

January 16, 2024

San Diego Unified Port District, Development Services Department
Attn: Megan Hamilton
Senior Planner (EHITopgolf@portofsandiego.org)
3165 Pacific Hwy
San Diego, CA 92101

Re: Comments – CEQA Scoping for East Harbor Island Redevelopment/Topgolf Project and Port Master Plan Amendment (UPD #EIR 2023-134)

Dear Ms. Hamilton,

On behalf of San Diego Coastkeeper (“Coastkeeper”), please accept the following comments regarding the Revised Notice of Preparation (“NOP”) for the Draft Environmental Impact Report (“DEIR”) for the East Harbor Island Redevelopment/Topgolf Project and Port Master Plan Amendment (UPD #EIR 2023-134) (“Project”).

San Diego Coastkeeper works to protect and restore the waters of the San Diego region through water quality monitoring, advocacy, education, community engagement, and enforcement.

In order to fulfill the legal requirements of the California Environmental Quality Act (“CEQA”), the EIR should, among other things, (a) identify a reasonable range of alternatives that includes a “no project” alternative; (b) analyze the broad range of environmental impacts caused by the expansive project; and (c) include measures to mitigate significant environmental impacts of the project, as described below.

In light of the foregoing, Coastkeeper offers the following comments:

Public Trust and Coastal Act Conflicts:

While the NOP identifies numerous potentially significant environmental impacts warranting an EIR requirement, it fails to consider the lack of compliance with State regulations in the Coastal Act and Public Trust Doctrine. The Topgolf Project proposes to utilize 9.37 acres within the 42.98-acre project area of East Harbor Island (see NOP Figure 2). East Harbor Island (“EHI”) constitutes public trust tidelands that the State of California has granted to the Port District of San Diego (“District”). The State Lands Commission implements the public trust doctrine through its application of the Coastal Act, which sets forth guidelines for managing new development within the District’s jurisdiction.

The core purpose of the public trust doctrine is to protect the public's right to use California's waterways for navigation, fishing, boating, natural habitat protection and other water-oriented activities. The Public Trust provides that tide and submerged lands and the beds of lakes, streams and other navigable waterways are to be held in trust by the State for the benefit of the people of California.¹ Notably, the U.S. Supreme Court has long held that of the most important public uses encompassed within the tidelands trust is the preservation of those lands in their natural state so that they may serve as ecological units for scientific study, as open space, and as environments which provide food and habitat for birds and marine life, and which favorably affect the scenery and climate of the area.² The recreational and ecological values at stake in the proposed project area—public access to open waterways and preservation of natural marine habitats—are clearly among the purposes that public trust aims to protect.

The EIR should assess environmental factors with potential significant impacts in light of the public trust standards. For instance, the Project proposes to fence-off 4.5 acres of tidelands from general public recreational space and serve only as a repository for golf balls. This represents a significant loss of potential public open space that should be considered a Potentially Significant Impact for "Recreation."

The NOP fails to mention several conflicts between the proposed project and governing regulations in the Coastal Act pertaining to new development on coastal/public trust tidelands. Coastkeeper and other environmental groups have identified several provisions to be addressed in the EIR, including but not limited to the following:

- Coastal areas suited for **water-oriented recreational activities**³ [. . .] shall be protected for such uses. Cal. Coastal Act § 30220;
- All port-related developments shall **give highest priority to the use of existing land space within harbors for port purposes**, as well as, provide for other beneficial uses consistent with the public trust, including, but not limited to, recreation and wildlife habitat uses, to the extent feasible. Cal. Coastal Act § 30708;
- **Scenic and visual qualities** of coastal areas shall be considered and protected as a resource of public importance. Permitted development shall be sited and designed to **protect views to and along the ocean and scenic coastal areas**, to minimize the alteration of natural land forms, **to be visually compatible with the character of surrounding areas, and, where feasible, to restore and enhance visual quality in visually degraded areas.**" Cal. Coastal Act § 30251.

These guiding principles strongly suggest that the Project is inappropriate for its proposed location. A golf driving range is neither coastal-dependent or oriented, serves no relevant port purposes, and would adversely impact scenic coastal views and habitats. The Project would effectively privatize ten acres of prime coastal tidelands, with 170-foot-high netting no less,

¹ Cal. State Lands Commission, Public Engagement, <https://www.slc.ca.gov/public-engagement/>.

² See *Marks v. Whitney*, 6 Cal. 3d 251, 259–60 (1971).

³ This includes coastal areas suited for both contact and non-contact water recreation (activities involving proximity to water where ingestion of water is reasonably possible, such as picnicking, sunbathing, hiking, beachcombing, camping, boating, tidepool and marine life study, hunting, sightseeing, or aesthetic enjoyment in conjunction with the above activities). Water Quality Control Plan for the San Diego Basin (San Diego Basin Plan) at p.2-8.

excluding the general public from this space, for corporate profit. The inconsistencies between the Coastal Act and the proposed development must be assessed in the EIR.

Hydrology/Water Quality:

The NOP acknowledges the construction phase of the Project would likely result in substantial additional sources of polluted runoff. The IS notes that construction of the Project will require bulldozers, scrapers, backhoes, earthmovers, haul trucks, and generators. It will also require the cleaning and maintenance, and associated industrial materials such as hydraulic oils, degreasers, and other cleaning agents. “Pollutants associated with these construction activities that could result in water quality impacts include soils/sediment, debris, fuels, and other fluids associated with the equipment used for construction.”⁴ Suspended sediment in surface waters can cause harm to aquatic organisms by abrasion of surface membranes, interference with respiration, and sensory perception, and reduces photosynthesis in and survival of aquatic flora by limiting the transmittance of light.⁵ Suspended and settleable solids are also deleterious to benthic organisms and may cause the formation of anaerobic conditions in surface waters.⁶ Therefore, the EIR must thoroughly assess and mitigate potential impacts to Hydrology and Water Quality from the Project’s construction.

The IS fails to discuss the water quality impacts of the completed Project. Topgolf’s outfields are commonly artificial turf. Recent scientific studies of artificial turf have found that it has significant impacts, including release of toxic chemicals including lead, perfluoroalkyl and polyfluoroalkyl substances (the forever chemicals known as “PFAS”), and microplastics.⁷ Due to the location of the Project, during every rain event, these chemicals and others are extremely likely to enter San Diego Bay. These molecules then enter the food chains in the ocean, “and they’re in our system, they’re in our blood, they’re in our muscles.”⁸

Synthetic turf is one of the hottest possible surface materials, can be hotter than asphalt, and thus adds to the urban heat effect.⁹ This will only worsen with climate change. Research by the National Toxicology Program shows that high heat can cause chemicals to leach out of the crumb rubber base of synthetic turf, thereby exacerbating the chemical pollutant impact of artificial turf. These leached chemicals are known to cause cell death in humans.¹⁰ Therefore, the EIR must assess the impacts of the chemical and heat pollution caused by the completed project, and identify mitigation measures to minimize these impacts.

⁴ IS at 33.

⁵ San Diego Basin Plan at 3-31.

⁶ *Id.*

⁷ Shreya Agrawal, *Once it was hailed as a drought fix — but now California’s moving to restrict synthetic turf over health concerns*, Cal Matters, Oct. 18, 2023, <https://calmatters.org/environment/2023/10/california-synthetic-turf-pfas/> (updated Oct. 23, 2023).

⁸ *Id.*, quoting Sylvia Earle, a marine life advocate and former chief scientist at the National Oceanic and Atmospheric Administration.

⁹ *Id.*

¹⁰ National Toxicology Program, *Synthetic Turf/Recycled Tire Crumb Rubber Research Overview*, <https://ntp.niehs.nih.gov/whatwestudy/topics/syntheticurf> (last updated Dec. 1, 2023).

The Project would also alter the current landscape and hydrology through the addition of a Topgolf entertainment complex and other associated facilities, which has the potential to affect drainage patterns, water quality, and cause additional pollutants to be discharged off site. Hence, the NOP correctly identifies that a Drainage Memorandum must be prepared and that further analysis is warranted in the EIR.

Biological Resources:

The Initial Study (“IS”) correctly identifies that the proposed project could have significant impacts to all of the categories of biological resources. San Diego Bay hundreds of species of birds, over 100 species of marine fishes, over 45 species of algae, eleven federal/state threatened or endangered species and 50 special status species, in addition to a multitude of other flora and fauna. The sediments, oils, PFAS and other chemicals, microplastics, and heat pollution generated by the Project will negatively impact these biological resources.

As noted in the Port Master Plan Update (“PMPU”) Conflicts Section below, there remains a serious omission in the NOP/IS of any reference to the biological resources policies and principles embedded in the public trust doctrine and Coastal Act—both of which are foundational to the PMP and PMPU. Accordingly, this omission suggests an even greater threat to the proposed project’s impact on biological resources.

Coastkeeper requests the EIR thoroughly assess and mitigate the noise and light pollution associated with the proposed Project. This includes consideration of the impacts resulting from the land use designation change from Industrial Business Park to Commercial Recreation. Powerful floodlights from the driving range are very likely to have a significant impact on biotic behavior of the adjacent marine ecosystem. Topgolf facilities amplify music through a stereo system. Furthermore, Topgolf facilities are often open until at least midnight, extending the disruptive noise and light pollution deep into the night.

Aesthetics:

The EIR requires a thorough viewshed and aesthetics analysis. Fencing off 4.5 acres of prime coastal tidelands with 170-foot-high netting will substantially alter scenic vistas of open water and San Diego Bay. The proposed 4.5 acres of turf and target “holes” would have no scenic context to the rest of the adjacent shoreline, which adversely impacts public access and connection to the coastal environment.

Energy/Greenhouse Gas Emissions:

The EIR must assess and mitigate GHG emissions and energy consumption resulting from the Project. While the IS identified potentially significant impact from increased GHG emissions associated with construction and operation, it failed to address the possibility of even greater impacts due to the EHI land use change.

The NOP also notes that the increased GHG emissions associated with the Project would conflict with the District’s Climate Action Plan. Non-compliance with the CAP not only

contributes to increased GHGs, but creates potential civil liability for the District. Therefore, CAP measures pertaining to the Project should be thoroughly addressed in the EIR to ensure compliance.

Port Master Plan Update (PMPU) Conflicts:

There are several new updates to the Port Master Plan that directly relate to new development in the Project area. For instance, one objective is to identify each water and land use's functional dependency to the water in accordance with the Coastal Act (WLU Objective 1.2).

Coastkeeper urges the District to follow its own policies in the soon-to-be-adopted Port Master Plan Update ("PMPU"), including but not limited to the following:

- Development adjacent to habitat areas occupied by threatened or endangered species shall be in compliance with the federal and California Endangered Species Acts and shall be implemented to protect the health and survival of the species. ECO Policy 1.1.7;
- Development above the water or adjacent to sensitive habitat areas should use ecologically sensitive lighting that is shielded and directed away from the water or sensitive habitat areas, sensor activated, and of the lowest possible color temperature that also meets public safety requirements. ECO Policy 1.1.10;
- Science-based management practices shall be used on Tidelands to guide water, sediment, and natural resource decisions, which includes a suite of programs, conditions, or criteria to protect and enhance ecosystems including restoring and creating wetlands, establishing new mitigation banks for eelgrass, wetlands, or other sensitive habitat types, and enhancing fisheries. ECO Policy 1.1.12;
- Strive to achieve a net increase of wetland habitat acreage from baseline conditions throughout the Bay. ECO Policy 1.1.14;
- The District shall prioritize the use of nature-based solutions composed of natural or sustainable materials that increase shoreline biodiversity and coastal resiliency, including but not limited to living shorelines and wetland and coastal habitat restoration, where feasible and applicable. ECO Policy 1.1.17;
- The District shall maximize habitat connectivity and continuity for intertidal and subtidal habitats within the Bay particularly for those areas that provide habitat and nursery areas for estuarine and marine species. ECO Policy 1.1.21;
- The District shall pursue opportunities to create, preserve, enhance or restore intertidal and subtidal habitats in areas that have historically been impacted by development. ECO Policy 1.1.23.

The EIR must assess the scope of the Topgolf project in light of these policies. This parcel represents a unique opportunity to improve the quality of public access to the San Diego waterfront—an area which has become increasingly walled off with private development. For instance, Coastkeeper requests a consideration of constructed wetlands and a return to natural conditions as an alternative to the project. Along with being more closely aligned with State and local regulations and guiding principles, this alternative could promote other benefits such as water quality improvements, carbon sequestration, climate resiliency, ecosystem benefits, and aesthetic appeal.

The first goal under the Water and Land Use Element of the PMPU is to balance the District's responsibilities under the Port Act with Coastal Act responsibilities and priorities. The implementation policies for this goal outline the types of water and land uses that support the five Public Trust uses: Commerce, Environmental Stewardship, Fisheries, Navigation, and Recreation. While "golf course" is listed as an allowable use under "Recreation," it is listed as neither "coastal-dependent" nor "coastal-related" (PMPU at 55). The only justification noted is for "coastal-enhancement," which is not a formal Coastal Act category.

While we disagree that golf courses should even be listed in the PMPU as an allowable recreational land use, the Project should nonetheless be excluded from this category. The PMPU defines "golf course" as "the grounds where the game of golf is played." (PMPU at 393). The NOP describes the Topgolf project as an "entertainment complex." Not to mention, the future redevelopment of adjacent parcels as a result of the land use designation change from Industrial Business Park to Commercial Recreation is still unknown.

Hazards:

Errant golf balls that escape the Topgolf facility over, through, and/or around the safety netting will occur. Not only do these golf balls introduce plastics into the environment,¹¹ it presents a serious safety issue as the Project is proposed immediately adjacent to the Bay and the extremely high-traffic North Harbor Drive. This stretch of road is the primary point of access to and from the San Diego International Airport, the busiest single runway airport in the world. Thus, the Project's location presents a recipe for disaster, and Coastkeeper strongly encourages the Port to thoroughly assess the multiple threats to public safety and environmental health in the EIR.

Alternative Measures:

An EIR must analyze a "reasonable range of alternatives to the project," with an emphasis on alternatives which "offer substantial environmental advantages over the project proposal."¹² The purpose of analyzing alternatives is to assess options for attaining the basic objectives of the project while avoiding or substantially lessening environmental impacts and to evaluate the comparative merits of each alternative.¹³ Specifically, "[t]he 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" in order to "permit a reasoned choice"¹⁴ and "foster informed decision-making and public participation."¹⁵

¹¹ Daniel Potter, *Teens tackle an unlikely source of plastic pollution: wayward golf balls*, Monterey Bay Aquarium, Jun. 26, 2017, <https://www.montereybayaquarium.org/stories/teens-tackle-an-unlikely-source-of-plastic-pollution-wayward-golf-balls>.

¹² *Citizens of Goleta Valley v. Board of Supervisors*, 52 Cal. 3d 553, 566 (1990); *California Native Plant Society v. City of Santa Cruz*, 177 Cal. App. 4th 957, 982-83 (2009).

¹³ 14 CCR § 15126.6

¹⁴ *Id.* § 15126.6(c), (f).

¹⁵ 14 CCR § 15126.6(a). *See also Laurel Heights Improvement Assn. v. Regents of University of California*, 47 Cal. 3d 376, 406-07 (1988).

Coastkeeper echoes comments made by SWIA and requests the EIR consider golf simulators as a potential project alternative. Simulators are highly efficient and effective alternative to the current driving range, allow for real-time feedback on the golfer's swing, and can emulate hundreds of actual golf courses – presumably Topgolf could recreate the San Diego Bay and City of San Diego skyline as one of the virtual images.

The EIR must also analyze a “no project” alternative. This includes assessment of the gains and losses associated with relocating the project to another appropriate site. As previously noted, the loss to public trust protected tidelands and marine biodiversity should be carefully weighed against the feasibility of relocating the project to a site better suited for a driving range. The location of the Project, adjacent to a public walkway and immediately on the waterfront, would be better suited for activities such as rentals of small watercraft, kayaks, paddle boards, etc. Coastkeeper is unaware of any option for something like this on Harbor Island, despite multiple hotels and other attractions on the peninsula. The conversion of a what is currently a large parking lot also offers tremendous potential for ballfields or a sports complex for youth or public use in an area deficient of such resources.

Thank you for your consideration of our comments.

Sincerely,

Patrick McDonough
Senior Attorney
San Diego Coastkeeper