

**PMSA REQUEST FOR BOARD COMMENT ON PROPOSED BALLPARK AT
HOWARD TERMINAL DRAFT ENVIRONMENTAL IMPACT REPORT**

PMSA has proposed that the Board comment on the Draft Environmental Impact Report for the proposed A's ballpark at the Port of Oakland's Howard Terminal. In furtherance of that request, PMSA has provided a draft of proposed Board comments on the Draft EIR. There is nothing in the Board's governing statutes or regulations that requires Board action of the type requested, nor is there anything that prevents it. On occasion, the Board has chosen to comment to third parties regarding matters of concern to the Board. Whether to offer such comments is entirely within the Board's discretion.

For a number of reasons, staff recommends that the Board not accede to the PMSA request that it adopt as the Board's own the views expressed in the draft comment letter that PMSA has prepared for the Executive Director's signature.

First, although a draft comment letter prepared by an outside party may act as a catalyst for the development of a Board position, it is best that Board comments reflect the Board's independent review and analysis, rather than simple adoption of views drafted for it by a third party. This is so for two reasons. First, for institutional reasons, a public agency's expressed views should unquestionably be its own. Any perception that a public agency is serving simply as a conduit for the views of a private party should be avoided. Second, independent development of Board positions enhances the credibility and weight accorded comments by the Board, should it choose to make comments on a matter of concern.

Second, the circumstances do not warrant Board adoption of the position set forth in the draft letter suggested by PMSA. This is so for the following reasons.

- If, following preparation of the Draft EIR, there were still significant concerns regarding safe piloting in Oakland's Inner Harbor adjacent to the proposed ballpark, one would expect the San Francisco Bar Pilots to take the lead in voicing those concerns. They are the group most directly affected and best able to assess the project's impacts on navigation. In January 2019, the San Francisco Bar Pilots commented by letter on the proposed ballpark to the City of Oakland, focusing on two issues: (1) the possible impact of ballpark lights and occasional fireworks on safe navigation by pilots in the Inner Harbor adjacent to the ballpark, and (2) the possible hazards to safe navigation occasioned by recreational boaters mixing with ship traffic adjacent to the ballpark. The Draft EIR acknowledges both of these concerns and, in response, contains a lighting study, a review of the recreational boating issue, and mitigation measures. The pilots will not be commenting on the response to their concerns in Draft EIR. In these circumstances, Board comment does not appear to be necessary or appropriate.
- If PMSA believes its comments concerning lighting, fireworks, and recreational boaters have merit, it can itself make those comments to the City of Oakland. It does not need the Board to make those comments independently of PMSA.

- This is a controversial project that will involve required approvals by various public agencies. Those public agency approvals will turn principally on broad land-use issues that are outside the Board's area of concern. Although the Board is not one of the approving agencies, Board comment might nonetheless be appropriate if the narrower navigation issues raised in PMSA's draft Board comment letter were persuasive and compelling. Time constraints and the press of other assigned tasks have precluded staff from fully assessing all of the points raised in PMSA's draft comment letter of four and a half pages, which was received late on April 15. These same time constraints have prevented careful review of relevant portions of the Draft EIR that the PMSA draft proposes for Board criticism. Such a review as has been possible, however, indicates that PMSA's proposed comments are not such as to warrant the Board inserting itself into the multi-issue, multi-agency debate concerning whether the ballpark project should be approved.
- The principal issues that PMSA proposes for critical Board comment involve ballpark lighting, recreational boaters, and occasional fireworks displays.
- Concerning ballpark lighting, an expert, HLB Lighting Design, was retained who analyzed the potential for light and glare affecting navigation in adjacent waters. The study evaluated light intensity from a point in the turning basin at three different elevations. These three "receptor locations" were at 25, 64, and 190 feet above the water, corresponding to the approximate height at which a pilot would be exposed to light emanating from the ballpark, depending upon the size of the vessel being piloted. As shown in Figure 4.10-7 of the Draft EIR, a pilot would not be exposed to the highest light intensity, which is in the cone of light directed down at the field of play. Three standards were used in assessing whether the "spill light and glare" from the ballpark lights would impair the ability of pilots to navigate in the adjacent waters. First, the study determined that light from the ballpark did not rise to the level of "Disability Glare," which renders it difficult or impossible for a motor vehicle operator to safely maneuver a vehicle (for example, being blinded by high beams from an oncoming vehicle). Second, the study determined that the light intensity was "significantly below" the maximum intensity of sports lights fixtures in the direction of sites sensitive to "obtrusive light," as prescribed by the European Committee for Standardization. Finally, the study determined that the ballpark light intensity was well below the standard for maximum light intensity in the direction of a pilot on a moving aircraft, as set forth in the standards of the Illuminating Engineering Society. The study also considered the possible impact of ballpark light on ferry operators. The San Francisco Bay Area Water Emergency Transportation Authority (WETA), which operates the ferries that serve Oracle Park on game days, did not indicate that light stands at Oracle Park were an issue for approaching or departing ferries, although it did indicate that light aimed directly at a ferry operator's eyes could be a problem. The study concluded that would not be a problem because the ballpark lights are directed down at the field of play. It is true that the study did not assess the light impacts at multiple points within the Inner Harbor, but staff lacks the expertise whether to assess whether that may legitimately be critiqued as a flaw in the study. The graphic figure from the study (Figure 4.10-7 in the Draft EIR) suggests that light and glare would not be greater at points in the Inner Harbor other than that focused on in the study.

- Concerning fireworks displays, the study assumed seven fireworks displays a season, each about 15 minutes in length. As with other fireworks displays on other areas of the bay, Coast Guard approval would be required. Assessing the implications of such displays on safe navigation is within the scope of the Coast Guard’s review. One can perhaps argue that pilots could be distracted by such displays, but pilots are professionals who can be counted upon to focus their complete attention on the task at hand.
- Concerning the potential impacts of recreational boats adjacent to the proposed ballpark, the Draft EIR conceded that small craft might be attracted to the site, even though there would be no home runs splashing into the Inner Harbor (as they do into McCovey Cove in San Francisco) because of the distance of the ballpark from the water. The Draft EIR proposes Mitigation Measure LUP-1a. (Draft EIR, pp. 4.10-38–39.) It requires the A’s to develop a protocol for boating and water recreation around the ballpark site that has the approval of various other agencies, including the Coast Guard, the Harbor Safety Committee, and the Port of Oakland. In the language of the Draft EIR, the protocol “shall include, but shall not be limited to” the following specific requirements: (1) signage along the wharf advising of the prohibition against docking or anchoring; (2) water-based patrols by the Oakland Police Department before, during, and after events at the ballpark, ensuring compliance with all applicable laws governing navigation in the shipping channel and in the turning basin; (3) procedures for response to water-related emergencies; and (4) communication by the A’s to their guests, customers, and the public concerning the content of the protocol. The Port’s issuance of a building permit for the project is conditioned upon prior agreement by the named parties to the required protocol. Further, the approving parties must periodically reevaluate the protocol for effectiveness. If efforts at agreed-upon revision of the protocol are unsuccessful, the Port of Oakland may unilaterally require additional operational safety measures. Although the language of the Draft EIR is ambiguous concerning whether the parties who approve the initial protocol are the same parties who must approve any changes to it, the ultimate assumption of PMSA’s suggested Board comment is that protective elements of the protocol will be relaxed in the future. This is speculation for which no basis is offered.

For the foregoing reasons, staff recommends against Board adoption of the comment letter suggested by PMSA.