

EXHIBIT D TO ALL APPROVAL DOCUMENTS

GENERAL FINDINGS

RELATED TO THE APPROVAL OF THE OAK TO NINTH AVENUE MIXED USE DEVELOPMENT PROJECT

City Council/Redevelopment Agency Public Hearing

June 20, 2006

I. INTRODUCTION

1. These General Findings are adopted by the City of Oakland and the Redevelopment Agency of the City of Oakland for the Oak to Ninth Avenue Mixed Use Development Project ("Project"). These findings refer to the EIR prepared for the Project, SCH # 2004062013 and are based on that EIR. These findings are based on the entire record of the proceedings for the Project as identified in Exhibit A (CEQA Findings). References to specific reports and specific pages or documents are not intended to identify those sources as the exclusive basis for the finding.

2. These General Findings are attached as Exhibit D and incorporated by reference into several approval documents pertaining to the Project, including a resolution amending the General Plan, ~~an~~ [a resolution and ordinance amending the land use map for the Central City East Redevelopment Plan](#), ~~an~~ [a resolution and ordinance amending the land use map for the Central District Urban Renewal Plan Amendment](#), an ordinance adopting the new Planned Waterfront Zoning District-4, an ordinance amending the Zoning Map, a resolution approving a Vesting Tentative Subdivision Map, ~~approval of a~~ [resolution approving a Preliminary Development Plan and Design Guidelines](#), ~~and~~ approval of ~~an~~ [a resolution and ordinance for a Development Agreement and a resolution denying the appeal filed by Arthur Levy in connection with the actions of the Planning Commission pertaining to the project](#). These findings, in addition to all staff reports, ordinances, and resolutions prepared for these Project approvals, provide the relevant findings pursuant to the Oakland Municipal Code and applicable state law

3. Attached to the approvals listed above are: (a) Exhibit A, which contains CEQA findings and a statement of overriding considerations for the Project; (b) Exhibit B, which is the Mitigation Monitoring and Reporting Program for the Project; and (c) Exhibit C, which is the Conditions of Approval for the Project. All Exhibits are incorporated by reference into each other and into the approvals for the Project.

4. These findings are adopted after extensive review and consideration of all the written and oral testimony and evidence in the entire record for the Project, [including all the material present in the appeal of the Planning Commission's actions and the staff response to the appeal](#). The City has considered the advice and recommendations from the Landmarks Preservation Advisory Board, the Parks and Recreation Advisory Commission, the Planning Director, and the Director of Redevelopment, Economic Development and Housing.

II. GENERAL PLAN CONSISTENCY

5. The Project is governed by the City of Oakland General Plan and the City must find that the Project approvals are consistent with the General Plan. In order to achieve consistency with the General Plan, the Project includes General Plan Amendments to the Estuary Policy Plan to allow the residential development, to create a new Planned Waterfront Development – 4 land use designation, and to clarify and update certain provisions of the Plan. The proposed General Plan Amendments are discussed in the staff reports presented to the City and the EIR. The City adopts the analysis, explanations, and conclusions contained in the EIR, staff reports, and presentations by the Project Sponsor with respect to the General Plan Amendments.

6. The General Plan Amendments approved for this Project will not cause any internal inconsistencies in the General Plan. The General Plan Amendments and the remainder of the General Plan comprise an integrated, internally consistent and compatible statement of policies for the City.

7. The Project is compatible with, and will not obstruct the objectives and policies of, the General Plan as amended by the Project approvals. The Mitigation Monitoring and Reporting Plan (Exhibit B) and the Conditions of Approval (Exhibit C) for the Project further ensure that the Project is compatible with the General Plan as amended.

8. The General Plan comprises many goals, objectives, policies, principles, programs, standards, proposals, and actions plans. The City recognizes that the General Plan necessarily contains competing elements and policies. In evaluating a project, the City determines whether, on balance, a project is consistent with the General Plan. In reaching its decision on the Project, the City has considered all applicable General Plan policies, the extent to which competing policies apply to the Project, and has made determinations in connection with the Project that balance these competing policies.

9. The City has evaluated the extent to which the Project achieves the objectives and policies in the General Plan, including, among others, the Land Use and Transportation Element, the Estuary Policy Plan, the Open Space, Conservation and Recreation Element, the Historic Preservation Element, the Safety Element, the Housing Element, the Noise Element, the Bicycle Master Plan, the Pedestrian Master Plan, and the Scenic Highways Element. The City adopts the analysis and conclusions regarding the Project's consistency with these General Plan Elements as set forth in the EIR (Draft EIR pp. IV.A-6 - IV.A-26) and the staff reports on the Project.

10. For the reasons stated in the EIR, in the staff reports presented to the City, in these findings, and in the CEQA findings, the City finds that the balance achieved by the Project among competing General Plan policies is acceptable and that the Project complies with all performance standards in the General Plan. The Project represents a reasonable accommodation of all applicable competing policies in the General Plan. The implementation of the Project will result in the fulfillment of several important General Plan policies, including investment in an economically distressed area, the encouragement of infill development, meeting regional fair share of housing needs, and the creation of significant new and enhanced public open space on the Oakland Estuary.

11. This City also finds that the Project is consistent with the Historic Preservation Element ("HPE") goals and policies. The Ninth Avenue Terminal (including the wharf) is a historic structure and has received an Oakland Cultural Heritage Survey rating of "A," which renders it a Potentially Designated Historic Property (PDHP). The Project proposes to retain and rehabilitate the approximately 15,000 square foot bulkhead portion of the building and demolish the remaining 165,000 square feet of the building and a portion of the ~~Wharf~~wharf. The public benefits of the proposed ~~project~~Project, as a whole, outweigh the benefit of retaining all of the original structure. The clean up of soil contamination, the development of a vital new mixed use neighborhood, and the creation of over 30 acres of park and open space are significant public benefits. Further, the characteristics and qualities that define the Ninth Avenue Terminal, including the wharf, can be honored and acknowledged through the rehabilitation and reuse of the preserved portion of the building through a continued sense of its prominent visual importance, its Beaux-Arts style, its location on the Estuary, the recognition of its importance as an intermodal transportation complex due to the proximity of water, rail and land and the less tangible qualities of the importance of the Port's place in Oakland history and its industrial past. The conditions and requirements approved as part of the ~~project~~Project will further assure that the preserved portion of the Ninth Avenue Terminal will be a viable entity capable of being sustained on an economically feasible basis through a business and management plan and ~~fully~~full funding of the historic preservation work by the project sponsor.

12. The Project would demolish a substantial portion of the Ninth Avenue Terminal and the associated wharf, which does not fulfill those policies in the HPE calling for avoiding or minimizing adverse impacts to historic properties including, Policy 3.1. The City acknowledges, however, that the HPE policies also recognize that preservation concerns must be "reasonably balanced with other concerns." (HPE, Objective 2) The HPE states that for proposals adversely affecting historic properties, the City should "weigh the public benefit in preserving the property with such factors as the public benefit in approving the proposal, the proposal's design quality, and any hardship or difficulties preservation may impose on owners or users." (HPE, p. 2-13) Moreover, the HPE does not mandate the preservation of PDHPs. Instead, the HPE states that PDHPs "warrant consideration for possible preservation." (HPE, Policy 1.2) The text accompanying Policy 3.1 states that the City "will make all reasonable efforts to avoid or minimize adverse impacts to PDHPs." The Project balances competing needs and a significant investment will be made in restoring a portion of the building and reusing it for more complementary activities. In addition, the new Shoreline Park will be required to include commemorative elements relating to the historic building and its past use.

13. The City has considered these policies and statements in the HPE, and the testimony and other evidence in the record, which reflects controversy and differences of opinion regarding the preservation of the Ninth Avenue Terminal building and wharf. The City has determined that the Project proposal for demolition of a substantial portion of the Ninth Avenue Terminal building and wharf and preservation and reuse of the bulkhead appropriately balances the concern for preservation of PDHPs and the provision of new public waterfront open space that will substantially benefit the citizens of Oakland and the region. Moreover, the EPS Alternatives Analysis and the EPS Terminal Reuse Feasibility Analysis (more fully referenced in the CEQA Findings, Exhibit A) document that it is not financially feasible to retain the building without substantial public assistance. The City adopts the analysis and conclusion contained in the EPS reports. The City has determined that it would not be prudent, given the multitude of

competing City demands, to use City funds to subsidize the retention and reuse of additional portions of the building or the entire building and wharf. No other entity has offered to fill the financial gap associated with the retention and reuse of the building. The City's consideration of the EPS reports, which examined a range of alternatives for preserving and reusing the building, constitutes all reasonable efforts to examine the possibility of retaining the building and confirm that there are no feasible alternatives to the Project for retaining or reusing the Ninth Avenue Terminal building and wharf.

14. In response to questions raised during the Planning Commission consideration of the Project and at the March 28, 2006 Joint City Council/Redevelopment Agency informational meeting on the Project, three additional documents were prepared in connection with the feasibility of preserving the Terminal. First, the PFM Group reviewed the EPS reports and financial data from the project sponsors. (See the PFM Group memorandum to Dan Vanderpriem and Oakland Harbor Partners, dated June 1, 2006, and attached to the staff report). PFM found the following: (a) even adjusting cost and revenues to remove costs such as retrofitting the pier and landscaping the open area, none of the alternatives for preserving the Terminal, including the Project, show a positive cash flow; (b) the amount of the annual losses of the alternatives increases with the increase in size and complexity of the alternatives; (c) the risk associated with the larger preservation alternatives are greater than those associated with the Project; (d) additional capital investment to eliminate loan debt service would reduce the Project to an infeasible rate of return; (e) the project sponsor's financial assumptions are reasonable given the long term nature of the Project and current financial conditions; and (f) the return on equity for the Project is in the lower quartile of the range of returns on equity for similar projects and the Project is a relatively high risk development.

Additionally, EPS prepared a report entitled "Subsidization of the Chelsea Piers and the Torpedo Factory Adaptive Reuse Projects" dated May 2006 (attached to the staff report). This report shows that both the Chelsea Piers and Torpedo Factory projects have required substantial public subsidies. Moreover, these projects are substantially different from the Ninth Avenue Terminal in terms of market dynamics, construction costs, economics and allowable uses. Consequently, the projects cannot feasibly serve as a model for preservation of the Terminal.

Finally, Novogradac & Company, certified public accountants, reviewed the potential impact of federal rehabilitation tax credits and federal new market tax credits on the economic feasibility of the Project in connection with preservation of the Terminal. Novogradac found that, even assuming best case conditions, the funding shortfall for the preservation alternatives ranges from \$19.6 million to \$28.9 million. Consequently, Novogradac concluded that "maintaining the Shed as is or reducing it down to the 1927 size of the building is not economically feasible with the use of federal Rehabilitation Tax Credits or New Market Tax Credits."

15. The City finds that the Project complies with Policy 3.5 of the HPE in connection with the substantial alteration and demolition of the Ninth Avenue Terminal building and wharf. The Project's proposal to preserve the bulkhead portion of the Ninth Avenue Terminal and to provide significant new public open space in the area of the demolished portions of the building is a design that equally matches the importance of the current building. The Project's design proposal for the building's site is equal in quality to the existing building, because it will restore

the bulkhead portion of the building and provide well-designed public open space that will restore accessibility to, and scenic vistas of, this portion of the Oakland Estuary waterfront. The proposed Project is compatible with the character of the neighborhood in that it will fulfill the City's plan to extend the public open space around the waterfront perimeter of the site thereby enhancing the significant public benefits of the local and regional open space provided on the Project site. The proposal for public open space in this location will allow greater public accessibility to and enjoyment of the Oakland Estuary than would complete or more extensive preservation of the Ninth Avenue Terminal. Thus, the City finds that the public benefits of the Project outweigh the benefit of additional preservation of the building or the wharf.

~~15. — None of the other buildings on the Project site are historic, as confirmed by the evidence, analysis, and conclusions contained in the EIR, or subject to the provisions of the HPE.~~

16. — None of the other buildings on the Project site are historic, as confirmed by the evidence, analysis, and conclusions contained in the EIR, or subject to the provisions of the HPE.

17. — With respect to the Noise Element, the Project site is located adjacent to the I-880 freeway and areas of the site closest to the freeway could experience high noise levels during peak traffic times. Noise measurements in the Project EIR reflect both ground level and higher elevations. Some portions of the Project would be located in areas where outdoor noise levels are above what is considered “normally acceptable” in the Noise Element. However, the fact that such development would be in areas generally labeled as “clearly unacceptable” in the Noise Element does not preclude residential development. Although the Noise Element provides policy guidance discouraging development in these areas, it does not prohibit development.

The General Plan, by its comprehensive nature, contains a number of competing policies. City decisionmakers must determine whether, “on balance, the project is consistent (i.e., in general harmony) with the General Plan.” (LUTE, 2005) Here, the City has determined that the project, is consistent (i.e., in general harmony) with the General Plan, including the Noise Element. The City has weighed the policies in the Noise Element in relation to other General Plan policies and has determined that the Project appropriately balances the competing policies of the General Plan. For example, the provision of new housing including affordable housing, the environmental remediation of the site, the provision of significant new trails and open space, and the revitalization of this blighted site on the Estuary outweigh noise environment concerns.

Oakland is a highly urban environment with significant noise sources. The noise at the Embarcadero edge of the site is typical of a highly urban environment. Residential units must meet State mandated interior noise levels, thereby protecting residents inside their homes. In terms of the outdoor noise residents will experience, the highest noise readings (see Draft EIR p. IV G-11-13) are at elevated levels and not ground level. The majority of the site and open space areas are located away from the specific high noise locations. In addition, the Oak to Ninth Avenue Design Guidelines call for landscaping and setbacks along the Embarcadero.

III. PLANNED WATERFRONT ZONING DISTRICT (PWD-4) OAK TO NINTH MIXED USE DEVELOPMENT PROJECT AND OAK TO NINTH DESIGN GUIDELINES

~~16.~~18. The Zoning Code amendments for the Project include the text attached to the Ordinance of the City of Oakland Adopting the Planned Waterfront Zoning District (PWD-4) Oak to Ninth Mixed Use Development Project and a Zoning Map amendment attached to the Ordinance of the City Oakland Rezoning of the Project site from M-40 to PWD-4 and Open Space-Region Serving Park and maintaining a portion of the existing S-2/S-4 zoning. The City adopts the analysis, explanation, and conclusions contained in the EIR, staff reports, and presentations by the Project Sponsor relating to the zoning district.

~~17.~~19. The City finds the rezoning of the Project site to PWD-4 and Open Space Region-Serving Park and maintaining the existing S-2/S-4 zoning is consistent with the General Plan and the proposed General Plan Amendment related to the Project as discussed above. The notice required by 17.144.060 has been given.

~~18.~~20. The Planned Waterfront Zoning District (PWD-4) is based on regulations from the existing Oakland Zoning Code and sets forth land use regulations, development standards and other requirements. The new zoning district is a comprehensive set of regulations for the Oak to Ninth site that will ensure the future development of the site in an orderly, functional, and high quality manner that will promote the General Plan and the general purposes of the City's zoning regulations. This zoning district will apply to the 64.2 acre Oak to Ninth Avenue Mixed Use Development site, consistent with the proposed land use designations and policies under the General Plan Amendments proposed as part of the Project.

~~19.~~21. The rezoning and adoption of the new zoning district will promote local and regional welfare by allowing residential, commercial and open space uses to be developed on a site that is currently under underutilized, largely vacant, and contaminated. The City has determined that this site is appropriate for high density housing given its size, location, topography, and other physical attributes. The Project's significant addition to the housing stock will assist the City in satisfying local and regional housing needs to a much greater degree that would the current zoning designations which are not appropriate for housing. The Project will provide a variety of housing types, including affordable housing, making the development accessible to a range of needs in the market. The new zoning district will allow the development of significant new waterfront open space and recreation in a pedestrian and bicycle oriented mixed use development with convenient access to public transit and freeways. Commercial development included in the development will serve local residents and visitors to the site. Additionally, this development will promote the public health, safety and welfare by remediating the site, encouraging economic development in this area of the City, providing economic and job opportunities for local businesses and residents, and providing significant revenues to the City and the Redevelopment Agency as documented in the EPS Fiscal Impact Analysis.

~~20.~~22. The Planned Waterfront District (PWD-4) will be compatible with the surrounding area. To the west of the Project site is the Jack London District, which contains a mix of uses including residential, commercial, retail, entertainment and water-oriented uses. To the east of the Project site is the Embarcadero Cove area, which contains commercial-

recreational and water-dependent uses. The Project land uses allowed under the new zoning district are compatible with, and will serve and enhance, these areas. The Project site is separated from the neighborhoods to the north by I-880 and the rail tracks. The new open space uses on the site will serve surrounding neighborhoods, thereby creating new connections between the Project site and nearby neighborhoods. Although the Fifth Avenue Point will be surrounded by the new development, the new zoning district contains a provision requiring appropriate buffer treatments between the new development and adjacent buildings. Additionally, the new public open space areas and the new commercial development will serve the Fifth Avenue Point tenants.

~~21.~~23. The Planned Waterfront District (PWD-4) allows a development that will improve roadways on the Project site, improve the Embarcadero along the Project site frontage, implement traffic mitigation measures as called for in the Mitigation Monitoring and Reporting Program, and provide new views of the waterfront from roads. The development permitted under the zoning will provide adequate parking for new uses, including the open space uses, and will promote the efficient use of the new parking through the implementation of the Transportation Demand Management Plan.

~~22.~~24. The Planned Waterfront District (PWD-4) includes provisions for the review and regulation of signs and requires that the preliminary development plan include major landscaping features. These requirements will enhance the appearance of this new urban neighborhood. Additionally, the development permitted in the new zoning district will enhance and preserve the Oakland Estuary along the Project edge through open space, trails, shoreline improvements, and protection of the existing wetland restoration area. With its extensive system of parks, promenades, quays, and plazas, the Project will extend and enliven the Oakland waterfront making it a destination of local and regional importance.

~~23.~~25. The Project also includes the Oak to Ninth Avenue Mixed Use Development Design Guidelines that, in conjunction with the requirements of the Planned Waterfront District (PWD-4), will ensure the excellent design of the overall Project and its individual elements. These Guidelines include the design principles, concepts, and guidelines that will transform the site into a vibrant mixed-use neighborhood. The Design Guidelines will ensure the development of an attractive urban environment on this currently underutilized, industrial site that will allow Oakland residents and visitors to live, work, shop and recreate on the site.

~~24.~~26. The development permitted under the Planned Waterfront District (PWD-4) will achieve an acceptable balance between historic preservation and open space [General Plan](#) policies by allowing the preservation of the Ninth Avenue Terminal bulkhead building and removal of the remaining Ninth Avenue Terminal shed to allow new waterfront public open space and views. [The development also will achieve an acceptable balance between noise and housing and economic General Plan policies by allowing a significant new neighborhood to be developed on an underutilized, blighted, and contaminated site.](#)

~~25.~~27. The requirements contained in the Mitigation Monitoring and Reporting Program and the Conditions of Approval provide further assurance that the Project will be compatible with the surrounding neighborhood, and will promote the health, safety and welfare of the citizens of Oakland.

IV. DEVELOPMENT AGREEMENT

~~26.~~28. The Project Sponsor has requested approval of a Development Agreement in order to regulate this large-scale development Project and to provide both the City and the Project Sponsor with assurances that the Project could be successfully and completely built out over time. The Development Agreement contains all the information required by State Law and by the Oakland Municipal Code, including all information referenced in Chapter 17.138.

~~27.~~29. The notice required by Chapter 17.138 has been given.

~~28.~~30. The Development Agreement is consistent with the City's General Plan, including the Estuary Policy Plan as amended, in accordance with the findings set forth above. The City adopts the analysis, conclusions, and findings contained in the EIR, the staff reports, and the Project Sponsor presentations in support of the Development Agreement.

~~29.~~31. In reviewing and approving the Development Agreement, the City has considered the factors contained in Oakland Municipal Code section 17.138.060. Specifically, the City has determined that: (a) plans for development of the Project as reflected in the comprehensive elements of the preliminary development plan are adequate; (b) all issues concerning development of the site have been adequately planned for as reflected in the EIR, the Planned Waterfront District (PWD-4), the Design Guidelines, the vesting tentative subdivision map, and the preliminary development plan; (c) traffic, parking, public service, visual, and other impacts of the Project on abutting properties and the surrounding area have been adequately reviewed in the EIR and mitigated as necessary through the Mitigation Monitoring and Reporting Program and the Conditions of Approval; (d) the new public open space and improvements to the existing open space proposed as part of the Project will provide substantial public benefits; and (e) the Project will provide substantial economic benefits to the City's general fund, to the Redevelopment Agency, and to local residents and businesses through new construction and permanent employment, new business opportunities serving the Project and its residents, and new housing opportunities; (f) the Project will provide 3,100 new housing opportunities to meet the local and regional housing need and new affordable housing opportunities on site and through the substantial tax increment generated by the Project for the Redevelopment Agency.

V. PRELIMINARY DEVELOPMENT PLAN

~~30.~~32. The Project Sponsor has submitted a preliminary development plan in accordance with the proposed new Planned Waterfront Zoning District (PWD-4). The preliminary development plan contains all the required information. The plans have been reviewed by the City Engineer. The required notice has been provided. The City adopts the analysis, conclusions, and findings in the EIR, staff reports, and Project Sponsor presentations regarding the preliminary development plan.

~~31.~~33. The City finds that the preliminary development plan is in substantial conformance with the Planned Waterfront Zoning District (PWD-4), the Open Space-Region Serving Park (OS-RSP) zoning district, the Civic Center/Design Review (S-2/S-4) zoning regulations, the Oak to Ninth Mixed Use Development Design Guidelines, the Conditions of Approval, and the Mitigation Monitoring and Reporting Program. The proposed uses, the

location of the uses, the densities and square footages, building heights, set backs, open space, landscaping, parking, and other components of the preliminary development plan comply with the applicable regulations in a manner determined appropriate by the City.

~~32.34.~~ Two permits, a tree removal permit and a special use/condition use permit, are required for the Project and these permits are a part of the preliminary development plan approvals. Thus, the City adopts the following findings with respect to the proposed tree removal permit and the special use/conditional use permit, ~~both of which will be approved administratively.~~

TREE REMOVAL PERMIT

~~33.35.~~ The Project Sponsor has applied to remove the trees on the Project site. Most of the Project site is paved area and developed with commercial, industrial, and storage-related structures. Vegetation on the site is minimal. Approximately six mature trees exist on site and several mature trees exist along the Embarcadero. Ornamental trees exist along Estuary Park. The EIR does not identify any trees on the site as significant or of any significant habitat value. Trees need to be removed in order to complete the remediation, to implement infrastructure and development improvements, and to implement a cohesive, attractive landscaping plan in connection with the new development. As shown in the landscape plan submitted with the preliminary development plan, the Project will provide extensive new trees throughout the Project site, including along new public streets and open spaces.

~~34.36.~~ In accordance with Oakland Municipal Code section 12.36.050, the City finds that removal of the trees will promote the public health and safety by removing trees that could otherwise be damaged during demolition, site preparation, site remediation, and implementation of infrastructure and development. The tree removal and replacement of trees with a planned, coordinated landscape design will ensure that public views of the water are available. Additionally, the Project includes a professional landscape plan that would be compromised by the existing trees. The Project will comply with conditions of approval that relate to tree removal and replacement.

SPECIAL USE /CONDITIONAL USE PERMIT

~~35.37.~~ The public park and open space areas of the site will be zoned Open Space-Region Serving Park. Certain of the Project activities proposed for the park and open space areas require a special use/conditional use permit. Through the preliminary development plan submittal, the project sponsor has applied for a special use/conditional use permit for the uses proposed for the park and open space areas which, under the new PWD-4 zoning district, may be approved as part of the preliminary development plan.

~~36.38.~~ The Project will include four major parks (29.48 acres) along the waterfront: an expansion of Estuary Park for a total of 8.27 acres; the new Channel Park, 5.97 acres; the new South Park 2.30 acres; and the new Shoreline Park, 9.74 acres. Most of the new parks and open space areas will not be programmed, except that a bocce ball court is proposed for Channel Park, a children's play area is proposed in South Park, a dog play area in Channel Park, and a waterfront trail is proposed throughout the parks and open space, all of which require a minor

conditional use permit pursuant to Oakland Municipal Code section 17.11.060 and section 17.135.030.

~~37.39.~~ In accordance with Oakland Municipal Code chapter 17.135, the Park and Recreation Advisory Committee held a noticed, public hearing on February 8, 2006 to consider the Oak to Ninth Project, including the conditional use permit request. The notice required by Oakland Municipal Code section 17.135.030 has been given. The Director of City Planning will make a determination with respect to the minor conditional use permit.

~~38.40.~~ The City has determined that the bocce ball court proposed for Channel Park, the children's play proposed for South Park, the dog play area in Channel Park, the waterfront trail, and the proposed parks and open space plan in general meet the general use permit criteria contained in Oakland Municipal Code section 17.134.050 in that :

a. The location , size, design, and operating characteristics of the proposed open space is compatible with abutting properties and surrounding neighborhoods based on the following: (1) the 20.7 acres of new open space would equate to 4.1 acres of new local-serving parkland per 1,000 residents on the Project site, which exceeds the City's level of service standard of 4.0 acres. (General Plan Policy REC-3.1), thereby ensuring that the Project provides adequate open space to serve the Project without an impact on surrounding properties or neighborhoods; (2) the series of connected parks and open space proposed by the Project including the bocce ball courts, children's play area, and the dog play area, aided by the Bay Trail and other inter-neighborhood connectivity, will serve the new residents in the Project, serve and enhance the livability of nearby residential and mixed-use neighborhoods in the downtown, the San Antonio district, Lake Merritt and Jack London Square areas, and serve other visitors from Oakland ; (3) the parks and waterfront open spaces will provide a variety of recreational opportunities, including passive recreation, a playground, a dog play area, bocce ball courts, picnic areas, and gardens for project residents, nearby residents and the public at large; (4) the project will create new waterfront views and access where none currently exist and the activities proposed in the parks and open space will encourage use of these areas by residents from the surrounding neighborhoods; (5) the EIR discusses and proposes mitigation measures, which have been adopted by the City, to mitigate any adverse impacts of the Project on surrounding properties and neighborhoods.

b. The location, design and site planning of the proposed open space will be as attractive as the nature of the use and its location and setting warrant based on the following: (1) a mix of active and passive parks and open spaces would cover approximately 46% of the Project site along the waterfront edge, thereby highlighting the location of the site on the Oakland Estuary; (2) the Project Sponsor will be required to prepare and submit to the City a detailed landscape plan indicating specific type, size, and location of vegetation and details regarding the uses in the parks and open space as part of the final development plan approval; and (3) the Project will create new waterfront views and access where none currently exist and the proposed bocce ball court, children's playground, dog ply area, and waterfront trail will attract users to these newly accessible views and open space areas.

c. The proposed project will enhance the successful operation of the surrounding area in its basic community functions, or will provide an essential service to the

community or region based on the following: (1) the project would provide over 20 acres of new, publicly accessible open space along the Oakland Estuary shoreline for a total of over 29 acres of park and open space area on the site; (2) this new and enhanced waterfront open space will serve Project residents, residents from nearby neighborhoods, Oakland residents and will draw visitors from the region; (3) the bocce ball court, dog play area, waterfront trail, and children's playground will serve a broad range of users from the Project and the surrounding community by providing activities for adults and children that will enhance the recreational experience for those living on and visiting the site; and (4) the Project will complete a segment of the Bay Trail and connect to other areas along the Estuary, thereby forwarding the goal of OSCAR Policy OS-7.2 – to create an unbroken trail along the water's edge between Jack London Square and Martin Luther King, Jr. Regional Shoreline.

d. The proposal will conform to all applicable design review criteria because the Project Sponsor will be required to prepare and submit to the City a detailed landscape plan indicating specific type, size, and location of vegetation as part of the final development plan for each phase of development and these plans will be evaluated for compatibility with the adopted Design Guidelines for the Oak to Ninth Avenue Mixed Use Development Project.

e. The proposal conforms in all significant respects with the Oakland General Plan and with any other applicable plan or development control map that has been adopted by the City Council based on the following: (1) the findings regarding the Project's consistency with the General Plan set forth above; (2) the Project will exceed the General Plan standards for new parkland on the Project site; and 3) the Project will complete a segment of the Bay Trail and connect to other areas along the estuary, which forwards the goal of OSCAR Policy OS-7.2 – to create an unbroken trail along the water's edge between Jack London Square and Martin Luther King, Jr. Regional Shoreline.

VI. REDEVELOPMENT PLAN AMENDMENTS

~~39.41.~~ 41. The Project is located in two Redevelopment Plan areas, the Central District Urban Renewal Plan area and the Central City East Redevelopment Plan area (jointly referred to as "the Redevelopment Plans"). The City has previously documented the physical, economic and other blight in the Project area in connection with adoption of the Redevelopment Plans.

~~40.42.~~ 42. The Redevelopment Plans do not mandate a specific development program for the Project Area, deferring instead to the land uses allowed by the Oakland General Plan and Zoning Code. The Project proposes General Plan and Zoning Code amendments. In order to ensure that the Redevelopment Plans are consistent with the General Plan and Zoning Code as amended for the Project, the land use designations for the Oak to Ninth Project site in the Redevelopment Plans must be amended. The proposed amendments to the Redevelopment Plans are discussed in the staff reports presented to the City and the City adopts the analysis, conclusions and findings contained in these staff reports.

~~41.43.~~ 43. The amendments to the Redevelopment Plans have been submitted to the Planning Commission pursuant to Health and Safety Code section 33453. The Planning Commission has independently reviewed and considered the proposed amendments and has

recommended that the City Council and the Redevelopment Agency amend the Redevelopment Plans as proposed. The notice required by section 17.144.060 has been given.

~~42.44.~~ The amendments to the Redevelopment Plans is desirable because they allow for creation of a residential, commercial, open space mixed use community that will eliminate the economic and physical blight on the Project site. The amendments will allow a development that will provide substantial economic benefits to the Redevelopment Agency and the City as documented in the EPS Fiscal Impact Analysis. Additionally, the Project will strengthen the economic base of the community through construction and permanent jobs, increased business opportunities, and increased opportunities for home ownership. In these ways, the Project and the proposed amendments to the Redevelopment Plans will foster redevelopment goals and objectives in this area.

~~43.45.~~ The Project will also assist in fulfilling the affordable housing goals of the Central City East Redevelopment Plan. ~~A minimum of 15% of the~~The Project ~~includes approximately 420 units will be affordable and additional units, up to 20%, may be subsidized with Agency funds to affordable levels~~of affordable housing in accordance with the terms of the affordable housing provision of the Development Agreement. Additionally, as documented in the EPS Fiscal Impact Analysis, the Project will generate substantial tax increment that will be used by the Agency for affordable housing.

VII. VESTING TENTATIVE SUBDIVISION MAP

~~44.46.~~ Pursuant to Title 16 of the Oakland Municipal Code, the City finds that the Vesting Tentative Map contains all of the information, and complies with the design and improvement standards, required by the Title 16.

~~45.47.~~ Pursuant to section 16.08.030 of the Oakland Municipal Code, the City finds:

a. The Vesting Tentative Map, and the design and improvement of the proposed subdivision, is consistent with the goals and policies of the General Plan and the General Plan Amendments proposed as part of the Project as set forth above. The Vesting Tentative Map and the Project are discussed in the staff reports presented to the City and these reports include discussions of the Project's compliance with the General Plan. The City adopts the conclusions, analysis and explanations contained in the staff reports.

b. As demonstrated in the EIR prepared for the Project and in the staff reports related to the Project, the Project site is physically suitable for development. The Project site is located in a developed area, is currently used for industrial uses, and is served by roads and other infrastructure. No unusual physical conditions would prevent the development of the site.

c. The Project site is approximately 64.2 acres, which is suitable to accommodate the Project's proposed density and there are no physical conditions on the site that would render the site unsuitable for the proposed density.

d. The Project's design and proposed improvements will not cause substantial environmental damage or injure fish, wildlife, or their habitat given the imposition of the mitigation measures contained in the Mitigation Monitoring and Reporting Program.

e. The Project's design and type of improvements will provide residential, commercial, and open space uses with new roads and other appropriate infrastructure by redeveloping an underused industrial site, remediating environmental hazards on the site, and protecting the shoreline and the existing wetlands restoration on the site. In this way, the Project will improve the public health and safety. Implementation of the mitigation measures contained in the Mitigation Monitoring and Reporting Program will ensure that no serious public health or safety problems will occur from implementation of the Project.

f. Approval of the subdivision will not conflict with any easements acquired by the public at large for access through or use of the property within the proposed subdivision.

g. The design of the subdivision does not prevent feasible future passive or natural heating or cooling opportunities in the subdivision.

h. The Project will be served by the EBMUD's East Bayshore Recycled Water Project and recycled water is expected to be delivered to the Project area by 2009. If the recycled water becomes available to the Project site, the Project will comply with the City's recycled water ordinance.

~~46-48~~ Pursuant to Water Code section 10911(c), the City finds, based on the water supply assessment provided by EBMUD, including the EBMUD's Urban Water Management Plan and information in the entire record, that projected water supplies (including the supplemental water supply and drought management described by EBMUD in its water supply assessment) will be sufficient to satisfy the demand of the Project. The water supply assessment prepared for the Project meets the requirements of Government Code section 66473.7.

~~47-49~~ The Vesting Tentative Map meets all the applicable requirements of Oakland Municipal Code Chapter 16.16 and 16.20 in a manner determined appropriate by the City.