

EXHIBIT A TO ALL APPROVAL DOCUMENTS

CEQA FINDINGS AND STATEMENT OF OVERRIDING CONSIDERATIONS FOR THE OAK TO NINTH AVENUE MIXED USE DEVELOPMENT PROJECT

Planning Commission Hearing

March 15, 2006

I. INTRODUCTION

1. These California Environmental Quality Act (Pub. Res. Code § § 21000 *et seq.*, "CEQA") findings are adopted by the City of Oakland as lead agency for the Oak to Ninth Avenue Mixed Use Development Project ("the Project"). These findings pertain to Environmental Impact Report SCH #2004062013 prepared for the Project.

2. These CEQA findings are Exhibit A and are incorporated by reference into each and every ordinance and resolution approving the Project. Exhibit B is the Mitigation Monitoring and Reporting Program (MMRP). Exhibit C contains conditions of approval. Exhibit D contains general findings regarding the Project approvals, including compliance with the Municipal Code and consistency with the General Plan. All Exhibits are incorporated by reference into each other and into the ordinance or resolution to which the Exhibit is attached.

3. The statements, findings, determinations, and other actions set forth in this Exhibit are based on the substantial evidence contained the entire record before the City. References to specific reports and specific pages of documents are not intended to identify those sources as the exclusive basis for the findings.

II. THE PROJECT

4. The Oak to Ninth Avenue Project is a mixed use development on approximately 64.2 acres located along the Oakland Estuary. The Project includes up to 3,100 residential units, approximately 200,000 square feet of commercial space, a minimum of 3,950 parking spaces, 29.9 acres of parks and public open space, two renovated marinas, shoreline improvements, new roads, improvements to the Embarcadero along the Project site, and other necessary infrastructure and improvements. The existing buildings on the Project site will be demolished with the exception of a portion of the Ninth Avenue Terminal building and the Jack London Aquatic Center. The trees located on the Project site will be removed. The Project also includes General Plan amendments, Redevelopment Plan amendments, a new zoning district to accommodate the Project and amendments to the zoning map.

III. ENVIRONMENTAL REVIEW OF THE PROJECT

5. Pursuant to CEQA, the CEQA Guidelines (Cal. Code Regs title 14, § § 15000 *et seq.*), and the Oakland Environmental Review Guidelines in Oakland Municipal Code Chapter 17.158, the City determined that an EIR would be prepared. The City issued a Notice of Preparation, which was circulated to responsible agencies and interested groups and individuals

for review and comment. A copy of the Notice of Preparation and comments received thereon are included in Appendices A and B of the Draft EIR.

6. A Draft EIR was prepared for the Project to analyze its environmental effects. The Draft EIR was circulated for public review and comment from September 1, 2005 to October 24, 2005. The Planning Commission, the Parks and Recreation Advisory Commission, and the Landmarks Preservation Advisory Board held public hearings on the Draft EIR on September 28, 2005, October 12, 2005 and October 17, 2005, respectively..

7. The City received written and oral comments on the Draft EIR. The City prepared responses that evaluated the comments on environmental issues and made any necessary additions and revisions to the Draft EIR. The comments, responses to the comments, changes to the Draft EIR, and additional information were published in a Final EIR on January 31, 2006. Certain comments were received after the close of the comment period and publication of the Final EIR and these comments were responded to in a document entitled "Additional Responses to Comments," which are incorporated into the Final EIR. The DEIR, the Final EIR, the "Additional Responses to Comments," and the appendices comprise the "EIR" referenced in these findings.

8. The EIR provides a project-level analysis of the environmental impacts of the Project and supports all levels of approval necessary to implement the Project.

IV. THE RECORD

9. The record upon which all findings and determination related to the Project are based includes the following:

- a. The EIR and all documents referenced in or relied upon by the EIR.
- b. All information (including written evidence and testimony) provided by City or Redevelopment Agency staff to the Planning Commission, the Landmarks Preservation Advisory Board, and the Parks and Recreation Advisory Commission relating to the EIR, the proposed approvals for the Project, the Project, and alternatives to the Project.
- c. All information (including written evidence and testimony) presented at any and all public hearings related to the EIR and the Project, and all information incorporated into reports presented to any of the public bodies that conducted hearings on the EIR or the Project.
- d. All applications, letters, testimony and hearing presentations provided by the project sponsor and their consultants to the City or the Redevelopment Agency in connection with the EIR or the Project.
- e. For documentary and information purposes, all locally adopted land use plans and ordinances, including, without limitation, general plans, specific plans, redevelopment plans and related ordinances, together with any related environmental review documents, findings, mitigation monitoring programs and other documentation relevant to planned growth in the Project area.

- f. The Mitigation Monitoring and Reporting Program for the Project.
- g. All other documents comprising the record pursuant to Public Resources Code section 21167.6(e).

10. The Custodian of the documents and other materials that constitute the record of proceedings on which the City's decision is based is Claudia Cappio, Development Director, Community and Economic Development Agency, or designee. Such documents and other materials are located at 250 Frank Ogawa Plaza, Suite 3315, Oakland, California 94612.

V. CERTIFICATION OF THE EIR

11. In accordance with CEQA and the CEQA Guidelines, the City certifies that the EIR has been completed in compliance with CEQA and was presented to the Planning Commission. The City has reviewed and considered the information contained in the record and the EIR prior to certifying the EIR and approving or recommending approval of any aspect of the Project. Preparation of the EIR was overseen by the City and the conclusions and recommendations in the EIR represent the independent conclusions and recommendations of the City. By these findings, the City confirms and adopts the findings of the EIR as supplemented by these findings.

12. The City recognizes that the EIR may contain clerical errors and bases its determination on the substance of the information in the EIR.

13. The City certifies that the EIR is adequate to support the approval of the Project, each alternative in the EIR, and variations on the range of alternatives evaluated in the EIR, each component of these alternatives, and any minor modifications to the Project or the alternatives. The EIR is adequate for each entitlement or approval, and any future discretionary approvals, required for construction and operation of the Project.

VI. ABSENCE OF SIGNIFICANT NEW INFORMATION

14. The City recognizes that the EIR incorporates information obtained and produced after the Draft EIR was completed, and that the EIR contains additions, clarifications, and modifications. The City has reviewed and considered the Final EIR and all of this information. The Final EIR does not add significant new information to the Draft EIR that would require recirculation of the EIR under CEQA. The new information added to the EIR does not involve a new significant environmental impact, a substantial increase in the severity of an environmental impact, or a feasible mitigation measure considerably different from others previously analyzed that the project sponsor declines to adopt and that would clearly lessen the significant environmental impacts of the Project. No information indicates that the Draft EIR was inadequate or conclusory or that the public was deprived of a meaningful opportunity to review and comment on the Draft EIR.

15. Based on the above finding, the City finds that the changes and modifications made to the EIR after the Draft EIR was circulated for public review and comment do not individually or collectively constitute significant new information within the meaning of Public Resources Code section 21092.1 or CEQA Guidelines section 15088.5.

VII. MITIGATION MONITORING AND REPORTING PROGRAM

16. Public Resources Code section 21081.6, CEQA Guidelines section 15097, and Oakland Administrative Code Chapter 17.158 require the City to adopt a monitoring or reporting program to ensure that the mitigation measures for Project identified in the EIR are implemented. The Mitigation Monitoring and Reporting Program ("MMRP") is included in Exhibit B and is adopted by the City. The MMRP satisfies the requirements of CEQA and the Oakland Municipal Code.

17. The mitigation measures set forth in the MMRP are specific and enforceable. As appropriate, some mitigation measures define performance standards to ensure no significant environmental impacts will result. The MMRP adequately describes implementation procedures, monitoring responsibility, reporting actions, compliance schedule, non-compliance sanctions, and verification of compliance in order to ensure that the Project complies with the adopted mitigation measures. The MMRP ensures that the mitigation measures are in place, as appropriate, throughout the life of the Project.

18. The mitigation measures contained in the MMRP will be imposed as enforceable conditions of approval on the individual development proposals to be approved by the City as the Projects is implemented. The City has adopted measures to substantially lessen or eliminate all significant effects where feasible.

19. The mitigation measures contained in the MMRP will not have new significant environmental impacts that were not analyzed in the EIR. In the event a mitigation measure recommended in the EIR has been inadvertently omitted from the MMRP, that mitigation measure is adopted and incorporated from the EIR into the MMRP by reference and adopted as part of the MMRP.

VIII. FINDINGS REGARDING ENVIRONMENTAL IMPACTS

20. In accordance with Public Resources Code section 21081 and CEQA Guidelines sections 15091 and 15092, the City adopts the findings and conclusions regarding impacts and mitigation measures that are set forth in the EIR. These findings do not repeat the full discussions of environmental impacts contained in the EIR. The City ratifies, adopts, and incorporates the analysis, explanation, findings, responses to comments, and conclusions of the EIR. The City adopts the reasoning of the EIR, staff reports, and presentations provided by the staff and the project sponsor as may be modified by this Resolution.

21. The City recognizes that the environmental analysis of the Project raises controversial environmental issues, and that a range of technical and scientific opinion exists with respect to those issues. The City has, through review of the evidence and analysis presented in the record, considered the full scope of the environmental issues presented. These findings are based on a full appraisal of all viewpoints expressed and evidence presented in the EIR and in the record, as well as other relevant information in the record of the proceedings for the Project.

22. Under Public Resources Code section 21081(a)(1) and CEQA Guidelines sections 15091 (a)(1) and 15092(b), and to the extent reflected in the EIR, the City finds that changes or

alterations have been required in, or incorporated into, the Project that mitigate to a less than significant level or avoid the following potentially significant effects on the environment:

a. Land Use, Plans, Policies

(1) Impact A.1: The Project, located near the Fifth Avenue Point, may result in the physical division of an existing community. This impact will be mitigated through the imposition of Mitigation Measure A.1, which calls for design measures, access from the Point to the public areas of the Project, appropriate buffering, and design standards in the PWD regulations.

(2) Impact A.2: The Project will conflict with the existing land use classification and zoning. This impact will be mitigated through the imposition of Mitigation Measures A.2 (a) – (b), which call for amending the General Plan and adoption of the PWD zoning district.

(3) Impact A.3: The Project will result in a substantial change in the existing environment and existing land uses. This impact will be mitigated through the imposition of Mitigation Measures A.3 (a) – (b), which call for implementation of all EIR mitigation measures and the regulations of the new PWD zoning.

b. Transportation, Circulation, and Parking

(1) Impacts B.1, B.1a, and B.1d: Phase I of the Project will affect levels of service at the Embarcadero and Oak Street and Embarcadero and 5th Avenue intersections in 2010. These impacts will be mitigated through imposition of Mitigation Measures B.1 (a) and (d), which call for installation of traffic signals.

(2) Impacts B.2, B.2b, B.2f, B.2g, B.2i, B.2j, B.2k, B.2m, B.2n, B.2o, B.2p, B.2q: At build out the Project will affect levels of service at the following intersections in 2025: Broadway and Embarcadero, West Grand Avenue and Harrison Street, Lakeshore Avenue and Foothill Boulevard, Lakeshore Avenue and Lake Park Avenue, Embarcadero and Fifth Avenue, Embarcadero and I-880 Northbound Off-Ramp, 5th Avenue and 7th/8th Streets, 14th Avenue and 7th/12th Streets (southbound), Foothill Boulevard and 14th Avenue (westbound and eastbound), and 16th Street and 23rd Avenue. These impacts will be mitigated through imposition of Mitigation Measures B.2b, B.2f, B.2g, B.2i, B.2j, B.2k, B.2m, B.2n, B.2o, B.2p, and B.2q, which call for installation of certain traffic signals, optimization of certain traffic signals, and widening the Embarcadero along the Project site frontage.

(3) Impacts B.3, B.3b, B.3h, B.3i, B.3j, B.3l, B.3n, B.3o: Project traffic will contribute to cumulative significant impacts at the following intersections in 2025: Embarcadero and Broadway, Lakeshore Avenue and Lake Park Avenue, Embarcadero and 5th Avenue, Embarcadero and I-880 Northbound Off-Ramp, 5th Avenue and 7th/8th Streets, Foothill Boulevard and 14th Avenue, and 16th street and 23rd Avenue. These impacts will be mitigated through imposition of Mitigation Measures B.3b, B.3h, B.3i, B.3j, B.3l, B.3n, and B.3o, which call for installation of certain traffic signals, optimization of certain traffic signals, and widening of the Embarcadero along the Project site frontage.

(4) Impact B.4: The Project will generate demand for alternative transportation service for the Project area. This impact will be mitigated through implementation of Mitigation Measures B.4a and b, which call for the Project site plan to include transit facilities and operation of a shuttle service.

(5) Impact B.7: The Project will increase the potential for conflicts among different traffic streams. This impact will be mitigated through implementation of Mitigation Measure B.7, which calls for changes in the Project site plan to reconfigure certain intersections, install certain traffic signals, design pedestrian facilities to comply with ADA standards, maintain or reconstruct the fence along the Embarcadero adjacent to the Project site to limit access to the railroad tracks, and install warning signage at the crossing along 5th Avenue.

(6) Impact B.10: The Project construction will temporarily affect traffic, parking, and pedestrian conditions. This impact will be mitigated through implementation of Mitigation Measure B.10, which calls for implementation of a construction traffic management plan.

c. Air Quality and Meteorological Conditions

(1) Impact C.1: Project construction activities will generate short-term emissions of criteria pollutants. This impact will be mitigated through implementation of Mitigation Measures C.1a and b, which call for implementation of the BAAQMD's basic and enhanced control measures, control measures for a site located near sensitive receptors, and compliance with regulations covering the demolition and removal of asbestos.

d. Hydrology and Water Quality

(1) Impact D.1: The Project construction activities could generate loose and erodable soils that, if not properly managed, could have adverse impacts on water quality. This impact will be mitigated through implementation of Mitigation Measure D.1, which calls for compliance with all NPDES requirements, RWQCB General Construction Permit requirements and all City regulations, including the Creek Protection Permit.

(2) Impact D.2: The Project construction dredging activities could adversely affect aquatic organisms and water quality. This impact will be mitigated through implementation of Mitigation Measure D.2, which calls for compliance with all water quality certification requirements, a Section 404 permit, and approval by the Dredged Material Management Office.

(3) Impact D.5: Establishment and maintenance of new landscaping and lawns may result in adverse water quality impacts. This impact will be mitigated through implementation of Mitigation Measure D.5, which calls for preparation of a landscape management plan.

(4) Impact D.6: The Project could deplete groundwater supplies or interfere with groundwater recharge and cause contamination of surface water. This impact will be mitigated through implementation of Mitigation Measure D.6, which calls for compliance with NPDES requirements for dewatering activities.

e. Cultural Resources

(1) Impact E.1: Construction of the Project could adversely affect unknown cultural resources at the site. This impact will be mitigated through implementation of Mitigation Measures E.1a through E.1d, which call for an archival resource evaluation and additional measures based on the results of this evaluation, training of construction personnel, provisions for historical or unique archaeological resources accidentally discovered during construction, and provisions for the discovery of human skeletal remains.

(2) Impact E.2: Project construction could adversely affect unidentified paleontological resources at the site. This impact will be mitigated through implementation of Mitigation Measure E.2, which calls for a paleontologist to document and assess the discovery and prepare an excavation plan for approval by the City.

f. Geology, Soils and Seismicity

(1) Impact F.1: The Project could be subject to the effects of a major earthquake causing structure collapse or damage. This impact will be mitigated through implementation of Mitigation Measure F.1, which calls for site specific, design level geotechnical investigations, review and approval by a registered geotechnical engineer, incorporation of all recommendations into the final design and approval by the City of Oakland Building Services Division.

(2) Impact F.2: The Project could be exposed to liquefaction and settlement in the event of a major earthquake. This impact will be mitigated through implementation of Mitigation Measure F.2, which calls for site specific, design level geotechnical investigations for each building site to address and require the incorporation into the Project design, methods for safeguarding against liquefaction and settlement.

(3) Impact F.3: Development at the Project site could be subject to settlement. This impact will be mitigated through implementation of Mitigation Measure F.3, which calls for the preparation of site specific geotechnical investigation and reports that will include engineering techniques for mitigating the effects of settlement and for construction activities and design criteria to comply with all applicable codes and regulations.

(4) Impact F.4: Development of the Project may include the use of dredged material as fill which would be subject to settlement and subsidence. This impact will be mitigated through implementation of Mitigation Measure F.4, which calls for consolidation and stabilization of dredged material use for fill, geotechnical investigations and reports, appropriate permits, and limitations on the use of dredged material as fill to open space areas.

(5) Impact F.5: The Project construction activities could result in loosening and exposure and potentially the loss of topsoil and could expose shoreline area to erosion and the loss of topsoil. This impact will be mitigated through implementation of Mitigation Measure F.5, which calls for compliance with NPDES requirements, RWQCB General Construction Permit requirements and all City regulations, including Creek Protection Permits.

g. Noise

(1) Impact G.2: Noise generated by the Project operations could exceed City standards and disturb Project occupants and nearby residents. This impact will be mitigated through implementation of Mitigation Measure G.2, which calls for incorporating certain design features related to shielding building equipment and the location of truck delivery areas.

(2) Impact G.3: The Project will locate new residential uses in a noise environment that is above the General Plan Noise Element "normally acceptable" level. This impact will be mitigated through implementation of Mitigation Measures G.3a and b, which call for compliance with the requirements of Title 24 to achieve an interior noise level of less than 45 dBA and notice to future residents regarding railroad crossing noise.

h. Hazardous Materials

(1) Impact H.1: During remediation, demolition and construction activities, workers, the public, and the environment may be exposed to adverse conditions related to hazardous materials handling. This impact will be mitigated through implementation of Mitigation Measures H.1a through e, which call for preparation of a soil and groundwater clean up plan, compliance with all applicable OSHA regulations, compliance with all local and state protocols for the handling, storage and transport of any hazardous or potentially hazardous waste, proper classification of soils for offsite disposal, sampling of soil for reuse or disposal, containment and proper treatment or disposal of groundwater generated during construction activities, and preparation and approval of a Sampling and Analysis Plan for dredging.

(2) Impact H.2: During demolition and construction, hazardous building components could expose workers, the public and the environment to adverse conditions related to hazardous materials handling. This impact will be mitigated through imposition of Mitigation Measures H.2a through d, which call for a pre-demolition ACM survey, preparation and implementation of an asbestos abatement plan, preparation and implementation of a lead-based paint abatement plan, a pre-demolition PCB survey and abatement of known or suspected PCBs prior to demolition and construction activities, and proper removal any UST and remediation of any leaks from the UST.

(3) Impact H.3: Hazardous materials used during construction could be released into the environment. This impact will be mitigated through implementation of Mitigation Measure H.3, which calls for the use of construction best management practices to minimize the potential negative effects to groundwater and soils.

i. Biological Resources/Wetlands

(1) Impact I.2: The Project could result in substantial adverse effect on jurisdictional wetlands or waters of the U.S. This impact will be mitigated through implementation of Mitigation Measures I.2a through e, which call for preparation of a Corps-verified wetland delineation, avoidance of wetlands, implementation of BMPs, protection of the existing wetlands restoration project, obtaining any necessary regulatory permits and Agency approvals including Section 404/Section 10 permits, Section 401 Water Quality Certification,

and a BCDC permit, and compensatory mitigation as may be required by the Corps, RWQCB or BCDC.

(2) Impact I.3: The Project construction activities could have a substantial adverse effect on fisheries resources in the Oakland inner harbor. This impact will be mitigated through implementation of Mitigation Measure 1.3, which calls for implementation of certain mitigation called for in the Long Term Management Strategy for the Placement of Dredged Material in the San Francisco Bay Region.

(3) Impact I.4: The Project construction activities could have an adverse effect on nesting habitat for breeding raptors and passerine birds. This impact will be mitigated through the implementation of Mitigation Measure I.4a and b, which call for construction timing considerations and preconstruction surveys and avoidance of nesting raptors and birds.

(4) Impact I.5: The Project could have a substantial adverse effect on special-status nesting roosting bats. This impact will be mitigated through pre-demolition building surveys, postponement of demolition if nursery sites are discovered, relocation of roosting bats, and creation of bat roosting structures.

23. Under Public Resources Code section 21081 and CEQA Guidelines section 156091 and 15092, and Chapter 17.158 of the Municipal Code, the City determines that the following significant effects on the environment, as reflected in the EIR, are unavoidable and are acceptable due to the overriding considerations described below.

a. Traffic, Circulation, and Parking

(1) Impacts B.1b: Phase I of the Project will affect the intersections of 5th Street and Broadway. No feasible mitigations measures are available to reduce this impact to a less than significant level because of the constrained capacity of the Webster Tube, which cannot be widened.

(2) Impact B.1c: Phase I of the Project will affect the intersection 6th and Jackson Streets at the I-880 Northbound On-Ramp. This impact could be reduced to a less than significant level through implementation of Mitigation Measure B.1c, which calls for optimization of the traffic signal at this intersection. The implementation of this Mitigation Measure, however, is uncertain because it requires the approval of Caltrans. Although implementation of the measure may be possible and the impact avoided, because the approval of Caltrans is uncertain, the City finds that this impact is significant and unavoidable. The City further finds that if Caltrans approves this measure, the impact will be reduced to a less than significant level.

(3) Impact B.1e: Phase I of the Project will affect the intersection Embarcadero and I-880 Northbound Off-Ramp – 6th Avenue. This impact could be reduced to a less than significant level through implementation of Mitigation Measure B.1e, which calls for installation of a traffic signal at this intersection. The implementation of this Mitigation Measure, however, is uncertain because it requires the approval of Caltrans. Although

implementation of the measure may be possible and the impact avoided, because the approval of Caltrans is uncertain, the City finds that this impact is significant and unavoidable. The City further finds that if Caltrans approves this measure, the impact will be reduced to a less than significant level.

(4) Impact B.2a: Buildout of the Project will affect the intersection of Atlantic Avenue and Webster Street. This impact could be reduced to a less than significant level through implementation of Mitigation Measure B.2a, which calls for payment of a fair share fee for certain improvements at this intersection. The implementation of this Mitigation Measure, however, is uncertain because it requires the approval of, and implementation by, the City of Alameda. Although implementation of the measure may be possible and the impact avoided, because its approval and implementation is uncertain, the City finds that this impact is significant and unavoidable. The City further finds that if Caltrans approves this measure, the impact will be reduced to a less than significant level.

(5) Impact B.2c: Buildout of the Project will affect the intersection of 5th Street and Broadway. No feasible mitigation measures are available to reduce this impact to a less than significant level because of the constrained capacity of the Webster Tube, which cannot be widened.

(6) Impact B.2d: Buildout of the Project will affect the intersection 5th and Oak Streets at the I-880 Southbound On-Ramp. This impact could be reduced to a less than significant level through implementation of Mitigation Measure B.2d, which calls for optimization of the traffic signal at this intersection. The implementation of this Mitigation Measure, however, is uncertain because it requires the approval of Caltrans. Although implementation of the measure may be possible and the impact avoided, because the approval of Caltrans is uncertain, the City finds that this impact is significant and unavoidable.

(7) Impact B.2e: Buildout of the Project will affect the intersection of 6th and Jackson Street at I-880 Northbound On-Ramp. No feasible mitigation measures are available to reduce this impact to a less than significant level because of the constrained right-of-way, which prevents the addition of turn lanes or other similar physical improvements at this intersection.

(8) Impact B.2h: Buildout of the Project will affect the intersection of Lakeshore Avenue and MacArthur Boulevard. No feasible mitigation measures are available to reduce this impact to a less than significant level because of the constrained right-of-way, which prevents the addition of turn lanes or other similar physical improvements at this intersection.

(9) Impact B.2I: Buildout of the Project will affect the intersection of Embarcadero and I-880 Southbound On-Ramp. This impact could be reduced to a less than significant level through implementation of Mitigation Measure B.2I, which calls for installation of a traffic signal at this intersection. The implementation of this Mitigation Measure, however, is uncertain because it requires the approval of Caltrans. Although implementation of the measure may be possible and the impact avoided, because the approval of Caltrans is uncertain,

the City finds that this impact is significant and unavoidable. The City further finds that if Caltrans approves this measure, the impact will be reduced to a less than significant level.

(10) Impact B.3a: Buildout of the Project will contribute to the cumulative conditions at the intersection of Atlantic Avenue and Webster Street. This impact could be reduced, although not to a less than significant level, with implementation of Mitigation Measure B.3a. Implementation of the Mitigation Measure is uncertain because it requires the approval of the City of Alameda. The City further finds that if Alameda approves this measure, the impact will be reduced to a less than significant level.

(11) Impact B.3c: Buildout of the Project will contribute to the cumulative conditions at the intersection of 5th Street and Broadway. No feasible mitigation measures are available to reduce this impact to a less than significant level, because of the constrained capacity of the Webster Tube, which cannot be widened.

(12) Impact B.3d: Buildout of the Project will contribute to the cumulative conditions at the intersection of 5th and Oak streets at the I-880 southbound On-Ramp. This impact could be reduced to a less than significant level through implementation of Mitigation Measure B.2d, which calls for optimization of the traffic signal at this intersection. The implementation of this Mitigation Measure, however, is uncertain because it requires the approval of Caltrans. Although implementation of the measure may be possible and the impact avoided, because the approval of Caltrans is uncertain, the City finds that this impact is significant and unavoidable. The City further finds that if Caltrans approves this measure, the impact will be reduced to a less than significant level.

(13) Impact B.3e: Buildout of the Project will contribute to the cumulative conditions at the intersection of 6th and Jackson Street at the I-880 Northbound On-Ramp. No feasible mitigation measures are available to reduce this impact to a less than significant level, because of the constrained right-of-way at this location.

(14) Impact B.3f: Buildout of the Project will contribute to the cumulative conditions at the intersection of Lakeshore Avenue and Foothill Boulevard. This impact could be reduced, although not to a less than significant level, with the implementation of Mitigation Measure B.2g. No feasible mitigation measures are available to reduce this impact to a less than significant level, because of the constrained right-of-way at this location.

(15) Impact B.3g: Buildout of the Project will contribute to the cumulative conditions at the intersection of Lakeshore Avenue and MacArthur Boulevard. No feasible mitigation measures are available to reduce this impact to a less than significant level, because of the constrained right-of-way at this location.

(16) Impact B.3k: Buildout of the Project will contribute to the cumulative conditions at the intersection of Embarcadero and I-880 southbound On-Ramp. This impact could be reduced to a less than significant level through implementation of Mitigation Measure B.2I, which calls for installation of a traffic signal at this intersection. The

implementation of this Mitigation Measure, however, is uncertain because it requires the approval of Caltrans. Although implementation of the measure may be possible and the impact avoided, because the approval of Caltrans is uncertain, the City finds that this impact is significant and unavoidable. The City further finds that if Caltrans approves this measure, the impact will be reduced to a less than significant level.

(17) Impact B.3m: Buildout of the Project will contribute to the cumulative conditions at the intersection of 14th Avenue and 7th/East 12th streets (Southbound). This impact could be reduced, although not to a less than significant level, with the implementation of Mitigation Measure B.2n. No feasible mitigation measures are available to reduce this impact to a less than significant level, because of the constrained right-of-way at this location.

(18) Impact B.9: The Project will contribute to 2025 traffic conditions on regional and local roadways. No feasible mitigation measures are available to reduce this impact to a less than significant level, because of constrained right-of-ways, the inherent difficulties in widening freeways, and the lack of a regional mitigation fee program.

b. Air Quality and Meteorological Conditions

(1) Impact C.7: The Project will contribute to cumulative regional air pollution. This impact could be reduced, although not to a less than significant level, with the implementation of Mitigation Measures C.7a through k, which call for implementation of certain rideshare, transit, shuttle, and bicycle and pedestrian measures. No feasible mitigation measures are available to reduce this impact to a less than significant level.

c. Cultural Resources

(1) Impact E.3: The Project will result in the substantial demolition of the Ninth Avenue Terminal. This impact could be reduced, but not to a less than significant level, through the implementation of Mitigation Measures E.3a and b, which call for documentation of the historic resource and reuse and rehabilitation of the bulkhead building. No feasible alternatives are available to reduce this impact to a less than significant level for the reasons set forth below.

(2) Impact E.4: The Project will substantially alter the wharf structure supporting the Ninth Avenue Terminal and surrounding areas. This impact could be reduced, but not to a less than significant level, through the implementation of Mitigation Measures E.3a and b, which call for documentation of the historic resource and reuse and rehabilitation of the bulkhead building. No feasible alternatives are available to reduce this impact to a less than significant level for the reasons set forth below.

(3) Impact E.5: Although the Project buildings have not been designed, the Project may not be architecturally compatible with the remaining bulkhead building and Project buildings will be located within 100 feet of the bulkhead building. No feasible alternatives are available to reduce this impact to a less than significant level for the reasons set forth below.

(4) Impact E.8: The Project will contribute to the cumulative loss of historic resources. This impact could be reduced, but not to a less than significant level, through implementation of Mitigation Measures E.8, which call for a historical exhibit in the bulkhead building and park design elements that reference the Terminal building's footprint and height. No feasible alternatives are available to reduce this impact to a less than significant level for the reasons set forth below.

b. Noise

(1) Impact G.1: The Project construction activities will generate noise levels above City standards and disturb noise-sensitive areas. This impact could be reduced, but not to a less than significant level, through implementation of Mitigation Measures G.1a through d, which call for limiting the hours of construction, use of best available noise control techniques, special provisions for the use of impact tools, noise control measures for stationary sources, limitations on the number of consecutive days that activities such as pile driving may occur, special attenuation provisions for pile driving or other extreme noise generating construction impacts, and procedures for tracking and responding to noise complaints from construction. No feasible mitigation measures are available to reduce this impact to a less than significant level.

(2) Impact G.4: The Project will locate noise sensitive uses in a noise environment where outdoor noise levels are above the General Plan's "normally acceptable" level. No feasible mitigation measures are available to reduce this impact to a less than significant level. No feasible alternatives are available to reduce this impact to a less than significant level for the reasons set forth below.

23. Under Public Resources Code section 21081, CEQA Guidelines section 15091 and 15092 and Chapter 17.158 of the Municipal Code, the City recognizes that some mitigation measures require action by, or cooperation from, other agencies. For each mitigation measure that requires the cooperation or action of another agency, the City finds that adoption and/or implementation of each of those mitigation measures can and should be adopted and/or implemented by that other agency.

IV. FINDINGS REGARDING PROJECT ALTERNATIVES AND OPTIONS FOR REUSE OF THE NINTH AVENUE TERMINAL

24. The City finds that specific economic, social, environmental, technological, legal or other considerations make infeasible the alternatives to the Project and justify approval of the Project despite remaining impacts, as more fully discussed in the Statement of Overriding Considerations below.

25. The City adopts the EIR's analysis and conclusions regarding the alternatives previously considered but rejected. The City adopts the EIR's analysis and conclusions with respect to all of the alternatives discussed as supplemented by the findings below.

26. The four potentially feasible alternatives analyzed in the EIR, represent a reasonable range of potentially feasible alternatives that reduce one or more significant impacts of the Project. These alternatives include the (1) No Project Alternative; (2) No Project Estuary Policy Plan Alternative; (3) Enhanced Open Space / Partial Ninth Avenue Terminal Preservation

And Adaptive Reuse Alternative; and (4) Reduced Development / Ninth Avenue Terminal Preservation Alternative. As presented in the EIR, the alternatives were described and compared with each other and with the Project. The Reduced Development / Ninth Avenue Terminal Preservation Alternative was identified as the environmentally superior alternative. Additionally, the City examined a "Sub-alternative: Full Ninth Avenue Terminal Preservation and Adaptive Reuse." This is a stand-alone alternative for the Ninth Avenue Terminal that could be included in the Project or any of the development alternatives.

27. The City certifies that it has independently reviewed and considered the information on alternatives provided in the EIR and in the record. The EIR reflects the City's independent judgment as to alternatives. The City finds that the Project provides the best balance between the project sponsor's objectives, the City's goals and objectives, the Project's benefits as described below in the Statement of Overriding Considerations, and mitigation of environmental impacts to the extent feasible. The alternatives proposed and evaluated in the EIR are rejected for the reasons stated in the EIR and for the following reasons. Each individual reason presented below constitutes a separate and independent basis to reject the alternative as being infeasible, and, when the reasons are viewed collectively, provide an overall basis for rejecting the alternative as being infeasible.

28. The City has reviewed the three reports prepared by EPS and submitted by the project sponsor, including: (a) the "Oak to 9th Mixed Use Project Fiscal Impact Analysis" dated July 29, 2005 ("EPS Fiscal Analysis"); (b) the "Oak to 9th Mixed-Use Project Alternatives 1B, 2, and 3 Feasibility Analysis" dated January 31, 2006 ("EPS Alternatives Analysis"); and (c) the "Oak to 9th Mixed-Use Project Ninth Avenue Terminal Reuse Feasibility Analysis" dated February 21, 2006 ("EPS Terminal Reuse Feasibility Analysis"). After reviewing these EPS reports, the City has determined that the reports constitute credible, expert data, analysis, and evidence regarding the fiscal impacts and economic feasibility of the Project and the alternatives. The City has relied on the information, analysis, and conclusions in these EPS reports in its findings regarding the Project alternatives as more specifically set forth below.

29. No Project/No Development Alternative (Alternative 1): Under this alternative, none of the development proposed under the Project would occur. Without the Project, the site is likely to remain in its current state for the foreseeable future. Thus, none of the environmental impacts associated with the Project would occur. This alternative is rejected as infeasible for the following reasons: (a) This alternative would not attain any of the objectives of the Project; (b) It would not increase open space, parks, public access, and views to and along the Estuary as called for in the Estuary Policy Plan; (c) It would not improve existing open space and parks in the Estuary area as called for in the Estuary Policy Plan; (d) No improvement of the existing shoreline and marinas would occur and Clinton Basin Marina would remain functionally obsolete; (e) Uses that generate contamination and the potential for runoff into the Estuary would continue to operate on the site and pose a potential threat to the adjacent Estuary; (f) Comprehensive remediation of the site by the developer would not occur; (g) The alternative would not be consistent with the goals of the Redevelopment Plans and the Estuary Policy Plan to revitalize and redevelop these underused, blighted, industrial parcels and create an active, economically vibrant, publicly accessible waterfront area; (h) The local economy would lose the benefits of this Project, because additional retail spending by Project residents in the surrounding areas and the City would not occur; (i) The alternative would not provide the City with any of

the fiscal benefits of the Project as documented in the EPS Fiscal Analysis, including revenues from property taxes, property transfer, sales taxes, utility user fees, motor vehicle fees, business license taxes, new household expenditures, redevelopment revenues including housing set-asides, and other various local taxes and fees; (j) Over 3,100 new housing opportunities would be lost; and (k) No new construction or permanent jobs would be created, which would further disadvantage the local job market and economy.

30. No Project/Estuary Policy Plan (Alternative 1B): Under this alternative, development would occur in accordance with the existing Estuary Policy Plan. This alternative would reduce certain of the Project's significant traffic and air quality impacts and would have the same significant unavoidable impacts on historic resources, because it includes the demolition of the Ninth Avenue Terminal and portions of the associated wharf to create a new large scale open space area. This alternative is rejected for the following reasons: (a) This alternative would not provide any new housing and would result in the loss of 3,100 new housing opportunities, thereby substantially reducing the City's ability to meet its housing goals; (b) Based on the EPS Alternatives Analysis, which examined the alternative's residual land value (i.e. a comparison of the cost of developing and operating the building prototype against the revenues and value that can be achieved for the uses at this site), this alternative is not financially feasible because the type and amount of development results in the costs of development exceeding revenues, thereby producing a negative IRR (internal rate of return); (c) The EPS Alternatives Analysis found that this alternative produced an estimated net shortfall of \$257,267,076; (d) The EPS Alternatives Analysis found that conventional financing from lenders and investors would be very difficult to obtain given the substantial financial shortfall; (e) The EPS Alternatives Analysis determined that undertaking this alternative would require significant public subsidies or significant improvements in future market conditions; and (f) The EPS Alternatives Analysis determined that this alternative could not support the open space maintenance, security, management, and insurance costs associated with development of the site.

31. Enhanced Open Space / Partial Ninth Avenue Terminal Preservation and Adaptive Reuse Alternative (Alternative 2): Under the alternative, development would include 1,800 residential units, 95,000 square feet of commercial space, 40.6 acres of parks and open space, realignment of the Embarcadero to curve through the eastern portion of the site, and preservation and reuse of approximately 88,000 square feet of the Ninth Avenue Terminal building, consistent with the Tidelands Trust land use restrictions. This alternative would reduce certain of the Project's significant traffic impacts, would reduce, but not avoid, the significant unavoidable impacts to historic resources, would increase existing hazardous wind conditions in the open space areas, and otherwise would have impacts similar to the Project. This alternative is rejected for the following reasons: (a) This alternative would substantially reduce the number of new housing opportunities on the site, thereby impeding the City's ability to meet its housing goals; (b) The realignment of the Embarcadero would inappropriately place a major thoroughfare along a major new open space area and surrounding a new residential area causing land use conflicts and separating the new open space from the other uses on the site; (c) Based on the EPS Alternatives Analysis, which examined the alternative's residual land value (i.e. a comparison of the cost of developing and operating the building prototype against the revenues and value that can be achieved for the uses at this site), this alternative is not financially feasible because the type and amount of development results in the costs of development exceeding revenues, thereby producing a negative IRR (internal rate of return); (d) The EPS Alternatives

Analysis found that this alternative produced a net estimated net shortfall of \$172,126,631; (d) The EPS Alternatives Analysis found that conventional financing from lenders and investors would be very difficult to obtain given the substantial financial shortfall; (f) The EPS Alternatives Analysis determined that undertaking this alternative would require significant public subsidies or significant improvements in future market conditions; and (g) The alternative would reduce the ability to provide a new public open space and access to the waterfront in the location of the Ninth Avenue Terminal as called for in the Estuary Policy Plan. Additionally, the conclusions regarding the infeasibility of reusing this portion of the Ninth Avenue Terminal as a stand-alone development are presented below.

32. Reduced Development / Ninth Avenue Terminal Preservation (Alternative 3): Under this alternative, development would include 540 residential units, 10,000 square feet of retail/restaurant use, 39.9 acres of parks and open space and it would preserve and reuse the Ninth Avenue Terminal. This is the environmentally superior alternative and would reduce most of the Project's significant unavoidable impacts, except for one traffic impact, the impact on the historic wharf structure, and the construction noise impact. This alternative would result in exposing the waterfront open space area to the existing hazardous wind conditions. This alternative is rejected for the following reasons: (a) The alternative would substantially reduce the number of new housing opportunities on the site, thereby impeding the City's ability to meet its housing goals; (b) Based the EPS Alternatives Analysis, which examined the alternative's residual land value (i.e. a comparison of the cost of developing and operating the building prototype against the revenues and value that can be achieved for this uses at this site), this alternative is not financially feasible because the type and amount of development results in the costs of development exceeding revenues, thereby producing a negative IRR (internal rate of return); (c) The EPS Alternatives Analysis found that this alternative produced an estimated net shortfall of \$308,132,863; (d) The EPS Alternatives Analysis found that conventional financing from lenders and investors would be very difficult to obtain given the substantial financial shortfall; (e) The EPS Alternatives Analysis determined that undertaking this alternative would require significant public subsidies or significant improvements in future market conditions; and (f) The alternative would reduce the ability to provide a new public open space and access to the waterfront in the location of the Ninth Avenue Terminal as called for in the Estuary Policy Plan. The infeasibility of reusing the Ninth Avenue Terminal as a stand-alone development is presented in the findings below.

33. Sub Alternative: Full Ninth Avenue Terminal Preservation and Adaptive Reuse: This sub-alternative would retain and reuse the Ninth Avenue Terminal and related wharf structure. This sub-alternative would avoid the significant impact to the Terminal. This sub-alternative is a stand-alone alternative for the Terminal and could be combined with the Project or any of the development alternatives. This alternative is rejected for the following reasons: (a) The alternative would preclude using the Terminal area for open space and park uses and would preclude new views of the waterfront from this location as called for in the Estuary Policy Plan; and (b) Reuse of the Terminal is financially infeasible as a stand-alone project for the reasons set forth below

34. Options For Reusing the Ninth Avenue Terminal Building: The EPS Terminal Reuse Feasibility Analysis examined various proposed reuse scenarios for the Ninth Avenue Terminal as a stand-alone project, because the Terminal would be owned and operated by a

governmental or other entity, not the project sponsor. The scenarios examined included the Project proposal to reuse the bulkhead building, the EIR alternative (Alternative 2) to reuse the 1920's portion of the Terminal, and five options proposed by a study prepared by students and submitted as a comment on the DEIR, entitled "The Ninth Avenue Terminal, A Feasibility Study For Adaptive Reuse." For the reuse scenarios, EPS compared the projected revenues to projected costs to determine if financial shortfalls would occur. Reuse costs were based on estimates provided by Rutherford and Chekene for the structural upgrades that would be needed and construction costs provided by Devcon Construction, Inc. The EPS findings are summarized as follows:

a. Project Proposal: The Project proposal for reuse of the bulkhead building has the greatest likelihood of the various alternatives and options evaluated to be fully occupied. Although this proposal results in a financial shortfall, it is the lowest shortfall of all the options and alternatives examined. This proposal is the most financially feasible of all the proposals studied.

b. EIR Alternative 2: Based on public comments, the EPS Terminal Reuse Feasibility Analysis examined the financial feasibility of a proposed set of uses that could be developed under EIR Alternative 2, including a visitor's/cultural/community center, the Philbrick Boat Works, other marine-related space, food concessions, boat and bike rentals and other commercial uses. EPS found that, although the market would support these uses, not all uses could be supported at the square footage proposed, thereby reducing the revenue potential of this proposal. Additionally, the EPS Terminal Reuse Feasibility Analysis determined that additional parking must be provided to adequately support the feasibility of this proposal. EPS concluded that this proposal would not be financially feasible, because it results in a shortfall of between \$22,049,302 to \$23,433,349.

c. Student Study Option 1: This option proposes to reuse the Terminal as a conference/special events center. EPS examined the site's ability to compete in the market for conference center services. Based on the EPS analysis, this alternative is economically infeasible for the following reasons: (1) Although the site is suitable for a stand-alone convention center, the lack of full-service hotel facilities within walking distance would make it difficult for the proposed convention center to compete with similar facilities in the area; (2) Convention facilities already exist nearby – the Oakland Convention Center and at two Jack London square hotels, the Jack London Inn and the Waterfront Plaza hotel; (3) Current utilization at the Oakland Convention Center indicates that there is not excess demand to justify new facilities and any new facilities may adversely affect the Convention Center; (4) The financial difficulties of the recently-closed Henry J. Kaiser center illustrate the difficulties of running a stand-alone convention center; (5) Given the inadequate parking provided, the proposed uses would need to be reduced in order to accommodate the needed parking, thereby reducing leasable square footage and revenue; and (6) This option has an estimated financial shortfall of \$33,639,407.

d. Student Study Option 2: This option proposes a regional recreation center including a grocery store, sporting goods store, and cafes/restaurants. EPS examined the desirability of the site for grocery tenants and the location's ability to support a large recreation center. Based on the EPS analysis, this alternative is economically infeasible for the following reasons: (1) The waterfront does not offer a grocery tenant a competitive advantage; (2) This

alternative does not provide ancillary retail uses and services that help attract supermarket customers; (3) It is uncertain whether the site can support a large recreation space because of the number of similar facilities in the region, including 30 recreation centers operated by the City of Oakland and the Bladium in the City of Alameda.

e. Student Study Option 3: This option includes a conference center, a theater/club, meeting rooms, retail and restaurant space. EPS examined the site's ability to compete in the market for conference center services, and the need for another conference center in the area. Based on the EPS analysis, this alternative is economically infeasible for the following reasons: (1) although the site is suitable for a stand-alone convention center, the lack of full-service hotel facilities within walking distance would make it difficult for the proposed convention center to compete with similar facilities in the area; (2) The suggested added uses, such as retail, community and performing arts spaces, would likely conflict with the convention space; (3) Convention facilities already exist nearby – the Oakland Convention Center and at two Jack London square hotels, the Jack London Inn and the Waterfront Plaza hotel; (4) Current utilization at the Oakland Convention Center indicates that there is not excess demand to justify new facilities and any new facilities may adversely affect the Convention Center; (5) This option would have an estimated financial shortfall of \$35,552,683.

f. Student Study Option 4: This option proposes a large public market, a maritime history center, a restaurant and a café. EPS examined the site's ability to support almost 31,000 square feet of public market use. Based on the EPS analysis, this alternative is economically infeasible for the following reasons: (1) The square footage dedicated to market stalls is unusually large for this type of facility; and, (2) Direct competition with Jack London Square's Harvest Hall would likely make it difficult to attract tenants.

g. Student Study Option 5: This option proposes artists' related uses and a café/restaurant. Based on the EPS analysis, this option is economically infeasible for the following reasons: (1) The spaces are quite large and there are likely a limited number of artists who could afford this type of space; (2) Discussions with operators suggest that affordable live-work artists' studios are highly desirable, but residential use is not permitted at the Terminal site, because the land is held in public trust; (3) Therefore, it is unlikely that the studio spaces would generate enough revenue to make this a viable project.

V. STATEMENT OF OVERRIDING CONSIDERATIONS

35. The City finds that each of the specific economic, legal, social, technological, environmental, and other considerations described below and the benefits of the Project summarized below independently outweigh the remaining significant adverse impacts of the projects and is an overriding consideration independently warranting approval of the Project. The remaining significant adverse impacts are acceptable in light of each of these overriding considerations.

36. In furtherance of City goals and policies, the Project will revitalize the waterfront in this area of the Oakland Estuary and convert vacant and underused parcels into a productive, vibrant, cohesive, planned mixed-use community.

37. The Project will provide over 29 acres of public open space, parks, and pedestrian and bicycle trails in the waterfront area along the Oakland Estuary that will enhance and expand public access to this area in accordance with the goals and policies of the Estuary Policy Plan. The Bay Trail will be extended through the site. With these improvements, the Project will allow Oakland residents and other visitors to enjoy an areas of the waterfront that have been inaccessible..

38. As documented in the EPS Fiscal Analysis, the Project will provide significant revenue benefits to the City from property taxes, property transfer taxes, sales taxes from residents, employees, and business to business transactions, use taxes, business license taxes, motor vehicle in lieu fees and other permit fees. At build-out, the Project will generate annual net fiscal revenues substantially in excess of costs. As such, the Project will assist the City in meeting and sustaining its future fiscal responsibilities.

39. The Project will provide substantial tax increment revenue to the City and the Redevelopment Agency, generating significant funds for affordable housing in Oakland.

40. The Project will generate approximately 1,000 new employment opportunities and approximately 7,000 construction jobs over the course of the build out of the Projects.

41. By increasing residential and employee populations in this area of the City, the Projects will stimulate the local economy by creating opportunities to support nearby existing local businesses and providing opportunities for new businesses.

42. The Projects will provide much needed housing in a smart growth, infill development with a mix of uses convenient to downtown and transit facilities.

43. The Project will promote a jobs/housing balance by providing a mix of commercial and residential uses.

44. The Project will provide a variety of housing types to accommodate a diverse range of households.

45. The Project will remediate and reuse contaminated property thereby enabling redevelopment of these sites and enhancing public and environmental safety.

46. The uses in the Project will create a 24-hour population in this waterfront area adding to its attractiveness and vitality.

47. The Project will assist in the alleviation of blighting conditions in the area, thereby serving the goals and objectives of the Redevelopment Plans.

48. The Project will build two marinas providing opportunities for 175 slips.

49. The Project will renovate the Terminal bulkhead building to house a maritime museum and community center.

