical position that future aviation activity levels at OAK will be the same regardless of whether or not the Project is approved and implemented. E.g., DEIR at ES-3, 3.3-22, 3.11-15, 3.11-24, 3.12-8, 3.14-30, 4-8. OAK's position – that passengers will come to OAK regardless of whether the new Terminal and new gates are constructed – is directly contradicted by data presented in the Yimga Report. See, Yimga Report at 3, 4. As the Yimga Report explains, OAK's past passenger demand predictions have often skewed towards the ambitious side, failing to materialize as expected. For example, the airport's Master Plan envisioned a steady climb in passenger demand, forecast to peak at around 30 million passengers annually by 2025. Yimga Report at 3, 4; OAK Master Plan at 27, 34. In reality, OAK served 13.4 million passengers in 2019 and just 9 million in 2022, far less than envisioned by the Master Plan. Put simply, OAK's forecasts have been unrealistically high before and they are unrealistically high now. And the validity of the entire DEIR is undermined by its reliance on OAK's position that the number of aircraft operations will increase whether or not the new gates are implemented.

The DEIR's approach suggests that growth of aircraft operations at OAK is completely unconstrained and inevitable. As discussed above, and as acknowledged by OAK on its website, in reality, passenger forecasts are dependent on many factors. For example, airline fleet mix, the amount of delay that the airlines and airline passengers are willing to tolerate, air travel market constraints, FAA rules and procedures, and required aircraft-to-aircraft separations all play a role in passenger forecasts. See, <https://www.oaklandairport.com/development/master-plan/forecasts/>. The DEIR fails to register the reality of other influencing factors because it ignores the fact that expanded facilities are the lynch pins that would increase passenger aircraft operations.¹

¹ Courts have been skeptical of the idea that expansion of an airport's facilities will not have an impact on traffic. See *Barnes v. U.S. Dept. of Transportation* (2011) 655 F.3d 1124, 1139 (holding that “even if the stated purpose of [building a new runway] is to increase safety and efficiency, [an agency] must analyze the impacts of the increased demand attributable to the additional runway” when determining whether to perform an EIS under NEPA).

This lack of a true and accurate disclosure in the DEIR is so fundamental that it undermines nearly all of the analysis of impacts contained in the document. The failing causes the DEIR to conclude – incorrectly – that the Project will not influence growth at OAK. Doing so artificially inflates the impacts associated with the future “No Project” scenario, again making it appear less attractive when compared to the proposed Project. This is a clear CEQA violation. The DEIR must be revised to include an accurate “No Project” alternative that is not based on a faulty assumption that aviation activity at OAK will increase dramatically without the proposed Project.

D. It Is Simply Common Sense that the Project Would Expand OAK’s Operational Capacity.

As discussed above, the DEIR’s failure to acknowledge the Project will increase operations at OAK goes directly to CEQA’s mandate to disclose all reasonably foreseeable effects of the Project. OAK’s claim that operations will increase at the same rate with or without the Project is simply not credible because it is common sense. Expanding the airport’s operational capacity is the Project’s very purpose. The fact that OAK is proposing to expand to such an extent is itself evidence that this must enable and/or induce additional passenger operations, since otherwise pouring millions of dollars into a major project would not be justified. Merely improving passengers’ comfort and experience, when OAK claims that demand will continue to rise at the same rate regardless, does not make sense. That kind of investment makes sense only if it would also increase revenues and/or enable growth. Evidence exists that Southwest Airlines sees the Project as necessary to maintain and expand their passenger operations at OAK. Specifically, in response to CLASS’ request pursuant to the PRA for documents, OAK provided documents stating that “current capacity constraints won’t allow a steady growth consistently in the years prior to opening.” See, Attachment N, email from Randy Gillespie, Southwest Airlines representative, to Bryant Francis, former OAK Aviation Director, dated October 23, 2019.

In other words, Southwest, the dominant airline operating at OAK, responsible for roughly 95% of all arrivals and 90% of all departures between May 17, 2021, and June 15, 2023, makes clear that it needs the project in order to maintain and expand its passenger operations at OAK. *Id.* and Yimga report at 5 and 10. Put another way, Southwest’s comments make clear that unconstrained growth will not occur unless OAK proceeds with the Project to enhance the airport’s capacity. This is consistent with common sense, but the DEIR is instead built on OAK’s nonsensical claim that such growth is inevitable.

E. The DEIR's Flawed Project Description Does Not Permit Meaningful Public Review.

For an EIR to adequately evaluate the environmental ramifications of a project, it must first provide a comprehensive description of the project itself. “An accurate, stable and finite project description is the sine qua non of an informative and legally sufficient EIR.” *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 730 (quoting *County of Inyo v. City of Los Angeles* (1997) 71 Cal.App.3d 185, 193). As a result, courts have found that, even if an EIR is adequate in all other respects, the use of a “truncated project concept” violates CEQA and mandates the conclusion that the lead agency did not proceed in a manner required by law. *Id.*

Furthermore, “[a]n accurate project description is necessary for an intelligent evaluation of the potential environmental effects of a proposed activity.” *Id.* (citation omitted). Thus, an inaccurate or incomplete project description renders the analysis of environmental impacts inherently unreliable. While extensive detail is not necessary, the law mandates that EIRs should describe proposed projects with sufficient detail and accuracy to permit informed decision-making. See CEQA Guidelines §15124.

Here, the DEIR fails to describe aspects of the Project that are essential for the DEIR to provide a meaningful environmental analysis. In some cases, important aspects of the Project are omitted altogether. As discussed above, in perhaps the most glaring example, the DEIR fails to include a critical piece of the project as described in the Master Plan – the parallel Taxiway B. Given that the analysis included in the Master Plan has already identified the parallel taxiway as necessary to relieve congestion if a new terminal is constructed, this project feature should have been described as part of the Project. Moreover, as discussed above, the DEIR should include an airfield and airspace simulation explaining in detail the airfield improvements that would be necessary to manage airfield congestion resulting from the proposed Project.

In addition, the DEIR fails to provide a definitive description of the number of gates that will be constructed at the proposed new terminal. For example, portions of the DEIR indicate that the project would result in a net increase of 16 gates. See, DEIR Table 2-2 at 2-11 (Gap Analysis for existing terminals), indicating a gap of 16 gates for Planning Activity Level, or PAL, 2. Other sections of the DEIR indicate that “[t]he new terminal would include up to 25 aircraft gate.” See, e.g., DEIR at 2-17, 2-23. The DEIR also implies that nine existing gates would be removed through an “optimization of existing aircraft gates from 29 to 20 gates to allow each gate to operate independently.” DEIR at 2-17. The DEIR does not, however, provide any details or visual indicating how all this would be implemented. For example, the DEIR does not make clear which nine

existing gates would be eliminated. Likewise, the DEIR fails to provide even the most basic information regarding how the new, 25-gate terminal would be configured. Such information is routinely provided in CEQA documents for other airport projects and should have been provided in this DEIR. The DEIR's approach renders the project description inadequate and unstable. See *Stoepthemillenniumhollywood.com v. City of Los Angeles* (2019) 39 Cal.App.5th 1, 18.

Under CEQA, the airport cannot defer description and analysis of the number of gates or other project features to a future date. Guidelines § 15378(a) (“‘Project’ means the whole of an action, which has a potential for resulting in either a direct physical change in the environment, or a reasonably foreseeable indirect physical change in the environment.”). The DEIR must disclose the number, location, configuration and timing of aircraft gates proposed to be added and decommissioned. Without this information, the DEIR cannot properly evaluate Project impacts. For example, disclosure of this information is important because the number of gates located at the proposed new terminal is directly tied to the number of aircraft using Taxiway B to reach the South Field runway, and the amount of congestion that can be expected on this part of the air field. Therefore, detailed information about the exact number, location, configuration and timing of gates is necessary to allow decisionmakers, the public and responsible agencies to evaluate potential environmental impacts.

Furthermore, the revised DEIR must include an enforceable schedule for the decommissioning of any existing gates in Terminals 1 and 2 that will be replaced with gates in the proposed Terminal (i.e., removal of all passenger loading facilities and associated airfield markings). Moreover, OAK's commitment should include a provision that OAK cannot rely on the decommissioned existing gates for future operations. OAK must specify and lay out the details for decommissioning the gates to be replaced, including a construction schedule for gate decommissioning.

Without clear and enforceable commitments, CLASS is concerned OAK would continue to use the existing gates, resulting in more total operating gates than disclosed in the DEIR. Instead, for each new passenger gate that becomes operational, OAK should confirm that a corresponding existing gate is removed until all the existing gates being replaced are decommissioned. Existing gate removal must include demolishing or disabling all passenger boarding facilities and removing pavement markings associated with the gate.

In sum, the DEIR's description of the Project violates CEQA because it presents an inadequate and unstable project description. This violates CEQA and misleads EIR readers. The failure to describe the whole of the Project is a serious and pervasive

deficiency, as it renders faulty the EIR's environmental impact analyses as well as the discussion of potential mitigation measures and alternatives to minimize those impacts.

V. The DEIR's Analysis and Mitigation of Project-related Impacts Are Inadequate.

CEQA requires thorough, comprehensive environmental review for proposed projects. The EIR for this proposal should be of the highest quality, giving both decision-makers and the public a full opportunity to understand and analyze environmental repercussions of the Project. An EIR is "the heart of CEQA." *Laurel Heights Improvement Assn. v. Regents of Univ. of Cal.* (1988) 47 Cal.3d 376, 392 ("*Laurel Heights I*"). In particular, the Port "should not be allowed to hide behind its own failure to gather relevant data." *Sundstrom v. County of Mendocino* (1988) 202 Cal.App.3d 296, 311. "Because the EIR must be certified or rejected by public officials, it is a document of accountability." *Laurel Heights I*, 47 Cal.3d at 392. The evaluation of a proposed project's environmental impacts is the core purpose of an EIR. See CEQA Guidelines § 15126.2(a) ("An EIR shall identify and focus on the significant effects of the proposed project."). It is well-established that the City cannot defer its assessment of important environmental impacts until after the project is approved. *Sundstrom*, 202 Cal.App.3d at 306-07. Unfortunately, the DEIR fails entirely to live up to this mandate.

An EIR must provide enough analysis and detail about environmental impacts to enable decision-makers to make intelligent judgments in light of the environmental consequences of their decisions. The Port, in its role as lead agency, must make a good faith effort to disclose the impacts of the Project, both at the Project level and at the cumulative level. The Project's large size and its close proximity to thousands of people in dense urban neighborhoods mandate particularly careful analysis and public disclosure of its many significant impacts. Unfortunately, as described in detail in the following sections, the DEIR for the OAK Terminal Modernization and Development Project fails to meet even the most basic objectives of CEQA, and utterly deprives the public and decision-makers of any opportunity to understand the environmental repercussions of the Project.

As explained below, the DEIR fails to analyze the Project's numerous environmental impacts, including those affecting noise, air quality, climate change, and public health and safety. In addition, in some instances, the EIR also fails to adequately analyze the Project's cumulative impacts. These inadequacies require that the EIR be revised and recirculated so that the public and decision-makers are provided with a proper analysis of the Project's significant environmental impacts and feasible mitigation for those impacts. See CEQA Guidelines §15002(a)(1) (listing as one of the "basic

purposes” of CEQA to “[i]nform governmental decision makers and the public about the potential, significant environmental effects of proposed activities”).

A. The DEIR’s Analysis of the Project’s Noise Impacts Fails to Satisfy the Requirements of CEQA.

The DEIR fails to take into account two important facts. First, an ironclad definition of significant effect is not always possible because the significance of an activity may vary with the setting. For example, “an activity which may not be significant in an urban area may be significant in a rural area.” CEQA Guidelines § 15064(b). Second, where significant noise impacts and disturbing noise events are already present, tolerance is very low for any increase in either the frequency of events, the decibel level of the events, or the duration of the events. Here, the proper question is not the relative amount of noise resulting from the Project, but “whether any additional amount of [noise] should be considered significant” in light of existing conditions. *Los Angeles Unified School District v. City of Los Angeles* (1997) 58 Cal.App.4th 1019, 1025-26 (citation omitted) (“*LA Unified*”).

Given the uniqueness of the CEQA standard, the fact that residential uses are considered compatible with a noise level of 65 decibels for purposes of land use planning is not determinative in setting a threshold of significance under CEQA. For example, in *Oro Fino Gold Mining Corp. v. County of El Dorado* (1990) 225 Cal.App.3d 872, the court ruled that citizens’ personal observations about the significance of noise impacts on their community constituted substantial evidence that the impact may be significant, even though the noise levels did not exceed general planning standards. *Id.* at 881-82. *Berkeley Keep Jets Over the Bay Com. v. Port of Oakland* (2001) 91 Cal.App.4th 1344, 1381 (“*Berkeley Jets*”). Furthermore, in *Sierra Club v. Tahoe Regional Planning Agency* (E.D. Cal. 2013) 916 F.Supp.2d 1098, 1148-49, the court cited *Berkeley Jets* for the proposition that a community-wide noise metric may be inadequate if it obstructs meaningful understanding of the project’s noise impacts.

This is exactly the mistake that this DEIR makes. The analysis focuses on the increment of change in community-wide noise levels predicted from future aircraft operations and bases its conclusion that the Project would not result in significant noise impacts solely on its assessment that the 65 dBA CNEL contour would not expand to include any housing units and that the increase at other noise-sensitive receptors would be less than 1.5 dBA. DEIR at 3.11-30. Under CEQA, an EIR may conclude that impacts are insignificant only if it provides an adequate analysis of the magnitude of the impacts and the degree to which they will be mitigated. As documented below and as further detailed in the Salter Report (Attachment B), the DEIR fails to adequately analyze or

support with substantial evidence its conclusions that the project does not have significant operational noise impacts. Page 1 of the Salter Report summarizes the key failures of the noise analysis, including:

- The DEIR fails to acknowledge the longstanding and on-going community concerns and complaints about aircraft noise. The public deserves recognition that the noise environment is disruptive to the surrounding communities. As such, the project should include measures to help reduce existing impacts and ensure that no additional adverse impacts are produced.

- Single-event aircraft noise analysis is omitted entirely from the impact analysis and is ignored in the development of appropriate noise mitigation measures. This mistake was made 20 years ago in a previous Oakland Airport impact analysis, and it should not be repeated today.

- The DEIR does not provide adequate information for a proper and public evaluation of nighttime aircraft noise. And the little information that is disclosed about overall nighttime flights is concerning as substantial increases in the quantity of nighttime flights is anticipated.

- Though Appendix M “Sleep Disturbance Analysis” is attached to the DEIR, all information in this appendix is expressly ignored in the impact analysis. However, this appendix reveals the presence of excessive noise, which corroborates the ongoing public response to noise referenced above.

- Though Appendix M divulges that aircraft noise-induced “awakenings” is expected to increase as part of the project, it provides no evidence to demonstrate that such increases in the proposed NAWR rating are less than significant.

Each of these points is elaborated upon in the sections below and in the Salter Report.

Another problem with this noise analysis is its use of 2019 as a base year for existing conditions. The DEIR states, “[t]o provide a conservative analysis, the Port has elected in this Draft EIR to compare the aviation activity-based impacts of the Proposed Project in 2028 and 2038 to the 2019 OAK aviation activity level conditions, thus overstating the Proposed Project’s actual impacts.” DEIR at 3.11-15. The actual amount of activity at the airport in 2021 (date of NOP publication) is less than it was in 2019. Therefore, the delta between *actual* existing noise conditions in 2021 and future 2028 and 2038 conditions is likely *greater* than between 2019 and 2028, 2038. By using 2019 as a

baseline, the existing noise environment appears higher and the incremental noise increase is likely understated in the DEIR.

The DEIR describes the noise analysis, which highlights how ineffective the metric is for measuring actual on-the-ground conditions and experiences regarding noise. “The CNEL metric is used for this aircraft noise analysis based on an Average Annual Day (AAD) of aircraft operations, generally derived from data for a calendar year. An AAD activity profile is computed by adding all aircraft operations occurring during the course of a year and dividing the result by 365. As such, AAD does not reflect activities on any one specific day but represents average conditions as they occur during the course of the year.” DEIR at 3.11-3.

The flaw with this noise metric and using it to measure significance is twofold. First, the standard CNEL measures the weighted sound energy to which a person or community is exposed over a period of 24 hours. This means that the most extreme noise events are averaged out over the course of 24 hours and their impact is diluted. Second, utilizing an Average Annual Day (AAD) metric further weakens the result by not recognizing the day-to-day or seasonality of noise impacts. On page 3.11-3, the DEIR describes that “[a]n AAD activity profile is computed by adding all aircraft operations occurring during the course of a year and dividing the result by 365. As such, AAD does not reflect activities on any one specific day but represents average conditions as they occur during the course of the year.” By using a CNEL metric based on AAD, the resulting measurement is neutralized by blending intense periods of noise activity with lesser ones and averaging the number. This results in a second layer of diluting the noise measurement and moves further away from the real-life conditions and a numeric result that would accurately describe how people truly experience noise disturbances, which is the sound and duration at the moment the noise event happens.

The true measurement of how people experience a noise event is to calculate Sound Exposure Level (SEL), which takes into account the L_{max} (peak sound level during a noise event) and the duration of the event. This is the actual noise impact and the one that impacts speech, interferes with sleep, disrupts the ability to focus, and increases stress and anxiety levels. Reliance on the CNEL method is inadequate because the noise resulting from airplane traffic is acute, and the intensity of single flyover events should be measured in addition to average daily levels. California case law interpreting CEQA—*Berkeley Jets*, 91 Cal. App. 4th 1344—supports this position.

A final deficiency in the noise analysis is an understatement of increased aircraft operations, which prevents a full and proper accounting of the noise impacts. OAK's forecast of increased aircraft operations is low relative to its forecasted increase in

passengers. The DEIR suggests that this is due to the fact that airlines will be up-gauging to larger aircraft in the coming years and there will be more passengers per flight. However, as detailed on page 7 of the Yimga Report, the DEIR contains insufficient data to justify this expected transition to larger aircraft, and there remains ambiguity as to whether this transition will actually take place. If current conditions continue, the passenger count per plane would be less and the number of aircraft operations would be higher, leading to greater noise impacts than the DEIR analyzes.

This deficient noise analysis requires that the DEIR be revised to provide a complete and accurate picture of the Project's significant environmental impacts and feasible mitigation for those impacts, as required by law. See CEQA Guidelines § 15002(a)(1) (listing as one of the "basic purposes" of CEQA to "[i]nform governmental decision makers and the public about the potential, significant environmental effects of proposed activities).

1. The DEIR's Analysis of Single Event Noise Is Legally Inadequate.

The City of Alameda, and the Community of Harbor Bay Isle in particular, is located in close proximity to the airport and the residents regularly experience disruptive noise from aircraft departing from the North Field and South Field runways. The NAPs in place to protect the residential neighborhoods from aircraft disturbances are effective to a certain degree, but jet departures still occur from the North Field, many times at night and in the early morning hours. Nighttime departures are particularly disruptive, and evaluating the proposed Project simply by measuring CNEL is wholly inadequate to provide evidence to conclude that operational impacts would be less than significant. Our review of the DEIR therefore included a special focus on the document's single event noise analysis, which would describe the effect of noise generated from a single flight, and more importantly, its impact on receptors.

However, the DEIR's analysis of single event noise is non-existent. The Noise Section of the DEIR is inconsistent with the requirements and intent of CEQA. This lack of a single event noise analysis is particularly concerning given that, in 1997, the Board of Port Commissioners was sued by a group of community organizations (including CLASS) along with the cities of San Leandro and Alameda over the Port's failure to complete a single event noise analysis in the DEIR for the OAK Airport Development Program. The petitioners prevailed in the suit, and the Port of Oakland was forced to prepare a Supplemental EIR to address nighttime noise impacts, including sleep disturbance. Specifically, the 2003 SEIR: (1) evaluated potential nighttime noise effects by comparing nighttime aircraft activity under normal operating conditions both with and

without the Proposed Project; (2) estimated the increase in average number of nighttime flights; and (3) calculated the probability of awakening due to single event noise as a result of implementing the Proposed Project.

By contrast, this DEIR, prepared nearly 20 years later when a wealth of additional information is known about the detrimental effects of noise on human health, side-stepped this issue almost completely. Since the 2003 OAK ADP SEIR was published, there have been other examples of airports conducting robust single event noise analysis. The first example of this is the Noise Analysis for the 2016 Burbank Airport Replacement Passenger Terminal Project EIR, which contains SEL contours and SEL data tables to compare the SEL values for the noisiest passenger aircraft at the airport at selected noise-sensitive receptors. See 2016 Burbank Project EIR, Appendix K – Noise Technical Report at Table K-3; Figures K-5 through K-12 (Attachment O). The document notes that aircraft SEL data is valuable for “demonstrat[ing] the spatial extent of noise events” resulting from, for example, aircraft taxiing operations for various project alternatives. See *id.* at K-9. Notably, the Burbank Airport project involved a 1-to-1 replacement of gates and would add no additional gates, unlike the Project, which would add up to 16 new gates at OAK. The second example is the Noise Assessment for the Norman Y. Mineta San Jose International Airport Master Plan EIR (2019). This analysis presents Time Above (“TA”) values for aircraft noise levels greater than 75 dB and 85 dB at various receiver points, along with the overall land area exposed to the SEL values for the departure and arrival of various aircraft types, and SEL results for the predominant aircraft in the fleet mix. 2019 SJC Airport Noise Assessment for the Master Plan EIR at Table 12, Table 13, Table 14 (Attachment P). The Mineta EIR also notes that an earlier (2003) EIR contained a similar analysis comparing existing and future SEL conditions and identified increases in SEL values in the airport vicinity. *Id.* at 25.

We point to these two examples to show that OAK’s approach does not reflect what is possible and typical today. A thorough analysis of future single event noise events is achievable and common in airport EIRs. By not conducting a robust single-event noise analysis and providing that information in the DEIR, the document fails to disclose to the public the Project’s significant environmental impacts.

(a) The DEIR Fails to Analyze Night Awakenings.

Case law requires that an EIR “measure how many high-noise events will take place during the noise-sensitive nighttime hours [and] describe the effects of noise on normal nighttime activities, such as sleep.” *Berkeley Jets*, 91 Cal.App.4th at 1382, fn. 23. The Court of Appeal in that case stressed the need to provide information in a form that is useful to help nearby residents evaluate the impact of future increased air traffic on their

daily lives. In particular, the EIR must enable residents to evaluate the degree to which the “single events” of aircraft takeoffs and landings interfere with their sleep and conversation. *Id.* at 1372-83.

This information exists for OAK. It is collected daily, reports are generated quarterly, shared with the OAK Noise Forum membership, and are posted on the airport’s website.² Yet the DEIR includes none of the existing noise data other than CNEL measurements. Among the many noise data points collected by the airport is the number of nighttime noise events generated by aircraft activity at the North Field between the hours of 10:00 p.m. and 7:00 a.m. These SEL Noise Measurements are captured by noise monitors placed at various locations in the cities of San Leandro and Alameda. As an example, the statistics below are as reported by OAK for the last four quarters (July 2022-June 2023):

NORTH FIELD Night Aircraft Departure SEL Noise Measurements (shown in number of events)					
	Aircraft Noise Events Below SEL 80 dBA	Aircraft Noise Events SEL 80-84.9 dBA	Aircraft Noise Events SEL 85-89.9 dBA	Aircraft Noise Events Over SEL 90 dBA	Total Nighttime Noise Events
Q3 2022	290	142	60	79	571
Q4 2022	407	168	94	55	724
Q1 2023	505	224	117	49	895
Q2 2023	380	144	111	132	767
Total Four Quarters	1,582	678	382	315	2,957
Avg per Night	4.3	1.9	1.0	0.9	8.1

Sources: OAK Quarterly Aircraft Noise Reports (Attachment Q and online³)

² OAK website with noise resources: <https://flyquietoak.com/resources/documents/>.

³ OAK Quarterly Noise Reports: Q1 2023: https://flyquietoak.com/wp-content/uploads/2023/04/494872961-2023_quarterlyaircraftnoise_01.pdf, Q4 2022: https://flyquietoak.com/wp-content/uploads/2023/01/466048270-2022_quarterlyaircraftnoise_04.pdf, Q3 2022: https://flyquietoak.com/wp-content/uploads/2022/10/439296151-2022_quarterlyaircraftnoise_03.pdf

The above table illustrates that, on average, neighborhoods near the airport experience more than eight aircraft noise events on a nightly basis. On average, 3.8 of these nightly noise disturbances are in excess of SEL 80 dBA, which is a substantial disturbance – particularly in a quieter nighttime environment. These statistics are readily available yet, the DEIR fails to include any nighttime SEL event information in the noise analysis. This is required to give decision-makers and the public important information about the noise impact, frequency and timing of single noise events, enabling them to evaluate the significance of those impacts on sleep and quality of life. Pages 4 and 5 of the Salter Report provides additional detail on nighttime awakenings, how they should be analyzed, and how the data in Appendix M shows that nighttime aircraft noise is a significant impact.

(b) The DEIR Fails to Analyze Classroom Disruptions.

Discussion of Project-related classroom disruption is completely absent from the DEIR’s analysis. Outside of identifying those sensitive uses that are within the 65 dBA CNEL contour and identifying if they will experience an increase in the CNEL measurement at full Project buildout (PAL 2), the DEIR fails to evaluate noise impacts to these planned sensitive land uses and provides no justification for the omission. Without such information, the analysis remains insufficient and the level of disclosure of impacts simply does not satisfy CEQA.

(c) The DEIR Fails to Analyze Daytime Disruptions to Speech and Other Detrimental Health Impacts of Single Event Noise.

Noise is a serious public health issue in modern society, yet the DEIR fails completely to discuss what the Project’s significant noise impacts mean in terms of their impacts of on human health. Exposure to increased noise levels has been associated with increased stress, cardiovascular impacts, cognitive impairment in children, and mental health impacts. See Attachment R (WHO “Burden of Disease from Environmental Noise, 2011”); Attachment S (Passchier-Vermeer “Noise Exposure and Public Health”); Attachment T (“Noise Pollution: A Modern Plague”); Attachment U (New York Times “Are You Exposed to Too Much Noise? Here’s How to Check”.) According to the World Health Organization, “environmental noise should be considered not only as a cause of nuisance but also a concern for public health and environmental health.” See Attachment R at xvii. The New York Times article notes that “mounting research suggests that, as average noise levels climb, so do the risks of overreactions in your body that contribute to cardiovascular disease and other health issues.” In order to satisfy the disclosure requirements in CEQA, the DEIR must discuss the health effects of noise impacts on

affected members of the public, including school children whose school locations experience disruptive single event noise.

2. The DEIR Lacks Suitable Thresholds of Significance for Evaluating the Project's Significant Environmental Impacts.

Determining whether or not a project may result in a significant adverse environmental effect is a key aspect of CEQA. CEQA Guidelines § 15064(a) (determination of significant effects “plays a critical role in the CEQA process”). CEQA specifically anticipates that agencies will use thresholds of significance as an analytical tool for judging the significance of a Project’s impacts. CEQA Guidelines § 15064.7. Because the requirement to provide mitigation is triggered by the identification of a significant impact, the DEIR’s failure to identify all of the Project’s significant impacts also results in a failure to mitigate these impacts.

The first step in any discussion of an environmental impact is to select a threshold of significance. Here, the DEIR states that for the purposes of this analysis, implementation of the Proposed Project may result in a significant noise impact if it results in “a substantial increase in aircraft noise” under certain circumstances, or “sleep disturbance from aircraft noise.” DEIR at 3.11-12.

Section 3.11.1.3 (Significance Thresholds) contains two critical flaws: First, utilizing the CNEL metric alone to determine whether there is a substantial increase in aircraft noise ignores a whole set of data that provides valuable information on measuring how substantial noise disturbances actually are. Second, the DEIR goes on to state that sleep disturbance does not currently have a significance threshold and is reported in Appendix M to the DEIR for supplemental information only. The DEIR cannot simply state that data exists to measure sleep disturbance, but since no threshold currently exists, the DEIR can excuse itself from the task of establishing a threshold of significance. This approach is unlawful. The California Supreme Court has made clear that “no authority exempts an agency from complying with the law, environmental or otherwise, merely because the agency’s task may be difficult.” *Laurel Heights I*, Cal.3d at 399; *Protect the Historic Amador Waterways v. Amador Water Agency* (2004) 116 Cal.App.4th 1099, 1106-12 (CEQA does not allow an analysis to be labeled too “speculative” based on lack of threshold). Instead, the lead agency must “use its best efforts to find out and disclose all that it reasonably can.” *Citizens to Preserve the Ojai v. County of Ventura* (1985) 176 Cal.App.3d 421, 431 (citation omitted).

Moreover, other agencies have established significance thresholds for single noise events. In one recent example, in the DEIR for its Specific Plan Amendment Study, Los

Angeles International Airport (“LAX”) established thresholds of significance for both nighttime disturbances and classroom disturbances. While the thresholds used at LAX may or may not be appropriate for OAK, they demonstrate that establishing such a threshold is possible.

Furthermore, the absence of significance thresholds in the DEIR leads to a cascade of other failures: without a threshold, the DEIR cannot do its job since no meaningful analysis of the Project’s actual and foreseeable environmental impacts can be made, and no feasible mitigation measures can be formulated and considered by the public and the decision-makers. Because the DEIR here provides no standard or threshold on which to base its conclusion as to the Project’s impacts, the DEIR must be revised to insert that information, and recirculated for public review and comment.

While choosing and applying a standard of significance—for both individual and cumulative impacts—is the lead agency’s responsibility, the courts have established that citizens’ “personal observations” about the significance of noise impacts on their community constituted substantial evidence that the impact may be significant. *See Oro Fino*, 225 Cal.App.3d at 882. In this case, communities surrounding OAK have long expressed concerns about elevated noise due to over flights and objected to increasing noise levels from aircraft. OAK collects and summarizes on a quarterly basis the number of noise complaints received from the community. This information is then shared with the OAK Noise Forum members and posted on OAK’s website. The complaints received are highlighted and discussed in the Salter Report. Indeed, the community has long been engaged with OAK regarding the implementation of NAPs and advocating for alternative flight paths to alleviate existing noise impacts for overburdened areas of the adjacent communities. Given that residents along the flight paths of the North Field already experience severe aircraft noise at all hours, *any* increase in noise levels should be considered significant and must be disclosed.

3. Increases in Aircraft Noise Are Inconsistent with the City of Alameda General Plan.

The City of Alameda updated the Alameda General Plan 2040 in November 2021, and the document references airport noise within Section 6 (Health and Safety Element). Specifically, the General Plan includes Objective #6, which is to “Protect Alameda residents from the harmful effects of exposure to excessive noise from aircraft, buses, boats, trucks, and automobiles and adjacent land uses.” Alameda General Plan 2040⁴ at

⁴ Alameda General Plan: https://irp.cdn-website.com/f1731050/files/uploaded/AGP_Book_June2022_Amend-1.pdf

136. Under this objective, the General Plan contains eight unique policies and 15 unique actions – all of which speak directly to reducing the noise generated by OAK that impacts Alameda’s neighborhoods. See Alameda General Plan 2040 at 136-40. Several of the policies and actions state very specific requirements for the proposed expansion project and/or expectations as it relates to minimizing single-event and nighttime noise:

Policy HS-43: Oakland International Airport Expansion and Settlement Agreement. Oppose any expansion of operations at Oakland International Airport that would negate or reduce the effectiveness of the noise abatement procedures established by the existing Settlement Agreements.

Policy HS-44: Single Event Noise Exposure. Work with Oakland International Airport to reduce the incidence of single event noise exposure above those currently experienced.

Policy HS-45: Reduce Neighborhood Noise Impacts. Promote the reduction of existing and future potential harmful aircraft noise impacts in Alameda neighborhoods. (See also Policy LU-1 and ME-2).

Action HS-45e: Mitigation. Ensure that any changes to aircraft operations that would potentially result in increased noise levels in Alameda incorporate comprehensive noise mitigation measures, even when the impacts will be of limited duration. To the greatest extent feasible, any changes in airport activity should avoid impacts to noise sensitive uses such as residential areas and schools.

Action HS-45f: Noise Abatement. To the extent permitted by the 1976 Settlement Agreement, the 2001 Settlement Agreement, the 2002 Settlement Agreement, the 2003 Addendum to the Settlement Agreement and the Written Compliance Plan, advocate for noise abatement and mitigation programs that are based not only on the airport’s noise contour maps, but that consider other factors such as the frequency of overflights, single-event noise levels, the altitude of aircraft, the hours of operation, low frequency noise, and sensitive receptors. Monitor implementation and compliance with the Settlement Agreements of 1976, 2001 and 2002 and the Written Compliance Plan.

Policy HS-46b: Airport Expansion. Advocate for the following operational measures to be incorporated into any plans for the expansion of the Oakland International Airport: Flight path alterations for noise abatement. Continue to enforce flight path alterations for noise abatement for all runways, with remote monitoring sites maintained in locations mutually acceptable to the Port and the City.

At the minimum, the DEIR should recognize the City of Alameda's policy guidance in the Regulatory Context section. There is currently a single paragraph that summarizes the City's policies as "the City of Alameda supports state and federal guidelines and regulations used to reduce the effects of transportation noise on surrounding communities." DEIR at 3.11-11. However, this is an inaccurate oversimplification of the City's policy guidance, which should be included in the DEIR and compliance with which should be analyzed.

We anticipate that the Port may contend that it is not obligated to consider Alameda's standards because those standards are not binding on projects located outside of its jurisdiction. For purposes of CEQA, however, that argument is irrelevant and misconstrues the proper role of regulatory standards in determining the significance of impacts under CEQA. CEQA is not concerned with jurisdictional boundaries: environmental impacts do not stop at political borders. Accordingly, a project that will violate standards in an adjacent jurisdiction has significant impacts on that jurisdiction regardless of whether those standards are enforceable as a matter of law against the project. Because the Project will increase noise levels that already exceed City standards, the Project will have significant noise impacts on Alameda.

4. The DEIR Omits the Noise Abatement Procedures in Place.

Section 3.11.1.2 (Regulatory Context) fails to identify important aspects of the existing regulatory and legal framework at OAK. The Settlement Agreement (explained in a previous section of this comment letter) contains a variety of NAPs that guide operations at both the North and South Field runways. Operations at the South Field definitely contribute to the noise environment of neighborhoods around the airport. However, operations at the North Field are extremely impactful to Alameda's residential neighborhoods – both at Harbor Bay Isle as well as neighborhoods at the east end of the main island. In particular, the NAPs that influence aircraft departures from the North Field are a critical piece of the regulatory environment at OAK and should be reflected in the description of existing conditions in the DEIR. Without recognition of the NAPs, the public will question whether OAK is committed to continued implementation of these procedures or if there is another plan, approach, or program that the DEIR is relying upon to continue to control unnecessary and excessive noise impacts to the airport's residential neighbors.

The North Field Preferential Runway Use noise abatement procedure program in place states that the following aircraft should not depart from Runways 28R/L, nor land on Runways 10R/L, except during emergencies, whenever Runways 12/30 are closed or by any cause beyond the control of the Airport: (1) Turbo-jet and turbo-fan powered

aircraft; (2) Turbo-props over 17,000 pounds; (3) Four-engine reciprocating powered aircraft; and (4) Surplus military aircraft over 12,500 pounds. This Preferential Runway Use program is not uniformly successful, as described below, but the DEIR must accurately recognize its role and continued use to mitigate aircraft noise off the North Field.

5. The DEIR Does Not Accurately Analyze Impacts of Increased North Field Operations.

The DEIR does not analyze any increases in noise events from the North Field. Because the Project does not include an expansion to General Aviation facilities in the North Field, the DEIR assumes that operations (and by extension, the associated noise events) there will remain unchanged. However, the DEIR forecasts a 44% increase in aircraft departures at PAL 2, and without a proposed parallel Taxiway B to provide an additional route from jets from the North Field to the South Field runway, the likely outcome will be more business jets and others taking off from the North Field, despite the NAPs in place. This will increase the number of overflights impacting the Community of Harbor Bay Isle and neighborhoods on Alameda's east end, which the DEIR did not take into account. The DEIR's noise analysis must be revised to address this issue.

6. The DEIR Incorrectly Concludes that Noise Within the Airport Land Use Plan (ALUP) Area Would Not Be Excessive.

Section 3.11.3.5 (Impacts Related to Excessive Noise in an Airport Land Use Plan Area) states that "Operation of the Proposed Project would not result in changes to the existing noise contours that would result in any new noise sensitive land uses falling within the noise contours. Noise levels would be similar to existing levels, which are typical for an active public airport. The impact would be less than significant." DEIR at 3.11-33. As detailed in a previous section, simply because the CNEL contour is not changing with the Proposed Project does not mean that the noise environment is not changing. The DEIR does not contain a single-event noise analysis nor does it arrive at any conclusions regarding nighttime disturbance, so the conclusion that noise within the ALUP Area would not be excessive is unsupported.

7. The DEIR Fails to Identify Feasible Measures to Mitigate Significant Operational Noise Impacts.

Given that the Project will result in more flights that will result in more single-event noise disturbances, the DEIR must be revised to propose and analyze feasible mitigation measures to reduce this significant impact. If noise-reduction measures are

insufficient to reduce the Project's impacts to a less-than-significant level, then a revised analysis must identify alternatives that reduce the effects of the Project's noise. In sum, the DEIR provides an insufficient analysis of the noise impacts resulting from the Project's implementation. The revised DEIR must include a comprehensive analysis of these impacts and identify feasible mitigation measures to reduce the impacts to the greatest degree possible.

8. The DEIR's Construction Noise Impact Analysis Is Unsubstantiated.

As detailed in the Salter Report, the stated methodology for analyzing construction noise in the DEIR was to (1) identify the construction phases, construction schedule, equipment by phase, quantities of equipment, and durations of equipment during each phase to calculate noise levels; and (2) use industry accepted data sources to determine the noise and vibration levels of each type of equipment. DEIR at 3.11-14. Though this was the stated intent, there is no evidence that these industry practices were performed, as explained below.

The DEIR construction noise analysis results are provided alone with none of the necessary backup information. The DEIR does not list the equipment to be used, the quantities of equipment, the expected noise levels from each equipment source, nor the durations of equipment use. Therefore, the construction noise levels listed in Table 3.11-9 (DEIR at 3.11-21) are unsubstantiated. The DEIR also fails to supply or sufficiently document the "industry accepted data sources" that were specifically used as noise data sources to develop construction noise estimates. No document references are provided. Furthermore, no referenced construction equipment sound data is listed as the basis for the analysis. The analysis results are summarized in a table with almost no detail on how the calculations were performed. Thus, on both methodology claims listed above, the DEIR fails to follow through. The DEIR does not provide adequate information for peer review of the author's analysis and the expected noise impact. In summary, the DEIR should 'show its work' in order to allow for necessary public review.

9. The DEIR's Analysis of Traffic Noise Is Absent.

Similar to the construction noise analysis, technical background information on the traffic noise analysis (vehicular data or noise model inputs) are provided in the DEIR. Again, the analysis results are summarized in a table with almost no detail on how the calculations were performed. As with construction noise impacts, the DEIR should show its work in order to allow for necessary Lead Agency and general public review of potential traffic noise impacts.

B. The DEIR's Analysis of Air Quality and Greenhouse Gas Impacts Is Inadequate.

The deficiencies of the DEIR's analysis of environmental impacts are not limited to the noise analysis. As demonstrated above, the DEIR's use of an improper baseline and skewed forecast infects the DEIR's analyses and understates the Project's environmental impacts. These flaws implicate the air quality and greenhouse gas ("GHG") emissions as well.

In addition, as discussed below, the DEIR presents an incomplete analysis of the project's air quality impacts because it: fails to provide evidence to support its conclusions regarding project-related emissions; fails to adequately analyze the Project's consistency with applicable air quality plans; fails to analyze the Project's environmental justice impacts as required by the Bay Area Air Quality Management District ("BAAQMD"); and fails to identify feasible mitigation measures to minimize acknowledged significant impacts resulting from the project. The DEIR's analysis of Project-related air quality impacts must be revised to correct deficiencies in order for the public and decision-makers to fully understand the Project's impacts.

The Tamura Report, attached as Attachment C, provides detailed comments on the shortcomings in the DEIR's air quality impacts analysis. We incorporate the Tamura Report into these comments. Some of the DEIR's most troubling errors are described below.

1. The DEIR Substantially Understates the Severity and Extent of the Project's Air Quality Impacts Because the Document Relies on an Inaccurate Baseline and Aviation Forecast.

As discussed throughout this letter, the DEIR's reliance on an inaccurate baseline, and on an unsupported aviation forecast implicate the analysis of air quality and greenhouse gas emissions. Specifically, these errors result in inflated no-project scenario impacts that serve to minimize Project-related air quality impacts. A revised DEIR should incorporate an accurate baseline and present an updated, accurate forecast to evaluate the Project's air emissions.

2. The DEIR's Analysis of Air Quality Impacts Related to Construction and Operation Emissions Is Inadequate.

The DEIR's analysis of Project-related air emissions is inadequate for multiple reasons. First, the DEIR presents figures for calculated project-related emissions, but fails

to provide evidence to support the figures (e.g., model outputs, etc.). Under CEQA, lead agencies must base a decision as to whether a project may have significant environmental effects on substantial evidence. CEQA Guidelines §15064. Moreover, CEQA requires that an EIR support evidence presented with facts. *See Concerned Citizens of Costa Mesa, Inc. v. 32nd Dist. Agricultural Assn.* (1986) 42 Cal.3d at 935-36 (EIR must contain facts and analysis, not just bare conclusions; full and meaningful disclosure and openness to public input); *Center for Biological Diversity v. Department of Fish & Wildlife* (2015) 62 Cal.4th 204. Nor can an EIR's deficiencies be cured by documents not included in the EIR. *Sierra Club v. County of Fresno* (2018) 6 Cal.5th 502, 520-21 ("Friant Ranch").

Second, as discussed above, the DEIR repeatedly claims that the Project would have no growth effect on the passenger capacity of OAK and that passenger demand would grow independent of the proposed Project. E.g., DEIR at ES-3, 3.3-22, 3.11-15, 3.11-24, 3.12-8, 3.14-30, 4-8. As a result, the DEIR determines that the air pollutant emissions associated with aircraft (takeoff, climb-out and landing) would be essentially the same in 2038 regardless of whether or not the Project is implemented. DEIR at 3.7-20, 3.7-21. However, this assumption is unsupported. Tamura Report at 2, 3. The DEIR asserts that the difference between projected emissions in 2038 and baseline emissions in 2019 is a conservative estimate of the Project's impacts on operational emissions. *Id.*; DEIR at ES-3, 2-6, 2-7, 3.3-22. The DEIR provides no support for this assertion. In fact, the DEIR shows carbon monoxide (CO) and Toxic Air Contaminants (TACs) will *decrease*. Tamura Report at 2, 3. Given that the Project will facilitate a substantial increase in air traffic volumes and corresponding emissions, the DEIR's assertion that CO and TACs would decrease is unjustified. *Id.*

Third, the DEIR assesses the Project's air emission impacts only through the year 2038, immediately after the Project's construction would be completed, and before its full impact on the airport's air traffic would be realized. DEIR at 2-7 (Table 2-1). Instead, the DEIR should have evaluated the Project's environmental impacts, including air emissions, beyond the build-out year, when the Project would have its maximum impact.

Finally, the DEIR discloses that "the Port has considered project design features to be part of the Proposed Project design and not as mitigation measures." DEIR at 3.3-25. The DEIR fails to disclose what the design features entail and makes no attempt to calculate what the Project's emissions would be without the design features. Therefore, the DEIR does not separately quantify the emission reductions that would result from these measures. By assuming that these measures are already incorporated into the Project when conducting its air quality analysis, the DEIR obscures the true extent of the Project's impacts. The DEIR must be revised to classify the design measures as mitigation measures, and must evaluate their effectiveness in reducing air quality

impacts. The DEIR must evaluate the significance of the Project's air quality impacts without these mitigation measures, *before* considering the effectiveness of mitigation and the significance of Project impacts after mitigation. *Lotus v. Dept. of Transportation* (2014) 223 Cal.App.4th at 656, 658. Only then can decisionmakers and the public fully understand the Project's impacts.

3. The DEIR's Health Risk Assessment Fails to Disclose Essential Information and Lacks Substantial Evidence to Support Its Conclusions.

It is widely known that airports are among the largest sources of air pollution in the United States. Two examples of air pollutants from airports are nitrous oxide ("NO_x") emissions and ultrafine particulate matter ("UFPs"). See Tamura Report at 3, 4, 11, 12; <https://pubmed.ncbi.nlm.nih.gov/29800768/>, attached as Attachment V. These pollutants are known to cause adverse health effects. *Id.* As discussed further below and in the Tamura Report, the DEIR's Health Risk Assessment fails to include analysis of Project-related health impacts resulting from these emissions. See, Tamura Report at 3, 4, 12.

The DEIR indicates that the Project would generate toxic air contaminants ("TACS"). DEIR at 3.3-29. However, the DEIR fails to explain the implications of the Project's substantial NO_x emissions on public health. The DEIR discloses that the Project would result in a net increase of NO_x emissions of 558.7 tons per year compared to baseline operations, when the threshold of significance is 10 tons per year, and concludes that the impact would be significant. DEIR at 3.3-28 through 3.3-30. However, as the Tamura Report explains, the DEIR fails to disclose the corresponding ozone increase and health impacts associated with these emissions. Tamura Report at 3, 4.

NO_x reacts with other chemicals in the air to form both particulate matter and ozone. See <https://www.epa.gov/no2-pollution/basic-information-about-no2>, attached as Attachment W. Short-term exposure to NO_x, particulate matter, and ozone can irritate airways, aggravate respiratory diseases, particularly asthma, and lead to respiratory problems. *Id.* Longer exposures to elevated concentrations of NO_x may contribute to the development of asthma and potentially increase susceptibility to respiratory infections, especially in children and the elderly.

While the DEIR concludes that impacts from NO_x and ROG would be significant and unavoidable, the sparse analysis fails to provide sufficient information to enable informed analysis of the health impacts associated with these emissions. An EIR is inadequate as a matter of law where it lacks sufficient detail to enable informed, public participation and where it does not substantively connect a project's air quality impacts to likely health consequences. *Friant Ranch*, 6 Cal.5th at 510, 516, 519-22. Simply labeling

an effect “significant” without analysis of air quality impacts is inadequate under CEQA. *Berkeley Jets*, 91 Cal.App.4th at 1371.

Similarly, it is well documented that UFPs have consistently been found to be substantially elevated near airports and that exposure to UFPs leads to adverse health impacts. Tamura Report at 11, 12. As described in the Tamura Report, given that the Project will emit UFPs and that information regarding health effects related to UFP emissions from airplanes is readily available, the DEIR should have analyzed the potential health impacts to area residents.

In sum, a revised EIR should include more detailed analysis of the Project’s TAC emissions, including NOx and UFP emissions, and an analysis of expected health impacts, particularly to adjacent AB 617 communities and elderly populations in the vicinity.

4. The DEIR Fails to Adequately Analyze the Project’s Air Quality Impacts Relating to Obstructing Implementation of Applicable Air Quality Plans.

The DEIR provides a superficial analysis of the Project’s potential to obstruct implementation of applicable air quality plans. The DEIR includes an analysis of the Project’s consistency with the Bay Area Air Quality Management District’s 2017 Clean Air Plan. DEIR at 3.3-31 through 3.3-33. However, the DEIR fails to analyze consistency with the area’s corresponding State Implementation Plan (SIP)—which is an applicable air quality plan separate from the 2017 Air Quality Plan. Tamura Report at 4.

The SIP describes how a nonattainment area will attain national ambient air quality standards and is used to implement, maintain, and enforce the National Ambient Air Quality Standards, and to fulfill other requirements of the Clean Air Act. See <https://www.epa.gov/air-quality-implementation-plans/basic-information-about-air-quality-sips>, accessed on September 14, 2023. As explained in the Tamura Report, to demonstrate that projects will not conflict with the SIP, Federal regulations require a formal “General Conformity” determination for projects that exceed certain emissions thresholds. Tamura Report at 4. The regulations require that the General Conformity determination address the year during which the total of direct and indirect emissions from the project is expected to be greatest on an annual basis. The DEIR fails to perform this analysis.

5. The DEIR Fails to Evaluate the Project's Impacts Related to Environmental Justice.

As explained in the Tamura Report, the BAAQMD's current CEQA Air Quality Guidelines include "Best Practices for Centering Environmental Justice, Health, and Equity." Tamura Report at 7; <https://www.baaqmd.gov/~media/files/planning-and-research/ceqa/ceqa-guidelines-2022/ceqa-guidelines-chapter-2-environmental-justicefinal-pdf.pdf?la=en>, excerpt attached as Attachment X. The DEIR fails entirely to address the environmental justice issues resulting from the proposed Project's impacts. *Id.* For example, the DEIR's health risk assessment fails to take into account background concentrations of pollutants. *Id.* at 2-5 through 2-8. Under CEQA, agencies are required to evaluate the cumulative air quality impacts of a project that contributes to a regional air quality problem that is caused by multiple sources. *Kings County Farm Bureau v. City of Hanford* (1990) 221 Cal.App.3d 692, 720-21. The *Kings County Farm Bureau* court aptly stated, "The relevant question to be addressed in the EIR is not the relative amount of precursors emitted by the project when compared with preexisting emissions, but whether any additional amount of precursor emissions should be considered significant in light of the serious nature of the ozone problems in this air basin." *Id.* at 718. Similarly, the DEIR fails to focus mitigation measures on minimizing impacts to overburdened communities adjacent to the Project area. DEIR at 2-16 through 2-17. Given that the Project is located in East Oakland, an AB 617 community, this analysis and mitigation is even more important. A revised DEIR must include analysis that incorporates this BAAQMD guidance.

6. The DEIR Fails to Identify Feasible Mitigation for Project-related Significant Air Quality Impacts.

Under CEQA, "public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects." Pub. Resources Code § 21002. Here, the DEIR acknowledges that the Project would result in emissions that far exceed established thresholds by BAAQMD. DEIR at 3.3-28. The DEIR concludes that, even with the identified mitigation measures, related impacts would remain significant and unavoidable. *Id.* However, the DEIR makes no attempt to identify and evaluate other feasible measures or alternatives to minimize these impacts.

As discussed in the Tamura Report, a broad array of feasible measures, including but not limited to: requiring the purchase of cleaner alternatives when fleet vehicles or equipment are replaced or added; requiring Tier 4 Final for construction equipment where alternative fuels are not used; installation of low NOx boilers or replacement of boilers

with solar thermal technologies; and promoting and supporting the use of sustainable aviation fuel, have been implemented by other airport projects in the surrounding region. See Tamura Report at 5, 6. Nor is there evidence that a reduced gate alternative that reduces the number of new gates, and thus the number of new aircraft operations, is infeasible. A revised DEIR must identify and include additional mitigation measures and alternatives to reduce or avoid the Project's significant air quality impacts.

C. The DEIR Fails to Adequately Analyze and Mitigate Significant Project-Related Greenhouse Gas Emissions.

Analysis and mitigation of GHG emissions is particularly important with regard to climate change because existing conditions are such that we have already exceeded the capacity of the atmosphere to absorb additional GHG emissions without risking catastrophic and irreversible consequences. Therefore, even seemingly small additions of GHG emissions into the atmosphere must be considered cumulatively considerable. See *Communities for Better Environment v. Cal. Resources Agency* (2002) 103 Cal.App.4th 98, 120 (“the greater the existing environmental problems are, the lower the threshold should be for treating a project’s contribution to cumulative impacts as significant”), disapproved of on other grounds; see also *Center for Biological Diversity v. National Highway Traffic Safety Admin.* (9th Cir. 2007) 508 F.3d 508, 550 (“we cannot afford to ignore even modest contributions to global warming”) (citation omitted; superseded on other grounds).

Furthermore, CEQA’s central mandate is that “public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects.” *Berkeley Jets*, 91 Cal.App.4th at 1354 (quoting Pub. Resources Code § 21002). CEQA requires lead agencies to identify and analyze all feasible mitigation, even if this mitigation will not reduce the impact to a level of insignificance. CEQA Guidelines § 15126.4(a)(1)(A) (discussion of mitigation measure “shall identify mitigation measures for each significant environmental effect identified in the EIR”); see also *Woodward Park Homeowners Assn., Inc. v. City of Fresno* (2007) 150 Cal.App.4th 683, 724 (“The EIR also must describe feasible measures that could minimize significant impacts.”).

Here, as in other topic sections, the DEIR presents an incomplete analysis of the Project’s GHG emissions. As explained throughout this letter, the DEIR fails to support the calculated project-related emissions and its conclusions with technical analysis. Therefore, the documents analysis and conclusions are unsubstantiated. Although the DEIR concludes that the Project’s overall increase in GHG emissions is significant and

unavoidable, readers and decision-makers have no way to check the DEIR's accuracy about the extent and severity of the Project's impacts. DEIR at 3.7-22.

Furthermore, as noted above the DEIR's choice of a 2019 baseline is inappropriate and misleading. See *supra*, Section IV. The GHG impact analysis for the Project relies on this defective baseline and is therefore defective. Because the baseline employed by the DEIR is flawed, the conclusions about increases in GHG emissions predicated on that baseline are similarly flawed. To comply with CEQA, a revised DEIR must employ a baseline more representative of current conditions.

In addition, as discussed further below, the DEIR fails to: estimate OAK's operational emissions beyond 2038; properly evaluate the Project's impacts related to consistency with plans and regulations implemented to reduce GHG emissions; and, fails to identify all feasible measures to minimize Project-related GHG emissions. A revised DEIR must address these deficiencies.

1. The DEIR's Failure to Estimate or Disclose the Project's Operational Emissions Beyond 2038 Is a Serious Flaw.

The DEIR fails to adequately analyze the Project's impact related to climate change because it fails to account for GHG emissions beyond 2038, despite the fact that the Project will have a lifespan well beyond this period. By truncating the analysis at 2038, the DEIR fails to reckon with the growth in aviation activity—and GHG emissions—that will undoubtedly occur as a result of the Project. The need for an objective analysis that extends beyond 2038 is not an academic exercise. The increase in aviation activity that will result from the overall Project beyond 2038 would almost certainly result in an even greater increase in GHG emissions than disclosed in the DEIR. See DEIR at 3.7-20 (Table 3.7-4), 3.7-21 (Table 3.7-5).

Aircraft constitute a huge portion of an airport's emissions. According to a report prepared by the Center for Biological Diversity ("CBD"), aircraft carbon polluting is skyrocketing:

Greenhouse gas emissions from the aviation sector are a substantial contributor to global warming. If the aviation industry were a country, it would place sixth in emissions, between Japan and Germany. Left unchecked global aviation will generate an estimated 43 metric gigatons of carbon dioxide emissions through 2050, constituting almost 5% of the global emissions allowable to keep global warming below 1.5 degrees Celsius. In the United States,

aircraft are one of the fastest-growing sources of emissions: Emissions from domestic aviation alone have increased 17% since 1990, to account for 9% of greenhouse gas emissions from the U.S. transportation sector. Flights departing from airports in the United States and its territories are responsible for almost one-quarter of global passenger transport-related carbon emissions, the majority of which come from domestic flights.

“Airplane Emissions,” Center for Biological Diversity.⁵

By omitting the Project’s future emissions past 2038, the DEIR substantially underestimates the Project’s GHG emissions and thus fails to provide the public with a meaningful assessment of the Project’s impact on climate change.

2. The DEIR Lacks Thresholds of Significance for Evaluating the Project’s Significant Impacts Related to Greenhouse Gases.

Determining whether or not a project may result in a significant adverse environmental effect is a key aspect of CEQA. CEQA Guidelines § 15064(a) (determination of significant effects “plays a critical role in the CEQA process”). CEQA specifically anticipates that agencies will use thresholds of significance as an analytical tool for judging the significance of a Project’s impacts. CEQA Guidelines § 15064.7. Because the requirement to provide mitigation is triggered by the identification of a significant impact, the DEIR’s failure to identify all of the Project’s significant impacts also results in a failure to mitigate these impacts.

The first step in any discussion of an environmental impact is to select a threshold of significance. Here, the DEIR contains no threshold of significance for the Project’s GHG emissions. Thus, although the DEIR concludes, correctly, that the Project would result in significant impacts related to climate change (DEIR at 3.7-21), the document provides no standard by which to judge the impact’s significance. The DEIR attempts to excuse itself from the task of establishing a threshold of significance by pointing out that the CEQA Guidelines and BAAQMD have not established a threshold of significance for GHGs for projects such as an airport. DEIR at 3.7-9. This approach is unlawful. As discussed below, the fact that no threshold exists does not excuse a lead agency from establishing their own. In fact, the CEQA Guidelines specifically anticipates that lead

⁵ Available at https://www.biologicaldiversity.org/programs/climate_law_institute/transportation_and_global_warming/airplane_emissions/, last accessed September 18, 2023).

agencies will establish an appropriate threshold of significance in cases that warrant it. CEQA Guidelines §15064.4(b)(2).

Here, the DEIR's analysis does not conform to the CEQA Guidelines. The DEIR states that the analysis provided is in accordance with CEQA Guidelines Section 15064.4(b)(1 through 3); excerpted below. DEIR at 3.7-9. The Guidelines section cited in the DEIR states:

A lead agency should consider the following factors, among others, when determining the significance of impacts from greenhouse gas emissions on the environment:

- (1) The extent to which the project may increase or reduce greenhouse gas emissions as compared to the existing environmental setting;
- (2) *Whether the project emissions exceed a threshold of significance that the lead agency determines applies to the project.*
- (3) The extent to which the project complies with regulations or requirements adopted to implement a statewide, regional, or local plan for the reduction or mitigation of greenhouse gas emissions (see, e.g., section 15183.5(b)).

CEQA Guidelines §15064.4 Determining The Significance Of Impacts From Greenhouse Gas Emissions (emphasis added). However, the DEIR analysis focuses *only* on items (1) and (3) and altogether foregoes the process of establishing a threshold of significance as prescribed in item (2). *Id.* Although going through the process of establishing a threshold for the project might be time-consuming and challenging, these are not acceptable reasons to forego the work. The California Supreme Court has made clear that there is “no authority that exempts an agency from complying with the law, environmental or otherwise, merely because the agency’s task may be difficult.” *Laurel Heights I*, 47 Cal.3d at 399; *Protect the Historic Amador Waterways*, 116 Cal.App.4th at 1106-12 (CEQA does not allow an analysis to be labeled too “speculative” based on lack of threshold). Instead, the lead agency must “use its best effort to find out and disclose all that it reasonably can.” *Citizens to Preserve the Ojai*, 76 Cal.App.3d 421, 431 (citation omitted).

Furthermore, the absence of a significance threshold in the DEIR leads to a cascade of other failures: without a threshold, the DEIR cannot do its job since no

meaningful analysis of the Project's actual and foreseeable environmental impacts can be made. The DEIR also cannot formulate feasible mitigation measures or show whether or not the measures will reduce the impact below the threshold of significance for consideration by the public and the decision-makers. Because the DEIR here provides no standard or threshold on which to base its conclusion as to the Project's impacts, the DEIR must be revised to insert that information, and recirculated for public review and comment. Moreover, as discussed in more detail in section V.C.3 below, by simply proclaiming that the Project's emissions would exceed baseline emissions, the Project fails to determine the severity and extent of the Project's inconsistency with statewide, regional, or local plans for the reduction or mitigation of greenhouse gas emissions. CEQA Guidelines §15064.4(b)(3).

The DEIR claims that it “assesses the significance of the Proposed Project's GHG emissions based on consistency with State, regional, and local GHG reduction plans, and with AB 1279 and its associated implementing 2022 Scoping Plan.” DEIR at 3.7-9. However, the DEIR includes no such analysis. Instead the DEIR quantifies the Project's anticipated GHG emissions and concludes that aircraft emissions would be considered “potentially significant.” The DEIR also claims that it evaluates the Project's “fair share” of what is needed to achieve the State's long term GHG reduction goals consistent with BAAQMD requirements, but here too, the DEIR includes no such evaluation. DEIR at 3.7-21. The DEIR states only that “the Port would make efforts to include the minimum project design elements identified by BAAQMD.” This approach is inadequate under CEQA. At a minimum, OAK must commit to any District-required design features. A vague promise to “make efforts” without a specific commitment to construct specific design features will not suffice. Therefore, the DEIR fails to establish a threshold of significance and fails to demonstrate that the Port will contribute its “fair share” to achieve the State's long term GHG reduction goals.

In contrast, some agencies have adopted their region's Air District thresholds of significance. For example, in 2021 Sacramento International Airport adopted the Sacramento Metropolitan Air Quality Management District (SMAQMD) thresholds of significance for the EIR for its Master Plan Update. Even though the SMAQMD did not specifically apply to airports, the EIR applied SMAQMD's GHG Thresholds of Significance for land development and construction projects, which is 1,100 metric tons per year during the operational phase. See Final Supplemental Environmental Impact Report for Sacramento International Airport, adopted February, 2022, at 5-10, 5-16, excerpt attached as Attachment Y. Other agencies have adopted the Governor's Executive Orders as thresholds of significance for long-term projects, including Regional Plans. For example, in 2021 the San Diego Association of Governments used them as a

threshold of significance in the EIR for its 2021 Regional Plan, an update of the 2015 Regional Plan/Sustainable Communities Strategy for the San Diego Region and the 2019 Federal Regional Transportation Plan. Specifically, that EIR asked whether the project would “be inconsistent with the State’s ability to achieve the Executive Order B-30-15 and S-3-05 goals of reducing California’s greenhouse gas emissions to 40 percent below 1990 levels by 2030 and 80 percent below 1990 levels by 2050.” See Final Environmental Impact Report for San Diego Forward: The 2021 Regional Plan, adopted on December 10, 2021, at 4.8-20,⁶ excerpt attached as Attachment Z.

In its Regional Plan EIR, SANDAG evaluated the plan’s impacts by calculating a 40% and 80% reduction from the region’s 1990 emissions and using those figures as a target reference point for the Plan. It then compared the region’s expected GHG emissions in the years 2035 and 2050 to the emissions necessary to meet the Executive Orders’ trajectories. It included charts showing that the RTP/SCS would not come close to meeting the Executive Orders’ goals. It concluded that because the total emissions in the San Diego region of 25.5 MMT CO₂e in 2035 would exceed the regional 2035 GHG reduction reference point of 14.5 MMT CO₂e (which is based on Executive Order-B-30-15 and Executive Order S-3-05), the Plan’s 2035 GHG emissions would be inconsistent with state’s ability to achieve the Executive Orders’ GHG reduction goals and that this inconsistency constituted a significant impact. It reached a similar conclusion for the year 2050 goal. By conducting this detailed analysis, SANDAG demonstrated it is feasible to conduct a meaningful analysis of a project’s consistency with the state’s directives adopted for the purpose of reducing GHG emissions. The OAK DEIR should be revised to conduct an analysis that demonstrates the nature and extent of the Project’s inconsistency with California’s climate change goals.

3. The DEIR Fails to Provide a Legally Defensible Analysis of the Project’s Conflicts with Applicable Plans, Policies, and Regulations Adopted for the Purpose of Reducing the GHG Emissions.

The DEIR’s analysis of the Project’s consistency with applicable plans, policies and regulations is so minimal as to be completely unhelpful. Under the impact heading “Conflict with an applicable plan, policy or regulation adopted for the purpose of reducing the emissions of GHGs” the DEIR includes only *one paragraph* of discussion. DEIR at 3.7-22. In this paragraph, the DEIR reiterates that the Project would “accommodate market-based demand” and asserts the Project “would not conflict with

⁶ Available at <https://www.sandag.org/-/media/SANDAG/Documents/PDF/regional-plan/2021-regional-plan/environmental-impact-report/eir-2021-regional-plan-chapters-1-9-2021-12-01.pdf>, last accessed October 2, 2023.

applicable plans, policies, or regulations adopted for the purpose of reducing GHG emissions.” *Id.* The DEIR provides no analysis or base of support for this assertion.

In fact, the DEIR is required to evaluate the Project’s consistency with multiple state- and regional level plans, policies and regulations. For instance, the DEIR should have evaluated consistency with Executive Orders S-3-05, B-30-15, B-55-18, and California’s 2022 Scoping Plan for Achieving Carbon Neutrality (“2022 Scoping Plan”).⁷ The DEIR’s obligation to evaluate consistency with these regulations and plans is made difficult by the DEIR’s failure to analyze impacts beyond 2038. For example, Executive Order S-3-05 (“EO S-3-05”) establishes specific emissions reduction goals and guides state climate policy through 2050. The DEIR fails to conduct any evaluation whatsoever of the Project’s consistency with this Executive Order. To provide a meaningful evaluation of the Project’s consistency with EO S-3-05, other Executive Orders and relevant plans, the DEIR must begin its analysis by using an appropriate baseline and estimating the Project’s emissions in 2050.

For the reasons discussed above, the DEIR must be revised to provide a legally defensible analysis of the Project’s consistency with regional and state plans adopted for the purpose of reducing GHG emissions.

4. The DEIR Fails to Identify Feasible Mitigation Measures to Minimize Identified Significant Unavoidable Impacts Related to GHG Emissions.

Despite the DEIR’s conclusion that the Project’s overall increase in GHG emissions is significant and unavoidable, the DEIR fails to identify feasible mitigation measures to minimize these impacts. DEIR at 3.7-22. Instead, the DEIR describes only the existing measures that OAK has in place for electrical infrastructure in the terminals and cargo areas. *Id.*

As explained in the Tamura Report, the DEIR omits an array of mitigation measures that could reduce the Project’s GHG emissions. Tamura Report at 6. The Port must consider additional measures to reduce overall GHG emissions and measures to

⁷ Executive Order S-3-05 calls for reducing GHG emissions to 80% below 1990 levels by 2050; Executive Order B-30-15 establishes a statewide GHG reduction target of 40% below 1990 levels by 2030; Executive Order B-55-18 establishes a statewide GHG reduction target of carbon neutrality by 2045; and the 2022 Climate Change Scoping Plan sets a statewide strategy to achieve a statewide GHG reduction target of 40% below 1990 levels by 2030.

reduce the Project's energy consumption. In addition, the Port must consider the following small sampling of feasible measures:

- Requiring that off-road diesel-powered vehicles used for construction be new low-emission vehicles, or use retrofit emission control devices, such as diesel oxidation catalysts and diesel particulate filters verified by the California Air Resources Board.
- Requiring the Project to generate more of its own solar power, especially for hot water production, and on-site renewable energy generation.
- Cool roofs/cool parking.
- Requiring use of a catalyzed diesel particulate filter on both new and existing diesel engines (because black carbon is a component of diesel particulate matter, strategies that reduce particulate matter will also reduce black carbon).
- Minimizing and recycling construction-related waste.
- Using salvaged and recycled-content materials for hard surfaces and non-plant landscaping materials.
- Utilizing the combination of construction materials with the lowest carbon footprint.

All these measures would result in direct reductions in emissions that would otherwise be attributable to the Project. In addition, through a combination of other on-site and off-site measures, the Port could require all aspects of the Project within its influence to be "carbon neutral." A revised and recirculated EIR should draw on these resources to develop a concrete mitigation plan. Until it does so, this environmental review will remain inadequate.

D. The DEIR Provides an Inadequate Analysis of the Project's Cumulative Impacts.

CEQA Guidelines Section 15130(b) recognizes that a Lead Agency can utilize either the plan or list approach to identify future projects (or projections) with which the Proposed Project should be assessed to determine if there will be cumulative impacts. This DEIR opted to utilize the list approach, and Figure 5-1 (DEIR at 5-15) identifies the cumulative impacts boundary within which future projects were included on the list, and outside of which future projects were excluded. When utilizing the list approach,

paragraph (2) of subdivision (b) notes that factors to consider when determining whether to include a related project should include the nature of each environmental resource being examined, the location of the project, and its type. Location is particularly important for environmental resource areas such as biological resources, air quality, and water quality, where resource impacts are spread over a larger habitat area, air basin, or watershed.

The CEQA Guidelines explain that lead agencies should define the geographic scope of the area affected by the cumulative effect and provide a reasonable explanation for the geographic limitation used. In the case of this DEIR, the geographic area was identified in DEIR Figure 5-1, but there was limited explanation as to determination of the boundary. The DEIR simply stated that “the cumulative impact study area was determined by starting with the general study area and expanding to include East Oakland as it has been designated as a priority community under California State Assembly Bill 617 (AB 617).” See DEIR at 5-3. No explanation was offered for what the “general study area” entailed or why that would be an appropriated base from which to start, and no explanation of how a singular boundary area suitably serves all environmental resource areas equally.

For some of the environmental resource areas, this boundary is sufficient. For others, it is not. Of noteworthy concern for this cumulative assessment is impacts to air quality. For this resource, the boundary should be much larger, and the projects included on the list should be broader. For the areas of Oakland and Alameda, these communities are already burdened with air pollution impacts generated by the Port of Oakland, Interstate 880, and OAK. This Project will add pollution where even a small increase could have significant adverse impacts.

Furthermore, the DEIR failed to include all known projects that would contribute to cumulative impacts in the area. One particular project that should be included in the cumulative impacts assessment for air quality is the recently-approved sand and gravel plant to be built on 18 acres of port land in West Oakland that would store large amounts of sand and gravel in the open air. Recent reporting by the Mercury News stated that a settlement over the air quality impacts of this project is expected in the near future.⁸ Due to the location and expected impacts of this project, it must be included in the list of cumulative projects for the OAK DEIR.

⁸ <https://www.mercurynews.com/2023/09/19/despite-environmental-concerns-port-of-oakland-to-allow-sand-and-gravel-plant/>.

E. The DEIR's Alternatives Analysis Fails to Comply with CEQA.

Every EIR must describe a range of alternatives to the proposed project and its location that would feasibly attain the project's basic objectives while avoiding or substantially lessening the project's significant impacts. Pub. Resources Code § 21100(b)(4); CEQA Guidelines § 15126(f). A proper analysis of alternatives is essential to comply with CEQA's mandate that significant environmental damage be avoided or substantially lessened where feasible. Pub. Resources Code § 21002; CEQA Guidelines §§ 15002(a)(3), 15021(a)(2), 15126(f); *Citizens for Quality Growth v. City of Mount Shasta* (1988) 198 Cal.App.3d 433, 443-45. Additionally, as stated in *Laurel Heights I*, “[w]ithout meaningful analysis of alternatives in the [D]EIR, neither the courts nor the public can fulfill their proper roles in the CEQA process. . . . [Courts will not] countenance a result that would require blind trust by the public, especially in light of CEQA's fundamental goal that the public be fully informed as to the environmental consequences of action by their public officials.” 47 Cal.3d at 404. By contrast, this DEIR fails to adequately identify, evaluate, and clearly present a comparison of the alternatives to the Proposed Project.

1. The DEIR Fails to Analyze a Reasonable Range of Alternatives.

A “reasonable range” of alternatives should be guided by the purpose of offering substantial environmental advantages over the Proposed Project which may be “feasibly accomplished in a successful manner” considering the economic, environmental, social, and technological factors involved. See *Citizens of Goleta Valley v. Bd. of Supervisors* (1990) 52 Cal.3d 553, 564-66.

A fundamental mandate of CEQA is that “public agencies should not approve projects as proposed if there are feasible alternatives or feasible mitigation measures available which would substantially lessen the significant environmental effects of such projects.” Pub. Resources Code § 21002; see also *id.* § 21081. By examining a range of alternatives, the Lead Agency can demonstrate that it has taken a “hard look” at the project objectives to select alternatives that allow for meaningful comparison. See *Residents Ad Hoc Stadium Committee v. Bd. of Trustees* (1979) 89 Cal.App.3d 274, 287. This DEIR side-steps a thorough analysis of alternatives, as explained in the following sections.

(a) The DEIR Employs Improper and Misguided Criteria to Screen Alternatives from Further Analysis.

This DEIR misses the mark in its identification and evaluation of project alternatives and provides very little useful information for the public and decision-makers. Specifically, the DEIR's method of screening alternatives does not comport with CEQA. Chapter 4, Alternatives, identifies the screening factors employed in the DEIR to determine which of the potential alternatives were considered in the analysis:

Factor 1: Meeting Project Objectives

Factor 2: Constructability, Cost, Level of Service, and Airfield Operational Functionality Considerations

Factor 3: Environmental Impacts

CEQA Guidelines §15126.6(c) states: "The range of potential alternatives to the Proposed Project shall include those that could feasibly accomplish most of the basic objectives of the project and could avoid or substantially lessen one or more of the significant effects. The EIR should briefly describe the rationale for selecting the alternatives to be discussed. The EIR should also identify any alternatives that were considered by the lead agency but were rejected as infeasible during the scoping process and briefly explain the reasons underlying the lead agency's determination. . . . Among the factors that may be used to eliminate alternatives from detailed consideration in an EIR are: (i) failure to meet most of the basic project objectives, (ii) infeasibility, or (iii) inability to avoid significant environmental impacts."

Based on the CEQA Guidelines, screening against Factors 1 and 3 is reasonable. Factor 2, however, is overly broad and ill-defined. Under CEQA, cost alone shall not be a consideration in removing an alternative from further consideration. See CEQA Guidelines §15126.6(f)(1) (No one of these factors establishes a fixed limit on the scope of reasonable alternatives.) *Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553; see *Save Our Residential Environment v. City of West Hollywood* (1992) 9 Cal.App.4th 1745, 1753, fn. 1. The DEIR does not describe what the term "level of services" means in this context or what metric/standard/threshold the Project needs to achieve or why achieving the threshold is important.

(b) The DEIR Did Not Adequately Evaluate Feasible Alternatives

There are several flaws in the DEIR related to the assessment of potential alternatives that were screened: (1) the Project Objectives are too narrow and ill-defined to allow consideration of reasonable alternatives; (2) the alternatives were poorly developed and did not represent a range of options; (3) some alternatives were prematurely removed from consideration; and (4) an insufficient range of alternatives remained for evaluation in the DEIR. Each of these deficiencies in the evaluation process are explained in more detail below.

The Project Objectives are Overly-Narrow and Ill-Defined. The DEIR includes an overly narrow statement of the Project's objectives. In particular, Objective 2 is vague and subjective and Objective 3 is overly focused on meeting market-based demand.

Objective 2 states that the Project shall "Provide replacement and new terminal facilities that are *sized to efficiently accommodate the market-based passenger demand at industry standard levels of service and designed to improve the passenger experience*" (italics added). The DEIR does not define "industry-standard levels of service" or the means to determine if, and how much, the "passenger experience" is being improved. The DEIR offers no insight into how this objective could be met.

Objective 3 states that the Project shall "Modify and replace existing non-terminal facilities at OAK to accommodate the market-based demand." This objective is overly-focused on building the Project to meet forecasted demand, which has been identified in previous sections of this comment letter and in the Yimga Report as an inaccurate target.

These opaque and overly-narrow statements of the Project's objectives infect the DEIR's alternatives analysis such that the DEIR only meaningfully considers the Proposed Project and No Project Alternatives. Although the DEIR superficially contemplates a handful of alternatives, due to the perceived conflict with the Project's objectives, it is a foregone conclusion that the DEIR only seriously considers the Proposed Project and the No Project Alternative. Thus the DEIR fails to further analyze alternative "build" options, including options to add fewer passenger gates and other facilities, as those options would not expand the airport as much as OAK would like, based on its inflated forecasts and desire to meet ill-defined industry standards. Consideration and rejection of all less ambitious alternatives does not constitute a reasonable analysis of alternatives. OAK must prepare a revised DEIR for the Project that contains more clearly identified Project Objectives and a reasonable range of alternatives, including "reduced build" alternatives.

The Alternatives Considered Were Poorly Developed. As required under Section 15126(d) of the CEQA Guidelines, an evaluation of the comparative merits of the project alternatives also is required. According to the Association of Environmental Professionals (AEP), “Alternatives typically involve changes to the location, scope, design, extent, intensity, or method of construction or operation of the proposed project.”⁹

The DEIR fails to present a sufficient level of detail to understand the size and intensity of most of the alternatives. In reading the short, one- to two-sentence summaries of the alternatives in Section 4.3, the reader cannot know what is really being analyzed. For example, the Terminal Development Area A and C Alternatives do not describe the size of the project – number of gates, square footage to be developed, or facilities to be included. The reader is left to guess whether the alternatives would be the same size and scope as the Proposed Project, and whether they would function in the same way.

The Environmental Avoidance Alternatives (Retaining Terminal 1 Ticketing and Baggage Claim as well as Use of Hardstands With No New Terminal) are even less clear about the details of the alternatives being examined. For the alternative that includes retaining the curbside portion of Terminal 1, there are no other details about the number of gates, square footage to be developed, or facilities to be included. There is only a description of why this alternative should not be considered further.

For the “Use of Hardstands With No New Terminal” alternative, the DEIR states that no additional gates would be constructed, but it is not clear what other modernization and enhancements to the existing terminal would/could take place to improve airport and passenger congestion. The DEIR fails to indicate whether additional square footage would/could be developed under this alternative.

The DEIR states that during the review of each alternative, “[a]n important consideration is the ability of the Airport to accommodate existing and future passengers and aircraft operations in keeping with industry standards.” See DEIR at 4-2. The DEIR does not elaborate on what specific industry standards need to be met and what standards apply for determining the number of gates needed to accommodate the expected passenger volume. DEIR at 2-11 (Table 2-2). The gap analysis references the following sources used to determine the need for the various facility expansions planned:

⁹ AEP CEQA Portal: <https://ceqaportal.org/tp/Alternatives.pdf>.

International Air Transport Association (IATA), *Airport Development Reference Manual*, 11th edition, March 2019;

Transportation Research Board (TRB), *Airport Passenger Terminal Planning and Design*, Volume 1: Guidebook, 2010;

U.S. Customs and Border Patrol, *Airport Technical Design Standards: Passenger Processing Facilities*, 2006;

BNP Associates, *Planning Guidelines and Design Standards for Checked Baggage Inspection Systems*, 2017;

Transportation Security Administration (TSA), *Recommended Security Guidelines for Airport Planning, Design, and Construction*, 2011; and

TSA, *Checkpoint Design Guide*, Revision 4.0, 2012.

The IATA Airport Development Reference Manual (ADRM)¹⁰ specifically notes that “[t]he ADRM does not provide a definitive guide on how to design an airport terminal and it is not intended to be used in that context.” See ADRM at 255. How, then, is the Airport deriving the conclusion that 45 gates would be needed to serve the (unlikely) PAL 2 level passenger volume? Setting aside for a moment the fact that OAK is unlikely to see passenger volumes approaching the PAL 2 level, the DEIR should explain why 45 gates are needed to serve this passenger volume and why this is a threshold that eliminates potential alternatives from consideration.

The IATA ADRM provides sound framework and guideposts for evaluating project alternatives. IATA guidance on airport planning¹¹ suggests that airport development should strive to be:

- Affordable: Development that is within means to construct and maintain.
- Demand driven: Sized to realistic forecasts and correctly timed and predictable to meet needs.

¹⁰ IATA ADRM is a DEIR reference document and is therefore already in the Administrative Record for the OAK DEIR.

¹¹ IATA guidance: [https://www.icao.int/SAM/Documents/2018-ADPLAN/3.6%20IATA_ADRM_\(MarkRodrigues\).pdf](https://www.icao.int/SAM/Documents/2018-ADPLAN/3.6%20IATA_ADRM_(MarkRodrigues).pdf)

- Fit for purpose: Suitably scoped to deliver user requirements.
- Flexible: Adaptable to future needs and technological change and follows a modular approach.
- Efficient to operate: Enables a resilient and efficient airline operation and provides an optimum level of service.
- Linked to a Master Plan: The product of rigorous analysis and linked to a larger plan that allows incremental expansion.

Keeping this guidance in mind, the range of alternatives identified for the DEIR must be broader and should include alternatives that more closely meet the framework provided by the IATA. In particular, identifying alternatives that allow the airport to accommodate more gates when passenger demand is strong and also fewer gates when passenger demand softens is both a cost- and resource-efficient approach.

The Comparison of Alternatives Is Weak and Unsubstantiated. Under CEQA, alternatives need to be described in enough detail to allow a comparative analysis of the alternatives against the proposed project. See *Residents Ad Hoc Stadium Committee v. Board of Trustees* (1979), 89 Cal.App.3d at 274. That is, there must be sufficient detail for the Lead Agency to differentiate the impacts between the alternatives and to identify the Environmentally Superior Alternative. See *Laurel Heights Improvement Association v. Regents of the University of California* (1988), 47 Cal.3d at 376).

This Alternatives Analysis started by identifying seven alternatives. Two alternatives did not appear to be materially different in their size and scope from the Proposed Project, but simply looked at moving the new terminal development area to a different area on the 2,600 acre OAK site. Two off-airport alternatives involved closing OAK and relocating airport operations elsewhere. One alternative considered retaining Terminal 1 Ticketing and Baggage Claim Building (M101). One alternative considered using Hardstands with No New Terminal. The final alternative is the No Project Alternative.

All of the alternatives were developed based on the same fallacy that the market-based demand would occur at the Airport with or without construction of the Proposed Project. By relying on this faulty premise, the DEIR repeatedly concludes the same for all alternatives in two of the environmental impact categories – that “there is no potential avoidance alternative for air quality and greenhouse gas (GHG) operational emissions as the emissions are result of aircraft activity.” See DEIR at 4-8. The alternatives may be

less significant in other areas of environmental impacts, but the summary provided in DEIR Table 4-1 at 4-6 and Section 4.4 (Alternatives Considered but Screened From Further Review) does not provide enough information to make such determinations.

The weak alternatives comparison provided does not meet the requirements of CEQA. The alternatives analysis should have identified suitable options to the Proposed Project and then assessed whether the alternatives have environmental impacts that are greater than, equal to, or lesser than the proposed project in the different impact categories. This is an important distinction that the DEIR does not provide. This method of comparison is universally employed in DEIRs to present the Lead Agency with a clear picture of the Project as compared to alternatives. This DEIR not only fails to provide meaningful comparisons, but it also offers no evidence on *how* conclusions regarding environmental impacts were reached for each alternative. Table 4-1 simply provides a “YES” or “NO” statement without background or analysis to support the conclusion. This insufficient information is then used to prematurely remove alternatives from further consideration.

An Insufficient Range of Alternatives Remained for Evaluation in the DEIR. Once the seven alternatives were assessed against the screening factors and determined to not meet the criteria, only the Proposed Project (inaccurately portrayed in Table 4-1 as one of the alternatives) and the No Project Alternative were evaluated further in the Alternatives Chapter of the DEIR. At this point, the preparers of the DEIR should have stopped and identified additional alternatives for review and consideration so that the DEIR would have a full and complete analysis. By failing to do so, the DEIR fails to serve its purpose as an informational document for the Lead Agency and the public. This is particularly unexpected given that the Port has been down this road before. In February 1999, Alameda County Superior Court held that the 1997 EIR prepared for the OAK Airport Development Program was deficient under CEQA by failing to analyze a reasonable range of alternatives. Case No. 793-056-0. In order to correct this deficiency, and others identified by the Court, the Port prepared a supplement to the EIR (1999 SEIR). This DEIR, too, is deficient for the same reason. A revised DEIR must provide a more robust alternatives analysis.

2. The DEIR Fails to Evaluate a Feasible Alternative that Would Reduce the Project’s Significant Impacts.

In the discussion of the No Project Alternative, the DEIR states that “[w]ithout any development of a new terminal, the existing terminals, gates, and aprons could accommodate the market-based demand but not at the industry-standard levels of service.” See DEIR at 4-11. There are innumerable places in the DEIR which state that

the passenger demand is market-based and will come to OAK regardless. If that is true, and if the airport as currently designed can handle the passenger demand without the need to add terminals, gates, or aprons, then a viable alternative would be to enhance and make operational improvements to existing facilities to serve existing and future customers more effectively without expanding the number of gates. Yet, this DEIR offers no such examination and instead reaches the ultimate conclusion that the Proposed Project is the Environmentally Superior Alternative – a conclusion which is the result of several CEQA missteps, as explained in the following sections.

To comply with CEQA, and to provide decision-makers with the information they need, the DEIR should have considered a range of alternatives that would reduce or avoid the Project’s impacts, and it should have selected from among these alternatives the environmentally superior project. Without this analysis, the public and decision-makers cannot make a fully-informed decision about whether or not the Proposed Project is worth its environmental consequences. If there are feasible alternatives that could provide some benefits while limiting the costs, the public and the Port Commissioners deserve to know—and CEQA requires that the EIR inform them.

The EIR fails to meet this obligation in several ways. First, it dismisses all but one alternative (No Project) from evaluation without sufficient justification. Second, in concluding that only the Project and the No Project Alternative merited evaluation in the DEIR, the document fails to adequately identify an alternative (other than No Project) that could lessen the Project’s significant environmental impacts. Third, it fails to identify additional alternatives for evaluation when the other alternatives were screened out.

CLASS agrees that modernization to existing facilities and improvements to the passenger experience should be made at OAK. Modernized and improved terminal facilities designed to meet accurate and reasonable passenger demand forecasts and reliable aircraft operations forecasts is desirable. However, as discussed in previous sections, the passenger volumes estimated in this DEIR are not reasonable assumptions and designing OAK to accommodate these inflated numbers is not only a waste of private and public funds, it is also environmentally irresponsible.

The DEIR states that “[t]hose alternatives that would accommodate market-based passenger demand at industry standard levels of service are considered to be more viable than those that would reduce existing or levels of service at the Airport.” See DEIR at 4-2. As identified earlier in this letter, the DEIR makes no attempt to explain what “industry standard levels of service” are aiming to be met. If the DEIR contained accurate passenger-demand forecasts, it is likely that a lesser number of gates could be provided to successfully serve the future passenger population with a reasonable level of service. To

meet the CEQA requirement that an alternatives analysis include projects that reduce significant environmental impacts, the DEIR should evaluate other feasible alternatives. This could include the following:

(1) A smaller terminal expansion project with fewer gates, which could reduce construction noise impacts by having a shorter construction window and lesser number of new buildings constructed;

(2) A project that focuses on retrofitting existing gates for greater flexibility in lieu of the construction of new gates, which could have the same noise reduction benefits as above. This would be in alignment with the findings of the Yimga Report, which determined that the current gate utilization could be better optimized for more efficient use;

(3) A scaled-back alternative that includes reuse of historic Terminal 1. Demolition of Terminal 1 involves significant impacts to historic resources that are not mitigated to less-than-significant levels by measures proposed in DEIR. Therefore, an alternative that examines the retention of the historic feature must be evaluated. This idea was summarily dismissed before it could be evaluated properly against reasonable metrics, which is a failure of this DEIR; and

(4) An alternative that includes the construction of a parallel Taxiway B to reduce airfield congestion, which could in turn reduce air quality impacts, greenhouse gas emissions, and noise impacts from jets taking off from the North Field. The attributes and benefits of a parallel Taxiway B are detailed in the OAK Airport Master Plan, and the explanation of why this would reduce North Field overflights and noise impacts is described in this comment letter above.

A smaller terminal expansion with fewer new gates (with or without gate retrofits) could meet the Project Objectives – none of which specify that a certain number of terminal gates need to be constructed. The parallel Taxiway B alternative is in conformance with the OAK Airport Master Plan, so by default should also be in conformance with any objectives for the Project.

A terminal retrofit alternative would design existing aircraft gates/stands to accommodate an optimal number of parked aircraft combinations. The IATA Airport Development Reference Manual notes that “[a]ircraft stands can be dedicated to a particular aircraft type, however, in doing so, a degree of operational flexibility is lost. Alternatively, certain modes of operation can allow stands to be configured to permit the mixing of wide-body and narrow-body aircraft on a single Multiple Aircraft Ramp

System (MARS) layout.” See ADRM at 186. The ADRM goes on to describe in greater detail how designing flexibility into stand configurations can help absorb fluctuations in stand demand as well as be a more efficient and flexible use of apron and terminal infrastructure. Application of a MARS stand configuration can also “increase airport resilience with respect to uncertainties tied to airport growth.” See ADRM at 187. This alternative could be combined with other airport facility improvements to meet Project Objectives while minimizing the need for an additional terminal.

CEQA Guidelines §15021 prohibits a Lead Agency from approving a project when feasible alternatives or mitigation measures exist that would lessen significant environmental effects. Here, a full and proper evaluation of additional alternatives is warranted and required for the reasons above. Furthermore, because the DEIR discloses that demolition of Terminal 1 will cause a significant and unavoidable impact to historical resources (DEIR at 3.5-12, -13), under CEQA the DEIR must identify a feasible alternative to demolition. Yet, the DEIR rejects out of hand the only alternative to demolishing Terminal 1, claiming that it is infeasible because “a retrofit and expansion cannot be accomplished in a manner that would both support operations and maintain [the terminal’s] attributes as a historic resource.” DEIR at 4-8. The DEIR lacks substantial evidence to support its claim that retrofitting Terminal 1 would be incompatible with the Project’s objectives. See, e.g., *Uphold Our Heritage v Town of Woodside* (2007) 147 Cal.App.4th 587, 601 (findings of economic infeasibility of alternatives to demolition were not supported by data comparing the cost of building new home with cost of rehabilitating existing historic home on site). Instead, the DEIR should include an analysis of a *feasible* smaller project that does not include the proposed demolition of Terminal 1, with or without specific ramp modifications, and an analysis of an alternative that includes a parallel Taxiway B. To continue with the limited number of alternatives evaluated and the limited amount of information regarding each does a grave disservice to both the Port of Commissioners as future decision-makers and to the community at large. It is also contrary to established case law and CEQA guidance.

3. The DEIR Fails to Properly Identify an Environmentally Superior Alternative.

The DEIR’s approach to this alternatives analysis shows a fundamental lack of understanding of the concept of the “environmentally superior alternative.” It is immediately evident that the DEIR did not analyze a reasonable range of alternatives by virtue of the fact that DEIR has identified the Project as the Environmentally Superior Alternative (behind the No Project Alternative). See DEIR at 4-14. The Proposed Project is not an alternative – it is what the alternatives *are being compared to* in order to assess if they have fewer, the same, or greater environmental impacts. The DEIR’s selection of

the proposed Project as the environmentally superior alternative highlights a flaw in its handling of alternatives. If, as the DEIR implies, the Project is environmentally superior because the alternatives cannot improve on its environmental performance, then the range of alternatives was clearly too narrow—it needed to include alternatives that would reduce or avoid some or all of its impacts. Clearly, the DEIR must look outside its extremely limited vision of the Project to evaluate the feasible alternatives to reduce the Project’s impacts.

Courts have overturned many EIRs due to an improper or incomplete analysis of alternatives. See *Cleveland National Forest Foundation v. San Diego Assn. of Govs.* (2017) 17 Cal.App.5th 413; *North Coast Rivers Alliance v. Kawamura* (2015) 243 Cal.App.4th 647; *Habitat and Watershed Caretakers v. City of Santa Cruz* (2013) 213 Cal.App.4th 1277; *Watsonville Pilots Assn. v. City of Watsonville* (2010) 183 Cal.App.4th 1059. This DEIR offers a glaring example of an improper and incomplete analysis of alternatives. A revised DEIR should remedy this deficiency by: (1) overhauling the alternatives screening criteria; (2) re-assessing the suitability of alternatives based on updated criteria and their ability to reduce the severity of environmental impacts; (3) offering a clear and informative comparison of the alternatives and their ability to reduce potentially significant environmental impacts; (4) identifying a real Environmentally Superior Alternative from the alternatives studied, and (5) recirculating the DEIR as required by CEQA.

VI. The DEIR Must Be Revised and Recirculated.

Under California law, the present DEIR cannot properly form the basis of a final EIR. CEQA and the CEQA Guidelines describe the circumstances that require recirculation of a DEIR. Such circumstances include: (1) the addition of significant new information to the EIR after public notice is given of the availability of the DEIR but before certification, or (2) the DEIR is so “fundamentally and basically inadequate and conclusory in nature that meaningful public review and comment were precluded.” CEQA Guidelines § 15088.5.

Here, both circumstances apply. Decision-makers and the public cannot possibly assess the Project’s impacts, or even its feasibility, through the present DEIR, which is riddled with errors and omissions. As this letter explains, the DEIR clearly requires extensive new information and analysis. This analysis will likely result in the identification of new, substantial environmental impacts or substantial increases in the severity of significant environmental impacts. Moreover, the flaws that permeate the entire document, particularly the DEIR’s unsupported claim that passenger volumes will increase with or without the project, constitute precisely the sort of pervasive flaws in the

document that independently require recirculation under Guidelines section 15088.5(a)(4). See *Mountain Lion Coalition v. Fish & Game Com.* (1989) 214 Cal.App.3d 1043, 1052-53. Consequently, OAK must revise and recirculate the EIR for public review and comment.

VII. Conclusion.

Due to the foregoing and numerous adverse environmental impacts not fully disclosed and properly analyzed in the DEIR, CLASS opposes the Project as proposed. Implementing the Project as proposed would exacerbate the already significant adverse impacts suffered by Alameda residents. As aircraft depart OAK using established flight patterns, they disturb residents in the otherwise quiet community of Alameda, particularly within the community of Harbor Bay Isle. This is particularly true when flights depart at night. For these reasons, additional alternatives and mitigation measures are essential to avoid additional adverse impacts to Harbor Bay Isle's residents. However, the DEIR offers no noise relief and is seriously flawed for the reasons described in this letter. CLASS respectfully urges the Port to delay further consideration of this Project until the Port recirculates a revised draft EIR that fully complies with CEQA and the CEQA Guidelines.

On behalf of CLASS, thank you for the opportunity to comment on the DEIR.

Very truly yours,

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Attachments:

- Attachment A: Yimga Report, September 26, 2023
Professor Jules Yimga, Ph.D.
Embry-Riddle Aeronautical University
- Attachment B: Salter Report, October 16, 2023
Jeremy Decker, PE
Salter Inc.
- Attachment C: Tamura Report, October 16, 2023
Todd Tamura, QEP
Tamura Environmental
- Attachment D: OAK Master Plan, excerpts.
- Attachment E: FAA AC150/5070-6B, excerpt.
- Attachment F: OAK Monthly Activity Reports CY2023.
- Attachment G: San Jose Mineta International Airport. Monthly Activity Report for 7/1/2023 to 7/31/2023.
- Attachment H: Baron, Ethan. Will business travel to the Bay Area bounce back to pre-COVID levels? Maybe not. The Mercury News. September 5, 2023. <https://www.mercurynews.com/author/ethan-baron/>

- Attachment I: Email from Bryant Francis, former OAK Aviation Director to Randy Gillespie, Southwest Airlines representative, April 16 2020.
- Attachment J: Notes from Meetings of OAK staff with the FAA ADO Group (Regional Airports Division and District Offices), February 2022.
- Attachment K: Notes from Meetings of OAK staff with the FAA ADO Group (Regional Airports Division and District Offices), April 2022.
- Attachment L: FAA Forecast Process 2022 Terminal Area Forecast, Jan 2023.
- Attachment M: Humphries, C., Young, S., and Davey, J. Airline Capacity Constrained until 2025.... Thomson Reuters. August 19, 2023. <https://www.reuters.com/business/aerospace-defense/global-airline-capacity-constrained-until-2025-says-iatas-walsh-2023-04-19/#:~:text=Global%20airline%20capacity%20will%20be%20lower%20than%20expected,and%20a%20lack%20of%20availability%20of%20spare%20parts> .
- Attachment N: Email from Randy Gillespie, Southwest Airlines representative, to Bryant Francis, former OAK Aviation Director, dated October 23, 2019.
- Attachment O: Bob Hope Airport – Replacement Terminal Project Draft EIR, 2016 Appendix K – Noise Technical Report at Table K-3, Figures K-5 through K-12.
- Attachment P: Noise Assessment for the Norman Y. Mineta San Jose International Airport Master Plan EIR, 2019, at Tables 12-14.
- Attachment Q: OAK Quarterly Aircraft Noise Report, Second Quarter 2023.
- Attachment R: World Health Organization. “Burden of Disease from Environmental Noise.” 2011.
- Attachment S: W. Passchier-Vermeer and W.F. Passchier (2000), Noise Exposure and Public Health. *Environmental Health Perspectives*, Vol 108, Supplement 1, March 2000.
- Attachment T: Lisa Goines, RN, and Louis Hagler, MD (2007). Noise Pollution: A Modern Plague. *Southern Medical Journal*, Volume 100, Number 3,

March 2007.

- Attachment U: Baumgaertner, Emily. “Are You Exposed to Too Much Noise? Here’s How to Check.” The New York Times. June 9, 2023.
<https://www.nytimes.com/2023/06/09/health/noise-sound-exposure.html>
- Attachment V: Habre, R. et al. “Short-term effects of airport-associated ultrafine particle exposure on lung function and inflammation in adults with asthma.” National Library of Medicine. May 26, 2018.
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- Attachment W: Basic Information About Nitrous Dioxide (NO₂), US Environmental Protection Agency at <https://www.epa.gov/no2-pollution/basic-information-about-no2>.
- Attachment X: “Best Practices for Centering Environmental Justice, Health, and Equity,” excerpt, Bay Area Air Quality Management District.
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- Attachment Y: Final Supplemental Environmental Impact Report for Sacramento International Airport, adopted February, 2022, excerpt.
- Attachment Z: San Diego Association of Governments. Final Environmental Impact Report for San Diego Forward: The 2021 Regional Plan, adopted on December 10, 2021, excerpt.