PILLSBURY WINTHROP SHAW PITTMAN LLP
RONALD E. VAN BUSKIRK (SBN 64683)
Email: ronald.vanbuskirk@pillsburylaw.com
MARGARET ROSEGAY (SBN 96963)
Email: margaret.rosegay@pillsburylaw.com
STACEY C. WRIGHT (SBN 233414)
Email: stacey.wright@pillsburylaw.com
Four Embarcadero Center, 22nd Floor
San Francisco, CA 94111-5998
Telephone: (415) 983-1000
Facsimile: (415) 983-1200

Attorneys for Petitioners

MICHAEL JACOB (SBN 232214)
mjacob@pmsaship.com
PACIFIC MERCHANT SHIPPING ASSOCIATION
70 Washington Street, Suite 305
Oakland, CA 94607
Telephone: 510-987-5000

Attorney for Petitioner, Pacific Merchant Shipping Association

ELEANOR MORTON (SBN 220407)
emorton@leonardcarder.com
LEONARD CARDER, LLP
1188 Franklin Street, Suite 201
San Francisco, CA 94109
Tel./Cell: 415-336-9201
Fax: 415-771-7010

Attorney for Petitioner, International Longshore and Warehouse Union

**ELECTRONICALLY FILED**
Superior Court of California,
County of Alameda
**04/04/2022 at 03:09:20 PM**
By: Suzanne Pesko, Deputy Clerk

**SUPERIOR COURT OF THE STATE OF CALIFORNIA**

**IN AND FOR THE COUNTY OF ALAMEDA**

| | |
|---|---|
| EAST OAKLAND STADIUM ALLIANCE, PACIFIC MERCHANT SHIPPING ASSOCIATION, HARBOR TRUCKING ASSOCIATION, CALIFORNIA TRUCKING ASSOCIATION, SCHNITZER STEEL INDUSTRIES, INC., and INTERNATIONAL LONGSHORE AND WAREHOUSE UNION,<br><br>Petitioners,<br><br>vs. | CASE NO. 22CV009325<br><br>**[CEQA Action – Environmental Leadership CEQA Challenge]**<br><br>**VERIFIED PETITION FOR WRIT OF MANDAMUS**<br><br>[Code Civ. Proc. §§ 1085 and/or 1094.5; California Environmental Quality Act, Pub. Res. Code §§ 21168 and/or 21168.5; § 21168.6.7] |

CITY OF OAKLAND, a municipal corporation, and CITY COUNCIL OF THE CITY OF OAKLAND,

Respondents,

OAKLAND ATHLETICS INVESTMENT GROUP, LLC, and the PORT OF OAKLAND, a department of the CITY OF OAKLAND, acting by and through its BOARD OF PORT COMMISSIONERS,

Real Parties in Interest.

Petitioners East Oakland Stadium Alliance, et al. bring this action for writ of mandate against Respondents, the City of Oakland ("City") and the City Council of the City of Oakland ("City Council"), collectively "Respondents," and Real Parties in Interest the Oakland Athletics Investment Group, LLC ("AIG") and the Port of Oakland (the "Port"), and for their petition allege as follows:

## INTRODUCTION

1. This petition challenges and seeks to set aside (i) the City Council's Resolution No. 89045, adopted on February 17, 2022, certifying an environmental impact report ("EIR") for the Oakland Waterfront Ballpark District Project (ER 18-016) proposed by Real Party AIG for the Howard Terminal site ("HT Project" or "Project") in the Port, and (ii) the City Council's adoption of Ordinance No. 13681 on March 1, 2022, in reliance on the EIR, for relinquishment by the Board of Port Commissioners to the City Council of jurisdictional responsibilities to approve, permit, and administer "Project Approvals on the Port Area Project Site" (the "Jurisdictional Ordinance") (collectively, the "Approvals"). In granting the Approvals, Respondents failed to conduct adequate environmental review of the potentially significant adverse effects of the HT Project and took other actions in violation of the California Environmental Quality Act ("CEQA"), Pub. Res Code § 21000, *et. seq*.

2. During the administrative and environmental review process for the Approvals, Petitioners, public agencies, and many others provided detailed written comments to Respondents demonstrating that the HT Project would result in potentially significant adverse environmental

impacts that were not adequately disclosed, analyzed, or mitigated in accordance with CEQA and the State CEQA Guidelines (14 Cal. Code Regs. § 15000, *et seq*.) ("CEQA Guidelines"). Despite these comments and other evidence, Respondents certified a legally inadequate EIR and further violated CEQA by adopting inadequate findings on impacts and mitigation measures for the Project, improperly rejecting alternatives and certain mitigation measures as infeasible, adopting an inadequate and unsupported Statement of Overriding Considerations, and adopting an inadequate Mitigation, Monitoring and Reporting Program.

3. As a result, Respondents violated CEQA and committed a prejudicial abuse of discretion under CEQA §§ 21188 and/or 21168.5 by: (i) failing to proceed in the manner required by law; (ii) failing to apply the proper legal standards; (iii) adopting findings that are insufficient to support their decisions; (iv) making findings that are not supported or justified by substantial evidence in the record of proceedings; and (v) failing to make other necessary findings.

4. Accordingly, this Court should issue a writ of mandate directing Respondents to set aside and vacate the Approvals, and directing further action as may be ordered by the Court.

## PARTIES

5. Petitioner East Oakland Stadium Alliance ("EOSA") is comprised of a large and diverse group of organizations and members with significant interests in ensuring the continued success and vitality of maritime-related industrial uses, including transportation and union-related interests, in and near the Port of Oakland. Many of the EOSA members, in connection with their work and facilities at the Port, contribute significantly to the economy and institutions in the City and the region at large. The EOSA members include the majority of the transportation providers necessary to facilitate the movement of goods and who play a vital role in preserving the local, regional and State-wide economic importance of the Port's industrial and transportation-related operations. EOSA and its member organizations have a significant and direct interest in preserving and expanding the vital maritime-related role of Howard Terminal at the Port that would be eliminated by the HT Project. EOSA seeks to protect these interests through careful and balanced planning in the City and Port, as well as protecting the physical environment and historical uses in West Oakland from adverse development impacts. Together with the broader

West Oakland community, EOSA members seek to protect the environmental and historical uses in West Oakland from the many significant and unavoidable impacts that the HT Project would cause. EOSA has exhausted its administrative remedies in this matter by presenting substantial comments to the City in opposition to the Approvals.

6. Petitioner Pacific Merchant Shipping Association ("PMSA") is a nonprofit mutual benefit corporation trade association headquartered in the City of Oakland. Among other things, the PMSA represents maritime interests on the U.S. West Coast and its members include ocean carriers, marine terminal operators, and other maritime-related interests doing significant business at and with California seaports, including the Port. During the City's proceedings on the EIR, the PMSA submitted comments on the Draft EIR, individually and as a member of the EOSA, in opposition to the Project.

7. Petitioner Harbor Trucking Association ("HTA") is a trucking industry trade association headquartered in Long Beach, California, focused on port and intermodal transport and representing carriers doing business at West Coast ports. The HTA's members include intermodal carriers and trucking service providers doing significant business at and with California seaports, including the Port of Oakland. During the City's proceedings on the EIR, the HTA submitted comments on the Draft EIR, individually and as a member of the EOSA, in opposition to the Project.

8. Petitioner California Trucking Association ("CTA") is headquartered in Sacramento, California, and is the largest trucking association in California. The CTA includes members doing significant business at and with California seaports, including the Port. During the City's proceedings on the EIR, the CTA submitted comments on the Draft EIR, as a member of the EOSA, in opposition to the Project.

9. Petitioner Schnitzer Steel Industries, Inc. ("SSI") is a metal recycling company and a manufacturer of steel from recycled metal that is headquartered in Portland, Oregon. For over 50 years, SSI has owned and operated a metals recycling facility and export terminal at the Port of Oakland, located adjacent to the Howard Terminal, that serves California, the western United

States, and foreign markets. During the City's proceedings on the EIR, SSI submitted comments on the Draft EIR, individually and as a member of the EOSA, in opposition to the Project.

10. Petitioner International Longshore and Warehouse Union ("ILWU") is a labor organization with more than 29,000 members working in a variety of industries. Its members include longshore workers and marine clerks at the twenty-nine ports on the West Coast of the United States, including the Port of Oakland. During the City's proceedings on the EIR, the ILWU, through its members and local affiliates, submitted comments on the Draft EIR, individually and as a member of the EOSA, in opposition to the Project.

11. Respondent City of Oakland is a municipal corporation in Alameda County chartered under Article XI, §3(a) of the California Constitution. The HT Project is located within the boundaries of the City and the Port of Oakland, a department within the City. Pursuant to CEQA, the City acted in the capacity of lead agency (CEQA § 21067) for purposes of environmental review for the HT Project. As alleged herein, the City Council by resolution certified the EIR and adopted the Jurisdictional Ordinance that are challenged in this action. The Project was certified by the Governor as a leadership project under Public Resources Code section 21168.6.7 and is subject to California Rules of Court 3.2220-3.2237.

12. Real Party in Interest, Oakland Athletics Investment Group, LLC ("AIG") is the applicant to the City for the EIR and other approvals for the HT Project. Petitioners are informed and believe, and on that basis allege, that AIG is a limited liability company with its principal place of business in Oakland, doing business as the Oakland Athletics, a Major League Baseball team. AIG is listed as a Real Party in Interest in the Notice of Determination filed by the City on March 3, 2022.

13. Real Party in Interest, Port of Oakland, is a department of the City of Oakland established by Article VII of the Oakland City Charter, and acting by and through its Board of Port Commissioners, with duties and authority as provided by law with respect to the Howard Terminal. The Port is listed as a Real Party in Interest in the Notice of Determination filed by the City on March 3, 2022.

## JURISDICTION AND VENUE

14. This Court has jurisdiction over this action under California Constitution, Article VI, § 10, Code of Civil Procedure ("CCP") §§ 1085 and/or 1094.5, and CEQA §§ 21168 and/or 21168.5

15. Venue over this matter in this Court is proper pursuant to CCP §§ 393 and 395.

16. Petitioners have performed all conditions precedent necessary to filing this action, including exhaustion of administrative remedies to the extent required by law, and complying with the provisions of CEQA §§ 21167.5 (notice of commencement) and 21167.6 (request for record of proceeding). Pursuant to CEQA § 21168.6.7(g)(8), Respondents are required to certify the Record of Proceedings to this Court within ten (10) days of service of this Petition.

17. Petitioners, and each of them, are parties beneficially interested in the proper application of CEQA and the CEQA Guidelines to the processing and consideration of the HT Project, and any Project approvals, including judicial review of the EIR. Among other things, the HT Project will cause significant environmental impacts in the City, the Port, and the region, as well as business interference and disruption that will adversely affect operations and services at the Port provided by Petitioners and/or their members.

## GENERAL ALLEGATIONS

18. On or about November 11, 2018, AIG applied to the City for environmental review and numerous governmental approvals for the HT Project proposed to be constructed in the Port on approximately 55 acres comprised of the Charles P. Howard Terminal and adjacent parcels, along the Inner Harbor of the Oakland-Alameda Estuary. Howard Terminal is located within a heavy industrial area of the Port, and has been devoted for over 100 years to serving the maritime and transportation industries associated with incoming goods and materials to the United States and outgoing shipments of large volumes of goods and materials for foreign markets. These activities at the Port including the Howard Terminal reflect an intensive integration of land-based transportation systems, including railways and roadways for heavy trucking, with large marine-based vessels berthing and lading/unloading on a constant basis.

19. The HT Project proposes massive displacement and gentrification of this highly industrialized area with a 35,000 seat baseball stadium, up to 3,000 new residential units; up to 1.5 million square feet of office/commercial uses (such as general administrative and professional office and life sciences/research), and up to approximately 270,000 square feet of retail uses; an approximately 50,000 square-foot indoor performance venue with capacity of up to 3,500 persons; up to approximately 280,000 square feet of hotel space including up to 400 rooms in one or more buildings and supportive conference facilities; a network of approximately 18.3 acres of publicly-accessible open spaces; a maximum of approximately 8,900 total parking spaces at full buildout; and a single vehicle grade separated overcrossing of the railroad tracks accessing the HT Site. The HT Project would eliminate the HT seaport designation in the San Francisco Bay Plan and displace all existing uses and operations on the HT site.

20. On November 30, 2018, the City issued a Notice of Preparation of an EIR for the HT Project. A number of Petitioners and others filed comments with the City regarding the proper scope of environmental review for the Project and issues needed to be addressed in an EIR.

21. On February 26, 2021, the City released the Draft EIR ("DEIR") for the HT Project for public review and comment. On or before April 26, 2021, Petitioners, and many other commenters, submitted voluminous written and oral comments to the City identifying serious deficiencies in the DEIR, and its analysis of the potentially significant impacts of the Project, including but not limited to improper deferral of CEQA-required analyses and mitigation to future agency plans, actions and approvals; inadequate treatment of cumulative impacts; deficiencies in a number of specific impact areas including air quality and greenhouse (GHG) emissions, hazardous materials and remediation, hydrogeology and water quality, traffic and transportation systems, public health and safety, land use conflicts including incompatibility of Project-related uses with Port operations, and others; and failure to adequately address and compare alternatives to the Project that could lessen or avoid environmental impacts. Among other things, Petitioners commented that the deficiencies required the City to revise and recirculate the DEIR for further public review and comment under CEQA Guidelines §15008.5 and governing CEQA authorities.

22. The period for public review and comment on the DEIR was closed by the City as of April 27, 2021. Nonetheless, in the period after the close of the comment period on the DEIR, the City and AIG continued to issue significant new studies and information to the public, depriving members of the public and public agencies of the right and ability to review and comment on such information prior to close of the comment period as prescribed by CEQA.

23. Rather than carry out its duty under CEQA to revise and recirculate the DEIR, the City moved forward with preparation of a final EIR including responses to comments submitted on the DEIR. On December 17, 2022, the City released a proposed Final EIR ("FEIR"). However, following that release, the City and AIG continued to submit significant new information to the public record, again depriving the public an opportunity for review and comment on such information as prescribed by CEQA.

24. The City Council held a public meeting to consider certification of the FEIR on February 17, 2022. Both prior to and during the meeting, numerous commenters, including members of the EOSA, urged the City Council that it must decline to certify the proposed FEIR because it failed to meet the requirements of CEQA in numerous respects, rendering it legally inadequate as an environmental disclosure document. However, the City Council refused to correct these CEQA deficiencies, or to revise and recirculate the EIR; and instead voted (6-2) to certify the EIR as being in compliance with CEQA and to approve the Jurisdictional Ordinance (first reading). On March 1, 2022, the City Council approved and enacted the Jurisdictional Ordinance (second reading), as heretofore alleged.

25. On March 3, 2022, the City filed a Notice of Determination ("NOD") pursuant to CEQA §§ 21152. Under CEQA § 21167(b), this action was timely commenced within 30 days of the filing of the NOD.

## FIRST CAUSE OF ACTION

**(Writ of Mandate, CEQA §§ 21168 and/or 21168.5)**

26. Petitioners incorporate by reference the allegations of paragraphs 1-26 above.

27. Prior to granting any approval related to the HT Project, Respondents had a duty to inform the public about the potentially significant environmental effects of the Project, as well as

all feasible mitigation measures and alternatives that could lessen or avoid such effects, through preparation and certification of a legally sufficient EIR meeting the requirements of CEQA. CEQA § 21100; CEQA Guidelines § 15090. Respondents also had a duty, in connection with considering any Project-related approval, to make written findings as required by CEQA, including the adoption of a legally-adequate Statement of Overriding Considerations and Mitigation Monitoring and Reporting Program. CEQA §§ 21081, 21081.6; CEQA Guidelines §§ 15091-15093.

28. In taking the actions complained of herein, Respondents failed to carry out these duties and act in accordance with law, and prejudicially abused their discretion, by violating CEQA in numerous respects, including but not limited to certifying an inadequate EIR in at least the following respects:

(a) The EIR in numerous instances improperly defers environmental analysis and the identification of mitigation measures to future agency plans, actions and approvals, including but not limited to the subjects of traffic/transportation, hazardous materials and toxic air contaminants, waterfront safety protocols, and the effects of displacing all current activities at the Howard Terminal.

(b) The EIR fails to sufficiently address the cumulative impacts of the Project and its growth-inducing effects, especially in relation to the projected growth and impacts from reasonably foreseeable development under the proposed Downtown Oakland Specific Plan ("DTOSP") and the Coliseum site under the Coliseum Area Specific Plan ("CASP"), including increased traffic that may impede Port trucking and rail operations.

(c) The EIR does not adequately describe the nature and importance of existing uses at the Howard Terminal, and does not sufficiently analyze the impacts of relocating all such uses from Howard Terminal to other locations.

(d) The EIR's project description is inconsistent and uncertain as to the true scope of the actions to be undertaken for the Project.

(e) The EIR's air quality and greenhouse gas analyses suffer from numerous deficiencies, including reliance on an improper baseline, failure to properly evaluate air

quality and public health impacts related to the Project's emergency rooftop generators, failure to address reasonably foreseeable air quality impacts from relocation existing operations at Howard Terminal and the displacement and relocation of existing Port-related activities, failure to evaluate or quantify the air quality and public health impacts associated with fugitive emissions of particulate matter and toxic air contaminants during construction and remediation, erroneous quantification of greenhouse gas benefits associated with the installation of electric vehicle ("EV") charging infrastructure and taking credit for GHG reductions attributable to actions by others, and reliance on a health risk assessment with numerous flaws that was not performed in accordance with state and local guidelines, causing the EIR to understate potential health effects related to the HT Project.

(f) The EIR's analysis of hazards and hazardous materials is inadequate in failing to consider certain contaminants and their impacts (including contaminants in groundwater and potential to migrate to the Bay), failing to properly characterize risks to human health and the environment, relying on speculative plans and unreasonable assumptions that understate the extent and significance of environmental impacts relating to the effects and mitigation of subsurface contamination in soil, and failing to analyze the potential hazards associated with construction or long-term operations near active high-pressure fuel pipelines.

(g) The EIR fails to adequately assess numerous issues related to geology and soils, including but not limited to the improper reliance on a future site-specific geotechnical report, significantly understating the potential for earthquake-induced liquefaction and other impacts at the Project site and surroundings, and failing to provide sufficient information concerning the cumulative impact of earthquake-induced liquefaction on site access, emergency response, utilities, structures, regional access, and flooding.

(h) The EIR provides inadequate analyses and mitigation for a number of other Project-related impacts including hydrology and water quality, transportation and

circulation, land use conflicts, aesthetics, shadow and wind impacts, and historic and cultural resources.

(i) The EIR also fails to adequately analyze or mitigate public safety risks and other impacts associated with increased vehicle, bicycle and pedestrian traffic crossing the heavily-used Union Pacific railroad tracks adjacent to the Project, including blockages of emergency service vehicles, Project access and Port operations. The EIR likewise fails to adequately address or mitigate significant water-based safety impacts associated with the Project, including increased risk of maritime hazards and conflicts with maritime navigation resulting in ship delay at the Port.

(j) The EIR also fails to identify a reasonable range of alternatives to the Project, and as to those alternatives that it does identify (such as the Coliseum site), fails to include sufficient assessment of impacts and comparison to the significant and unmitigated impacts of the Project if located at the Howard Terminal.

29. In addition, despite these many deficiencies in the EIR, Respondents failed in their duty to recirculate a revised EIR remedying these defects and meeting the requirements of CEQA and the CEQA Guidelines prior to certification. Guidelines § 15088.5. Respondents also violated CEQA by adding significant new information to the public record after the close of the comment period on the DEIR, depriving Petitioners, public agencies and the public of the right and ability to review and comment on such information prior to certification of the EIR. CEQA § 21166; CEQA Guidelines § 15162.

30. Respondents also failed in their duties under CEQA to provide adequate responses to public comments, including the comments made by EOSA and other Petitioners, and to adopt legally adequate findings in connection with Resolution No. 89045 certifying the EIR.

31. Petitioners have no plain, speedy or adequate remedy at law to correct the errors and abuse of discretion committed by Respondents, as alleged herein, other than through the relief sought by this Petition.

32. Accordingly, Petitioners seek a determination and judgment that Respondents committed a prejudicial abuse of discretion by failing to proceed in the manner required by law,

that their decisions are not supported by their findings, and that the findings are not supported by substantial evidence in the record.

## PRAYER FOR RELIEF

WHEREFORE, Petitioners pray for relief as follows:

33. For a stay of any and all Project approvals pending resolution of this action;

34. For a judgment that Respondents committed a prejudicial abuse of discretion and failed to comply with CEQA as alleged herein;

35. For a peremptory writ of mandate ordering Respondents to set aside the certification of the EIR and the adoption of the Jurisdictional Ordinance, as alleged herein, and ordering Respondents to comply with their duties under CEQA as directed by the Court pursuant to CEQA § 21168.9;

36. For costs of suit herein;

37. For attorneys' fees as authorized by Code of Civil Procedure § 1021.5 and any other applicable law; and

38. For such other relief as the Court finds just and proper.

Dated: April 4, 2022

PILLSBURY WINTHROP SHAW PITTMAN LLP
RONALD E. VAN BUSKIRK
MARGARET ROSEGAY
STACEY C. WRIGHT
Four Embarcadero Center, 22nd Floor
San Francisco, CA 94111-5998

By:
Ronald E. Van Buskirk

Attorneys for Petitioners

## VERIFICATION

I, Michael Jacob, declare:

I am the Vice President and General Counsel of Petitioner Pacific Merchant Shipping Association, a member of Petitioner East Oakland Stadium Alliance, and I am authorized to execute this verification in their behalf. I have read the foregoing VERIFIED PETITION FOR WRIT OF MANDAMUS ("Petition") and I am familiar with its contents. The facts generally alleged in the Petition are true to the best of my personal knowledge, except as to matters alleged therein on information or belief, and as to those matters, I believe them to be true.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 4th day of April, 2022, at Oakland, California.

Michael Jacob